

CANADA / JUDGMENT

R. v. Wiwchar

2025 BCSC 145

COURT

Supreme Court of British Columbia

DECIDED

14 January 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 145 R. v. Wiwchar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wiwchar,

2025 BCSC 145

Date: 20250114

Docket: 27393-2; 27393-227

Registry: Vancouver

Rex

v.

Dean Michael Wiwchar

Restriction on Publication: Pursuant to 486.31(1), 486.5(1), 631(6) & 648 C.C.C.

Inherent Jurisdiction

Before: The Honourable Madam Justice Ker

Oral Ruling on Voir Dire #7

Re Application 227

Counsel for the Crown:

M.J. Sheardown

S.L. Dworkin

N. Grégoire

A. LaBar

The accused, appearing on his own behalf:

D. Wiwchar

Counsel appearing as Amicus Curiae:

T.M. Arbogast, K.C.

K.A. Kirkpatrick

Place and Date of Hearing:

Vancouver, B.C.

January 13 and 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

January 14, 2025

- [1] These reasons for judgment were delivered as oral reasons. They have since been edited for distribution.
- [2] The reasons address a preliminary motion brought by the accused, Dean Michael Wiwchar, within Application 227 (NOA 227), where he seeks to challenge the search of his then-residence, Unit 108 at 1111 Jervis Street in Vancouver. The search was conducted between May 24, and May 25, 2012, by members of the Vancouver Police Department (VPD) and the RCMP. In the preliminary motion Mr. Wiwchar brings, he seeks an order from this Court that Mr. Wiwchar and Amicus be permitted to attend 1111 Jervis Street to video and photograph the interior of his former studio apartment, Unit 108. He also seeks to attend and document the street view from Jepson-Young Laneway, where Unit 108's windows look out onto.
- [3] Mr. Wiwchar wants to capture photographs and videos of these areas at night with the lights off and the venetian blinds to the apartment closed. This request is to determine if Det. Rychkun could actually see the suspicious-looking bag Det. Rychkun claimed he observed on the top-level shelf in a closet in the apartment.
- [4] Det. Rychkun has testified three times as to the details of his observations in on the evening of May 24, 2012: he made them sometime after 8:15 p.m. when the police entered Mr. Wiwchar's apartment, but before 8:45 p.m., at which time the police received information from other members of the investigation that Mr. Wiwchar's then-girlfriend had advised an undercover operator that there were guns in the apartment. Det. Rychkun made his observations from inside the apartment while kneeling between the bed and the closet, facing the front door of the apartment, while the lights were off. Mr. Wiwchar continues to

argue that the visibility from ambient streetlight entering the apartment would not make observations possible from the position Det. Rychkun has testified he was in.

- [5] Det. Rychkun has remained firm that he was able to see the bag due to the ambient light provided by a nearby streetlight that managed to seep in through the closed venetian blinds. Mr. Wiwchar contends that this is impossible and that he now needs to film the areas, 12-and-a-half years after the fact, in order to establish that Det. Rychkun is lying.
- [6] I begin with the following observations. First, this issue of the lighting within the apartment and the positioning of Det. Rychkun during his attendance inside Unit 108 with other members of the VPD's Tactical Support Section (TSS) following the RCMP's Security Emergency Section (SES) members' entry to conduct a sweep for countersurveillance measures has been litigated two times now. It was first argued before Justice Bowden in Mr. Wiwchar's firearms trial in 2015. The issue was relitigated before Justice Maisonville in 2021, several months before Mr. Wiwchar was severed from the jury trial with his co-accused, Mr. Alkhalil and Mr. Amero. Det. Rychkun testified a third time during the jury trial before Maisonville J. when Mr. Wiwchar was still on the indictment.
- [7] Second, Det. Rychkun testified in both voir dres before Justices Bowden and Maisonville. He was vigorously and was extensively cross-examined by Mr. Wiwchar's defence counsel at the time, Simon Buck. In particular, Det. Rychkun was, to use the vernacular, "raked over the coals" by Mr. Buck in an aggressive cross-examination in the voir dire before Bowden J., in which counsel intimated that Detective Rychkun was lying about his ability to see the suspicious bag in the closet.
- [8] Justice Bowden, in his reasons in *R. v. Ley*, 2015 BCSC 970, found Det. Rychkun to be a credible witness and rejected the defence argument that the officer could not see the bag in the closet from his position in the room during the evening hours: *Ley* at para. 28. Justice Bowden specifically found that Det. Rychkun was able to see the bag: *Ley* at paras. 42, 44.
- [9] Det. Rychkun was subjected to a similarly aggressive, exhaustive--indeed searing--cross-examination, again by Mr. Buck, in the voir dire before Justice Maisonville. This time, Mr. Buck also provided defence photographs of the exterior areas of the apartment building that depicted the lone street lamp in the alley near the windows of Unit 108.
- [10] Justice Maisonville in her ruling in *R. v. Alkhalil*, 2021 BCSC 233 ("*Alkhalil 233*"), also accepted Det. Rychkun's evidence. After providing a summary of Det. Rychkun's evidence (see paras. 62-68), Justice Maisonville accepted Det. Rychkun's evidence that he conducted no search of the apartment. Rather, he merely "happened to observe the bag in the closet" while the TSS members he was with conducted their installation or modification of covert listening devices: *Alkhalil 233* at paras. 71-72.
- [11] Third, both Justices Bowden and Maisonville found that the search for firearms direction from the command triangle in the context of what the investigators were dealing with came after two important developments: (i) Det. Rychkun observing the bag in the closet, and (ii)

the command triangle receiving information from UC operators who were meeting with Mr. Wiwchar's girlfriend, who advised them that there were high-powered firearms in the apartment. Both justices upheld the validity of the searches and ruled that Mr. Wiwchar's s. 8 Charter rights had not been breached.

- [12] Not satisfied with the findings made by these two trial judges, Mr. Wiwchar intends to again challenge the validity of the search of Unit 108 at 1111 Jervis Street through NOA 227. He contends the only way he can do this is to conduct an investigation of the premises of his old apartment to establish what he knows and believes to be the true state of affairs: that Det. Rychkun lied about being able to see the suspicious bag.
- [13] The Crown and Amicus both argue that the Court should not grant the order giving Mr. Wiwchar permission to attend the residence. They outline a variety of reasons in support of dismissing this motion. I agree with their arguments. I decline to make the order Mr. Wiwchar seeks for the reasons outlined by the Crown in its reply to NOA 227 at paras. 46-51, and its written submission, Exhibit B on this motion within NOA 227 at paras. 33-41, and also for the reasons outlined in the written submissions filed by Amicus, Exhibit C at paras. 9-19.
- [14] Mr. Wiwchar had the opportunity to have his counsel explore the lighting and positioning issues and how they impacted Det. Rychkun's ability to see the bag on the top shelf of the closet in two separate voir dires. Counsel did so in a thorough, comprehensive, and exhaustive fashion. Det. Rychkun was subjected to an aggressive and prodding cross-examination on those issues in both voir dires. The only change in tactic between those two voir dires was for senior and experienced defence counsel to put some different non-Crown, non-disclosure photographs to the officer in the course of cross-examination on second voir dire.
- [15] The defence previously conducted no further lines of investigation to obtain video or other photographic evidence that Mr. Wiwchar now seeks to gather, something they could have done independently. In my view, Mr. Wiwchar is not entitled to a third crack at this particular issue.
- [16] Moreover, the order is inappropriate for a number of reasons, including:
- 1) it is not within the scope of the terms of appointment nor the duties of Amicus more generally to be acting as an investigator for the accused, and it runs the risk of turning Amicus into a witness in the process;
 - 2) there is no way of ensuring that the videoing and photographing of the areas, now 12-and-a-half years later, will exactly replicate the conditions that Det. Rychkun was in when he made his observations;
 - 3) the season was different: it was late May; currently it is January;
 - 4) the observations made by Det. Rychkun were made no later than 8:45 p.m.;

- 5) no evidence has been adduced to establish the weather conditions--cloudy, rainy, clear--or when exactly the sunset occurred on that date;
 - 6) there is no way of knowing if the streetlight and the lumens from the streetlight are the same or different now as opposed to 12-and-a-half years ago;
 - 7) there is no way of knowing the condition of the foliage adjacent to the building at the time of Det. Rychkun's observation and how that has changed over the intervening 12-and-a-half years, and how that would impact the lighting conditions now, such that they are different from May 24, 2012, between 8:15 p.m., when Det. Rychkun entered the apartment, and 8:45 p.m., when Det. Rychkun learned of the information from the UC operators about the firearms in the apartment;
 - 8) there is no way of knowing whether the interior of Unit 108 has the same venetian blinds or even the same tone of paint on the walls or inside the closet, or how the unit may have changed;
 - 9) there is no way of knowing if the street lighting conditions overall within the neighbourhood are now different to the conditions of May 24, 2012.
- [17] In other words, there are innumerable environmental factors that cannot be accounted for that may well impact the scene, such that the circumstances of May 24, 2012, cannot be exactly replicated.
- [18] Furthermore, Mr. Wiwchar couches much of his submissions and belief that Det. Rychkun is lying based on his knowledge and recollection of the conditions of his apartment in 2012 and various photographs. What this overlooks is, it is not Mr. Wiwchar's perspective that governs. It is what Det. Rychkun says he saw that is determinative. Det. Rychkun's evidence has been accepted on that point two times now.
- [19] Insofar as the angles of various photographs are concerned, for example, Exhibit 1, Tab 17, Photograph Number 27, which Mr. Wiwchar contends put the lie to Det. Rychkun's evidence, I must observe that camera angles in photographs are dependent on where the shot is taken from and do not always replicate what another person has seen.
- [20] There is a further problem with this motion. Mr. Wiwchar's remedy in his written argument, Exhibit A on the voir dire, seeks that he personally attend the scene and participate in the video and photography session with the lights out and in the dark. I will state the obvious for the sake of completeness: Mr. Wiwchar is serving a life sentence for the first-degree murder of John Raposo committed in June 2012 in Toronto, Ontario, some six months after his alleged involvement in the first-degree murder of Sandip Duhre, which is Count Number 1 on the indictment before this Court. Mr. Wiwchar is not free to walk out of here and conduct a photography and video examination of Unit 108 at 1111 Jervis Street. Moreover, it is not within the scope of Amicus's duties to the Court to undertake investigative steps, particularly when such investigative steps could have been done by Mr. Wiwchar's counsel when the matter was before Justice Bowden, and again when it was before Justice Maisonville, and

where such steps could well turn Amicus into a witness.

- [21] I acknowledge that defence counsel generally, and Mr. Wiwchar as a self-represented individual, have the ability to conduct their own investigations and inquiries independent of the Crown and the Court and without advising the Crown of their investigative steps. I also note that Mr. Wiwchar is not precluded from a right to investigate on his own. I agree with the observations in the written argument of Amicus that:

it is important to acknowledge that Mr. Wiwchar not be summarily precluded from going down 'rabbit-holes' to a certain extent, as that is what good defence counsel do in the context of understanding and evaluating a case, in pursuing full answer and defence and engaging in resolute advocacy. (Groia v. Law Society of Upper Canada, 2018 SCC 27; R. v. Barros, 2011 SCC 51)

- [22] However, in the context of this request, when considered against the backdrop of the exhaustive reviews before Justices Bowden and Maisonneuve, there is no practical purpose to engage in any further investigation. Trial judges, in the exercise of their case management powers, have the ability to refuse to be led down an evidentiary rabbit hole on a search for evidence to support a speculative claim: R. v. Phan, 2020 ONCA 298 at para 63.

- [23] While Mr. Wiwchar's custodial and self-represented status may pose some impediments to his own investigations, this status does not create a freestanding right to turn the court process or the role of Amicus into investigators or inquisitors.

- [24] As the Supreme Court of Canada has repeatedly said, while an accused is entitled to a fair trial, he is not entitled to a perfect trial: R. v. Harrer, [1995] 3 S.C.R. 562 at para. 45; R. v. Khan, 2001 SCC 86 at para. 72; R. v. Kahsai, 2023 SCC 20 at para. 67.

- [25] Moreover, an accused is not entitled to serially try different strategies to relitigate the same issue when those strategies could have been deployed on the first or the second occasion: R. v. Mahalingan, 2008 SCC 63. They were not. They were readily available then. They were not resorted to by experienced counsel.

- [26] Mr. Wiwchar's motion for permission to attend 1111 Jervis Street and Unit 108 therein and to have Amicus photograph and videotape the scene for lighting conditions is dismissed.

"Ker J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/01/2025BCSC0145.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-wiwchar-2025>

Prepared on 28 October 2026 · Esheria