
CANADA / JUDGMENT

U.S.A. v. Edwards

2010 BCCA 149

COURT

British Columbia Court of Appeal

DECIDED

24 March 2010

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2010 BCCA 149 U.S.A. v. Edwards

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

U.S.A. v. Edwards,

2010 BCCA 149

Date: 20100324

Docket: CA037813

Between:

The Attorney General of Canada

on Behalf of the United States of America

Respondent

And

Clifford Eric Edwards

Applicant

Before:

The Honourable Mr. Justice Low

(In Chambers)

On appeal from the Supreme Court of British Columbia, December 18, 2009,

(U.S.A. v. Edwards, 2009 BCSC 1849, Vancouver Registry No. 23234)

Counsel for the Applicant:

G. Botting

Counsel for the Respondent:

K.L. Swift

Place and Date of Hearing:

Vancouver, British Columbia

February 11, 2010

Place and Date of Judgment:

Vancouver, British Columbia

March 24, 2010

Reasons for Judgment of the Honourable Mr. Justice Low:

- [1] This is an application for bail pending hearing of the appeal of an order extraditing the appellant to the United States of America to face various charges arising out of a fraudulent telemarketing operation conducted in Surrey, B.C. that targeted elderly residents of the United States. Decision in this matter was delayed so that reasons for judgment in the trial court could be made available and to permit counsel to file further written submissions.
- [2] The Minister of Justice has not yet made a surrender order. Submissions on that issue have been made to him. If he makes the order, there might well be a review application brought in this court.
- [3] The offences are said to have occurred during 2000 and earlier. In 2000, investigators obtained a search warrant under the Mutual Legal Assistance in Criminal Matters Act, R.S.C. 1985 (4th Supp.), c. 30. There was a search of the premises in Surrey where the telemarketing took place and physical evidence that was seized was sent to the United States for the prosecution. The appellant was found at the premises when the search was conducted.
- [4] The respondent filed a record of the case in 2003. Several people in addition to the appellant have been proceeded against. Two of them waived extradition, pleaded guilty in the United States and are currently serving their sentences. A third was apprehended in the United States, pleaded guilty and served his sentence. A fourth is appealing an extradition order made against him last June. A fifth is still being sought for extradition.
- [5] An extradition warrant for the arrest of the appellant was issued in 2004. He was not arrested until April, 2009. He did not apply for bail until just before his extradition hearing. On 21 October 2009, Mr. Justice McEwan denied bail on both the primary and the secondary ground.
- [6] The extradition hearing was on 30 November and 1 December 2009.

- [7] On 18 December 2009, Mr. Justice Voith committed the appellant into custody to await surrender: 2009 BCSC 1849. He determined that there was a body of evidence implicating the appellant in the fraudulent telemarketing scheme.
- [8] It appears that the main position taken by the appellant at the extradition hearing was that his role in International Brokers Ltd., the company under which the telemarketing scheme operated, was purely administrative and not criminal. This was a difficult position to maintain in the face of evidence in the record from telemarketers employed in the operation that the appellant was one of the principals of the operation, some support for which is found in seized corporate and financial records. The extradition judge said this:
- [97] There is, in the present case, *prima facie* evidence that Mr. Edwards was engaged in fraudulent activities within the meaning of s. 380 of the Criminal Code. The evidence of former employees and of officials from the New South Wales Lottery provides *prima facie* evidence that the business of IBL as a whole was fraudulent. The evidence of former employees of IBL is that Mr. Edwards was one of the bosses or persons in charge of IBL and as such was involved in directing IBL's fraudulent activities. He hired people. He gave instructions to telemarketers, and he handled the finances. Still further, there is evidence that he handed out leads relating to potential victims or targets. He was actively involved in reassuring people who called to complain about IBL, and he told telemarketers to resell to people who were easy targets for sales.
- ...
- [100] Here, again, there is evidence from which a jury could conclude that under the management of Edwards, telemarketers caused the various Alleged Victims to send money to IBL on the basis of the false claim that the money was necessary to collect lottery winnings, as in the case of Bartlett, Phillips, Pollak, Rhodes, and Winkler, or that they could enter a lottery, as in the case of Dubois, Green, and Divall, or that they could obtain enhanced chances of winning a lottery, as in the case of Rowe, Offredo, or Kicklighter. None of these victims received any money. This evidence in combination with the evidence of the former employees provides *prima facie* evidence of fraudulent acts. These deceptive and/or fraudulent statements regarding purported lottery winnings or participation in foreign lotteries were used to persuade the Alleged Victims to send money to IBL at various mailboxes controlled by persons within IBL, such as Edwards. Relying on these deceptive and false statements, the various Alleged Victims were placed at risk of or suffered actual deprivation in the form of the money they sent to Edwards and his accomplices.
- [101] In this case, I am satisfied, as I have said, that there is evidence that IBL was a fraudulent enterprise. In Dixon, Mr. Justice Rice, in referring to much of the same evidence that I have, expressed this view on a *prima facie* basis at paras. 94 and 96.
- [102] There is evidence from which a jury could conclude that Mr. Edwards engaged in managerial functions that enabled IBL to operate day to day. The inference could be drawn that Mr. Edwards engaged in these managerial responsibilities for IBL during the time

periods that the various Alleged Victims were contacted by IBL and sent monies to IBL. There is evidence capable of supporting the inference that Mr. Edwards, by virtue of performing a managerial role for a company used to perpetuate a telemarketing scheme and given his level of direct participation in that business, had a subjective awareness of the intentional use of deceit, falsehood, or other fraudulent means, knowing that persons, including the Alleged Victims, could be deprived of money or have their economic interest prejudiced as a result of the activities of IBL.

- [103] There is evidence capable of supporting an inference that Mr. Edwards' involvement in a telemarketing scheme was that of an operating mind and not a mere functionary. Mr. Edwards' role could reasonably be viewed as involving a level of management responsibility for what transpired at the IBL business premises. As a manager of IBL, it is reasonable to infer that Mr. Edwards had some knowledge of the fraudulent nature of the business of the company. Furthermore, in my view, a jury could use the evidence adduced by the requesting state to infer that Mr. Edwards was aware of the fraudulent telemarketing activities conducted by IBL and that he, by managing that company on a day-to-day basis, participated in that effort. A reasonable jury, properly instructed, could then come to the conclusion that Mr. Edwards is guilty of fraud.
- [9] The judge made the above findings with reference to the crime of fraud. He made similar findings with respect to other criminal offences under consideration.
- [10] The appellant says he intends to argue on appeal that the extradition judge erred in refusing to let him call evidence at the extradition hearing; in "rubber stamping" the authority to proceed contrary to *United States of America v. Ferras*, [2006] S.C.J. 33; and in failing to note an absence, in some (but not all) of the offences under consideration, of evidence of an essential element of the particular offence.
- [11] Under s. 20 of the Extradition Act, S.C. 1999 c. 18, s. 679 of the Criminal Code, R.S.C. 1985, c. C-46 applies to judicial interim release pending appeal of a committal order, the Minister's decision as to surrender, or a judicial review of that decision. Under s. 679 of the Code, an appellant seeking judicial interim release pending appeal must establish that the appeal is not frivolous, that he will surrender himself into custody as required, and that his detention is not necessary in the public interest.
- [12] The record of available evidence shows a strong case that the appellant was involved for a considerable period of time in a telemarketing scheme designed to bilk elderly people of their money. In argument made through counsel, the appellant does not dispute that there was such a scheme and does not suggest that it was not criminal. The position that his involvement was purely administrative, peripheral and innocent seems to be a long bow to draw. Acceptance of this position would mean that those operating the scheme employed the appellant while keeping him in the dark about crimes being committed and that the appellant did acts to facilitate the scheme without, at the very least, being wilfully blind to the nature of the operation.

- [13] The respondent stops short of arguing that the appeal is frivolous. However, the respondent points out that the proposed grounds of appeal are merely recitals of unsuccessful arguments made before the extradition judge without articulation of how the judge erred. I have read the reasons of the extradition judge. I do not conclude that the appeal is frivolous but it is extremely weak.
- [14] The appellant contends that he was living in plain sight in this area from 2004, when authorities sought his apprehension on the extradition warrant for his arrest issued in this matter, and his arrest date in April 2009. The respondent does not allege that the appellant was in hiding but it is clear that he was not traceable, despite attempts by police over the years to locate him. Mr. Justice McEwan concluded that during this period the appellant "essentially disappeared". Police were able to arrest him only because they found him in a house containing a marijuana grow operation with about 450 plants. Drug charges against the appellant are pending.
- [15] The appellant swore an affidavit on this application. I find it of little use in determining his personal circumstances. He says that for 23 years he has been a licensed car salesman but he gives no work history during the period the extradition arrest warrant was outstanding. He claims that jobs are available for him at two named car dealers but that is not confirmed by either of those firms.
- [16] Counsel for the appellant suggests that bail could be set at \$70,000 with three sureties named in the appellant's affidavit. It is said that one of the three has agreed to put up his house as surety. There is, however, no evidence as to their respective abilities to make good on their pledge should the appellant fail to surrender as might be required.
- [17] Although his criminal record is now somewhat dated, the appellant has previous convictions for breaking and entering, robbery (for which he received a lengthy prison sentence), possession of stolen property and false pretences. The last of these convictions was in 1984.
- [18] This application for interim release must be considered in light of the need to honour Canada's international treaty obligations. Therefore, the court must look at the risk of non-appearance even more cautiously than might be the case in domestic proceedings: see the decision of Woods, J.A. in *United States of America v. Ross*, CA017111, July 5, 1993.
- [19] The appellant was difficult to find for several years and the authorities were able to finally execute the extradition arrest warrant only because of happenstance. Now the appellant seeks bail without providing the court with any plan as to where and in what circumstances he might live and with no concrete employment prospects. His history does not include a description by him of legitimate employment during the last several years. He appears to have no assets, has no fixed address and no plan to support himself in which the court can have confidence.
- [20] Having regard to the circumstances of the appellant's arrest and his criminal history, it cannot be said that the appellant is unlikely to reoffend.

[21] I am not satisfied that the appellant will surrender himself as required if he is released on any form of bail. In addition, it is my opinion that it is not in the public interest that the appellant be at large pending determination of his appeal.

[22] The application for judicial interim release is denied.

"The Honourable Mr. Justice Low"

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Prepared on 29 October 2026 · Esheria