

CANADA / JUDGMENT

United Kingdom v. Dhinsa

2015 BCSC 1648

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 1648 United Kingdom v. Dhinsa

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

United Kingdom v. Dhinsa,

2015 BCSC 1648

Date: 20150910

Docket: 26677

Registry: Vancouver

In the Matter of the Extradition Act,

S.C. 1999, c. 18 as amended

and

In the Matter of

The Attorney General of Canada on behalf of

The United Kingdom of Great Britain and Northern Ireland

and

Lakhvir Singh Dhinsa

aka Lakhviri Dhinsa

Before: The Honourable Madam Justice Duncan

Oral Reasons for Judgment

Counsel for the Attorney General of Canada

on behalf of the Requesting State:

S.M. Repas

Counsel for the Person Sought:

G. Botting

Place and Dates of Hearing:

Vancouver, B.C.

June 4-5, 2015

Place and Date of Judgment:

Vancouver, B.C.

September 10, 2015

Introduction

- [1] The United Kingdom of Great Britain and Northern Ireland (the "requesting state") seeks the extradition of Lakhvir Singh Dhinsa a.k.a. Lakhviri Dhinsa for allegedly defrauding the Sainsbury's supermarket chain by submitting false claims in relation to his work as a locum pharmacist. The corresponding Canadian offence is fraud under s. 380 of the Criminal Code.
- [2] On September 4, 2014, the Minister of Justice issued an Authority to Proceed ("ATP") under s. 15 of the Extradition Act, S.C. 1999, c. 18, as amended (the "Act"). The ATP authorized the Attorney General of Canada (the Attorney General) to seek an order for committal of Mr. Dhinsa on behalf of the requesting state under s. 29(1)(a) of the Act.
- [3] At the hearing before me, the Attorney General tendered the evidence contained in the Record of the Case for Prosecution ("ROC") which was certified on November 28, 2014. Counsel for Mr. Dhinsa applied to call evidence under s. 32(1)(c) of the Act. In my ruling dated June 6, 2015 I dismissed that application.
- [4] The admissibility of the ROC was not challenged. I am satisfied it is admissible pursuant to ss. 32, 33, 34 and 35 of the Act, the relevant portions of which state:
 - 32. (1) Subject to subsection (2), evidence that would otherwise be admissible under Canadian law shall be admitted as evidence at an extradition hearing. The following shall also be admitted as evidence, even if it would not otherwise be admissible under Canadian law:
 - (a) the contents of the documents contained in the record of the case certified under subsection 33(3);
 - (b) the contents of the documents that are submitted in conformity with the terms of an extradition agreement; and

- (c) evidence adduced by the person sought for extradition that is relevant to the tests set out in subsection 29(1) if the judge considers it reliable.
33. (1) The record of the case must include
- (a) in the case of a person sought for the purpose of prosecution, a document summarizing the evidence available to the extradition partner for use in the prosecution;
 - (2) A record of the case may include other relevant documents, including documents respecting the identification of the person sought for extradition.
 - (3) A record of the case may not be admitted unless
 - (a) in the case of a person sought for the purpose of prosecution, a judicial or prosecuting authority of the extradition partner certifies that the evidence summarized or contained in the record of the case is available for trial and
 - (i) is sufficient under the law of the extradition partner to justify prosecution, or
 - (ii) was gathered according to the law of the extradition partner;
 - (4) No authentication of documents is required unless a relevant extradition agreement provides otherwise.
 - (5) For the purposes of this section, a record of the case includes any supplement added to it.
34. A document is admissible whether or not it is solemnly affirmed or under oath.
35. A document purporting to have been signed by a judicial, prosecuting or correctional authority, or a public officer, of the extradition partner shall be admitted without proof of the signature or official character of the person appearing to have signed it.
- [5] In addition to the evidence in the ROC are Mr. Dhinsa's admissions:
- 1. The person before the court, Lakhvir Singh Dhinsa, is the same Lakhvir Singh Dhinsa a.k.a. Lakhviri Dhinsa referred to in the ROC certified by K.M. Leonard, Senior Prosecutor, on November 28, 2014 and is the person sought by the requesting state.
 - 2. The person before the court, Lakhvir Singh Dhinsa, is the person named in the ATP issued September 4, 2014.
 - 3. The person before the court is the same Lakhvir Singh Dhinsa referred to at paragraphs 38 and 39 of the ROC and in the photograph identified as Exhibit 2 in the ROC.
 - 4. The person before the court is the same Lakhvir Singh Dhinsa referred to at paragraphs 43 and 44 of the ROC and in the photograph identified as Exhibit 4 in the ROC.
 - 5. The person before the court is the same Lakhvir Singh Dhinsa referred to at paragraphs 45 and 46 of the ROC and in the photograph identified as Exhibit 5 in the ROC.

6. The person before the court is the same Lakhvir Singh Dhinsa who was arrested on November 19, 2014 at 14510 78th Avenue, Surrey, British Columbia, by Constable Ken Harrach of the Royal Canadian Mounted Police and produced to Constable Harrach a British Columbia Driver's License (No. 8724000) in the name of Lakhvir Singh Dhinsa with a birth date of February 18, 1972 and a passport from the United Kingdom of Great Britain and Northern Ireland (No. 462464150) in the name of Lakhvir Singh Dhinsa with a birth date of February 18, 1972.

Summary of the Case against Mr. Dhinsa

- [6] Mr. Dhinsa worked as a locum pharmacist for Sainsbury's supermarket chain between August 10, 2006 and December 1, 2009. The essence of the allegations in the ROC is that during this time he made 233 false claims for fees and expenses, totalling £60,785.86. The claims were made for dates he did not work and/or against stores in which he had never worked. Of the 233 alleged false claims, 197 were authorized and Mr. Dhinsa obtained £50,557.85 as a result.
- [7] The ROC summarizes the statements of a number of witnesses who worked directly or indirectly for Sainsbury's or for various banks to which payments claimed by Mr. Dhinsa were directed.
- [8] Mr. Ify Igbonoba works for Global Expense, a company which processes online payments for a variety of clients, including Sainsbury's. Global Expense operates from a website. Each person claiming expenses sets up an account on the website and provides contact and banking details through which payments may be made.
- [9] To use the system, Mr. Dhinsa was required to enter personal details including bank account numbers, telephone numbers and email addresses. Once an account is set up with contact and banking details, expense claims can be submitted. The online claim form requires details such as the purpose of the expenditure, the total cost, date of purchase, whether a receipt is available, reference to the store or cost centre and banking information. Mr. Igbonoba said receipts are not necessary for locum pharmacist claims.
- [10] Once the claim form is completed, the claimant clicks the "submit" button. The claimant then has an opportunity to verify the claim and clicks on "submit" again to confirm the claim. The system generates a batch number and claim ID and the claimant can log off the system. Once confirmed, the claim becomes visible to an assigned authorizer who either approves it or rejects it.
- [11] If the claim is rejected, an automated email is sent to the claimant advising the claim has been rejected. If the claim is approved, a record of the amount is kept on file by Sainsbury's. Payment is made electronically to the claimant's nominated bank account within three to five working days.

[12] Mr. Igbonoba told police that Mr. Dhinsa used the Global Expense system to make claims for expenses between August 10, 2006 and December 1, 2009, but he did not specify the number of claims.

[13] Mr. Dhinsa provided banking information to Global Expense for three accounts:

Bank Name Sort Code Account Number

L S BACS 209315 50063665

L S DHINSA AMEX 086130 70328725

Nat bacs 101657 11246243

[14] Mr. Igbonoba supplied police with a claims report containing details of the claims made by Mr. Dhinsa and a statement report concerning details of the authorized claims.

[15] Jason Hall works for Sainsbury's supermarkets as a National Investigations Manager. He began investigating Mr. Dhinsa's case on December 9, 2009. He obtained details of all of Mr. Dhinsa's authorized claims from the Payroll Team Leader, Matt Kemp.

[16] Mr. Hall stated in his police statement that he has cross-checked each claim made by Mr. Dhinsa against the rotas for the stores at which Mr. Dhinsa was actually working. He produced a spreadsheet of that information and marked "valid" beside each claim where Mr. Dhinsa was on the rota for that particular store.

[17] Mr. Hall found Mr. Dhinsa claimed a total of £155,994.80 between August 10, 2006 and December 1, 2009 in 755 separate claims. Mr. Dhinsa worked as a locum in Bridgemoor for most of 2006, 2007 and 2008 and most of the claims against that location were genuine. In 2009, however, Mr. Hall found that Mr. Dhinsa claims expenses for stores where he was not on the rota for the relevant date and thus had not worked at those stores.

[18] During his cross-check Mr. Hall found that on some occasions, Mr. Dhinsa claimed for work at more than one store on the same date. For example, on June 30, 2009 Mr. Dhinsa made expense claims for working at stores in Bath, Spalding, Preston and Halifax. Mr. Hall states Mr. Dhinsa would not have been able to travel between those four locations in the time available.

[19] In a subsequent statement to police Mr. Hall clarified the information he provided on non-valid claims. He created a printout showing all the non-valid claims submitted through Mr. Dhinsa's Global Expense account, whether they were approved or rejected. In total, Mr. Hall found 233 non-valid claims in the amount of £60,785.86 made from Mr. Dhinsa's Global Expense account. Of those, 197 were authorized by management at more than 22 stores for a total of £50,577.85. The remaining 36 claims totalling £10,277.01 were rejected by management at 27 stores, some of which had authorized payment of non-valid claims.

- [20] An examination of Mr. Hall's spreadsheet also reveals that on at least two occasions, Mr. Dhinsa made claims for services at Sainsbury's stores which did not have pharmacies. The stores against which these claims were made rejected the claim and noted they had no pharmacy in the comments line for the claim in the Global Expense system, as reflected in Mr. Hall's spreadsheet.
- [21] The Sainsbury's store in Green Park Station, Bath, was the subject of the largest number of non-valid claims. The pharmacy manager, Nick Daines, has worked at the Bath store since June 2006. Mr. Daines is responsible for controlling all locums and has never heard of Mr. Dhinsa.
- [22] Mr. Daines said Mr. Dhinsa claimed for work at the Bath store 18 times during 2009. Mr. Daines examined the store records. Locums claim expenses at that store by completing an invoice for work they have done. The invoice is signed by a member of management and a copy held in the store. Mr. Daines checked the original locum invoices for the 18 dates in 2009 and none of them are for Mr. Dhinsa.
- [23] Mr. Daines checked the Monthly Pharmacist Rota, replaced by the Responsible Pharmacist Record in October 2009, and found no record of Mr. Dhinsa working at the Bath stores on the dates he had claimed on Global Expenses. Mr. Daines also checked the store's visitors book for selected dates and Mr. Dhinsa had not signed in on the days he claimed he worked there.
- [24] Scott Parks is the deputy manager of the Bath store. He gave a statement to police on December 30, 2009. He authorized payment to Mr. Dhinsa as a locum on July 31 and August 10, 2009. Mr. Parks does not recall Mr. Dhinsa's name nor does he recall authorizing the two claims. He was the only person who knew his password and he authorized claims in his store manager's absence.
- [25] Lyndon Brown is the manager of the Bath store. He was asked about 16 claims made by Mr. Dhinsa in 2009 where he had authorized payment. Mr. Brown does not recall Mr. Dhinsa nor does he remember authorizing the claims, but he was the only person who knew his password and it was part of his job to authorize claims.
- [26] Matt Kemp gave a statement to police on February 3, 2010. He is a Payroll Team Leader for Sainsbury's. Mr. Kemp confirmed that Mr. Dhinsa provided Sainsbury's with three approved bank accounts into which his claims could be paid. He also confirmed a mobile phone number and email address for Mr. Dhinsa.
- [27] Three bank witnesses provided statements to police about three bank accounts held in the name of Mr. Dhinsa. The three accounts match the banking information Mr. Dhinsa provided to Global Expense, detailed above in the summary of Mr. Igbonoba's evidence.

- [28] On February 17, 2010, police attended Mr. Dhinsa's last known address in the United Kingdom. They learned he had sold the property in September 2009 and told the purchasers he was moving to Canada.
- [29] Ryan Shipman, a Police Staff Investigator in the Economic Crime Department emailed Mr. Dhinsa on March 15, 2010 at the email address associated with his account at Barclays Bank. He informed Mr. Dhinsa there was an investigation into financial loss resulting from the submission of fraudulent expense claims and that police would like to interview him. An email in response advised that Mr. Dhinsa was of no fixed address and was having difficulties returning to the United Kingdom but that a legal representative would be in touch with police. Mr. Shipman received no further contact through that email address after March 29, 2010.
- [30] The ROC sets out in detail the evidence of various investigators and government officials concerning Mr. Dhinsa's identity, including cross-referencing his date of birth, passport number, email addresses, phone numbers, fingerprints and various photographs of him. I will not detail this evidence any further in light of the admissions in this case, but suffice it to say that even in the absence of admissions concerning identity the evidence adduced in the ROC amply demonstrated the identity of the person investigated and linked it with the identity of the person sought as the person before the court.

The Test for Committal

- [31] As noted above, the ROC and admissions are admissible evidence. This case turns on whether the admissible evidence is sufficient to justify committal.

The threshold test for whether admissible evidence is sufficient to justify committal comes from the decision of the Supreme Court of Canada in *USA v. Shephard* (1976), 30 C.C.C. (2d) 424 at 427 where Ritchie J. for the majority said:

I agree that the duty imposed upon a "justice" under s. 475(1) [the section governing committal for trial] is the same as that which governs a trial judge sitting with a jury in deciding whether the evidence is "sufficient" to justify him in withdrawing the case from the jury and this is to be determined according to whether or not there is any evidence upon which a reasonable jury properly instructed could return a verdict of guilty. The "justice", in accordance with this principle, is, in my opinion, required to commit an accused person for trial in any case in which there is admissible evidence which could, if it were believed, result in a conviction.

- [32] Decisions subsequent to *Shephard*, in particular *United States of America v. Ferras* (2006), 209 C.C.C. (3d) 353, have refined the judge's role in an extradition proceeding. Mr. Justice Donald summarized the impact of *Ferras* in *USA v. Graham*, 2007 BCCA 345:

- [20] In Ferras, the Supreme Court of Canada addressed the problem created by two developments since Shephard was decided: the Charter of Rights and Freedoms, particularly s. 7, and the amendments to the Extradition Act, S.C. 1999, c. 18, that brought in the "record of the case" modality which was intended to ease the burden on the requesting state and which admitted evidence not admissible under Canadian law: s. 32(1)(a) and (b).
- [21] The court decided that the Shephard approach did not bring a close enough scrutiny to the case for extradition, that it led to a rubber stamp process, and that in order for the Act to conform to the fundamental justice requirements of s. 7, the law had to move on from Shephard. Those requirements meant that the extradition judge must act only on reliable and available evidence and assess the evidence as a whole to determine the sufficiency of the case for committal. It is in relation to sufficiency that the controversy arises over the meaning of Ferras.
- [22] As I understand the respondent's argument and the cases on which it relies, the extradition judge can now reject manifestly unreliable or unavailable evidence (which Shephard did not allow), but if there remains reliable and available evidence on each element of the offence in question, then the judge must commit on the presumption of sufficiency arising from the certification by the requesting state. That is, in my respectful opinion, a reductionist interpretation of Ferras and does not give full scope to the reasoning in that case.
- [23] As I will soon develop, the Ferras approach demands more; it demands a judicial appraisal of the case to ensure that there is a "plausible case" and that the subject is not committed on a case where "it would be dangerous or unsafe to convict, [and] the case should not go to a jury" (para. 54).
- [33] Donald J.A. went on to consider the phrase "manifestly unreliable" which appeared in the majority reasons of Ritchie J. in Shephard. He cautioned against focussing solely on whether evidence was manifestly unreliable, as that is only one example of what could lead a judge to conclude the evidence was insufficient to commit. Donald J.A. said:
- [32] In summary, Ferras stands for the proposition that extradition judges now have the discretion to disregard evidence shown to be unreliable or unavailable and in respect of the evidence that remains, to determine by an assessment of the evidence, including a limited weighing of the evidence, whether it is sufficient for a properly instructed jury acting reasonably to reach a verdict of guilty in Canada.
- [34] Finally, where the case is a circumstantial one, the extradition judge is permitted to engage in a limited weighing of circumstantial evidence to ensure that inferences from the evidence are reasonably supportable. If there are competing inferences, and one of those inferences supports guilt, the person sought must be committed. As Neilson J.A. said in *United States of America v. Hislop*, 2009 BCCA 94:

[31] The fact that the evidence in the ROC could also support an inference consistent with innocence is insufficient to justify setting aside the committal. The test is whether a jury could convict Mr. Hislop, not whether it would convict him. The choice between competing inferences is ultimately a decision for the fact finder at trial, not for the extradition judge.

The Corresponding Canadian Offence

[35] The ATP states the Canadian offence which corresponds to the alleged conduct that is the basis for the extradition request is fraud, contrary to s. 380 of the Criminal Code:

380(1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

- (a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or
- (b) is guilty
 - (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
 - (ii) of an offence punishable on summary conviction, where the value of the subject-matter does not exceed five thousand dollars.

[36] The actus reus of fraud consists of two elements: a dishonest act and a resulting deprivation. The dishonest act can be demonstrated by proof of deceit, falsehood or other fraudulent means. The resulting deprivation need not be actual economic loss. It may consist of proof of detriment, prejudice or a risk of prejudice to the victim's economic interests caused by the dishonest act.

[37] The mens rea of fraud was described by McLachlin J., as she then was, in *R. v. Theroux* (1993), 79 C.C.C. 449 at p. 481:

The accused must knowingly, i.e., subjectively, undertake the conduct which constitutes the dishonest act, and must subjectively appreciate that the consequences of such conduct could be deprivation, in the sense of causing another to lose his or her pecuniary interest in certain property or in placing that interest at risk.

The Attorney General's Position

[38] Counsel for the Attorney General argues the evidence described in the ROC demonstrates a plausible case that Mr. Dhinsa was involved in multiple dishonest acts when he claimed fees and expenses from Sainsbury's, through Global Expense, for work he did not or could not have performed. It comprises some evidence upon which a reasonable jury, properly instructed, could find that Mr. Dhinsa committed the offence of fraud.

- [39] The Attorney General submits the ROC contains evidence that Mr. Dhinsa claimed expenses at several stores in one day despite the geographical impossibility of being at them all in one day. Other claims were made for days he was not on the rota for the relevant store, or for stores that did not even have a pharmacy. The Bath store, the subject of the largest number of false claims, had no knowledge or record of Mr. Dhinsa working at that location.
- [40] The Attorney General submits that by filing dishonest claims, Mr. Dhinsa's actions satisfy the actus reus of fraud. Counsel further submits the ROC establishes Mr. Dhinsa intentionally used deceit and falsehood and knew Sainsbury's would be prejudiced by his actions, thus satisfying the mens rea element of fraud.

Mr. Dhinsa's Position

- [41] Counsel for Mr. Dhinsa submits the ROC is founded on suspicion, surmise and speculation. He points to the inclusion of "A.K.A. Lakhviri Dhinsa" as something that coloured the case when it was not a name Mr. Dhinsa ever actually used.
- [42] Mr. Botting suggests the evidence of Jason Hall may be biased because he is an employee of Sainsbury's rather than an independent investigator. Mr. Botting questions the reliability of Mr. Hall's evidence, as he is a "company man" rather than a neutral party who undertook an investigation.
- [43] I am of the view that this is not a matter of reliability but one of credibility and thus in the purview of the trial judge, not the extradition judge.
- [44] Counsel also submits the allegations are, or may be, founded on a defective rota system. I have no direct evidence of how the rota system is created or maintained; however, there is evidence from individuals at the Bath store who relied on the rota system. They checked their store records against that system. The evidence Mr. Dhinsa was not on the rota is fortified by the absence of anything in the store records to the contrary. Those same witnesses say they do not know Mr. Dhinsa, in spite of the numerous claims he made against their store which would require him to be present in the pharmacy on the dates in question.
- [45] Counsel also submits that since there are many store managers involved in the checks and balances of the payment authorization process, that process might be defective. The only evidence I have of more than one store manager being involved is in relation to the Bath store, and as I noted above, none of them knew Mr. Dhinsa.
- [46] Counsel also questions the statements of Mr. Daines that he does not know Mr. Dhinsa yet authorized some of his payments. Mr. Botting suggests if Mr. Dhinsa replaced Mr. Daines, the fact he did not know Mr. Dhinsa is not surprising. The difficulty with that submission is the fact that, as noted above, none of the witnesses from the Bath store who spoke with investigators - the pharmacy manager, the store manager and the deputy store manager - knew Mr. Dhinsa.

- [47] As to the four claims relating to the same date identified by Mr. Hall, Mr. Botting submits it is understandable that if Mr. Dhinsa is travelling he has little time to bill so when he gets time he bills for a number of stores on the same day. Upon close examination of the chart Mr. Hall prepared, all four claims were in fact submitted for payment on the same date (July 16, 2009), but all four were for the same date of purchase (June 30, 2009).
- [48] Mr. Botting submits there is no proof of deceit, falsehood or other fraudulent means, or proof of dishonesty. The two main witnesses, Mr. Hall and Mr. Daines, have a vested interest in the outcome of this case. Mr. Botting's position is the evidence is so defective or unreliable that it would be dangerous or unsafe to convict. On that basis, the case could not go to a jury and thus there is insufficient evidence to meet the test for committal.

Analysis

- [49] I remind myself of the principles set out earlier in these reasons. The extradition judge must examine the whole of the evidence to determine whether it reflects a case on which a jury could convict and whether the acts disclosed on the admissible evidence are criminal in Canada. There must be some evidence on every element of the offence that a properly instructed jury could use to reach a verdict of guilty. While guilt or innocence is not the question, the extradition judge must still engage in a limited weighing of the evidence to determine sufficiency for committal. In addition, an extradition judge may disregard evidence shown to be unreliable.
- [50] The evidence in the ROC establishes that Sainsbury's supermarket used an online system, Global Expense, to receive and approve claims by individuals for fees and expenses in relation to work performed for the company. It was not disputed that Mr. Dhinsa used Global Expense to make claims for work he did as a locum pharmacist.
- [51] There are two competing inferences in this case: one, Mr. Dhinsa used an online payment system to make claims for fees and expenses he knew he was not entitled to receive, or two, Mr. Dhinsa made bona fide claims but the rota system or the authorization of claims, or both, were unreliable.
- [52] The first inference is consistent with a dishonest act and a resulting deprivation or risk of deprivation to the victim's economic interests. Those are the elements of fraud.
- [53] Evidence to support the first inference arises from Mr. Hall's analysis. He identified claims made by Mr. Dhinsa for payment from stores where he was not on the rota on the relevant date. In addition, staff at the Bath store, which was the subject of the largest number of non-valid claims identified by Mr. Hall, had never heard of Mr. Dhinsa and store records for the relevant dates did not support his attendance there as claimed.
- [54] I cannot find the evidence in the ROC lacks reliability. The credibility of the witnesses and the inner workings of the rota system are for the trial judge to consider.

- [55] The choice between two competing inferences is ultimately a decision for the fact finder at trial, not for the extradition judge. I am satisfied there is evidence upon which a reasonable jury properly instructed could find that Mr. Dhinsa committed fraud against Sainsbury's through his use of the Global Expenses system and, accordingly, the prima facie test for committal is satisfied.
- [56] The application for an order for committal is granted and Mr. Dhinsa is committed to await surrender under s. 29 of the Act.
- [57] Pursuant to s. 38(2) of the Act, Mr. Dhinsa will not be surrendered until the expiry of 30 days and he has the right to apply for interim judicial release in the interim.

"Duncan J."

The Honourable Madam Justice Duncan

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