

CANADA / JUDGMENT

United States v. Espinosa

2011 BCSC 619

COURT

Supreme Court of British Columbia

DECIDED

21 April 2011

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

2011 BCSC 619 United States v. Espinosa IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: United States v. Espinosa, 2011 BCSC 619 Date: 20110421 Docket: 25574 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 States of America and Humberto Avanes Espinosa Before: The Honourable Madam Justice Gropper Oral Reasons for Judgment Counsel for the Attorney General of Canada on behalf of the United State of America: J. Gibb-Carsley S. Repas Counsel for the Person Sought: G. Botting Place and Date of Hearing: Vancouver, B.C. April 20 and 21, 2011 Place and Date of Judgment: Vancouver, B.C. April 21, 2011

- [1] THE COURT: The United States of America (the "Requesting State") requests the extradition of the Person Sought, Humberto Espinosa, so that he can be sentenced and incarcerated for offences to which he pleaded guilty in Florida in 2009. The application is made under s. 29(1) (b) of the Extradition Act, S.C. 1999, c. 18, which provides:
29. (1) A judge shall order the committal of the person into custody to await surrender if . . .
- (b) in the case of a person sought for the imposition or enforcement of a sentence, the judge is satisfied that the conviction was in respect of conduct that corresponds to the offence set out in the authority to proceed and that the person is the person who was convicted.
- [2] The extradition court takes a conduct-based approach to the tests outlined in that provision. The onus of proof on the Requesting State is on a balance of probabilities that the foreign conviction is in respect of conduct corresponding to the Canadian offences listed in the authority to proceed.
- [3] The evidence filed in support of the Requesting State's application regards:
1. the imposition of sentence in Polk County, Florida for the offence of trafficking in cocaine (Exhibits 2 and 3); and
 2. the enforcement of a sentence in Dade County, Florida, for trafficking cannabis and grand theft in the 3rd degree (Exhibits 4 and 5).

- [4] Mr. Espinosa admitted, in Exhibit 6 and in his viva voce evidence before the court, that he is the person to whom this conviction and sentence apply and that he has pleaded guilty to the offences.
- [5] There is no dispute here about the admissibility of the evidence provided in Exhibits 1 through 6 and that the records of the cases and supplementary records of cases (the "ROC" and "SROC") are correctly certified by a prosecuting authority of the courts in both Polk County and Dade County, Florida, in accordance with s. 33(1)(b) of the Act. There is no dispute that ss. 32 and 33 of the Act are also satisfied. The hearsay summary of the evidence reflected in the exhibits, specifically the ROCs and the SROCs, are admissible. The ROCs and the SROCs in Exhibits 2 to 5 are accepted as evidence in this matter.
- [6] There are two matters of which I must be satisfied under s. 29(1)(b) in order to grant the orders sought:
1. whether the convictions in Florida for the following conduct, trafficking in cocaine, trafficking in cannabis, and grand theft 3rd degree correspond to offences in Canada as set out in the application to proceed; and
 2. whether Mr. Espinosa is the person convicted in Florida of those offences. Application of the Tests A. Are the convictions in Florida for conduct which corresponds to Canadian offences?
 1. Is the offence of trafficking cocaine for which Mr. Espinosa is sought for the imposition of sentence in Polk County equivalent to the Canadian offence of possession for the purposes of trafficking of a substance included in a Schedule 1 of the Controlled Drugs and Substances Act, S.C. 1996, c.19 (CDSA) contrary to s. 5 of the CDSA?
- [7] I am satisfied that the offence to which Mr. Espinosa has pleaded guilty; trafficking in cocaine, is equivalent to the offence under the CDSA of possession of a Schedule 1 controlled substance for the purposes of trafficking, in accordance with the definitions of "trafficking" defined in s. 2 of the CDSA and "possession" defined in s. 4(3) of the Criminal Code R.S., 1985, c. C-46.
- [8] Section 5(2) of the CDSA provides: "No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II ..."
- [9] Cocaine is a Schedule I controlled substance offence of possession for the purpose of trafficking requires that a person possess an illegal substance and have an intention to traffic in that substance. Intent can be inferred where the quantity of the substance is large and it is determined not to be for personal use.
- [10] The conduct of Mr. Espinosa in regarding the offence of trafficking cocaine discloses that on January 16, 2009, in the course of a routine traffic stop in the City of Lake Wales, Florida, a vehicle driven by Mr. Espinosa was stopped by police. During a search of Mr. Espinosa's vehicle, the police officers discovered several plastic bags in a foil ball containing a substance that appeared to be cocaine.

- [11] Amanda Casto, a crime laboratory analyst for the Florida Department of Law Enforcement, tested the substance found in Mr. Espinosa's vehicle and determined that it was 28.9 grams of cocaine.
- [12] Sergeant William Strickland, an expert in the Florida court system in respect of trafficking offences, provided an opinion that possession of 28 grams of cocaine is not an amount for personal use but, instead, a quantity consistent with the purpose of trafficking.
- [13] The ROC and the SROCs also provide evidence that Mr. Espinosa was convicted of that offence on September 25, 2009. Mr. Espinosa, represented by his lawyer Rene Sotorrio, appeared before the Honourable Keith P. Spoto of the 10th Judicial Circuit of Florida and entered a plea of guilty to the charge of trafficking cocaine (the "Plea Hearing"), and at the request of Mr. Espinosa, Judge Spoto agreed to delay the sentencing hearing to impose a sentence to January 6, 2010. The court was clear and stated to Mr. Espinosa that if he failed to appear on January 6, 2010, his guilty plea would stand but he could face a 30-year sentence, and the other charges related to marihuana, MDMA and other motor vehicle offences would not be dismissed against him. Mr. Espinosa failed to appear for the sentencing on January 6, 2010.
2. Is the offence of which Mr. Espinosa was convicted in Dade County, Florida equivalent to the Canadian offence described as production of a substance included in Schedule II of the CDSA contrary to s. 7 of the CDSA?
- [14] Marihuana is a Schedule II controlled substance under the CDSA.
- [15] Section 7 of the CDSA provides: Production of substance
7. (1) Except as authorized under the regulations, no person shall produce a substance included in Schedule I, II, III or IV. Punishment
- (2) Every person who contravenes subsection (1)
- (a) where the subject-matter of the offence is a substance included in Schedule I or II, other than cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for life;
- (b) where the subject-matter of the offence is cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years;
- (c) where the subject-matter of the offence is a substance included in Schedule III,
- (i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or (ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and
- (d) where the subject-matter of the offence is a substance included in Schedule IV,

- (i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or (ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.
- [16] I am satisfied that the offence to which Mr. Espinosa pleaded guilty, trafficking in cannabis is equivalent to the Canadian offence of production of marihuana.
- [17] The ROC and SROC in relation to this offence discloses that on March 13, 2009, acting on a tip, the police attended at a residence located at 7940 Southwest 93rd Court, Miami, Florida, 33173 (the "Residence"). The police were informed by Mr. Espinosa that he owned the Residence, and he gave written and verbal consent for the detectives to search the Residence. The police observed a makeshift locked door located behind the towel that was hung from the rear wall of the closet in the master bedroom. Mr. Espinosa had the key to the door on his person and unlocked the door for the police, which revealed a live marihuana growing operation containing 29 live marihuana plants.
- [18] The entire lab containing the plants was lined in Mylar film, and there were 16 light-sodium vapour light bulbs affixed to the ceiling. Two charcoal air filters, an air-conditioning unit, and electrical water pump for irrigation were also discovered by the police. During the search in the bedroom, the police also discovered a heat-sealing machine and plastic bags.
- [19] The vehicle outside of the Residence was searched with Mr. Espinosa's permission, and inside, police discovered a heat-sealed bag containing approximately one pound of processed marihuana.
- [20] Miami-Dade Crime Laboratory Bureau Analyst Vincent C. McBee, a certified drug analyst, determined that the controlled substance provided to him from the Espinosa seizure was determined to be marihuana.
- [21] Mr. Espinosa was convicted of that offence, the details of which include that on November 12, 2009, Mr. Espinosa, represented by counsel, Roberto E. Pertierra, plead guilty to the counts of cannabis/trafficking before Justice Spencer Eig. As part of the marihuana guilty plea, Mr. Espinosa was sentenced to 10 years in prison, and he was ordered to return to the court on January 5, 2010, to begin serving his sentence. Mr. Espinosa did not return to the court and instead fled to Canada.
3. Is the offence of grand theft 3rd degree for which Mr. Espinosa is sought for enforcement in Dade County, equivalent to the Canadian offence of theft, contrary to ss. 322 and 334 of the Criminal Code?
- [22] The constituent elements of the offence of theft under s. 322 of the Code are:
- a) the actus reus elements are:
 - (i) take or convert anything; (ii) acting fraudulently; and (iii) acting without colour of right, and
 - b) the mens rea elements of the offence are:

- i) intent to take or convert, ii) with knowledge that the property or interest was that of another, iii) no mistake (i.e. lack of belief that there was a colour of right), and iv) intent to deprive temporarily, or absolutely, the owner of the thing or the person who has special property or interest in it, of the thing or his/her property or interest in it.
- [23] The offence is complete when the accused, with intent to steal moves the thing, causes it to be moved, or moved or begins to cause it to become moveable. The mental element requires proof of one of the mental states referred to ss. 322(1)(a) through (d).
- [24] Section 334 of the Criminal Code provides: Punishment for theft
334. Except where otherwise provided by law, every one who commits theft
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen 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 what is stolen does not exceed five thousand dollars.
- [25] The ROC and SROC in respect of the offence of grand theft in the 3rd degree disclose that the police discovered an electric-metered box that was altered in the Residence. The makeshift electrical panel allowed for power diversion resulting in theft from Florida Power & Light Electrical Company with the approximate value of \$5,000. The SROC attaches the details of Mr. Espinosa's conviction of that offence.
- [26] I am satisfied that the conviction was in respect of conduct that corresponds to the Canadian offence of theft contrary to ss. 322 and 334 of the Criminal Code. B. Is Mr. Espinosa the person who was convicted?
- [27] Mr. Espinosa is the person who was convicted based on the admissions that he made in writing to the court (Exhibit 6), in his viva voce evidence, and comparison which I have made between the photographs in the ROC and Mr. Espinosa, the Person Sought, before me in this court. On the basis of all of those, I am satisfied that he is the Person Sought. Order for Committal
- [28] I therefore order the committal of Mr. Espinosa under s. 29(1)(b) of the Act and that such committal is justified.
- [29] I order that the application of the Requesting State be granted. Mr. Espinosa is remanded in custody to await surrender for the offences specified in the authority to proceed.
- [30] In accordance with s. 38(1), I will order that a transcript of the evidence of Mr. Espinosa be produced within three business days and provided to all of the parties.

[31] In accordance with s. 38(2) of the Act, I am informing you, Mr. Espinosa, that you will not be surrendered until the expiry of 30 days and that you have a right to appeal this order and to apply for judicial interim release. "Gropper 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/11/06/2011BCSC0619.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/united-states-v-espinosa-2011>

Prepared on 28 October 2026 · Esheria