



TEST CASES

Date: 19980605
Docket: CC970285
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

REGINA

v.

FREDERICK AUSTIN CRESWELL

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE HUMPHRIES

Counsel for the Crown:
Counsel for the Accused:
Date and Place of Hearing:

C. Tobias
J. Conroy
June 5, 1998
Vancouver, B.C.

[1] On June 2, 1998 I issued the following Memorandum to Counsel:

On April 1, 1998 I ruled that the Crown must produce certain legal opinions to the defence. At this stage of the trial, the Crown's case is in, but not formally closed and we have embarked on a voir dire to determine whether the charges should be stayed as an abuse of process pursuant to the common law and/or section 7 and 24(1) of the Charter of Rights and Freedoms, or alternatively whether the evidence should be excluded under section 24(2) of the Charter. Mr. Creswell has admitted his factual guilt in respect of the charges of possession of the proceeds of crime, and intends, as I understand it, to argue only the meaning of "conceal or convert" as a defence to the charges of money laundering.

Upon giving my ruling on production of the opinions, for which the Crown had claimed solicitor-client privilege, the Crown asked for several days in which to consider their position, which I allowed, without making a formal order for production. The Crown advised that they might be seeking terms upon which the opinions would be disclosed, or might consider whether the case should proceed at all.

At a subsequent telephone conference on April 8, 1998, Crown advised that they had instructions not to produce the documents and would invite the Court to enter a stay. Defence suggested that, in order to have all possible issues before the Court of Appeal, other rulings be made before a stay was entered, but requested some time in which to consider their position, as did the Crown.

When the matter came on again on April 24, 1998, defence took the position that I should either find the Crown in contempt of the order of the Court, or the Crown should stay the proceedings, but that the Court should not enter a stay, as this would provide a remedy to Mr. Creswell that he did not want and would give the Crown a right of appeal which they would not have if forced to stay the proceedings themselves. The Crown again invited the Court to enter a judicial stay.

During the exchanges in Court on April 24, 1998, there was discussion as to whether, by inviting the Court to stay the charges, the Crown was seeking or could seek a remedy in all the circumstances of this case and whether the Crown should be held in contempt

for refusing to produce the opinions. This discussion took place while the Court was in the midst of another trial, and neither side had anticipated having the Court time available to deal with it fully. I therefore adjourned the matter again to consider what I should do in these unique circumstances, and invited counsel to submit any additional cases or arguments on the issue which they have now done.

It was agreed that I would issue a memorandum to counsel prior to the next appearance on June 5, 1998 so counsel could be aware of what would be expected at that time. Before adjourning, and again at the request of defence, I pronounced a formal order requiring the Crown to produce the relevant opinions, and suspended any contempt proceedings pending a decision on whether the Court should grant a judicial stay.

The issue as framed by defence during the discussion on April 24, 1998 and in their submissions is:

Does the Court have jurisdiction to stay the proceedings at the request of the Crown in the absence of an application by the accused, in these circumstances?

Upon further reflection, however, I think the issue as discussed on April 24, 1998 was too hastily characterized and is less specific than that set out above. This is not a case of the Crown asking for a remedy; neither, insofar as the case against Mr. Creswell is concerned, is it an issue of contempt, which is wholly separate. As well, it is not the concern of the Court if the Crown does or does not stay charges. The issue is simply what step the Court should now take, being faced with the Crown's statement that it will not produce the relevant opinions.

We are, at present, and at the request of the defence, in a voir dire to determine whether the Crown, having proven guilt (subject to the "conceal or convert" argument in respect of the money laundering charges), is entitled to register convictions against Mr. Creswell. By refusing to produce the documents, the Crown is, in my view, conceding that it is not entitled to register a conviction. A presumption has arisen, which the Crown neither can nor is willing to rebut, that Mr. Creswell's rights pursuant to section 7 of the Charter

have been breached and he is entitled to a remedy under section 24(1) of the Charter. The appropriate remedy is a stay of proceedings.

Therefore, when this matter convenes on June 5, 1998, I will order that the proceedings against Mr. Creswell be stayed pursuant to section 24(1) of the Charter. I make no ruling on the merits of the anticipated arguments on abuse of process or the inadmissibility of the evidence, as I have not heard them, and I leave the issue of contempt to be dealt with, if at all, after the matter has been heard in the Court of Appeal, assuming an appeal is pursued. The issue of the funding of Mr. Creswell's appeal as raised by his counsel in submissions I also leave to that Court.

[2] Accordingly, the accused and his counsel, as well as Crown counsel having appeared before me today, I order that the proceedings against Mr. Creswell be stayed pursuant to s. 24(1) of the Canadian Charter of Rights and Freedoms.

"Humphries, J."