



SUPREME COURT OF CANADA

CITATION: R. v. Haniffa, 2022
SCC 46

APPEAL HEARD: May 17, 2022
JUDGMENT RENDERED:
November 24, 2022
DOCKET: 39803

BETWEEN:

Erhard Haniffa
Appellant

and

His Majesty The King
Respondent

- and -

**Director of Public Prosecutions, Criminal Lawyers' Association of Ontario,
British Columbia Civil Liberties Association and Canadian Civil Liberties
Association**
Interveners

CORAM: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin,
Kasirer and Jamal JJ.

**REASONS FOR
JUDGMENT:**
(paras. 1 to 9)

Karakatsanis J. (Wagner C.J. and Moldaver, Côté, Brown,
Rowe, Martin, Kasirer and Jamal JJ. concurring)

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Erhard Haniffa

Appellant

v.

His Majesty The King

Respondent

and

**Director of Public Prosecutions,
Criminal Lawyers' Association of Ontario,
British Columbia Civil Liberties Association and
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Indexed as: R. v. Haniffa

2022 SCC 46

File No.: 39803.

2022: May 17; 2022: November 24.

Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer
and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law — Abuse of process — Entrapment — Bona fide inquiry — Virtual space — Internet — Accused responding to ad posted by police in escort section of online classified advertising website — Undercover officer posing as escort disclosing to accused in ensuing text message chat that she was underage — Accused arrested when attending at hotel room to meet officer and charged with child luring-related offences — Accused convicted but seeking stay of proceedings on basis of entrapment — Whether accused entrapped.

H was 1 of 104 people arrested over the course of “Project Raphael”, an online investigation conducted by the York Regional Police that targeted the buyer side of the juvenile sex work market. In 2016, while browsing the escort subdirectory of Backpage.com, H responded to an ad placed by an undercover officer posing as “Jamie”. Communicating with H by text, “Jamie” eventually revealed that “she” was 15 years old. When H arrived at a designated hotel room to meet “Jamie”, he was arrested and charged with three offences under ss. 172.1(1)(a), 172.1(1)(b) and s. 286.1(2) of the *Criminal Code*. He was convicted at trial of all counts but applied for a stay of proceedings based on entrapment. The application judge dismissed the application, concluding Project Raphael was a *bona fide* inquiry. The Court of Appeal dismissed H’s appeal.

Held: The appeal should be dismissed.

H was not entrapped. For the reasons given in *R. v. Ramelson*, 2022 SCC 44, the police had reasonable suspicion over a sufficiently precise space and the

offences the police offered were rationally connected and proportionate to the offences the police suspected were occurring in that space.

Cases Cited

Referred to: *R. v. Ramelson*, 2022 SCC 44; *R. v. Jaffer*, 2022 SCC 45; *R. v. Dare*, 2022 SCC 47; *Kienapple v. The Queen*, [1975] 1 S.C.R. 729; *R. v. Ramelson*, 2021 ONCA 328, 155 O.R. (3d) 481; *R. v. Mack*, [1988] 2 S.C.R. 903.

Statutes and Regulations Cited

Criminal Code, R.S.C. 1985, c. C-46, ss. 152, 172.1(1)(a), (b), 286.1(2).

APPEAL from a judgment of the Ontario Court of Appeal (Juriansz, Tulloch and Paciocco JJ.A.), **2021 ONCA 326**, 155 O.R. (3d) 523, 405 C.C.C. (3d) 332, [2021] O.J. No. 2621 (QL), 2021 CarswellOnt 6944 (WL), affirming the conviction entered by Kenkel J., 2017 ONCJ 525, [2017] O.J. No. 4048 (QL), 2017 CarswellOnt 12094 (WL), and the dismissal of the application for a stay of proceedings, 2017 ONCJ 780, [2017] O.J. No. 6016 (QL), 2017 CarswellOnt 18220 (WL). Appeal dismissed.

Boris Bytensky, for the appellant.

Lisa Fineberg and *Katie Doherty*, for the respondent.

David Quayat and *Chris Greenwood*, for the intervener the Director of Public Prosecutions.

Michael Lacy and *Bryan Badali*, for the intervener the Criminal Lawyers' Association of Ontario.

Gerald Chan and *Spencer Bass*, for the intervener the British Columbia Civil Liberties Association.

Danielle Glatt and *Catherine Fan*, for the intervener the Canadian Civil Liberties Association.

The judgment of the Court was delivered by

KARAKATSANIS J. —

[1] The appellant, Erhard Haniffa, was 1 of 104 people arrested over the course of “Project Raphael”, an online investigation of the York Regional Police which targeted the buyer side of the juvenile sex work market. His appeal was heard together with three others, each concerning the doctrine of entrapment in the context of the Project Raphael online police investigation. The companion cases, with reasons released concurrently, are *R. v. Ramelson*, 2022 SCC 44, *R. v. Jaffer*, 2022 SCC 45 and *R. v. Dare*, 2022 SCC 47. Like two of the other three appellants, Mr. Haniffa’s appeal is from an order of the Court of Appeal for Ontario dismissing his conviction appeal and his appeal from the application judge’s dismissal of his entrapment application.

[2] Mr. Haniffa's appeal concerns the *bona fide* inquiry prong of the entrapment doctrine in relation to Project Raphael. Because I consider these issues at length in *Ramelson* and because the disposition of this appeal is necessarily the same, my reasons here are brief.

[3] On March 22, 2016, while browsing the escort subdirectory of Backpage.com, Mr. Haniffa responded to an ad purportedly placed by "Jamie". The ad indicated she was 18 years old (the minimum age allowed by the website), and described her as "YOUNG Shy FRESH and NEW", "super new to this and pretty shy" and as having a friend who is "young like me" (A.R., vol. VI, at p. 5). Communicating with Mr. Haniffa by text, the undercover officer (UC) eventually revealed to him that "she" was 15 years old:

[11:13 – Haniffa]: U busy?

[13:09 – UC]: im free tn after school

[13:13 – Haniffa]: What time is school done?

[13:19 – UC]: 330

...

[14:35 – UC]: r u ok if im not quite 18 yet?

[14:53 – Haniffa]: Is this like a cop thing or something?

[14:53 – Haniffa]: Can u call u?

[15:00 – UC]: .no silly

[15:01 – Haniffa]: How old r u?

...

[16:18 – UC]: im 15 to be hones but I look older hun

[16:20 – Haniffa]: Mm

[16:20 – Haniffa]: Ok so where will u be working?

[16:24 – UC]: why the mm babe

[16:27 – Haniffa]: As in mm ok

(A.R., vol. VI, at pp. 13-15)

[4] When Mr. Haniffa arrived at the designated hotel room, he was arrested. He was charged with 3 offences: telecommunicating with a person he believed to be under the age of 18 years, for the purpose of committing an offence under s. 286.1(2) of the *Criminal Code*, R.S.C. 1985, c. C-46 (communicating to obtain sexual services from a minor), contrary to s. 172.1(1)(a); telecommunicating with a person he believed to be under the age of 16 years for the purpose of committing an offence under s. 152 (invitation to sexual touching), contrary to s. 172.1(1)(b); and communicating to obtain sexual services for consideration from a person under 18 years, contrary to s. 286.1(2).

[5] Mr. Haniffa was convicted at trial of all three counts, but his conviction under s. 172.1(1)(a) was stayed pursuant to *Kienapple v. The Queen*, [1975] 1 S.C.R. 729. He then brought an application for a stay of proceedings on the basis that he had been entrapped.

[6] The application judge dismissed the application, concluding that Project Raphael was a *bona fide* inquiry. The Court of Appeal then dismissed Mr. Haniffa's

appeal for its reasons in *R. v. Ramelson*, 2021 ONCA 328, 155 O.R. (3d) 481, which addressed the common issue of whether the individuals arrested through Project Raphael were entrapped (2021 ONCA 326, 155 O.R. (3d) 523, at para. 46).

[7] In this appeal, Mr. Haniffa adopts the questions in issue as set out in the appellant's factum in *Ramelson*, and acknowledges that "the facts of the present case are sufficiently similar, so that the same conclusions must follow" (A.F., at para. 41). Many of his arguments mirror those raised in *Ramelson*, but he raises some additional points. Inspector Truong's evidence, he says, was insufficient to ground reasonable suspicion: it was based too heavily on his personal experiences, failed to show the targeted offences were prevalent, and failed to explain how a user would actually locate a juvenile sex worker through the website, given its parameters. And given the potential breadth of investigations into spaces, the police should be limited, in the context of *bona fide* inquiries, to offering the same offences they suspect are occurring; they should not be entitled to offer those that are only rationally connected and proportionate (see *R. v. Mack*, [1988] 2 S.C.R. 903, at p. 958).

[8] For the reasons given in *Ramelson*, I would not accede to these arguments. As I explained there, the police had reasonable suspicion over a sufficiently precise space and the *Mack* standard of "rationally connected and proportionate" applies and was satisfied. Project Raphael was thus a *bona fide* inquiry. I conclude that Mr. Haniffa was not entrapped.

[9] For these reasons, I would dismiss Mr. Haniffa's appeal.

Appeal dismissed.

Solicitors for the appellant: Bytensky Shikhman, Toronto.

Solicitor for the respondent: Attorney General of Ontario, Crown Law Office — Criminal, Toronto.

Solicitor for the intervener the Director of Public Prosecutions: Public Prosecution Service of Canada, Toronto.

Solicitors for the intervener the Criminal Lawyers' Association of Ontario: Brauti Thorning, Toronto.

Solicitors for the intervener the British Columbia Civil Liberties Association: Stockwoods, Toronto.

Solicitors for the intervener the Canadian Civil Liberties Association: Paliare Roland Rosenberg Rothstein, Toronto.