



SUPREME COURT OF CANADA

CITATION: R. v. Dare, 2022 SCC
47

APPEAL HEARD: May 17, 2022
JUDGMENT RENDERED:
November 24, 2022
DOCKET: 39871

BETWEEN:

Temitope Dare
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 7)

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

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Temitope Dare

Appellant

v.

His Majesty The King

Respondent

and

**Director of Public Prosecutions,
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2022 SCC 47

File No.: 39871.

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.

D 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, D responded to an ad placed by an undercover officer posing as “Kathy”. Communicating with D by text, “Kathy” eventually revealed that “she” was 15 years old. When D arrived at a designated hotel room to meet “Kathy”, 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 on all counts by a jury at trial but applied for a stay of proceedings based on entrapment. The application judge dismissed the application, concluding Project Raphael was based on the police’s reasonable suspicion that the offences were occurring within a sufficiently precise space. The Court of Appeal dismissed D’s appeal.

Held: The appeal should be dismissed.

D was not entrapped for the reasons given in *R. v. Ramelson*, 2022 SCC 44, where it was held that Project Raphael was a *bona fide* inquiry.

Cases Cited

Referred to: *R. v. Ramelson*, 2022 SCC 44; *R. v. Jaffer*, 2022 SCC 45; *R. v. Haniffa*, 2022 SCC 46; *Kienapple v. The Queen*, [1975] 1 S.C.R. 729; *R. v. Ramelson*, 2021 ONCA 328, 155 O.R. (3d) 481.

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 327**, 155 O.R. (3d) 516, [2021] O.J. No. 2624 (QL), 2021 CarswellOnt 7086 (WL), affirming the conviction of the accused and the dismissal of the application for a stay of proceedings. Appeal dismissed.

Temitope Dare, on his own behalf.

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, Temitope Dare, 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 before this Court 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. Haniffa*, 2022 SCC 46. Like two of the other three appellants, Mr. Dare’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. Dare’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 25, 2016, while browsing the escort subdirectory of Backpage.com, Mr. Dare responded to an ad purportedly placed by “Kathy”. The ad indicated she was 18 years old (the minimum age allowed by the website), described her as a “Tight Brand New girl . . . who is sexy and young with a tight body”, and stated that she had a “YOUNG FRIEND” (R.R., vol. IV, at p. 118). Communicating with Mr. Dare by text, the undercover officer (UC) eventually revealed to him that “she” was 15 years old:

[03:26 – UC]: You cool with young?

[03:26 – Dare]: Yes

[03:27 – Dare]: Am also young

[03:27 – UC]: Ok cool. I’m 15 but look bit older.

...

[03:28 – UC]: How old are you if don’t mind me asking?

[03:29 – Dare]: Ok am 22

(R.R., vol. IV, at pp. 121-22)

[4] When Mr. Dare 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] The jury convicted Mr. Dare on all three counts, but his convictions under ss. 172.1(1)(b) and 286.1(2) were stayed pursuant to *Kienapple v. The Queen*, [1975] 1 S.C.R. 729. Mr. Dare then brought an application for a stay of proceedings, arguing that he had been entrapped.

[6] The application judge dismissed the application, concluding that Project Raphael was based on the police's reasonable suspicion that the offences were occurring within a sufficiently precise space. Since the police did "everything possible within the confines of Backpage" to limit the pool of people who would select the ad to those interested in obtaining the sexual services of a young person, the police conduct did not amount to random virtue testing (A.R., vol. I, at p. 8). The Court of Appeal then dismissed Mr. Dare'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 327, 155 O.R. (3d) 516, at para. 28).

[7] In this appeal, Mr. Dare adopts the appellant submissions made in *Ramelson* and *Haniffa*, stating that “the facts in the present case are sufficiently similar, so that the same conclusions ought to follow” (A.F., at para. 23). For the reasons I have given in *Ramelson*, where I concluded that Project Raphael was a *bona fide* inquiry, I would not accede to Mr. Dare’s grounds of appeal. He was not entrapped. I would therefore dismiss the appeal.

Appeal dismissed.

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.