



SUPREME COURT OF CANADA

CITATION: R. v. Jaffer, 2022
SCC 45

APPEAL HEARD: May 17, 2022
JUDGMENT RENDERED:
November 24, 2022
DOCKET: 39676

BETWEEN:

Muhammad Abbas Jaffer
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 11)

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

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

Muhammad Abbas Jaffer

Appellant

v.

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

Indexed as: R. v. Jaffer

2022 SCC 45

File No.: 39676.

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.

J 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 2014, while browsing the escort subdirectory of Backpage.com, J messaged an undercover officer posing as “Kathy”. Communicating with J by text, “Kathy” eventually revealed that “she” was 15 years old. When J arrived at a designated hotel room to meet “Kathy”, he was arrested and charged with offences under ss. 172.1(1)(a) and 286.1(2) of the *Criminal Code*. A jury convicted J on both counts but he applied for a stay of proceedings based on entrapment. The application judge dismissed the application, concluding that Project Raphael was a *bona fide* inquiry and that the police had reasonable suspicion that J was engaged in criminal activity when they offered him the opportunity to commit the offences. The Court of Appeal dismissed J’s appeal, in which he made arguments on both opportunity-based and inducement-based entrapment.

Held: The appeal should be dismissed.

J was not entrapped. J's arguments on opportunity-based entrapment are not acceded to, for the reasons given in *R. v. Ramelson*, 2022 SCC 44, where it was held that Project Raphael was a *bona fide* inquiry. The issue of whether the framework under the inducement branch of the entrapment doctrine ought to be revised is better left for another case.

Cases Cited

Referred to: *R. v. Ramelson*, 2022 SCC 44; *R. v. Haniffa*, 2022 SCC 46; *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. 172.1(1)(a), 212(4) [rep. 2014, c. 25, s. 13], 286.1(2).

APPEAL from a judgment of the Ontario Court of Appeal (Juriansz, Tulloch and Paciocco J.J.A.), **2021 ONCA 325**, 155 O.R. (3d) 535, [2021] O.J. No. 2620 (QL), 2021 CarswellOnt 6943 (WL), affirming the conviction of the accused and the dismissal of the application for a stay of proceedings. Appeal dismissed.

Breana Vandebek and *Hussein Aly*, 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, Muhammad Abbas Jaffer, 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 an online police investigation. The companion cases, with reasons released concurrently, are *R. v. Ramelson*, 2022 SCC 44, *R. v. Haniffa*, 2022 SCC 46, and *R. v. Dare*, 2022 SCC 47. Like two of the other three appellants, Mr. Jaffer’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. His

appeal raises two issues: (1) whether the police had reasonable suspicion over him personally, or acted pursuant to a *bona fide* inquiry when they presented him with the opportunity to commit the offences (thus satisfying the opportunity-based branch of the entrapment doctrine); and (2) whether he was induced.

[2] On October 24, 2014, while browsing the escort subdirectory of Backpage.com, Mr. Jaffer messaged “Kathy”, aged 18, who was described as a “Tight Brand New girl” who is “sexy and young with a tight body” (A.R., vol. II, at pp. 13 and 23). The posting listed a phone number and an email address titled “kathyblunt16@gmail.com” (pp. 13 and 23). Communicating by text with Mr. Jaffer, the undercover officer (UC) eventually revealed to him that “she” was 15 years old:

[20:56 – UC]: . . . how old r u

[20:57 – Jaffer]: 22

. . .

[21:00 – UC]: . . . well im not quite 18 yet r u ok with that

. . .

[21:00 – Jaffer]: Yeah I’m ok . . . but how much younger are u? 17?

[21:01 – UC]: im turning 16 on sunday but I look 18

[21:02 – Jaffer]: Um . . . ok but how do I know you’re not a cop?

[21:02 – Jaffer]: I really don’t want to get in trouble ya know

[21:03 – UC]: and i definitely don’t want trouble

[21:03 – Jaffer]: Ok can I ask why you’re escorting if it’s ok with u? Usually people your age don’t know about this industry

[21:04 – Jaffer]: Just curios

[21:04 – UC]: my friend got me into it . . . i just need the money i dont do this all the time its my second time honestly i need the money :)

[21:05 – Jaffer]: I see . . . I like that you're honest. I can trust u then :). So I'll come then but please please let's keep this between ourselves

(A.R., vol. II, at p. 28)

[3] When Mr. Jaffer arrived at the designated hotel room, he was arrested. He was charged and tried with 2 offences: telecommunicating with a person he believed to be under the age of 18 contrary to s. 172.1(1)(a) of the *Criminal Code*, R.S.C. 1985, c. C-46 (child luring under 18), and communicating to obtain for consideration the sexual services of a person under 18 contrary to s. 212(4) (now s. 286.1(2)) (communicating to obtain sexual services from a minor).

[4] A jury convicted him on both counts, yet the sentencing judge stayed his conviction on s. 212(4) pursuant to *Kienapple v. The Queen*, [1975] 1 S.C.R. 729. Mr. Jaffer then brought an application for a stay of proceedings, arguing that he had been entrapped.

[5] The application judge dismissed Mr. Jaffer's application. She concluded that Project Raphael was a *bona fide* inquiry: Inspector Truong — the officer who designed Project Raphael — was well-experienced in sex work-related offences and gave evidence that Backpage was “continually associated” with juvenile sex work; the offences were “challenging to investigate”; and the activity on Backpage “could readily

be identified to be within specific geographical areas” (A.R., vol. I, at pp. 27-28). The police, further, had reasonable suspicion that Mr. Jaffer was engaged in criminal activity when they made the offer.

[6] The Court of Appeal dismissed Mr. Jaffer’s arguments on opportunity-based entrapment for its reasons given in *R. v. Ramelson*, 2021 ONCA 328, 155 O.R. (3d) 481 (see 2021 ONCA 325, 155 O.R. (3d) 535, at paras. 15-16). And it dismissed his further argument that he had been induced, citing the application judge’s finding that Mr. Jaffer “was determined to purchase sexual services and gave specific consideration to the information as to the age of the purveyor before he acted on his choices” (para. 22).

[7] Mr. Jaffer adopts the arguments raised in the companion appeals as they concern opportunity-based entrapment, adding that the police lacked reasonable suspicion over him personally. I have addressed these points in my reasons in *Ramelson*, where I concluded that Project Raphael was a *bona fide* inquiry. For the reasons given in that case, I would not accede to these grounds of appeal.

[8] Mr. Jaffer’s second argument is that the courts below erred in failing to take his personal circumstances into account when assessing whether he was induced. Mr. Jaffer acknowledges that the police could not have known that he was living with undiagnosed Asperger’s Syndrome, but submits that such personal circumstances are relevant and ought to be considered in the analysis of inducement-based entrapment. Mr. Jaffer explains that the common symptoms of his condition — in particular, a

difficulty socializing and rigid rule compliance — put him at a heightened risk for being induced. In addition, that condition, and an earlier interaction he had with police, where he had agreed to provide information about a particular sex worker and her pimp, lent credence to his explanation that he had planned to meet “Kathy” only to gather information and alert the authorities.

[9] The inducement branch of the entrapment doctrine provides that even if the police have reasonable suspicion over an individual or act under a *bona fide* inquiry, they cannot “emplo[y] means which go further than providing an opportunity” to commit a crime (*R. v. Mack*, [1988] 2 S.C.R. 903, at p. 966). That assessment may include looking at “whether an average person, with both strengths and weaknesses, in the position of the accused would be induced into the commission of a crime” or whether the police “appear to have exploited a particular vulnerability of a person such as a mental handicap or a substance addiction”, among other factors (p. 966). But the assessment is objective and focuses on the police’s conduct, not on that conduct’s effect “on the accused’s state of mind” (p. 965).

[10] In my view, the issue of whether that framework ought to be revised is better left for another case. Whatever the merit of Mr. Jaffer’s legal arguments — a point I do not decide here — the jury, in full knowledge of Mr. Jaffer’s circumstances, rejected his evidence that he had intended to visit the hotel room solely to gather information. In convicting him, the jury did not have a reasonable doubt about the purpose for which he arranged the meeting. Echoing that conclusion, the application

judge found that Mr. Jaffer had been intent on a sexual transaction, even after learning the sex worker's age. No error in those findings has been demonstrated. Nor has Mr. Jaffer pointed to any indication that the police "employed means which go further than providing an opportunity" to commit the offences (*Mack*, at p. 966). Even if Mr. Jaffer's subjective circumstances were considered under the legal framework for inducement, then, they could not affect the result. I would not accede to this ground of appeal.

[11] For these reasons, Mr. Jaffer was not entrapped. I would dismiss the appeal.

Appeal dismissed.

Solicitors for the appellant: Gorham Vandebek, Toronto; Aly Amjad Law Group, 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.