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September 10, 2008

FAX COVER SHEET

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NO. OF PAGES: 25 PLUS COVER

RE: Series of Articles from the Windsor Star

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THE WINDSOR STAR

Offender kept 'nose clean'; Lonnie Talbot has moderated actions on medication; but 'still largely anti-social'

The Windsor Star
Thursday, May 3, 2007
Page: A3
Section: News
Byline: Doug Schmidt
Source: Windsor Star

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No sooner had a psychiatrist concluded in Ontario Court Wednesday that dangerous offender and self-described "monster" Lonnie Talbot has made "surprising" progress than the Crown introduced new evidence that he had been screaming and angrily banging on a holding cell earlier that same day.

Under cross-examination by defence lawyer Frank Miller, forensic psychiatrist Dr. Phillip Klassen testified he was impressed by Talbot's willingness to take his medication and "keep his nose clean."

He said the convict had stopped fighting inmates and guards and that his prognosis was "not as bleak" as the last time he assessed Talbot in 1997.

Talbot, 37, is appealing the indefinite prison sentence he was given as part of his 1997 sentencing and dangerous offender designation following his conviction for attacking a family, including kicking a nine-month-old baby in the head.

DIAGNOSED SCHIZOPHRENIC

Miller got the psychiatrist to agree that Talbot, while diagnosed with schizophrenia and noted for his "psychotic behaviour," has moderated his actions since sticking with his medication.

Klassen said Talbot is "still largely anti-social" and remains the same as he was in 1997 but that he no longer acts out impulsively with violence. Aging could be a factor, he said, noting that Talbot turns 38 this year.

At issue is whether the six-foot, three inch, 300-pound convict, who sat impassively in the prisoner's box under the watchful gaze of two armed Windsor police tactical unit officers, gets reclassified as a long-term offender with the possibility of being released into the community under strict supervision.

While Talbot's lawyer sought a glimmer of hope for his client, Klassen questioned whether freedom is the right thing for someone who only knows jail, "where everything is provided for him," or a criminal lifestyle "where you grab everything for yourself.

"it's a huge distance from a federal institution to the street ... of course I have concerns over the return of Mr. Talbot to the community," Klassen said under re-examination by assistant Crown attorney Mitch Hoffman.

Klassen spoke of Talbot's long history of jailhouse "muscling," where he used his "size and presentation" to influence those around him and get his way.

Nevertheless, he said Talbot, "a heavily institutionalized individual," has become more co-operative in recent years and he hasn't been fighting since 2004, representing "a major shift for him."

BANGING ON DOOR

The Crown's next witness was Windsor police special Const. Elaine LeBlanc, who testified Talbot reacted to being put into a higher-security courthouse holding cell Wednesday morning by yelling and banging on the steel door. She said he continued until warned if he didn't stop he'd be placed in another cell with his hands and feet restrained.

"He expressed his displeasure by yelling," said Miller, who asked whether his client had protested or resisted physically, as he would have in the past.

LeBlanc replied no.

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Illustration:

• Photo: Lonnie Talbot

Idnumber: 200705030103

Edition: Final

Story Type: Crime

Length: 471 words

Illustration Type: Black & White Photo

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THE WINDSOR STAR

Killer seeks lesser charge: Cabbie slayer asks for reduction to manslaughter

The Windsor Star
Tuesday, May 2, 2006
Page: A2
Section: News

Byline: Dave Battagello
Source: Windsor Star

CORRECTION: (From Windsor Star, May 3, 2006) A story on page A2 Tuesday should have said Daham Al Ghazzi was committed to stand trial on the charge of manslaughter in the slaying of Windsor cabbie Thuaffikar Alattiya. The Crown is appealing to a Superior Court judge to have that changed to first-degree murder. Al Ghazzi, 54, has not been convicted of any crime in relation to Alattiya's slaying. The headline and first sentence of Tuesday's story were incorrect.*****

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A man convicted of first-degree murder in the brutal slaying of a Windsor cab driver is attempting to have the charge reduced.

An application was entered in Superior Court Monday to have Daham Al Ghazzi, 54, tried for manslaughter for the November 2004 slaying of Thuaffikar Alattiya. Al Ghazzi was accused of participating in the murder.

A court order bans publication of evidence surrounding the incident.

But a decision on the application has been delayed by Justice Steve Rogin who instead will first rule on the status of Al Ghazzi's preliminary hearing court ruling last July. The audiotape that recorded Justice Guy DeMarco's decision was accidentally erased.

The judge reproduced his ruling in writing, but lawyers fear changes from its original form.

Evidence from DeMarco's ruling is key since it was used to determine whether Al Ghazzi should stand trial on a charge of first-degree murder, which carries a penalty of 25 years with no chance for parole for at least 10 years.

Offenders convicted of manslaughter can be eligible for parole after as little as two years in jail.

"That's a huge consideration," Rogin said.

"This whole thing is fraught with danger (grounds for appeal) because the tapes don't exist.

Rogin is faced with deciding whether to send "this back to Justice DeMarco and saying 'tell us what you were thinking at the time.' Or me saying 'this is what he said,' when I don't know what he said."

Assistant Crown attorney Renee Puskas asked notes taken by a court reporter and a Windsor police detective during DeMarco's reading of his ruling be enough for Rogin to determine its status and whether it needs to be revisited.

Al Ghazzi's lawyer Frank Miller resisted: "You can't rely on an interpretation of an interpretation."

Rogin will give his ruling next Monday.

FIRST-DEGREE MURDER

Hassan Al Ghazzi, 18, a son of Daham Al Ghazzi, has already pleaded guilty to first-degree murder in Alattiya's death. He was sentenced last August to an automatic term of life in prison with no parole eligibility for at least 10 years.

Idnumber: 200605020098
Edition: Final
Story Type: Crime
Length: 346 words



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THE WINDSOR STAR

Top court to hear dealer's appeal

The Windsor Star
Friday, February 2, 2007
Page: A3
Section: News
Byline: Craig Pearson
Source: Windsor Star

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A Windsor lawyer will go to the Supreme Court in a case that could give Canadians more power to fight extradition to countries where they face prosecution for crimes they have already been convicted of in Canada.

The Supreme Court said Thursday it will hear the appeal Frank Miller filed on behalf of his client Talib Steven Lake -- who pleaded guilty in 1998 to three counts of trafficking crack cocaine to an undercover officer, two of possessing proceeds of crime and one of conspiracy to traffic.

"We're absolutely elated," Miller said. "I think the Supreme Court may do something on this and I think Lake should be allowed to stay in Canada."

Lake was arrested in late 1997 in a larger OPP operation. He arranged the deal with an undercover officer in Ontario, sold about 90 grams of crack cocaine to him in Detroit near the Renaissance Center, and was later arrested in Windsor.

Lake spent a year in jail before confessing and was sentenced to another 3 1/2 years in penitentiary.

The United States requested Lake's extradition after he had served three years in Canada and was released. A Superior Court judge approved the extradition in 2004. Then Liberal justice minister Irwin Cotler signed the order to surrender Lake to U.S. authorities.

Miller took the case to the Ontario Court of Appeal, which ruled that Lake could be extradited.

The minimum sentence in the U.S. for trafficking more than 50 grams of crack cocaine is 10 years.

The Supreme Court will not likely hear Lake's appeal before late fall or early winter.

Miller, along with Toronto lawyer John Norris, will argue that Section 6 of the Charter of Rights allows citizens to stay in Canada unless there's a good reason for extradition. Miller questions the ethics of making someone serve time in one country and then serve more time in another country for the same offence -- especially since both Canadian and American law prohibit consecutive sentences for the same crime.

"If he goes over to the States he essentially gets a consecutive sentence," Miller said. "That's unfair. Very unfair."

Miller said his 34-year-old client has already "turned his life around," has served his sentence, and now works a daily factory job in Windsor.

Miller feels the case hinges on what is known as the 1989 Cotroni decision. The Supreme Court ruled that Frank Santo Cotroni, accused of planning to sell heroin in the U.S., could be reasonably tried in Quebec.

But Miller said interpretation of the law across Canada has been "all over the map," and that courts have generally let most extraditions proceed -- except in cases where the accused may face the death penalty.

"The Supreme Court could be taking this case to clarify what they mean by their Cotroni decision," said Miller, noting that all but Lake's actual transaction happened in Canada. "And this is the perfect-storm case to do it with. We know that he can be prosecuted in Canada for the crime -- because he already was.

"If Lake can't win on the basis of Section 6 of the charter, then Section 6 might as well not exist."

Illustration:

• Photo: Frank Miller

• Photo: Talib Steven Lake

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THE WINDSOR STAR

Crack dealer: 'No' to house arrest

The Windsor Star
Wednesday, June 21, 2006
Page: A8
Section: Editorial/Opinion
Source: Windsor Star

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The last thing a city suffering from a physician shortage needs is for doctors to spend valuable time monitoring urine samples of convicted dealers to ensure they aren't getting high while serving a conditional sentence.

Yet that is what lawyer Frank Miller is suggesting the court consider so that his 37-year-old client, a drug addict, can serve house arrest rather than prison time after convictions for trafficking crack cocaine, resisting arrest and dangerous driving.

Miller is a pit bull when it comes to aggressively representing his clients' interests and he can't be faulted for coming up with novel proposals to spare them incarceration. But the judgment of the court could certainly be questioned if it goes out of its way to give a conditional sentence to a trafficker who doesn't deserve it.

Crack cocaine is a dangerous and addictive drug that is often associated with other crimes including break and enters, auto-thefts and robberies. Police allege it was a crack cocaine deal in a store parking lot that preceded the shooting death last month of Windsor police officer John Atkinson.

Federal prosecutor Richard Pollock argued the offender's drug rehabilitation was a concern but not as pressing as the need to protect the community, denounce drug trafficking and deter others from similar crimes. Pollock asked the court to reject house arrest in favour of a stint in jail and we couldn't agree more.

Idnumber: 200606210091
Edition: Final
Story Type: Editorial; Crime
Length: 232 words

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THE WINDSOR STAR

Appeal of deportation fails: In Windsor jail for two years, suspect faces double murder charge in New Jersey

The Windsor Star
 Monday, June 26, 2005
 Page: A1 / FRONT
 Section: News
 Byline: Doug Schmidt
 Source: Windsor Star

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A Pakistani man holed up inside the Windsor jail for more than two years has lost his latest court battle against an extradition order to New Jersey, where he is wanted on a double murder charge.

"There is simply no basis upon which the death penalty could be imposed," Ontario Court of Appeal Justice Robert J. Sharpe wrote in dismissing an application by Zaid Tariq, 25, to seek a review of his ministerial surrender order.

MORATORIUM

The decision was endorsed by a three-member court panel.

The appeal court ruled that a prosecutor in New Jersey -- a state which has imposed a moratorium on the death penalty -- wrote the federal justice minister confirming that Tariq, if convicted on the current charges, "is not eligible for the death penalty."

However, said his Windsor lawyer Frank Miller, "that is now and there's always then."

Regardless of "how remote" the chances are that Tariq could be put to death, Miller said, his client is concerned that, once surrendered to New Jersey authorities, the prosecutor there could amend charges and the state's moratorium may be lifted.

"The only thing he can do now is seek leave to appeal to the Supreme Court of Canada on the same issue. He's mulling that over now," said Miller, who argued Tariq's case before the court of appeal in Toronto.

Tariq has been languishing behind bars at the county jail since being picked up by Windsor police in the near west side in March 2004.

Officers believe he entered Canada by riding a train through the rail tunnel connecting Windsor and Detroit.

In February 2005, a Superior Court justice ordered Tariq's extradition to the United States, ruling there was sufficient evidence linking him to a kidnapping scam that turned into a double murder.

A New Jersey federal prosecutor accuses Tariq of standing guard with a gun while the victims in the robbery scam were being beaten, bound and gagged. When one of the two was strangled, Tariq, it is alleged, helped put both victims, one with a bullet to the brain, inside the trunk of a car that was then set on fire.

Tariq had been out on \$1-million bail for a year at the time of his Windsor arrest, which occurred on the eve of the trial of one of his co-accused, Paul Reid, who was sentenced to life in prison with no eligibility for parole for 60 years.

"However remote, he could be subjected to capital punishment," said Miller, whose client has until mid-July to appeal to the Supreme Court.

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Illustration:
 • Colour Photo: Zaid Tariq

Idnumber: 200606260092
 Edition: Final
 Story Type: News
 Length: 428 words
 Illustration Type: Colour Photo

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THE WINDSOR STAR

Victim loses nose, \$20,000: Plaintiff must pay brother's legal fees

The Windsor Star
Saturday, April 9, 2005
Page: A1 / FRONT
Section: News
Byline: Don Lajoie, with files from Chris Thompson
Source: Windsor Star

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A man who launched a \$350,000 lawsuit against his brother for biting off part of his nose is out an estimated \$20,000 in court costs after a jury dismissed the case.

The jury deliberated for about four hours Friday afternoon before dismissing the civil suit launched in Ontario Superior Court by Mark Renaud against his brother David, 39.

"My clients, of course, are very happy," defence lawyer Frank Miller said. "The jury wasn't satisfied that he intentionally bit the guy's nose off."

With the dismissal, Mark Renaud will have to pay the court costs of the defendant, which Miller estimated will be in the neighbourhood of \$20,000 for a five-day trial.

Earlier Friday, the opposing lawyers accused each other's client of behaving like "a rabid dog" as closing arguments were heard. Miller told the six jurors his client "accidentally" tore the tip off his brother's nose while defending himself and his sister from the plaintiff.

In a previous criminal proceeding, David Renaud pleaded guilty to assault causing bodily harm for disfiguring his brother, Mark, during a fight at their father's home, Aug. 28, 2001. He was sentenced in 2003 to six months of house arrest plus one year probation.

Mark sued David for \$105,000 for physical and emotional suffering and loss of income due to his injuries. Miller stated the altercation began when Mark became embroiled in a vicious argument with a younger sister. David, he said, intervened, knocking his brother to the floor.

When the men's father grabbed David from behind, pinning his arms to stop the fight, David bit his brother's nose to stop him from punching and biting. Miller suggested the nose "tore away" when the brothers were pulled apart.

"David knew all about his brother's background, how violent and dangerous he was," Miller said. "He knew he might cause his sister serious damage because he can't control his anger.... Not only do you have a rabid dog but David was in a full nelson. ... arms behind his back. ... He's thinking 'I'm going to save myself and bites his nose.'"

The plaintiff's lawyer, Michael Kruse, argued the idea of biting someone's nose off as a form of self defence is "ludicrous and ridiculous."

He said the brothers had a reputation for brawling in their youth but that was in the past.

When the two fought in the kitchen, Kruse said, it was not a situation in which they consented to fight. Rather, he said, David, who weighs 199 pounds compared with Mark's 175, crashed through the kitchen door "like a linebacker" and tackled his brother, bent on retribution.

"The only rabid dog that day was the gentleman in that chair," he said, pointing at David. "He is the one who bit the nose off."

Kruse said his client must live with a disfigurement that puts him at a competitive disadvantage in any social or work setting.

Illustration:
- Colour Photo: Mark Renaud

Idnumber: 200504090162
Edition: Final
Story Type: News

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THE WINDSOR STAR

Slaying suspect set free on bail

The Windsor Star
Saturday, May 28, 2005
Page: A2
Section: News
Byline: Doug Schmidt
Source: Windsor Star

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The Windsor man accused of killing a Good Samaritan over the Easter weekend has been set free pending trial for second-degree murder.

Daniel McCallum, 32, was granted bail Tuesday by Superior Court Justice Joseph Quinn. He must remain in his home except for work, medical, court and other approved appointments, not communicate with witnesses and report every Monday to Windsor police.

His lawyer Frank Miller described it as "a very important decision" because the trial could be a year or more away, but that bail releases are uncommon for those accused of murder. "If the person is ultimately acquitted, that year in their life is gone," he said.

McCallum was charged with murder after Israel Grant Carver, 34, died of injuries sustained in an early-morning fight near Wyandotte Street East and Gladstone Avenue on March 25. Police described it as "a random meeting" between strangers after Carver appeared to have tried to intervene in a domestic dispute.

Carver was able to speak to responding officers, but he succumbed later in the day at Hotel-Dieu Grace Hospital to severe head injuries sustained when he was knocked to the sidewalk.

Miller said it was "a chance encounter" between strangers and that it was "unlikely" that his client would ever find himself in a similar situation.

Miller said it was "relatively infrequent" that a judge would release an accused murderer on bail.

McCallum was on probation at the time of the Good Friday incident for earlier charges of failing to attend court and causing a disturbance.

McCallum was in the news a few years ago when his throat was slashed with a broken beer bottle in an altercation at Reactor Bar on Dec. 27, 2002. The accused in that case was eventually acquitted of assault, but two days after the incident he was shot in the leg at Lanspeary Park by a man dating McCallum's sister.

Kamal Bazzi, who accidentally also shot himself in the foot, was sentenced to four months in jail.

Miller said he'd "rather not get into the details" of McCallum's latest legal travails.

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Idnumber: 200505280155
Edition: Final
Story Type: Crime
Length: 347 words

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THE WINDSOR STAR

Drug dealer avoids prison: Electronic tether ordered for 60-year-old in trafficking case

The Windsor Star
Tuesday, June 7, 2005
Page: A2
Section: News
Byline: Don Lajoie
Source: Windsor Star

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A 60-year-old Windsor autoworker, sentenced Monday for drug trafficking and illegal possession of firearms, will spend two years less a day as a prisoner in his own home, electronically tethered to the penal system.

Citing the offender's age and previously clean criminal record, Ontario Superior Court Justice Anthony Cusinato accepted a joint submission from the Crown and a defence lawyer that John William Rankin become the second local prisoner accepted for the Electronic Supervision Program (ESP).

Acting on tips, police raided Rankin's home in 2003, seizing 1.6 kilograms of marijuana, 82 methamphetamine tablets, 24 oxycodone tablets, five grams of cocaine and six firearms. He pleaded guilty to the charges March 30.

"The court was extremely mindful that the offence constituted a serious breach of the Canadian Criminal Code," said Cusinato.

"At the time in question (Rankin) was 60 years old, steadily employed as an electrician at Ford since 1993 and had no previous criminal record. Those considerations were important to the court."

But Cusinato stressed that doing time at home must also be seen as "punitive" and include strict conditions to reflect public denunciation of Rankin's crimes.

Cusinato ruled Rankin must wear the electronic tethering device around his ankle constantly and be at his residence at all times except to attend work, medical appointments or religious services.

The ankle transmitter tethers the prisoner to a receiver via an electronic signal which alerts monitors to the offender's presence or absence at pre-defined locations. Rankin's Westminster Boulevard home must also remain instantly accessible to corrections officers for inspections to ensure the equipment is working properly and that the prisoner is abiding by all conditions.

Cusinato ruled Rankin will be on probation a further three years with stiff reporting provisions to probation supervisors. The provisions include a lifetime ban on possessing explosives or firearms and mandatory substance abuse counselling, if necessary.

Rankin must also pay two fines of \$1,000 each for the unlawful possession of two restricted weapons seized by police and forfeit \$8,320 recovered in connection with the investigation. He must also forfeit drug equipment seized by police for disposal.

"He will be under strict supervision the next five years and has forfeited proceeds worth \$9,000," said federal prosecutor Richard Pollock. "For a man his age, with no previous record, the public interest has been satisfied."

Frank Miller, Rankin's lawyer, agreed: "I think it's a good result. He is not unhappy with it."

idnumber: 200506070142
Edition: Final
Story Type: Crime
Length: 401 words

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THE WINDSOR STAR

Judge OKs extradition

The Windsor Star
 Wednesday, February 23, 2005
 Page: A2
 Section: News
 Byline: Sarah Sacheli
 Source: Windsor Star

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A Windsor judge paved the way Tuesday for a Pakistani man to be extradited to the United States where he is charged with murder, kidnapping and armed robbery.

Superior Court Justice Steve Rogin ruled there is sufficient evidence for Zaid Tariq, 23, to be returned to the United States to stand trial in New Jersey in relation to a double murder.

His lawyer, Frank Miller, said Tariq will likely appeal the ruling, meaning he could remain in Canada for several months. After his ruling, Rogin reminded Tariq he has 30 days to file an appeal, and suggested he file it "on the 29th day," allowing the man to delay prosecution in the United States as long as possible.

One of the men charged along with Tariq, Paul Reid, was sentenced to life in prison with no eligibility for parole for 60 years. Tariq was to be tried after Reid, said Sai Rozzi, the assistant Hudson County prosecutor responsible for bringing him to trial in New Jersey.

Tariq was arrested in Canada on the eve of Reid's trial. "He was around for months, but as his trial got closer I thought he might fly the coop," Rozzi said.

Reid's brother, Steven, was sentenced to 10 years for theft, and a third man, Tariq Maqbool, is on trial for capital murder, a charge that carries the death penalty.

Tariq, if the federal justice minister does extradite him, will be tried for felony murder, which carries a maximum penalty of life in prison.

The Pakistani citizen had been out on \$1-million bail for a year when he was picked up by Windsor police wandering the near west side in March 2004. Officers at the time said they believed Tariq had entered Canada by riding a train through the rail tunnel connecting Windsor to Detroit.

At the end of Tariq's two-day extradition hearing this week, Rogin said there is sufficient evidence that the man "participated in what was originally a scam that turned into a double murder."

Joong Ahn of Pennsylvania and his nephew, Muni, and two other men were meeting Tariq to buy illegal phone cards. But Tariq's accomplices decided to rob the men of the \$300,000 they were carrying, according to a statement Tariq gave police. Tariq's contention that he had no knowledge anyone would be killed is "a question for a jury in a trial," Rogin said.

STOOD GUARD

Federal prosecutor Milica Potrebic said Tariq stood guard with a gun while the victims were beaten, bound and gagged and Maqbool allegedly strangled Joong Ahn to death with an electrical cord. Potrebic said Tariq assisted in putting the victims in the trunks of cars and took a portion of the money stolen from them.

The bodies of Muni and Joong Ahn were found in a burned-out car. Muni Ahn had taken a bullet to the brain, but a pathologist who testified at the New Jersey trials said Muni Ahn had soot in his lungs indicating he was alive when the car he was found in was set on fire.

The federal justice minister has decided, in referring Tariq to an extradition hearing, that his conduct is consistent with 17 counts under Canadian law. Rogin ruled there is sufficient evidence to support extradition on all counts.

Idnumber: 200502230115
 Edition: Final
 Story Type: Crime
 Length: 543 words

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THE WINDSOR STAR

Judge slams bank for lack of evidence: Scotiabank criticized for withholding tape of theft

The Windsor Star
Thursday, October 14, 2004
Page: A1 / FRONT
Section: News
Byline: Craig Pearson
Source: Windsor Star

A Windsor judge who found two men not guilty of debit card fraud Wednesday criticized the prosecution for allowing a bank to "drive" the Crown's case.

Superior Court Justice Steve Rogin dismissed charges, related to automated teller fraud at a Scotiabank outlet on Central Avenue Feb. 14, against Mihai Bobic, 33, and Vasile Toader, 35.

"A private complainant ought not drive a prosecution," Rogin said in his prepared decision, admonishing the bank for not providing all video tapes and documents and for taking too long to furnish some of the evidence it did.

Rogin called it a "tragedy" that Bobic -- a Romanian who was living in Michigan and now faces deportation, since he may have been in Canada illegally -- has remained in custody since his arrest in the lobby of the Central Avenue outlet.

The Scotiabank failed to provide evidence that may have cleared the matter up much sooner, Rogin said.

Windsor police say money was stolen from seven automated tellers across Windsor Feb. 14 in less than an hour. Bobic and Toader had been accused of stealing \$500, which was found on Toader.

"It's a proper decision and the only decision that could have been made because of the nature of the charges and the gaps in the evidence," defence lawyer Frank Miller said after Rogin's verdict. "The bank essentially produced to the Crown what the bank thought the Crown and the police needed. If the police do the investigation, of course, they have to produce everything they collect."

Perhaps the most crucial piece of evidence missing from trial was the videotape from inside the Scotiabank.

Miller said the bank's senior fraud investigator Stephen Burnham said he would furnish the video but never did. Miller also questioned the bank for withholding some banking information for privacy reasons, despite the fact the missing information potentially could have helped his clients' cases.

"What we had, as Justice Rogin said, was the bank essentially hijacking the investigation by becoming the ones who determined what the police got," Miller said. "Essentially what you've got is a prosecution driven by the bank. The bank is the alleged victim but they're also the ones in control of the documentation."

"Frank (Miller) was great," said a relieved Toader, who lives in Montreal. "We took advantage of every mistake they made. The police, they lacked experience."

Illustration:

- Colour Photo: Scott Webster, Star photo / Stephen Burnham, senior fraud investigator with the Bank of Nova Scotia, never produced videotape.
- Colour Photo: Scott Webster, Star photo / Not guilty: Vasile Toade, was found not guilty of debit card fraud.

Idnumber: 200410140134

Edition: Final

Story Type: Crime

Length: 391 words

Illustration Type: Colour Photo

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Scott Webster, Star photo
Stephen Burnham, senior fraud investigator with the Bank of Nova Scotia, never produced videotape.



Scott Webster, Star photo
Not guilty: Vasile Toade, was found not guilty of debit card fraud.

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THE WINDSOR STAR

Cops can use infrared to find grow-ops: Court: Pot grower loses fight for privacy

The Windsor Star
Saturday, October 30, 2004
Page: A1 / FRONT
Section: News
Source: Windsor Star; News Services

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Police tactics to root out marijuana grow-ops by using infrared aerial surveillance do not contravene the constitutional right to privacy in one's home, the Supreme Court of Canada ruled Friday in a decision that will send a Kingsville man back to jail.

The decision is a departure from the law in the U.S. where the high court ruled three years ago that it is unconstitutional for police to use the thermal heat cameras without a judge's warrant because of the need to protect the home "from prying government eyes."

The Canadian Supreme Court unanimously concluded that the cameras, which are used to detect external "hot spots" that may indicate the presence of electricity-gobbling grow-ops, are "non-intrusive" and "mundane" in the information that they reveal.

The decision is a loss for Kingsville handyman Walter Tessling, who said police violated his Charter of Rights protection against unreasonable search and seizure by unlawfully using an infrared aerial camera over his home.

"I'm disappointed," said Tesolin's lawyer Frank Miller. "We were hoping the Crown's appeal would be dismissed."

But despite the loss Miller said the decision upholds Canadians' right to privacy while deeming the technology used by the RCMP at the time not sufficient to constitute a breach of privacy.

"While we lost the appeal it further entrenches privacy rights in Canada," said Miller.

The ruling restores Tesolin's conviction and sentence of 18 months in jail for being caught with 120 marijuana plants worth an estimated \$15,000 to \$22,000.

"He has to go to jail," said Miller.

"There's no way around it. That's the way it is. I feel terrible for him."

Miller was attempting to contact his client Friday night to relay the news.

The Supreme Court decision said Tesolin's privacy rights were not compromised.

"Living as he does in a land of melting snow and spotty home insulation, I do not believe that the respondent had a serious privacy interest in the heat patterns on the exposed external walls of his home," Justice Ian Binnie wrote in the 7-0 decision.

"Safety, security and the suppression of crime are legitimate countervailing concerns."

Police, who are already losing the war against hydroponic marijuana operations, warned the Supreme Court that requiring warrants to use heat-sensing cameras would lead to "investigative gridlock."

The Supreme Court rejected a ruling from the Ontario Court of Appeal that the surveillance technique merits a warrant because the detected heat may come from "perfectly innocent" private activities, such as taking a bath or using lights at unusual hours.

"The nature of the intrusion is subtle but almost Orwellian in its theoretical capacity," said the 2003 ruling, authored by Justice Rosalie Abella, who was then on the appeal court but has since been promoted to the Supreme Court.

Binnie confined the court's ruling to the infrared technology as it exists today and said that any

advancements will have to be dealt with by the courts "step by step."

Miller also noted that new infrared technology that exists in the U.S. -- which can detect people moving in their homes -- would probably not survive a Canadian legal challenge.

"The technology the police were using five years ago was out of date then," said Miller.

"More invasive technology that tells you more will have to be revisited."

He based his conclusion on the tempered nature of the Supreme Court ruling, which repeatedly stressed that privacy is paramount and "that the spectre of the state placing our homes under technological surveillance raises extremely serious concerns."

The ruling builds on another leading Canadian case on the right against unreasonable searches.

The Supreme Court ruled 10 years ago that police can freely obtain electricity bills in their investigations because they reveal little about personal lifestyles and, therefore, do not meet the test for privacy protection.

Idnumber: 200410300180
Edition: Final
Story Type: Crime
Length: 629 words

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THE WINDSOR STAR

Ex-cop beaten in jail: Lawyer: Wants triple credit for time served

The Windsor Star
Thursday, December 2, 2004
Page: A1 / FRONT
Section: News
Byline: Sarah Sacheli
Source: Windsor Star

CORRECTION: (From Windsor Star, December 3, 2004) A story in Thursday's Star regarding the guilty plea of former Windsor police officer Wayne Routley should have said there is no minimum sentence for robbery. Wearing a face mask in the commission of a crime carries a minimum three-year sentence. ****

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A former Windsor police officer who has been attacked and threatened in jail while awaiting trial pleaded guilty Wednesday to a knife-point robbery at Windsor Raceway last year.

Wayne Richard Routley, 58, pleaded guilty to robbing a cash room clerk at the racetrack the morning of May 26, 2003. As part of the plea bargain, a charge of wearing a face mask in the commission of a crime was dropped.

Routley's lawyer, Frank Miller, told Superior Court Justice Joseph Quinn he will be seeking "enhanced credit" for the 18 months Routley has spent in jail since his arrest.

In an interview after Routley's brief court appearance Wednesday, Miller said jail has been unusually harsh for the ex-cop. "He's been beaten up, attacked. He had to be transferred to other jails."

Word about his former career as a police officer spread quickly through the other jails and he was threatened and attacked there too, Miller said.

For his own protection, much of his jail time has been spent in segregation.

Miller said he will ask the judge to give Routley triple credit for the time he has already served in jail. Normally, every month spent in jail prior to sentencing counts as two months toward the sentence.

Triple credit would likely preclude Routley from having to serve any more time in jail since he would be considered to have served the equivalent of 48 months in jail.

Robbery carries a minimum three-year prison sentence.

Past convictions will be considered in his sentencing.

After resigning in good standing from the Windsor Police Service after 21 years in 1987, Routley was twice convicted of impaired driving. His driver's licence was suspended and he paid \$1,450 in fines in 1992.

Routley was last employed as a security guard at Windsor Raceway. He was off work on sick leave at the time of the robbery.

He was seen on racetrack video surveillance tapes before the robbery. He was wearing distinctive dark shoes with a white ring around the top -- the same shoes worn by the robber, armed with a butcher knife, whose face was masked by a balaclava.

Routley was arrested after \$84,000 in Canadian and American currency, much of it wrapped in Windsor Raceway money bands, was seized from a motel room on Huron Church Road. Police found the money in a gym bag that matched the description of the one used by the raceway robber.

Miller tried to have the money and bag ruled inadmissible as evidence, saying it was seized as a result of an illegal search.

Court was told that detectives following Routley first attended the Kenora Motel a few hours after the robbery. When they showed the motel manager a photograph of Routley, she identified him as the guest who had signed in as Ron Jubenville staying in Room 27.

Police entered the room briefly, spotting the gym bag and a bill on the desk with Routley's name on it. They

retreated and obtained a warrant to search the room the next day.

Idnumber: 200412020150
Edition: Final
Story Type: Crime
Length: 503 words

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THE WINDSOR STAR

The Routley case

The Windsor Star
Saturday, December 11, 2004
Page: A6
Section: Editorial/Opinion
Source: Windsor Star

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Windsor lawyer Frank Miller plans on making an extraordinary request on behalf of his client, a former police officer who pleaded guilty last week to a knife-point robbery at Windsor Raceway.

Arguing his client, 58-year-old Wayne Richard Routley, has been abused, attacked and threatened in prison because of his law enforcement past, Miller is asking that Routley receive extra credit for the time already spent in prison.

Ordinarily, every month spent awaiting trial knocks two months off the eventual sentence. Miller will ask Justice Joseph Quinn to consider every month Routley has spent in custody as three months, raising the spectre of a drastically reduced sentence for a robbery that no doubt frightened raceway employees.

Accepting Miller's suggestion could set a precedent that would provide police officers convicted of a crime with special status. In essence, it would provide them with a get-out-of-jail-more-quickly card.

It is unfortunate that Routley is being persecuted because he was once a police officer and corrections officials should make every effort to ensure his safety while in custody. But providing him extra credit for the time he's served is simply unacceptable.

The sentence should fit the crime and not the criminal.

Idnumber: 200412110154
Edition: Final
Story Type: Editorial
Length: 196 words

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THE WINDSOR STAR

Privacy rights; The infra-red debate

Windsor Star
Friday, April 16, 2004
Page: A8
Section: Editorial
Source: Windsor Star

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Canada's Supreme Court is considering an appeal that seeks to give police the right to scan homes with heat-seeking devices to look for marijuana-growing operations. The Court must take the opportunity to deliver a strong message in defence of privacy rights.

Allowing police to exercise such extraordinary power without a search warrant allows them to drive down streets, or fly over homes, on fishing expeditions. It is akin to giving them a key to every locked home in the country.

This crucial case concerning individual and privacy rights began in May of 1999 when police, from an overhead helicopter, used Forward Looking Infra-Red (FLIR) aerial cameras to sneak a peak into a Kingsville home.

The cameras noticed concentrated heat in the home of Walter Tessling -- an indication of a possible marijuana-growing operation -- and used that information to obtain a search warrant. Tessling was subsequently arrested and convicted of drug charges.

The Ontario Court of Appeal acquitted him in 2003, ruling police violated his privacy rights by not obtaining a search warrant before using the heat-seeking camera.

The court ruled the camera enabled police to obtain "more information about what goes on inside a house than is detectable by normal observation or surveillance."

Prosecutors opted to appeal that decision.

Jim Leising, director of federal prosecutors for Ontario, argues the camera doesn't give police the "functional equivalent of being in a house" so it shouldn't require a warrant.

The Canadian Civil Liberties Association, an intervenor in the case, recently cited its concern about the erosion of privacy rights in the face of advancing technology. "What you're dealing with is expanded technological ability to invade personal privacy," said Alan Borovoy, the association's general counsel.

Even if the camera only detects sources of heat, it should still require a warrant. And the precedent that would be set by permitting the use of these cameras is dangerous in the extreme. What's next? Cameras that see through walls like X-Ray machines? Ultra-sensitive microphones that can pick up whispered conversations inside locked homes?

"It's not about drugs," said Tessling's lawyer Frank Miller.

"It's about privacy."

Idnumber: 200404160074
Edition: Final
Story Type: Editorial
Length: 350 words

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THE WINDSOR STAR Cops' heat sensor called privacy risk

Windsor Star
Saturday, April 17, 2004
Page: A2
Section: Local News
Byline: Janice Tibbetts CanWest News Service
Dateline: Ottawa
Source: CanWest News Service

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Police tactics used to detect marijuana grow operations at a Kingsville home clashed with the right to privacy in the sanctity of one's home as the Supreme Court considered Friday whether to impose limits on infrared aerial surveillance.

The court was warned that police, who are already losing the war against grow-ops, would be hampered by "investigative gridlock" if the judges decide it is unconstitutional for police to employ heat-sensing cameras.

The Attorney General of Canada asked the Supreme Court to overturn an Ontario Court of Appeal ruling that police had violated handyman Walter Tessling's Charter of Rights protection against unreasonable search and seizure by unlawfully using an infrared aerial camera to detect excess heat in his house.

On the other side of the courtroom, Tessling's lawyer, Frank Miller, cautioned against granting licence to the state to use technology to spy on people in the place where they most expect privacy.

The court reserved its decision and a ruling is not expected for months.

Hydroponic marijuana operations, which number in the tens of thousands across the country, need an unusual amount of lighting and, therefore, give off intense heat.

Police sometimes use forward looking infrared (FLIR) aerial cameras to locate "hot spots."

The Ontario Court of Appeal ruled last year that police have to obtain search warrants for aerial surveillance using infrared cameras, since the heat they detect may come from "perfectly innocent" private activities, such as taking a bath or using lights at unusual hours.

"The nature of the intrusion is subtle, but almost Orwellian in its theoretically capacity," wrote Ontario Justice Rosalie Abella.

She ruled that there should not be a ban on using infrared cameras in marijuana investigations, but that police must obtain a warrant from a judge first.

Her judgment acquitted Tessling, who had been sentenced to 18 months in jail after the RCMP seized about 120 plants worth an estimated \$15,000 to \$20,000 from his home.

Federal lawyer James Leising told the Supreme Court that Canadians could not care less about aerial cameras searching for heat sources on the outside of their homes.

FLIR technology cannot zero in on the heat-causing activity in a home, he said. It can only detect where there are unusual hot spots that can be caused by such things as people using their fireplace or saunas.

"This really doesn't reveal anything personal of any sort," he said. "This is something Canadians just don't care about. It's really impossible to imagine who cares, other than marijuana growers."

The Ontario government, an intervenor in the case, argued that the court would "stifle legitimate police inquiries and create investigative gridlock" by siding with Tessling.

Idnumber: 200404170131
Edition: Final
Story Type: News
Length: 441 words
Keywords: SUPREME COURT OF CANADA CONSIDERATION; INFRARED AERIAL SURVEILLANCE

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THE WINDSOR STAR

Lawyer seeks credit for client's time on bail

The Windsor Star
Thursday, August 5, 2004
Page: A5
Section: News
Byline: Dave Hall
Source: Windsor Star

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A Windsor man who pleaded guilty in May to two counts of armed robbery should be given credit for the time he spent under strict bail conditions when he is sentenced next week, said his lawyer.

Stephen Landgraff, who had been recently fired from his job at a family owned tree service company when the crimes were committed last August, pleaded guilty and admitted the crimes were committed to finance a road trip with his rock band.

During a pre-sentence hearing Wednesday, lawyer Frank Miller said that his client "has been under strict bail conditions, which are akin to house arrest, for the past 12 to 13 months and that he should be given credit for anywhere from half to all of that time when he is sentenced."

But assistant Crown attorney Bruce Coates rejected that argument, saying "Landgraff was required to remain in his residence unless in the company of a surety and he had four of them.

"He could leave the house and go anywhere he wanted and do anything he wanted, subject to his other bail conditions, when in the company of one of these four individuals. To characterize that amount of freedom as house arrest does not stand up."

Ontario Court Justice Saul Nosanchuk is expected to sentence Landgraff, who is 19, next Wednesday.

The robberies, committed with the aid of a pellet gun and ski mask, occurred last August at the Haf Price convenience store in the 1800 block of Drouillard Road and a McDonald's restaurant in the 2700 block of Tecumseh Road East.

Miller had argued in June for a conditional sentence while assistant Crown attorney Walter Costa had argued for a jail term of two years less a day.

Idnumber: 200408050107
Edition: Early
Story Type: Crime
Length: 286 words

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THE WINDSOR STAR

Delays win drug charge dismissal; Dad, son waited 3 years for drug trafficking trial

Windsor Star
Friday, February 21, 2003
Page: A1 / FRONT
Section: News
Byline: Ellen van Wageningen Star Justice Reporter
Source: Windsor Star

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A judge has tossed out charges against a father and son relating to more than \$700,000 in marijuana and cash found at their Leamington home because it took three years to get the case to trial.

Danny Balkwill, 56 and Jesse Balkwill, 22, walked out of a Windsor court Thursday saying they are happy and relieved.

Superior Court Justice Anthony Cusinato said staying the charges is the only way he could remedy the violation of the men's charter right to be tried within a reasonable time.

"Because of the seriousness of the charges stayed, I am hopeful this disposition shall be the subject of further review by an appellate tribunal," he said.

Cusinato found the problem was repeated adjournments of the preliminary hearing in Ontario Court.

At that time, new dates were agreed to outside of the courtroom by lawyers without the Balkwills present.

There were several delays before the preliminary hearing started in March 2001. It was completed in November last year and the Balkwills were committed to go on trial March 31.

"This was an unusual case because the preliminary hearing was only to last a day and it lasted almost four days," said federal prosecutor Richard Pollock. "So after each day the hearing wasn't completed a new date had to be set and each date was set six to eight months later."

There was no evidence in any court records that the Balkwills consented to the delays, which might have allowed the case to drag on without jeopardizing their constitutional rights, Cusinato noted.

The procedure in Ontario Court has since been modified to ensure dates for preliminary hearings and trials in jeopardy of being delayed are set in court, said Frank Miller, lawyer for Danny Balkwill.

It is the third major case tossed out in the past four months because of delays in Windsor courts. Lawyers involved, however, say the delays in the Balkwill case were unique.

"This case was like the Energizer bunny. It just wouldn't stop," said Kirk Munroe, lawyer for Jesse Balkwill.

The Balkwills were charged with having marijuana and hashish for the purpose of trafficking and possessing cash proceeds of crime after a lengthy investigation by the OPP. Officers armed with a search warrant raided their home on Mersea Road C in Leamington on Jan. 20, 2000 and both men were arrested.

Police found 18 kg of marijuana and 200 grams of hashish -- estimated to have a street value of \$500,000. They also seized \$238,887 in Canadian and U.S. cash which they found in bundles throughout the house.

Jesse Balkwill, who has no criminal record, spent four days in jail before being released on bail conditions that he had to abide by for three years, Munroe said. The elder Balkwill, who has a lengthy criminal record, was released on similar conditions after 20 days in jail.

Even though the charges have been dropped, the Balkwills won't necessarily get the money and illegal drugs seized from their house back.

Pollock has applied to have the money forfeited to the Crown as proceeds of crime. The Balkwills's lawyers want at least some of the money to go toward their fees. Those issues will be decided by another judge as early as today.

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THE WINDSOR STAR

Appeals court rejects use of spy cameras

Windsor Star
Wednesday, January 29, 2003
Page: A3
Section: Local News
Byline: Doug Schmidt, Star Police Reporter
Source: Windsor Star

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Federal prosecutors say they will review "at least two or three" local drug cases in involving police use of infrared surveillance cameras after the Ontario Court of Appeal threw out charges against a Kingsville man.

Richard Pollock, Essex County's federal Crown attorney, said Tuesday that the Crown will have to determine if those cases hinge on evidence gathered by Forward Looking Infra-Red (FLIR) aerial cameras.

Pollock said the cases involve large-scale hydroponic marijuana-growing operations in the county.

Describing the intrusiveness of new surveillance technology as "almost Orwellian," the appeal court on Monday overturned the conviction of Kingsville handyman Walter Tessling on drug trafficking and weapons charges.

The use of infrared cameras for surveillance by police "constituted an unreasonable search" under the Charter of Rights, the court ruled.

Jim Leising, provincial director of criminal prosecutions, said the Crown will likely appeal the decision to the Supreme Court. He said the ruling is at odds with a similar case heard by B.C.'s appeal court.

Lawyer Frank Miller, who argued Tessling's appeal, said that if the lower court's conviction had been allowed to stand, police might soon be spying into people's bedrooms.

"The technology is developing in leaps and bounds on this.... The technology is apparently there now (with which) you can pick up the outline of a body moving behind a wall," he said.

Warrant required

The U.S. Supreme Court ruled in 2001 that police using FLIR must always first obtain a search warrant. The prosecutor in the Tessling appeal argued it was simply an investigative tool used by police.

"You can't see whether people are taking a bath, you can't see people (inside their homes) at all ... you see heat," said Pollock. Marijuana grow houses, for example, show up much brighter than neighbouring homes, an indication of the high-intensity lights used to grow their illicit crops.

Tessling was charged in May of 1999 with trafficking and numerous weapons offences after RCMP and other drug units raided a Kingsville home, seizing shotguns, a rare pistol, a Russian assault rifle and a large quantity of marijuana.

In its ruling, the appeal court wrote that Tessling had admitted to "the balance of the elements of the drug and weapons offences ... except for the trafficking charge."

By tossing out the trafficking charge, the court erased Tessling's entire 18-month sentence.

Heat sensors

FLIR cameras, which take pictures of heat rather than light, are commonly used by police on the hunt for everything from hydroponic marijuana operations to missing children. The military uses them to hunt terrorists and other enemies.

Idnumber: 200301290086
Edition: Final
Story Type: News
Note: Doug Schmidt can be reached at 255-5777, Ext. 586.
Length: 425 words
Keywords: POLICE; INFRARED SURVEILLANCE CAMERAS; NARCOTICS; REVIEW

Other cases tossed

The Crown is appealing the decisions of Windsor judges to dismiss two cases in November because of court delays of 30 months or more:

* Superior Court Justice John Brockenshire threw out robbery conspiracy and firearms charges against Zuhair Gorges, Rabih Saleh and Goran Dresic on Nov. 15.

* Superior Court Justice Terry Patterson stayed sexual assault and forcible confinement charges against Russell Steinhoff, Antonios Michos and Brian McCallum on Nov. 26.

Illustration:

- Danny Balkwill
- Jesse Balkwill

Idnumber: 200302210093

Edition: Final

Story Type: Sports

Note: EDITOR'S NOTE: Ellen van Wageningen can be reached at 255-5777, Ext. 650.

Length: 613 words

Keywords: COURT CASES CRIME WINDSOR; MARIJUANA; SUPERIOR COURT JUSTICE; CHARGE DISMISSED; DELAY

Illustration Type: Colour Photo

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THE WINDSOR STAR

Top court will decide on camera

Windsor Star
Tuesday, February 18, 2003
Page: A3
Section: Local News
Byline: Ellen van Wageningen Star Justice Reporter
Source: Windsor Star

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The case of a Kingsville man is headed for Canada's top court because federal prosecutors want clear guidelines on how police can use infrared heat-sensing cameras that are increasingly being used to sniff out indoor marijuana growing operations.

There are about 500 cases before Canadian courts that could be jeopardized by an Ontario high court ruling tossing out charges against Walter Tessling, said Jim Leising, head of drug prosecutions in the province.

In all those cases police used Forward Looking Infra-Red (FLIR) cameras to detect heat from grow lamps inside suspected marijuana houses, he said. The heat patterns detected by the device were used, along with other evidence, to obtain search warrants that led to seizures of marijuana crops and charges against the alleged growers.

In the Tessling case, the Ontario Court of Appeal ruled that police needed a search warrant to use FLIR because it was intrusive enough to reveal more than could be observed from watching the Kingsville house from outside.

That makes the infrared cameras almost useless to drug investigators, who have used them largely to back up other evidence to get search warrants, Leising said.

An application asking the Supreme Court to review the Tessling case will be filed in March, he said.

'Serious issue'

"We think it's an extremely important issue ... that should be reviewed by the Supreme Court," Leising said. "It's a serious issue, as technology is developing by leaps and bounds on almost a daily basis. There's a need to review how that technology needs to be governed for law enforcement purposes."

Tessling's lawyer, Frank Miller, agrees. There is potential for police to use the airplane-mounted and hand-held infrared cameras to scan whole neighbourhoods, he said.

"It's just a big brother is what it is. It's not real intrusive, but it's so random and indiscriminate that the potential of it is very worrisome," he said.

Windsor police don't own any of the cameras, but have access to those of other forces, said Staff Sgt. Dan Woods.

NO PATTERN YET

Prosecutors will deal with marijuana cases investigated by police using heat-sensing cameras on a case-by-case basis, said Jim Leising, head drug prosecutor for Ontario. Those that have circumstances similar to the Tessling case will probably be adjourned until the Supreme Court takes a position, he said.

Idnumber: 200302180068

Edition: Final

Story Type: News

Note: EDITOR'S NOTE: Ellen van Wageningen can be reached at 255-5777 Ext. 650.

Length: 383 words

Keywords: POLICE; CRIME; MARIJUANA GROWING OPERATIONS; INFRARED HEAT-SENSING CAMERAS; SUPREME COURT OF CANADA; REVIEW

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THE WINDSOR STAR

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Tuesday, February 18, 2003

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Section: Local News

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Idnumber: 200302180068

Edition: Final

Story Type: News

Note: EDITOR'S NOTE: Ellen van Wageningen can be reached at 255-5777 Ext. 650.

Length: 383 words

Keywords: POLICE; CRIME; MARIJUANA GROWING OPERATIONS; INFRARED HEAT-SENSING CAMERAS; SUPREME COURT OF CANADA; REVIEW

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THE WINDSOR STAR

Charge reduced in Good Samaritan's death; Ontario Court of Appeal orders manslaughter trial in altercation that police say led to fatal injury

The Windsor Star
 Friday, November 23, 2007
 Page: A3
 Section: News
 Byline: Doug Schmidt
 Source: Windsor Star



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A Windsor man charged with murder in the 2005 death of a man described by police as a Good Samaritan must instead be tried on the lesser charge of manslaughter, the Ontario Court of Appeal has ordered.

"For my client, that's a huge difference -- it's (like) the difference between theft and armed robbery," said lawyer Frank Miller.

Daniel McCallum was charged by Windsor police with murder after Israel Grant Carver, 34, died of injuries sustained in an early-morning confrontation near Wyandotte Street East and Gladstone Avenue on March 25, 2005. Police described it as "a random meeting" between strangers after Carver appeared to have tried to intervene in a domestic dispute.

McCallum was 32 at the time. Carver was able to speak to responding officers but died later in the day, which was Good Friday, at Hotel-Dieu Grace Hospital. He suffered head injuries when he was knocked to the sidewalk.

Following a preliminary hearing before Ontario court Justice Harry Momotiuk, McCallum was committed to stand trial for second-degree murder. The provincial court ruling was appealed to Superior Court, where the lower court's decision was affirmed in March.

That decision was appealed and on Tuesday, the Ontario Court of Appeal ruled: "The committal on the charge of second degree murder must be quashed. Counsel are content that a committal on the charge of manslaughter should be substituted."

Miller had argued for the lower charge before a three-judge panel last week in Toronto.

McCallum has been free on bail since two months after Carver's death. His trial in Superior Court gets underway May 20.

McCallum was on probation at the time of the 2005 Good Friday incident, for earlier charges of failing to attend court and causing a disturbance.

He was previously in the news after his throat was slashed with a broken beer bottle in an altercation at the Reactor bar on Dec. 27, 2002. The accused in that case was eventually acquitted of assault, but two days after the incident he was shot in the leg at Lanspeary Park by a man dating McCallum's sister.

The shooter, Kamal Bazzi, who also accidentally shot himself in the foot, was sentenced to four months in jail.

In their ruling released Tuesday, the appeal court justices concluded there was "no basis in the evidence" for a reasonable person to conclude the appellant (McCallum) could know that death was a likely outcome of his actions.

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Illustration:

- Photo: Lawyer Frank Miller says the ruling 'makes a huge difference' to Daniel McCallum, who was originally charged with murder in the death of Israel Grant Carver

Idnumber: 200711230016
 Edition: Final
 Story Type: Crime
 Length: 404 words
 Illustration Type: Black & White Photo