

Whatever Happened To...U.S. v. Burns: Extradition and the Death Penalty

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The Death Penalty Around the World

About 140 countries have permanently abolished the death penalty. Some 50 countries have it on the books but don't use it; 36 countries continue to use the death penalty, and 22 of these carried out executions in 2013.

Japan and the United States are the only two industrial democracies that use the death penalty. Notably, in the United States, the death penalty for serious felonies was introduced as part of English law that continued after independence. In 1972 the U.S. Supreme Court struck it down as unconstitutional, but it was reinstated in 1976 which, coincidentally, was the same year it was abolished in Canada. Today, the death penalty continues in 34 states, in federal criminal law and in military law in the United States for aggravated murders committed by sane adults.

Notably, in the United States, the death penalty for serious felonies was introduced as part of English law that continued after independence.

The 1930s saw the most executions at almost 170 per year. Since 1976, there have been 1394 executions, of which only 15 were women. In 2013, there were 39 executions in the U.S. and 3035 people remain on death row today. Over 98% of executions and death row inmates are male.

Extradition

Due to the relative ease of crossing the border, occasionally persons who commit death penalty crimes in the U.S. will flee to Canada and, once captured there, will resist extradition to the United States. In 1991, the Supreme Court of Canada in the *Charles Ng* case decided that extradition from Canada would be allowed in cases where the death penalty was a possibility. Was this about to change?

In *United States v. Burns* [2001] 1 SCR 283, two 18-year-old men were accused of brutally murdering three family members of one of them. The murders happened in the state of Washington, and both accused quickly fled to British Columbia.

Facts

Atif Rafay and Sebastian Burns were friends and classmates who attended West Vancouver High School together. When Rafay's family relocated to Bellevue, Washington midway through his Grade 12 year for his father's work at an engineering firm, he decided to finish high school in Vancouver.

On July 7th, 1994 Rafay and Burns travelled by bus from Vancouver to Bellevue to visit

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Rafay's family. Six days later at around 2 a.m. Burns made a 911 call from the Rafay home reporting the deaths of Rafay's family. The parents had been beaten to death. His disabled sister also died later that night.

Rafay and Burns said they were out at a movie and then dinner together before returning home to the gruesome scene. Police, however, suspected the boys in the triple murders. Both stood outside the home and did not help the sister who was then still alive. They did not seem interested in knowing whether any family members might be alive. Their demeanor that evening was nonchalant.

Large amounts of blood were found in the shower enclosure; an effort had been made to wash this blood away. Virtually all hairs in the shower were Caucasian, inconsistent with any of the victims, and matching Burns.

Before they could be arrested, Rafay and Burns, both Canadian citizens, bolted to Vancouver and started spending Rafay's inherited money. The family estate was valued at a half million dollars and life insurance pushed that higher.

The teens confessed to RCMP in B.C. through an elaborate "Mr. Big" sting. Burns bragged about stripping down to his underwear in order to wash off the blood before doing the baseball bat bludgeoning. The violent force splattered blood on all four walls and the ceiling. The parents were beaten to death in their bedroom. Asked why he wanted his own family dead, Rafay said, "I felt it was a necessary sacrifice... to achieve what I wanted in this life." The Crown believed they killed for the money. Burns participated in exchange for a share of the money.

With the Rafay and Burns confessions in hand, proceedings to extradite them to face trial in Washington began. This took six years (including two years and two re-hearings at the Supreme Court of Canada) to change the Canadian law of extradition for criminals facing the death penalty in the United States.

Extradition Treaty Subject to the *Charter of Rights*

Under a treaty between Canada and the United States, the federal Minister of Justice in Canada can approve extraditions. The Minister *may* seek assurances the fugitives would not get the death penalty if convicted in the U.S. The Minister of Justice did *not* seek such assurances for Rafay and Burns. Plans were made to extradite the pair.

The lawyer for Rafay and Burns challenged the Minister's decision by arguing their *Charter* rights were violated.

A unanimous Supreme Court of Canada concluded extradition into a jurisdiction with capital punishment violates the principles of fundamental justice in a way that shocks the conscience.

Supreme Court Decision

Section 7 of the *Charter* guarantees that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." A unanimous Supreme Court of Canada concluded extradition into a jurisdiction with capital punishment violates the principles of fundamental justice in a way that shocks the conscience. It ruled that "The Minister is constitutionally bound to ask for and obtain an assurance that the death penalty will not be imposed as a condition of extradition."

The Court considered the youth of the accused and the "death row phenomenon" of how convicts suffer psychological harm while on death row for decades as mitigating circumstances, as well as development of international law favouring abolition of the death penalty. The Court left room for "exceptional cases" where assurances do not need to be sought, but did not elaborate.

The Court's decision was that extradition of fugitives in Canada to a jurisdiction that might impose the death penalty is prohibited by section 7 of the Canadian *Charter of Rights*. If one is extradited to an American state to be prosecuted, that state must first assure Canada that the accused will not be executed.

Where are they now?

Within a month of the Supreme Court's decision, Rafay and Burns were extradited to Washington. The Prosecutor in charge of the case promised that he would not seek

the death penalty for the two accused, and on that basis, the Canadian Justice Minister signed the papers for their extradition. Their trial did not start for three more years. Almost a decade after the crime, both were convicted of three counts of aggravated murder and sentenced to three consecutive life sentences with no possibility of parole.

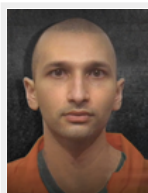
Being two of the youngest people ever targeted in such an undercover operation, Rafay and Burns have filed an appeal on this basis.

They are housed with other violent long-term offenders in the Washington State Penitentiary in Walla Walla.

In July 2014, the Supreme Court reconsidered the constitutionality of Mr. Big stings, and limited the admissibility of some confessions obtained from them, especially in the case of very young or vulnerable suspects. Being two of the youngest people ever targeted in such an undercover operation, Rafay and Burns have filed an appeal on this basis. Now 39 years old, each also has responded differently to incarceration.

Rafay

He advocates for prison educational programs and has published an essay, "On the Margins of Freedom" in which he discusses the decline of his life behind bars in *The Walrus*, a Canadian journal.



Atif Rafay

Burns

Burns carried out the killings and was the first to be induced into the "Mr. Big" sting.

He has struggled in jail where he allegedly has been involved in several infractions.

He has been assaulted by inmates and has been penalized for fighting and stealing.

He has suffered from an eating disorder and underlying mental-health problems.

He has refused to eat, has been force-fed,

has been restrained and spends much of his time in solitary confinement.



Sebastian Burns

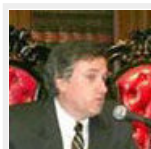
Photos are from the Fifth Estate, Mr. big Stings: Cops, Criminals and Confession, Jan. 16, 2015. cbc.ca

Filed Under: Famous Cases Tagged With: Canadian Charter of Rights and Freedoms, case law, confession, death penalty, extradition

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