

CANADA / JUDGMENT

R. v. Aeichele

2020 BCSC 2309

COURT

Supreme Court of British Columbia

DECIDED

3 March 2020

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2020 BCSC 2309 R. v. Aeichele IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Aeichele, 2020 BCSC 2309 Date: 20200303 Docket: 45595-4 Registry: Penticton Regina v. Cheryl Lynn Aeichele Elkena Michael Knauff Before: The Honourable Mr. Justice G.P. Weatherill Oral Ruling on Voir Dire #2 Re: Qualification of Cst. Minkley Counsel for Federal Crown: J.M. Le Dressay Counsel for Accused Aeichele: J.H. Pennington Counsel for Accused Knauff: M.A. Patterson Place and Date of Trial: Penticton, B.C. March 3, 2020 Place and Date of Judgment: Penticton, B.C. March 3, 2020

- [1] THE COURT: This is my ruling on a voir dire called to determine qualifications of an expert that the Crown seeks to tender as a witness at trial.
- [2] The Crown seeks to tender Constable Daniel Minkley as an expert qualified to give opinion evidence with respect to methods of packaging and concealment of illicit drugs for street-level sale, pricing of street-level drugs, generally and particularly fentanyl, methamphetamine and cocaine, methods of sale of those drugs, street drug jargon and slang, trafficking operations known as dial-a-dope operations, as well as the drug consumption and usage habits of typical street users of illicit drugs, including the amount of drugs a typical drug user would have in his or her possession, generally speaking at any particular moment in time.
- [3] Both Mr. Pennington, for Ms. Aeichele, and Mr. Patterson, for Mr. Knauff, challenge Constable Minkley's qualifications to give such opinion evidence on drug usage and consumption and consumption habits.
- [4] The role of an expert is to assist the court by providing an impartial and objective opinion on matters outside the experience and knowledge of the trier of fact. Opinion evidence is prima facie inadmissible and the burden is on the Crown to establish its admissibility.
- [5] As set out in R. v. Mohan, [1994] 2 SCR 9, the admission of expert evidence depends on meeting four criteria:
- a) Firstly, it must be relevant, and the court must balance the probative value against its potential prejudicial effect;

- b) Secondly, it must be necessary to enable the trier of fact to appreciate the matter as an issue due to their technical and/or specialized nature;
 - c) Thirdly, there must be an absence of any exclusionary rule on the admissibility of the evidence; and
 - d) Fourthly, the expert must be properly qualified in the area of expertise.
- [6] Additionally, the trial judge has the overriding discretion to exclude expert evidence even if it meets the Mohan criteria, if the benefits of receiving the evidence is outweighed by the potential risks of its introduction: *R. v. Galye*, 2019 BCSC 897.
- [7] The court plays the role of gatekeeper in conducting a cost benefit analysis to determine whether the evidence is sufficiently beneficial to the trial process to warrant its admissibility. The court must also ensure that if the opinion is admitted, the expert testifies within the scope of his or her expertise, as qualified. The fact that an expert has been qualified to give evidence in another case is not determinative of the case at bar. The admissibility of expert evidence is case specific.
- [8] It goes without saying that the determination of the guilt or innocence of the accused in this case is to be determined by me as the trial judge based on the evidence. Anecdotal evidence or evidence of general drug usage patterns does not speak to the particular facts before me. To the extent that such evidence may be relevant to the facts of this case, it is also highly prejudicial: *R. v. Sekhon*, 2014 SCC 15.
- [9] Expertise can be gained in several different ways including by experience, by education, by training, discussions with other police officers and anecdotally: *R. v. Galye*, para. 34 citing Justice Romilly in *R. v. Violette*, 2008 BCSC 920, at para. 34.
- [10] Constable Minkley's evidence in relation to the consumption patterns of street-level drug users is based partly on his observations from drug trafficking investigations, but is to a large degree anecdotal in nature having acquired information through discussions of drug usage patterns with various individuals over the past 15 years as a member of the RCMP, and through in excess of 100 drug trafficking investigations.
- [11] While I am satisfied that he is an expert in the areas of packaging and concealment of drugs for street-level sale, in pricing of drugs such as fentanyl, methamphetamine and cocaine, the methods of sale, the possession of street-level drugs, drug jargon and slang, and the operations of a dial-a-dope trafficking business, and how they typically work, I am not convinced that he is an expert in or is qualified to express an opinion on drug consumption patterns, nor on whether such consumption evidence might vary according to the accused's tolerance, weight or health, and if so, how.

- [12] His knowledge comes from discussions with drug dealers, confidential informants, some courses he has taken online and articles he has read, none of which deal specifically with the information about consumption rates as they may apply to the accused in this case. Any evidence he could offer about average consumption rates of uses of methamphetamine, cocaine or fentanyl would be of little value to me.
- [13] This case is not about the average person, it is about these two accused. To the extent that he is able to offer an opinion on the consumption habits of a typical street-level drug user, it is not relevant, necessary or helpful in deciding the issues in this case, in my view. Accordingly it fails the second factor of the Mohan test.
- [14] I can draw my own conclusions from the totality of the evidence before me: *R. v. Mulaj*, 2014 ONSC 4405 at paras. 46 to 52.
- [15] I have not yet heard Constable Minkley's opinion evidence. He has prepared a report dated March 2, 2018, which has been provided to the defence and which was marked Exhibit B on the voir dire. The Crown does not propose to tender the report in evidence at trial and I have not read it.
- [16] I conclude that, save for expressing opinions in the area of drug consumption patterns as it may relate to the accused in this case, which is not admissible, he is qualified in the areas of expertise for which the Crown seeks to have him qualified, and he may so testify. "G.P. Weatherill J."

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Prepared on 28 October 2026 · Esheria