

CANADA / JUDGMENT

R. v. Bennett

1999 BCCA 207

COURT

British Columbia Court of Appeal

DECIDED

18 March 1999

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Citation: Regina v. Bennett Date: 19990318 1999 BCCA 0207 Docket: CA0223115 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT: Before: THE HONOURABLE MADAM JUSTICE SOUTHIN March 18, 1999 THE HONOURABLE MADAM JUSTICE HUDDART THE HONOURABLE MR. JUSTICE MACKENZIE Vancouver, B.C. BETWEEN: R E G I N A RESPONDENT AND: JOHN RICHARD BENNETT APPELLANT P. Janzen appearing for the Appellant C. Deedman appearing for the (Crown) Respondent

- [1] SOUTHIN, J.A.: This is an appeal from the conviction of the appellant on the 6th of March 1997 by a jury of second- degree murder.
- [2] Mr. Janzen has said all that could possibly be said in favour of this appeal, and as I am sure counsel now realize, the Court has concluded that it cannot be allowed.
- [3] One of the attacks on the verdict arises because the learned trial judge gave rather extensive instructions to the jury at the opening of the trial, and some of those instructions related to the substantive law of murder. The Supreme Court of Canada has commented adversely, if that is the right word, on the practice of opening instructions in R. v. Menard (1998), 125 C.C.C. (3d) 416. Indeed, the late Chief Justice of this Court, Chief Justice Nemetz, commented adversely on such a practice in R. v. Sherman (1979) 47 C.C.C. (2d) 521 at 524.
- [4] Certainly, if a trial judge considers that such a course is a useful one, the judge should invite, before he gives such instructions which go beyond very limited instructions, the comments of counsel. In the case at bar, for instance, the learned trial judge made a comment about what the jury should do with evidence if the accused testified, a comment which might lead to difficulties if the accused chose not to testify, and only does not lead to difficulties here because the accused did give evidence.
- [5] There are other questions which arose, but the evidence here was such that the question we have to ask ourselves, in accordance with the Menard decision, is whether, on the whole of the evidence, the charge to the jury at the end, and the instructions, and so on, it is plain that this jury was properly instructed as to how to act judicially in the circumstances.

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- [6] The evidence against the accused was substantial. The accused denied having anything to do with the crime. The jury was instructed about weighing the evidence and considering all the evidence, and the burden of proof, and so on, and it came to the conclusion which it did; and in my view, there was here no miscarriage of justice within the provisions of the Criminal Code.
- [7] For those reasons, I would dismiss this appeal.
- [8] HUDDART, J.A.: I too would dismiss the appeal, because I agree that there was no miscarriage of justice resulting from any deficiencies in what the trial judge said to the jury at any point during the trial.
- [9] MACKENZIE, J.A.: I agree. The Honourable Madam Justice Southin
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