

CANADA / JUDGMENT

R. v. Boyle

2005 BCCA 537

COURT

British Columbia Court of Appeal

DECIDED

19 October 2005

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2005 BCCA 537 R. v. Boyle COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Boyle, 2005 BCCA 537 Date: 20051019 Docket: CA031771 Between: Regina Respondent And Breeze Michael Boyle Appellant Before: The Honourable Mr. Justice Hall The Honourable Madam Justice Levine The Honourable Madam Justice Kirkpatrick Oral Reasons for Judgment I. Donaldson, Q.C. Counsel for the Appellant K.D. Madsen Counsel for the Respondent Place and Date: Vancouver, British Columbia 19 October 2005

- [1] HALL J.A.: The appellant, Boyle, was charged that between February 20, 2001, and April 13, 2001, at Vancouver, he fraudulently personated Daniel Richard Kovic ("Kovic") with intent to gain advantage for himself, contrary to s. 403(a) of the Criminal Code.
- [2] What Boyle did was to acquire a birth certificate in the name of a deceased person, Kovic, and using this documentation he applied for a social insurance number and a B.C. identification card. He then used those two documents to acquire a learner's B.C. driver's licence in the name of Kovic. He also obtained a bank account and a postal box using the Kovic identity.
- [3] At trial, the criminal record and driving record of Boyle were tendered in evidence by the prosecution as relevant to motive. The trial judge held that the records ought to be admitted on the basis that their probative value was not outweighed by their prejudicial effect. The judge found the appellant guilty of the offence charged in the indictment.
- [4] The appellant appeals to this Court, arguing that the judge erred in admitting the aforesaid evidence of his criminal record and his driving record and of finding him guilty. The appellant argues that there was no evidence that he used the Kovic identity to get an advantage for himself. The appellant argues that the Crown did not demonstrate that he used this false identity to gain any advantage he could not obtain under his own name. The appellant submits that in cases such as R. v. Marsh, [1970] 31 C.R.N.S. 232 (Ont. Co. Ct.) and Rozon v. R., [1974] 28 C.R.N.S. 232 (Que. C.A.) where convictions were registered, there was evidence of an accused gaining an advantage from a false identity: in Marsh, by using a false driver's licence to obtain work as a driver; and in Rozon, by producing a medical insurance card in the name of another person to avoid being arrested on a bench warrant.

- [5] It seems to me that the purpose of this legislation is to prevent individuals from assuming the identity of someone else with the intention of gaining an advantage which the individual would not otherwise be enabled to obtain. If that can be established, then guilt is proven.
- [6] In my opinion, the judge made no error in ruling admissible the previous criminal record and driving record of the appellant. Proof of motive to commit a crime is always relevant, *R. v. Lewis*, [1979] 2 S.C.R. 821, 98 D.L.R. (3d) 111. That is what this evidence of the records concerned. It would be open to the trier of fact in this case to determine that the motivation of the appellant was to obtain a driver's licence and other identification under the name of Kovic in order to avoid the burdens of any disabilities consequent upon his criminal record or his driving record. Counsel for the Crown points out that it could also have relevance to the issue of intent and I think that submission has merit. This evidence was admissible and its weight was a matter for the trial judge to decide.
- [7] The respondent submits that the judge did not err in convicting the appellant of this offence. The trial judge said:
- [6] Does it matter that the accused has not been proved to have utilized the fraudulently obtained information in furtherance of any specific criminal enterprise? The answer in my view is no. He has created and not abandoned an untraceable identity available for use and furtherance of criminal enterprise, for example, detection avoidance.
- [7] The evidence here is not equivocal. The accused fraudulently obtained that false identity available to make his past disappear and he thereby gained advantage. He is guilty as charged.
- [8] I do not consider that the judge erred in convicting the appellant. As pointed out by Montgomery J.A in *Rozon v. R.* above, "The words 'gain advantage' could scarcely be more general in their scope." I am of the view that, if anything, the approach of the trial judge in this case was more favourable to the appellant than was warranted. The trial judge held that the appellant had gained an advantage by being able to adopt a new identity. However, it was only required for a conviction to be registered that the judge find that the appellant had the intent to gain an advantage by personating someone else. The judge's finding that the appellant gained an advantage seems to me to be a clear indication that the judge was of the opinion that the appellant had the necessary intent mandated by the section of the Criminal Code, namely having an intent to obtain an advantage by adopting the false identity of the deceased person, Kovic. It seems to me that the obtaining here of a new identity was in and of itself an advantage. While it is true that the learner's licence Mr. Boyle obtained had restrictions on it that his own licence did not have, it was certainly an inference open to the judge that the appellant intended to obtain a licence document that would enable him to pass himself off as someone without a prior driving record. Likewise, the obtaining of this document plus the other documentation, the social insurance number and the B.C. identification card, opened up a panorama of possibilities to the appellant, a panorama untrammelled by the existence of the criminal or driving record in his name. As the judge

observed, it would be a way of "making his past disappear."

- [9] It is true that the appellant did not obtain any money, nor did he avoid arrest by using the identification he had obtained in the name of Kovic as occurred in some of the cases cited in argument, but as I said, in my opinion the judge made no error in finding that, based on his actions and his history (which could furnish a motive), the Crown had proven on all the evidence that the appellant had demonstrated the necessary intent to gain by personation an advantage for himself, the very thing prohibited by the statute. The fact that he came to the attention of the authorities before he was able to obtain any particular monetary or other advantage does not afford a defence to the charge of which he was convicted.
- [10] I would sustain the conviction of the appellant on this offence and dismiss the appeal.
- [11] LEVINE J.A.: I agree.
- [12] KIRKPATRICK J.A.: I agree.
- [13] HALL J.A.: The appeal is dismissed. "The Honourable Mr. Justice Hall"

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