
CANADA / JUDGMENT

R. v. Brassington

2019 BCSC 694

COURT

Supreme Court of British Columbia

DECIDED

29 January 2019

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2019 BCSC 694 R. v. Brassington

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Brassington,

2019 BCSC 694

Date: 20190129

Docket: 25813

Registry: Vancouver

Regina

v.

Derek Brassington

David Attew

Paul Johnston

Danny Michaud

Publication ban made pursuant to s. 486.5(1) of the Criminal Code of Canada and the inherent jurisdiction of the Court by Associate Chief Justice Holmes

on January 30, 2019.

Before: The Honourable Mr. Justice Silverman

Oral Reasons for Sentence

Re: Danny Michaud

Counsel for the Crown:

C.M. Considine, Q.C.

C.A. Massey

Counsel for the Accused, Danny Michaud:

G. DelBigio, Q.C.

For the Accused, Derek Brassington, David Attew and Paul Johnston:

No appearances

Place and Date of Hearing:

Vancouver, B.C.

January 29, 2019

Place and Date of Judgment:

Vancouver, B.C.

January 29, 2019

- [1] THE COURT: These are oral reasons. If a transcript is ordered, I reserve the right to edit, although that process will not involve a change in the decision or in the reasoning.
- [2] Before me for sentencing is Mr. Michaud after pleading guilty to a charge under s. 48(1) of the Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10 which prohibits by concert or conniving any act whereby a regulation is evaded. In this case, RCMP Regulations s. 17(1)(c) noting the duty of members are required to "maintain law and order" is what is at stake, and the failure to do that is the essence of the crime that has been pleaded guilty to.
- [3] The information was laid in Provincial Court. Both counsel asked that I sit as a Provincial Court judge, and pursuant to s. 7 of the Provincial Court Act, R.S.B.C. 1996, c. 379, I have indicated that I will do so and I am doing so.
- [4] The charge is a summary conviction matter. The information was laid long after six months had passed. Counsel have agreed to waive the six-month limitation period for the laying of the charge pursuant to s. 786(2) of the Criminal Code. I acknowledge that and consequently this matter proceeds accordingly.
- [5] Briefly, the background of this arises out of the police investigation into the Surrey Six murders. Mr. Michaud was then a corporal with the RCMP, an investigator with IHIT, originally assigned the role of exhibit manager in the investigation, and eventually joining the IHIT Witness Management Unit. He was then 35 years old and had been an officer for nine years.

- [6] A potential witness in the Surrey Six investigation was a young woman who was referred to as Jane Doe 1. She had information that was considered to be of assistance to the investigation. There came a time when it was determined that there may be a credible threat to her. She was approached by and put under the care of several officers, including one who has pleaded guilty before this Court to an offence that involved having a sexual relationship with her while she was a potential witness, under his care. They were involved in an ongoing relationship for approximately six months in the latter half of 2009.
- [7] Towards the end of that time period, then Corporal Michaud and another officer were in Toronto to perform witness management work with that witness. She had been relocated to there, and in the course of that activity the young woman explained, disclosed to Corporal Michaud that she, and the officer I have previously referred to, were in an ongoing romantic and sexual relationship. Corporal Michaud had good reason to believe that, having heard her talk about it and having heard her side of a telephone conversation where she was speaking with the other officer.
- [8] Corporal Michaud did not advise his superior officers or otherwise take steps to address the inappropriate relationship. Senior RCMP officers became aware of that relationship, in any event, and requested that an internal investigation be conducted. They contacted the Ontario Provincial Police to assist in the conduct of that investigation and they did assist. In the course of doing that, they interviewed a number of witnesses, one of whom was Corporal Michaud.
- [9] On the date in the Information, April 29, 2010, during an interview of Corporal Michaud with Ontario Provincial Police investigators, he lied to them about what he knew of the involvement of the other officer together with the witness. He denied having any prior knowledge at all of the relationship. That was simply a lie. That is the essence of the charge to which he has pleaded guilty today.
- [10] In fairness, I should note that that other officer was a senior officer to Corporal Michaud. He was a sergeant.
- [11] The lies were clearly made with the intent of deceiving the OPP investigators with respect to the investigation that they were conducting.
- [12] It is important and fair for me to note that, unlike the allegations against the sergeant that I referred to, there is no allegation in the evidence before me on this matter today of sexual impropriety by Corporal Michaud with any witness in this case.
- [13] Corporal Michaud has been suspended as an RCMP officer. He has not been terminated. He is receiving his pay. The likelihood is there will be some sort of disciplinary proceedings when this matter comes to an end. It is unclear what his future holds.
- [14] There are aggravating features, as there are in most sentencing cases. In this case, it is the breach of duty, the duty to maintain law and order, that the lie constitutes. The reason he did so is not as clear as I would like it to be, although on the basis of questions from me to

counsel, it is clear that it was not because Mr. Michaud believes in some code of honour where police officers should lie on behalf of each other to protect each other. I accept what his counsel has said in that regard. Clearly there is no such code of honour. There may be between criminals, but there is not between police officers.

- [15] I am told and I accept that he was under a great deal of stress and pressure, as was everybody involved in the Surrey Six investigation. The pressure was not only to do the work, but to solve the case. There was damage caused to the investigation by virtue of the lie and that damage was to the credibility of Corporal Michaud, who was intended to be a witness at the trial dealing with the exhibits that he was in charge of as exhibit officer. The credibility of the exhibit officer is obviously important.
- [16] By way of mitigation, I have already indicated he was under stress. He has suffered and his family has suffered the separation of that family as a result of the strain arising out of this matter. His career is on hold, which is a consequence by itself, but which also adds additional pressure to him. His guilty plea is an acknowledgment of wrongdoing and saves the public and the court system a good deal of money in that regard.
- [17] The sergeant who was involved in the sexual relationship about whom the lie was told, and the information withheld, pleaded guilty to more serious charges under the Criminal Code, and was sentenced, following a joint submission, to a jail sentence of two years less a day to be served in the community by way of a conditional sentence order.
- [18] A second officer was involved in a much less serious but nevertheless sexual relationship of brief duration with another potential witness in the case and was sentenced, again by virtue of a joint submission, to six months in custody to be served in the community by way of a conditional sentence order.
- [19] I have a joint submission before me today for 90 days' imprisonment to be served in the community by way of a conditional sentence order with a number of conditions to be imposed together with it. Joint submissions are something which the court is not bound to follow, and in fact, there is a duty to not follow them when they are clearly inappropriate. On the other hand, there are cases where they are considered appropriate. Two examples are the two that I referred to already in this particular matter, as I was the judge who sentenced those two men.
- [20] I am satisfied, on the basis of the submissions from counsel, two senior counsel in this province who have convinced me on the merits that their submission is an appropriate one and I intend to impose it.
- [21] Consequently, Mr. Michaud, I sentence you to 90 days' imprisonment to be served in the community by way of a conditional sentence order with a number of conditions which are also agreed to, and I am required to read these to you. The registry will prepare the written form of the conditions, which you will receive before you leaving the courthouse.

[22] The conditions are:

1. You must keep the peace and be of good behaviour.
2. You must appear before the court when required to do so by the court.
3. You have to notify the court or your conditional sentence supervisor, which I will just call supervisor from this point, you must notify them, one of them in advance of any change of name, address, or employment.
4. You have to remain in British Columbia unless you have prior written permission from the court or your supervisor to leave the province. You have to carry that permission with you if you are outside the province.
5. You are to have no contact or communication, directly or indirectly, with Jane Doe 1, except through legal counsel who will have read the order, or during scheduled court appearances. You have acknowledged in court that you know who she is.
6. You have to report in person to the supervisor at the Richmond Community Corrections office, the address is here in the written form, by 3:00 p.m. on February 1, that is this Friday. After that you must report as directed.
7. When first reporting to the supervisor, you must inform him or her of your address and phone number. You must not change it without permission.
8. For the entire three months, you must remain inside or on the lot of your residence between 7:00 p.m. and 6:00 a.m. each day.
9. You must present yourself immediately at the door of your residence or answer the phone when any peace officer or supervisor attends or phones to check to make sure that you are there when you are supposed to be there. If you have a reasonable excuse, of course, that would be a defence to any breach.
10. You may be away from your residence during those hours when you are supposed to be home with the advance written permission of your supervisor. Such permission will only be given for compelling reasons which may include parenting responsibilities. You have to carry the written permission with you when you are outside your residence during those hours.
11. You are not to possess or consume alcohol, drugs, or any other intoxicating substances, except in accordance with a medical prescription.
12. You must not enter any liquor store or similar facility or any other place where the primary commodity sold is liquor. You cannot even go into the liquor store.
13. You must complete 25 hours of community work service under the direction of your supervisor and you must do this prior to March 31, 2019.

[23] You understand all that?

[24] THE ACCUSED: Yes.

"Silverman J."

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