
CANADA / JUDGMENT

R. v. Camille

2018 BCSC 301

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 301 R. v. Camille

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Camille,

2018 BCSC 301

Date: 20180228

Docket: 101253-3

Registry: Kamloops

Regina

v.

Gordon Paul Camille

Publication ban based on the Court's inherent jurisdiction:

these reasons are not to be published before the verdict is given in the trial.

Before: The Honourable Madam Justice H. Holmes

Oral Ruling on Voir Dire Re

Whether Mr. Camille's Statements to the Police were Voluntary

Counsel for the Crown:

K.E. Bouchard

S.E. Firestone

Counsel for the Accused:

K.M. Walker, QC

Place and Dates of Trial:

Kamloops, B.C.

January 29-31,

February 1, 2, 5-9, 2018

Place and Date of Judgment:

Kamloops, B.C.

February 28, 2018

OVERVIEW

- [1] Gordon Camille is on trial for manslaughter, for killing Dennis Adolph on or about January 26, 2016. The two were living together in a room at the 4 Seasons Motel in Kamloops, BC, and at approximately 11:15 a.m. on January 26, Mr. Camille reported that Mr. Adolph was dead. Mr. Adolph had been stabbed once in the abdomen.
- [2] A voir dire was held to determine the admissibility of statements Mr. Camille made to the police on Sunday February 7, 2016, in which he admitted killing Mr. Adolph. Mr. Camille had been arrested on Friday February 5, 2016 for the second degree murder of Mr. Adolph. He was held at the city cells in Kamloops and interviewed there through substantial portions of February 6 and the morning of February 7. Mr. Camille said repeatedly - many dozens of times - that he did not wish to speak to the police.
- [3] For the February 7 statements to be admitted into evidence in the trial, the Crown must prove beyond a reasonable doubt that they were voluntary.
- [4] The police treated Mr. Camille with courtesy and respect, and did not set out to mislead or coerce him in any way. Nonetheless, they persisted in their questions, despite Mr. Camille saying many times that he did not wish to speak. They also presented him with a subtle inducement to give them information, and overstated the effect of incriminatory evidence. Mr. Camille has many vulnerabilities that, I conclude, require that the pressures upon him be viewed through a particular lens, shaped by his life experience. From this perspective, I am unable to conclude beyond a reasonable doubt that he freely chose to make his admissions, and did not acquiesce in what he felt was inevitable or expected of him.
- [5] I will first briefly describe the interviews that led to the admissions on February 7, 2016, before then explaining in more detail why I am left in doubt about whether the admissions were voluntary.

THE INTERVIEWS

January 26, 2016 Interview

- [6] When the police went to the 4 Seasons Motel on January 26, 2016, in response to Mr. Camille's report of the death to the motel manager, Mr. Camille was standing near the doorway of the room he shared with Mr. Adolph. The police took down Mr. Camille's identifying information, and asked him a few questions about Mr. Adolph and the circumstances of the night before. They then put him in the back of a police car because he was cold and unable to return to his room because it was being treated as a crime scene.
- [7] Mr. Camille was 65 years old at the time, but appears considerably older. It was obvious from the start of the police investigation that he is very hard of hearing, and that he walks with difficulty, in a shuffle. Mr. Camille generally used a walker, but it remained in the motel room as part of the crime scene. Mr. Camille explained later that he suffers from arthritis as well as the residual physical effects of some early-life injuries.
- [8] Mr. Camille told the police that he and Mr. Adolph had been homeless before they moved into the 4 Seasons Motel. He told them that he was now concerned about where he would live, since he had no access to his room at the motel; the police offered to find him a place in a men's shelter. At this early stage, Cpl. Shelkie noticed that Mr. Camille had memory problems, with difficulty remembering names of people with whom he was well-acquainted.
- [9] Mr. Camille was interviewed at the detachment by Cst. Celina Gammie and Cst. (now Cpl.) Kevin McIntyre. During the first part of the interview, the police considered Mr. Camille to be a witness, not a suspect. However, during the interview they received information that made him a suspect; at that point, Mr. Camille was formally advised that he was under investigation, and was given the official warning that he was not obliged to say anything.
- [10] Although nothing is suggested to turn directly on this in the voir dire, I note that while the police (and the Crown in the voir dire) take the position that Mr. Camille was not detained in the January 26 interview, he himself evidently viewed the situation differently. Various statements he made on January 26 and in a later interview after his arrest indicated that, on January 26, he felt under the control of the police, even though they told him in that interview that he was at all times "free to go". For example, Mr. Camille asked the police about where he would sleep after he was "released", a term he used more than once. Moreover, this evident understanding that he was not, in fact, free to go was reinforced by certain statements or actions of the police that indicated that they controlled the situation and Mr. Camille. For example, Cst. Gammie essentially announced at one point that the interview would be continuing for a while longer. At one point she told Mr. Camille to stop talking and to listen to Cpl. McIntyre. At the end of the interview, the police told Mr. Camille that they were seizing his clothing (and would give him other clothes) and they did so; Mr. Camille was still not under arrest, and the police had no warrant to authorize the seizure.
- [11] In the January 26, 2016 interview, the police questioned Mr. Camille persistently about the night before. Mr. Camille explained that he and Mr. Adolph had been drinking, and that at one point Mr. Adolph went outside and got into an altercation there, likely with the drug

addicts who frequented the area. He denied stabbing Mr. Adolph, and said that he did not know who had done so or how the stabbing had happened. Mr. Camille also told the police that Mr. Adolph wanted Mr. Camille's bank card in order to buy alcohol, and Mr. Camille had given it to him but wished he had not.

- [12] Mr. Camille said many times during this interview that he wanted to speak to a lawyer. He said several times that he did not wish to be "interrogated", and that he did not wish to "say anything" to the police.
- [13] No issue was raised in the voir dire about the failure of the police officers on January 26, 2016 to respect Mr. Camille's rights under s. 10(b) of the Charter. As I mentioned, the police were of the view, and the Crown echoes it in the voir dire, that Mr. Camille was not detained, and his s. 10(b) rights were therefore not engaged. I doubt that I would accept this position, were it necessary to determine the issue. However, Mr. Walker fairly acknowledges that any s. 10(b) violation cannot be shown to have had any effect on the interviews on February 6 and 7, 2016, or on Mr. Camille's admissions on February 7. If there was such a violation, Mr. Camille does not contend that it affected the voluntariness of his statements on February 7.
- [14] After the interview, the police took Mr. Camille to the men's shelter at which they had arranged a place for him to stay.

Arrest on Friday February 5, 2016

- [15] Mr. Camille was arrested for second degree murder on Friday February 5, 2016 at the men's shelter, shortly before 7:30 p.m. This was the Friday of a three-day long weekend.
- [16] He was taken to the police detachment in Kamloops, and lodged in city cells.
- [17] At this point, the RCMP's E-Division specialized interview team took over. Cpl. Heather Swetnam, a member of the interview team, delivered all of the required warnings and information about Mr. Camille's Charter rights, speaking clearly and slowly to Mr. Camille, and ensuring that he understood. She arranged for Mr. Camille to consult first a legal aid lawyer who had experience with serious and complex criminal cases, and then Mr. Camille's own counsel at the time, Mr. Fred Kaatz. Mr. Camille spoke to the legal aid counsel on the telephone, and later spoke to Mr. Kaatz by telephone and then in person at the detachment. No issue was taken with the adequacy of the warnings or the information given to Mr. Camille, or with his access to counsel at this stage.
- [18] Mr. Camille's hearing problems were evident throughout this process. He continued to ask for statements to be repeated. At times his responses to questions showed that he had either not heard or not understood the question.

- [19] Mr. Camille made it clear from the start, after his arrest, that he wanted to speak to a lawyer and that he did not wish to "say anything" (meaning anything of significance to the investigation) to the police. After he consulted counsel, he said many times that counsel had advised him not to talk to the police, and that he did not wish or intend to do so.

Interviews on Saturday February 6, 2016

- [20] The first interview on Saturday February 6, 2016 took place between about 2 p.m. and 6 p.m. The second interview that day was between about 8:30 p.m. and 11 p.m. Cpl. Tyler Bell (Cst. Bell at the time) was the main interviewer for these interviews (and the interview on Sunday February 7). This interview and the subsequent ones were all conducted by Cpl. Bell, sometimes with the brief participation of other police officers, all from the specialized interview team.
- [21] In the February 6 interviews, Mr. Camille recounted a similar but more detailed narrative about his evening with Mr. Adolph. He said that they had been drinking, that he eventually passed out, and that when he woke up he found that Mr. Adolph was dead. He said that he did not know how the death had come about.
- [22] In these interviews, Mr. Camille spoke several times about Mr. Adolph using his bank card, sometimes without authorization, because Mr. Adolph knew the PIN number that Mr. Camille did not.
- [23] Asked about his background, particularly in the first interview on February 6, Mr. Camille described horrific events and appalling losses in almost incomprehensible numbers. There was no suggestion in the interviews, and there is no basis in the voir dire, to doubt the truth of what Mr. Camille recounted. The events and losses - which I mention because they bear on the particular vulnerabilities Mr. Camille carries with him now, forming part of the life experience that shapes his perspective and his responses to others in society - included the following.
- [24] Mr. Camille suffered serious abuse by a priest when at residential school as a child. He often heard the cries of other children who were being seriously abused there, and suffered a sense of powerlessness because he was too small to help them. He witnessed the gang rapes of several close family members on his home reserve. Two of his women partners, from different periods of his life, overdosed on heroin. One of those partners, with whom he had three children, attacked him with a butcher's knife, causing him serious injury and a lengthy hospitalization, and ending his relationship with her and the children. A third, more recent, woman partner drank large amounts of mouthwash on a regular basis, and died as a result; Mr. Camille estimated that he has known approximately 60 people who came to a similar end. Mr. Camille's twin brother was murdered at the age of 29. He lost other close family members to violence or drug overdoses.

- [25] Mr. Camille explained that he began drinking at around the age of 14 in an effort to forget the abuse he had experienced or witnessed. He became addicted to drugs when he spent time in the federal corrections system. He gave the impression that his drug addiction is largely overcome, with the help of six or seven periods in residential treatment, but his challenges with alcohol continue. He attributes ongoing pain in the liver area to his problems with alcohol.
- [26] Mr. Camille has been homeless during significant periods in recent years, and is accustomed to hunger.
- [27] He described memory problems that he sometimes attributed to Alzheimer's and sometimes to old age. Mr. Camille referred to these problems frequently, but some were evident also from his inability to remember names that should have been familiar, and from inconsistencies between non-controversial information he gave to the police and the facts they knew from other sources.
- [28] At the same time, the interviews provide evidence that Mr. Camille has considerable personal resources. He took up some of the most challenging occupations early in his adult life, including bull-riding in the rodeo business and log-falling. He evidently values hard work. He studied fine arts at Cariboo College and UBC, and achieved average marks of 92.5%. He was quick to learn computing at Cariboo College. He enjoyed debating as part of college teams. He was evidently an accomplished artist. In the police interviews, he often showed a strong understanding of the English language and its subtleties, even though English may not have been his mother tongue.
- [29] In the second interview on February 6, Cpl. Bell introduced certain "props", notably sheets of paper which he posted on the wall of the interview room to represent agreed or known facts, set out in time sequence. His evident objective was to encourage Mr. Camille to speak about the time period when the death must have taken place, which was represented by a blank space in the sequence.
- [30] Mr. Camille continued throughout to say that he did not know what had happened to cause Mr. Adolph's death, and that he did not wish to speak to the police. He responded at length to questions Cpl. Bell asked about other subjects, notably his background.

Interview on Sunday February 7, 2016

- [31] The interview on Sunday February 7, 2016 took place between about 10:20 a.m. and 1:30 p.m.
- [32] Mr. Camille said at first that he had slept well. However, he went on to say that he had been cold until a second blanket was given to him, and that he was constantly woken by a guard hammering on the window and telling him not to sleep.

- [33] In this interview, Cpl. Bell showed Mr. Camille a series of video-clips taken from security cameras around the exterior of the 4 Seasons Motel. I will discuss these in somewhat more detail later.
- [34] One of Cpl. Bell's evident objectives in this interview was to demonstrate to Mr. Camille that nobody other than him and Mr. Adolph could have been in their room during the period when Mr. Adolph was killed.
- [35] After watching these video-clips, Mr. Camille first tacitly and then explicitly admitted that he killed Mr. Adolph. He said that he did so because of money: Mr. Adolph had been taking advantage of him by using his bank card to withdraw funds from his account.
- [36] However - and as I will discuss in more detail later - Mr. Camille refused to give any further details about the killing, such as what weapon he used, what he did with the weapon, or Mr. Adolph's physical position and reaction when he was stabbed. He told Cpl. Bell, "you got what you wanted", and said that he did not wish to say anything more. In most of the few answers he did give, he spoke about what "probably" happened.
- [37] Shortly after admitting that he killed Mr. Adolph, Mr. Camille told Cpl. Bell that he could have "said" or admitted a long time before; however, he wanted to "spar" with Cpl. Bell for a while before doing so.
- [38] When Cpl. Bell left the interview room briefly after Mr. Camille's admission, Mr. Camille spoke to himself, making a number of statements that I will discuss later. These included apologizing to his lawyer, Mr. Kaatz, for not following his advice not to speak; Mr. Camille added that he could not take the interrogation. He also said that he didn't know what really happened, and that he might as well rot in prison.

DISCUSSION

- [39] The Crown bears the burden of proving beyond a reasonable doubt that Mr. Camille's statements were voluntary.
- [40] As Iacobucci J. for the majority of the Supreme Court of Canada explained in *R. v. Oickle*, 2000 SCC 38 at paras. 27, 47, the voluntariness of an accused's statement is to be broadly conceived, and is to be assessed according to the factual context of the particular case. Hard and fast rules cannot account for the variety of circumstances that may vitiate the voluntariness of a confession.
- [41] The voluntariness rule is rooted in the criminal justice system's overriding concern not to convict the innocent: *Oickle* at para. 36. However, the rule's goal of protecting the rights of an accused person comes with a companion goal of doing so without unduly limiting society's need to investigate and solve crimes: *Oickle* at para. 33.
- [42] Circumstances that may give rise to an involuntary confession include, either alone or in combination: inducements (such as threats or promises) which create a quid pro quo; oppressive circumstances; and the accused person lacking an operating mind. Alone or in

combination, those circumstances may produce a confession which is false. However, confessions may also be excluded to uphold standards of fairness in the criminal justice system, because the voluntariness rule reflects a range of concerns that is broader than those relating to, only, the reliability of the statements they produce.

- [43] In this case, the police who dealt with Mr. Camille on February 5, 6 and 7, 2016 treated him with respect and courtesy, and took considerable care to accommodate his Charter rights as they understood the law requires. They were pleasant in their conversation with him, never raising their voices except to help him hear better, usually at his request. They tried to make him comfortable, giving him water and juice to drink, offers of fast food, bathroom breaks, hearing aids, and, after a while, an extra blanket in his cell.
- [44] Nonetheless, Mr. Camille's conditions were uncomfortable and disorienting. He was cold for much of the time he was in his cell between interviews. He ate little because, he said, the pressure of the interrogation bothered him. His request (during the first interview on February 6) to lie down for a while because he was tired was overlooked and the interviews continued. He slept badly during the night of February 6 to 7, because the cells area was noisy, and a guard constantly woke him up to check on his welfare. The hearing aids given to him only helped to a limited extent, and he struggled to hear, often asking the police officers to repeat what they had said, and leaning forward to hear better. Sometimes his responses revealed that he had not heard or understood the question or statement, even though he evidently believed he had.
- [45] Of more significant concern are some subtle messages the police gave Mr. Camille that, taken together, and in light of his numerous vulnerabilities, may have overridden his will to remain silent. It is to be recalled that Mr. Camille expressed his wish to remain silent countless times throughout the interviews.
- [46] First, members of the interviewing team presented themselves as independent of the investigative team, and implied that Mr. Camille could benefit from giving them information that they could then present to the investigative team. Cpl. Bell began the substance of the first interview on February 6 by asking Mr. Camille if he killed Mr. Adolph, and, when Mr. Camille said that he did not, offering to explain this to the investigative team in greater detail if Mr. Camille continued to supply information about the events. Since the investigative team had arrested Mr. Camille for second degree murder, the obvious inference was that the interviewers' interventions could work to Mr. Camille's advantage in relation to the charge.
- [47] Sgt. Yanicki furthered this theme when he joined the first February 6 interview for several minutes. He explained at some length during that time that he and Cpl. Bell wanted to be able to show the investigative team that Mr. Camille was truthful, in his denial of the offence, but needed information from Mr. Camille in order to do so. Like Cpl. Bell, Sgt. Yanicki was careful to add that Mr. Camille was not obliged to speak to the police, especially when Mr. Camille reminded him that he did not wish to do so. However, Sgt. Yanicki's message was clear that if Mr. Camille chose to provide information that the interviewers

could accept as or show to be true, then his position with the investigative team responsible for the charge would likely improve.

[48] Cpl. Bell alluded to this theme again in the second February 6 interview, when he told Mr. Camille that he had confirmed that various things Mr. Camille had told him were true:

I guess Gord, what I'm tryin' ... to say is there's things you've told us that are ... I agree with you, they're true. Because maybe there's a belief from some people that what you're saying isn't true, but what I'm saying is things you have said to me today are true.

[Emphasis added to reflect Cpl. Bell's inflection.]

In its context, this statement implied that Cpl. Bell believed what Mr. Camille had told him thus far, though others appeared not to, but was concerned that Mr. Camille's choice not to speak about certain matters indicated a lack of candour. In the context of Cpl. Bell's and Sgt. Yanicki's other statements, the statement implied that the choice not to speak did not help Mr. Camille's position.

[49] The clear message, through these statements by members of the interviewing team, was that they were independent of the investigative team but in a position to influence it, if Mr. Camille gave them information to equip them to do so. In this sense, the statements amounted to an inducement. Moreover, the inducement was presented as the foundational approach to the interviews.

[50] Standing alone, an inducement will not render an accused's statement involuntary. The inducement must have functioned as a quid pro quo that had the effect of eliciting the admission. As Iacobucci J. noted in *Oickle*, the police are entitled to try to convince a suspect that it is in their best interests to confess. The persuasion becomes improper "only when the inducements, whether standing alone or in combination with other factors, are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne": *Oickle* at para. 57. Iacobucci J. found apt the observations in *R. v. Rennie* (1981), 74 Cr. App. R. 207 (C.A.), at p. 212 that "[v]ery few confessions are inspired solely by remorse", and that "[o]ften the motives of an accused are mixed and include a hope that an early admission may lead to an earlier release or a lighter sentence". In many such cases, "the confession will not have been obtained by anything said or done by a person in authority" and the quid pro quo offer by interrogators, necessary to vitiate the voluntariness of the statement, will be absent.

[51] The Crown submits that the officers' comments, even if functionally an inducement, did not have the necessary causative effect. Rather, notes the Crown, Mr. Camille appeared to reject any implied offer or inducement with anger or scorn (for example, responding to Sgt. Yanicki with, "I thought the courts decide these" and "fuck you guys") or by referring to his right and intention to remain silent. Moreover, and as the Crown also notes, the officers were careful to acknowledge Mr. Camille's right to silence, and never disparaged the advice Mr. Camille said his lawyer had given.

- [52] I agree that the inducement, standing alone, would not on its own render Mr. Camille's statements involuntary. However, taken together with the particular circumstances of this case (which I will discuss in more detail shortly), the inducement contributes to the doubt about whether Mr. Camille ultimately spoke as a result of his own free choice.
- [53] The second subtle message that contributes to this doubt was Cpl. Bell's overstatement of the effect of some of the evidence he presented to Mr. Camille shortly before Mr. Camille admitted his guilt.
- [54] In short, Cpl. Bell gave Mr. Camille the impression that objective evidence established that only he could have killed Mr. Adolph, when, according to the evidence in the voir dire, this was not necessarily the case. Video-footage showed Mr. Camille and Mr. Adolph coming and going to and from the general area of their room, but a roof overhang obscured the first few feet from the building such that one could not see them actually entering or leaving the particular room. Also, on the evidence in the voir dire, a person could have entered or left the room without being shown at all if they walked close to the building in the area the overhang obscured.
- [55] Cpl. Bell also told Mr. Camille that a man in the neighbouring room had heard arguing in the night, when in fact, according to Cpl. Bell's notes, the neighbour did not mention arguing but, rather, said he heard loud voices through the night, as well as a door slamming, someone yelling "get out", and someone twice saying, "let's get outta here". Arguing and shouting may be equivalent in some circumstances, but they are not always so - people may shout without being in dispute. The potential distinction was significant because, on the account Mr. Camille had given to that point in the interviews, his most likely motive for killing Mr. Adolph was in a dispute over the use of his bank card.
- [56] In the course of discussing the right to silence protected by s. 7 of the Charter (in a situation where the appellant had conceded that his statements were voluntary), the majority of the Supreme Court of Canada in *R. v. Singh*, 2007 SCC 48 at para. 50, noted that the police stratagem of presenting the case against a suspect as insurmountable is not objectionable of itself, but that it may bear on the voluntariness of the resulting statements.
- [57] The Crown submits that, in presenting the video-footage to Mr. Camille, Cpl. Bell was simply expressing his own conclusions about the effect of that evidence, and was allowing Mr. Camille to draw different conclusions if he wished. However, I cannot accept that submission because Cpl. Bell gave Mr. Camille the clear impression that the only reasonable conclusion was Mr. Camille's guilt:

We know ... you guys arrived at ... 8:11 p.m. the night before. We know that nobody comes and goes from your room between 8:11 p.m. and then 6:15 a.m., nobody comes or goes from your room because I think you would agree with me, Gord, that this camera angle here shows people ... shows if anybody comes and goes from the room. And this camera didn't stop, ah it was on the whole time. The guys here have all the video footage for it.

...

I've gone over and ... the investigators have ... pored over that footage, Gord, and there's nobody ... and using ... what you've told us, Gord, is that [Mr. Adolph] went outside and he had some sort of argument or conflict with some kids and ... drugs is the video shows ... that doesn't happen. That never happened, Gord.

[58] It is true that, as the Crown notes, Mr. Camille at first responded with disbelief, saying, in effect, that Cpl. Bell's conclusion did not accord with his own memory of Mr. Adolph arguing with kids outside: "Well, what else is shoutin' on about there? ... they were shoutin' 'round out there". However, Cpl. Bell responded to this by giving Mr. Camille the additional but inaccurate information that the next-door neighbour had heard arguing from Mr. Camille's and Mr. Adolph's room. It was following this that Mr. Camille said, "Well, if I'm a suspect, I'm willing to face the consequences", and admitted first that he was upset with Mr. Adolph for using him, and then that he "probably flipped out" as a result. After that, he expressly acknowledged that he killed Mr. Adolph, though without providing details, as I have noted.

[59] In considering the potential effect on Mr. Camille of the description of the case against him, one must take into account an important feature of his situation that distinguishes it from many.

[60] In the narrative Mr. Camille had repeatedly given in the February 6 and 7 interviews, he had passed out after drinking with Mr. Adolph, and woke to find him dead. On that narrative, if Mr. Camille caused Mr. Adolph's death he would have no memory of doing so. Indeed, many times in the interviews, including after the admissions on which the Crown would rely for proof of his guilt, Mr. Camille said that he did not know how it was that Mr. Adolph came to his death. These circumstances call for heightened attention to whether Mr. Camille's admission that he caused the death amounted to no more than an acknowledgement that he must have done so, given the evidence that Cpl. Bell had described.

[61] The concern is that Mr. Camille may have admitted his guilt not because he himself knew he had killed Mr. Adolph but because Cpl. Bell had convinced him that this was the inevitable conclusion that Mr. Camille needed to acknowledge.

[62] Several aspects of the evidence in the voir dire provide a basis for this concern.

[63] As I have mentioned, the admissions on which the Crown would rely followed almost immediately after Cpl. Bell presented the video-footage that, he said, showed Mr. Camille to be the only person in the room with Mr. Adolph when he was killed, and also told him that the neighbour heard arguing in their room. As I have discussed, Cpl. Bell overstated or misstated the effect of that evidence to Mr. Camille's disadvantage, according to the evidence in the voir dire.

[64] But even after Mr. Camille acknowledged responsibility for killing Mr. Adolph, he made no clear admissions about the death except for those relating to what the Crown would rely on to show his motive to kill. Mr. Camille explained that he was upset that Mr. Adolph took

advantage of him by using his bank card and by having sexual relations with a friend's girlfriend in front of him in the room. However, for all other details about the death, Mr. Camille either spoke in terms of likelihood or probability, or said he could not or would not answer Cpl. Bell's questions.

[65] Examples of Mr. Camille seeming to speculate on what was likely to have happened include the following:

(Responding to questions about what the final straw was that caused him to hurt Mr. Adolph):

Well, I don't know. Anybody would flip out after a while ... I probably flipped out because ... he was using me

(Responding to Cpl. Bell's suggestion that a person can only be pushed so far before they react):

Yeah, probably what happened, yeah.

(Responding to whether Mr. Adolph suffered):

I don't think so ... Hell, he probably died instantly. Probably got a lung punctured. Ah you guys already showed me what happened, ah the detective done this. You puncture a lung, it's gonna go right away.

In the last response Mr. Camille was referring to an investigator at the scene having lifted a covering to reveal Mr. Adolph's wound.

[66] Questions which Mr. Camille said he could not or would not answer included these:

- whether Mr. Adolph was already hurt when Mr. Camille tried to get the landlord;
- whether Mr. Adolph was aware that Mr. Camille had hurt him;
- what Mr. Camille used to hurt Mr. Adolph;
- how Mr. Camille punctured Mr. Adolph's lung (as he had put it);
- whether Mr. Adolph died in peace;
- whether Mr. Adolph asked for help;
- where Mr. Camille put the item with which he killed Mr. Adolph;
- where he got the knife; and
- whether Mr. Adolph was lying down when Mr. Camille stabbed him.

- [67] Despite his uncertainty or unwillingness to talk about various details of the killing, Mr. Camille said numerous times that he accepted responsibility for it and would take the consequences. He also told Cpl. Bell time and again, when pressed for more detail, that he would say no more and "you got what you wanted outta me". These responses suggest that Mr. Camille's admissions took the form of accepting responsibility for the crime he was accused of, rather than acknowledging facts that might help establish his guilt.
- [68] I do not overlook the fact that the task now is not to assess the weight or the ultimate reliability of Mr. Camille's admissions; that task takes place at the trial if the admissions are proven to have been voluntary. The potential unreliability of Mr. Camille's admissions is of concern now because it signals that the admissions may have been involuntary because made for reasons other than by Mr. Camille's free choice.
- [69] I recognize also that statements of an accused may help the Crown prove its case even if they are not overt admissions of guilt or admissions of facts that the Crown relies on to prove guilt.
- [70] The unusual end to the interview deserves consideration, although, in my view, the difficulty of interpreting it prevents it playing much of a role in the voluntariness analysis.
- [71] After rejecting many times Cpl. Bell's attempts to get further details from him, Mr. Camille said once again that he accepted the consequences, Cpl. Bell had what he wanted, and "I'm gettin' tired of this". He then told Cpl. Bell that they had "sparred around" enough, and he would say no more. When Cpl. Bell asked what he meant by sparring around, Mr. Camille said, "I coulda admitted long time ago, but I just wanted to spar around with you guys". He said he had sparred around for entertainment, and he referred to his own intelligence and previous success in debating. However, he "wasn't trying to outsmart": "I knew eventually I would admit it because I loved Dennis".
- [72] On their face, Mr. Camille's comments about sparring around suggest that he made a free choice to make the admissions on which the Crown would rely. However, given the larger context in which they were made, an equally consistent interpretation, in my view, is that they express a certain bravado on Mr. Camille's part in the face of what he saw as his inevitable fate.
- [73] The interpretation of this portion of the interview is further complicated by remarks Mr. Camille made to himself when, shortly afterwards, Cpl. Bell left him alone in the room. Unlike the whispered comments Mr. Camille made on earlier occasions when alone, these comments were made in a normal speaking voice as though he wanted them to be heard:
- (Sighs) Well, I just wanted to spar with [him] [per H. Holmes J.]. No, I just wanted to spar with [him?], that's all. I knew wouldn't win. I'm guilty, I felt sorry for Dennis. I knew he was FAS, I got a nephew with FAS. (Burps, mumbles) Well ... I'll take the consequences. I'm gonna. Well, I cracked under the pressure. I'm sorry. I'm getting old, I'm not as young as I used to be. Lotta people (Indecipherable) down there, I've got some relatives down there in Kent, Matsqui, Mission ...

(Indecipherable). (Indecipherable muttering) Well, you get one after another ah Fred, I'm sorry. Well, I'll let (Indecipherable) Fred, I'm sorry. I don't know what you got ... you got enough evidence you showed me so uhm I cracked. Fuck it. (Indecipherable whispering). Well, I cracked Fred, I'm sorry. I couldn't take the interrogation, I'm not strong wa . . . as I was when I was young. I don't know what really happened, I just cracked under pressure over the money. (Indecipherable) I'm getting old, Fred. I might as well just rot in prison.

- [74] While Mr. Camille continued to acknowledge and accept responsibility for the crime in these comments, he also continued to maintain that he did not know "what really happened". Moreover, at least some of his references to having "cracked" under pressure can only have referred to the interrogation, including, specifically, to the evidence Cpl. Bell had shown him ("you got enough evidence you showed me so ... I cracked").
- [75] The soliloquy is difficult to interpret. One can only speculate about whether it was spoken without regard for its potential evidentiary value. In my view, when the soliloquy is taken together with Mr. Camille's comments to Cpl. Bell about having sparred with him, it adds little in the analysis of whether or not his earlier admissions were voluntary.
- [76] I give no weight, in the voluntariness analysis, to Mr. Camille's statement that his appetite returned after he made the admissions because "I got ... that off my chest". On its face, the evidence indicates, as the Crown submits, that Mr. Camille felt better for having told the truth. However, in its larger context, another reasonable interpretation is that Mr. Camille felt better for having conformed to the expectations of authority figures who he knew were convinced of his guilt.
- [77] Mr. Walker referred in his submissions to fresh evidence which was sought to be tendered in the appeal in *R. v. Alec*, 2016 BCCA 282, to show a phenomenon of "aboriginal fatalism", meaning "a sense of hopelessness" in which "when aboriginal offenders interact with social institutions, including the administration of justice, they tend to bring a mindset that manifests itself in a tendency to want to expedite proceedings as a consequence of a perceived powerlessness to influence the outcome" (para. 9). The appellant had sought to adduce evidence of this phenomenon to support his application to set aside his guilty plea.
- [78] Mr. Walker acknowledges that the application in *Alec* did not succeed, and the appeal from conviction was dismissed. He acknowledges also that no evidence similar to that sought to be adduced in *Alec* was tendered in the voir dire in this case, and that no judicial or other commentary provides a basis on which to consider such a phenomenon as a factor in this case. He submits, and I agree, that nonetheless *R. v. Gladue*, [1999] 1 S.C.R. 688 reminds us that courts must take account of different cultural values and experiences that may shape the world views of indigenous people and their responses as individuals in the criminal justice system.
- [79] There is evidence in the voir dire that supports a conclusion that Mr. Camille experienced a sense of hopelessness through substantial periods of his life. Despite Mr. Camille's impressive personal resources, the traumatic events in his life left him often feeling

powerless and resigned to his fate. He spoke of being a scapegoat in his ordinary life, of homelessness and hunger, and of several desperate situations in which he would have met his death but for the help of individual strangers. He spoke of receiving a very large settlement as a residential school survivor, giving away large amounts of money, and having nothing to show for the settlement after only a few weeks. Several times, he said he feared that he would be homeless once again because the amount of his CPP pension had recently been significantly reduced for no reason he knew of, while his rent at the 4 Seasons had been raised. As I noted earlier, he evidently considered himself detained by the police on January 26, and under their control, when others involved in the situation saw things very differently.

- [80] Mr. Camille's dealings with people in authority - even his "sparring" - must be viewed through the lens of the life experience in which he often has little control over his destiny and is subject or vulnerable to the control of others.
- [81] Dozens of times - likely as many as a hundred, but it is difficult to count the instances because often Mr. Camille's utterances were broken by Cpl. Bell's or were repeated - Mr. Camille asserted the right to silence that he knew the law gave him, but the questioning continued. Indeed, when Mr. Camille said, early in the first interview on February 6, that he could sit silent all night if necessary, Cpl. Bell responded that that was fine, and that he - Cpl. Bell - would be around all weekend.
- [82] The right to remain silent is not a right to be free from questioning by the police: Singh at para. 28. The voluntariness rule recognizes the importance of police interrogation in the investigation of crime and provides scope for it. Nonetheless, a suspect's repeated assertions of the right to silence in the face of persistent questioning can be a strong indication that an eventual admission was not the product of free choice: R. v. Dhaliwal, 2016 BCSC 1966 at para. 213. In some circumstances, the evidence will support a finding that continued questioning by the police in the face of the accused's repeated assertions of the right to silence denied the accused a meaningful choice whether to speak or to remain silent.
- [83] Mr. Camille undoubtedly understood his right to silence and wished and intended to assert it. The police were not wrong to continue to question him. However, that they did and that Mr. Camille eventually made admissions in the area he had previously avoided contributes to the matrix of circumstances that raise a reasonable doubt that he did so voluntarily.
- [84] The interviews on February 6 and 7, 2016 were about ten hours in total, the longest, the first interview on February 6, being about four hours in length. However, by the time Mr. Camille made his admissions, he had been under arrest and held for approximately 42 hours in conditions that must have been uncomfortable for him, given some of his vulnerabilities. As early as in the first interview on February 6, Mr. Camille had asked to be able to lie down for a while because he was tired, but that request was overlooked and the interviews continued. Mr. Camille then had a bad night between the February 6 interviews and the February 7 interview when he made the admissions. In his final soliloquy, after making his admissions,

he said that he cracked because "I couldn't take the interrogation", and "I'm not strong as I was when I was young".

[85] My view of Mr. Camille's situation is somewhat similar, but is not identical, to that which Schultes J. took of the situation of the accused Mr. Bedi in Dhaliwal, at para. 247:

My decision is not based on [Mr. Bedi] having given up entirely or his having become some kind of passive tool of the police. It is that I am left with a reasonable doubt that he was emotionally pressured and induced into forsaking his right to silence to make statements that he did not wish to make, which is the essence of involuntariness. In that regard, a partial grudging admission can be as involuntary as an abject surrender, and the latter is not a precondition to doubt about voluntariness.

[86] In all the circumstances, I cannot conclude beyond a reasonable doubt that Mr. Camille's admissions on February 7 were voluntary.

[87] Factors which contribute to the doubt include Mr. Camille's repeated assertions of his right to silence in the face of persistent and continued questioning; the subtle inducement that underlay the interview; and the overstatement of evidence said to show that only he could have caused Mr. Adolph's death. The effect of these factors is compounded by Mr. Camille's particular vulnerabilities, including the psychological and other consequences of his appalling life experiences and his problems with memory, hearing, and physical pain.

[88] The task in the voir dire is not to assess the reliability of Mr. Camille's admissions. However, the nature and the limited scope of his admissions, which amounted to little more than an acceptance of responsibility for the killing, reinforce the concern arising from other factors that the admissions may have proceeded not from Mr. Camille's free choice but rather from acquiescence in what appeared to be an unavoidable process and an inevitable result.

CONCLUSION

[89] Since the Crown has not proven beyond a reasonable doubt that Mr. Camille's statements on February 7, 2016 were voluntary, evidence of those statements will not be admitted in the trial.

"H. Holmes J."

The Honourable Madam Justice H. Holmes

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