

CANADA / JUDGMENT

R. v. Ciano

2010 BCSC 1854

COURT

Supreme Court of British Columbia

DECIDED

24 September 2010

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2010 BCSC 1854 R. v. Ciano IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Ciano, 2010 BCSC 1854 Date: 20100924 Docket: 23606 Registry: Vancouver Regina v. Salvatore Ciano Pursuant to s. 648(1) and the inherent jurisdiction of the court, until the jury returns a verdict there is a ban on publishing information concerning any portion of the trial that took place when the jury was absent. This publication ban has expired. Pursuant to s. 486.5(2) of the Criminal Code, there is a ban on publishing any information that could identify any undercover operators involved in this proceeding. This judgment complies with this publication ban order. Before: The Honourable Madam Justice Bruce Oral Ruling on Application to Empanel a New Jury Counsel for the Crown: C. Greenwood H. Magnin Counsel for the Accused: S. Buck Place and Date of Trial: Vancouver, B.C. September 24, 2010 Place and Date of Judgment: Vancouver, B.C. September 24, 2010

- [1] THE COURT: I want to start with the point that under s. 591(4) of the Criminal Code, I agree from the language used, that once there is a severance order in mid-trial, it is contemplated that at least the one accused that is left will continue on with the jury, and there is no automatic right to empanel a new jury in that situation.
- [2] The question would be whether or not I had an inherent jurisdiction to order an empanelling of a new jury on the basis that there is a denial of Mr. Ciano's right to a fair trial, whether that is s. 7 of the Charter and a s. 24 remedy or not.
- [3] I think you have to start with the assumption that the jury system is based upon a belief that a jury is capable of following the instructions of the court and that they can fairly comply with those directions during the course of the trial. Otherwise, the fundamental premise behind a jury system is lost. I must say that at the outset of these proceedings in 2004 it was Mr. Ciano who chose judge and jury. Thus I have to presume at that time he felt that he could receive a fair trial with a judge and jury.
- [4] The circumstances have changed and there has been additional publicity since the election. However, I think that what remains is the fundamental presumption that the jury system works, and it works because the jury members are capable of following the strict instructions given by the judge, particularly when it comes to doing their own research.

- [5] Now, I know that Mr. Buck has provided me with the reason why he is not applying for a judge alone trial in this second trial, and he has also explained why he did not make an application to challenge the existing jury for cause. However, notwithstanding those explanations, I have to assume that this is not a case where a judge alone trial is necessary in order to protect Mr. Ciancio's right to a fair trial, and that this is not a case where a challenge for cause would be mandatory because of a realistic fear that there would be bias or a reasonable apprehension of bias among some of the members of the jury panel.
- [6] Based upon those assumptions, there cannot be a successful argument that there will be a denial of a right to a fair trial if the existing jury is maintained. All of the peremptory challenges were used by both accused, and so this was a carefully chosen jury.
- [7] In my view, the ban on publication imposed by Madam Justice Bennett, which is continued in this proceeding, is comprehensive. There is a ban on publication under s. 648(1) of the Criminal Code, a ban on disclosure under 486.5(2) of the Criminal Code, a ban on the name of the undercover operator, there is a ban on information, there is a ban on the publication of any information regarding Roberto Salvatore Ciancio, Aviv Ciulla, or Eugene Uyeyama. In particular, there is a ban on the publication of any information associated with this case, including details of any previous court history. This order does not prevent the publication of evidence heard by the jury during the trial, but there will be no publication of any contextual information that is not heard by the jury. This ban on publication will remain in place until the jury returns a verdict. Clearly, this is a wide-ranging ban on publication that is designed to ensure that there is no prejudice to Mr. Ciancio in the course of this trial.
- [8] For those reasons, I find that it is not necessary for me to empanel a new jury who has not heard Mr. Ciancio's name. I might add, as well, that a decision to empanel a new jury would undoubtedly delay this trial further, and as I have set out in my ruling with respect to post charge delay, there has already been seven-and-a-half years or close to seven-and-a-half years since the date of the charge. This matter must get on. This is the second trial. There should not be any further delay.
- [9] Therefore, I find that for those reasons I cannot accede to Mr. Ciancio's request that I re-empanel the jury. Because of that ruling, it is not necessary to deal with the defence application to use Mr. Ciancio's name in the form of initials and having the indictment changed to reflect those initials. Obviously this jury has had access to Mr. Ciancio's name when they were first empanelled on the 13th of September.
- [10] I also agree with Mr. Greenwood's submission that using the accused's initials would be an extraordinary remedy to impose, particularly when this is not a case, by assumption, that there is such a risk of prejudice in the empanelling of a jury that it has to be by judge alone.

- [11] I would also add that the prohibition against mentioning Mr. Ciancio's name during the course of the trial would be an onerous requirement to place on the witnesses and an onerous requirement to place on the court to actively supervise the use of initials. Moreover, had I made this order, and there was a violation of this order in front of the jury, that would be a ground for calling a mistrial. The jury would have heard Mr. Ciancio's name and thereby jeopardize the fairness of the trial.
- [12] For those reasons, I would not have granted this application in any event. As I said earlier in my ruling concerning the admissibility of the statements, I am prepared to hear submissions with respect to using the initials of Mr. Moyes because of his notoriety, and we can do that prior to the evidence being led in perhaps a mid-trial voir dire.
- [13] I understand the concerns raised by Mr. Ciancio and I will do my best to instruct the jury carefully and thoroughly with respect to doing their own research; to emphasize that their obligation is to render judgment on guilt or innocence based upon the evidence they hear in the trial exclusively. That is the time honoured safeguard that has been in our system for 150 years. It is the system that we trust. We have confidence that the jury can obey instructions, and until I see that there is evidence they cannot obey those instructions, I must find the application to re-empanel the jury is denied. "Bruce J."

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