

CANADA / JUDGMENT

R. v. Correia

2020 BCSC 608

COURT

Supreme Court of British Columbia

DECIDED

17 March 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 608 R. v. Correia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Correia,

2020 BCSC 608

Date: 20200317

Docket: 27475

Registry: Vancouver

Regina

v.

Colin Raymond Correia

Sheldon Joseph Hunter

Restriction on Publication: A publication ban has been imposed under s. 486.5 of the Criminal Code restricting the publication, broadcasting or transmission in any way of evidence that could identify a witness, referred to in this judgment by the names Witness X, Witness Y, and Witness Z and any information disclosed in or in relation to this trial that could identify any undercover police officer in the investigation of this case, including any pseudonym used by any undercover police officer. This publication ban applies indefinitely unless otherwise ordered.

Corrected Judgment: The text of the judgment was corrected
on the cover page on April 21, 2020

Before: The Honourable Mr. Justice Silverman

Oral Ruling on Voir Dire #2

Counsel for the Crown:

P. Favell, Q.C.

H. James

B. Caffaro

C. Cabulea

T.W. Cullen

Counsel for the Accused, Colin Raymond Correia:

B.F. Smith, Q.C.

F. Mahon

A.C. Campbell

H. Khosa

D. ChingMcNamee

Counsel for the Accused, Sheldon Joseph Hunter:

B. Coleman, Q.C.

A. Vo

G. Ng

G. Prat

T. Au, Articled Student

C. Laroche, Articled Student

Place and Date of Trial:

Vancouver, B.C.

Dates Ongoing

Place and Date of Judgment:

Vancouver, B.C.

March 17, 2020

[1] THE COURT: This is an oral ruling. 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] This is my decision in voir dire number 2 in this trial, a voir dire to determine the issue of voluntariness of a series of statements made by the accused, Mr. Correia.
- [3] There is an outstanding Notice of Application for Mr. Correia with respect to a s. 10 Charter issue as well. Originally, this was intended to be heard and decided together with the voluntariness issue. However, at the outset, counsel were having problems agreeing on procedure. I determined there was a potential danger in the two issues being joined as one, given the differences in burden and standard of proof, and the disagreements of procedure that had arisen. Therefore, I ordered that they would be heard separately. Consequently, voir dire number 2 and this decision deal with voluntariness only. The Charter notice remains outstanding. I will have a further comment on that at the end.
- [4] The statements at issue in this voir dire arose during a series of interviews over portions of three consecutive days. The interviews were conducted by trained police interviewers who were brought into the investigation for the interview process only. They had a backup team that assisted them, observed and listened to the entire process by video and audio, and offered advice to the interviewers from time to time. They were all well prepared before commencing the process. They had volumes of information available to them about the background of the alleged offence and about Mr. Correia himself.
- [5] This type of interview strategy is not new to the court system nor is it improper in any way. Invariably, it involves a balancing between, on the one hand, the importance of police gathering evidence while investigating serious crimes, and on the other hand, the importance of ensuring that the rights of accused persons have been protected in terms of the voluntariness principle and Charter principles.
- [6] Generally such professional interview teams are trained in techniques from two points of view and I conclude, based on the evidence, that this applies to this case as well. Those two points of view are:
1. In applying techniques that go as far as the law permits in order to gather information, but no further; and
 2. In applying techniques intended to cause a subject to speak about the crime being investigated, when he has indicated a reluctance to do so, preferring to rely on legal advice he has received which is usually advice that he remain silent.
- [7] Here, the Crown argues that the interviewers, in using their techniques, did not go so far as to render the statements involuntary. The accused argues the opposite, that they went too far. In that regard, the accused was a witness on this voir dire, as was a psychiatrist who was called on the voir dire by the defence. The Crown called its own psychiatrist in rebuttal.

- [8] The charges are first degree murder of two victims committed many years ago. The Crown's theory is that these two murders were committed as a result of a conspiracy to murder a different person who was not present at the time of the murders. Instead, the two victims of the murders were present when the murderers attended. They were killed simply because they were there at the wrong place and time, according to the Crown's theory.
- [9] The accused was tried and convicted in 2013, with two others, of conspiracy to kill the intended target. He was sentenced to 13 years' imprisonment. He had served a significant portion of that sentence and had been released on parole. He was still on parole when arrested and charged with the offences at bar.
- [10] He was arrested in Edmonton where he was living with his family and working as a foreman building a tunnel for the Edmonton Transit System. The arrest occurred on Friday evening, June 8, 2018, at 5:37 p.m. Upon arrest, he was advised of his rights, including his right to call counsel. He was presented to a telephone at the Edmonton police station in a private room. He indicated he did not intend to call counsel and he did not need counsel, and he did not call at that time. He was reminded later that he had these rights. His response was the same. Ultimately he decided to call his lawyer on the second day and this was promptly arranged, and did occur. There is no criticism to be made of any of the police officers or any part of the investigation with respect to that aspect of the case.
- [11] He was transported shortly after his arrest to an RCMP detachment in a suburb of Edmonton called Sherwood Park, and he stayed there until Sunday evening, waiting to be transported to the Vancouver area to pursue these charges. I infer and am satisfied that the wait of several days at that location was solely so that the interview team could have uninterrupted time with him to use their various techniques to attempt to get information and to create an environment where he would speak about the crime he had been arrested for. When he arrived in custody at the detachment, the interview team had already been there and was preparing for the two-day event that was about to occur.
- [12] At the outset, the accused was unwilling to talk to the officers at all. At most, he would make a comment or a question, be unhappy with the police response, and retreat into phrases such as "I am done" or something similar. I am satisfied that the phrase "I am done", and similar phrasing, meant "I am done speaking".
- [13] The interviewers had come prepared to answer any evidentiary disputes that might arise between them and the accused. By Saturday, the accused had begun to make what the Crown would argue are incriminating statements. By Sunday, it is arguable that he had made significant incriminating statements. It is not necessary for me to determine on this voir dire if those statements are indeed incriminating.

- [14] The interview approach of the team was not one of yelling, accusing, or insulting. Rather, some might call it an approach that used logic to convince him that he would benefit in many ways if he told the police the truth. Others might call it an approach that used manipulation and/or trickery to convince him that he would benefit in many ways if he told the police the truth.
- [15] Whether called logic, manipulation, trickery, or something else, it is clear that the interviewers used a number of techniques that they are trained to use in such situations. I refer to some of them:
1. An attempt on the first evening to make him feel uncomfortable. On the evening of his arrival at about 8:00 p.m., that is the Friday night, it was known by the officers that he had worked a full day at his physical labouring job and he was tired. He told them numerous times he wanted a cell and a bed so he could sleep. He was denied that until 11:13 p.m. I infer that the interview team wanted to start the interviews that evening while the accused was in an unrested state. It turned out to be ineffective, at least on that evening. Frankly, that approach would have doomed the Crown's attempt to prove voluntariness on this voir dire had it continued. However, it did not continue. I am satisfied that was because it did not work.
 2. The above approach changed dramatically from that point forward. The team moved to a "we are your friends who want to help you" approach [my characterization]. They arranged for Mr. Correia's partner to attend for a visit with him in the presence of the officers. They brought him, from that point forward, restaurant food for all his meals and, although duplicitous, there is nothing inherently wrong with any of that or with the "I am your friend" approach.
 3. Over approximately 48 hours of interviews, from Friday evening to Sunday evening, and excluding times when he was walking to and from his cell or speaking briefly at his cell, there were six longer interviews in interview rooms totalling approximately eight hours. The longest was 103 minutes, the shortest 31 minutes. I am satisfied this was appropriate and does not contravene any aspect of the voluntariness issue.
 4. They attempted to convince him they were interested in what he could tell them about the person that the accused said had been the prime mover of the murders, had been present at the time, and was in effect, the boss of the organization behind it. The approach was that he would feel much better if his boss was in jail for it, even if he were also in jail. It was clear to the interviewers and to anyone listening, including myself, that this was of great interest to the accused. I am satisfied this was appropriate and does not contravene any aspect of the voluntariness issue.

5. He indicated he wanted some form of immunity and was willing to assist the police and/or the Crown in that regard. The defence argues this as an inducement and that the Crown allowed the accused to continue to believe that this was a real possibility. However, the evidence does not support that position. In this regard, two things flow from the evidence:
 - a) the issue of immunity or some kind of deal was raised by the accused, never by any of the interviewers; and
 - b) each time the accused raised it, the interviewers emphatically stated that they had no authority to make a deal of that sort and it was not even a topic of discussion, as far as they were concerned.

I do not accede to this defence argument.

6. And finally, to assist in overcoming the accused's reluctance to speak about the crime, one of the interviewers and later a second one, told him, and I paraphrase, that he did not have to talk about the murders, he could simply talk about the offence of conspiracy for which he had already been convicted and served his sentence, and therefore he would not have to worry about it being used against him because he had already been tried and convicted for that. The interviewer first raised this issue only minutes after the accused had finally spoken to his lawyer by telephone.

The defence argues that this line of questioning and persuasion on the part of the police was improper, had a direct result on the subsequent decision of the accused to speak to the police, and should lead to the conclusion that his decision to speak from that point was involuntary.

The balance of this judgment addresses this issue raised by the defence.

[16] At Tab 16 of Exhibit 11, which is the bulk of the transcripts, there is a transcript that commences at 8:35 p.m. on the Saturday. The accused had just finished speaking to his lawyer, as he notes in communication with one of the officers on page 2 of that same transcript. On page 9, he speaks with the primary interviewer--Sgt. Di Nella. What Sgt. Di Nella says is arguably misleading and at best confusing. Reading from page 9, lines 315-334, the following occurs. We will start with Mr. Correia:

A: . . . you can talk to my lawyers. And anyways you know, my life is at stake dude. This is a hundred per cent (100%) bullshit what you're saying.

Q: Then tell me, tell me everything around that time. You know it and I know it. And here's reality, something legal, I'm not a lawyer. Your lawyer gives you good advice you gotta-, here's something legal here. You could...

A: My lawyer told me to shut my mouth so...

Q: Yeah, totally.

A: ...I'm not gonna [go] against her so...

Q: That, but just so you know, you've been charged and convicted for that conspiracy. You can't be recharged for that right? That's a done deal. That ship's already sailed. So, sitting here and, and, afraid to tell the story because of what happened in the past uh, you know, and you can't be re-convicted and recharged for that, that offence. I wanna know about what happened because whatever plan was put in place over here that led to the conviction...and uh, another plan actually gets followed through and in, in, and innocent people died. Innocent people that literally had no idea what was goin' on and really had no uh, no business - in this game at all.

[17] At Tab 18 of the same exhibit, there is a transcript that begins on Sunday morning at 10:54 a.m. At page 14 of that transcript, commencing at line 488, Cpl. Purdy has a brief conversation with Mr. Correia. The first word is "Adriano", which is the first name of Sgt. Di Nella. I am reading from line 488 to 499:

Q: Adriano said yesterday that (inaudible) you've already been tried and convicted and done a jail time for a (inaudible), right.

A: Yeah.

Q: So if you could tell the story around that piece, there's, you're not gonna self incriminate cause you've already, you can't you've be [sic] tried for that. And the guy that you were sent to kill and order that was given, that guy's not dead. Right.

A: Okay.

Q: So, I don't know but is that something that you do wanna talk about.

A: Talk about the conspiracy to commit murder of Doug MAHON.

Q: Yeah. Cause you were convicted for it, you've done your time.

A: Yeah.

[18] I have listened to the recorded interviews which were played in Court during the voir dire. I would suggest that the phrase that says "tell your story around that piece" is a reference to the conspiracy conviction, and that in the next line, the phrase "you've be tried" is either "you've been tried" or "you can't be tried".

[19] And on page 15 of the same transcript, at line 512 to 519, there is a conversation between Sgt. Di Nella and Mr. Correia:

Q: Yeah, because there's a lot in there that happens that, again, you've gone to court for that, you've already been convicted. You can't be recharged for that.

A: (inaudible)

Q: And ultimately we're not investigating that cause it's already happened, it's in the past, you've already (inaudible) your time. It'd be considered double jeopardy.

A: Yeah.

[20] There are three problems with the foregoing:

1. I am satisfied that it is a primitive form of legal advice described by Sgt. Di Nella, and I go back to the first of the quotes that I referred to, as, "here's reality, something legal, I'm not a lawyer." It is legal advice given on the heels of the accused having spoken to his lawyer, and immediately after telling the officers that "you can talk to my lawyer".
2. Second, it is confusing at best, and deliberately misleading.
3. And third, a lawyer may understand it, but a person with a high school education, which was the evidence on this voir dire of Mr. Correia, would believe it to mean it would be safe to talk about the conspiracy, precisely what it was intended to convey.

[21] The transcript at Tab 18 that I just referred to with the last set of quotations started Sunday morning at 10:54 a.m. Pages 14 and 15 are what I read from and have those comments. On page 25 of that same transcript, the most significant inculpatory admissions begin to be made. It is difficult to conclude that the conversation about double jeopardy made 10 pages earlier was not a factor that contributed to the making of inculpatory statements 10 pages later.

[22] Further, the accused had commented a number of times after those comments that he should be speaking to his lawyer again. That was deflected and ignored by the officers who changed the topic and Mr. Correia took the bait and moved along with the changed topic.

[23] The accused also called, on the voir dire, Dr. Brink. The Crown called Dr. Lohrasbe in rebuttal. Both are forensic psychiatrists. Both were qualified as experts, and both were exceptional and helpful witnesses. They both had read all the relevant material, viewed the video and audiotapes, and interviewed the accused. They also were both present in the courtroom during the entirety of the evidence of the accused given on this voir dire. Both agreed that the accused suffered from a condition referred to as generalized anxiety disorder ("GAD") and did so at the time of the police interviews.

[24] GAD is a recognized psychiatric condition found in the Diagnostic and Statistical Manual of Mental Disorders. Both psychiatrists referred to the accused's history that had some emotional and stressful difficulties, and both expressed sympathy with his ongoing difficulties. However, they came to different conclusions with respect to how that background and his ongoing GAD affected the issue in this case that they were asked to comment on.

[25] In Court, Dr. Brink adopted the following from his original report:

The investigating officers exploited this dynamic very well, and Mr. Correia gradually decompensated during the interviews with escalating anxiety and agitation. In a state of heightened anxiety, in what he describes as a "panic episode", and with a diminished ability to think clearly, made self-incriminating statements.

[26] In Court, Dr. Lohrasbe said this. He also wrote this in his report and then adopted it in his oral evidence:

Based on my review of all available information and my interview with Mr. Correia, it is my opinion that:

1. The distress experienced by Mr. Correia during the interviews cannot be attributed to a specific emotion or psychiatric dysfunction.
2. His speech and behaviour during the interviews do not reflect a grossly abnormal state of mind.

[27] Neither of the foregoing opinions cause me to totally reject the opinion of the other. I am satisfied that they are both reasonable opinions for the doctors to have formed, in view of the evidence, and I do not reject either of them outright.

[28] This tactic by the police was a trick. The interviewers purported to give legal advice indicating that "you're not gonna self incriminate" with respect to the conspiracy charge, but did not tell him that he was, of course, going to self-incriminate with respect to the charge then under investigation (if he decided to speak about the conspiracy).

[29] Together with that, I cannot ignore the opinion of Dr. Brink that in his state of heightened anxiety, Mr. Correia made self-incriminating statements "with a diminished ability to think clearly". I am cognizant of the fact that Dr. Lohrasbe comes to a different opinion. While I do not reject the sentiments of Dr. Lohrasbe, they do not cause me to entirely ignore the opinion of Dr. Brink. It is not necessary that I choose between the experts. Both have important comments to make, some of which I accept in varying degrees from both of them.

[30] The burden is on the Crown to prove voluntariness. Neither the defence, nor Dr. Brink, needs to satisfy me beyond a reasonable doubt that Dr. Brink's opinion is accurate, in order for me to rely, to some extent, upon that opinion. The extent to which I do so bears on the question of whether I will be left with a reasonable doubt about whether or not the statements are voluntary.

[31] The evidence fails to establish beyond a reasonable doubt that the statements of the accused were voluntary. Simply put, they were induced by a combination of police trickery and "a diminished ability to think clearly". Together, these contributed significantly towards his decision to speak with the police.

[32] In *R. v. Oickle*, 2000 SCC 38, the Court said this: In para. 64, the Court adopts a quote from an earlier case which says this:

64 Furthermore, the principle which inspires the rule remains a positive one; it is the principle of voluntariness. The principle always governs and may justify an extension of the rule to situations where involuntariness has been caused otherwise than by promises, threats, hope or fear, if it is felt that other causes are as coercive as promises or threats, hope or fear and serious enough to bring the principle into play.

[33] And at para. 69, which is found under the heading in the judgment, "Other Police Trickery":

69 . . . Voluntariness is the touchstone of the confessions rule. Whether the concern is threats or promises, the lack of an operating mind, or police trickery that unfairly denies the accused's right to silence, this Court's jurisprudence has consistently protected the accused from having involuntary confessions introduced into evidence. If a confession is involuntary for any of these reasons, it is inadmissible.

[34] The evidence is inadmissible.

[35] I am conscious that the context of this interview process involved a "right to counsel" issue concerning whether the interviewers should have advised Mr. Correia that, if he wished to, he could speak again with his lawyer. While conscious of the foregoing, I give no consideration on this voir dire to the s. 10 Charter issue that would be before me if that application had proceeded as part of a blended voir dire together with the voluntariness issue.

"Silverman J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/06/2020BCSC0608cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-correia-2020>

Prepared on 29 October 2026 · Esheria