

CANADA / JUDGMENT

R. v. Crossley

2018 BCSC 2570

COURT

Supreme Court of British Columbia

DECIDED

22 June 2018

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

2018 BCSC 2570 R. v. Crossley IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Crossley, 2018 BCSC 2570 Date: 20180622 Docket: X079516 Registry: New Westminster Regina v. Ryan Ross Crossley Before: The Honourable Mr. Justice Ball Oral Reasons re Ruling on Recorded Evidence of Robert Bailey Counsel for the Crown: W. Dawson, Q.C. A. Lee Counsel/Amicus for the Accused: K. Westell Place and Date of Trial: New Westminster, B.C. June 22, 2018 Place and Date of Judgment: New Westminster, B.C. June 22, 2018

- [1] THE COURT: These are oral reasons which respond to an application by the Crown pursuant to s. 715(1) of the Criminal Code, to enter into evidence in this trial the digital audio recording system recording of the evidence of Mr. Robert Bailey, the named complainant in this proceeding.
- [2] Mr. Bailey testified in the first trial, and was extensively cross-examined in that case.
- [3] On May 4, 2018, Mr. Bailey was served with a subpoena to attend this trial by a peace officer. He told the officer who served him with the subpoena that he would not come to court, and that the police did not care about him, among other things. Subsequently, a material witness warrant was issued on May 28, 2018, but has not yet been executed on Mr. Bailey.
- [4] This court heard evidence from Sergeant MacDonell about significant but unsuccessful efforts by the police to locate Mr. Bailey. Those efforts included placing his information and photograph, together with information about the warrant, on the Canadian Police Information Computer System. That information was also placed on the Real Time Information Centre, a communication system broadcast with daily email bulletins to police, which included a photograph and information about the warrant for Mr. Bailey, and that daily broadcast goes to all British Columbia police officers.
- [5] Sergeant MacDonell individually attended the Surrey Outreach team stationed on 135A Street in Surrey, a location of a tent city also called the Whalley Strip. Sergeant MacDonell also had contact with Mr. Bailey's mother, who did not know where Mr. Bailey was, and the officer left his contact information with Mr. Bailey's mother, and has had no response. There were also proactive RCMP patrols in the Whalley Strip area, and contact with the Surrey Outreach team, as I have indicated, located full time in that Strip area.

- [6] In addition, the seven D-Watch patrol officers supervised by Sergeant MacDonell have been conducting regular patrols through the Whalley Strip area. In addition, there have been proactive patrols in the area looking specifically for Mr. Bailey since May 28, 2018.
- [7] Based on the evidence which I have just recited, I am satisfied that the Crown has established on the balance of probabilities that Mr. Bailey will not attend court to give evidence.
- [8] Section 715(1) has been interpreted by the Ontario Court of Appeal in the case of *R. v. Li*, 2012 ONCA 291. Shortly thereafter, the same court decided the case of *R. v. Saleh*, 2013 ONCA 742, where Watt J. observed that once the Crown has established a witness gave evidence in a prior trial in the presence of the accused, and that witness is unavailable to testify, the evidence from the prior trial will be admitted unless the accused proves that he or she has not had a full opportunity to cross-examine.
- [9] Further, it is the full opportunity to cross-examine, and not the use actually made of the full opportunity to cross-examine, that is to be considered.
- [10] The evidence in the prior trial led by the Crown from Mr. Bailey occupied approximately 85 minutes of court time. Cross-examination of Mr. Bailey by defence counsel occupied 107 minutes of court time, approximately. There was no restriction on cross-examination in the prior trial.
- [11] The court's discretion to exclude prior testimony must only be exercised after consideration of two competing concerns: that is, one, fair treatment of the accused; and two, society's interest in admission of probative evidence at trial.
- [12] At paragraph 78 of *Saleh*, Watt J.A. also noted a caution given in *R. v. Potvin*, [1989] 1 S.C.R. 525, that the circumstances in which the exclusionary discretion may be exercised are comparatively rare.
- [13] In this case, the Crown seeks to have live testimony of Mr. Bailey which was recorded in this court in the prior trial admitted into evidence in this trial. In the circumstances above, Mr. Bailey will not testify, despite sufficient efforts by the police to find him and bring him before the court as a witness.
- [14] Insofar as the principled approach to hearsay evidence applies to these facts or otherwise informs the exercise of a trial judge's discretion under s. 715(1), the Crown has satisfied the requirement for necessity by the demonstrated inability to locate Mr. Bailey, the full opportunity to cross-examine detailed above satisfies the requirement for reliability.
- [15] Therefore accordingly, the Crown's application under s. 715(1) is allowed with respect to the recorded evidence of Robert Bailey. "Ball 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/18/25/2018BCSC2570.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-crossley-2018>

Prepared on 26 October 2026 · Esheria