

CANADA / JUDGMENT

R. v. Dunbar

2003 BCCA 465

COURT

British Columbia Court of Appeal

DECIDED

22 August 2003

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2003BCCA0465 COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Dunbar, Pollard, & Leiding, 2003 BCCA 465 Date: 20030822 Docket: CA027861; CA027862; CA028736 Docket: CA027861 Between: Regina Respondent (Applicant) And Allan Arthur Dunbar Appellant

- and - Docket: CA027862 Between: Regina Respondent (Applicant) And Darren Dennis Pollard Appellant
- and - Docket: CA028736 Between: Regina Respondent (Applicant) And Gerry Joseph Leiding Appellant Before: The Honourable Mr. Justice Smith (In Chambers) S. Goldberg Counsel for the Appellants C.M. Sweeney, Q.C. Counsel for the Respondent (Applicant) Place and Date of Hearing: Vancouver, British Columbia 14 August 2003 Place and Date of Judgment: Vancouver, British Columbia 22 August 2003 Reasons for Judgment of the Honourable Mr. Justice Smith:

- [1] The Crown seeks a direction pursuant to s. 683 of the Criminal Code that certain items that the appellants seek to adduce as fresh evidence on their appeals are inadmissible as irrelevant to the ground of appeal that defence counsel was incompetent at trial. Alternatively, the Crown seeks a direction that it not be required to respond to these items unless and until the hearing panel decides that they are relevant.
- [2] I am not persuaded that I have the power as a single justice sitting in Chambers to declare the proposed evidence to be inadmissible. However, the evidence is of such a nature that I think the direction sought by the Crown is warranted. Accordingly, I direct that, if the division that hears the appeals decides that these items or any of them may be admissible and are possibly relevant to the disposition of the appeal, the Crown shall be given a reasonable opportunity to investigate them and to provide a response before the admissibility and relevance of the items are finally assessed. Such a direction is not unprecedented: see R. v. Hector (2000), 146 C.C.C. (3d) 81 (Ont. C.A.) at ¶19. "The Honourable Mr. Justice Smith"

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