
CANADA / JUDGMENT

R. v. Fleurant

2021 BCSC 1665

COURT

Supreme Court of British Columbia

DECIDED

10 August 2021

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2021 BCSC 1665 R. v. Fleurant

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Fleurant,

2021 BCSC 1665

Date: 20210810

Docket: 88518-24

Registry: Kelowna

Regina

v.

Joshua Albert Fleurant

Before: The Honourable Mr. Justice Betton

Oral Reasons for Sentence

Counsel for the Crown:

N.J. Lerfold

Counsel for the Accused

appearing via teleconference:

P.S. McMurray

Place and Date of Trial/Hearing:

Kelowna, B.C.

August 10, 2021

Place and Date of Judgment:

Kelowna, B.C.

August 10, 2021

- [1] THE COURT: This matter comes before me now for disposition. I cited Mr. Fleurant for contempt when he was called as a witness by the Crown in a trial of a former co-accused, Mr. Jorgenson. When he was called as a witness, Mr. Fleurant declined to be sworn or affirmed or to answer any questions regarding the events where Michael Bonin had been murdered.
- [2] As I say, Mr. Jorgenson was a former co-accused. In May of 2021, prior to the trial of Mr. Jorgenson, Mr. Fleurant himself pled guilty to second-degree murder and was sentenced to life imprisonment. It was following that that he was called as a witness.
- [3] In the circumstances of the particular offence, it had become clear that only three people were physically present at the actual location where Mr. Bonin was murdered. The two living are Mr. Fleurant and Mr. Jorgenson. Mr. Jorgenson was under charge, making Mr. Fleurant the only compellable witness who could provide direct evidence as to Mr. Jorgenson's involvement at the time.
- [4] Without his testimony, the jury was deprived of the opportunity to hear that testimony, to consider it in the context of the whole of the evidence, and to render a verdict on the best evidence that could be presented. What specifically Mr. Fleurant could say, what he knew, whether that coincided with statements that he had provided remains only known to Mr. Fleurant.
- [5] In the end, the Crown made efforts to rely on the statements that Mr. Fleurant had provided. I made a ruling in the context of Mr. Jorgenson's trial that it was not appropriate for those statements to be presented to the jury. As a result, no evidence from Mr. Fleurant, either viva voce or from his statements, was available for the jury's consideration.
- [6] The case against Mr. Jorgenson was resolved when Crown and defence entered into an agreement. A new indictment was sworn, and Mr. Jorgenson pled guilty to manslaughter.
- [7] I have been provided with a number of authorities dealing with similar circumstances. Obviously, no two cases are the same but both this Court, the Court of Appeal in this province as well as courts in Ontario and Manitoba have commented on the significance and importance of witnesses who are called of complying with their obligation, once brought before the court, to answer questions and provide whatever information they are able about the matters presently before the court.

- [8] The charge against Mr. Jorgenson was second-degree murder. The importance of Mr. Fleurant's testimony was obvious. Given that he was the only compellable and surviving individual from the actual events, his testimony was critically important to the trial.
- [9] Contempt of the court by refusing to testify is a serious matter, and the cases reflect that. The ultimate objective of trials is, of course, to provide the trier of fact with the best evidence possible so that justice can be done, in whatever form that ultimately takes. When witnesses are called and are compellable to testify and refuse to testify, the task of the trier of fact is compromised and the role of the courts, in ensuring that justice is done, is, therefore, compromised. As a result, the authorities treat the refusal of witnesses, particularly in important criminal matters, very seriously.
- [10] Here, his contempt has not been challenged. Mr. Fleurant has not taken steps to show cause why he should not be found in contempt, and I ultimately have done so. The issue then before me is what consequence should flow.
- [11] The authorities speak of a range of sentences of 15 to 36 months. I have before me a joint submission of 18 months. There is no reason and I conclude that the guidance from the Supreme Court of Canada on joint submissions is equally applicable in the context of this type of contempt proceeding as it would be in a joint submission on a criminal charge brought in the ordinary course.
- [12] The joint submission of 18 months falls within the range. I must consider the circumstances of Mr. Fleurant being called as a witness and the nature of the case then before the Court, as well as his background. I do not intend to review that background in any detail. It is set out in the materials before me, in the sentence proceedings before Madam Justice Beames.
- [13] Suffice to say, Mr. Fleurant is a young man who is now serving a life sentence. His conduct before the Court, although contemptuous, was not enflamed by being belligerent or obnoxious or rude. He was firm in stating that he would not testify.
- [14] In all of these circumstances, I am content to impose a sentence in accordance with the joint submission of 18 months' imprisonment. Because he is serving a life sentence, that is necessarily concurrent with that life sentence.

"Betton J."

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Prepared on 26 October 2026 · Esheria