

CANADA / JUDGMENT

R. v. Goodhart

2000 BCCA 25

COURT

British Columbia Court of Appeal

DECIDED

6 January 2000

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2000 BCCA 25 Citation: R. v. Goodhart Date: 20000106 2000 BCCA 25 Docket: CA025214 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT Before: The Honourable Madam Justice Southin January 6, 2000 The Honourable Madam Justice Rowles The Honourable Madam Justice Ryan Vancouver, B.C. BETWEEN: R E G I N A RESPONDENT AND: MICHAEL GOODHART APPELLANT R. Fleming appearing for the Appellant J. Duncan appearing for the (Crown) Respondent

- [1] SOUTHIN, J.A.: This is an appeal from the appellant's conviction of theft which was pronounced by a Provincial Court judge on the 24th July 1998.
- [2] The matter arose from events which took place on the 7th August 1997. When a security guard observed a parked van that had apparently been broken into, he called the police. Conversations occurred on the 911 line between the police and the security guard, who testified at the trial that he saw the accused and another man approach the van, get in and drive away. The guard followed the van to Oppenheimer Park, which is located in the Vancouver downtown eastside and is a frequent place for the occurring of drug transactions when the driver and passenger left the van. The police arrived at the scene and they picked up the accused. The security guard testified before the learned Provincial Court judge that he lost sight of the man who was driving the vehicle for 10 seconds after he got out of the van, but that that man was the man who was arrested. I will not attempt to explain any more than that save to say that in his evidence the security guard was adamant that the driver of the van had no facial hair.
- [3] At the end of the trial, that is after the accused had given evidence, the Crown produced to counsel for the accused, who is not counsel here, notes made by one of the arresting constables, Constable Dhaliwal. Those notes describe the accused, that is the man arrested, as having a goatee with sideburns. Had those notes been disclosed to the accused before the chief witness for the Crown, the security guard, gave evidence, I have no doubt that counsel for the accused would have made some use of them. Whether the content of Constable Dhaliwal's notes, either testified to by him or put in by agreement of the Crown, would have raised a reasonable doubt in the learned trial judge's mind as to the identification of the accused I am quite unable to say. But I have no doubt that the notes were a relevant piece of

evidence which the accused was entitled to be able to use in dealing with the Crown's case and also in making his own decision as to whether or not to give evidence. To produce the notes after the trial could not cure the problem which existed from their non-disclosure earlier.

- [4] There is no suggestion in this case of bad faith on the part of the Crown nor any failure on the part of the accused to be diligent about his rights. These things happen. Neither Crown counsel or counsel for the accused knew of the notes before the trial and there is no reason to think that the constable knew that the presence or absence of a "goatee", whatever he meant by the word, was of importance.
- [5] In my view, in order to assure the accused of a fair trial in those circumstances it is right that we should allow this appeal and order a new trial.
- [6] ROWLES, J.A. I agree.
- [7] RYAN, J.A. I agree.
- [8] SOUTHIN, J.A. So ordered. "The Honourable Madam Justice Southin"
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