

CANADA / JUDGMENT

R. v. Haevischer

2014 BCSC 109

COURT

Supreme Court of British Columbia

DECIDED

23 January 2014

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2014 BCSC 109 R. v. Haevischer IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Haevischer, 2014 BCSC 109 Date: 20140123 Docket: X072945-B Registry: New Westminster Regina v. Cody Rae Haevischer and Matthew James Johnston Ban on publication in accordance with the terms at para. 1 of this ruling Before: The Honourable Madam Justice Wedge Ruling re: Application No. 114 Publication Ban for Crown Witness Counsel for the Crown: M.J.H. Stacey Counsel for the Accused Haevischer: D. Dlab Counsel for the Accused Johnston: B.A. Martland Counsel for Postmedia Network Inc. d.b.a. The Vancouver Sun, Canadian Broadcasting Corporation, Global Television Network Inc., and Postmedia Network Inc. d.b.a. The Province: M.J.J. Wagner Y. Li-Reilly Place and Date of Hearing: Vancouver, B.C. January 10, 2014 Place and Date of Judgment: Vancouver, B.C. January 23, 2014

- [1] The Crown applies pursuant to s. 486.5 of the Criminal Code, the common law and the inherent jurisdiction of the Court for an order:
- a) Prohibiting publication of photographs, depictions and descriptions of D.C.; and
 - b) Directing that in any publication D.C. be identified as "D.C."
- [2] D.C. is an anticipated Crown witness in the Surrey Six prosecution. According to his affidavit filed on this application, he was living in Surrey and involved in the drug trade at the time of the offences. He was in his early 20s at the time. D.C. has since been relocated outside the Lower Mainland and is no longer involved in criminal activities. He has obtained and held the same job for several years while furthering his education. He has built a solid career and has good prospects for advancement. D.C. has also developed a new social network that does not include people involved in criminal activity. His employer, co-workers and friends are not aware of his history.
- [3] D.C. has not changed his name.
- [4] D.C. further deposes that several of his co-workers are following the Surrey Six proceedings in the media. He expresses concern that if any proposed ban were to direct that he be identified by his initials, his co-workers could become aware of his past given that he would be away at the same time that [] was on the stand.

- [5] In light of the foregoing, the Crown submits that a limited publication ban is necessary to ensure D.C.'s continued rehabilitative path. It argues that in the absence of a ban, there is a real and substantial risk that D.C.'s reputation in his new community will be irreparably damaged, with significant personal and economic consequences that rise beyond mere embarrassment. The Crown further says that the ban sought is limited in scope and will not interfere in any material way with the ability of the press to publish D.C.'s evidence in full.
- [6] The Crown says there is nothing to distinguish D.C.'s circumstances from those of the witnesses in Application 98. In a ruling indexed as 2013 BCSC 2013, this Court ordered publication bans on identical terms as those sought here on the basis that they were both necessary and proportional.
- [7] Mr. Haevischer opposes the publication ban for the same reasons that he opposed them on the earlier application. He argues that D.C.'s affidavit does not suggest that he risks harm to a level that necessitates a publication ban. Moreover, proportionality weighs against the ban, as the potential harms of lost friendships or employment are at the low end of the spectrum, while the deleterious effects of the ban in terms of its impact on Mr. Haevischer's right to a fair and public trial are substantial.
- [8] Neither Mr. Johnston nor the Media Respondents oppose the application.
- [9] This application is in every material respect analogous to Application 98, and my reasoning as set out in the earlier ruling applies in equal measure here. I will not repeat any of my comments other than to say that I am satisfied that the publication ban sought is necessary as there is a substantial risk to D.C.'s continued rehabilitation if his name is published, and that given the limited nature of the ban, there are no reasonable alternatives to address that risk. I am also satisfied that the ban will not interfere with the substantive reporting of D.C.'s evidence, and thus its impact on press freedom and the accused's right to a fair and public trial is minimal. The proposed ban will additionally advance society's interest in encouraging the participation of witnesses in the criminal justice process. Accordingly, I find that the salutary effects of the ban outweigh its deleterious effects on competing rights and interests.
- [10] I grant the order in the terms sought by the Crown. The Honourable Madam Justice C.A. Wedge

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