
CANADA / JUDGMENT

R. v. Hosack

2012 BCSC 2139

COURT

Supreme Court of British Columbia

DECIDED

14 June 2012

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

2012 BCSC 2139 R. v. Hosack

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hosack,

2012 BCSC 2139

Date: 20120614

Docket: X073841-2

Registry: New Westminster

Regina

v.

Ernest Allan Hosack

Before: The Honourable Mr. Justice Schultes

Oral Ruling on Voir Dire

Re Voluntariness of Statement

Counsel for the Crown:

C. McPherson

B. Kielmann

Counsel for the Accused:

B. Coleman, Q.C.

J. Fung

Place and Date of Hearing:

New Westminster, B.C.

April 30, 2012

May 4,7-10,14-17, 2012

Place and Date of Judgment:

New Westminster, B.C.

June 14, 2012

1. Overview

- [1] In this voir dire, the Crown is seeking to prove the voluntariness of a statement that Mr. Hosack gave to members of the RCMP on May 10 and the early morning hours of May 11, 2009, following his arrest for the murder of Richard Falardeau.
- [2] There is no question that Mr. Hosack was suffering from some kind of mental illness at the time of the interview. Throughout it he made grandiose and delusional statements about his momentous inventions and their potential impact on the fate of the world. During the incriminating part of the interview, he purported to be speaking in the voice of his deceased grandfather, who described Mr. Falardeau having been murdered and his body parts cut up by entities or spirits -- with Mr. Hosack acting under the grandfather's control to clean up the scene and dispose of the remains.
- [3] The critical questions to be decided on the voir dire are whether the Crown has proven beyond a reasonable doubt that (1) Mr. Hosack had an operating mind during the interview, and (2) that its length and that the police tactics that were employed during it did not create an atmosphere of oppression or demonstrate conduct that would shock the community.

2. Evidence

a. The Interview

- [4] Mr. Hosack had been serving a sentence of provincial incarceration on an unrelated matter and was released on the morning of May 10. By previous arrangement, members of the investigative team arrested him for Mr. Falardeau's murder immediately upon his release and transported him from the Surrey Pre-trial Centre through a connecting tunnel to the Surrey RCMP Detachment.
- [5] There is no issue that he was given the appropriate Charter and statement cautions, or that he exercised his right to counsel following that arrest.

- [6] Because of a large number of arrests that had been made in an unrelated investigation in Surrey, Mr. Hosack was transported to the Langley RCMP Detachment to be interviewed. It has not been suggested that anything that could affect the voluntariness of his statement occurred during the process of transporting him there.
- [7] It had been planned in advance that members of the RCMP "E" Division's Interview Team would be the ones to attempt to obtain a statement from Mr. Hosack. The members of the team who dealt with him were Corporal Bruce Singer, Sergeant Sandra Lavallee, Sergeant Peter Tewfik (who is also the head of the team) and Detective-Constable Gareth Blount, a seconded member of the New Westminster Police.
- [8] The primary interviewers turned out to be Corporal Singer and Sergeant Lavallee, supplemented at certain crucial points by Sergeant Tewfik. Constable Blount's main roles were to oversee Mr. Hosack's exercise of his right to counsel and to attend to his personal needs during breaks in the interview.
- [9] Mr. Hosack was first brought into the interview room at 2:49 p.m. on May 10. The interview was concluded at 2:38 a.m. on May 11. It was video recorded and the recording has been transcribed.
- [10] The initial interviewer was Corporal Singer. The first stage of the interview was clearly an attempt on his part to build a rapport with Mr. Hosack. After Mr. Hosack asserted his lawyer's advice not to say anything to the police, Corporal Singer, in a manner to which no objection has been taken on Charter grounds, endorsed the general wisdom of such advice but offered the view that Mr. Hosack should nonetheless listen to what he had to say and comment if he felt it appropriate to do so.
- [11] Because Mr. Hosack had expressed disappointment at being unable to go for a steak dinner following his release from his sentence, the investigators bought steaks for him and Corporal Singer. They ate them together in the interview as they discussed matters.
- [12] In this initial stage of the interview, Mr. Hosack expounded at length on elaborate plans that he had been working on for such innovations as a new pay system for the global economy, fuel efficient vehicles, nuclear cutting wire, nuclear-free controlled limited warfare, and so on. He said that they were worth billions or even trillions of dollars and that he had communicated with organizations like NASA and General Electric about them. (It emerged later in the interview that he seals his designs with fingerprints, using his own blood.) Mr. Hosack also began to express a concern which would recur throughout the interview -- that his ideas and plans were being stolen and exploited for gain by others.
- [13] Corporal Singer was largely a passive listener during this stage, offering prompting questions where appropriate. He then asked Mr. Hosack directly if he had killed Mr. Falardeau. This was done before any exploration of Mr. Hosack's relationship with Mr. Falardeau or of the circumstances surrounding his death. It produced a denial.

- [14] Corporal Singer then explored the background of the relationship with further questions. This produced a general narrative from Mr. Hosack about the circumstances under which he had met Mr. Falardeau, including how he had protected him during a dispute with some bystanders at a coffee shop, escorted him home and then been invited to stay there. Mr. Hosack described how, after staying with Mr. Falardeau for a while he ended up getting arrested. When he returned after being released, Mr. Falardeau informed him that he no longer wished him to stay there and dumped his belongings outside the residence.
- [15] Mr. Hosack expressed the concern that a suitcase containing some of his valuable designs had been taken from him following his arrest on the matters that had led to his recent sentence. Corporal Singer attempted to reassure him by showing him photographs of a suitcase that was found in the vehicle that he had been driving.
- [16] After Corporal Singer explored in more detail Mr. Hosack's relationship with Mr. Falardeau and the circumstances under which he had been evicted, Mr. Hosack described an assault that he suffered from another person after leaving the residence, and his ultimate decision to return to Edmonton to see his family, in the vehicle that he had been driving at the time he was arrested.
- [17] Mr. Hosack talked about a blue binder of especially valuable and potentially dangerous designs going missing from his belongings after they had been thrown out of Mr. Falardeau's residence. He became tearful when discussing his father and other family members and his positive experiences being an uncle.
- [18] He was then taken for a cigarette break. Constable Blount had obtained a birthday cake for Mr. Hosack and during this break he, along with Sergeant Lavallee, sang him "Happy Birthday".
- [19] Mr. Hosack was returned to the interview room from his break before Corporal Singer came back. While back in the interview room on his own, he exchanged his chair, which had no wheels or padding, for a spare chair in the room that had both. Constable Blount entered the room and took that chair away from him, with the explanation that it was required for another interview. After Constable Blount left, Mr. Hosack then took Corporal Singer's padded rolling chair, but Corporal Singer repossessed it in a light-hearted manner upon his return.
- [20] It was now about six hours into the interview. It shifted to what could be characterized as the confrontation stage. Corporal Singer asserted that he was certain that Mr. Hosack had killed Mr. Falardeau, that Mr. Hosack had been placed in an impossible position and that the time had now come for him to move on with his life by admitting his involvement. Corporal Singer went on to characterize the offence as either having been planned and deliberate or spontaneous, and emphasized that he hoped it was the latter. He noted that God forgives people who put things behind them and move on with their lives. He also suggested that by killing Mr. Falardeau, Mr. Hosack had protected all of the women and children whom Mr. Falardeau would otherwise have abused.

- [21] He advised Mr. Hosack that half of the investigative team was of the view that Mr. Hosack had gone straight back to Mr. Falardeau's place after getting released, with the intention of killing him. Corporal Singer said that he did not want to believe that.
- [22] At about 9:14 p.m. Sergeant Tewfik, adopting the posture of being impatient with Corporal Singer for his lack of progress in the interview thus far, entered the room and ordered him to show Mr. Hosack some of the evidence.
- [23] After some further discussion, Sergeant Lavallee entered the interview room at 9:36 p.m. Her approach to Mr. Hosack initially was to refer to the difficult circumstances in his life thus far and the concerns of his family in Alberta that they had not been sufficiently supportive of him. According to her, this was the day that Mr. Hosack needed to show that he had a caring side and to give his family the opportunity to support him. She also suggested that the police had an overwhelming amount of evidence against him.
- [24] She presented Mr. Falardeau as a very unsavoury person, including describing him as a "useless drunk", the killing of whom was a favour to both Mr. Falardeau himself and the world.
- [25] She and Corporal Singer then purported to review the key pieces of evidence against Mr. Hosack. They conducted this in the form of a dialogue between themselves, with Sergeant Lavallee asking follow-up questions to Corporal Singer's descriptions. This approach seemed designed to draw Mr. Hosack into commenting. Their review included assertions that the landlord could place Mr. Hosack and Mr. Falardeau together in the residence on the day that Mr. Hosack was asked to leave and that a new tenant, Mr. Russell, had seen Mr. Hosack come to the laundry room carrying a pile of bloody sheets, including a T-shirt that was ultimately found to contain Mr. Falardeau's blood.
- [26] They played a recording of part of a statement from Mr. Russell, implied that his description of Mr. Hosack matched Mr. Hosack, and later stated that Mr. Russell had positively identified him. They asked Mr. Hosack if his DNA would come back from an analysis of the bedding, which Mr. Hosack said could have resulted from his having been on the bed at some point.
- [27] They also asserted that after leaving Mr. Falardeau's place, Mr. Hosack had been living in the bushes with a bunch of people who "positively identify him" and that he was talking to them about body parts. They played an excerpt from an interview with one of these people in which that person refers to Mr. Hosack talking about cutting something in pieces and putting it in a bag.
- [28] They told him that the dirt found on the boots that he was wearing on his arrest would "come back as the same dirt" from the local park where Mr. Falardeau's severed head had been found.
- [29] They said that Mr. Falardeau's DNA was found on a knife in Mr. Hosack's bag at the time of his arrest.

- [30] They brought to his attention that a drawing found in Mr. Hosack's possession and done by him shows a person being decapitated in the same manner as Mr. Falardeau had been.
- [31] Finally, there was a broad reference by Corporal Singer to a number of experts testifying at the trial and "extrapolating back" to the suitcase that Mr. Falardeau's remains were found in.
- [32] In relation to the possible inference that the killing was premeditated, Sergeant Lavallee said during this process that, "Without hearing [Mr. Hosack's] stories we can only assume the worst here". She invited him in this context to show the world that he was not a cold, calculating killer by describing what happened. The possibility that Mr. Falardeau had made a sexual pass at him was also raised by the investigators.
- [33] At this point, they played a recording of Mr. Hosack's father, who requested that his son, "Fess up, get it off his chest" and have himself committed to a mental institution for the help he needed.
- [34] After the various pieces of purported evidence had been presented to Mr. Hosack, he became extremely angry, accusing the investigators of presenting him with irrelevant material, and demanded to be taken for a cigarette. At the culmination of this outburst, he knocked over his coffee cup and unplugged Corporal Singer's laptop computer from the wall. During the tirade, he had demanded to be taken to the United States so that he could receive the death sentence.
- [35] Sergeant Tewfik then entered the room in an attempt to calm things down. He had a one-on-one conversation with Mr. Hosack. He explained that the interviewers were just doing their jobs and that he could not safely let Mr. Hosack go for a cigarette with them in his current agitated state. If Mr. Hosack calmed down and listened politely to the investigators as they presented the material, he would be allowed to have a cigarette.
- [36] Sergeant Tewfik said that Mr. Hosack could sit there tonight and choose not to tell a story but that the jails are full of people who have not told their stories. He left the room and Corporal Singer and Sergeant Lavallee returned.
- [37] They gave Mr. Hosack his anti-anxiety medication from his personal effects. He took it at about 11:40 p.m., approximately nine hours into the interview.
- [38] The tone of the following part of the interview was much friendlier and more relaxed. Sergeant Lavallee interacted with Mr. Hosack in a manner that could be characterized as mildly flirtatious, telling him at one point that seeing that he has a sense of humour is attractive for a woman, as was seeing him in a calmer frame of mind.
- [39] In responding to the interviewers' ongoing presentation of the evidence, Mr. Hosack continued with the position that he had adopted with Sergeant Tewfik that he was a patsy, and that he would accept the blame for the killing even though he had not done it. The investigators again raised the possibility of a sexual angle to the crime.

- [40] Next, they played a recording made by Mr. Hosack's sister. In it she urged him to tell the police what he knew or what he had done in the matter.
- [41] Sergeant Lavallee is a polygraph examiner and she discussed with Mr. Hosack the possibility of taking that test as part of the investigation. He became extremely agitated in response, apparently inferring that he would have to inform on other prisoners as part of the polygraph process. Sergeant Tewfik returned to reassure him on that point and ask him again to calm down.
- [42] The investigators then played Mr. Hosack a recording from his grandmother. She urged him, if there was anything he had to admit, to tell the truth and clear his conscience, so that he could be accepted into heaven when he dies.
- [43] The tone of the interaction between Sergeant Lavallee, Corporal Singer, and Mr. Hosack continued in a lighter vein, with Mr. Hosack being teased by Sergeant Lavallee for calling her a bitch. General laughter ensued when in the context of being asked to confess, Mr. Hosack jokingly proposed marriage to her. This led to a more serious discussion about Mr. Hosack's sense of hopelessness about ever marrying or having a family given his lengthy criminal history. The interviewers sought to allay his concerns by explaining the possibility of his forming relationships with women in the outside world while he was in custody, and even having conjugal visits in that situation.
- [44] At 12:21 a.m., after monitoring Mr. Hosack's further request for a cigarette from outside, Sergeant Tewfik entered the interview room and provided him with cigarettes and permitted him to smoke, I infer contrary to regulations, on Mr. Hosack's promise to behave himself and "not burn the place down".
- [45] The interview then moved into what I would characterize as its critical phase. Mr. Hosack began to talk about his knowledge of things that the interviewers would not be able to understand, specifically the bad things that happen to people who steal his designs. He explained that he gives dead people objects to watch over and if people use his work in any "ill way" they will meet their maker at the hands of these spirits. He agreed with the suggestion that these spirits had "taken" Richard (Mr. Falardeau). In response to the suggestion that all he had done was clean up afterwards Mr. Hosack said, "Yeah, I guess so". He had no memory of that clean-up though. He said that Richard had gone through his stuff and stolen things. He was dabbling in things that could cause a "paradox in time" or global nuclear war. This was the material in Mr. Hosack's stolen blue binder.
- [46] The interviewers left the room to confer between themselves and then returned. They asked if Mr. Hosack could connect them with these entities. He asked if they wanted to talk to the "fuhrer" or "furor" (spelled by the transcriber as "furor" but in context could also mean "fuhrer"). He informed them that they were actually talking to Mr. Hosack's deceased grandfather who later identified himself with the name "Ernie Gootchie Gootchie Koo".

- [47] Mr. Hosack, while adopting this persona, spoke in a low guttural tone, very different from his previous conversational tone, interspersed with what are best described as growls. In this role, he informed the investigators, among other things, that he had ordered Mr. Falardeau to be dismembered, that the thumbs and genitals had been removed and that those body parts remained in the freezer in the residence, wrapped in a plastic bag. The genitals came off cleanly because he had used a razor. He had also used shears to cut Mr. Falardeau up. He put a stick of incense "up [Mr. Falardeau's] ass and lit it". He had asked his grandson to do the clean-up for him. Mr. Falardeau died quickly, "faster than he ever thought possible." Mr. Falardeau could not have felt it for more than a second and Mr. Hosack saw the grandfather snap Mr. Falardeau's head off like a twig. He put the head back "to the time when it was just bone". His grandson was strong enough to do that if he "let him be". According to the grandfather persona, Mr. Falardeau was doing "ill practices and sexual misconduct" with Mr. Hosack. He was raping his body, his space and his work "for ill".
- [48] Mr. Hosack burped at one point during this presentation and when Sergeant Lavallee said that he did not have any more manners than his grandson, who had burped earlier in the interview, Mr. Hosack said that the grandson, "takes after me". While in this persona he also asked for more cigarettes and said that his grandson would have money for them.
- [49] At the end of the interview, apparently still maintaining the persona of the grandfather, Mr. Hosack asked if they were going to go for a cigarette and, when he was told that the cigarettes were all gone, said "Well, I should still have some money in my thing, or Ernie should".
- b. Psychiatric evidence
- [50] Crown counsel also called Dr. Lohrasbe, an experienced forensic psychiatrist, to give evidence about Mr. Hosack's apparent mental state, based on his review of the interview and of some background material, including a fitness assessment of Mr. Hosack conducted by Dr. Meldrum of Forensic Psychiatric Services.
- [51] Dr. Lohrasbe defined certain essential terms for the purposes of his analysis.
- [52] Psychosis amounts to a lack of connection with objective reality. It encompasses a variety of symptoms, the most common of which are delusions and hallucinations.
- [53] The relevant phenomena for the present case are delusions -- mistaken beliefs to which the sufferer clings despite all evidence to the contrary. The delusions often have an element of grandiosity to them, usually with a paranoid aspect.
- [54] There can also be thought disorders as part of a psychosis. In such a disorder, the person's thoughts gradually lose coherence and connection with each other, and eventually stop making sense entirely.

- [55] Dr. Lohrasbe emphasized that psychosis is not an all or nothing proposition. The symptoms are usually observed in a particular context and no one is psychotic all of the time. The foundation of mental functioning in this regard is the person's attention. If the person's attention is fixed entirely on the psychotic symptoms, the rest of the world may be "walled off".
- [56] The relationship between psychosis and a person's ability to give voluntary statements is based, according to Dr. Lohrasbe, on the context and intensity of the delusion. If the context of the interview or the choices being made by the person have nothing to do with the subject area of the mental illness, then that person may well make a free choice to speak. Dr. Lohrasbe gave an example of a patient of his who is profoundly delusional, but whose entrenched beliefs are specific and encapsulated enough that the patient is able to go about his daily life in all other aspects.
- [57] With respect to the legal concept of having an operating mind, Dr. Lohrasbe emphasized that there is no specific psychiatric diagnosis corresponding to that term. A psychotic person may well have robust cognitive and volitional capacity. Their ability to engage in willing action can remain relatively unimpaired. It is only when symptoms become so acute, pervasive, and overwhelming that one can conclude that a person's mind is not "operating", in the usual sense of that word. This usually occurs intermittently, so that the observer must continue to view the conduct on an ongoing basis to determine how the person's mind is functioning.
- [58] Dr. Lohrasbe offered the opinion there were portions of the interview (those dealing with Mr. Hosack's many achievements and his fear of being deprived of what is due to him) that demonstrate clear evidence of mental illness. These are delusions and even some thought disorder, in the sense of Mr. Hosack occasionally losing track of what he was saying. However, he appeared to Dr. Lohrasbe to be fully oriented, able to keep track of the conversation, and to resist considerable pressure from the officers. His anger at their tactics at various points also suggested to Dr. Lohrasbe that he was aware of the legal jeopardy he faced.
- [59] In view of Dr. Meldrum's report and viewed in that context, it was also clear to Dr. Lohrasbe that Mr. Hosack has some form of personality disorder. However, his grandiosity is of psychotic proportions, so intense are his delusions, and is not just a facet of a narcissistic personality.
- [60] Dr. Lohrasbe also explained the diagnosis of dissociative disorder, in which one part of a person's consciousness is essentially split off and comes to centre stage, so to speak, in the person's actions. There are also recognized personality disorders in which actual different personalities, or levels of consciousness, come to the fore, as part of a recurrent pattern.

[61] Dr. Lohrasbe did not believe that Mr. Hosack's purported channelling of his grandfather's spirit was an example of such a disorder in action. He offered the opinion that genuine illness, other than perhaps hypomanic episodes which can be quite amusing, does not inspire mirth as this one did. There is also a degree of conviction in the statements of genuinely psychotic persons in his experience, which was absent from Mr. Hosack's statements.

[62] Dr. Lohrasbe also noted that Mr. Hosack's ability to sustain the persona for the length of time that he did is evidence of a good level of concentration and sustained attention skills, which again tell against any difficulty in the functioning of his mind.

c. Other relevant police evidence

[63] There was no DNA report back on the knife found in Mr. Hosack's possession when he was told that it contained Mr. Falardeau's DNA. Corporal Singer showed it in the hopes that Mr. Hosack would admit it was the murder weapon.

[64] There was also no connection between Mr. Hosack's boots and the area where Mr. Falardeau's head was found.

[65] Mr. Hosack did not conform to certain aspects of Mr. Russell's description of the person he spoke to at the Falardeau residence, in that he is nowhere close to six feet four or five inches tall and does not have a tattoo on his forearm.

[66] Corporal Singer also agreed that it was not true that the police had "solid evidence", as they had represented to Mr. Hosack.

[67] The interviewers conceded that they were not aware of the exact nature of Mr. Hosack's anxiety medication, exactly when he had most recently taken it, or its likely effect on him after taking it.

3. Submissions

[68] The Crown submits that when looked at in their totality, the circumstances of the statement given by Mr. Hosack do not leave any reasonable doubt that his admissions were the product of an operating mind, or that they arose from any atmosphere of oppression or a level of police trickery that would shock the community.

[69] Crown counsel emphasizes Mr. Hosack's full interaction with the interviewers throughout the process, at times adamantly denying allegations with which he did not agree, correcting mischaracterizations of the situation and commenting relatively insightfully on his circumstances. This demonstrated state of awareness, particularly of the investigative context of the questioning and his significant legal jeopardy, far exceeds the fairly basic threshold and legal standard for an operating mind.

- [70] On the issue of voluntariness, while conceding the significant length of the interview, Crown counsel points to the various breaks and refreshments that were provided to Mr. Hosack during it. It is also significant, in the Crown's submission, that while the interviewers were tenacious in pursuing admissions, the actual tone of their interactions with Mr. Hosack was always civil, even when he himself became extremely agitated and yelled at them. His interactions with the officers demonstrated a degree of confidence and assertiveness that is inconsistent with any doubt that his will was overborne by the interviewers.
- [71] Similarly, the police tactics here amount only to overstating the connections between existing pieces of evidence, rather than wholly fabricating evidence. Crown counsel submits that such conduct, even viewed in its worst light, cannot be said to shock the community.
- [72] Mr. Hosack's counsel asks me to look carefully at the entire treatment that this very fragile and self-evidently floridly mentally ill detainee received from the police, when I decide whether his statement was voluntary. In particular, counsel drew my attention to these factors:
- Knowing in advance that Mr. Hosack had mental health issues, based on their background material, and then seeing them manifest themselves early on in the interview, the Interview Team simply chose to ignore them.
 - They made no enquiries concerning his recent medication consumption and then dispensed it only at the eleventh hour, so to speak, not really knowing what effect it would have on him when continued with the interview.
 - The atmosphere of the interview was calculated to dominate Mr. Hosack and overbear his decision-making ability in both subtle and overt ways. The withholding of cigarettes to secure his compliance and the refusal to allow him to select his own chair are clear examples of the degree of control that was asserted over him by the police.
- [73] Counsel also submits that it is wrong to conclude that Mr. Hosack voluntarily engaged in the interview process. He was forced to submit to it and did no more than succumb when he had no other alternative.
- [74] Counsel's concern is that the conditions for what the decision in *R. v. Oickle*, [2000] 2 S.C.R. 3 has characterized as a "stress-compliant confession" were all met by this interview, especially its sheer length, the fabricated evidence of his guilt that was presented to him, the relentless emphasis on Mr. Falardeau's despicable character, and the appeals to God and from Mr. Hosack's family.
- [75] One should also figure into this mix, counsel submits, the corrosive and undermining psychological effect of the police "gating" Mr. Hosack, by re-arresting him on the very day of his highly-anticipated release from his previous sentence.

4. Discussion

- [76] The governing authority is the seminal decision of the Supreme Court of Canada in *Oickle*.
- [77] That decision emphasizes that hard and fast rules are not suitable for the wide variety of situations in which statements are taken from suspects by police officers. Instead, the governing principles must be applied sensitively within the context of the particular statement being examined.
- [78] Overt threats or inducements are not major issues in this case, but under the analysis in *Oickle* their presence, as well as the issues of oppression, the presence of an operating mind, and police trickery should all be considered, in light of the actual circumstances of the statement as understood by the trier of fact, in order to determine if there is a reasonable doubt as to voluntariness.
- [79] The existence of a quid pro quo is a key concern in determining whether there have been threats or inducements, whether explicit or veiled ones.
- [80] Circumstances that can give rise to oppression include the deprivation of sleep, food, clothing, water or medical attention, or where the subject was denied counsel, subjected to prolonged and aggressive questioning, or confronted with fabricated evidence. However, in relation to fabricated evidence, Justice Iacobucci was careful to note, at para. 61:
- [61] I do not mean to suggest in any way that, standing alone, confronting the suspect with inadmissible or even fabricated evidence is necessarily grounds for excluding a statement. However, when combined with other factors, it is certainly a relevant consideration in determining on a voir dire whether a confession was voluntary.
- [81] An operating mind requires that a suspect knows what he is saying and that what he says may be used to his detriment by the interviewers. It should not be understood however as a discrete enquiry, one completely divorced from the rest of the confessions rule (see para. 63). It is to be considered as part of the overall circumstances.
- [82] Police trickery can affect voluntariness by violating the detainee's right to silence, or by undermining voluntariness as part of oppressive circumstances, but it can also result in exclusion as part of a separate inquiry, beyond the confines of the confessions rule itself, about whether the police have engaged in conduct that would shock the community. This inquiry is intended to fulfill the distinct but equally important purpose of maintaining the integrity of the justice system.
- [83] I think counsel were correct not to focus their submissions on the effect of threats or inducements on the issue of voluntariness in this case. Some of the police tactics could certainly be read as implied threats -- for example, telling Mr. Hosack that the case will go forward as one of premeditated murder unless he admits that it was a spontaneous killing, that a portion of the investigative team held to the former view and presumably would work to demonstrate it, and that jails are full of offenders who chose not to speak to the police when given the opportunity to do so.

- [84] In the context of the overall statement however, I do not find they had any particular significance during the dialogue between the officers and Mr. Hosack or any effect whatsoever on his ultimate decision to speak about the offence in his unique fashion.
- [85] Nor could the general appeals to him by his family members be seen as a conscription of them as agents of the police. Regardless of their apparent cooperation with the investigators, the moral or spiritual appeals that their recorded messages contained were not offers or threats to provide or withhold anything that was within the control of the police.
- [86] Since Mr. Hosack's mental illness plays a pivotal role in my analysis of his statement, I should say at the outset that while I find Dr. Lohrasbe, as usual, to be a very knowledgeable, experienced, and helpful expert, I do not think I can rely on those parts of his evidence that purport to make an assessment of Mr. Hosack's actual mental condition during his interview and in particular to offer any opinion on the genuineness of his adoption of the grandfather persona. I find Dr. Lohrasbe's general explanations of psychosis, delusions, dissociative state, and personality disorders relevant and informative, but the actual factual and legal meanings to be ascribed to Mr. Hosack's behaviour during the interview are things that I am well able to, and indeed must, arrive at on my own.
- [87] I think the question of whether it has been proven beyond a reasonable doubt that Mr. Hosack had an operating mind during the interview can be dealt with quite straightforwardly.
- [88] While his descriptions of his works of genius and the persistent theft of them by others are obvious delusions, his interactions with the interviewers reveal throughout the interview, including during his adoption of the persona of his grandfather, a purposive awareness of his statements and their effect, and a keen understanding that they could be used against him. He repeatedly commented on the efforts of the interviewers to impose criminal responsibility on him for acts of which he claimed to be innocent, including his potential role as a fall guy or patsy for the actions of others. He also referred repeatedly to his preference to have matters sorted out during the trial process rather than commenting on the evidence with which he was being confronted. For example, he responded to suggestions that Mr. Falardeau was a person of bad character, which had been put to him by the interviewers self-evidently as a means of normalizing and justifying the killing, with the observation that there would then be lots of people who might have wanted to harm Mr. Falardeau. This was quite an insightful recognition by Mr. Hosack of the abundance of alternative suspects that the officer's demonizing of the victim implied.
- [89] Further, during a conversation when he was presenting himself as the grandfather, he referred to such relatively sophisticated legal concepts as being acquitted of the killing or the spirits not allowing him to be convicted, as well as to the concept that the acts of the spirits would be characterized in earthly terms as murder.

- [90] In essence his delusions of worldly importance and creative genius seem to have been walled off from the bulk of his other cognitive abilities which, as the interviews clearly demonstrate, were not impaired. I am therefore satisfied beyond a reasonable doubt that he had an operating mind when he gave the statement.
- [91] With respect to oppression I have kept in mind, as Mr. Hosack's counsel so ably urged, the interaction of multiple factors here, especially Mr. Hosack's pre-existing mental illness, the control exerted over him in various ways by the investigators, and the sheer length of the interview.
- [92] The problem with this submission is that observation of Mr. Hosack's actual behaviour during the interview does not support a finding that he was worn out or overwhelmed by the tactics that were being employed.
- [93] The interview is indeed long but it was punctuated by appropriate breaks.
- [94] Although the opportunity for a cigarette break was used by Sergeant Tewfik as a means of calming Mr. Hosack down at one point, he did not make any admissions in response to being allowed to smoke in the interview room. They were made some time after and there is no evidence of a connection with the opportunity to smoke.
- [95] Mr. Hosack was adamant in rebuffing suggestions of his guilt for the majority of the interview and felt comfortable enough to get angry with his questioners when their suggestions irritated him. Nor were their questions or their overall treatment of him ever aggressive or bullying.
- [96] Perhaps most significantly for the oppression analysis, he embarked on his discussion of the role of the spirits who protect him and assumed the grandfather persona to make the incriminating admissions during a relatively innocuous interaction with the investigators -- a stage that involved no pointed inquiries or increased psychological pressure by them.
- [97] I have considered the role of Mr. Hosack's medication in the statement, but given his repeated explanations to the investigators that he often did not take it, and was not intending to take it on this day, I cannot find any aspect of oppression in their failure to make it available to him until relatively late in the process. As to its actual effect on him, the interview recording reveals no discernible change in his physical presentation after it was given to him that I could attribute to the operation of any drug, even during his bizarre adoption of the grandfather persona.
- [98] I have also considered the possibility that Mr. Hosack's mental condition deteriorated over the course of the interview because of the pressures that were placed on him, or the exhausting effects of protracted questioning. Again, his actual interactions with the officers as I have observed them seem to rebut that possibility. Their relationship with him is at its most positive and relaxed in the period leading up to what I am being asked to view as his mental disintegration. Even within the grandfather persona Mr. Hosack made humorous remarks to them and sought out the worldly pleasure of cigarettes.

- [99] The evidence does not allow me to conclude whether Mr. Hosack was deliberately deceiving the interviewers, for what he intended to be an exculpatory purpose, by speaking as the grandfather, or whether it arose as part of the same grandiose and paranoid delusion that gave rise to his belief in his prowess as an inventor and world saviour. In either case, however, I am satisfied that he said what he intended to say, with the knowledge that the police would make whatever use of it they could against him, and that whatever fatigue or sense of pressure may have existed by the time he took on the grandfather role and made the inculpatory admissions, those factors did not deprive him of his essential ability to choose whether to speak.
- [100] Lastly, there is the question of police trickery. The interviewers certainly misrepresented the strength of their investigation with respect to the quality of Mr. Russell's identification, the presence of Mr. Falardeau's DNA on the knife, and the ability of forensic analysis to link the dirt on his boots to the place where Mr. Falardeau's head had been discarded.
- [101] I am not left in any state of doubt that this police conduct could have contributed to an atmosphere of oppression because, as I have said, there is no evidence that any such atmosphere existed, or that the misstatements undermined Mr. Hosack's ability to choose not to speak.
- [102] I have kept in mind the decision of Madam Justice Neilson, then a member of this Court, *R. v. Hammerstrom*, 2006 BCSC 1700, in which misleading statements by the police interviewer about the accused being captured on surveillance videos played a pivotal role in the finding of an atmosphere of oppression. However, in that case there was a clear link found between the accused's belief that he was caught on the tape and his subsequent confession in response to aggressive police questioning. I have found no such link here, and the evidence actually shows that the misstatements had no effect on Mr. Hosack's decision to speak. In fact, he explicitly questioned the officers' claim about the link between the dirt on his boots and the location of Mr. Falardeau's head.
- [103] On the separate inquiry about whether this police conduct would shock the community, I would say as a general proposition that police misstate the existence of evidence during interviews at their peril, because there is no way for them to tell when they use this tactic whether a suspect will, like Mr. Hammerstrom, regard himself as inevitably caught by something that does not actually exist and abandon all resistance. The officers were fortunate in this case that their misstatements played no role in what Mr. Hosack eventually chose to say.
- [104] Hammerstrom suggests that it is a legitimate tactic for interviewers to imply the strength of the accumulated evidence, without overtly being untruthful. Neilson J. indicated that it would have been fine for the videos to have been sitting around with their labels showing in the presence of the interviewee, allowing him to speculate about what might be shown in them. It was the actual assertion of a falsehood by the interviewer that was determinative in that case.

[105] In this case, while I cannot endorse the tactics employed, they nevertheless rank far below the kinds of outrageous examples that were suggested as being capable of shocking the community by Justice Lamer in *Rothman v. The Queen*, [1981] 1 S.C.R. 640 and cited with approval in *Oickle*, such as a police officer pretending to be a chaplain or a Legal Aid lawyer, or injecting truth serum into a diabetic under the pretense that it was insulin.

[106] I am ultimately left with no reasonable doubt that the wholly ineffective misrepresentations in the present case would in any sense shock the community.

[107] For these reasons, I find the statement was given voluntarily and that it is admissible in evidence should the Crown choose to lead it.

The Honourable Mr. Justice T.A. Schultes

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/12/21/2012BCSC2139.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-hosack-2012>

Prepared on 29 October 2026 · Esheria