CANADA / JUDGMENT

R. v. Langlet

2012 BCSC 1621

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Langlet,

2012 BCSC 1621

Date: 20121030

Docket: X074669-3

Registry: New Westminster

Regina

v.

David Lawrence Robert Langlet

Publication Ban Ordered Pursuant to s. 486.5(1) and s. 486.5(9) of the Criminal Code Prohibiting Publication of the Contents of the Application of the Ban and Any Information that Could Identify the Police Undercover Operators

Publication Ban Ordered Pursuant to s. 648(1) of the Criminal Code on Contents of Voir Dire Proceedings in Absence of Jury

Corrected Judgment: the text of the judgment was corrected at paras. 25, 39, 44, 54, 76, 109, 111, 113, 123 and 126 as per the Corrigendum dated December 12, 2014

Before: The Honourable Madam Justice E.A. Arnold-Bailey

Reasons for Judgment on Voir Dire

Counsel for the Crown:

Jay Fogel and Sheryl Wagner

Counsel for the Defence:

Patrick D. Angly and Bree Makohn

Place and Date of Hearing:

New Westminster, B.C.

September 17, 18, 19, 20, 24, 25, 26, 27, 28, October 1, 3, 4, and 5, 2012

Place and Date of Judgment:

New Westminster, B.C.

October 30, 2012

Introduction

[1] The applicant on this voir dire, David Lawrence Robert Langlet, is charged with one count of first degree murder contrary to section 235(1) of the Criminal Code.

[2] The charge arises out of the death of Shayne Preece, which occurred on or about June 12, 2000, in Surrey, BC, when Mr. Preece was found dead in a vehicle, having been shot a number of times in the head and body.

[3] The issue to be decided on this voir dire is the admissibility of evidence that was gathered by the police in the context of a "Mr. Big" type of investigation. In the course of the Mr. Big investigation Mr. Langlet made two confessions and a number of inculpatory statements to an agent and an undercover police officer regarding his involvement as the shooter (referred to collectively as "the confessions") in relation to the death of Mr. Preece. The Crown sought to tender this evidence at the trial, set to commence before a jury on October 22, 2012.

[4] I indicated to counsel in court on October 19, 2012 that I had determined this evidence to be admissible at trial and read into the record the last four paragraphs of these reasons. Shortly thereafter, also on October 19, 2012, the accused re-elected trial by judge alone, to which the Crown consented. The trial proceeds before the Court at this time and it is appropriate to file these voir dire reasons in order for counsel to assess aspects of their case.

[5] In this voir dire the defence submits that in the particular circumstances of this case the s. 7 and s. 11(d) Charter rights of the accused were violated and the evidence should be excluded. The defence submits that exclusion of this evidence is warranted to preserve the accused's right to a fair trial given that its admission would constitute an abuse of process. The defence also submits it should be excluded as its prejudicial effect significantly outweighs its probative value.

[6] In response, the Crown submits the evidence obtained by the RCMP during the Mr. Big investigation is admissible and that its admission violates neither the accused's Charter rights nor the common law on a probative value/prejudicial effect analysis. The Crown submits that nothing occurred in the Mr. Big investigation of a nature so as to shock or outrage the sensibilities of an informed community aware of the crime under investigation. Rather, the Crown submits that Mr. Langlet was enthusiastic about joining the Mr. Big criminal organization and was easily encouraged to talk about his involvement in the shooting of Mr. Preece. The Crown submits that a consideration of the particular circumstances of this Mr. Big operation and the present law supports a finding that it is admissible before the trier of fact.

Evidence on the Voir Dire

Generally

[7] The witnesses on the voir dire were Mr. DaSilva, a paid police agent and former friend of Mr. Langlet's; Cst. K., who was involved in the Mr. Big investigation and the handling of Mr. DaSilva; Cst. D, who designed and managed the Mr. Big investigation; and Mr. Langlet. In rebuttal, the Crown called Cst. Scharffs, one of the officers who arrested Mr. Langlet on October 8, 2010.

[8] In evidence are the audio recordings of Scenarios 3 through 12 of the Mr. Big investigation and the corresponding transcripts, and in the case of Scenario 12 an audio/video recording of the portion of the scenario that took place on a boat. Also in evidence is a volume of transcribed telephone conversations containing conversations between Mr. Langlet and Mr. DaSilva, and one between Mr. Langlet and P. Portions of the audio recorded statements and the audio/video portion of Scenario 12 were played in court.

Admissions

[9] Admissions pursuant to s. 655 of the Criminal Code provide the basic facts in relation to the Preece homicide. They include the following. On June 12, 2000 at approximately 23:46 the Surrey RCMP responded to a report of shots fired at JD's Restaurant at 10194 152 Street, Surrey, BC. The body of Mr. Preece was located in a Jeep Cherokee that was parked facing north in the back parking lot of JD's restaurant with its motor running, the lights on, and the radio playing. The front passenger window was partially rolled down. Mr. Preece's body was lying across the rear seat and his legs were hanging out the rear driver's side door. There was a hole consistent with a bullet hole on the driver's side door. The bullet entrance was on the interior of the driver's side door and travelled through the door, exiting the vehicle door. There was damage to the lower door frame lining of the rear driver's side door. It was consistent with being hit by a gunshot. A bullet was found in the seat belt receptacle of the rear driver's seat. A bullet was located on the driver's side floor mat beneath the steering wheel. Four bullet casings were found at various locations in the rear passenger side of the vehicle. Three fingerprints that matched Mr. Langlet's finger prints taken at the time of the

arrest were found on the window post directly behind the front passenger window of the vehicle. Specifically the prints found matched one of Mr. Langlet's left ring finger and two of his left middle finger.

[10] An autopsy performed on the body of Mr. Preece found that he had sustained five separate gunshot wounds. Gunshot "A" was described as a penetrating wound to the head, with an entrance in the right posterior skull and an exit in the left cheek. The projectile travelled back to front, right to left and upward. Gunshot "B" was to the right side of the face, and the projectile embedded itself into the vertebral column, having travelled front to back and right to left. Gunshot "C" was described as a perforating wound to the face, with an entrance right on the tip of the nose and an exit to the left side of the mouth near the left lower jawbone, the projectile having travelled front to back, right to left and downward. Gunshot wound "D" was to the left upper chest with an entrance below the left shoulder and an exit in the right lower back beneath the 11th rib. The projectile travelled front to back, left to right and downward. Gunshot wound "E" was through the mid and lower right thigh, with an entrance above the right heel and an exit in the upper and medial thigh. The projectile travelled right to left, downward and front to back. The gunshot wounds to the face resulted in an area of stippling or minute punctuate abrasions on the face.

[11] Two calls from a cell phone belonging to a person named Aaron Wilson to a cell phone used by Mr. Preece occurred on June 12, 2000 at 11:34 p.m. and 11:39 p.m. respectively.

The Police Agent

[12] The police had insufficient evidence as to the identity of the perpetrator of the Preece shooting until 2009, when an informant, Mr. Matthew DaSilva, approached police in Ontario and told them that he had witnessed two still-unsolved homicides in Surrey, BC in 2000. Mr. DaSilva indicated that although he was not the perpetrator, he could provide information as to the identity of the alleged perpetrators. One of these homicides was in relation to Mr. Preece.

[13] At the time Mr. DaSilva approached police he was being hounded and threatened by persons associated with the illegal drug trade in eastern Canada in which he had been working. He owed a debt for a drug shipment lost in a police seizure, and was very motivated to look for a way out of his criminal lifestyle.

[14] Mr. DaSilva has a lengthy criminal record that includes convictions for violent offences. As part of his dealings with the police he was required to make full disclosure of all his criminal activities over the years for which he has not been charged. Mr. DaSilva has a very significant criminal history that includes his personal involvement in incidents where he used violence against other persons that caused them physical harm and injury, and no doubt mental harm as well. He has spent many years active in the illegal drug trade in BC, Alberta, and Ontario.

[15] Ultimately, after extensive interviews with the police Mr. DaSilva entered into a Letter of Acknowledgment with the RCMP on September 10, 2009, in which he agreed to assist the police with the investigation of Mr. Langlet regarding the Preece homicide, and to testify if required. Mr. DaSilva indicated to police that Mr. Langlet was the perpetrator of the Preece homicide and provided police with details. According to the agreement, Mr. DaSilva is to be paid an amount not to exceed $100,000 in two payments, and a monthly stipend of $4,000 while the investigation and court proceedings are ongoing. Certain additional expenses are covered.

[16] On December 10, 2009, Mr. DaSilva entered into a Limited Immunity Agreement with the Crown, which indicated he had provided accounts of the Preece homicide and one other that the RCMP considered to be truthful. Upon agreeing to work as a police agent in relation to investigations regarding both homicides, the Crown agreed to accept pleas of guilty from Mr. DaSilva to two counts of being an accessory after the fact to murder, contrary to s. 240 of the Criminal Code. The Crown agreed to support the imposition of two concurrent sentences of imprisonment of two years less a day for these offences by way of a joint submission.

[17] Mr. DaSilva entered pleas of guilty to these offences and a robbery charge from Alberta that resulted in concurrent sentences not exceeding two years less a day. He served his sentence between December 2010 and April 2012 when he was released.

[18] The Limited Immunity Agreement does not protect Mr. DaSilva from prosecution. It states in part that:

There will be no protection from a prosecution against Matthew DASILVA in respect of his role in the homicides of Shayne Preece and [one other] if it is discovered that he lied or was untruthful about his role in the homicides of Shayne Preece and [one other] in the Cautioned Statements, or he is otherwise unwilling to abide by the terms and conditions of the Partial Immunity Agreement. In the event that it is determined that Matthew DASILVA lied or was untruthful about his role in the homicides of Shayne Preece and [one other] the Crown may commence a prosecution, including a prosecution for the homicides of Shayne Preece and [one other], obstruction of justice, public mischief, fabricating evidence, perjury, giving inconsistent statements, and/or false affidavits.

[19] Reduced to its bare bones, the information provided to the RCMP by Mr. DaSilva was that he was a friend of Mr. Langlet's and they spent a lot of time together in 1999 and 2000, associating socially and in relation to "a drug line" that was operated by Mr. Preece. The drug line sold cocaine to customers by the use of a pager and then delivery by the person on duty on the line. Mr. Langlet was the street boss of this line and Mr. DaSilva worked shifts on the line. By the spring of 2000 Mr. Preece had become paranoid and unreliable in terms of supplying the cocaine, and was thus a liability to the operation. Both Mr. DaSilva and Mr. Langlet were carrying handguns during this time.

[20] According to Mr. DaSilva, Mr. Langlet shot Mr. Preece multiple times on the night of June 12, 2000, at a meeting behind JD's Restaurant on 152nd Street in Surrey. This meeting was arranged by Mr. Langlet and Mr. DaSilva through another person who worked shifts on the line, Mr. Aaron Wilson. Mr. DaSilva provided encouragement and support to Mr. Langlet with regards to shooting Mr. Preece by his presence around the corner during the shooting, and then by appearing fleetingly at the scene before he drove them both away. Having both gone their separate ways by about the end of 2000, Mr. Langlet and Mr. DaSilva had some sporadic contact in the intervening nine years. It was plausible for Mr. DaSilva to re-establish contact with Mr. Langlet in 2010.

The Mr. Big Investigation

[21] Because of their prior relationship the RCMP enlisted Mr. DaSilva as a paid agent to entice Mr. Langlet into a Mr. Big investigation that commenced in January 2010. Police undercover operators pretended to be members of a criminal organization based in Montreal, who were active in the Lower Mainland of BC. Mr. DaSilva was presented as actively involved in work for this fictitious criminal organization and appeared to be trusted, well paid for his efforts, and advancing in terms of the responsibilities given to him and the criminal acts he was called upon to perform. Mr. DaSilva was receiving his instructions from his boss, an undercover officer who played a local crime boss in the organization, who I will refer to as "P."

[22] In the course of the undercover operation Mr. Langlet was engaged in various staged scenarios of criminal activity with on-going involvement and encouragement of Mr. DaSilva. Mr. DaSilva was present for the first scenarios to enlist Mr. Langlet and then to facilitate his meeting P. By the end of Scenario 7 and thereafter Mr. Langlet was at times in the company of P. alone, or P. and other undercover police officers posing as criminal heavy weights or victims. Sometimes Mr. Langlet, Mr. DaSilva, and P. were together. The scenarios included meals out at restaurants, a trip to a strip club, a trip to a club to watch a UFC fight, two simulations involving the transport of contraband or illegal goods, a debt collection accompanied by implied threats of bodily harm, an extortion of a CanWest marine pass from a man in debt to the organization, and an agreement to purchase firearms from an imposing crime boss from another organization and their feigned delivery by boat. Some of the scenarios were audio recorded and some were not. The defence takes issue with this selective recording in light of the testimony of Mr. Langlet on the voir dire that he was encouraged by Mr. DaSilva to falsely confess to gain admission into the criminal organization.

[23] Regarding the recordings made during the Mr. Big investigation, the RCMP received an authorization to intercept private communications of Mr. Langlet on December 22, 2009, by way of judicial authorization pursuant to s. 184.2(3) of the Criminal Code (commonly referred to as a one-party consent authorization), to which a number of RCMP officers and Mr. DaSilva had provided their consent. Also granted on December 22, 2009 was

authorization for the RCMP to use a television camera, or other similar electronic devices, pursuant to s. 487.01(1) of the Criminal Code.

[24] The Mr. Big investigation took place between January 27, and March 3, 2010. The scenarios referred to in evidence, some of which were recorded and some were not, or only had portions recorded, are Scenarios 3 through 12. The most significant ones are Scenarios 3, 10 and 12. However, given the testimony of Mr. Langlet that he had unrecorded conversations with Mr. DaSilva at various points throughout the Mr. Big investigation in which Mr. DaSilva convinced him to falsely confess to being the shooter of Mr. Preece to gain acceptance in the Mr. Big criminal organization, it is necessary to set out a brief summary of all the scenarios and then refer to the testimony of Mr. DaSilva and Mr. Langlet in particular.

[25] The Mr. Big investigation commenced by Mr. DaSilva making renewed contact with Mr. Langlet by telephone via a former girlfriend of the latter. The two had been out of touch for several years. This occurred after a failed scenario involving a "chance" meeting of the two at a mall. They planned to meet on January 27, 2010 and during a telephone call between the two regarding their meeting place on that date Mr. Langlet picked the Earl's restaurant in Guilford in Surrey on 152nd near where "the screaming happened" (which he admitted was a reference to the Preece shooting).

[26] The first scenario in evidence, Scenario 3, occurred on January 27, 2010 at Earl's and was audio recorded. When Mr. DaSilva and Mr. Langlet met in Earl's they had a wide-ranging conversation that touched on Mr. Langlet's marijuana grow operation, the price of marijuana, Mr. Langlet's steroid use, money, sex, and Mr. Langlet losing his driver's licence. Mr. DaSilva then drove Mr. Langlet from Surrey to his residence outside Mission and their conversation during the drive was recorded. During that drive their conversation touched on many topics. Mr. DaSilva commented that it "feels like ten years ago, we were just rollin' around waiting on a page", to which Mr. Langlet responded "No shit, eh, yeah? ... Fuck, when are they gonna call, man. When are we gonna shoot this bitch? When's Aaron gonna cry? Remember how he bawled like a bitch?" (Tab D2, p. 56, a reference to Mr. Langlet and Mr. DaSilva going to see Aaron Wilson about a week after Mr. Preece was shot). Mr. Langlet sounded very pleased to see his old friend and they parted with Mr. DaSilva saying that they would chat soon.

[27] Scenario 4 occurred the next day on January 28, 2010. Mr. DaSilva and Mr. Langlet met in Mission and Mr. DaSilva was feeling ill. They drove to Gold's Gym in Langley where Mr. DaSilva was briefly introduced to P. Mr. DaSilva then had a short meeting with P. that did not include Mr. Langlet. It was made clear that Mr. DaSilva was involved in a criminal organization and was being well paid for his efforts as Mr. DaSilva was paid $4,000 in cash from P. that he counted in the presence of Mr. Langlet. P. looked the part of a gangster and was driving a black BMW. Mr. Langlet asked Mr. DaSilva if there was an opening in their organization. In the course of their conversation Mr. Langlet asked if Mr. DaSilva "ever had to carry", to which Mr. DaSilva responded "now and then" but only if he was "going with somebody." Mr. Langlet commented "Oh. Yeah, I miss it. (Chuckles) Just having

one" (referring to a gun). Mr. DaSilva made various comments that introduced the idea that Mr. Langlet might be able to get work in the organization, but indicated that P. was very careful who he hired and was a demanding boss.

[28] Scenario 5 occurred on February 3, 2010. It involved Mr. Langlet, Mr. DaSilva and P. Mr. DaSilva picked Mr. Langlet up from his residence in Mission. Mr. Langlet, who was managing two grow operations, had just sent a crop of marijuana to the trimmers. The planned activity involved Mr. DaSilva and Mr. Langlet meeting P. and then the two of them transporting some items from a warehouse to the First Nations' Reserve in North Vancouver. In the course of their drive Mr. DaSilva and Mr. Langlet talked about how Mr. Langlet might take over some of the "shit" that Mr. DaSilva had been doing for P. Mr. DaSilva talked about having told P. about Mr. Langlet being "solid" and having done some "heavy shit". They discussed money and Mr. DaSilva talked about having to threaten people sometimes in the course of his work. They met P. and delivered cases of alcohol and cigarettes to their destination where P. picked them up and engaged in conversation with Mr. Langlet on their way to dinner at the Cactus Club in Burnaby. Dinner there was not recorded but conversation between the three of them in the vehicle was, until Mr. Langlet was dropped off at a Skytrain station to make his way home. After Mr. Langlet's departure, Mr. DaSilva expressed some regret to P. over his role in the Mr. Big operation in light of how much Mr. Langlet trusted him.

[29] Scenario 6 occurred on February 5, 2010. Mr. DaSilva and Mr. Langlet met at a Greek restaurant in Langley. Mr. Langlet arrived first and both of them consumed alcohol. Then Mr. DaSilva and Mr. Langlet met P. at the South Point Keg and ate and drank more alcohol. P. dispatched them to pick up some goods that had apparently been smuggled across the border. The planned scenario involved Mr. DaSilva driving a van in the company of Mr. Langlet to collect crates from a parked truck and then leaving the van and contents at a hotel in Burnaby. Mr. DaSilva and Mr. Langlet speculated that the crates contain firearms but they did not open them. In the course of the drive Mr. DaSilva and Mr. Langlet stopped, bought beer, and then drank along the way. The police lost surveillance of them. Mr. DaSilva drove in a wild and reckless manner and hit a roundabout, doing damage to the van. When Mr. DaSilva and Mr. Langlet arrived at the hotel Mr. Langlet accepted an offer of a drive home to Mission from P. Mr. DaSilva went to have a coffee to attempt to sober up before writing his notes for the evening. The police handling the Mr. Big investigation were very concerned about the night's events, including that Mr. DaSilva was clearly driving while his ability was impaired and had damaged the van. At that point his continued involvement in the investigation was in jeopardy.

[30] The interaction between Mr. DaSilva and Mr. Langlet at the Greek restaurant at the beginning of Scenario 6 and then the dinner they had with P. at the Keg were not recorded. The conversation between Mr. DaSilva and Mr. Langlet while driving was recorded, as was the conversation between P. and Mr. Langlet when P. drove him home. Mr. Langlet talked about their earlier escapades including a debt they owed and Mr. Langlet joked about

shooting the person in the mouth (Tab E p. 43). Mr. Langlet indicated that he was doing alright for money but "should be doing a lot better" (Tab E p. 53). Mr. DaSilva indicated that he had vouched for Mr. Langlet to P., and that Mr. DaSilva was actually paying Mr. Langlet for his participation in these various jobs while he "earned his stripes." Both Mr. DaSilva and Mr. Langlet were significantly intoxicated during their time together.

[31] During the ride home with P., Mr. Langlet indicated that he trusted Mr. DaSilva with his life and Mr. Langlet volunteered that he and Mr. DaSilva had been "through some heavy shit together" (Tab B p. 8). Mr. Langlet said that he would "go to the fuckin' edge, too" and that he would "go to the end, too, man." Mr. Langlet indicated to P. that he was willing to work hard and was eager to get as much work as P. would give him (Tab B p. 12). Mr. Langlet said that he was "into that" when P. said that he did "some shit that gets a little heavy sometimes" (Tab B p. 14) P. described a fictitious violent incident in his own past that highlighted the benefits of keeping one's mouth shut. P. also emphasized the need for those working for him to be honest, "deal with things", and said that they could always move on if they did not want to continue to work for him in the organization; but P. stressed that lying was a problem. When he was dropped off Mr. Langlet was very agreeable to meeting the next day.

[32] Scenario 7 occurred on February 6, 2010. The scenario involved Mr. Langlet, Mr. DaSilva and P. having dinner at a club called the "Academic" in Vancouver and watching a UFC fight. They then all went to the Cecil Strip Club to drink and watch the strippers. P. then drove Mr. Langlet to Mission. The only recorded portion of this scenario was the short drive between the Academic and the Cecil in which the conversation focused on the Olympics, heated car seats, and the fact that Mr. Langlet had a new girl waiting for him in Langley.

[33] Scenario 8 occurred on February 9, 2010. A large part of this scenario was not recorded, with recording being limited to when Mr. Langlet was in a vehicle being driven by P. Mr. DaSilva was not present during this scenario. In the recording P. gave instructions to Mr. Langlet to threaten a man (an undercover operator) who had missed giving a couple of payments he owed to Mr. DaSilva from whom Mr. Langlet was to go and collect. P. explained to Mr. Langlet that Mr. DaSilva was doing better things and that he wanted to try Mr. Langlet out to "see how it goes" (p. 7). The task involved Mr. Langlet going into a Cactus Club restaurant where the man was sitting, watching the man for a while, and then approaching him, saying he was there to collect and then sliding a photograph of the man's girlfriend across the table to imply that harm would come to her if the man did not pay. The interaction between P. and Mr. Langlet was to further involve Mr. Langlet with the business of the criminal organization. Mr. Langlet reported to P. "I guess I'm kinda good at it. (Chuckles)" (p. 38) when he described the look on the face of the man in the restaurant. Later on, in conversation with P. Mr. Langlet indicated that it was not an issue for him if he had to smack the guy a couple of times, and then said "Yeah, no, I don't mind throwing a gat on someone either, man" (p. 540). During this scenario P., Mr. Langlet, and Mr. DaSilva had dinner at an Earl's, which was not recorded.

[34] Scenario 9 occurred on February 10, 2010. The planned scenario was for Mr. Langlet to accompany P. to extort or intimidate a WestCan pass from a man who gambled and owed a debt. In the first part of the recorded conversation between P. and Mr. Langlet P. explained how the organization collected money from those who owed it. P. then had Mr. Langlet engaged in a fairly protracted attempt to follow the man they were going to approach. Mr. Langlet watched P. intimidate the man for the pass and it was clear from the comments that Mr. Langlet made to P. when they returned to the vehicle and recording recommenced (H2 pp. 2-6) that Mr. Langlet was impressed and appeared to be enjoying working for the organization.

[35] Scenario 10 occurred on February 13, 2010. It was a rather elaborate scenario in which Mr. Langlet was directed by P. to follow and watch a man who P. eventually met in a hotel room in the company of Mr. Langlet. The man, referred to as "A." displayed different types of firearms for sale. P. concluded a deal for firearms. After this meeting Mr. Langlet and P. were again in P.'s vehicle and their conversation was recorded. A time occurred when Mr. Langlet was alone in the vehicle and talked to himself. He was anxious and upset about something and called his brother to see if he could spend the night with him if things went late. However, when P. returned to the vehicle Mr. Langlet was quite willing to go with P. to a dinner with A. and Mr. H.

[36] At that dinner (and previously in the day) Mr. Langlet consumed a considerable amount of alcohol. In the course of the dinner it was made to appear that Mr. Langlet had overheard a reference to someone who Mr. H. needed "taken care of" and Mr. Langlet was asked to leave the table for the ostensible purpose of this discussion between P. and Mr. H. continuing.

[37] Later the same evening while P. was driving Mr. Langlet home, Mr. Langlet confessed his involvement in the Preece shooting to P. This confession occurred after P. referred to the earlier exchange between himself and R. (also known as Mr. H.) overheard by Mr. Langlet, namely the conversation between P. and Mr. H. regarding the latter's need "to take care" of a particular guy who was causing problems for Mr. H.

[38] During the drive home (Device G p. 63) when P. asks Mr. Langlet how he would feel with "this shit" referring to the overheard conversation about the hit, Mr. Langlet said (leaving out the brief one or two word responses of P.) that "doesn't really faze me... Cause it's, it's just -... - how the world works, man. ... Some people gotta go." Then P. said "Alright, you got no problem doing shit like that?" and Mr. Langlet responds "Fuck no. Not at all. Not at all." P. said "Brother", and Mr. Langlet says "I've done it before." Shortly thereafter Mr. Langlet described his actions, and those of Mr. DaSilva, leading up to the shooting, and then how he, Mr. Langlet, shot Mr. Preece multiple times while Mr. Preece was sitting in the passenger seat of his vehicle. In this scenario the meeting in the hotel room regarding the transaction for the firearms, the visit by Mr. Langlet and P. between the meeting and dinner to the Paramount Strip Club, and then the dinner at the Hilton Hotel restaurant (with Mr. Langlet, P., A., and Mr. H. present) were not recorded.

[39] Scenario 11 occurred on February 19, 2010. Mr. DaSilva and Mr. Langlet met for dinner at Earl's restaurant. Their conversation at dinner was not recorded but a brief trip they took in a vehicle afterwards was when Mr. DaSilva drove Mr. Langlet to a Skytrain station. Mr. Langlet thanked Mr. DaSilva for dinner and when Mr. DaSilva responded that he was glad they had come out, Mr. Langlet said "Ah, so much shit we wanna talk about not over the phone ... I don't really trust mine anyway. It's not like it's heated, but, whatever. It ain't a Blackberry (p. 1). They talked about driving through their old neighbourhood and Mr. DaSilva remarks that they never used to see these streets "without being dirty" to which Mr. Langlet responded "Fuck, fuck, we were dirty." In response to Mr. DaSilva saying "Ah. Life is good my friend" and that while they could have more money or more things he did not think that they "could have any less problems" to which Mr. Langlet responded "Yeah. No shit. I got no problems, right now." Mr. DaSilva described an incident where he decided not to stop for police on a radar stop and then outdrove and outran the police while delivering a stolen trunk. When Mr. DaSilva commented that those were "the good old days, there's no excitement anymore" Mr. Langlet indicated that he was sure they could "brew some up". They discussed the fact that Mr. DaSilva had been checked by the gang squad in the "peeler bar" (referring to the trip to the Cecil) and P. had not been very happy about that. They parted company with Mr. DaSilva indicating to Mr. Langlet that he would be in touch with him as soon as he knew something.

[40] Scenario 12 took place on March 3, 2010. The plan for this scenario was that Mr. Langlet and Mr. DaSilva would assist in the unloading of a shipment of firearms from a boat that had just tied up in Coal Harbour. Mr. DaSilva and P. picked up Mr. Langlet in downtown Vancouver. Mr. Langlet was drinking coffee at a coffee shop. Mr. Langlet told them that a Hydro employee had come to his door in Mission and let him know that he knew he was running a grow operation from his hydro consumption. The Hydro employee had said that he would not report it to the police if Mr. Langlet shut it down right away, which Mr. Langlet said he had done. Mr. Langlet referred to watching a hockey game on Sunday "all drunked up" but showed no signs of impairment this day.

[41] The three men went down to Coal Harbour and boarded a boat tied at the dock. Once they boarded the boat their interaction was audio and video recorded. Mr. Langlet initially appeared somewhat nervous but then relaxed and appeared comfortable. Alcoholic beverages were offered and he chose his favourite, "straight Crown" and accepted a little ice. He had one drink and a little later Mr. DaSilva offered him a splash more, which he happily accepted. That comprised the total amount of alcohol Mr. Langlet consumed on the boat as documented by the video. The video showed that Mr. Langlet was not "pounding back" the drinks as he claimed, nor did he show any signs of impairment. Apart from being nervous at the start Mr. Langlet did not show any signs of anxiety or fear. He was clearly deferring to Mr. DaSilva initially on the boat in terms of taking cues from Mr. DaSilva regarding social interaction, but then may be observed to relax. He appeared pleased to be there and eager to work for the criminal organization.

[42] After the Captain and the other male assisting in the operation left the boat, P. made reference to the shipment of firearms in the context of the prior meeting that P. and Mr. Langlet had with A., implying that the guns previously ordered had arrived and were in the hold of the boat. They were to be unloaded at an appropriate time.

[43] Eventually, the conversation turned to upcoming jobs within the criminal organization. P. stressed that if someone doesn't want to do what "we" tell them to, then they are to leave, to "get out the fuckin' door", and that "It's a good policy", to which Mr. Langlet responded "Not very much I won't do" (p. 88). They discussed that there were several upcoming jobs. P. and Mr. DaSilva discussed the nature of "That, uh, [R.] thing that he wanted to take care of" (p. 89), and P. referred to the fact that Mr. Langlet had been with him when R. had raised the topic. It was explained by P. to be a residential hit where only one person would be at home, for which Mr. DaSilva would be paid $25,000. However, Mr. DaSilva was not to do it alone and P. could not be involved, so P. needed to know who would work with Mr. DaSilva. When Mr. DaSilva said that he wanted "Dave" (Mr. Langlet) to help him, Mr. Langlet enthusiastically responded "Fuckin 'A'" (p. 93) and "Ah, I'm in" (p. 94). There was a little further discussion and it was agreed that Mr. Langlet would assist Mr. DaSilva in this planned hit. Mr. DaSilva was to pay Mr. Langlet half the cash the former was to receive for doing this job, to which Mr. Langlet responded "Fuckin' rights" (p. 94). The video showed Mr. Langlet and Mr. DaSilva clinked their glasses at this point to celebrate. Mr. Langlet said "Fuck, I can get a nice place now. (Chuckles)" (p. 94).

[44] Then P. presented it as necessary that the Preece homicide, which he called "the big gong show thing," be discussed, in order to dispel P.'s doubts as to whether the prior killing had been carried out in a manner unlikely to attract the attention of the police, given that Mr. Langlet had volunteered to assist Mr. DaSilva with a similar task for P. and his organization. Mr. Langlet promised that "...we won't be sloppy like that one. Guarantee you. (Chuckles)" (p. 97). As to who knew about it Mr. Langlet indicated that Chris Schwartz, who gave him "the thing" might suspect that "we did it. Cause we went out of town all of a sudden" (p. 99), and that his partner Jeff might suspect they did it as well. Mr. Langlet indicated in response to a question from P. as to why he "whacked" Shayne, that Mr. Preece had threatened to rape his girlfriend if he did not sign his house over and that Mr. Preece had slapped him. On the basis of those two things, Mr. Langlet said that Mr. Preece "had to go" (p. 106).

[45] At that point Mr. Langlet provided a detailed confession regarding his involvement in the Preece homicide, accompanied by hand and body gestures and hand drawn diagrams on the floor, at times encouraged by Mr. DaSilva, as the latter, of course, had been present at the scene of the shooting and had his own memory of events to draw upon. Mr. Langlet described how he and Mr. DaSilva had been armed for a week or two in anticipation of meeting up with Mr. Preece. Mr. Langlet then described how he met Mr. Preece that night parked in the alley by a garbage container. Mr. Preece was sitting in the front passenger seat of his vehicle and Mr. Langlet said he shot him a number of times as he squirmed about in his vehicle. Mr. Langlet subsequently got rid of the gun in a nearby river. At one point P. left

and Mr. DaSilva and Mr. Langlet were shown on the video alone on the boat. Mr. Langlet said he would rather do it properly and agreed that running around with pagers was "silly" (with reference to a pager that Mr. DaSilva dropped at the time of the Preece shooting). Mr. Langlet and Mr. DaSilva appeared on the video giving each other a "high five" type gesture, touching their knuckles together. They discussed the likelihood of Hydro returning to Mr. Langlet's residence. Mr. Langlet declined another drink offered by Mr. DaSilva and said "I feel nice and, nice and calm" (p. 124).

[46] After this part of the conversation things wound down on the boat as it was determined that it could not be unloaded until early the next morning because of a night security guard. The video portion ended. Mr. Langlet, Mr. DaSilva, and P. went out for dinner at Cardero's. That dinner was recorded and at two points Mr. Langlet and Mr. DaSilva were alone as P. stepped away. At one point they talked about P. and whether he had been convinced that they, as two old buddies, could be "business-like" and Mr. DaSilva offered that he thought P. was "good now". He referred to the proposed hit and "Oh, we'll do that thing clean" to which Mr. Langlet responded "(Chuckles) Can't wait." After Mr. DaSilva referred to the fact that there would be one guy, Mr. Langlet said "That sounds like fun for me..." and then they chuckle about getting some uniforms and pretending to be delivery people like Fedex (p. 162). In a later conversation when P. had stepped away to take a call, Mr. Langlet brought up the topic of "a quiet device" (ie. a silencer) and that they would probably get one, to which Mr. DaSilva responded that they would get at least one (p. 198). After dinner P. and Mr. DaSilva parted company with Mr. Langlet who appeared to be in a good mood and very amenable to future contact.

Testimony of Mr. Langlet

[47] Mr. Langlet testified on the voir dire. He provided a version of events leading up to and related to the shooting of Mr. Preece that implicated Mr. DaSilva as the person who was most motivated to get rid of Mr. Preece, and as the person who ran up to Mr. Preece's vehicle and shot Mr. Preece multiple times. Mr. Langlet testified that this occurred while Mr. Langlet was having a conversation with Mr. Preece through the partially rolled-down passenger window of the latter's vehicle.

[48] With regards to why it was that Mr. Langlet confessed to shooting Mr. Preece as he did in the Mr. Big investigation, Mr. Langlet testified that he made these confessions as a result of contact with Mr. DaSilva that was not recorded in the Mr. Big operation. Mr. Langlet testified that Mr. DaSilva persuaded him to tell P. that he, Mr. Langlet, had been the shooter of Mr. Preece, whereas in actual fact it had been Mr. DaSilva. This was to impress P. Mr. Langlet testified that conversations between him and Mr. DaSilva occurred several times when Mr. DaSilva and Mr. Langlet were out together in the context of the Mr. Big operation when the operators were not recording their conversations and P. was either not with them, or had momentarily stepped away. In addition, Mr. Langlet testified that he received several telephone calls from Mr. DaSilva that made him fearful for his own life.

[49] In his testimony Mr. Langlet reviewed the general sequence of events portrayed in the scenarios. Mr. Langlet testified that when he first met Mr. DaSilva in Scenario 3 at the Earl's on 152nd Street he arrived first and had consumed a large quantity of alcohol, both when he was being driven into town by his girlfriend, and then consumed two or three double Crowns before Mr. DaSilva arrived. He said he followed this by consuming a further four drinks after Mr. DaSilva's arrival. He said he was happy to see Mr. DaSilva, who appeared to be doing well and that he had a roll of money of at least a couple of grand. They had more drinks at the Keg and then on the way back to Mission they stopped and got a case of beer that they drank along the way. Although he was "pretty much drunk", Mr. Langlet was impressed by how well Mr. DaSilva was doing and Mr. DaSilva agreed to talk to his boss on Mr. Langlet's behalf.

[50] Mr. Langlet recounted the details of Scenario 4, which included first seeing P., and then watching P. give Mr. DaSilva a large wad of money. Mr. Langlet said at that point he was just going month to month, getting $1000 per month from EI and perhaps $5,000 every three or four months from the grow operations he was running. Mr. Langlet said he wanted money and he was interested in getting involved in the criminal organization as it looked promising.

[51] Prior to Scenario 5 the next day, Mr. Langlet said that he received a call from Mr. DaSilva on Mr. Langlet's girlfriend's phone (Ashley) and Mr. DaSilva said that his phone was out of minutes. Mr. DaSilva told him that when Mr. Langlet met with P. to act "really gangster, act really hard ass, and don't say anything about the two murders." After the delivery of the alcohol and cigarettes to the First Nation's reserve, during the dinner at the Cactus Club, Mr. Langlet recalled that P. recounted a story about how Mr. DaSilva had killed someone to help P., and that P. would trust Mr. DaSilva with his life. When P. went to the washroom Mr. Langlet said that Mr. DaSilva nudged him and told him "we should tell him that you did Shayne [Preece] and he will trust you like that too."

[52] At the beginning of Scenario 6 on February 5, 2010, (which involved Mr. Langlet and Mr. DaSilva later taking a van to collect some crates and delivering the van and the crates to a hotel where they met P.) Mr. Langlet waited for Mr. DaSilva to arrive at the Greek restaurant in Langley. When Mr. DaSilva arrived, in the course of them having drinks and appetizers, Mr. Langlet testified that Mr. DaSilva confirmed that P. was Florida mafia and close to being a crime boss. Mr. DaSilva told him that P. was not too sure about him (Mr. Langlet) and wanted to know more about him, so Mr. DaSilva suggested that Mr. Langlet tell P. that he was the one who shot Shayne and that will put P. more at ease regarding Mr. Langlet. Also, Mr. DaSilva told Mr. Langlet that he thought P. listened to his phone conversations in order to find out what they were up to. Mr. Langlet suggested that he give Mr. DaSilva his "dirty" cell number that he used in the weed business to call, and Mr. DaSilva said that Mr. Langlet ought not to say anything to P. about Mr. DaSilva shooting the Hindu, referring to Manny, for the two kilos of cocaine. Mr. Langlet said they planned out that "we would pretend I was the shooter so P. would like me." The meeting at the Greek restaurant between Mr. Langlet and

Mr. DaSilva was not recorded. Then P. drove Mr. Langlet home to Mission and that conversation was recorded.

[53] During Scenario 7 at the Cecil Bar Mr. Langlet testified that at one point when P. was not present Mr. DaSilva tried to talk to him about some details about the incident to tell P. Mr. Langlet said that Mr. DaSilva said to him words to the effect that Mr. Langlet should just say how it was that night and just put himself as the shooter, and given that Mr. Langlet was there he saw how it happened; and that way their stories would be similar. Mr. Langlet said that Mr. DaSilva said "I will back you all the way," and at that point P. came back to the table.

[54] Prior to Scenario 10 Mr. Langlet testified that he received a telephone call on his "throw away phone" from Mr. DaSilva in which Mr. DaSilva suggested that Mr. Langlet "just pop off" and tell P. about that story they made up, so P. will start to trust him. Mr. DaSilva told him that he had overhead P. talking to someone about Mr. Langlet, to the effect that "if we need to get rid of this guy we can just make it look like a grow robbery gone bad." Mr. DaSilva also said to him that he was sorry that Mr. Langlet was "in so deep" and that Mr. DaSilva thought they (P. and his associates) were at a point that they would harm Mr. Langlet if they couldn't trust him.

[55] With regards to the point in Scenario 10 where he was talking to himself in P.'s vehicle (Tab G2, at pp. 16-17), Mr. Langlet testified that he was "freaked out" as they were going to meet this other California boss and he was thinking that he had put himself "in the dinner situation" and worried as to how could he get himself out of it, and that he needed to "get the fuck out of there." He said that he was scared. When P. returned to the vehicle Mr. Langlet thought maybe he could play it out and he knew he had Mr. DaSilva in his corner. Mr. Langlet testified that he "felt he had to stay in" and unload the guns.

[56] At various points in the scenarios, but in particularly in Scenario 10, Mr. Langlet testified about the copious amounts of liquor he consumed during the day and evening. He also testified that as he was telling P. about the Preece shooting on the drive back to his place he was "freaked out" and thought that he was going to be killed, perhaps at his remote house, based on what Mr. DaSilva had told him the night before, and then upon seeing the gun deal and meeting a crime boss who spoke of doing a hit on someone.

[57] Then during Scenario 11, which was not recorded, Mr. Langlet testified that when he met Mr. DaSilva for dinner at Earl's in Guilford, Mr. DaSilva told him that he thought that P. had "bought" Mr. Langlet's story, and that Mr. DaSilva asked him what he had told P. so that they could keep their stories straight. Mr. Langlet said that he told Mr. DaSilva that he had put himself as the shooter, "nothing too complicated" and Mr. DaSilva responded "We will just go with that then." Then Mr. Langlet testified that Mr. DaSilva said that they will say that the gun came from the Schwartz guy who was a partner of Mr. Preece's. They went over some details so in case P. got them both in the same room they would have the same story. Mr. Langlet said that he thought he told Mr. DaSilva what the motive was. He also said that he "just kind of rolled with whatever was on his tongue as you would be surprised what comes

out of your mouth when you think you are gonna get killed." Mr. Langlet said that Mr. DaSilva's response was to the effect that they should stick to their story as P. was probably listening, and if P. found out they were lying he would probably get rid of them both.

[58] I do not propose to set out much of Mr. Langlet's testimony about Scenario 12. He did, however, testify that things were "still kinda sketchy" because there he was on a boat with a bunch of guns, and he felt that he and Mr. DaSilva were going to have to convince P. that Mr. Langlet did (shoot Mr. Preece). On the boat Mr. Langlet thought he had three glasses of Crown, maybe 12 oz. and that he drank as much as he could. Mr. Langlet also testified that he played along with the proposed hit with Mr. DaSilva because he felt that if he "showed weakness" he was "done."

[59] Mr. Langlet testified that after the boat incident not much happened and that he had no further contact that he recalled with either P. or Mr. DaSilva, except he might have received a few calls from Mr. DaSilva.

[60] When P. called Mr. Langlet in October 2010 and said that he was back in town and wanted to meet, Mr. Langlet testified that he decided to meet P. because he did not want P. to hunt him down, and then he planned to show little interest and try to brush P. off. After they met at the Boston Pizza in Langley on October 8, 2010, they went to leave and once Mr. Langlet got into the truck he testified that he was arrested by a "bunch" of police with six guns to his head and thrown to the ground.

[61] Mr. Langlet was cross-examined on many topics, including aspects of the Preece shooting. In terms of his arrest at gun point, Mr. Langlet elaborated that there were three guys with guns on his side and three on P.'s side and the guns were drawn and pointed at both himself and P. Also, on cross-examination Mr. Langlet admitted that at times he did drink to excess. With regards to his first meeting with Mr. DaSilva at the beginning of Scenario 3 he consumed a lot of alcohol although he stated he was not nervous or anxious.

[62] Mr. Langlet was cross-examined in relation to many of his comments contained in the transcripts of the Mr. Big scenarios. Mr. Langlet did not recall more details about the conversation he said he had with Mr. DaSilva before Scenario 5 in which Mr. DaSilva told him "to act gangster" and in relation to their conversation during Scenario 6 at the Greek restaurant when Mr. DaSilva apparently told Mr. Langlet to make it seem like he was the shooter and Mr. DaSilva would back him up. Nor did Mr. Langlet recall what Mr. DaSilva allegedly said to him at the Cecil Bar. In the call that Mr. Langlet said he received from Mr. DaSilva prior to Scenario 10, Mr. Langlet recalled that Mr. DaSilva told him that he "had to step it up" and that as Mr. Langlet was there, he should say he did what he saw Mr. DaSilva do. Mr. Langlet said that he did not remember details from this conversation including where the gun came from, which gun was used, or how many shots were fired. Mr. Langlet agreed that Mr. DaSilva never told him which details to provide. At the dinner in Scenario 11, Mr. Langlet recalled that Mr. DaSilva said that they should say the gun (used to shoot Mr. Preece) came from Chris. Mr. Langlet recalled that when Mr. DaSilva called him before or

after Scenario 12 (using Ashley's sister's phone) that Mr. DaSilva told him that P. bought the story and that they should stick with it no matter what. He agreed that no details were discussed in that call. Mr. Langlet could not recall any other conversations or meetings with Mr. DaSilva regarding having Mr. Langlet take the responsibility for the murder of Mr. Preece. Mr. Langlet agreed that at no time did Mr. DaSilva tell him what type of gun to say he used in shooting Mr. Preece.

Mr. DaSilva's Testimony

[63] Mr. DaSilva testified to his criminal past, how he became an agent in the Mr. Big operation, and also regarding his own role in the death of Mr. Preece. Mr. DaSilva's evidence was that he was with Mr. Langlet on the night of June 12, 2000, and knew that Mr. Langlet was planning to shoot Mr. Preece.

[64] Mr. DaSilva indicated that both he and Mr. Langlet were armed with guns and a meeting was set up with Mr. Preece in a parking lot behind a restaurant in Surrey, BC. Mr. Preece had supplied cocaine to a drug line that was staffed around the clock to deliver to customers. Mr. Langlet was the "street boss" of the drug line and Mr. DaSilva worked shifts on the line. Mr. Preece had become unable to provide a regular supply of cocaine to the line, was addicted to heroin and paranoid, such that he was regarded as a liability to be taken care of when the time arose. According to Mr. DaSilva, Mr. Langlet approached Mr. Preece, who was sitting in the passenger side of his vehicle, and then Mr. Langlet fired off a number of shots in quick succession into Mr. Preece's head and upper body. Mr. DaSilva said he then approached the scene, noted that it appeared that Mr. Preece was dead, and then he and Mr. Langlet ran back to their vehicle and drove away from the scene. Mr. Langlet disposed of the gun used in the shooting off a bridge in the area and then the pair drove to Calgary, spending the night at a motel in Kamloops on the way. Mr. DaSilva recalled seeing a news broadcast on TV that showed the scene of the Preece homicide that confirmed he was indeed dead and revealed that the few leads the police had did not appear to point in their direction. Then, using the cash they had for delivery to Mr. Preece they spent several days in Calgary staying at a hotel, eating out, and purchasing the necessary clothes, and then they both drove back to Surrey about a week later. Neither was interviewed by police at the time.

Position of the Defence

[65] It is the defence position that the inculpatory statements by Mr. Langlet, including his confessions to being the shooter of Mr. Preece obtained in the Mr. Big investigation, ought to be excluded from evidence at trial.

[66] The defence submits that the particular circumstances of this Mr. Big investigation violate the applicant's s. 7 Charter right to "life, liberty and security of the person" and his s. 11(d) Charter right to a fair trial; and exclusion of the evidence obtained is warranted. The defence also submits that absent a Charter violation, the court has the power to exclude the admission of evidence if its admission would violate a principle of fundamental justice and/

or result in an unfair trial. The defence further submits the Mr. Big evidence should be excluded as its prejudicial effect significantly outweighs its probative value.

[67] It is the position of the defence that this Mr. Big evidence would constitute an abuse of process and infringe Mr. Langlet's right to a fair trial because of: the use of Mr. DaSilva, who is arguably a party to the offence charged or may be the principal offender as an agent, to entice Mr. Langlet into the investigation and encourage his continued participation; the lack of monitoring of the agent outside of the operation; the failure to record some of the scenarios; the prevalent use of alcohol in scenarios; the payment of cash inducements; the reference to a proposed murder in Scenario 10; and the inclusion in Scenario 12 of a proposed murder for money that Mr. Langlet agreed to be involved in, will, if admitted, provide the trier of fact with otherwise inadmissible evidence of bad character.

[68] During the voir dire the defence placed before the Court Mr. Langlet's version of events as to how the integrity of the evidence gathered in the Mr. Big investigation was compromised by Mr. DaSilva. Defence counsel cross-examined Mr. DaSilva extensively on his criminal past, his alleged involvement in the Preece shooting, his statements to police, and his involvement as an agent in the Mr. Big operation, with a view to discrediting him sufficiently, such that the Court would find the evidence of Mr. Langlet (that he had been coerced and pressured by Mr. DaSilva to provide the version of events he did) sufficiently credible upon which to found a violation of his Charter rights or an exclusion of the Mr. Big evidence based on trial fairness.

[69] It is the defence position that the motivation for Mr. Langlet to provide this allegedly false confession was out of fear for his own safety given his increasing involvement in the criminal organization, and his having overheard a conversation between P. and Mr. H. that a problematic person needed to be taken care of, such that his own safety within the criminal organization was at risk.

[70] Further, the use of the agent, Mr. DaSilva, who may himself have been the shooter in the murder of Mr. Preece, reduces the reliability of Mr Langlet's confession, both because Mr. DaSilva was not under direct police control throughout the operation, and because he is an active participant in audio/video part of Scenario 12 eliciting parts of Mr. Langlet's "confession." Therefore, the defence submits that the police tactics in the Mr. Big operation, including the involvement of the agent in Scenario 12, call the reliability and hence probative value of Mr. Langlet's incriminating statements and confessions into question.

[71] The defence also submits that the audio recorded statements and the audio/video recording of Mr. Langlet made during Scenario 12 are highly prejudicial. The jury, to assess the reliability and credibility of his inculpatory admissions to undercover operatives, will have to hear that Mr. Langlet involved himself in what he believed to be criminal activity of a most serious and prejudicial nature, including involvement in a planned contract killing similar in nature to the offence for which he is being tried. The defence argues that if admitted, the statements of the accused could be misused by the jury to assess his guilt

because of the similar fact scenario of a premeditated hit.

[72] Therefore, the defence further submits that the Mr. Big evidence is such, given the oppression and intimidation employed and the inducements offered by the undercover operatives, that to admit it into evidence at trial would shock the community. It would also result in the admission of highly prejudicial and unreliable evidence that would outweigh any probative value it might possess.

[73] The defence relies upon the following authorities:

- R. v. Ciancio, 2006 BCSC 1673 [Ciancio];
- R. v. Creek, [unreported] March 25, 1998, Vancouver Registry, CC971007 [Creek];
- R. v. Dikah, (1994) 31 C.R. (3d) 105 (Ont. C.A.) [Dikah];
- R. v. Griffin, 2001 MBQB 54 [Griffin];
- R. v. G. (S.G.), [1997] 2 S.C.R. 716 [G. (S.G.)];
- R. v. Hart, 2012 NLCA 61 [Hart];
- R. v. La, [1997] 2 S.C.R. 680 [La];
- R. v. Osmar, 2007 ONCA 50 [Osmar];
- R. v. Perfect, 2001 CanLII 21207 [Perfect];
- R. v. Proulx, 2005 BCSC 184 [Proulx];
- R. v. Terry, [1996] 2 S.C.R. 207 [Terry]; and
- R. v. Harrer, [1995] 3 S.C.R. 562 [Harrer].

Position of the Crown

[74] The Crown submits that investigations of the sort embarked upon by police here in the undercover Mr. Big investigation of Mr. Langlet, are necessary given the nature of the crime alleged and the alleged perpetrator. It submits that Mr. Langlet demonstrated throughout the Mr. Big investigation that he was interested in continuing criminal activity and his willingness to participate in the planned contract killing with Mr. DaSilva was genuine, and not as a result of fear or intimidation. When Mr. Langlet spoke of the details of his involvement in the Preece homicide, both in Scenario 10 to P. when being driven to his residence outside Mission, and then in similar detail in the audio/video portion of Scenario 12 on the boat, the Crown submits that he did so freely and voluntarily so as to gain acceptance in the criminal organization, and to be able to participate in the planned hit discussed by P. and Mr. DaSilva. The Crown submits that there is nothing in the manner in which this Mr. Big operation was carried out that would shock the community.

[75] Further, the Crown submits that the evidence obtained in the Mr. Big investigation in relation to the accused is highly probative and its probative value outweighs its prejudicial effect. In this regard the Crown refers to the similarity of the statements made by the accused to P. to the forensic evidence gathered at the scene of the Preece shooting.

[76] The Crown states the defence bears the onus of establishing a violation of s. 7 and the exclusion of evidence. It is the Crown's position that the defence has not met this onus. There was nothing in this Mr. Big operation that points to an abuse of process through police coercion or the use of Mr. DaSilva as an agent.

[77] Finally, the Crown submits that upon cross-examination by the Crown, Mr. Langlet was shown to be a very unreliable witness who was not credible. In particular, his evidence about how Mr. DaSilva told him to say that he was Mr. Preece's shooter only during those moments of their interaction that happened not to be overheard by P. or recorded in the course of the operation strains his credibility to the breaking point. Crown counsel pointed out numerous inconsistencies, both internally and externally, in the testimony of Mr. Langlet. Apart from his being evasive, argumentative and at times lackadaisical during his testimony, Crown counsel submits his memory was very selective insofar as he remembered things that supported his version of events. In relation to those aspects of his confessions that were inculpatory, Mr. Langlet attributed them to his poor memory, having consumed too much alcohol, or exaggerating to impress. Crown counsel submits that Mr. Langlet's testimony is the only support for his version of how he came to confess to P. during the investigation. He submits that right from the outset of the Mr. Big operation in Scenario 3 Mr. Langlet was willing to refer to aspects of the Preece murder, and that Mr. DaSilva could not have been sure when he was being recorded and when he was not with any degree of certainty.

[78] Further, Mr. Langlet was unable to recall what details Mr. DaSilva apparently provided to him to facilitate him taking responsibility for the role of shooter regarding Mr. Preece; and Mr. Langlet agreed that at no time did Mr. DaSilva tell him what type of gun to say he had used. The Crown also pointed to the forensic and pathology evidence that tends to support the version of events provided by Mr. Langlet and stressed that these details are not shown in evidence to ever have been made available to Mr. DaSilva.

[79] The Crown relies upon the following authorities:

- R. v. Bonisteel, 2008 BCCA 344 [Bonisteel];
- R. v. Terrico, 2005 BCCA 361 [Terrico];
- R. v. Riley and Henry, 2001 BCSC 1407 [Riley];
- R. v. Ashmore, 2011 BCCA 18 [Ashmore];
- R. v. Buric, [1997] 1 S.C.R. 535 [Buric No. 2];

- R. v. Buric, 1996 CanLII 1525 (ONCA) [Buric No.1];
- R. v. Bacon, 2012 BCSC 38 [Bacon];
- R. v. James, 2012 BCCA 162 [James]; and
- R. v. Raza, 1998 Can LII 5352 (B.C.S.C.) [Raza].

Findings on the Voir Dire Evidence

[80] Credibility and reliability findings regarding the evidence on this voir dire pose a very real challenge in relation to the two main witnesses, Mr. DaSilva and Mr. Langlet.

[81] First, however, I will deal with the easier task of the police evidence. In this regard I find that there is no issue as to the overall reliability and credibility regarding the RCMP witnesses: Cst. K., who was involved in the Mr. Big investigation and the handling of Mr. DaSilva; Cst. D., who designed and managed the Mr. Big investigation; and Cst. Scharffs, who was involved in the arrest of Mr. Langlet on October 8, 2010. I accept their testimony as reliable and credible and to accurately set out the facts relating to the Mr. Big investigation and the arrest of Mr. Langlet. Although the structure of the Mr. Big investigation raises several serious questions, namely the proposed contract hit included in Scenario 12 and the failure to record all the interactions known to the RCMP between Mr. Langlet and Mr. DaSilva (which I will address separately) there is no issue with the facts of the investigation as proven. In particular, where the evidence of Cst. Scharffs conflicts with that of Mr. Langlet as to whether Mr. Langlet had a firearm drawn and pointed at his head during his arrest, I accept the testimony of Cst. Scharffs that this did not occur.

[82] I turn now to the matter of credibility and reliability of Mr. DaSilva. Overall Mr. DaSilva impressed the Court as an intelligent witness who has decided to change his criminal ways motivated primarily by self-interest. In assessing his evidence I am mindful that it will be for the ultimate trier of fact to determine the facts as they relate to the shooting of Mr. Preece and the events leading up to that event on June 12, 2000 and its aftermath.

[83] However, I find it unlikely that Mr. DaSilva would have jeopardized his position as a paid agent, in light of the terms of the Limited Immunity Agreement, to encourage Mr. Langlet to falsely confess to a role in the Preece shooting that Mr. Langlet did not play. Under that agreement Mr. DaSilva may still face prosecution for the murder of Mr. Preece; and he still stands to receive significant funds for his participation having only received approximately half of the award ($48,727.86 out of a maximum of $100,000) in addition to his monthly stipend and the payment of other expenses associated with the investigation. In his testimony it is clear that Mr. DaSilva was very aware of the terms of the agreement.

[84] Mr. DaSilva's remuneration is understandably and quite properly not tied to any particular outcome in this case and further payment to him is at the sole discretion of the RCMP. The second part of the award may be paid to him "at the end of all legal proceedings (including appeals if applicable.)" Mr. DaSilva knew this from the outset. Thus, Mr. DaSilva has much to lose and nothing to gain by tampering with the integrity of the evidence gathered in the Mr. Big investigation.

[85] Although Mr. DaSilva did ask the police on several occasions if he was being recorded, I find it is unlikely that he could have been sufficiently certain that his interactions with Mr. Langlet were neither being recorded nor monitored by the police. This is particularly so as all his face-to-face dealings with Mr. Langlet occurred in the context of planned scenarios, albeit there were instances when the two of them were together, not being recorded, and not in the presence of a police undercover operator. Mr. DaSilva testified that he expected all his interactions with Mr. Langlet would be recorded and that they would be under surveillance. Although there is at least one known instance of Mr. DaSilva not following the correct protocol for telephone contact with Mr. Langlet, Mr. DaSilva could not be certain that Mr. Langlet's calls were not being monitored by another means. It is also clear that when Mr. DaSilva was participating in a scenario he was looking out for and essentially expected that undercover officers would be in the vicinity.

[86] Next, I note that Mr. DaSilva does not appear to bear Mr. Langlet any ill will. They were close friends for several years and then appear to have drifted apart as opposed to having a disagreement or fall out. Significantly, at one point part way through the investigation Mr. DaSilva expressed genuine regret to P. about turning on his former friend who still loved, respected and trusted him (Scenario 5 Tab C2 pp. 35-37), and P. essentially gave Mr. DaSilva a "pep talk" and reminded him that he was trying to get his own life together.

[87] Within the context of the Mr. Big investigation it is difficult to appreciate why it would make sense for Mr. DaSilva to encourage Mr. Langlet to lie to P., given the repeated emphasis that P. put on those who worked for him to tell the truth. In other words, there was no incentive for Mr. DaSilva to jeopardize his continued employment in P.'s organization, which appeared so successful, to encourage Mr. Langlet to lie regarding his role in the Preece shooting. If Mr. DaSilva was telling Mr. Langlet to lie, this would likely have struck Mr. Langlet as a bad idea.

[88] In assessing the evidence regarding Mr. DaSilva's role in the Mr. Big investigation I note that the specific instances that Mr. Langlet testified about when Mr. DaSilva allegedly encouraged his false confession were not put to Mr. DaSilva in cross-examination. More generally, Mr. DaSilva testified that he told Mr. Langlet to be forthcoming when he talked to P., and that this came up a lot in their conversations when Mr. Langlet asked how he should act and what he should say. Mr. DaSilva agreed that he encouraged Mr. Langlet to talk to P. Mr. DaSilva understood that his role in the investigation was to facilitate disclosure by Mr. Langlet. He recalled being briefed as to what he was to do in each scenario. He specifically denied telling Mr. Langlet what to say or what not to say regarding the Preece incident, or that Mr. Langlet was close to being admitted into the organization and that Mr. Langlet

should tell them a story that he, Mr. Langlet, was the shooter of Mr. Preece. Mr. DaSilva recalled Mr. Langlet asking whether P. knew about them, in the context of the Preece shooting. Mr. DaSilva recalled that he told Mr. Langlet to tell P. everything. Mr. DaSilva did not think that he had ever told Mr. Langlet what specifically that he, himself, had told P. about it, nor did he recall Mr. Langlet asking him.

[89] Mr. DaSilva also denied contacting Mr. Langlet by telephone in a manner designed to avoid police interception, either by using his own personal cell phone or the phone of the young woman, Leila Lee, who he met at the Cecil to call her sister, Ashley, who was apparently a girlfriend of Mr. Langlet.

[90] Finally, I note that in the probing and lengthy cross-examination of Mr. DaSilva by defence counsel he freely admitted his many, many past-wrong doings and did not generally appear to shade his evidence to portray himself in a better light. He did not seem prone to exaggerating or filling in gaps in his memory. When he did not know or did not recall he said so. He admitted his drinking/driving debacle with the van and evading surveillance that occurred in Scenario 6. With regards to his testimony about his actions during the Mr. Big investigation, I find Mr. DaSilva to be a generally credible and reliable witness.

[91] I turn now to the credibility and reliability of the testimony of Mr. Langlet as it relates to the issue of the Mr. Big investigation only. Mr. Langlet appears to be a man of average intelligence whose memory is somewhat suspect. He was consuming a considerable quantity of alcohol during the period of time that the Mr. Big investigation was going on, both during the investigation and on his own time. He came across in court as lackadaisical and bored at times. Other times he was argumentative and evasive. Yet, at other times he sought to ingratiate himself with the Court. However, demeanour is only one of many factors to be considered by the Court when assessing credibility. There are a number times in Mr. Langlet's testimony that he clearly contradicts other reliable evidence. How much he had to drink on the boat in Scenario 12 is one such instance. Whether he was arrested by police with their guns drawn and pointed at him is another. He denied a familiarity with guns that is not supported by evidence from his own mouth. He professed to drink alcohol to excess when nervous or anxious when in fact he often drank to excess when not in those emotional states.

[92] In his testimony, Mr. Langlet clearly exaggerated aspects of his evidence, most notably the amount of alcohol he consumed during the scenarios and the extent to which his alcohol consumption impaired his judgment and thus, loosened his tongue. He also relied on his poor memory when he thought it would assist him. In short, he was a poor and unreliable witness and his credibility with regards to being set up by Mr. DaSilva to confess in the Mr. Big investigation is highly suspect.

[93] It no doubt came as a great blow to Mr. Langlet that his former friend, and quite literally his partner in crime, Mr. DaSilva, had turned him in to the police and then enticed him into the Mr. Big investigation as its target. I expect that sitting in jail awaiting trial and reviewing

disclosure Mr. Langlet has had considerable time to reflect on the gravity of his circumstances in relation to the present charge and his confessions and the other inculpatory comments he made during the Mr. Big investigation. Human nature being what it is, he now seeks to distance himself from his words and actions as recorded in the Mr. Big investigation. Thus, he seeks to shift responsibility for his actions and comments to Mr. DaSilva.

[94] In this voir dire, I am mindful the Court is assessing evidence with regards to the burden of proof on a balance of probabilities. It is fundamental to a finding that Mr. Langlet's s. 7 and s. 11(d) Charter rights were violated in the context of the Mr. Big investigation that Mr. Langlet's testimony establish that the integrity of the evidence against him was seriously compromised by the involvement and activities of Mr. DaSilva, such that Mr. Langlet was allegedly persuaded by Mr. DaSilva to falsely confess. His testimony to this effect, which is denied by Mr. DaSilva, is uncorroborated by any other evidence. This finding is also relevant to a probative value/prejudicial effect analysis. For the reasons I have set out I find that Mr. Langlet's evidence in this regard falls significantly short of the mark.

[95] Who planned and met with Mr. Preece late in the evening of June 12, 2000, and for what purpose, and who shot Mr. Preece, are questions of fact to be decided at trial. Ultimate findings as to the reliability and credibility of witnesses, including the Crown witness Mr. DaSilva, and the accused should he decide to testify, and the weight to be attached to his confession in the Mr. Big investigation are for the ultimate trier of fact.

The Applicable Law, Analysis and Findings

Overview

[96] In the present case the accused seeks a finding that his s. 7 and s. 11(d) Charter rights were violated and the evidence obtained in the Mr. Big investigation should be excluded. The defence submits that exclusion of this evidence is necessary to preserve the accused's right to a fair trial given that its admission would constitute an abuse of process. The defence also submits it should be excluded as its prejudicial effect significantly outweighs its probative value.

[97] It is well-accepted that the confession rule does not apply to Mr. Big scenarios because the utterances of an accused are not being made to a person in authority while detained or under arrest: R. v. Earhart 2011 BCCA 490 [Earhart], at paras. 76-78. As explained in R. v. Grandinetti 2005 SCC 5 [Grandinetti] by Justice Abella:

44 The appellant believed that the undercover officers were criminals, not police officers, albeit criminals with corrupt police contacts who could [page42] potentially influence the investigation against him. When, as in this case, the accused confesses to an undercover officer he thinks can influence his murder investigation by enlisting corrupt police officers, the state's coercive power is not engaged. The statements, therefore, were not made to a person in authority.

[98] However, the court can still consider the degree of coercion employed by undercover officers and whether this coercion amounts to an abuse of process in the context of a breach of s. 7 and s. 11(d) of the Charter. In Grandinetti, Justice Abella in obiter discusses the available exclusionary doctrines:

36 There is no doubt, as the Court observed in Hodgson, at para. 26, that statements can sometimes be made in such coercive circumstances that their reliability is jeopardized even if they were not made to a person in authority. The admissibility of such statements is filtered through exclusionary doctrines like abuse of process at common law and under the Canadian Charter of Rights and Freedoms, to prevent the admission of statements that undermine the integrity of the judicial process. The "abuse of process" argument was, in fact, made by Mr. Grandinetti at trial, but was rejected both at trial and on appeal, and was not argued before us.

When Do Police Tactics Employed in a Mr. Big Investigation Shock the Community?

[99] Abuse of process in the context of s. 7 is assessed in Mr. Big cases by whether the scenarios themselves and the behaviour of the undercover officers would "shock the community": R. v. Oickle, [2000] 2 S.C.R. 3 [Oickle], paras. 66-67.

[100] In Bonisteel Madam Justice Levine discusses how the test for "shock the community" has been interpreted in other Mr. Big scenarios:

88 In Oickle (at paras. 65-67), Iacobucci J. for the majority of the Supreme Court of Canada discussed the "community shock" doctrine in the context of considering the voluntariness of a confession. A confession obtained by the use of police trickery that is "so appalling as to shock the community" will be excluded "to [maintain] the integrity of the criminal justice system". Examples of what might "shock the community" were a police officer pretending to be a chaplain or a legal aid lawyer, or injecting truth serum into a diabetic under the pretence that it was insulin, citing Lamer J. in Rothman and the Queen, [1981] 1 S.C.R. 640.

[101] The approach to the admissibility of Mr. Big confessions was considered by Bennett J.A. in Earhart, where she considered whether a new approach was required:

Should Courts Adopt a New Approach Toward Determining the Admissibility of "Mr. Big" Statements?

[79] The police have been very successful in obtaining confessions from suspects in the context of "Mr. Big" operations. The plan generally involves undercover officers convincing a suspect to join a criminal organization. The suspect is eventually introduced to the crime boss, who often professes the influence and ability to internally resolve the suspect's murder charge. The circumstances of these operations vary significantly from investigation to investigation. Some are very lengthy and purport to involve the suspect in increasingly serious criminal activity. In some, the suspect is led to perceive serious threats and assaults perpetrated upon other members of the "gang" if they fail to meet expectations. (See, for example, Bonisteel; R. v. Terrico, 2005 BCCA 361, leave to appeal ref'd 2005 S.C.C.A. No. 413.) In others, the scenario put forward is less menacing, involving only offers of employment in the criminal

organization conditional upon reassurance that the suspect's background will not cause problems for the organization. If so, the crime boss will take care of it.

[80] Concerns about this investigative technique have been raised for some time. Those concerns are that a suspect who is brought into the criminal underworld will be so intimidated or so keen to impress the crime boss that he or she will falsely confess to a crime. Ms. Earhart presses this court to introduce prerequisites for the admission of statements obtained in this manner.

[81] First, she says that "Mr. Big" statements should be considered on a case-by-case basis. This protection already exists, and each statement is considered in the context in which it was made. The question of reliability was considered in Osmar. Mr. Justice Rosenberg, for the Court, discussed the concerns regarding the admission of the Mr. Big statements. In doing so, he reviewed the principle of self-incrimination in depth, and in particular, affirmed, at paras. 31-32, the necessity for a contextual analysis as was set out in R. v. White, [1999] 2 S.C.R. 417 at para. 45, where Iacobucci J. said, "[t]he principle against self-incrimination demands different things at different times, with the task in every case being to determine exactly what the principle demands, if anything, within the particular context at issue".

[102] Thus, the evidence sought to be admitted from a Mr. Big investigation is to be carefully scrutinized with regards to reliability in the overall context in which it was obtained to safeguard against abuses that risk false confessions.

[103] The often quoted words of Scollin J. of the Manitoba Queens Bench in R. v. Skinner (1992), 17 C.R. (4th) 265, at p. 275, serve to underline the tension inherent in assessing the admissibility of a Mr. Big Confession:

The difference between the unpalatable and the inedible is generally a matter of personal taste. Absent "dirty tricks", the courts should not set themselves up as the arbiters of good taste or of the preferred methods of investigation. It is unrealistic to demand chivalry from those who must investigate what are often heinous offences against blameless victims. The law should not appear to materialize as a revolutionary rabbit from a judicial magician's hat. Both the common law and the Charter justly preserve the accused from coercion and endow him with specific rights which he may exercise at the time of his arrest and while he is in custody; but the courts should not be so indulgent as to preserve the accused from himself and his own untrammeled tongue, and should require realistic justification for suppressing facts from the jury which go to weight rather than to admissibility.

[Emphasis added.]

[104] In Bonisteel Justice Levine stated:

89 In Roberts, this Court found that the police tactics employed in a Mr. Big operation would not "shock the community". In response to the appellant's argument that the operation was an abuse of process and violated his rights under s. 7 of the Charter, Hall J.A., for the Court, said (at paras. 13-15 (Q.L.)):

There are obviously limits to investigative procedures that can legitimately be undertaken by police officers. The difficult case of Evans v. The Queen (1991), 63 C.C.C. (3d) 289 (SCC) illustrates a situation where a somewhat weak-minded and vulnerable accused was found to have been overborne by police suggestions and the resulting statements were ruled out. In the case of R. v. Unger (1993), 83 C.C.C. (3d) 228 at 248, a decision of the Manitoba Court of Appeal, the court said this:

Courts should not be setting public policy on the parameters of undercover operations. The Crown's position, with which we agree, is that the public would endorse rather than be shocked by the efforts of the undercover agents in this case.

[Emphasis added [by Hall J.A.]]

[105] It is important to note in relation to the Unger case referred to above that DNA evidence arose fourteen years after Mr. Unger was convicted indicating that a hair seized from the scene was not Mr. Unger's, which supported the view that Mr. Unger had indeed provided a false confession. Mr. Unger was convicted in 1992 and served his sentence until 2004, after the DNA testing suggested some errors in the forensic evidence. He was released on bail pending ministerial review of the case. The Crown decided to drop the charges in 2009. The risk of false confessions as illustrated by Unger was highlighted in Hart at para. 168. It was noted by Levine J.A. in Bonisteel (at para. 87) that the conviction of Mr. Unger was at that time under review.

[106] The case of Unger and indeed the recent ruling of the Newfoundland Court of Appeal in Hart point out the need for extreme caution in assessing evidence obtained from an accused in a Mr. Big investigation.

[107] In Hart Chief Justice J.D. Green, concurred in result by Harrington J.A., ordered a new trial in relation to the appellant's conviction of two counts of first degree murder regarding the drowning deaths of his two daughters and ordered the exclusion of evidence obtained by police in a Mr. Big operation based on a violation of s. 7 of the Charter. Chief Justice Green concluded that in the circumstances of the particular Mr. Big operation Mr. Hart was in the control of the state although not physically detained. This was due to the psychological coercion brought to bear upon Mr. Hart, an extremely vulnerable individual who was in an adversarial relationship with the state, albeit unbeknown to him at the time. The incriminating statements made by Mr. Hart during the course of the Mr. Big operation were excluded based on s. 24(2) of the Charter and an analysis pursuant to R. v. Grant, [2009] 2 S.C.R. 353.

[108] In a very compelling and thoughtfully- reasoned judgment Chief Justice Green articulated how a Mr. Big investigation can become an abuse of process in the context of "a weak and vulnerable person," and the risks associated with such a technique:

230 In Mr. Hart's case, the abuse of power is that the state employed considerable resources to gain control over a weak and vulnerable person by a dishonest trick and then used that power to place him in a situation where it was, given his expectations and needs, the only logical thing to do but to say what he believed Mr. Big wanted him to say as a condition of remaining in the organization, namely to "confess" to the murders. This case is unlike Osmar or McIntyre where the police tricked a person who was still independent and had a meaningful choice not to confess. The trickery becomes abusive when the state takes control over the accused, as in Mr. Hart's case, by creating a false world of imaginary friends and a lifestyle that he desperately wanted but could not maintain without continuing to be associated with them, and then uses the product of that trickery in a manner that effectively requires him to testify in his own defence in circumstances where his credibility is already destroyed through the creation of adverse propensity evidence that is inherent in the technique that was employed.

[...]

233 A Mr. Big operation, by its nature, involves a steady escalation in association, influence and pressure, leading up to the creation of an atmosphere in which it is deemed appropriate to encourage the target to confess. Up to a certain point, escalating the pressure increases the likelihood of a confession. But beyond that point, the pressure and influence just increases the risk of a false confession. When that point is reached is, of course, a judgment call and reasonable people may differ as to when it occurs. Nevertheless, the persons employing the technique, cognizant of its potential dangers, must be alert to the warning signs indicating that the danger point is approaching and take reasonable steps to prevent the operation becoming an instrument of abuse, thereby unnecessarily increasing the risk of obtaining a false confession. While according some latitude to account for reasonable differences in judgment, a court, with hindsight, should nevertheless consider whether there are clear indications that the danger point has been reached.

[Emphasis added.]

[109] While defence counsel in the present case admits that Mr. Langlet is not as vulnerable an individual as Mr. Hart was, and the Mr. Big investigation was not as protracted, I note that vulnerability is clearly matter of degree in the face of the increasing and relentless nature exerted upon a target by the police undercover operators in a Mr. Big investigation that may become tantamount to a psychological detention.

[110] Specifically with regards to Mr. Hart and the Mr. Big operation conducted in that case, Chief Justice Greene found as follows:

231 In Mr. Hart's case, the police were knowingly and actively seeking to exploit his vulnerability to ensnare him in a lifestyle from which he could not realistically be expected to want to leave. To say in such circumstances that he could have left at any time is disingenuous. The police were alert to the opportunity created by Mr. Hart's susceptibilities but either overlooked, or chose not to focus upon, the dangers those susceptibilities created. They planned an operation targeted against him and Mr. Hart, by his actions and his statements, indicated he was progressively falling under their control.

232 As the scenarios unfolded, there were a series of warnings that Mr. Hart's freedom to choose was being seriously compromised. There were therefore indications that too much pressure and influence might be exerted; yet the warning signs led to an increase in pressure rather than a careful evaluation of how far Mr. Hart might safely be pushed. One month into the operation, during the twentieth scenario, Mr. Hart indicated he would do "anything" because of his friendship with one of the undercover officers. There were clear indications that he had bonded with the officers, but instead of introducing Mr. Big into the picture, the pressure and influence was increased. After the twenty-ninth scenario, Mr. Hart was saying that he "loved" the undercover officers and that they were "family". On April 10, 2005, according to the police, he indicated to an undercover officer, without having had it suggested to him, that he had killed his daughters. At this point the bonds between Mr. Hart and the officers were tight enough for a "full" confession. However, instead of introducing Mr. Big, the pressure and influence were increased again. He was told he would be given more responsibility and the scope of the fictitious criminal organization was increased.

[...]

234 By the twenty-ninth scenario, Mr. Hart's declaration of love and his spontaneous admission ought to have signalled to the police that the point of optimal leverage, without unnecessary risk of inducing a possible false confession, was arriving. Instead the police continued to escalate the pressure for another two months and thirty-four scenarios before introducing Mr. Hart to the Mr. Big interview. At that interview, Mr. Big employed coercive techniques by presenting implicit threats (of termination of Mr. Hart's new lifestyle) and promises, rejected any (innocent) explanations that did not involve the admission he was seeking, and continued to accuse him of lying until Mr. Hart agreed with the assertions Mr. Big was putting to him.

235 In so doing, the police created a situation where Mr. Hart's right to silence was overridden, in circumstances where there was a risk of having obtained a false confession and where Mr. Hart would have to face a potentially unfair position for him to respond to at trial. [Emphasis added.]

[111] Other elements relevant to a determination whether a Mr. Big scenario would shock the community are whether the accused sought out employment with the criminal organization and whether the accused was given the freedom to leave the criminal organization.

[112] In Osmar the appellant was offered employment in a criminal organization and made statements as to his involvement in a murder to a crime boss in an "interview" scenario. Justice Rosenberg of the Ontario Court of Appeal admitted the statements to be heard by a jury, and stated:

50 I am also of the view that it was for the jury to decide whether in the context of a meeting where he was seeking work, the inducement of a job in an illegal operation would be sufficient to cause the appellant to falsely confess to past deeds. This was not a case of such extraordinary coercion that it can be said the statement is too unreliable to be received by the triers of fact, nor a set of facts they would be unable to assess.

[113] Likewise, the trial judge's finding that a "job interview" during a Mr. Big investigation is not sufficient coercion was upheld in Earhart by Justice Bennett of the British Columbia Court of Appeal:

99 The trial judge found that Ms. Earhart attended at the hotel for dinner and for the "job interview" of her own free will. It is not disputed that the undercover officers hoped she would respond to their invitation, but there was no control over her, either psychologically or physically, by people she knew to be police officers. Mojtahedpour was detained when the police placed him in the interview room. He was not the subject of an unpredictable undercover operation where he was free to act as he wished.

100 The communications intercepted here were those between the undercover officer and Ms. Earhart. The nature of undercover operations is that they are dynamic and often unpredictable. The police had reasonable grounds to believe that Ms. Earhart would use the hotel because they invited her to do so. However, they did not compel her physically or psychologically. In my respectful view, this case is distinguishable from Mojtahedpour and there was no unreasonable delegation of authority from the authorizing justice to the police. The trial judge did not commit any error when she found that there was no violation of Ms. Earhart's s. 8 Charter right.

101 In summary, the trial judge committed no error when she admitted the statements of Ms. Earhart made on May 4, 2006.

[114] Each Mr. Big investigation must therefore be assessed for its duration, tone, content, and the degree of vulnerability of the target.

Do the Circumstances of the Present Mr. Big Investigation Constitute an Abuse so as to Shock the Community?

[115] In assessing the nature of this Mr. Big investigation in terms of what occurred and its impact on the accused Mr. Langlet, I will consider a number of aspects of the evidence, namely: (a) the nature of its target, Mr. Langlet, as revealed in the operation and in his evidence; (b) the nature of the operation in terms of its content and length; whether it may be regarded as overly coercive, either in terms of inducements or threats, so as to deprive Mr. Langlet of meaningful choices of whether to make inculpatory statements and eventually confess to a direct role in the Preece shooting; (c) the use of alcohol and cash

inducements in the scenarios; (d) the use of Mr. DaSilva as an agent; and (e) whether the failure of the RCMP to audio record all of the scenarios in their entirety, particularly when Mr. DaSilva was in contact with Mr. Langlet, compromised the integrity of the operation.

(a) Mr. Langlet as the Target

[116] Mr. Langlet seems to be a man of average intelligence. He was born in August 1973, and was therefore almost 37 years old during the investigation. He appears to be in reasonably good health, although he indicated that he is presently taking anti-depressant medication. He has a Grade 11 education. His father died when he was 2 years old, and he and his four siblings were raised by his mother. He started working at 15 years old washing dishes at a restaurant, and then began delivering food. In 1997 he got into "the drug business" and worked for Mr. Preece until his death in June 2000. Mr. Langlet became the "street boss" of the drug line that delivered cocaine to customers by way of a cellphone/pager system. After leaving the drug business within a year or so of Mr. Preece's death, Mr. Langlet was employed for a time as a marine painter.

[117] Mr. Langlet appears to have maintained a relationship with one of his brothers, Joe, and to have had contact with his only sister and his mother while the latter was ill with cancer. Mr. Langlet had several dogs, for which he demonstrated a fondness.

[118] In January 2010 at the commencement of the Mr. Big operation, Mr. Langlet was living at a residence outside of Mission, BC, where he was minding a marihuana grow operation on the property and looking after another one nearby. He was also engaged in making hash oil and trying to sell it. He was making an adequate income from that endeavour although he indicated a keen interest in making more money during the operation. He was not socially isolated, in the sense that he had at least one girlfriend, and appeared on the evidence quite inclined to seek out female company. He had several female assistants in the marijuana grow operation.

[119] Mr. Langlet likes to drink. At times he likes to drink a lot in social situations or with women. In particular, he likes Crown Royal.

[120] It cannot be said that Mr. Langlet was a disadvantaged person at the time of the Mr. Big investigation, either socially, financially or psychologically. He was, therefore, by his nature and circumstances, not a weak or vulnerable individual likely to be unfairly exploited by the Mr. Big tactics. His years running the drug line no doubt put him in contact with difficult people and aspects of criminal violence and intimidation, such that he knew how to assert himself in stressful interpersonal situations. Although he had an adequate income he was clearly attracted to the criminal organization for the money.

(b) The Nature of the Mr. Big Operation

[121] Overall, this was not a particularly oppressive, relentless or protracted Mr. Big investigation. It ran intermittently, with breaks in between scenarios. Mr. Langlet came and went and engaged in his other usual activities. As the content of the actual scenarios went, with the possible exception of Scenario 12, it was actually fairly tame.

[122] Clearly, Mr. Langlet was being offered a position in the criminal organization which appeared to employ P. and Mr. DaSilva. Throughout the Mr. Big investigation Mr. Langlet appeared keen to be hired, willing to do what was asked of him, and motivated by the money he could make by being involved. Notably, there were opportunities throughout for Mr. Langlet to refuse to meet up, be late, feign illness or other commitments, or delay further involvement and he did not do so. He travelled in from Mission to Surrey, Langley or Vancouver by arranging lifts or taking the Skytrain to participate. Several times in the scenarios Mr. Langlet sought to prolong his contact with Mr. DaSilva or P., or both, and stayed to have a meal together, as opposed to ending early by asking to be dropped off or driven home, all of which goes against his later claim that he became too fearful to extricate himself.

[123] The only occasion in recorded scenarios when Mr. Langlet expressed anything that could be interpreted as reluctance to continue his association with Mr. DaSilva, or P., or the criminal organization, occurred during Scenario 10 after the meeting to arrange the purchase of firearms by P.'s organization (from A. who worked for the crime boss Mr. H.), at the point when Mr. Langlet was recorded muttering and talking to himself when P. left him alone briefly in the vehicle (Scenario 10, Tab G2, pp. 17-19). Mr. Langlet discovered, likely via a text or voice mail, that his girlfriend had "met some guy in Vegas" and he called her derogatory names. He then said:

I gotta get the fuck out of there, man. I gotta get the fuck out of there, ya know... There's gotta be a life. (Coughs) I don't know, I don't give a fuck. Oh, maybe I should get rid of this (Clears throat) Fuck me. ...up. This is wicked. See what Joe's doin' later. Fuck, Big Joe.

He then called his brother, Joe, and spoke briefly to him so see if he could crash on Joe's couch later if necessary. However, when P. returned to the vehicle Mr. Langlet was most amenable to carrying on with P. to check out nude women at the Paramount and then to go with P. to the dinner at the restaurant at the Hilton to meet A. and Mr. H.

[124] Given my findings with regards to Mr. Langlet's evidence, and the content of the Mr. Big operation, I find that he was not intimidated or coerced to participate as he did. He appeared to appreciate that there were risks associated with committing crimes, but to buy in whole-heartedly. This was consistent throughout, even as the level of threatened violence (to undercover operators) or degree of criminality in the staged scenarios increased.

[125] The defence did not seek to have P. testify on the voir dire. This is relevant because the actual scenarios that involved Mr. Langlet in a threatening and an extortion, and then the purchase of guns, were not recorded. This was explained because they took place in the presence of at least one experienced undercover operator (P.) and other officers undercover

playing various roles. These scenarios were not designed to elicit incriminating statements from Mr. Langlet but rather to increase his involvement and trust in P. and his criminal organization. While the police run a certain risk in operating this way, particularly if a paid agent like Mr. DaSilva is involved, there is no evidence before the Court that indicates anything overtly untoward, violent, or abusive of Mr. Langlet or the other participants occurred.

[126] Further, I find that in the circumstances of this case, the introduction of a proposed "hit" of someone causing problems for Mr. H. in Scenario 10 does not constitute an abuse of process, and does not shock the values of the community. After careful consideration I have also concluded that in Scenario 12 using the proposed hit to be carried out by Mr. DaSilva and Mr. Langlet as the springboard to encourage Mr. Langlet to talk about his role in the Preece shooting also does not constitute an abuse. Given how freely Mr. Langlet had talked about his role in the Preece shooting in Scenario 10 when the topic of a pending hit had just been discussed it is unlikely that it was overly coercive or shocking.

[127] The defence submitted that the overall tone of the banter between P., Mr. DaSilva and Mr. Langlet, fostered by P. and other undercover police operators, was such as to encourage exaggerated, disrespectful, and hate-filled speech in the course of the operation directed at women, minorities, certain ethnic groups, and gays. This was submitted to be a disinhibitor of a sort on Mr. Langlet and to have been designed by the police to portray Mr. Langlet in the poorest possible light. In my view this gives rise to the need for a cautionary instruction to the ultimate trier of fact. While it may or may not be the way that individuals in Mr. Langlet and Mr. DaSilva's milieu relate to the world, it is likely to be foreign to most jurors and potentially prejudicial. It is however, the kind of potential prejudice appropriately addressed by an instruction to the jury.

[128] Therefore, I conclude that the Mr. Big operation, in terms of its design, duration, and the manner it was carried out was not an abuse.

(c) Alcohol Consumption and Cash Payments in the Scenarios

[129] I note that the use of alcohol is common in Mr. Big scenarios and even where the accused target is recognized as having an addiction to alcohol, its use has not been seen as an abuse of process: Riley. However, the Court could still find that undercover operators who pushed alcohol upon an alcoholic in a Mr. Big investigation committed an abuse depending on the circumstances of the individual case. Excessive alcohol consumption by the target in a Mr. Big investigation may, however, serve to considerably undermine the ultimate weight afforded to a confession.

[130] As indicated, Mr. Langlet liked to regularly drink alcohol. At several points in the recorded conversations he indicated that he had consumed alcohol to considerable excess while not engaged in the investigation, but during its overall time frame. I find that he tended to exaggerate his alcohol consumption during the scenarios in order to lessen his responsibility for his confessions. I find that at no time during the significant scenarios

(Scenarios 3, 10, and 12) was Mr. Langlet intoxicated to the point that he did not appreciate what he was saying or its import. The extent to which what he said was true and accurate is for the ultimate trier of fact to assess. In other scenarios designed to increase his rapport with P. and/or Mr. DaSilva, when Mr. Langlet attended dinners, strip clubs or bars with them he likely consumed alcohol to excess, as appears to have been his regular habit. These scenarios were not conducted for the purpose of eliciting statements from Mr. Langlet, and in the main were not recorded. I find that the overall integrity of this investigation and Mr. Langlet's confessions were not compromised by his excessive alcohol consumption; the fact that in certain instances he had consumed a considerable amount of alcohol goes to the question of the weight.

[131] Mr. Langlet testified that he received about $1,200 cash as "payment" for the services he rendered to the criminal organization. In the overall scheme of the Mr. Big investigation I do not consider this to be a problem. The real inducement for Mr. Langlet was the money he hoped to make in the future by working for the criminal organization, not the modest amount he received for the several jobs he carried out for P. The time occupied by the scenarios took him away from his main source of income, marijuana cultivation and the making of hash oil. It would have been odd for an organization flush with cash not to send some his way.

(d) The Use of Mr. DaSilva as an Agent

[132] Mr. DaSilva was, on all accounts a party to the offence of murder in relation to the death of Mr. Preece. He is also a paid agent of the police in the Mr. Big investigation. To my mind this means that the trier of fact will be instructed to view his evidence with great caution and a large measure of suspicion.

[133] The use of evidence of an agent has been considered in Dikah, a decision of the Ontario Court of Appeal, where the court found that the financial agreements with police agents do not necessarily make the agent's evidence inadmissible. Agents have been accepted as a valuable tool in fighting crime and while their testimony must be viewed with a certain degree of suspicion, such arrangements do not amount to an abuse of process. As stated by Justice Labrosse:

23 To the extent that agents are paid to gather evidence, their testimony must be viewed by the trier of fact with a certain degree of suspicion. While an expectation of financial advantage may reduce the weight of a witness's testimony, it does not render such evidence inadmissible without more. In my view, Salhany J. was correct in comparing the evidence of a paid agent to the evidence of an accomplice because both may have a motive to lie. An accomplice has at least as great a potential incentive to commit perjury as a paid agent because the accomplice may want to minimize his or her participation in the crime while the agent may want to receive payment.

[134] Ciancio, a decision of this Court, also considered the use of an agent in a Mr. Big operation. The agent, Mr. Moyes, was a career criminal and had been hired to commit murders for Mr. Ciancio. His evidence was considered with some degree of scepticism but eventually relied upon by Justice Boyd, who stated:

[33] Thus, I commence this exercise understanding that Moyes is perhaps one of the worst examples of an unsavoury witness, not simply a career criminal, with a history of violence, but an established historically clever, manipulative liar whose evidence gives rise to the strong risk of being potentially unreliable. In the face of such a risk, as the trier of fact, I am entitled to believe his evidence, even on disputed facts that are not otherwise confirmed, if I am satisfied that, despite his frailties and shortcomings, Moyes is truthful insofar as he implicates Ciancio as the individual who hired him to commit these murders.

[135] In Ciancio Mr. Moyes had already been convicted of murder and was serving life in prison. During the investigation he was under full surveillance and did not have access to Mr. Ciancio outside of the scenarios.

[136] I also note that the existence of a close personal relationship between the agent and the suspect under investigation does not necessarily make the use of an agent an abuse of process. In Perfect the agent was a close friend of the accused and although he did use his relationship with Mr. Perfect and was persistent, the court found that this did not amount to undue exploitation or entrapment.

[137] As indicated, as a person who could be charged as a potential party to the offence of murder in relation to Mr. Preece (based on his own account of what occurred) and someone who is receiving considerable financial remuneration as a paid police agent, the evidence of Mr. DaSilva as uncorroborated by other reliable sources must be viewed with a high degree of caution. In the particular circumstances of this case Mr. DaSilva's participation as a paid agent is a rather high risk strategy on the part of the RCMP and the Crown, but I do not find it to constitute an abuse.

(e) Did the Failure of the RCMP to Audio Record all of the Scenarios in Their Entirety Constitute a Violation of s. 7 of the Charter?

[138] In the present case the defence submits that the failure of the RCMP to record all the scenarios involving Mr. Langlet compromised the integrity of the Mr. Big investigation and deprived Mr. Langlet of evidence that may have assisted him in his defence. As such, the defence submits that this amounted to a violation of Mr. Langlet's s. 7 rights. On this point the defence submitted the closest authority was the Supreme Court of Canada decision in La.

[139] In La evidence that the police collected was subsequently lost. Justice Sopinka stated (at para. 55) that the Crown has a duty to preserve evidence as "a necessary element of an accused's right to make full answer and defence, as well as the right to a fair trial." However in that case no violation of s. 7 was found because the loss of a taped interview did not affect the defence's ability to make a full answer and defence.

[140] In this case the RCMP planning and running the Mr. Big investigation chose to record some parts of scenarios and not to record others. The explanation offered for the non-recording of conversations in restaurants, bars or clubs was that the quality of the recording was so poor because of interruptions and background noise that it was not a preferred method. That being said the first meeting of Mr. Langlet and Mr. DaSilva at Earl's in Scenario 3 was recorded. The non-recording of all interaction between the target and an agent like Mr. DaSilva is a potential source of difficulties for the investigation as it may come down to the word of the accused against that of the agent as to what threats or inducements were or were not offered.

[141] Having carefully considered this issue in light of the structure of the Mr. Big investigation and how it was carried out, and my findings regarding the testimony of Mr. DaSilva and Mr. Langlet, I do not find the non-recording of all scenarios, including all contact between the agent and the accused to be a serious problem. In those rapport building scenarios and the feigned criminal activities, P. was always present except for short periods of time when I am not satisfied anything of concern occurred. As between the non-recorded interaction between Mr. DaSilva and Mr. Langlet, the quality of Mr. Langlet's testimony, in particular its lack of detail and the other problems I have highlighted, militates against the non-recording being a significant problem. However, the fact that all their interaction was not recorded may affect the ultimate weight of the evidence gathered.

[142] For all these reasons, I do not find that this Mr. Big investigation was conducted in a way that shocks the community so as to constitute an abuse.

Should the Evidence be Excluded on the basis that its Prejudicial Effect Exceeds its Probative Value?

[143] The common law exclusion framework requires a balancing of the prejudicial effect against their probative value of the statements by an accused obtained in a Mr. Big investigation.

[144] The foundation of a Mr. Big scenario is tricking the person who is its target into joining a criminal organization and then eliciting a confession with regards to the offence for which the person is a suspect. If the target is indeed interested in joining this organization, as occurred in the present case, this immediately puts their character into a bad light. As part of the feigned criminal organization the target is often involved in criminal activities of varying levels of criminality contrived by the police undercover operators. In the event the target confesses to the offence he or she ultimately comes to trial for, the evidence of the accused's willingness to join the criminal organization and commit various "illegal" acts is typically all admissible before the trier of fact in the context of the confession. Later, at trial

this evidence of the accused's bad character has a prejudicial effect. Bad character evidence can be used at trial to assess the general credibility of the accused as long as it does not lead to propensity reasoning. As stated by Justice Cory in R. v. S.G.G., [1997] 2 S.C.R. 716:

66 The appellant argues that a trier of fact cannot use such evidence to assess the general credibility of the accused by inferring from the bad character of the accused that she is not likely to tell the truth. I cannot accept that contention. Once evidence of bad character is adduced because it is relevant to an issue in the case, it can properly be used in assessing the general credibility of the accused. As long as the evidence is not used for the purpose of finding guilt on the basis of the accused's alleged propensity to commit the crime, the jury can take the evidence into account in assessing the accused's testimonial trustworthiness.

[145] Typically, the approach has been to instruct juries to avoid propensity reasoning in the face of evidence of bad character in the context of Mr. Big confessions, although it is recognized that the admission of such evidence may be highly prejudicial by its very nature.

[146] Thus, the evidence gathered from a Mr. Big operation is highly probative as it can, in some circumstances, lead to an admission by the accused of their involvement in a crime. To ensure that the way this admission is obtained is not an abuse of process, the content of the scenarios leading up to the admission are relevant. The tension between the value of the confession within its context and the danger of admitting bad character evidence has been considered numerous times by the courts.

[147] In R. v. Creek evidence was excluded because it was highly prejudicial and internal inconsistencies demonstrated it was not very probative. Likewise, in R. v. Ciancio the court excluded Ciancio's utterances because they were simply blatant admissions, devoid of detail which were not corroborated by any independent evidence.

[148] By contrast, in R. v. Bonisteel the British Columbia Court of Appeal supported the trial judge conclusions on admissibility of bad character evidence:

32 The trial judge then reviewed the authorities on the admissibility of bad character evidence (at paras. 5-8):

Evidence of extrinsic misconduct by an accused is relevant and has probative value because it gets at the accused's propensity to commit crime, but it is initially inadmissible at the instance of the Crown as a result of a policy decision long embedded in our law; R. v. Scopelliti (1981), 63 C.C.C. (2d) 481 at 493 (Ont. C.A.); Morris v. The Queen, [1983] 2 S.C.R. 190 at 201, 202; R. v. Arcangioli, [1994] 1 S.C.R. 129 at 138-139; R. v. Sims (1994), 87 C.C.C. (3d) 402 at 421 (BCCA).

Evidence of extrinsic misconduct by an accused, of which so-called similar fact evidence is but a subset, is admissible at the instance of the Crown only where the Crown satisfies the judge of the law that it has relevance and probative value beyond only its inevitable tendency to establish a propensity in the accused to commit crime in general, or the type of crime alleged against the accused in the indictment in particular, and the probative value clearly outweighs the potential for prejudicial effect - that phrase being properly understood - if the evidence of extrinsic

misconduct is admitted; R. v. C. (M.H.), [1991] 1 S.C.R. 763 at 771; R. v. B.(F.F.), [1993] 1 S.C.R. 697 at 731; R. v. Klymson (1994), 91 C.C.C. (3d) 161 (BCCA).

The mere fact that evidence proffered by the Crown tends to show the commission of other crimes or other bad acts does not render it inadmissible if it be relevant to an issue properly before the jury. This trite point of law bottoms the decision in a myriad of cases, including Lizotte v. The King (1950), 99 C.C.C. 113 (SCC) at 129; R. v. Ignace and Reynolds, [1977] 3 W.W.R. 434 at 441 to 443; R. v. Boyko (1975), 28 C.C.C. (2d) 193 (BCCA) at 201-202 with respect to Sandra Grendus; R. v. Legebokoff (1981), 64 C.C.C. (2d) 499 (Sask. C.A.) at 502.

Where what confronts the judge of the law is not viewed by the judge of the law as evidence of extrinsic misconduct but of a relevant bit of evidence that has probative value directly in relation to the charge in the indictment - but may have a prejudicial effect in any of a number of ways, including revelation of the commission of crime by the accused, and thus of a propensity to commit crime - the evidence is to be excluded if, after assessing the potential probative value of the evidence, the judge of the law is of the opinion that the potential prejudicial effect outweighs the potential probative value; R. v. Seaboyer, [1991] 2 S.C.R. 577 at 609-611; R. v. Creek, [1998] B.C.J. No. 3189. [Emphasis added in Bonisteel.]

[149] For example, in Ashmore, when considering whether the trial judge had erred in admitting evidence obtained in a Mr. Big operation, Mr. Justice Frankel for the Court of Appeal stated:

[37] Mr. Ashmore accepts that his statements to Steve regarding Mr. Sabine's murder are relevant and probative with respect to both his involvement in that murder and his degree of culpability. He also accepts that those statements are inextricably entwined with the overall context of his relationship with Steve. His position is that since that context shows him to be a person of bad character, the evidence is highly prejudicial and, therefore, should not have been admitted into evidence. I am unable to accept that submission.

[38] This Court has previously upheld the admission of statements made by accused persons during Mr. Big operations. Whether such evidence should be excluded on the basis that its prejudicial effect outweighs its probative value is a discretionary decision for the trial judge which is entitled to considerable deference on appeal: R. v. Redd, 2002 BCCA 325, 165 C.C.C. (3d) 412 at paras. 33-38, leave ref'd, [2003] 1 S.C.R. xvi; R. v. Bonisteel, 2008 BCCA 344, 236 C.C.C. (3d) 170 at paras. 39-50; see also: R. v. Osmar, 2007 ONCA 50, 217 C.C.C. (3d) 174 at paras. 49-51, leave ref'd, [2007] 2 S.C.R. vii.

[39] The trial judge was alive to the fact that the evidence of Mr. Ashmore's relationship with Steve was potentially prejudicial (i.e., capable of being misused by the jury) because it showed him to be a person willing to assist in the commission of crime in exchange for money. However, as the judge noted, the nature of that criminal activity was never made clear and the tasks Mr. Ashmore was asked to perform were relatively benign. Indeed, as Mr. Ashmore's counsel said later in addressing the jury, this Mr. Big operation was "very low-key" compared to some others.

[40] In balancing the probative value and prejudicial effects of the evidence, the trial judge assessed its relevance as "high", and its potential prejudice as "low". In addition, he was of the view that the potential prejudice could be dealt with by giving the jury an appropriate limiting instruction. I see no error in principle in the trial judge's treatment of this question. Further, it has not been shown that the decision to admit the evidence was plainly wrong.

[Emphasis added.]

[150] In the present case, having considered the specific circumstances, I find that the probative value of the evidence objected to by the accused is great and the potential for prejudice - a wrong use of the evidence via a forbidden chain of reasoning - is also significant. This prejudice arises from the evidence of general bad character as well as the more specific evidence of Mr. Langlet agreeing to commit a murder, given the introduction in Scenario 10 of the proposed hit regarding the person causing trouble for Mr. H., and Mr. Langlet's willingness to assist Mr. DaSilva with this fictitious proposed hit for a share of the $25,000.

[151] I have also given careful consideration to whether the evidence obtained in the Mr. Big investigation ought to be admitted except that Scenario 12 ought to be excluded, its prejudicial effect outweighing its probative value. However, I concluded that given the similarity of the confessions by Mr. Langlet in Scenarios 10 and 12 it was not appropriate to exclude Scenario 12. I have found that the overall Mr. Big investigation does not constitute an abuse. The offence being investigated is most serious. The proposed hit that is discussed by P., Mr. Langlet and Mr. DaSilva in Scenario 12 is not offered to Mr. Langlet. It is, in fact, offered to Mr. DaSilva with the suggestion by P. that Mr. Langlet might be a suitable partner. However, what ultimately comes through is that Mr. Langlet appears very keen to be involved and that enthusiasm carries over into his confession with regards to his involvement in the shooting of Mr. Preece. The entire Mr. Big investigation is intertwined as between Mr. DaSilva, Mr. Langlet and P. Mr. DaSilva's evidence as to his own role at the scene of the shooting is also intertwined throughout. In my view, it is for the ultimate trier of fact carefully cautioned by a prophylactic warning tailored to the specifics of this case, preceded by cautionary remarks at the outset and in the form of mid-trial instructions, to assess the ultimate credibility and reliability of the Mr. Big confessions made by Mr. Langlet.

[152] I note in conclusion that in Bonisteel Justice Levine also emphasized that a prophylactic warning is sufficient in cases such as these where the evidence in question is relevant but may lead the finder of fact to make some bad character inferences.

[153] I also note that statements in the Mr. Big scenario that tend to show bad character might be admissible because they are relevant to another issue at trial. For example, the statements might demonstrate whether the accused was a willing participant in the criminal organization or was coerced. For example, in James, an application for judicial interim release pending appeal from a conviction of first degree murder, Justice Donald held:

22 I am unable to appreciate why the relevance of such statements depends on their connection with the crime charged. The point of their admission was not to prove the appellant murdered the victim but to evaluate the reliability of her confession. Was it procured by fear or intimidation, or was it freely given? What was her relationship with the other players in the scenario? Was she terrorized by the prospect of violence within the organization or comfortable with it? These are some of the questions that the impugned statements could assist the jury in answering.

In this case the statements reflected very poorly on Ms. James, including several statements that indicated she had a propensity for shocking violence.

[154] For these reasons I conclude that the evidence obtained by the Mr. Big investigation that targeted Mr. Langlet is admissible on the basis that its probative value exceeds its prejudicial effect.

Conclusion

[155] For these reasons I have concluded that the evidence collected by the RCMP in this Mr. Big investigation regarding Mr. Langlet and his alleged involvement in the shooting death of Mr. Preece is admissible at trial.

[156] I have concluded that the testimony of Mr. Langlet in which he claims he was encouraged by Mr. DaSilva to make false inculpatory statements and confessions to the undercover police operator in the course of the Mr. Big investigation is not sufficiently reliable to support a finding that his s. 7 and/or s. 11(d) Charter rights were violated. I do not find that the admission of the Mr. Big evidence would render the trial unfair on the basis that its prejudicial effect exceeds its probative value. Further, I find that the manner in which the Mr. Big investigation was carried out, including the use of the agent, would not shock the community, and does not constitute an abuse of process.

[157] I accept that in the unique circumstances of this case, given the participation of Mr. DaSilva in the Mr. Big operation as an agent, it was necessary for Mr. Langlet and Mr. DaSilva to be examined in relation to their respective alleged involvements in the Preece shooting in order to provide a context for other circumstances relevant to this voir dire. However, the issue of the ultimate credibility and reliability of the testimony of Mr. DaSilva when he testifies for the Crown at trial, as is likely, and that of Mr. Langlet, in the event that he decides to testify in his own defence, is properly left for the trier of fact. In these reasons I have deliberately abstained from broad-brush findings as to the reliability and credibility of the accused, Mr. Langlet, but rather have focused on what he claimed occurred during the course of the Mr. Big investigation. After very careful consideration of this matter I have concluded that it is properly left to the trier of fact to assess the weight to be attributed to Mr. Langlet's inculpatory statements and confessions in relation the death of Mr. Preece obtained in the Mr. Big investigation, and that careful and strongly worded cautions to the jury as to the inherent risks and weaknesses of such evidence will be sufficient to ensure a

fair trial.

"The Honourable Madam Justice Arnold-Bailey"

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