

CANADA / JUDGMENT

R. v. Lincoln

2009 BCSC 1622

COURT

Supreme Court of British Columbia

DECIDED

19 May 2009

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2009 BCSC 1622 R. v. Lincoln IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Lincoln, 2009 BCSC 1622 Date: 20090519 Docket: 24083 Registry: Vancouver Regina v. Charlie Rae Lincoln Before: The Honourable Mr. Justice Truscott Oral Ruling on Voir Dire Counsel for Crown: B. Cookson and E. Poll Counsel for Defence: M.A. Nathanson and V.M. Desroches Place and Date of Hearing: Vancouver, B.C. May 19, 2009 Place and Date of Judgment: Vancouver, B.C. May 19, 2009

- [1] THE COURT: I am going to give oral reasons here as best I can so that we can move on with this trial.
- [2] R. v. Bonisteel, 2008 BCCA 344, directs at paragraph 45: Where a statement of the accused contains "evidence that may be irrelevant or unnecessarily prejudicial to the accused", "a very heavy duty lies upon a trial judge" to edit out those portions "yet insure that the remaining portions will retain their proper meaning in relation to the whole". ... I, of course, accept that requirement.
- [3] When this matter was first raised by Mr. Nathanson on Friday last, his focus, as I believe most of his focus today continues to be, was with respect to the proposed evidence of Ms. Vickers, that the accused said to her that she was going to kill Madeline. The emphasis being on the use of the word "kill".
- [4] As the submission of the Crown has developed this morning, they have submitted a number of statements with a number of allegations that the accused blamed Madeline and said certain things about Madeline. This was an expansion of the issue that was before me on Friday.
- [5] The evidence, if it is led, of the accused blaming Madeline, making allegations that Madeline came at her with a knife, that any other allegations about Madeline or against Mr. Hall, or anyone else for that matter as having committed or caused this death, if I can put that in more neutral fashion, is perfectly acceptable post-offence conduct that the Crown is entitled to lead to enable an argument that this, by itself, should indicate to the jury that the accused was attempting to evade responsibility and, thus, it was some evidence in which they could infer, as it used to be called, a "consciousness of guilt." I do not have any difficulty with

allowing that evidence.

- [6] I will, however, not allow any witness to say that the accused said she was going to kill anyone. The reason for that is that is far too close to the issue of the state of mind of the accused at the time of the offence. It does not matter, in my view, what kind of caution I give to the jury as to how they should treat that sort of statement, as to whether they should consider that this is just a person in anger alleging that they are going to kill someone with no intention to kill, or whether the jury would then conclude that if she intends to kill Madeline, she must have had the intention to kill her baby. I cannot believe that any caution I give to the jury will be satisfactory to ensure that they do not reach a mistaken conclusion from those statements after the fact with the use of the word "kill".
- [7] I find in the statements that the Crown has put before me in Tab 7, the statement of Pam Reid on the second page: Rae also shared that Madeline was going to pay and she wanted to kill her.
- [8] I do not have a problem with saying that Madeline was going to pay. I rule it inadmissible, that part of the statement, that she wanted to kill her.
- [9] In keeping with the direction of Bonisteel, I consider that part of any statement of the accused, whether it be to Ms. Reid or to anyone else, including Ms. Vickers, that she intended to kill as unnecessarily prejudicial to the accused and it can be excluded as far as I am concerned because it still ensures that the remaining portions will retain their proper meaning in relation to the whole, and that is giving the Crown an opportunity to submit to the jury that the post-offence conduct indicates a guilty mind, if I can put it that way.
- [10] Now, I know in this case, as the way it is shaping up, that intoxication is going to be an issue. Mental illness might be an issue, as well. I do not know that. I will obviously have to charge the jury that even on the matter of post-offence conduct and what it means, it does not necessarily point to murder. It could, with intoxication or mental illness, point to manslaughter or depending upon what the full defence is, point to neither. I have no idea what the total of the defence is but I do rule out statements that "I'm going to kill anyone." It is too prejudicial and overwhelming any probative value to that statement.
- [11] Now, I do not know about Dr. Shearer and I do not remember if that is during the statement to Constable MacDonald --
- [12] MR. NATHANSON: It is, My Lord. In fact, in the transcript which was marked as Exhibit G --
- [13] THE COURT: Yes.
- [14] MR. NATHANSON: -- on the first voir dire --
- [15] THE COURT: Yes.
- [16] MR. NATHANSON: -- that interaction between my client and Dr. Shearer are caught there.

[17] THE COURT: Yes. Well, I am going to rule out that statement to Dr. Shearer. "The Honourable Mr. Justice Truscott"

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Prepared on 29 October 2026 · Esheria