

CANADA / JUDGMENT

R. v. McKay

2016 BCCA 512

COURT

British Columbia Court of Appeal

DECIDED

28 December 2016

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2016 BCCA 512 R. v. McKay COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. McKay, 2016 BCCA 512 Date: 20161228 Docket: CA43232 Between: Regina Appellant And Cameron Tyler Lewis McKay Respondent And Attorney General of British Columbia Intervenor Before: The Honourable Mr. Justice Willcock The Honourable Mr. Justice Goepel The Honourable Madam Justice Fenlon Supplementary Reasons to R. v. McKay, 2016 BCCA 391. Counsel for the Appellant: W.P. Riley, Q.C. and J. Walker Counsel for the Respondent: B. Hickford and R. Neary Counsel for the Intervenor: M. Levitz, Q.C. Place and Date of Hearing: Vancouver, British Columbia June 22, 2016 Place and Date of Judgment: Vancouver, British Columbia September 30, 2016 Date of Supplementary Judgment: December 28, 2016 Supplementary Reasons by: The Honourable Mr. Justice Willcock Concurred in by: The Honourable Mr. Justice Goepel The Honourable Madam Justice Fenlon Supplementary Reasons for Judgment of the Honourable Mr. Justice Willcock:

- [1] For reasons indexed as 2016 BCCA 391 we allowed the Crown appeal from a judicial stay of proceedings and a disclosure order made in these proceedings. Our reasons ought to have dealt with an application brought by the respondent to adduce new or fresh evidence but did not do so. For reasons set out below, that application is dismissed.
- [2] The notice of motion to adduce new or fresh evidence referred to evidence obtained by order of MacKenzie J. in R. v. Ziaee and Matheson, (October 30, 2015) Victoria 164987-1 (B.C.S.C.) and evidence obtained by order of Holmes J. in R. v. Curry, 2015 BCSC 2604. The motion to introduce evidence obtained in the Ziaee matter was withdrawn by the respondent as a result of an order made by the trial judge in oral reasons indexed as 2016 BCSC 1189. The references to that evidence in paras. 38-42 of the respondent's factum were struck by consent.
- [3] The material produced pursuant to the order of Holmes J. in Curry was disclosed to counsel subject to terms that strictly limited its disclosure. Holmes J. granted leave to the respondent to apply to adduce the evidence obtained pursuant to her disclosure order in this Court.

- [4] The motion to introduce the evidence obtained in the Curry matter was opposed by the Crown appellant. In accordance with our practice we heard the submissions in support of the admission and consideration of that evidence in the course of submissions on the merits of the appeal.
- [5] Section 683(1)(d) of the Criminal Code provides:
- (1) For the purposes of an appeal under this Part, the court of appeal may, where it considers it in the interests of justice,
- (d) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness;
- [6] The well-known test set out in *Palmer v. The Queen*, [1980] 1 SCR 759 provides that discretion to permit the introduction of new or fresh evidence should only be exercised where the proposed evidence is relevant in the sense that it bears upon a decisive or potentially decisive issue and it is such that it could reasonably be expected to have affected the result. In my view the evidence the respondent seeks to introduce would not have affected our decision to allow the appeal or the reasons for doing so. "The Honourable Mr. Justice Willcock" I agree: "The Honourable Mr. Justice Goepel" I agree: "The Honourable Madam Justice Fenlon"

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Prepared on 28 October 2026 · Esheria