

CANADA / JUDGMENT

R. v. Monteith

2025 BCSC 318

COURT

Supreme Court of British Columbia

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2025 BCSC 318 R v. Monteith

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R v. Monteith,

2025 BCSC 318

Date: 20250226

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Registry: New Westminster

Rex

v.

Carlos Nathaniel Monteith

Corrected Judgment: The judgment has been redacted for publication purposes on March 20, 2025.

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment re: Voir Dire 10 - Crown's Slang Expert

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Place and Dates of Voir Dire:

New Westminster, B.C.

January 24, February 14, 2025

Place and Date of Ruling given to Parties with Reasons to Follow:

New Westminster, B.C.

February 14, 2025

Place and Date of Judgment:

New Westminster, B.C.

February 26, 2025

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I. Introduction

- [1] The Crown applies to adduce expert opinion evidence of Detective Constable Patrick Duerden, in the field of coded, slang and covert language with respect to illegal activities.
- [2] The accused, Carlos Nathaniel Monteith, is charged with the first-degree murder of Kristijan Coric occurring on or about September 28, 2019 at or near Surrey, BC. A trial with judge and jury commenced February 3, 2025.
- [3] Evidence in relation to the Crown's application was heard on January 24, 2025, prior to the commencement of the trial. Submissions were heard on February 14, 2025, during the trial. On that day I gave oral judgment, allowing the Crown's application, with some restrictions on the evidence to be adduced. I stated that my reasons for judgment would follow. These are those reasons.

II. Background

- [4] As part of its case, the Crown relies on the contents of phone calls made by the accused when he was in custody at North Fraser Pretrial Centre, after November 25, 2019, in relation to another matter (the "jail calls"). The jail calls include some rap song lyrics. The Crown contends that the jail calls include a number of admissions, and also that the jail calls support other aspects of the Crown's case.
- [5] In reasons for judgment in this matter indexed as 2024 BCSC 1445, [the voir dire no. 7 reasons], or [the previous reasons], I ruled that the jail calls including the rap lyrics were admissible, despite their nature as evidence of discreditable conduct on the part of the accused.
- [6] In the voir dire no. 7 reasons, I set out certain background information. For purposes of these reasons, I adopt portions of that background information, as follows:
- [5] The following summary is taken from the Crown's submissions on this application. That summary, with some amendments, is as follows:
1. Shortly after 6:00 pm on September 28, 2019, Kristijan Coric and his girlfriend, Megan Lao, stopped to get gas at the Mobil Gas Station at 18699 Fraser Highway, in Surrey BC (the "Gas Station"). They were driving a black Mercedes G-Wagon (the "G-Wagon"). Ms. Lao was the driver and Mr. Coric was sitting in the front passenger seat.
 2. Surveillance video from the Gas Station showed Ms. Lao exit the driver's side of the G-Wagon, fill it with gas, and then go into the Gas Station shop before returning. As she began to enter the G-Wagon, a person (the "Shooter") dressed in black, wearing a black mask, ran up to the G-Wagon and shot a black handgun at Mr. Coric multiple times as he sat in the passenger seat, before fleeing the scene.
 3. BC Ambulance paramedics attended the Gas Station by 6:19 p.m. and determined that Mr. Coric was dead.
 - 4.
 5. Sometime during October of 2019, the accused went to live with [DD] in New Westminster. He lived with her on and off. According to [DD], when he was at her residence, he was wearing expensive (Louis Vuitton) shoes and had a lot of money on him.
 6. On November 17, 2019, the accused shot [DD]. He was arrested by the New Westminster police outside the Deluxe Hotel in Vancouver on November 23, 2019 in connection with the shooting of [DD].
 - 7.
 8. The accused was charged with the attempted murder of [DD], along with various firearm offences, on November 23, 2019.

9. Following his arrest, the accused was in custody at North Fraser Pretrial Centre ("NFPC").
- 10.
11. Production orders were obtained for jail calls of the accused while he was in custody at NFPC for the shooting of [DD]. During these calls, the accused referred to shooting people in the head, killing someone, and that he had a body. He also said that he has done things for money, and he could get 25 to life. He used slang terms for violence such as having a body, wiping a nose, spanking a man on camera, and having a hammer (firearm). The accused also rapped about being an assassin, killing someone, with hollow points, head shots, and having a black mask (which the Crown submits refers to the killing of Mr. Coric).
- [7] I described the jail calls and rap lyrics in some detail at paras. 29-33 of the previous reasons. I adopt those paragraphs for the purposes of these reasons.
- [8] My analysis with respect to admissibility of the jail calls and the rap lyrics included the following commentary:
- [101] The defence opposes the admission of the jail calls. It argues that the calls are difficult to decipher, or indecipherable, contain significant amounts of slang, and in general, are very difficult to understand. Therefore, the defence questions the probative value of the evidence, while pointing to significant prejudicial effects of the admission of the jail calls. The defence argues that the calls contain inflammatory language that would distract the jury, as well as possibly triggering stereotypical thinking and racial bias against Mr. Monteith as a Black man.
- [102] The defence argues, alternatively, that the jury does not need to hear the audio recordings of the jail calls. The jury could be given transcripts in some cases, or material points could be the subject of admissions.
- [103] I heard significant portions of the audio recordings during this voir dire. They are, as the defence notes, often very difficult to understand. Agreed transcripts are helpful. Interpretation of the slang is necessary. However, although the task may not be easy, and despite the cryptic, coded, guarded, and apparently deliberately vague nature of the statements, and the difficulties associated with deciphering and interpreting their contents, when set against the other evidence in this case, the admissions that the Crown argues for arising from the jail calls are open to the jury to find.
- [104] On the Crown's interpretation (which as I said the jury may choose to accept), the contents of the jail calls are highly probative. I accept the Crown's submission that some of the jail calls may be admissions. They help establish major parts of the Crown's case, such as that Mr. Monteith was motivated to kill for money, and did so, very shortly after being released from parole. As the Crown says, the jail calls can link Mr. Monteith specifically to the Coric killing. The links include Trion Castello's role in the murder of Mr. Coric, as the driver of the Toyota, the association with Mr. Castello, during and after the shooting, and the timing of the killing. The Crown contends that the jail calls establish that Mr. Monteith did the

killing with "Smitty" (Castello), who was behind the wheel, and was paid \$10,000 by him of the \$60,000 that he had. They popped champagne ("Dom") and went shopping the next day.

- [105] In addition, the jail calls link with and give support to other evidence in the case, most notably, the evidence of [DD]. Also, to Mr. Monteith's references to being a hitman in his social media posts, and text messages. The jail calls refer to some specific aspects of the Coric killing, such as rapping about killing someone with hollow points, and running up to someone with a gun (the shooter ran up to Mr. Coric's vehicle before shooting him); having a gun in his hand and having a black mask on, and it being executing time when he has a gun in his hand, and there will be headshots (the shooter of Mr. Coric had a mask on and Mr. Coric was shot in the head). Photographs on Mr. Monteith's social media posts depict a collage of items including Dom Perignon champagne, what may be drugs, items referred to in the Holt Renfrew receipt and in his calls (the designer brand shoes), several large wads of cash, and a handgun, as well as the accused posing with large wads of cash, and several photos of him holding a handgun, in a menacing manner.
- [106] As the defence argues, the calls contain inflammatory language, and may engender negative stereotypical reactions and prejudicial thinking. The calls are laced with profanity, and contain many references apparently glorifying guns, violence, drugs and criminal lifestyles.
- [107] As noted, central issues at trial will be what Mr. Monteith meant by the statements in the jail calls, and whether the references were to real facts, or are merely boasting, bragging, fictional, or fantasies of some sort. Also, if the statements can be accepted as real, whether they relate to the killing of Mr. Coric.
- [108] Although presenting the jail calls via transcripts or admissions can help to ameliorate the inflammatory nature of the calls, and in many cases the Crown is prepared to do so, in my view, in order for the jury to fairly decide these important questions, the jury must hear for itself a substantial portion of the jail call recordings. It is essential that the jury hear and assess the accused's own spoken voice, words, tone, and emotions, in connection with the specific admissions and related statements the Crown relies on. As noted, admissions may consist of demeanour: Schneider at para. 57. The cases recognize that it may not be possible to sanitize the Crown's case: Sipes at para. 366; Bottomley at paras. 40-41.
- [109] As with the evidence of [DD] and [MH], the potential for prejudice of this evidence is substantial, but the probative value of the evidence is so high that it outweighs the potential for prejudice.
- [110] I conclude that the jail calls are admissible, including the audio recordings, to the extent reasonably necessary for the jury to fairly decide the issues.
- [111] I turn to consideration of the rap lyrics, which are embedded in the jail calls.

- [115] In this case, there are many references in the rap lyrics connecting them to the subject matter of the charge, especially in the context of all of the other evidence.
- [116] As with the jail calls and the evidence of [DD], and the digital evidence, the rap lyrics may be seen as admissions that the accused killed someone for money. The recent killing of Mr. Coric and the nature of that killing (as a probable drug gang related execution, and the specifics of the shooting) when combined with the other evidence in the case provides a strong connection between the rap lyrics and the facts of the charge alleged.
- [117] Specifics include references to "Ima wipe his nose"; "Did it for a bag that was needed"; "I got hollow shells in this nine bitch"; "Certified hitter"; "I'm an assassin and I turned him into a Casper"; "Blood money all my racks"; "Christian [Louboutin] with spikes"; "P226 filled with hollow tips"; "slither gang hitter"; "see me in a black mask"; "I got this strap"; "see gun in my hand"; "executing time"; "headshot". (The Crown says "spikes" actually refers to Christian Louboutin brand shoes decorated with spikes, of the type purchased at Holt Renfrew the day after the murder.)
- [118] In my view, the rap lyrics are highly probative, in relation to the same issues as the jail calls generally. As to their potential for prejudice, their content is not too different from that of the other evidence, including the other parts of the jail calls, the [DD] evidence, and the digital evidence. So for example this evidence carries with it similar risks of stereotypical and racially biased thinking as with much of the other evidence. The risk of prejudice is generally similar to that of the other evidence in the case, except that as a form of artistic expression, the rap lyrics carry a particular risk of being misused. The jury must be instructed that forms of artistic expression such as this may be fictional.
- [119] I conclude that the rap lyrics are admissible, with appropriate cautions to the jury.

III. Legal Principles

- [9] In *R. v. Zanolli*, 2023 BCCA 163, the court summarized the principles relating to the admissibility of expert opinion evidence:
- [47] In *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, the Court synthesized the previous case law establishing a two-part structure for the law relating to admissibility of expert opinion evidence. At the first step, the proponent of the evidence must establish the four threshold requirements for admissibility: (1) relevance; (2) necessity; (3) absence of an exclusionary rule; and (4) a properly qualified expert: at paras. 19, 23. The second part of the structure is the discretionary gatekeeping step at which the judge balances the potential risks and benefits of admitting the evidence: at para. 24.
- [10] In the decision of the Ontario Court of Appeal in *R. v. Mills*, 2019 ONCA 940 [Mills] the court summarized applicable legal principles as follows:

- [38] Expert evidence is presumptively inadmissible. As Watt J.A. noted in *R. v. Johnson* (2019), 145 O.R. (3d) 453, 2019 ONCA 145, at para. 48, the expert opinion rule will sometimes exclude relevant and material evidence because "we leave it to the trier of fact, not witnesses, to form opinions, to draw inferences and to reach conclusions". There are some issues, though, upon which special knowledge, skill or expertise is required in [page153] order to draw reliable inferences from the facts. In those situations, qualified experts may be permitted to assist the trier of fact in understanding those facts: *Johnson*, at para. 49; *R. v. Vassel*, [2018] O.J. No. 4512, 2018 ONCA 721, 365 C.C.C. (3d) 45, at para. 86.
- [39] Given the importance of expert evidence, and the critical role that it can play in the litigation process, Cromwell J. explained in *White Burgess*, at para. 32, that experts are expected to be
- (a) impartial, in the sense that they give only an "objective assessment of the questions at hand";
 - (b) independent, in the sense that their opinions result from an exercise of "independent judgment, uninfluenced by who has retained" them or the "outcome of the litigation"; and
 - (c) unbiased, in the sense that they do not "unfairly favour one party's position over another".
- The "acid test" is "whether the expert's opinion would not change regardless of which party retained him or her": *White Burgess*, at para. 32 (citation omitted).
- [40] In *White Burgess*, the court tackled the previously vexing issue about whether alleged bias on the part of the expert should be considered at the admissibility stage, or whether it should remain within the sole domain of the trier of fact. Cromwell J. reviewed the basic two-stage approach to determining the admissibility of expert evidence and concluded that the question of bias must be addressed at both stages of admissibility.
- [41] At the first stage, the court considers: (i) logical relevance; (ii) necessity; (iii) the absence of an exclusionary rule; and (iv) the need for a properly qualified expert: *White Burgess*, at para. 19; *Mohan*, at pp. 20-25 S.C.R.; *R. v. Abbey* (2017), 140 O.R. (3d) 40, [2017] O.J. No. 4083, 2017 ONCA 640 ("*Abbey* (2017)"), at para. 48; and *R. v. Abbey* (2009), 97 O.R. (3d) 330, 2009 ONCA 624 ("*Abbey* (2009)"), at para. 80, leave to appeal refused [2010] S.C.C.A. No. 125.
- [42] An assessment of whether the witness is a properly qualified expert must take into account the proposed witness' ability to understand and to fulfill an expert's duty to the court to provide impartial, independent and unbiased evidence: *Abbey* (2017), at para. 48; *White Burgess*, at para. 53. This is not a high [page154] threshold. Once the expert testifies to this effect, the burden shifts to the party opposing the admission of the evidence to show a "realistic concern" as to why the expert might not comply with that duty: *White Burgess*, at para. 48. If that realistic concern is shown, the burden shifts back to the party proffering the evidence to demonstrate on a balance of probabilities why the expert is a properly qualified expert. Expert evidence should only be excluded in "rare" and "very clear cases", where the proposed expert is found to be unable or unwilling to provide "fair, objective and non-partisan evidence": *White Burgess*, at para. 49; *R. v. Natsis* (2018), 140 O.R. (3d) 721, [2018]

O.J. No. 2383, 2018 ONCA 425, at para. 11.

- [43] As clarified in *White Burgess*, at para. 50, the concept of "apparent bias" is not relevant to the question of whether an expert is biased. Importantly, bias means actual bias, not apparent bias. When considering an expert's interest or relationship with a party to the litigation, the question is not what a "reasonable observer would think" about the expert's independence, but "whether the relationship or interest results in the expert being unable or unwilling to carry out his or her primary duty to the court to provide fair, non-partisan and objective assistance": *White Burgess*, at para. 50.
- [44] At the second stage of the admissibility analysis, the court exercises a residual discretion to exclude the evidence as part of what is often referred to as its gatekeeping function. This calls on the court to consider whether the benefits of admitting the expert evidence outweigh the potential risks: *White Burgess*, at para. 24; *Abbey* (2017), at para. 48; *Mohan*, at p. 21 S.C.R.; *R. v. Shafia*, [2016] O.J. No. 5627, 2016 ONCA 812, 341 C.C.C. (3d) 354, at para. 233, leave to appeal refused [2017] S.C.C.A. No. 17.
- [45] While anything short of an expert's clear unwillingness or inability to meet his or her obligations should not lead to exclusion under the first stage of admissibility, the trial judge must still take into account any concerns regarding the expert's independence and impartiality at the second stage, weighing those concerns in the final equation: *White Burgess*, at para. 54.
- [52] Expert evidence can be provided by a witness who has "acquired special or peculiar knowledge through study or [page156] experience in respect of the matters on which he or she undertakes to testify": *Mohan*, at p. 25 S.C.R. (emphasis added). Thus, a witness can be qualified by the court as an expert whether his or her expertise was acquired through on-the-job experience or through formal education (or a combination thereof). Just because that specialized knowledge is gained on the job, sometimes developed through the "accumulated wisdom" of a group of people, does not, on its own, diminish its value (assuming it otherwise meets the other criteria for admission): *R. v. Dominic*, [2016] A.J. No. 395, 2016 ABCA 114, 616 A.R. 356, at para. 22.
- [54] The fact is that sometimes police officers obtain expertise on certain matters through practical experience gathered in the course of their duties over many years. For instance, expert evidence from police officers is sometimes elicited in drug importation cases to demonstrate, among other things, distribution routes, means of transportation, and methods of concealment: *Sekhon*, at paras 73-74, per LeBel J. (dissenting, but not on this point). See also: Bruce A. MacFarlane, Robert J. Frater & Croft Michaelson, *Drug Offences in Canada*, loose-leaf, 4th ed. (Toronto: Thomson Reuters Canada Ltd., 2015), at p. 17-22.5; *R. v. Van Bree*, [2011] O.J. No. 3259, 2011 ONSC 4273; *R. v. Clouden*, [2012] A.J. No. 583, 2012 ABCA 175.

IV. Analysis

- [11] Mr. Monteith is from Toronto. Detective Constable Duerden is a member of the Toronto police service, and has been so employed since August 2005. Currently, he is assigned to the "Intelligence Services - Gang Analysis Unit". For purposes of this decision, it is understood that Mr. Monteith had relocated to British Columbia quite recently, in the context of the September 28, 2019 homicide. Therefore, the Crown contends, Detective Constable's expertise as to coded, slang and covert language in the context of illegal activities in the city of Toronto is relevant. The defence does not argue otherwise.
- [12] On this voir dire, the Crown advises that there are 15 jail calls pertinent to Detective Constable Duerden's opinions. Of these, of these, five contain some rap lyrics.
- [13] I referred to a number of the slang terms in the voir dire no. 7 reasons.
- [14] The specific terms that Detective Constable Duerden is expected to interpret, as apparently heard in the jail calls, include the following:
1. "hammer" refers to a firearm;
 2. "bands" refers to the money or thousand dollar increments of money;
 3. "racks" or "band" both refer to \$1,000 increments of money;
 4. "plug" is a supplier or person who has access to something;
 5. "snake" means untrustworthy;
 6. "paper" refers to money;
 7. "catch a body" refers to someone being killed;
 8. "wipe a nose" refers to an act of violence, such as shooting, robbery, or a homicide;
 9. "bag" refers to money;
 10. "hollow shells" and "nine" are references to ammunition and firearms;
 11. "nine bitch" can refer to a firearm;
 12. "I have a body" refers to having killed someone;
 13. "touch roads" refers to being released from jail;
 14. "bird" refers to drugs;
 15. "Casper" refers to ghost;
 16. "spank" or "spanking" refers to shooting someone or something;
 17. "hemmed up" refers to being arrested;
 18. "hitter" refers to a shooter, or as a variation of the term "hit man";

19. "stick" refers to a firearm.
- [15] I referred to a number of these words or phrases in the Voir dire no. 7 reasons, such as "catch a body", "wipe the nose", "I turn him into Casper", "bag" or "racks of money" and others.
- [16] It will be the task of the jury to decide what is said in the jail calls, what the meaning of the words was, and, of course, any significance of the contents of the calls.
- [17] I previously commented that interpretation of the slang is necessary, and that the language in the jail calls is "cryptic", "coded", "guarded", and "apparently deliberately vague" (para. 103 of the previous reasons). However, I noted that on the Crown's interpretation, which the jury may choose to accept, the contents of the jail calls are highly probative: para. 104. I ruled that the rap lyrics, contained within the jail calls, are also highly probative, in relation to the same issues as the jail calls generally: para. 118.
- [18] The proposed evidence is logically relevant. The words and phrases that Detective Constable Duerden will interpret form vital aspects of the jail calls, upon which the Crown relies. I have already ruled that the jail calls are highly probative, if the jury accepts the Crown's arguments.
- [19] The words and phrases interpreted by Detective Constable Duerden comprise specialized language of a nature largely peculiar to the Toronto criminal street and drug crime scenes. This evidence is very likely to be outside of the understanding and knowledge of most and probably all members of the jury, hearing this case in New Westminster, British Columbia.
- [20] There is no applicable exclusionary rule.
- [21] I have no doubt about Detective Constable Duerden's ability to fulfil his duty to the Court to provide impartial, independent and unbiased evidence.
- [22] He has had no involvement in investigating the homicide. His involvement has solely been in respect of interpretation of the specialized language found in the jail calls. In the voir dire, and in his written statement of qualifications [his CV], he confirmed his understanding that his obligation to the Court is to provide objective and impartial opinion evidence that is within his area of expertise. His assertion has not been displaced.
- [23] Detective Constable Duerden is amply qualified to give opinion evidence in the area in question. As noted, he has been a police officer with the Toronto police service for more than 19 years. For the first several years of his career he served as a front-line officer in the city of Toronto. From April 2012 to the present, he has been heavily involved in major crimes and criminal gang investigations and suppression activities. This work includes involvement in four specific projects where Detective Constable Duerden spent many hours listening to, reading and interpreting intercepted communications, of a nature relevant to his opinions in this case. These projects included intervals where he spent five or six days per week, and 75% of each day, listening and reviewing intercepted communications. He has taken a

number of police courses relating to street gang investigations, and attended numerous conferences, seminars or webinars related to the same general topic. He has frequently spoken or presented on similar topics. He has previously been qualified as an expert in coded, slang and covert language in the Ontario Court of Justice, in March 2022.

- [24] I turn to the second stage of the admissibility analysis.
- [25] The jury will be unable to properly assess the evidence without the assistance of Detective Constable Duerden's opinions. Therefore, the evidence is necessary, in relation to critical evidence, and as to the main issue in the case. The benefit of admitting the evidence is, obviously, that as a practical matter it is necessary to do so.
- [26] In their submissions on the voir dire, defence counsel contended that the evidence could be prejudicial, in that the evidence of the witness could go beyond merely interpreting the material words and phrases, in context, to explaining to the jury how they should interpret the jail calls, more generally. This is a valid concern. The evidence of the expert must not be allowed to intrude into the province of the jury as the finder of the facts.
- [27] In giving my decision orally on February 14, I directed that the scope of the expert evidence must be limited in the manner discussed by Justice Holmes *R. v. Sanghera*, 2012 BCSC 995 at para. 16. That paragraph is as follows:
- [16] Applying that approach here, I place the following limits on the expert evidence Det. Cst. Sangha may give. He may testify in general about the meaning of terms used in urban street jargon. However, he may not interpret particular passages of intercepted communications where street jargon may have been used, unless it is first established that his more general evidence about the meaning of street jargon terms will not provide the Court with the contemplated assistance without further context. In that event, leave to take him specifically to particular passages is to be sought from the Court.
- [28] I am satisfied that limiting the proposed evidence in this way properly addresses the concerns of the defence. More generally, I am satisfied that the benefits of the evidence outweigh the risks of its admission, and I should not therefore exercise my residual discretion to exclude it.

"Verhoeven J."

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