
CANADA / JUDGMENT

R. v. Newman

2013 BCSC 1241

COURT

Supreme Court of British Columbia

DECIDED

28 January 2013

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2013 BCSC 1241 R. v. Newman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Newman,

2013 BCSC 1241

Date: 20130128

Docket: 25031

Registry: Vancouver

Regina

v.

Michael Bruce Newman

Before: The Honourable Mr. Justice Ehrcke

Oral Ruling re line of questioning by Crown

on cross-examination of Accused

Counsel for the Crown:

G.C. Proulx

E. Leno

Counsel for the Accused:

M. Peters

M. Vis-Dunbar

Place and Date of Trial:

Vancouver, B.C.

October 15-19,22-26,29-31, 2012

November 1,5-9,13,19-23,26-30, 2012

December 3-7,10-12, 2012

January 14-18,21-25,28,2013

Place and Date of Judgment:

Vancouver, B.C.

January 28, 2013

- [1] THE COURT: During the cross-examination of the accused an issue arose as to whether the Crown should be permitted to ask him whether he used a false name when he appeared in Court in Ontario on March 30, 2007, on certain drug charges unrelated to the Vancouver murder charge that is the subject matter of this trial.
- [2] Defence counsel objected to the question on the basis that the question would introduce evidence of bad character when the accused has not put his character in issue.
- [3] The Crown submits that the intent of the question is not to attack the accused's character but rather to challenge his credibility as a witness.
- [4] The defence responds that in challenging the accused's credibility in this manner the evidence would also amount to an improper attack on his character.
- [5] Counsel have referred me to three cases: R. v. P.K. (1980), 52 C.C.C. (2d) 523 (Alta. C.A.); R. v. Dvorak, 2001 BCCA 347; and R. v. Minhas (1986), 29 C.C.C. (3d) 193 (Ont. C.A.). None of those decisions is directly on point, as in all of them the Crown attempted to lead the contested evidence as part of the Crown's case.
- [6] Those decisions make the point that the Crown cannot justify a line of questioning on the basis that it goes to the issue of the accused's credibility if the accused has not put his or her credibility in issue by taking the witness stand.
- [7] Here, the Crown correctly points out that since the accused has chosen to testify he has put himself forward as a person whose testimony is worthy of belief and his credibility has therefore become a live issue in the trial.
- [8] The Crown therefore submits that the proposed line of questioning is proper since it goes to the issue of the accused's credibility as a witness.

- [9] The defence responds that in the particular circumstances here, the attack on the accused's credibility cannot be separated from an attack on his character and the question should, therefore, not be permitted.
- [10] As noted, the decisions cited by counsel do not directly correspond to the circumstances before me. Indeed, in *Dvorak* the Court appeared to be more concerned about the lack of a limiting instruction to the jury on the use of the evidence than on its admissibility.
- [11] The decisions do not deal with the specific issue before me, namely, the scope of permissible cross-examination of the accused.
- [12] Reference may usefully be made to the decision of the Ontario Court of Appeal in *R. v. Davison* (1974), 20 C.C.C. (2d) 424 (Ont. C.A.). There Martin J.A. wrote at pp. 441 to 442:

An accused who gives evidence has a dual character. As an accused he is protected by an underlying policy rule against the introduction of evidence by the prosecution tending to show that he is a person of bad character, subject, of course, to the recognized exceptions to that rule. As a witness, however, his credibility is subject to attack. If the [if the] position of an accused who gives evidence is assimilated in every respect to that of an ordinary witness he is not protected against cross examination with respect to discreditable conduct and associations.

If an accused could in every case be cross examined with a view to showing that he is a professional criminal under the guise of an attack upon his credibility as a witness it would be virtually impossible for him to receive a fair trial on the specific charge upon which he is being tried. It is not realistic to assume that, ordinarily, the jury will be able to limit the effect of such a cross-examination to the issue of credibility in arriving at a verdict.

In my view the policy rule which protects an accused against an attack upon his character lest it divert the jury from the issue which they are called upon to decide, namely, the guilt or innocence of the accused on the specific charge before the Court, is not wholly subordinated to the rule which permits an accused who elects to give evidence to be cross-examined on the issue of his credibility. In this area of the law, as in so many areas, a balance has been struck between competing interests, which endeavours so far as possible to recognize the purpose of both rules and does not give effect to one to the total exclusion of the other.

Consequently, limitations are imposed with respect to the cross-examination of an accused which do not apply in the case of an ordinary witness.

- [13] As indicated by Mr. Justice Martin in the passage above, it is necessary to strike a proper balance between competing interests. Achieving a proper balance will require a consideration of the specific circumstances of each case.
- [14] In the circumstances of the present case, I agree with the defence that the line of questioning proposed by the Crown in relation to the name used by Mr. Newman on his appearance in Court on March 30, 2007 in Ontario on charges unrelated to the present offence should not be permitted.

The Honourable Mr. Justice W.F. Ehrcke

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