

CANADA / JUDGMENT

R. v. Nuttall

2015 BCSC 634

COURT

Supreme Court of British Columbia

DECIDED

4 February 2015

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2015 BCSC 634 R. v. Nuttall IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Nuttall, 2015 BCSC 634 Date: 20150204 Docket: 26392 Registry: Vancouver Regina v. John Stuart Nuttall and Amanda Marie Korody Restriction on Publication: There is a publication ban pursuant to the Court's inherent jurisdiction and s. 648 of the Criminal Code restricting the publication, broadcasting or transmission in any way of any part of a trial heard in the absence of a jury. This publication ban applies until the jury returns with a verdict. This publication ban was lifted on May 30, 2015. Restriction on Publication: Pursuant to ss. 486.5(1) and 486.5(9) of the Criminal Code there shall be no publication, broadcast or transmission in any way of any information that could identify any undercover police officers including any pseudonyms used by the undercover police officers involved in the investigation of the Accused. This publication ban applies until further order of the Court. These reasons for judgment comply with this publication ban. Before: The Honourable Madam Justice Bruce Oral Ruling re Air of Reality to Defence of Duress Counsel for the Crown: Peter A. Eccles Sharon K. Steele Counsel for the Accused, John Stuart Nuttall: Marilyn E. Sandford Alix Tolliday Counsel for the Accused, Amanda Marie Korody: Mark R. Jetté Scott Wright Place and Date of Trial/Hearing: Vancouver, B.C. February 2 and 4, 2015 Place and Date of Judgment: Vancouver, B.C. February 4, 2015

- [1] THE COURT: I think it will be quite problematic for the court to make a ruling that particular defences are not available to the accused when no evidence has yet been led, there has been no preliminary inquiry, there is not even a transcript of a preliminary proceeding in order for me to determine whether there is an air of reality to the defence of duress, whether it is going to be raised or not.
- [2] I accept the defence submission that they are not taking duress off the table, they are not committing themselves to raising that defence, but they are committing themselves to attacking the Crown's case based upon a lack of mens rea and the lack of the specific motive that has been particularized.
- [3] I am not prepared to make a ruling as to what evidence would be admissible to establish lack of mens rea and lack of the particularized motive at this point in the trial when I have heard no evidence and the jury has heard no evidence.

- [4] I am not prepared to say that bad character evidence can be led as a matter of course because it may well be that the defence of duress is addressed.
- [5] I think that the Crown must have been aware, when they were in discussions with the defence, that mens rea and motive would have been an issue - there is either - there is the actus reus and there is the mens rea - would no doubt be something that they would consider.
- [6] Having said that, I think it is important not to prejudice the accused with evidence of bad character that I am going to have to give a lengthy instruction about at the end of the day in my final address, my charge to the jury. It would be an error to do that, and I do not think that a jury, notwithstanding how much they listen to what I say, is going to be able to put aside that much evidence in that broad category and only consider it for a limited purpose.
- [7] Consequently, I am not prepared to allow the Crown to elicit from their witnesses, as part of their case, evidence that is solely bad character evidence, at this point in the trial. You may renew your application to have that evidence heard in re-examination, if the cross-examination of the Crown's witnesses makes it very clear where the defence is going, in terms of its argument on mens rea, motive, and any possible defence such as duress. But at this point in the trial, it would be too premature to make such a ruling and to restrict the defence in their efforts to defend their clients. I am not prepared to make any further ruling.
- [8] In regard to the particular passages that have been raised by Ms. Sandford, I agree with the Crown that this is admissible as part of the other plans that were discussed and goes to the terrorist motive. I do not agree that it is overly prejudicial to Mr. Nuttall within that scheme. Although there are some distinguishing factors, I do not believe that they are significant enough. It may very well be that if this evidence is entered, I will have to make, at the end of the day, an instruction to the jury about the purpose for which they may consider this evidence, but I do not think it is distinguishable from the other types of plans that Mr. Nuttall and Ms. Korody discussed and therefore is relevant to whether they did have the terrorist motive that is defined in the particulars and in the four charges that they are facing.
- [9] So I do not believe that it is required of the Crown to exclude this particular passage from the evidence, but I am not going to permit the Crown to call additional character evidence that they have agreed to take out of the transcripts on some contingency that there may be certain defences pressed to the jury by the defence. That issue, I will leave to the end of the cross-examination, and the Crown may make an application with the jury excluded to call any portion of that evidence, that had been excluded from their direct evidence, in re-examination in order to address that problem. "Bruce J."

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