

CANADA / JUDGMENT

R. v. Pickton

2007 BCSC 2031

COURT

Supreme Court of British Columbia

DECIDED

8 August 2007

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2007 BCSC 2031 R. v. Pickton IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Pickton, 2007 BCSC 2031 Date: 20070808 Docket: X065319 Registry: New Westminster Regina v. Robert William Pickton Publication Restriction Notice: Pursuant to s. 486.4, s. 486.5 and the inherent jurisdiction of the Court, information that may identify certain witnesses and undercover police officers may not be published, broadcast or transmitted in any manner. All other publication ban orders issued during this proceeding have expired. This version of the Reasons for Judgment complies with the existing publication bans. Before: The Honourable Mr. Justice Williams Oral Ruling re Admissibility of Evidence of S/Sgt. Clary Counsel for the Crown: M.S. Petrie, Q.C., S. Sidhu Counsel for the Accused: A.F. Brooks, Q.C., P.C. Ritchie, Q.C., P.M. McGowan Place and Date of Judgment: New Westminster, B.C. August 8, 2007

- [1] THE COURT: The Crown intends to call S/Sgt. Clary as a witness. He was the file coordinator at the time that the investigation first came to focus on Mr. Pickton, and continued in that role until sometime later when he became the primary investigator. He is probably the most knowledgeable police officer with respect to the overall investigation. The Crown proposes to elicit evidence from him concerning a number of topics. The defence is quite staunchly opposed to the Crown being permitted to do so.
- [2] The justification for S/Sgt. Clary being called and the areas to be addressed have been explained as follows: (1) to rebut any assertion that the police investigation was restricted by tunnel vision and, more particularly, to speak to the reasons for the decision to arrest Lynn Ellingsen, Dinah Taylor and Pat Casanova; (2) to testify as to the policies and rationale behind supports put in place respecting witness management; (3) to testify about the notion of immunity and to state that no immunity was offered to any witness in the case; and (4) to testify concerning his knowledge of the involvement of Project Evenhanded personnel with investigators of Project KARE, particularly as that relates to Andrew Bellwood.
- [3] The defence contends that there is no proper basis for this evidence to be called, and that there is a very real concern that his evidence is hearsay; he is essentially going to testify as to what other persons told him and the jury will undoubtedly attribute a truth value to his evidence. That, of course, engages all of the difficulties that underpin the hearsay evidence rule.

- [4] I am going to deal with two of these areas at this time. Two other topics will be ruled upon later, hopefully first thing on August 9. The fifth area dealing with immunity seems not to be of concern and I will proceed on the understanding that there is no need to provide a ruling because the Crown no longer intends to canvass this matter with S/Sgt. Clary.
- [5] I will deal first with witness management. The Crown indicates an intention to ask S/Sgt. Clary certain questions with respect to the policies and practices that are followed respecting the management of and supports for witnesses. I understand the defence to be opposed to this evidence being permitted.
- [6] Three important witnesses in this trial have testified to having received financial and other assistance from the police between the time that they became known to the investigation and the time that they testified at trial. These witnesses are Scott Chubb, Lynn Ellingsen and Andrew Bellwood. It is fair to say that the credibility of each of these witnesses has been vigorously challenged by the defence. Part of the challenge has concerned itself with the benefits that these persons have received from the police. The principal aspect of the issue, it seems to me, is to consider whether the witness is likely to feel that they are beholden to the authorities such that it might be an influence upon their evidence and should be a factor to consider in the assessment of their credibility. That is to a substantial degree a subjective matter. However, in my view, whether the measures that were taken are within the standard operating guidelines of the RCMP or whether they were above or beyond may be of relevance to the jury in assessing the evidence of those particular persons. If it is reasonably open to suggestion that the support provided to these witnesses is a factor that has effectively bought their testimony, then this is evidence that has relevance. In that sense, there is an objective dimension as well. I also consider that there is no hearsay component to the evidence, nor do I see it having a potential prejudicial effect for Mr. Pickton. On that analysis, if there is a reasonable relevance, it appears to me that the evidence should be permitted.
- [7] In keeping with the eminently sensible suggestion that is found in the case of *R. v. Dhillon* (2002), 166 C.C.C. (3d) 262, and noted in *R. v. Mallory*, 2007 ONCA 46, both decisions of the Ontario Court of Appeal, there is much to recommend the practice of a trial judge conducting a voir dire before ruling. In that way the court is better able to assess the probative value and the prejudicial effect of the proposed evidence. The time cost of doing so is modest and it will enable me to better understand the problems that might attend the Crown being permitted to lead the evidence.
- [8] With respect to the matter of Mr. Bellwood and Project KARE, the Crown seeks to have S/Sgt. Clary testify to the effect that the Evenhanded task force assisted Project KARE by facilitating an interview with Mr. Bellwood and that they did not interfere or influence that investigation at any time. In the course of giving his evidence, Mr. Bellwood testified that he had been interviewed by the Project KARE investigators in connection with the murders of a number of women in Alberta. He said that he felt that he had been someone of interest to that matter only because of his involvement in the Pickton investigation. He did not appear to believe or

accept that he had been afforded any advantage in that regard by virtue of his being a witness in the present matter. In my view, there was a very discernible thrust to the defence approach to him in that regard which contained the implication that there were factors that did make him more than simply a nominal person of interest and that the Project Evenhanded officers may have taken an active and arguably improper interest in hastening his being cleared in respect of the Alberta matter. I refer specifically to a question posed on July 19 with respect to whether he had any awareness of Inspector Adam having indicated that he wanted Mr. Bellwood eliminated as a suspect in the Alberta matter. That is certainly capable of the interpretation that the Evenhanded officers actively and possibly improperly exerted influence to extricate him from the investigation. If that were the case, it could reasonably be seen as a factor that would cast doubt upon Mr. Bellwood's credibility and would also discredit the police investigation of Mr. Pickton. In effect, it could be seen to support the notion that the Evenhanded group were out to secure a conviction against Mr. Pickton no matter what that might require.

- [9] I note that I adverted to something like this in the ruling that dealt with the matter when Mr. Bellwood was in the stand. I am of the view that there is a measure of relevance to this line of evidence being led. However, with regard to the hearsay concern that often arises where a police witness testifies concerning investigational knowledge and activity, it may be that S/ Sgt. Clary is not the proper witness to speak to this matter. For that reason, I will hear his evidence on this topic in the voir dire that will proceed this afternoon, and that way I will be able to determine whether there is a hearsay problem and it can be addressed there. It may be that there is another witness that would testify with regard to this matter. That, of course, is for the Crown.
- [10] There remain two other issues: the Crown calling S/Sgt. Clary to speak to investigational tunnel vision generally, and what I call the issue of the adequacy of the investigation of other possible suspects, in particular, Ms. Taylor and Mr. Casanova. In accordance with how matters were left yesterday, I will now hear the Crown with respect to how they say the defence has put investigational tunnel vision into play in this trial. The defence will then reply. I will also hear from counsel with respect to anything they wish to say as to whether the Crown should be permitted to lead evidence, including investigational hearsay, to answer the specific concern that the defence has cast doubt on the adequacy of the investigation of other suspects, namely Ms. Taylor and Mr. Casanova. I will have my ruling to you on those matters as quickly as possible. "The Honourable Mr. Justice Williams"

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