

CANADA / JUDGMENT

R. v. Stearns

2020 BCSC 1735

COURT

Supreme Court of British Columbia

DECIDED

7 October 2020

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2020 BCSC 1735 R. v. Stearns

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Stearns,

2020 BCSC 1735

Date: 20201007

Docket: 179134-2

Registry: Victoria

Regina

v.

Layton Daniel Stearns

Before: The Honourable Mr. Justice Steeves

Oral Ruling on Voir Dire #2

Qualification of Expert Witness Constable Matthew Rowat

Counsel for the Crown:

M. Adams

Counsel for the Accused:

M. Munro

Place and Date of Trial/Hearing:

Victoria, B.C.

October 7, 2020

Place and Date of Judgment:

Victoria, B.C.

October 7, 2020

- [1] THE COURT: The accused here is charged with three counts under the Controlled Drugs and Substances Act, and in particular possession for the purpose of trafficking of fentanyl, heroin, and methamphetamine.
- [2] We are in the Crown's case, and the Crown has called Constable Matthew Rowat, and presented him as an expert to the court. The defence objects to his expertise, and evidence and submissions were heard on this issue as part of a voir dire.
- [3] The Crown relies on R. v. Mohan, [1994] 2 S.C.R. 9. The defence relies on R. v. Liu, 2020 BCCA 235.
- [4] Beginning with the analysis in Mohan, there are issues of relevance and necessity to be considered when deciding whether a proposed expert is qualified as an expert.
- [5] In this case, Constable Rowat has been a peace officer for 11 years. He has worked in general duties as well as in drug investigations. One year of his experience was only in drugs. He has worked in plain clothes surveillance. He testified that he has participated in 200 to 250 drug investigations, and approximately 75 arrests. He has been the handler of about three confidential informants and assisted with two or three others.
- [6] The specific point raised by the challenge by the defence is the consumption rates for fentanyl and methamphetamine. I think the point is an obvious one, consumption rates would go to whether the drugs that are the subject of this trial were for personal use or for trafficking.
- [7] With respect to that issue, consumption rates for fentanyl and methamphetamine, Constable Rowat has his previous experience as a peace officer, he has interviewed one confidential informant on that issue, and he took a course in August 2019 in which that issue is discussed among other issues. In his evidence, he described it as an overview of all street drugs.
- [8] It does seem to me that his proposed evidence would be relevant on the issue of whether the drugs found could be reasonably used for personal use or not.
- [9] As for the issue of necessity, it seems to me that some expert evidence is required on the issue here, that is to say that I do not have the information either in my training or experience to know what is personal consumption and what is not.
- [10] So I conclude that the proposed evidence of Constable Rowat meets the relevance and necessity standards in Mohan.

- [11] Turning to the Liu decision relied on by the defence, in that case a peace officer testified that anyone in a grow operation would be there for a purpose connected to the cultivation of marihuana, that is para. 41.
- [12] The Court of Appeal decided that that was logically relevant, but legally irrelevant, because it was anecdotal evidence that did not advance the ability of the trial judge to properly assess the evidence.
- [13] The decision in R. v. Sekhon, [2014] 1 S.C.R. 272 was relied on. In that case, a peace officer testified that he had not personally encountered a blind courier over the course of his investigations. That was found to be neither relevant nor necessary; that is para. 49.
- [14] In the subject case, the defence says that the information that would be tendered by Constable Rowat is of the same character as in Liu and Sekhon, that is, it is it may be logically relevant but it is legally irrelevant.
- [15] It seems to me that those decisions can be characterized as an indirect discussion of what is called propensity evidence. That is to say, whether a peace officer had encountered a blind courier over the course of his investigations suggests that the only reason the accused would be there is because he is involved in the grow operation.
- [16] It does not speak at all to the individual circumstances of the accused, and to whether there is some non-objectionable reason for attendance at the grow operation.
- [17] It also seems to me that experts routinely rely on anecdotal evidence. Indeed they rely on hearsay evidence in many cases and it is up to the party calling the expert to prove any hearsay evidence directly.
- [18] Overall I conclude that Constable Rowat is qualified as an expert in the areas sought by the Crown, including the consumption of fentanyl and methamphetamine. I say nothing about what weight that would ultimately be attached to his opinions on those issues. That is for consideration along with all the other evidence in the trial.
- [19] For those reasons, the defence objection to Constable Rowat being certified as an expert in the area of consumption of fentanyl and methamphetamine is dismissed.

"J. J. Steeves, J."

The Honourable Mr. Justice Steeves

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