

CANADA / JUDGMENT

R. v. Tait

2020 BCSC 1413

COURT

Supreme Court of British Columbia

DECIDED

21 September 2020

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2020 BCSC 1413 R. v. Tait IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Tait, 2020 BCSC 1413 Date: 20200921 Docket: 25830 Registry: Nelson Between: Regina v. Jason Tait Restriction on Publication: A publication ban has been automatically imposed under s. 648(1) of the Criminal Code restricting the publication, broadcasting or transmission in any way regarding any portion of the trial at which the jury is not present. This publication ban applies until the jury has retired to consider its verdict. Before: The Honourable Madam Justice Murray Reasons for Judgment re: Admissibility of Mr. Kerr's Expert Reports Counsel for the Accused: D.G. Butcher, Q.C. C.A. Fleck Counsel for the Crown: B. McKinley C. Lo Place and Date of Hearing: Nelson, B.C. September 15, 2020 Place and Date of Judgment: Nelson, B.C. September 21, 2020

Introduction

- [1] Cst. Tait, an RCMP officer, is charged with manslaughter with a firearm in connection with the shooting death of Waylon Edey during a traffic stop on January 29, 2015.
- [2] On this voir dire (#5), the Crown seeks to have the reports of Christopher Kerr, now deceased, admitted as evidence in the trial.
- [3] Mr. Kerr was a firearms analyst with the RCMP forensic laboratory. He wrote two reports. The first, dated May 26, 2015, pertains to his examination the deceased's vehicle and the second, dated February 29, 2016, his examination of the firearm and fired bullets. He passed away in May, 2018.
- [4] Counsel agree that they can draft admissions to deal with the second report. Only the first report is in issue. For clarity, the Crown intends to file both the report of Mr. Kerr and his work notes as exhibits at trial.
- [5] The Crown seeks admission of this hearsay evidence on the basis that it is necessary and reliable. There is no issue regarding necessity. The issue is with respect to reliability. Threshold reliability, which is what the court is concerned about on this application, is established when the hearsay "is sufficiently reliable to overcome the dangers arising from the difficulty of testing it": R. v. Khelawon, 2006 SCC 57 at para. 49.

- [6] By way of brief background, Cst. Tait was attempting to stop Mr. Edey, a suspected impaired driver, by partially blocking the roadway. Mr. Edey did not stop. Instead, he veered toward Cst. Tait and continued to drive. Cst. Tait fired four times at Mr. Edey's truck. One of those shots struck Mr. Edey in the head, killing him. Cst. Tait maintains that he shot at the vehicle in self-defence. He relies on ss. 25 and 34 of the Criminal Code. As such, where Cst. Tait was positioned at the time he fired at the vehicle is significant to the defence.
- [7] The purpose of Mr. Kerr's examination of the deceased's vehicle was to locate bullet impact damage to Mr. Edey's vehicle and determine the approximate direction of bullet travel.
- [8] Defence counsel take the position that the report is admissible with one exception-Mr. Kerr's entries regarding the positioning of Cst. Tait when he fired the bullet identified as D1. The defence argues that the entries relating to the position of the shooter are unreliable, as in his report and working notes Mr. Kerr describes the position of the shooter of D1 in four different ways: front of car, front driver side corner, 9 cm. from the driver's side front corner and front drivers quarter of the vehicle corner. The defence submits that only one of the four entries is reliable. That is the note that Mr. Kerr made during his examination of the truck which reads as follows: Assuming normal driving position, shot likely came from Front (sic) of car
- [9] The defence says that this note is reliable for two reasons:
- a) it was made contemporaneous to Mr. Kerr's examination of the vehicle while the other statements were made after; and
 - b) the note is corroborated by Allison Franz, investigator with the IIO, who was present for Mr. Kerr's examination and can testify as to what he said during his examination of D1.
- [10] The Crown takes the position that all four entries meet threshold reliability.
- [11] I disagree with the Crown. In my view, only the original note made during the examination meets threshold reliability. Without Mr. Kerr to clarify and explain, the other statements are ambiguous, open to interpretation and therefore unreliable.
- [12] This ambiguity and the dangers associated with the entries was evidenced when Joseph Prendergast, a firearms analyst and former colleague of Mr. Kerr's who was called by the Crown on the voir dire (and will be called at trial to assist the jury with interpreting Mr. Kerr's report), proffered his opinion regarding what Mr. Kerr likely meant.
- [13] Accordingly, I am satisfied that Mr. Kerr's report and notes relating to the examination of Mr. Edey's truck are admissible at trial with the following exceptions:
- a) The last phrase on page 11 which states "travelling from the front driver side corner of the vehicle";
 - b) Entry for "Y" on page 15 under D1, Location from Datum; and

- c) The last phrase in para. [D] on page 21 which reads "The bullet likely originated from the front drivers quarter of the vehicle." "The Honourable Madam Justice Murray"
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Prepared on 26 October 2026 · Esheria