

Citation: *R. v. Reeves*, 2022 YKTC 51

Date: 20220429  
Docket: 20-00671  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Neal

REGINA

v.

JOHN MICHAEL JOSEPH REEVES

Appearances:  
Lauren Whyte  
Malcolm E.J. Campbell

Counsel for the Crown  
Counsel and Agent for the Defence

**RULING ON APPLICATION**

[1] NEAL T.C.J. (Oral): The application before me is by the Crown to reopen the *voir dire* during the current trial process. The *voir dire* was closed after brief evidence from the Crown. There was no evidence tendered from the accused in that process. The Crown has not, of course, closed its case and we have also not made any inquiries as to whether or not there will be any defence evidence, as that point has not been reached in the trial.

[2] In argument concerning the evidence on the *voir dire*, there was an issue raised by the defence on the close of the *voir dire* as to the validity of one of the tendered certificates by the Crown. An adjournment had been permitted at the request of the

Crown to remit written submissions from Crown and defence. That was, of course, before the submission from the Crown of its application to reopen the *voir dire* to permit the calling of further evidence.

[3] The defence opposes the reopening of the *voir dire*, arguing that there is prejudice to the accused and an inherent unfairness in doing so, as result of four things:

- (i) The Crown now knows the key defence issue and to reopen the *voir dire* would defeat the purpose of the right of silence of the accused;
- (ii) The Crown has already had the document in its possession, although obviously it was not aware of the legal arguments advanced as sort of possible flaws in the document;
- (iii) It is submitted that the Crown should have been prepared to address the argued flaws in the document without the necessity to reopen the *voir dire* and call additional evidence; and
- (iv) The submission is made that, in any event, the evidence noted in the application that may be the subject of additional evidence in a reopened *voir dire* is not relevant in any event to the proceedings.

[4] The key responsibility of the Court here is to ensure a fair hearing for the accused. It is also critical to recognize the stage of the proceedings the trial process has reached. The trial has not been completed, nor has the Crown's case been closed.

We have completed the *voir dire* and, at this point, had been awaiting submissions on the evidence in that *voir dire*.

[5] Having considered all of the submissions before me, I am satisfied that the *voir dire* should be reopened for the limited purpose set out in the Crown application.

[6] I find that the test is set out clearly in the Supreme Court of Canada decision in *R. v. P. (M.B.)*, [1994] 1 SCR 555, at paras. 20 and 21. I find that the Court has confirmed that there is a broad discretion to deal with an application to reopen a *voir dire* and to consider the inherent possible prejudice to the accused and the fundamental fairness process.

[7] I find that it is in the interests of justice to reopen the *voir dire* and permit the Crown to adduce additional evidence in the *voir dire* context.

[8] I find that reopening the *voir dire* will in no sense prejudice the case of the accused nor render the proceedings unfair. In that regard, I note that the accused still maintains a right of full answer and defence that would not, in my judgment, be affected by a reopening of the *voir dire*. There will remain a full opportunity to cross-examine any new witnesses on the *voir dire* and, of course, to call defence evidence if a decision is made to do so.

[9] As well, as it is of course a *voir dire*, there will be a full opportunity to make submissions on the admission of *voir dire* evidence, including any new evidence in the *voir dire*.

[10] The right to call defence evidence in the trial proper and, of course, to make

submissions in the trial proper remains. I have not made any decisions concerning the evidence in the original *voir dire* nor, of course, considered or made decisions on anything referenced in the Crown application.

[11] My order is that the *voir dire* is reopened for further Crown evidence.

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NEAL T.C.J.