SUPREME COURT OF YUKON

Citation: *R v GPD* 2022 YKSC 67

Date: 20221207
S.C. No. 20-01514A
Registry: Whitehorse

BETWEEN

HIS MAJESTY THE KING

AND

G.P.D.

Publication, broadcast, or transmission of any information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.

Before Justice M.D. Gates

Counsel for the Crown — Leo Lane and Kevin Gillespie

Counsel for the accused — Jennifer Cunningham

REASONS FOR DECISION

(Supplementary Reasons for Decision to allow the Crown to introduce narrative evidence)

Introduction

[1] After hearing the evidence of Cst. Jordan Booth in a *voir dire* at the outset of this trial, I ruled that the Crown would be permitted to lead his evidence before the jury. As such, I found that the evidence was admissible as narrative evidence led solely as background information to assist the jury in understanding how the complainant came to be before the Court, and to assist in the jury's overall understanding of the unfolding story. At the time of making the ruling, I indicated that supplementary reasons would be provided, specifically as regards the limits on the use to be made of this evidence and

my intention to give a mid-trial instruction to the jury on this issue. These are my supplementary reasons.

Facts

[2] Cst. Jordan Booth is a member of the RCMP currently stationed in Selkirk, Manitoba. From August 2015 until September 2020, he was a general duty member stationed in Whitehorse, Yukon. In late January 2020, the complainant, P.C.T., attended the RCMP Detachment in Whitehorse. She met with Cst. Booth. She reported a domestic assault by the accused, G.P.D. She provided a written statement to Cst. Booth and, subsequently, an audio recorded statement. Cst. Booth noted a bruise on the top of her left hand, as well as a faint bruise on her forehead in the vicinity of her hairline. Cst. Booth described the visible bruises as "older bruises … dark and faded". He acknowledged during cross-examination that he has no independent recollection of the bruises that he observed and, as such, relied on his contemporaneous notes and the contents of the police report. P.C.T. reported to Cst. Booth that there were other bruises all over her body, but that she was reluctant to show them to a male RCMP officer.

[3] P.C.T. also told Cst. Booth about another incident but advised that she was not comfortable speaking to a male police officer about the matter. Cst. Booth offered no details as to what the complainant disclosed relative to this other incident, but he arranged for P.C.T. to speak to a female RCMP officer that same day. Another officer took photographs of the bruising on P.C.T. A series of 11 photographs will be placed before the jury in this trial through an Agreed Statement of Facts. On the basis of the information provided by P.C.T. that day, an assault charge was commenced against the accused. In his evidence on that *voir dire*, Cst. Booth made no reference to the content

of any of the complainant's statements. Likewise, he offered no evidence as to the complainant's demeanor or emotional state at the time.

[4] The Crown seeks to introduce this evidence for a number of purposes. First, the Crown says that P.C.T. relates the timing of the assault to the date she attended the RCMP detachment. As such, the Crown says that this evidence from Cst. Booth is necessary to establish the approximate date on which at least one of the alleged assaults is said to have taken place. Further, the Crown says that this evidence is properly characterized as narrative evidence that provides context for the unfolding story as to how the current charges came to be before the Court. The Crown maintains that the evidence is not being tendered for the truth of its content and, indeed, that the Crown has carefully avoided eliciting evidence from Cst. Booth as to any details relayed by P.C.T.

[5] The Defence, on the other hand, says that there is no admissible basis upon which this evidence can or should be admitted. The Defence says that the Crown is attempting to adduce narrative evidence to establish the integrity of the police investigation of this matter in circumstances where no challenge to that investigation has been raised. Further, the Defence maintains that the Crown seeks to introduce this evidence in order to enhance the credibility of the complainant in the eyes of the jury through the introduction of a prior consistent statement. The Defence further contends that the evidence is not admissible for any legitimate purpose and, moreover, that it amounts to oath-helping. The Defence relies on the Court of Appeal's decision in *R v Murphy*, 2014 YKCA 7 ("*Murphy*"), as being applicable in this instance.

[6] The Crown rejects the Defence contention that the evidence is inadmissible as oath-helping or to any way bolster the credibility of the complainant. The Crown maintains that the decision of the Court of Appeal of Yukon in *Murphy*, is readily distinguishable from the within matter.

Analysis

[7] It is important to consider the decision in *Murphy* in the context of its somewhat unique facts. *Murphy* involved a charge of second degree murder in which the Crown's case largely turned on the evidence of two witnesses who testified that Murphy admitted to killing the deceased. Murphy gave evidence at trial in which she denied any involvement in the murder. She also denied making admissions to the two witnesses and provided an alibi that was largely corroborated by independent witnesses. At trial, under an expanded notion of narrative evidence, the Crown led details as to the methodology employed by the police in obtaining the two witness statements, the police impressions of the witnesses' statements, the lead investigator's conduct of the overall investigation, and his working theories related to the crime scene and cause of death.

[8] On appeal, the Court of Appeal of Yukon held that all of this evidence was led "…out of a desire to enhance the Crown's case" (at para. 5) and in the absence of any defence challenge to the integrity of the investigation. Indeed, in his closing address to the jury, Crown counsel urged the jury to find that the evidence of one of the two Crown witnesses to be "clearly reliable" on the basis "of the way that the story was told…" (at para. 7). At para. 8, the Court held that "[w]hat the witnesses said to the police, their demeanour, emotional condition and cooperativeness, should have had nothing to do

with their testimony at trial, yet it was used to make the evidence more reliable." Earlier, at para. 6, the Court of Appeal held:

> This is an impermissible strategy. The respondent's stated purpose for calling evidence surrounding the taking of statements from Tanya Murphy and Rae Lynne Gartner was to make their testimony more reliable. The evidence of their initial dealings with the police was not only irrelevant, in the sense that there was no fact in issue, but it violated the rule against oath-helping.

[9] With respect to the second key Crown witness, the Court of Appeal, after describing in some detail the evidence of the interviewing RCMP officer, concluded (at para. 11) that this evidence "would have left the jury with the impression that her statement to the police were probably reliable and likely consistent with her testimony".

[10] The prohibition against oath-helping is well documented in Canadian law. As cited in *Murphy*, the Supreme Court of Canada in *R v Burns*, [1994] 1 SCR 656, cited with approval its earlier decision in *R v Beland*, [1987] 2 SCR 398. At p. 667 in *Burns*, McLachlin J (as she then was) held "[t]he rule against oath-helping holds that evidence adduced solely for the purpose of proving that a witness is truthful is inadmissible."

[11] In my view, the facts in *Murphy* are readily distinguishable from the case at hand. I accept the Crown's contention that this is not a situation where the Crown seeks to establish the integrity of the police investigation in the absence of any challenge to same, or a situation involving evidence led for the purpose of oath-helping. There is nothing in the evidence of Cst. Booth that purports to extol the police investigation and thereby seek to enhance the Crown's case. He gave brief evidence outlining the sequence of events that unfolded upon the complainant's attendance at the RCMP Detachment, specifically the receipt of a complaint of domestic violence, a subsequent

disclosure of a further incident, the taking of statements, and the capture of photographic images of bruising referenced by P.C.T. and at least partially observed by Cst. Booth.

[12] This challenged evidence is nothing more than a very brief summary of what took place. Under the circumstances, I am unable to accede to the Defence contention that the Crown is seeking to establish the integrity of their investigation through this evidence. This is an entirely different situation than the one that confronted the Court of Appeal in *Murphy*.

[13] I am satisfied that this was evidence adduced to provide the trier of fact with the necessary context to understand the sequence of events that led to the charges currently before the court. In *The Law of Evidence*, 8th ed, Irwin Law, 2020, the authors, David M. Paciocco, now Paciocco J.A. of the Ontario Court of Appeal, Palma Paciocco and Lee Stuesser, observe (at p 56):

> The term "narrative" is used inconsistently in the law of evidence. At times it is used to describe information that provides context for material events and enables them to be understood, such as information about the nature of a relationship between parties to the event. It would be best if the term "narrative" were not used in this way. Such evidence is relevant and material, and admissible without the need for this categorization. There are two instances where the "narrative" label is instructive and helpful: (1) as an exception to the rule against prior consistent statements, and (2) to describe irrelevant and immaterial information that is presented or narrated simply to facilitate the presentation of evidence.

[14] On the basis of the approach outlined in *The Law of Evidence*, set out above, it may well be that this proposed evidence is not "narrative" evidence. However, in light of

the fact that both counsel approached this evidence as falling within the description of "narrative" evidence, I propose to address it as such.

[15] The Defence concedes the admissibility of Cst. Booth's evidence regarding his observations of bruising on the complainant's body at the time of her attendance at the police detachment. However, the Defence says that the balance of Cst. Booth's evidence is unnecessary in that the complainant is expected to provide this same evidence in terms of her attendance at the police detachment to register her complaints.

[16] The fact that the complainant may well give evidence regarding the timing and nature of her attendance at the police detachment to report these events does not, in my view, preclude the Crown from leading the evidence of Cst. Booth. The Crown must be afforded some degree of latitude in the determination of the evidence that it seeks to place before the Court in any given matter. As long as the proposed evidence is relevant and otherwise admissible, it is not, generally speaking, open to the Defence to challenge the evidence as "unnecessary". In my view, the evidence is both relevant and otherwise admissible notwithstanding that similar evidence may be forthcoming from another source. I would simply add that it is not clear at this point in the proceedings what the complainant may or may not say in this regard.

[17] I accept the Defence suggestion that this evidence does, at least in part, appear to relate to previous consistent statements made by the complainant. To the extent that this is the case, I agree that other considerations arise, specifically the limits on the Crown's reliance on this evidence and the need for a limiting instruction to the jury. I would pause at this point to observe that whether or not the referenced statements are properly characterized as consistent or inconsistent statements will have to await the

completion of the examination and cross examination of P.C.T. However, assuming that this may well be a situation where we are dealing with previous consistent statements made by the complainant, I would again refer to *The Law of Evidence*, cited above.

[18] At p. 641, the author note:

> It is settled that prior consistent statements can come in as "narrative" or background information, received to permit witnesses to tell their stories naturally and to give the trier of fact the context necessary to understand the admissible evidence. It is important to note, however, that there are two categories of narrative in the prior consistent statement context: "pure narrative" and "narrative as circumstantial evidence". The difference depends upon whether the background information is being offered to support permissible inferences. As will be explained, if a party (typically the Crown) seeks to present the prior consistent statement solely as background information to assist in explaining how the complaint came to be before the court, or to assist in unfolding the story so that admissible evidence is presented coherently, the prior consistent statement is offered as "pure narrative". All that should be related about the prior consistent statement is what is required to achieve those purposes, and the prior consistent statement should not be used as evidence in the case. If the Crown is seeking to have inferences drawn from the narrative evidence, then things are different. The law described below relating to the "narrative as circumstantial evidence" category should be applied.

[19] In this instance, the Crown insists that it seeks the introduction of this evidence as "pure narrative". The Crown says that it is not relying on the prior consistent statements for the truth of their content and will not be asking the jury to draw any inferences from the fact that the prior statements were made. Further, the Crown maintains that it will not ask the jury to rely on the prior consistent statements to support or enhance the reliability for the complainant's anticipated trial testimony.

[20] I am satisfied that the evidence of Cst. Booth falls within the category of "pure narrative" as described above. In my view, the fact that the complainant went to the police station and made complaints of domestic violence that gave rise to the institution of criminal charges is admissible as part of the narrative of the case and to provide the jury with the context in which these charges made their way before the Court. I would allow the admission of this evidence on this limited basis. The Crown may not rely on the fact that the complainant provided a series of statements to the police for any purpose other than as background information. This evidence cannot otherwise be used as evidence in this case, and the Crown may not invite the jury to draw any inferences from this narrative evidence.

[21] Finally, I would note that a mid-trial jury instruction is required to ensure that the jury understands the limited purpose that they may make use of this evidence. I propose to invite counsel to make further submissions before me as to the scope of this mid-trial instruction once the examination and cross-examination of the complainant has been completed.

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GATES J.