REGINA v. SMITH

60 C.C.C. (2d) 327

Quebec Superior Court (Criminal Jurisdiction)
Barrette-Joncas J.

May 25, 1981

Evidence — Confessions and admissions — Edited version of prior statement Accused and police having half-hour conversation — Police officer recording only what in his opinion was relevant to charge — At least some statements by accused concerning relationship with victim and desire to be released by police omitted — Statement inadmissible — Police not required to record conversation verbatim but also not entitled to edit statement.

[R. v. Rosik (1970), 2 C.C.C. (2d) 351, [1971] 2 O.R. 47, 13 C.R.N.S. 129, 13 Crim. L.Q. 224 [affd loc cit., p. 393n C.C.C., p. 89n O.R., [1971] S.C.R. vi, 14 C.R.N.S. 400]; R. v. Bélanger (1978), 40 C.C.C. (2d) 335, *refd to*
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RULING as to the admissibility of evidence on the accused's trial for wounding.

C. Haccoun, for the Crown.

J. Del Vecchio, for accused.

BARRETTE-JONCAS J. :— The accused is charged with wounding with intent to maim Ann Vaccaro, his common law wife, early in the morning of March 27, 1981. A fifth voir dire pertaining to an unsigned declaration was made Friday and the Court rendered its decision immediately, advising the attorneys that reasons would be handed down shortly.

The accused was taken down to police station 31 by Constables Fyfe and Audy and handed over to Sergeant-Detective Therriault and Constable Yves Paiement. Another constable saw him in the cells. There is no evidence of either threats or violence by any policemen involved either then or at any time during the taking of the declaration.

The interrogation which lasted a little over half an hour was held at 3.00 p.m. in a small room not far from the cells at station 31. It was held in English and the Court could appreciate that the interrogatory Sergeant-Detective Claude Faucher, speaks English well, though his written English is not up to par with his spoken English. There has been the usual warning that is written on the declaration formulae of the Montreal Urban Community Police.

Both Faucher and his companion Beaulieu admitted candidly that the declaration that Faucher took down did not contain everything the accused said. Faucher says that he noted only what, in his opinion, was pertinent to the infraction. He did not judge necessary to put down that the accused wanted him to let him go. The officer admitted that he only typed the words that he thought were important. ***[page328]***

For example, he did not write that the accused had told him:

1. that he had just bought a car for Ann Vaccaro;
2. that they were about to get married;
3. that Ann Vaccaro would not lay charges against him;
4. that he wanted him to let him go;
5. that he wanted to go out at least for the week-end;
6. to give him a chance because he had just come out of jail.

Nothing the accused said in the first 10 minutes was taken down and, after that, Faucher wrote a declaration that contained "globally" what was said in the room except of course, the six statements, some of which are very damaging to the accused, some of which are favourable to the accused, but all of which are pertinent to the issue before the Court. It is significant also that the accused refused to sign this declaration.

Mr. Justice Kaufman in his Admissibility of Confessions, 3rd ed. (1979), states at pp. 284-5:

> The Crown's obligation to introduce the good with the bad was established in 1827, when it was held in R. v. Jones that "there is no doubt that if a prosecutor uses the declaration of a prisoner, he must take the whole of it together, and cannot select one part and leave another".

(Emphasis added.)

Later at p. 285 he adds:

> Canadian Courts have, in general, followed the early English jurisprudence, and it is now well settled that
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> > "if a statement is partly inculpatory and partly exculpatory and the Crown elects to adduce evidence of the statement, the whole of the statement must be put in and, in such case, it is received as evidence of its truth as to the exculpatory part as well as the inculpatory part."

(I have added the emphasis in the latter citation which is from MacKay J.A. in R. v. Rosik (1970), 2 C.C.C. (2d) 351 at p. 361, [1971] 2 O.R. 47, 13 C.R.N.S. 129 at p. 137 [affirmed loc. cit., p. 393n C.C.C., p. 89n O.R., [1971] S.C.R. vi].)

The Court cannot accept that police officers edit a declaration by taking down what they think is pertinent and only bring before the Court an edited version of what an accused has said, thereby forcing him to testify as to what was left out. An accused who makes a declaration that the Crown sees fit to bring in evidence is entitled to have it brought in its entirety before the jury, subject obviously to its pertinence. But it is not for police officers to decide what is pertinent and what is not. ***[page329]***

The Court does not go so far as to say that everything should be taken down verbatim though it would be ideal if it were. I fully agree with Mr. Justice Kaufman at p. 139, when he says:

> When questions are asked, it is of the utmost importance to keep a complete record of all questions and answers, and to resist the temptation to reduce to writing only that part which inculpates the accused. Indeed, failure to recollect the complete conversation may jeopardize an otherwise acceptable confession, but once again this is a matter of appreciation for the judge.

As in R v. Bélanger (1978), 40 C.C.C. (2d) 335, I cannot accept this declaration even though I cannot say that the officers were in bad faith: they left out more that was unfavourable to the accused than they omitted which was favourable to him. But this declaration filed is not the accused's, it is Faucher's interpretation of what was important and/or pertinent in the repetitive declaration of the accused who later refused to sign it.

For the above-mentioned reasons the Court declares inadmissible a declaration purportedly made by the accused between 15.00 and 15.36 o'clock on March 27, 1981.

Ruling accordingly.