

## **COURT OF KING'S BENCH OF MANITOBA**

**B E T W E E N:**

HIS MAJESTY THE KING,

- and -

TIMOTHY WILFRED CHRISTOPHER  
LECOY MAPLE,

accused.

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) Daniel P. Chaput  
) for the Crown

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) Ryan T. Amy  
) Caleigh Clawson  
) for the accused

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) JUDGMENT DELIVERED

) ORALLY:

) November 26, 2024

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**LANCHBERY J.**

### **RULING ON VOIR DIRE**

#### **INTRODUCTION**

[1] The Crown seeks to introduce the sworn and videotaped statement of Amanda Bell ("Bell") dated November 25, 2021. Ms. Bell, who was served with a subpoena requiring her to attend this court on Monday, November 18, 2024, failed

to attend. The court issued a witness warrant that day requiring Bell to appear. However, the Winnipeg Police Service was unable to locate Bell as of 2:00 p.m. on November 22, 2024, when the Crown's application proceeded to argument.

[2] The Crown relies upon necessity and the principled exception to the hearsay rule (see *R. v. Bradshaw*, 2017 SCC 35).

## **BACKGROUND**

[3] On November 24, 2021, Angus Maple, nicknamed Tank ("Angus") was killed by a single gunshot wound to the back of his head. The theory of the Crown is Thunder and the accused, Timothy Wilfred Christopher Lecoy Maple, acted in concert with each other, intending to rob Angus. Mr. Angus' death is an unintended consequence of their joint enterprise. The accused, nicknamed "Jimbo", is charged with manslaughter. Ms. Bell referred to the accused as Jimbo in her statement and I refer to the accused as Jimbo throughout this decision.

### ***Position of the Crown***

[4] The Crown submits the issue is whether Bell's statement may be admitted under the *Bradshaw* analysis. The Crown argued the principled exception to the hearsay rule is met based on the testimony of Chelsea Paul, the recording retrieved from the WYZE video and audio-recording device located in Angus Paul's suite at 7 - [REDACTED], Winnipeg, Manitoba, as well as limited evidence contained within Bell's sworn witness statement.

[5] The necessity of entering the statement is satisfied as Bell has failed to appear as a witness even though properly served with a subpoena. The hearsay dangers are overcome by both procedural reliability, substantial reliability, or a blend of the two.

[6] Ms. Bell's statement was given under oath, and she was warned twice of the criminal consequences which may befall her if she lies under oath (sections 137, 139 and 140 of the ***Criminal Code***, R.S.C., 1985, c. C-46).

[7] The evidence Bell provides is that Thunder and Jimbo entered her residence, suite 6 - [REDACTED]. She confirms she was Angus' girlfriend for six months. Mr. Thunder and Jimbo told her they were going upstairs to see Angus. Shortly after, she heard what she believed was a gunshot.

[8] Moments after she heard the gunshot, Bell observed Chelsea Paul, nicknamed "Baby Girl", enter suite 6 with an older woman. She knew Baby Girl as the mother of Thunder's two children. Baby Girl was not in suite 6 at the time she heard the gunshot. After speaking with Tyesha, who was in the bedroom of suite 6 when Bell heard the gunshot, the two of them left and returned to suite 7, the location of the killing. Ms. Bell, herself, goes to suite 7 and holds Tank's hand realizing he is seriously injured. She leaves suite 7 when paramedics and police officers arrive on scene. Ms. Bell is subsequently escorted to police headquarters. During transportation she was advised Tank died.

***Defence Position***

[9] Defence counsel submits I should exclude the statement for:

- (a) There is no necessity to admit Bell's statement the warnings she was given failed in compelling her attendance at court under subpoena, therefore the consequences she faced under sections 137, 139 and 140 of the ***Criminal Code*** were ineffective;
- (b) Inability to cross-examine on whether Bell was intoxicated by alcohol or drugs;
- (c) The Winnipeg Police Service officers' failure to videotape or audiotape all their interactions with Bell prior to a sworn statement being taken; and
- (d) Ms. Bell, at the first review of the ten-photo pack identified photo 6 (Jimbo), and photo 7 without Detective Sergeant Trudeau questioning her as to why she was confused between the two photos.

**ANALYSIS**

[10] Defence counsel's position necessity was not met is rejected by me. The core of the argument is the statement is not reliable. The necessity was established when Bell failed to respond to a subpoena and the police were unable to locate her pursuant to the warrant.

[11] Hearsay evidence is presumptively inadmissible (*Bradshaw*, at paras. 1 and 21).

[12] In *R. v. Charles*, 2024 SCC 29, the court states for the trier of fact the dangers of hearsay evidence (at paras. 43 to 45):

Hearsay evidence is presumptively inadmissible (see, e.g., *Bradshaw*, at paras. 1 and 21). Its presumptive inadmissibility is due to the fact that it is often difficult to assess the truth of a statement made outside the courtroom. In *Bradshaw*, Karakatsanis J. explained that, generally, “hearsay is not taken under oath, the trier of fact cannot observe the declarant’s demeanor as she makes the statement, and hearsay is not tested through cross-examination” (para. 20). However, “[t]he truth-seeking process of a trial is predicated on the presentation of evidence in court” (*Bradshaw*, at para. 19), and “our adversary system is based on the assumption that sources of untrustworthiness or inaccuracy can best be brought to light under the test of cross-examination” (*Khelawon*, at para. 48). It is “mainly because of the inability to put hearsay evidence to that test” that such evidence is presumptively inadmissible (*Khelawon*, at para. 48; see also *Bradshaw*, at para. 1).

The admission of hearsay may therefore “compromise trial fairness and the trial’s truth-seeking process” (*Bradshaw*, at para. 20). It is possible that the statement has been “inaccurately recorded, and the trier of fact cannot easily investigate the declarant’s perception, memory, narration, or sincerity” (*Bradshaw*, at para. 20, citing *Khelawon*, at para. 2). There is thus a risk that such evidence “may be afforded more weight than it deserves” (*Bradshaw*, at para. 21, quoting *Khelawon*, at para. 35).

That being said, in some circumstances, hearsay evidence “presents minimal dangers and its *exclusion*, rather than its admission, would impede accurate fact finding” (*Khelawon*, at para. 2 (emphasis in original), quoted in *Bradshaw*, at para. 22). Over time, the case law therefore developed categorical exceptions to the exclusionary rule and, ultimately, a more flexible approach. Under the principled exception, “hearsay can exceptionally be admitted into evidence when the party tendering it demonstrates that the twin criteria of necessity and threshold reliability are met on a balance of probabilities” (*Bradshaw*, at para. 23, citing *Khelawon*, at para. 47). To establish the threshold reliability of a statement, a party may demonstrate its procedural or substantive reliability.

[13] Also stated in **Charles** (at para. 46):

Procedural reliability is established when there are adequate substitutes for testing the truth and accuracy of the statement, "given that the declarant has not 'state[d] the evidence in court, under oath, and under the scrutiny of contemporaneous cross-examination'" (*Bradshaw*, at para. 28, quoting *Khelawon*, at para. 63).

[14] **Charles** reiterates substitutes for safeguards include recording of the statement, the presence of an oath, and a warning about the consequences of lying (*Bradshaw*, at para. 28, citing **R. v. B. (K.G.)**, 1993 CanLII 116 (SCC), [1993] 1 S.C.R. 740, at pp. 795-96). These three elements are present before me. What is not present is some form of cross-examination (**Charles**, at para. 46).

[15] Defence counsel submits this lack of cross-examination and the manner the statement was taken should exclude the statement from the trial.

[16] Ms. Bell's statement she was neither drunk nor high was never tested. Detective Sergeant Trudeau admitted under cross-examination, determining if someone was impaired by alcohol is easier than to know if someone is impaired by drugs. Without a more thorough cross-examination, the court will never know the level of impairment of Bell.

[17] Defence counsel also noted Bell could not identify Jimbo during her first review of the ten-photo pack (Exhibit No. V102). Ms. Bell's answer was photo numbers 6 or 7. On a closer review of the photographs, Bell chose photo 6. Jimbo was the person represented by photo number 6. The defence submits the absence of cross-examination is crucial given the inconsistency.

[18] I disagree. The ten photos chosen for the photo pack are to be similar in features, hair colour, scars, and skin tone to ensure a fair identification. Asking to see two photos again, at best, is a neutral factor to be considered.

[19] Defence counsel contests the interview of Bell as being deficient and not procedurally reliable. The officers interviewed Bell off camera, absent any note taking. After that was complete, the officers again interviewed Bell and warnings were given by Detective Sergeant Trudeau under sections 137, 139 and 140 of the ***Criminal Code***, which was captured in Detective Sergeant Trudeau's 14 pages of notes. However, this second interview was neither videotaped nor audiotaped. Ms. Bell then provided her evidence for a third time, which was preceded by the proper warnings and being placed under oath, which was video and audiotaped.

[20] In support, the defence argues the directions in ***Charles*** (at paras. 74 and 75):

Nor are the indicia of procedural reliability reassuring. The usual substitutes for the traditional safeguards are absent. There was no recording of the statement or the interview that preceded it (of which the police investigator had only a limited recollection at the *voir dire*). K.A. was not under oath, and although he was read his rights, he was not given a warning by the investigators concerning the need to tell them the truth and the consequences associated with lying (see *B. (K.G.)*, at pp. 795-96). In addition, since K.A. claimed to have no recollection of the events, the defence was deprived of any opportunity to cross-examine him. Yet some form of cross-examination is usually required to establish procedural reliability (*Bradshaw*, at para. 28).

In short, the indicia of reliability — whether substantive reliability, procedural reliability or both — do not support the admissibility of K.A.'s out-of-court statement. It cannot be said that cross-examining K.A. at the time he made his statement to the police would have added little if anything to the process. There are many aspects of the statement that, without cross-examination, remain impossible to verify. For example, there is no way to verify that K.A. was not aware of the issues between the appellant

and the complainant or that the pistols belonged to Fares. There remains a real concern regarding the truthfulness of the statement given the opportunity that K.A. had to minimize his responsibility and to exaggerate the appellant's. The indicia of reliability do not rule out this possibility. Thus, the combined effect of the corroborative evidence and the circumstances does not overcome "the *specific hearsay dangers* raised by the . . . statement" given by K.A., such that its "*only likely explanation* . . . is [K.A.'s] truthfulness about, or the accuracy of, the material aspects of the statement" (*Bradshaw*, at para. 47 (emphasis in original)).

[21] I questioned the Crown; was it appropriate for Detective Sergeant Trudeau to have interviewed Bell on three separate times on November 25, 2021, and on only one of those occasions was Bell placed on video. The cases of ***Bradshaw*** and ***Charles*** remind the trier of fact it is the "particular circumstances" of each case which are important.

[22] The "particular circumstances" of this case are Bell was transported to police headquarters as a witness. At no time did Bell's status change. In the event Bell's status changed from a witness to a person of interest to suspect during the interview, the danger would be obvious. In other circumstances, defence counsel's position may be relevant. The particular circumstances of Bell's statement are distinguishable from the facts in ***Charles***.

[23] Bell provided a witness statement throughout. She was never a person of interest or an accused. Her statement was taken under oath, she was told of the consequences of sections 137, 139 and 140 of the ***Criminal Code*** if she lied in her statement. Her statement was videotaped. I am satisfied the video did provide me an opportunity to observe Bell and is in keeping with the observations of Detective Sergeant Trudeau.



[24] I find there to be necessity and procedural reliability and admit the portions of the statement suggested by Crown counsel based on the “particular circumstances” of this case. Therefore, it is not necessary to assess substantive reliability. Although the Crown requested limited evidence from Bell’s statement be admitted, the balance of the statement where the witness recounts what was said to her by others are not admissible as these are subject to exclusions based on the hearsay rule.

\_\_\_\_\_ J.