

R. v. Steele

Her Majesty the Queen and Richard Steele, Accused

Ontario Superior Court of Justice

Nordheimer J.

Heard: April 24, 2007
Judgment: April 24, 2007
Docket: None given.

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Counsel: Ms K. Hughes, for Crown
S. Pieters, S. Bogle, for Accused

Subject: Criminal; Evidence

Criminal law --- Pre-trial procedure -- Compelling attendance of witnesses -- Summons (subpoena) -- General.

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally -- referred to

Nordheimer J., Orally:

1 Mr. Steele brings this application to quash a subpoena issued to him to attend and give evidence on behalf of the Crown at a preliminary hearing scheduled to commence on May 1st.

2 It is clear to me that Mr. Steele may have material evidence to offer regarding the prosecution. In addition to intercepted communications that are clearly relevant to the prosecution, the police say that Mr. Steele made certain statements to them regarding his observations of certain of the accused shortly before the shooting, that underlies the prosecution, took place. These observations would be relevant and material to the Crown's case. Whether Mr. Steele actually made those statements is a matter that the preliminary hearing judge will have to determine.

3 Mr. Steele also asserts that both his life and the lives of his family members may be in danger if he gives evidence. No evidence was put forward in support of this assertion. Nonetheless, I proceed on the basis that Mr. Steele holds that belief. However, the court of appeal has made it clear in [R. v. Young, \(1999\) 138 CCC \(3d\) 184 \(Ont. C.A.\)](#) that that is not a basis for quashing a subpoena. As the court of appeal observed, an individual in that situation has other avenues available to him or her.

4 I acknowledge that Mr. Steele may be considered by some individuals as a "rat" if he is called as a witness notwithstanding that Mr. Steele has been compelled to attend. The fact that some people hold misguided, indeed I would say perverse, notions of what is

involved in being a citizen of this country and the obligations that come with that status is not a proper basis to quash a subpoena. To accede to that submission would be to undermine the very foundation of our justice system.

5 Finally, Mr. Steele asserts that his rights against self-incrimination should preclude him being subpoenaed to give evidence. The fact is that Mr. Steele has the same protections against self-incrimination that any other individual has and that are enshrined in the *Charter*. Absent evidence, of which there is none in this case, that the sole purpose in subpoenaing Mr. Steele is to obtain evidence in order to incriminate him, that assertion is also not a basis upon which to quash a subpoena - see [British Columbia Securities Commission v. Branch \(1995\), 97 CCC \(3d\) 505 \(SCC\)](#).

6 Simply put there is nothing that invalidates the subpoena that has been issued to Mr. Steele. The application is therefore dismissed.

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