

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Hoyeck*, 2018 NSSC 59

Date: 20180319

Docket: CRH No. 464560

Registry: Halifax

Between:

Her Majesty the Queen

v.

Elie Phillip Hoyeck

VOIR DIRE 1 – DECISION
Admissibility of Statements

Judge: The Honourable Justice James L. Chipman

Heard: March 1 and 2, 2018

Written Decision: March 19, 2018

Counsel: Peter Craig, Q.C. and Alex Keaveny, on behalf of the
Provincial Crown

Elie Phillip Hoyeck, on his own behalf

By the Court:**Introduction:**

[1] By Indictment dated June 16, 2017, Elie Philip Hoyeck stands charged:

- (1) Being a person who undertook, or had the authority, to direct how another person did work or performed a task, fail to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task, and did thereby cause the death of Peter Dwight Kempton through criminal negligence, contrary to Section 220(b) of the Criminal Code.

[2] A jury trial is set for June 4 – 19, 2018.

[3] The Crown seeks rulings with respect to the admissibility of four statements made by Mr. Hoyeck as follows:

Transcript Exhibit No.	Description	Date	Format	Approximate Length
2	Statement to police	2013-09-20	Video	30 m
3	Statement to the Nova Scotia Department of Labour and Advanced Education (“LAE”)	2013-09-20	Audio	40 m
4	On-camera interview with the CBC	2014-09-16	Video	26 m
5	Statement to police (post-arrest)	2015-09-10	Video	1 h, 15 m

[4] Three of the above statements were made to persons in authority (police and LAE) with the fourth provided to CBC news reporter, Elizabeth Chiu. With respect to Mr. Hoyeck’s statements to persons in authority, the Crown must prove beyond a reasonable doubt that the statements were made voluntarily. As for the statement provided to Ms. Chiu, since she is not a person in authority, the statement is presumptively admissible.

Background:

[5] On September 20, 2013, at approximately 11:50 a.m. an industrial accident occurred at Your Mechanic Auto Corner, a workplace located at 850 Main Street,

Dartmouth. Your Mechanic Auto Corner was an auto body shop that provided auto service and repair. Mr. Hoyeck was an owner and the supervisor of the shop. Peter Dwight Kempton was a 58-year-old mechanic employed by Mr. Hoyeck.

[6] On September 20, 2013, Mr. Hoyeck and Joseph Spence, another employee of the shop, went to the rear of the garage property and loaded a minivan on to a trailer. Mr. Hoyeck towed the trailer to the front of the property and backed the trailer into an area next to the garage bays and adjacent to a set of acetylene tanks. Mr. Kempton and Mr. Spence began to strip the van as it was going to be scrapped. While Mr. Kempton worked under the trailer, Mr. Spence began the process of removing the tires and other components from the minivan.

[7] Mr. Kempton removed the catalytic converter using an acetylene torch without incident. As Mr. Kempton was using an acetylene torch to remove the steel straps that attached a gas tank to the minivan, the gas tank ignited with Mr. Kempton trapped under the vehicle.

[8] At the time of the fire Mr. Hoyeck was working in the office of the garage. After hearing Mr. Spence calling for help he went to the minivan shortly after the fire began. After a few minutes Mr. Hoyeck and Mr. Spence were able to remove Mr. Kempton from under the minivan; however, it was too late. The fire caused Mr. Kempton to suffer severe burns to a significant part of his body. Mr. Kempton died of his injuries the next day.

[9] In his post-incident statements Mr. Hoyeck made several admissions relevant to the charge, including admissions as to his relationship as employer and supervisor of Mr. Kempton, directions given to Mr. Spence and Mr. Kempton on the day of the incident, and on the use of an acetylene torch by Mr. Kempton, himself, and others. Additionally, the Crown asserts that many of Mr. Hoyeck's statements were contradictory and otherwise relevant to his credibility. In the result, the Crown wishes to introduce these statements as part of their case.

[10] During the *voir dire* the Crown called police officers and a (former) LAE officer. Mr. Hoyeck briefly cross-examined the witnesses and chose not to call any evidence. Eight exhibits consisting of the three video statements and one audio statement as well as transcripts of the statements and photographs of the scene were entered by consent.

[11] The Crown submitted extensive pre and post-trial briefs and authorities. Mr. Hoyeck did not provide any written material. Both parties presented oral argument at the close of the *voir dire*.

When he provided his statements, Mr. Hoyeck had his cellular phone with him. During all four statements he referred to photographs he took (with his phone) of Mr. Kempton immediately after he was pulled from the fire. The references regarding Mr. Hoyeck photographing Mr. Kempton are found in the transcripts of the statements, as follows:

1. Initial police statement of September 20, 2013 (Exhibit 2), pp. 1, 12, 18 & 19;
2. LAE statement of September 20, 2013 (Exhibit 3), pp. 8, 9, 22, 23, 29, 30, 31, 32, 33, 34 & 48;
3. Ms. Chiu's interview of September 16, 2014 (Exhibit 4), p. 25; and
4. Post-arrest police statement of September 10, 2015 (Exhibit 5), p. 22

[12] In the course of his LAE statement Mr. Hoyeck's phone was seized (and subsequently returned shortly after the statement was completed). During the seizure the police obtained copies of the photographs.

[13] The Crown has gone on record stating that during its case-in-chief it will not introduce the photographs into evidence. In the event Mr. Hoyeck calls evidence he may chose to enter the photographs. In any case, the Crown wishes to reserve the right to introduce the photographs through cross-examination or on rebuttal (if permitted). Should either scenario arise, it will be dealt with by way of a mid-trial *voir dire*.

[14] In addition to voluntariness, the question on this *voir dire* remains as to whether Mr. Hoyeck's after the fact conduct of photographing Mr. Kempton (as referenced through his statements) should be left with the jury and if so, what instruction should be given to the jury.

Mr. Hoyeck's September 20, 2013 Statement to the Police:

[15] The Crown says that they have proven the voluntariness of Mr. Hoyeck's initial police statement beyond a reasonable doubt. They assert that Mr. Hoyeck's will was not overborn by the police conduct and that everything the officers did was in compliance with the guidelines established in *R. v. Oickle*, 2000 SCC 38.

[16] Const. Peter MacIntyre was the first officer on the scene and first witness called on the *voir dire*. With the aid of Exhibit 1 (booklet of 17 photos of Your Mechanic premises taken on the day of the fire), Const. MacIntyre described what he observed. He gave evidence of his interaction with Mr. Hoyeck and recalled what Mr. Hoyeck said to him. He confirmed that he only spoke with Mr. Hoyeck at the scene and provided no promises of favourable treatment. He added that he did not threaten Mr. Hoyeck. Const. MacIntyre said he tasked Const. Ben MacLeod to take Mr. Hoyeck's statement at the Cole Harbour detachment of the RCMP.

[17] Const. MacLeod testified he spoke briefly at the scene with Mr. Hoyeck before asking him to attend at the detachment to provide a statement. He confirmed Mr. Hoyeck drove himself to the detachment. In the time before and after the statement, Const. MacLeod testified he did not promise anything to Mr. Hoyeck or threaten him in anyway. Const. MacLeod said that prior to taking the statement he had little knowledge of the situation other than knowing about the extent of Mr. Kempton's injuries. He testified he did not have reasonable and probable grounds to believe an offence had been committed; his only knowledge was that Mr. Hoyeck owned the business.

[18] Const. MacLeod said that prior to questioning Mr. Hoyeck he told him the police were in the "evidence gathering stage". He described Mr. Hoyeck as "very talkative".

[19] The video (Exhibit 6) shows Mr. Hoyeck and Const. MacLeod together in an interview room. Const. MacLeod is in his police uniform and Mr. Hoyeck is wearing a red t-shirt and gray pants. Mr. Hoyeck's left hand is bandaged and he explains that he burned his hand while pulling Mr. Kempton out of the fire.

[20] The video lasts approximately 30 minutes. Const. MacLeod asks questions in a calm manner. Mr. Hoyeck appears excitable, often gesticulating while speaking.

Mr. Hoyeck's September 20, 2013 Statement to LAE:

[21] As with the initial police statement, the Crown says that they have proven the voluntariness of Mr. Hoyeck's LAE statement beyond a reasonable doubt. They say that Mr. Hoyeck's will was not overborn by the police conduct and that everything the officers did was in compliance with the guidelines established by the Supreme Court of Canada.

[22] Const. Derek MacFarlane testified that he arrived on the scene a short time after Const. MacIntyre got there. Almost immediately upon attending at 850 Main Street, he telephoned the LAE as he classified the matter as an occupational incident. Const. MacFarlane referred to his notes disclosing that LAE's personnel arrived on scene at 1:23 p.m. Shortly thereafter, Const. MacFarlane noted LAE's Sterling Kendall and John Chant commenced a recorded interview of Mr. Hoyeck in Mr. Hoyeck's garage office.

[23] Const. MacFarlane said that he was asked by Corp. Cameron (who had recently arrived on the scene) to seize Mr. Hoyeck's phone. The transcript (Exhibit 3, p. 22 and following) of Mr. Hoyeck's statement to Messrs. Kendall and Chant reflects that this took place, as confirmed by Const. MacFarlane in his *voir dire* testimony.

[24] Const. MacFarlane stated the phone was initially seized as an exhibit (placed in a plastic bag). However, the officer then spoke with Corp. Cameron and Const. MacIntyre and, "... Mr. Hoyeck under his own free will, he wanted to show the contents of the phone so I returned back in the office... and under his own free will Mr. Hoyeck said he'd show the photos, he put in this password and showed us the pictures and emailed to them" (Messrs. Kendall and Chant).

[25] Former LAE employee John Chant was called by the Crown as a witness. Mr. Chant is a compliance officer with the Halifax Regional Municipality. At the time of the incident he was a special investigator with the Occupational Health and Safety Division of the LAE.

[26] Mr. Chant and his (then) colleague, Sterling Kendall, arrived at 850 Main Street during the early afternoon of September 20, 2013. Upon arriving, Mr. Chant was informed by police that Mr. Hoyeck was in police custody, being interviewed at their Cole Harbour detachment. Once Mr. Hoyeck returned to his business, Mr. Chant said that he and Mr. Kendall asked Mr. Hoyeck if he would participate in a "cautioned interview". Mr. Hoyeck agreed and the interview took place in Mr. Hoyeck's office. With the aid of Exhibit 1, Mr. Chant demonstrated through various photographs where on the premises the office was located.

[27] Mr. Chant said Mr. Hoyeck was read his *Charter* rights and given a primary and secondary caution and this is apparent from the transcript (Exhibit 3). Mr. Chant testified that pre and post the audio recorded statement no threats or promises were provided to Mr. Hoyeck.

[28] The forty minute audio (Exhibit 6) was played in Court and I found the transcript of the audio to be accurate. The voices are easy to discern, with officer Kendall doing most of the questioning and Mr. Hoyeck providing responsive answers.

Mr. Hoyeck's September 10, 2015 Statement to the Police:

[29] The Crown says that they have proven the voluntariness of Mr. Hoyeck's post-arrest police statement beyond a reasonable doubt. Once again they assert that Mr. Hoyeck's will was not overborn by the police conduct and that everything the officers did was in compliance with the guidelines in *Oickle*.

[30] Corp. John Berger testified that he arrived at 850 Main Street at 2:45 p.m. on September 20, 2013. He did not have any contact with Mr. Hoyeck at that time. Corp. Berger's involvement with Mr. Hoyeck occurred just under two years later. On September 10, 2015, he and Const. Jody Allison attended at Mr. Hoyeck's place of business in Milford, Nova Scotia. The two officers were in plain clothes, in an unmarked police vehicle. After meeting with Mr. Hoyeck briefly they gave him about 15 minutes to finish up with customers. Corp. Berger then arrested Mr. Hoyeck, reading him his *Charter* rights from the standard police card. Mr. Hoyeck was then placed in the police vehicle and transported to the Halifax Regional Police station at 1975 Gottingen Street.

[31] Corp. Berger testified that the approximately 40 minute drive was uneventful. While seated in the back seat (Corp. Berger could not recall if Mr. Hoyeck was hand-cuffed), Mr. Hoyeck wanted to speak about the incident; however, Corp. Berger and Const. Allison (the front seat passenger) told him to wait until they arrived at the station.

[32] Mr. Hoyeck was placed in one of the two "cubes", or interview rooms at the police station. Corp. Berger monitored the room while Const. Allison interviewed Mr. Hoyeck. Corp. Berger stated no threats or promises were made to Mr. Hoyeck and that he had no interaction with any other officers. After providing his audio recorded statement, it was Corp. Berger's recollection that Mr. Hoyeck was processed and released.

[33] Corp. Joseph "Jody" Allison testified his first involvement in the matter was on April 21, 2015, when he accompanied Corp. Berger on an interview of Mr. Spence.

[34] On September 10, 2015 Corp. Allison started his shift at 6 a.m. by reviewing the police and LAE files (inclusive of the statements) with respect to this matter. At approximately 11:45 he and Corp. Berger arrived at Mr. Hoyeck's work place at 9218 Highway 14, Milford.

[35] After Corp. Berger arrested Mr. Hoyeck for criminal negligence causing death, Corp. Allison conducted a pat-down search of Mr. Hoyeck which simply turned up his cell phone and I.D. Mr. Hoyeck was then placed in the unmarked car on his own, "he was very compliant".

[36] Corp. Allison recalled Mr. Hoyeck was handcuffed (hands in front) and placed in the back seat. He denied making any promises of leniency or threats. The officer said Mr. Hoyeck was driven straight to the police station, arriving there at approximately 12:40 p.m.

[37] Corp. Allison stated that while he was being driven, Mr. Hoyeck, "wanted to get his side out". The officer said that he responded by advising him to wait until they got to the interview room.

[38] During the next part of Corp. Allison's testimony, Exhibit 6, the video of his interview of Mr. Hoyeck was played and the transcript (Exhibit 5) was referenced. From cross-referencing the two, I find that the transcript is accurate.

[39] Corp. Allison testified that Mr. Hoyeck was placed in interview room 146. Mr. Hoyeck is shown there (by split screen – one from a camera located at the top of the room and the other from a camera in a corner to capture the entire room) wearing a blue t-shirt and grey pants. Prior to Corp. Allison entering the room, Mr. Hoyeck is seated in a chair at a table checking and talking on his phone. Corp. Allison enters the room at 12:49 p.m. and sits down (with a pad of paper on the table) across from Mr. Hoyeck. The two stay seated for the most part although Mr. Hoyeck stands (p. 14) to demonstrate part of what he is talking about.

[40] Mr. Hoyeck seems quite calm at first but becomes rather excited as the interview progresses. When Corp. Allison leaves at one point (p. 78 for approximately 4 minutes), Mr. Hoyeck sits calmly checking his phone and then stretches. The entire interview is roughly 1 hour and 15 minutes in duration.

[41] After the interview Corp. Allison stated that he took Mr. Hoyeck to the downstairs booking area where he was fingerprinted and photographed. Corp.

Allison (with Sgt. Charlotte Keddy) then drove Mr. Hoyeck back to his place of business in Milford.

Mr. Hoyeck's September 16, 2014 Statement to the CBC:

[42] The CBC statement is an on-camera interview between Mr. Hoyeck and CBC news reporter Elizabeth Chiu. There is a CBC camera person present filming the interview. The on-camera interview lasts close to a half hour. The transcript (Exhibit 4) accurately reflects the words spoken in the video (Exhibit 7).

Disposition:

[43] After assessing the *voir dire* evidence, Crown briefs, cases and argument, I have no hesitation in admitting all of the statements into evidence. The Crown has met its burden, beyond a reasonable doubt. In all respects the statements were voluntary. Indeed, having observed and listened to Mr. Hoyeck in three of the four statements and listened to him in the LAE statement, I conclude that he was a most willing participant. As Const. MacLeod observed (while in the car with Mr. Hoyeck on the drive from Milford to Halifax), "he seemed to want to tell his side of the story". This description is applicable to all four statements as Mr. Hoyeck is anything but a reluctant talker. Rather, in all four instances he is most anxious to explain the circumstances of the tragedy.

[44] In his statements to persons in authority (police and LAE officers), Mr. Hoyeck is determined to convey the message that Mr. Kempton may have been under the influence of alcohol and that he should have taken better care by not working with an open flame near gasoline.

[45] In his statements to police and the LAE officers there are no threats or promises, oppression, lack of an operating mind or police trickery. Indeed, my only concerns pertain to two aspects of the very early stages of Mr. Hoyeck's initial interview:

1. Mr. Hoyeck made several utterances to Const. MacLeod prior to being cautioned and being advised of his rights to counsel; and
2. The right to counsel provided by Const. MacLeod did not include the "standard" wording concerning the individual's right to consult duty counsel.

[46] Before addressing these concerns, I will discuss the law with respect to Mr. Hoyeck's status at the time of his initial police statement.

Guiding Law Regarding the Status of a Witness

[47] In determining whether someone is a witness, person of interest or suspect, what matters are the totality of the facts, not the understanding or belief of an individual officer. In *R. v. Teng*, 2017 ONSC 567, Justice MacDonnell examined statements made by an accused during initial questioning by police. While the officer who had spoken with the accused did not caution her, he testified that he viewed the (ultimate) accused as a "suspect". In finding the accused was not a suspect at the time the Court held:

34 Constable Kumar was a confused and confusing witness on this issue. It was obvious that he has an imperfect grasp of the meaning in law of the concepts of 'suspect' and 'detention'. Notwithstanding his contradictory and confusing answers I am satisfied that at the time he asked the defendant 'what happened', she was not a suspect in the relevant sense. To paraphrase the test suggested by Justice Watt in *R. v. Worrall*, *supra*, the facts known to Kumar at the time, minutes after he had arrived in the apartment, would not have alerted a reasonably competent investigator to the realistic prospect that the defendant was *culpably* involved in the death of her husband. At that point, Kumar had no idea and could not have had any idea how the deceased had met his death or, if it was not a natural death, who was involved in causing it. The situation may well have merited the adjective 'suspicious', but the fact that a situation is suspicious does not mean that every person present is a suspect.

[emphasis added]

[48] In *R. v. Hutt*, 2013 ONSC 2267 Justice Maranger set out a helpful summary of why a person's status as witness, person of interest, or suspect, is relevant to the issue of voluntariness and particularly when a caution is required:

10 The question of whether or not Mark Hutt was a suspect or a witness when he was interviewed on December 6, 2009 is of concern to the overall analysis of whether the Crown has proven beyond a reasonable doubt that the statement given to Sgt. Hudson on that date was voluntary. In *R v. A.D.* 60 W.C.B. (2d) 8 (Ont. Sup. Ct.), Dambrot J. provides the following analysis respecting this issue:

In considering the admissibility of statements made by persons who are not under arrest and who have not been cautioned about their right to silence, two significant questions must be addressed. The first is: whom, if anyone, other than a person under arrest, should the police caution before

commencing an interview? The second is: what are the consequences of not cautioning a person who should be cautioned? ...

... I note that when the admissibility of the statement is considered, the fundamental concern is whether it was made voluntarily. The mere fact that a warning was given is not necessarily decisive in favour of voluntariness and admissibility but, on the other hand, the absence of a warning does not compel a Court to rule that the statement is not voluntary, and inadmissible.

11 Citing Watt J. in *R v. Worrall*, [2002] O.J. No. 2711, Dambrot J. in *R. v. A.D.* stated at para. 67:

... once a police officer has information that would alert any reasonably competent investigator to the realistic prospect that the death of the deceased may have been associated with an unlawful act committed by a person being questioned by that officer, the officer should tell that person that his or her answers could be used in evidence in a prosecution brought against him, even where that person is neither arrested nor detained. The informational deficit arising from a failure to caution the accused is a consideration when the voluntariness of the statement is considered at trial.

[emphasis added]

[49] In *Worrall*, Justice Watt went on to note at para. 104 that a person will be considered a suspect where the facts known to investigators, “would alert any reasonably competent investigator to the realistic prospect that the person may have been culpably involved in the matter being investigated”.

Const. MacLeod’s Level of Knowledge of Mr. Hoyeck when he Questioned Him

[50] When Const. MacLeod interviewed Mr. Hoyeck, the incident had just happened and the police were at the beginning stages of their investigation. Const. MacLeod was very clear in his evidence that Mr. Hoyeck was not a suspect at the time he questioned him. Although Const. MacLeod provided a slightly belated caution and (an abbreviated) right to counsel, I find on the evidence that he did not have reasonable and probable grounds or even suspicion that Mr. Hoyeck may have committed an offence.

[51] In my view, the information Const. MacLeod had at the time of the police interview would not alert any reasonably competent investigator to the realistic prospect that Mr. Hoyeck (per *Worrall*), “may have been culpably involved in the matter being investigated”. In this regard, Const. MacLeod’s initial description of

what he was doing is instructive as the following examples (p. 3 of the transcript, Exhibit 2) demonstrate:

- he described the incident as an “industrial accident”;
- he explained that the “Labour Board [LAE] was coming out to look at it”;
- he stated that “...until then we just do our job as police officers making sure there was nothing criminal...”

[52] Const. MacLeod’s testimony confirms he had virtually no information prior to the interview. He did not know what had happened, who may have been present, or Mr. Hoyeck’s relationship to Mr. Kempton. The only information Const. MacLeod had was that there had been an incident.

[53] At no point in the police interview was Mr. Hoyeck confronted with any evidence, much less any evidence pointing to his guilt. This stands to reason as Const. MacLeod had no evidence at that point in the investigation.

[54] Nothing Mr. Hoyeck said to Const. MacLeod changed his status on September 20, 2013. Mr. Hoyeck’s interview statements did not provide Const. MacLeod grounds, or otherwise incriminate him in relation to an offence. Mr. Hoyeck was not arrested by Const. MacLeod; he left the Cole Harbour detachment following the interview.

[55] In all of the circumstances, I am satisfied Mr. Hoyeck’s initial statement was voluntary and that it may be placed before the jury as part of the Crown’s case.

The References in the Statements to the Photographs

[56] In all four statements Mr. Hoyeck “offers up” the photographs he took of Mr. Kempton immediately after he was pulled from the fire.

[57] The Crown has indicated how it may enter the photographs at trial. This may or may not occur; a mid-trial *voir dire* will be required should the case unfold in certain ways. As I have already observed, if Mr. Hoyeck calls evidence he may decide to enter the photographs as part of his defence.

[58] The question remains as to whether those portions of the statements where Mr. Hoyeck refers to his cell phone and the photographs should be kept from the

jury. Having considered all of the evidence and submitted materials, I see no basis in law for any redactions of this after the fact conduct by Mr. Hoyeck. In my view, it cannot be said that the prejudicial effect of the references to the photographs outweighs the probative value, and this has not been suggested by the parties. I would add that the Crown's proposed treatment of this evidence (as extensively reviewed by Mr. Craig at pp. 2 – 9 of his brief) remains to be considered. In my view, how the parties may characterize this evidence must be left to be ruled upon after all of the evidence (inclusive of the statements) has gone before the jury.

The Crown's Proposed Redactions to the Post-Arrest Statement

[59] On the topic of redactions, the Crown has proposed that very small portions of Mr. Hoyeck's September 20, 2015 police statement be redacted. These portions take place at the very beginning and end of the video (Exhibit 6) and appear in the transcript (Exhibit 5) at pp. 2 and 95.

[60] During these brief moments, Mr. Hoyeck is alone in the interview room and he says words which I believe to be in the Farsi language. During the *voir dire*, Mr. Hoyeck stated (he was not under oath) that he was swearing to himself. In any case, the Crown states as follows in one of their post-*voir dire* briefs:

Also, highlighted in green, is the brief reference in the transcript of the Accused's 2015 post-arrest statement at the very outset (p. 2) wherein the Accused is noted as speaking in Lebanese. It is the Crown's intention to remove this reference from the transcript, and redact altogether the corresponding audio/video. Also highlighted in green at p. 95 of this transcript for Your Lordship's consideration are the Accused's comments to himself at the conclusion of the interview. It is the Crown's intention to do the same with respect to this passage as well.

[61] Unfortunately, in the copy of the transcript provided with the Crown's brief, there is no green highlighting at p. 95. Further, the transcript at p. 95 does not refer to Mr. Hoyeck speaking in a language other than English. From the video it is apparent Mr. Hoyeck says some non-English words to himself at the end of his statement.

[62] In any event, I concur with the Crown's position (which has not been opposed by Mr. Hoyeck) and hereby order that the post-arrest statement video (Exhibit 6) shall be edited to remove the (very brief) segments at the beginning and end where Mr. Hoyeck speaks in a language other than English. As well, the last two sentences spoken in English by Mr. Hoyeck to himself shall be redacted from

the video and transcript. Correspondingly, the transcript (Exhibit 5, pp. 2 and 95) shall also be excised to remove the references to Mr. Hoyeck speaking to himself.

The CBC Statement

[63] Finally, with respect to Mr. Hoyeck's statement to Ms. Chiu, I accept the proposition advanced by the Crown that the statement is presumptively admissible. Ms. Chiu, a CBC reporter, is obviously not a person in authority (police officer, LAE officer or agent of the police). She sought out Mr. Hoyeck and he voluntarily provided her with a statement in response to her questions about the incident. Portions of Mr. Hoyeck's statement to the CBC were broadcast to the public. In any case, I see no reason, should the Crown wish to introduce the statement as part of their case, that the statement should be kept from the jury. No argument has been advanced that the CBC statement's prejudicial effect outweighs its probative value and I see no basis for such a proposition. The only caveat I place on admitting this statement, is the same one I will place on the other three statements (with the one exception as discussed above regarding the small edits to Mr. Hoyeck's post-arrest statement); it must be played (and received by the jury) in its entirety, with no editing.

[64] Order accordingly.

Chipman, J.