Citation: *R. v. Lilley*, 2025 YKTC 56

Date: 20251114
Docket: 25-00185
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before His Honour Chief Judge Phelps

REX

v.

CHEYENNE LILLEY

Appearances:
Karlena A. Koot — Counsel for the Crown
Mark Chandler — Counsel for the Defence

REASONS FOR JUDGMENT

[1] PHELPS C.J.T.C. (Oral): Cheyenne Lilley proceeded to trial on November 13, 2025, on a single count alleging that:

> On or about the 14th day of March in the year 2025 at the City of Whitehorse in the Yukon Territory, did in committing an assault on Dale Thompson use a weapon to wit: an axe, contrary to Section 276(a) of the *Criminal Code*.

[2] Crown called two civilian witnesses and introduced video that captured the incident. Defence did not present evidence at trial.

[3] The allegations are that Ms. Lilley drove to the Casa Loma Motel, where Dale Thompson, Aaron Bosancich, and an unidentified female were located. They were

standing outside the lounge having a cigarette. Ms. Lilley got out of the truck, approached the female and struck her twice, then turned and struck Mr. Thompson, knocking off his glasses. Ms. Lilley then got back in her truck and drove away. She and Mr. Thompson had been in a brief intimate relationship and had worked together previously.

[4] About 35 minutes later, the same three individuals were standing in the same location having a cigarette when Ms. Lilley returned. She pulled in aggressively and stopped near the three individuals, this time much closer to the three individuals than on the first occasion. She took an axe out of the truck, described as a maul axe, which is a large and heavy axe, approached the group and proceeded to strike the window of the Casa Loma with the axe multiple times. These incidents are both caught on video, although at a distance and without sound.

[5] Dale Thompson was a poor historian and unable to place the month and year of the incident. He said that Ms. Lilley stepped on his glasses, which is not clearly depicted in the video. He said that she picked up his glasses, also not depicted in the video, and that she took them. He told the RCMP that he could not find the glasses after the assault but did not mention her stepping on them or taking them. In his testimony, he said that Ms. Lilley came back with the axe and smashed the window at the Casa Loma. He did not testify to any threatening behaviour with the axe.

[6] Mr. Bosancich testified to the initial assault, indicating that Ms. Lilley struck Mr. Thompson and knocked his glasses off, which he noted were never found. Regarding the second incident, he indicated that she swung the axe at them. On

cross-examination when the video was put to him, he conceded that she did not swing the axe at them. He also indicated on his evidence that all three had been in the lounge consuming alcohol between the incidents.

[7] Both Crown witnesses testified in a credible manner, but they had significant reliability issues. The best evidence before the Court is the video, which has its own limitations. Based on the testimony of the Crown witnesses, viewing the evidence, and noting that Mr. Thompson did not testify to any concern about Ms. Lilley holding the axe, I find that the Crown has failed to prove that Ms. Lilley used the axe in committing an assault on Dale Thompson.

[8] That does not end the matter, as Ms. Lilley clearly struck Mr. Thompson as depicted in the first video. I accept the evidence of Mr. Thompson that she did slap him in the face and knocked off his glasses. The issue raised is whether or not the assault committed 35 minutes prior to the incident involving the axe is a lesser and included offence to the s. 267(a) charged.

[9] The question is whether or not the two incidents 35 minutes apart constitute a single transaction. The decision of *R. v. C.K.* (1999), 127 O.A.C. 261, is helpful to understand the single transaction as set out at paras. 7 through 10:

> 7 A “single transaction” is not synonymous with a single incident, occurrence or offence: R. v. Selles (1997), 34 O.R. (3d) 332 (C.A.). The mere fact that a count in an indictment refers to several acts, each of which may constitute a separate offence, does not necessarily violate the single transaction rule: R. v. Hulan, [1969] 2 O.R. 283 (C.A.). However, even though a count in an indictment might on its face comply with the single transaction rule, evidence led in support of that count may violate the single transaction rule

by disclosing more than one transaction. In such circumstances, it is necessary to determine whether the evidence was admissible in respect of the single transaction that was the subject of that count in the indictment: R. v. Selles, supra.

8 In Hulan, the indictment charged that the appellant had sexual intercourse over a period of several months with a female under the age of fourteen. The evidence established that intercourse occurred on various dates within the period covered by the indictment. This court held that, even though the count covered several incidents during the specified time period, the count related to a single transaction. Kelly J.A., speaking for the court, said, at p. 292:

> ...Each act concerning which evidence was given took place in the home and followed a similar pattern of conduct. The relationship of the complainant and her age enabled the prisoner to exert influence over her so that once having accomplished his original intention to subject her to his indecent acts, subsequent acts were an extension, prolongation or continuation of his original intention.

9 In Selles, this court found that, while the indictment complied with the single transaction requirement on its face, the evidence led in support of the indictment violated the requirement. The accused was charged in a single count indictment with sexual assault causing bodily harm. The evidence adduced disclosed six separate incidents, occurring at different times and involving different persons and places. The court found that the incidents could not be treated as a single transaction. Unlike as in Hulan, there was a lack of continuity in the nature of the sexual offence and the incidents involved different parties on succeeding occasions.

10 In our view, the present case is closer to Hulan than to Selles. Unlike Selles, each count in the indictment concerned the same parties. The fact that each count concerned more than one incident does not constitute a violation of the single transaction rule. The incidents may be regarded as constituting an ongoing transaction, and subsequent acts as an extension or continuation of the original incident. The indictment does not offend the single transaction rule.

[10] The case of *R. v. Rocchetta*, 2016 ONCA 577, is also of assistance. Although the events were very close in time, as set out in para. 45, the facts are summarized as follows:

> Looking at the events from a common sense perspective, it is artificial to treat the two assaults as discrete transactions. Both are part of a single narrative. Mr. Doan was the victim of both assaults. Both assaults occurred in the context of rapidly unfolding hostilities. Those hostilities began with the exchange between Mr. Doan and Ryan in the cottage, escalated to the confrontation on the deck which resulted in the blow to Mr. Gauthier and moved quickly to the pursuit of Mr. Doan across the lawn by various people, including Ryan and Jordan. The pursuit ended when Jordan knocked Mr. Doan to the ground allowing Ryan and the others in pursuit to catch up and assault Mr. Doan. The blows struck by Jordan and Ryan were closely connected in time. Jordan's blow to Mr. Doan preceded Ryan's by a matter of several seconds.

[11] *Rocchetta* sets out the single transaction rule in the paragraphs immediately prior to para. 45, starting at para. 43 as follows:

> 43 The question becomes — did Jordan's punch to Mr. Doan's eye and Ryan's kicking and hitting of Mr. Doan occur within the same transaction? A single transaction can encompass several acts, each of which may have been chargeable as a discrete offence: *R. v. Selles,*16 C.C.C. (3d) 435, at para. 17 (Ont. C.A.); *R. v. M. (G.L.)* (1999), 138 C.C.C. (3d) 383, at paras. 9-14 (B.C.C.A.). The distinction between the offence charged, that is the act to be proved, and the transaction within which the offence occurred, is made clear in the language of s. 581(3) of the *Criminal Code*, the fundamental criminal law rule of pleading:
>
> > A count shall contain sufficient detail of the circumstances of the alleged offence to give to the accused <u>reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to</u>, but otherwise the absence or

> insufficiency of detail does not vitiate the count. (Emphasis added.)
>
> 44 A series of acts that are sufficiently connected will make up a single transaction for the purposes of s. 581(1). The sufficiency of the connection will depend on the circumstances. The requisite connection may be established by the proximity in time or place of the acts, the identity of the parties to the acts, the similarities of the conduct involved in the acts, the ongoing relationship of the parties to the acts, or other factors tending to show that each act is properly viewed as part of the larger whole: see *R. v. Hulan* (1969), 2 O.R. 283 (C.A.).

[12] After going through its analysis, the Court also addresses the issue of prejudice at para. 54:

> There is no possibility of any prejudice here. Ryan had full disclosure of the Crown's case. He knew that it was alleged he kicked and punched Mr. Doan as he lay on the ground. There is no suggestion that Ryan and his counsel did not appreciate the nature of the evidence or the essential elements of the charge. It was Ryan's testimony that he did not kick or punch Mr. Doan at any time. It is impossible to imagine how the case and more specifically, Ryan's defence, would have evolved any differently had the Crown laid a separate assault charge based on the allegation that Ryan kicked and punched Mr. Doan. ...

[13] Defence counsel referred to the *R. v. Taylor* (1991), 66 C.C.C. (3d) 262 (N.S.C.A.), reference in the *Rocchetta* decision, which starts at para. 48. That decision, from the Nova Scotia Court of Appeal, was from 1991. The *Rocchetta* decision, from the Ontario Court of Appeal, is from 2016. And after referencing *Taylor*, they stated the following at para. 50:

> With respect, the majority's approach fails to distinguish between the acts to be proved to establish the offence as charged and the transaction referred to in the charge. The

> latter describes an event or a series of events. The former refers to the essential element of the charge. Proof of bodily harm was an essential element of the full offence charged in *Taylor*. The allegation of bodily harm did not, however, necessarily limit the scope of the transaction referred to in the allegation to the assault that caused the bodily harm. The scope of the charge depended on the wording of the charge and the evidence describing the circumstances of the alleged offence. A single transaction alleging an assault causing bodily harm can encompass the *actus reus* of more than one assault. Liability for the included offence of common assault is established if the Crown proves a common assault that occurred within the terms of the transaction referred to in the charge. We decline to apply the majority judgment in *Taylor*.

[14] I accept the approach set out by the Ontario Court of Appeal in *Rocchetta*. In the case that is before the Court, there are many similarities that would give rise to a conclusion that it was a single transaction. Those include the manner of the approach, with Ms. Lilley approaching the Casa Loma Motel in her truck on both occasions, immediately getting out, and approaching the same three individuals that were outside of the Casa Loma Motel. The level of aggression by Ms. Lilley was high in both approaches, including the driving pattern, the individuals involved, immediately going right up to them in the first incidence and committing an assault, and then immediately going up to them with the axe and committing what ended up being the mischief.

[15] I note that Mr. Bosancich had reliability concerns with respect to the sequence of events, but he was clear in his testimony that he was quite intimidated by the sequence of events that started with the aggressive driving of Ms. Lilley and ended up with her in their proximity with the axe. I accept that he was frightened by the sequence of events and was not merely standing by and observing somebody committing a mischief. I

certainly cannot accept that it is simply a coincidence that they were there at the same place and similar in time when she decided to commit a mischief.

[16] As a result of the similarities, the sequence of events and the lack of a break other than Ms. Lilley driving away and then driving back to the scene, I find that the two incidents that occurred in less than 35 minutes to constitute a single transaction. Relying on the evidence of Mr. Thompson and the video evidence that has been entered as an exhibit in this proceeding, I find Ms. Lilley not guilty on Count #1 of the indictment, alleging an offence contrary to s. 267(a) of the *Criminal Code*, but guilty to the included offence of s. 266 of the *Criminal Code* for simple assault against Dale Thompson.

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PHELPS C.J.T.C.