

Citation: *R. v. James*, 2025 YKTC 18

Date: 20250502
Docket: 24-00185
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before His Honour Judge Gill

REX

v.

KASHIES CHARLES ANDREW JAMES

Pursuant to s. 278.9 (1) of the *Criminal Code*: No person shall publish in any document, or broadcast or transmit in any way, any of the following: (a) the contents of an application made under section 278.3; (b) any evidence taken, information given, or submissions made at a hearing under subsection 278.4(1) or 278.6(2);

Publication, broadcast or transmission of any information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.

Proceeding held *in Camera* pursuant to s. 278.4 of the *Criminal Code*.

Appearances:

William McDiarmid

Counsel for the Crown

Lynn MacDiarmid (appearing for counsel of record, Kevin Drolet)

Counsel for the Defence

William Lu

Counsel for the Royal Canadian Mounted Police

Susan Bogle

Counsel for the Complainant

RULING ON APPLICATION

[1] The applicant, Kashies James ("the accused", or "the applicant") is charged on two counts with committing a sexual assault, and with touching for a sexual purpose, the named complainant, a person under 16 years of age, on or about June 25, 2023.

[2] The accused has made an application (“*Mills* application”) pursuant to sections 278.1 to 278.91 of the *Criminal Code* (“the *Code*”) for production of certain RCMP occurrence reports and related investigative files, (collectively, “the records”).

[3] The applicant seeks production on the basis that the charges faced by him, and his defence to them, raise issues going directly to the credibility of the complainant, in other words to whether the complainant is telling the truth, and also to the issue of whether the applicant knew the complainant was under 16 years of age, or was wilfully blind to that.

[4] The manner in which these records came to the attention of the applicant is that on April 9, 2025, the Crown counsel having conduct of this file wrote to counsel for the applicant informing him that the public prosecution service of Canada was in possession of RCMP records relating to the complainant that pertained to a criminal investigation unrelated to the present case. In that message, Crown further advised the defence in the following terms:

While I cannot disclose the contents of the records, the Crown’s position is that they would meet the test for production for review under s. 278.5. There is nothing in the material that the Crown would use in its case against Mr. James, but there is information which, if found admissible, could impact the assessment of the complainant’s credibility.

[5] A *Mills* application occurs in two stages. At stage 1, the records are produced for review by the court if the court is satisfied that they are likely relevant to an issue at trial, or the competence of a witness to testify, and that disclosure to the court is necessary in the interests of justice.

[6] At stage 2, the court, having reviewed the records, may order disclosure to the accused provided the court is satisfied they are likely relevant, and that disclosure is in the interests of justice.

[7] In the present case, all of the parties consented to bypassing Stage 1 and proceeding directly to the stage 2 portion of the application. This is because the Court already viewed the same records in a prior application by a different accused, charged in different proceedings.

[8] Although the prior application was also grounded in assertions of likely relevance going to the issue of the credibility and knowledge of age of the complainant, the outcome of the prior application by the other applicant will not automatically determine the outcome of this application. This is because each application must be considered on its own merits, having regard to the relevant codified provisions.

[9] That said, some of the similarity in analysis underlying the nexus between the sought records and the identified issues, regarding knowledge of age and credibility, may be pertinent.

[10] The allegations underlying the present charges are that on the date in question, the complainant, a person then under the age of 16 years, was followed on foot by the accused and then grabbed by him and forced to have sexual intercourse. This is alleged to have occurred in the early afternoon on a trail by the Yukon River.

[11] DNA belonging to the applicant is alleged to have been located on the complainant immediately following the complaint. While this constitutes potentially

strong evidence connecting the applicant to the commission of this offence, defence points out that the complainant's credibility is nonetheless relevant, both in terms of what exactly happened between them, and also in terms of how it may bear on whether the Crown is able to prove that the applicant knew, or was wilfully blind to, the age of the applicant being under the age of 16 years.

[12] I have considered the relevant case authorities as provided, and as they bear upon applications of this nature, in particular as they relate to societal interests, the interests of the accused, the interests of complainants (particularly young, marginalized women), and the discretionary balancing under which even relevant records may at times be determined not in the interests of justice to disclose.

[13] Having already viewed the records, I find that some, but not all of the sought records meet the test for production. This is because the nature of those records directly put in question representations the complainant has made about her age. The records document those representations, as made to a specific male individual with whom contact had been made via a social media platform, as well as representations made directly to him in a meeting with him that followed shortly thereafter. The representations about her age, made on the social media platform, would be presumably accessible to any member of the public accessing that platform.

[14] Given the foregoing, I find the complainant to have virtually no privacy interest in those representations, nor in the records relating to them. What she represented to the male in the sought records, as well as to the world at large regarding her age is entirely relevant to the issue of this applicant's knowledge of her age on the date in question.

[15] The records also document the complainant's communications with the said male about her represented age compared to her actual age, and what she would do about it. Those communications were the subject of a police investigation of the complainant. While no charges were decided to be laid against her, the records are strong evidence of what could be easily regarded as the crime of extortion.

[16] The records are real evidence, created by the complainant herself, and they speak for themselves. Knowledge of their contents by way of production to the accused is essential for his right to make full answer and defence. They are highly probative of the identified issues, and knowledge of them will enhance the potential for integrity of the trial process.

[17] The balancing of factors going against production reveals very little of concern. These are police records, in which the expectation of privacy is low. Having brought the subject matter of the records to the attention of the police herself, the complainant must be regarded to have understood and consented to the potential for that information being released to others.

[18] The records are not medical, therapeutic, nor counseling records, nor do they contain any information that could be regarded as such. Their production will not impact the reporting of sexual offences, nor will they impact the seeking of treatment for same. Their production is only in relation to the identified issues and is unrelated to any discriminatory belief or bias.

[19] As noted in my Reasons on the previous application, the lapse of time between the allegations against the applicant and the subsequent creation of the sought records,

while clearly deserving consideration in the balancing of interests, cannot be a bar to their production and will be a matter for consideration, including weight, for assessment by the trial judge.

[20] Some of the records, involving a different investigative file, are not relevant as they relate to the complainant's relationship with a different male, one known to her for some years. Even if they are arguably marginally relevant, they have the very real potential to sidetrack the trial by raising issues that would themselves become contested and would bring into play the balancing of interests of the complainant in ways that move that balancing decisively against production.

[21] This application is therefore allowed, on the following terms and conditions. For greater clarity, this Order mirrors the Order granted in the prior application.

[22] This Court Orders production, by the Royal Canadian Mounted Police, to counsel for the accused, and to the Crown of the following records, as sourced and described by the Royal Canadian Mounted Police:

1. All 23 “.JPG” files comprising cellphone screenshots;
2. Redacted - Transcript Bookmarks mpr_20240311_215911.pdf” (49 KB);
3. RCMP File 2024 323235_Redacted.pdf (15,186 KB);
4. Redacted - Sup Report- Cst Grant - statement timeline.pdf (237 KB);
5. RCMP Whitehorse SRU_20240326-0959_01da7f64581ccab0.wmv (102,242 KB), provided that:

- a. All portions of this file shall be redacted EXCEPT the segment occurring from 00:00 to 02:45;
 - b. The segment from 00:00 to 02:45 shall be produced un-redacted.
6. RCMP Whitehorse SRU_20240326-1026_01da7f680850f2a0.wmv (42,377 KB), provided that:
 - a. All portions of this file shall be redacted EXCEPT the segment occurring between 01:40 to 10:24;
 - b. The segment from 01:40 to 10:24 shall be produced un-redacted.
7. The aforesaid records shall be produced to the parties on the following terms and conditions, pursuant to s.278.7(3) of the *Criminal Code*:
 - a. Copies of the records, not the originals, will be produced;
 - b. All parties receiving the records in the within proceedings shall not disclose their contents to any other person, except with the approval of the Court.

GILL T.C.J.