

Citation: *R. v. Baufeld*, 2009 YKTC 130

Date: 20091110  
Docket: 09-00486  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Faulkner

REGINA

v.

JOHN EMIL BAUFELD

Appearances:  
Ludovic Gouaillier  
Malcolm Campbell

Counsel for Crown  
Counsel for Defence

**REASONS FOR JUDGMENT**

[1] FAULKNER T.C.J. (Oral): John Emil Baufeld is charged with aggravated assault and assault with a weapon. The charges arose after Mr. Baufeld assaulted another man, inflicting serious injuries with a knife or broken glass.

[2] Questions soon arose concerning Mr. Baufeld's mental state and, in particular, his fitness to stand trial. In consequence, the Court ordered an assessment pursuant to s. 672.12 of the *Criminal Code*. The assessment was made by Dr. Aileen Brunet, a forensic psychiatrist of considerable experience in matters of fitness. Dr. Brunet's opinion is contained in a report which was filed with the Court. As well, she appeared by video link to testify and amplify upon that report.

[3] Dr. Brunet's opinion, as contained in her report and in her *viva voce* evidence, is that Mr. Baufeld is unfit to stand trial. As the issue of the accused's fitness was raised by the Crown, it bears the onus of establishing, on balance, that Mr. Baufeld is unfit. Mr. Campbell, who is counsel for Mr. Baufeld, opposes such a finding.

[4] As indicated, Dr. Brunet's opinion is that the accused is unfit to stand trial. Dr. Brunet did not resile from that opinion in cross-examination, nor did the Court find reason, in examining the report or hearing her evidence, to question the credibility of the doctor's opinion.

[5] However, that is not the issue before the Court. The issue is whether or not Dr. Brunet's opinion is capable, in law, of showing that the accused is unfit to stand trial. In this regard, I note the decisions of the Supreme Court of Canada in *R. v. Whittle*, [1994] S.C.J. No. 69, and of the Ontario Court of Appeal in *R. v. Taylor*, [1992] O.J. No. 2394, and *R. v. Morrissey*, 2007 ONCA 770. These decisions make it clear that the factors set out in s. 2 of the *Criminal Code* constitute, in effect, a complete test.

[6] Fitness requires only a limited cognitive capacity to understand the process and the consequences of it, and to communicate with counsel. It is not necessary, to be fit to stand trial, that the accused be able to analyze or reason effectively, be able to make decisions that objectively are in his best interests, or that he be able to recall the events in question or to testify in his own defence. With that test in mind, I turn to the evidence.

[7] Dr. Brunet indicates that Mr. Baufeld suffers from dementia which has resulted in very significant cognitive and memory impairments. As the dementia is progressive, Mr. Baufeld's condition will only worsen with time.

[8] Mr. Baufeld underwent neuro-psychological testing in early 2008, and serious and pervasive deficits in cognitive functioning were noted at that time. I quote from Dr.

Brunet's report:

The testing implied a highly significant degree of deterioration in his overall cognitive functioning and a severe level of compromise in his capacity to handle complex thinking, decision making or reasoning. His performance on other tests indicated that he likely has frontal lobe damage which would negatively impact his self control, thinking & planning, causing him to be impulsive, over-reactive to stress and easily frustrated. This is consistent with how he presented clinically during this assessment as well as how his counselors and supports have experienced him over the past few years.

[9] As Dr. Brunet's report alludes to, family members and social supports have noted a further decline in Mr. Baufeld's faculties, especially over the last eight months. The existence of dementia was further confirmed by testing conducted by Dr. Brunet at the time of her assessment. As a result of his cognitive and memory impairments, he is unlikely, in Dr. Brunet's opinion, to be able to follow or make sense of the trial proceedings. In consequence, he will be unable to properly discuss the issues with counsel in a way that would allow him to effectively assist in his own defence.

[10] I hasten to add that for fitness purposes it may only be necessary to show that the accused is able to seek and receive effective legal advice. He need not necessarily be able to be a contributing member of the defence team. However, even in this limited sense, it appears clear that Mr. Baufeld's ability to seek, and, especially, to receive effective advice, is badly compromised.

[11] In addition to dementia, it appears that Mr. Baufeld has recently become

psychotic and suffers from a range of serious and often grandiose delusions.

Unfortunately, some of these delusions are intimately connected with the trial process and the possible consequences of the proceedings. At the risk of over-simplifying things, it appears that Mr. Baufeld views the entire proceedings to be of no consequence to him since, for various reasons, he is above the law. Thus, while he may have some limited understanding of the trial process, he has no conception of the consequences, since he believes that they do not apply to him. Ultimately, as Dr.

Brunet reports:

He is ... unable to appreciate that it is [even] theoretically possible [that] he could be found guilty ....

[12] The delusions from which Mr. Baufeld suffers have an additional impact on his ability to comprehend and assess the import of the proceedings. For example, he is reported as believing that the complainant, Mr. Beebe, is his son. He is also reported as saying that Mr. Beebe has committed suicide so that the trial will not be proceeding. Additionally, it should be noted that he made some reference even to defence counsel being his son.

[13] I do not forget Mr. Campbell's assertions that Mr. Baufeld is able to provide instructions to him. However, viewed cumulatively, Mr. Baufeld's cognitive deficits and psychosis can only lead to the conclusion that he is unfit to stand trial.

[14] MR. GOUAILLIER: Yes, Your Honour, and if that is the verdict of the Court, the Crown would ask the Court to follow the advice of Dr. Brunet in her report and decline to make a decision in that regard or to make a disposition and defer to the Review Board, which will be convened, if the Court accedes and does not make a

disposition, which will be convened within 45 days and make a disposition in relation to Mr. Baufeld.

[15] THE COURT: Mr. Campbell, any submission?

[16] MR. CAMPBELL: No, Your Honour.

[17] THE COURT: I am satisfied, in the circumstances, the matter of disposition should be declined by the Court and deferred to the Review Board, and I so order.

[18] MR. GOUAILLIER: Thank you, Your Honour. And just for the record, as per the effect of s. 672.46, Mr. Baufeld is currently detained on that order of detention, so that will remain in force until he appears before the Board.

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FAULKNER T.C.J.