

Citation: *R. v. Baril-Blouin*, 2013 YKTC 34

Date: 20130326  
Docket: 12-00807A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before: His Honour Judge Faulkner

REGINA

v.

MAXIM BARIL-BLOUIN

Appearances:  
Ludovic Gouaillier  
Kim Hawkins

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] FAULKNER T.C.J (Oral): On October the 31st of 2012, the accused, Maxim Baril-Blouin, robbed a convenience store in Whitehorse. His face was concealed by a gas mask and he claimed to have a gun which he would use if the clerk did not give him some money. After obtaining about \$100, he fled. When arrested a short time later, he was found in possession of the gas mask and a Beretta BB pistol. A Firepower BB pistol was also found nearby in circumstances that linked it to the accused.

[2] At the time Mr. Baril-Blouin was bound by a Probation Order.

[3] Based on an Agreed Statement of Facts which has been filed, I found that the accused had committed the offences of robbery by stealing money while armed with an

offensive weapon or imitation thereof; being masked with intent, contrary to s. 351(2) of the *Criminal Code*, and breach of probation.

[4] There was reason to question Mr. Baril-Blouin's mental state at the time of the commission of these acts and the accused was subsequently examined by Dr. Lohrasbe, a forensic psychiatrist of long standing and repute, who has provided a report of his findings to the Court.

[5] Based on the report, Ms. Hawkins, on behalf of the accused, sought a finding that he was not criminally responsible due to mental disorder, as provided in s.16(1) of the *Criminal Code*. This application was not opposed and, indeed, is supported by Mr. Gouaillier on behalf of the Crown.

[6] The first issue is whether or not the accused suffers from a mental disorder, which the law defines, not terribly helpfully, as a disease of the mind.

[7] Dr. Lohrasbe's report and other expert reports establish that the accused suffers from a combination of organic brain deficit, or FASD, caused by prenatal exposure to alcohol, as well as a constellation of sometimes ill-defined mental illnesses. He is subject to a guardianship order; he is incapable of living independently, and developmentally functions as child of less than ten years of age. Based on the foregoing, I have no difficulty whatever in concluding that Mr. Baril-Blouin suffers from a mental disorder or a disease of the mind.

[8] It is the second prong of the test that is more difficult to assess. To be found not criminally responsible it must be shown on balance that the mental disorder rendered

the accused incapable of appreciating the nature and quality of his acts or of knowing they were wrong. Determining the answer to this question is not easy. As Dr. Lohrasbe stated in his report:

...Mr. Baril-Blouin presents a conundrum in the application of clinical psychiatric findings of s. 16. His is not the typical presentation of those who are assessed by forensic psychiatrists under s. 672. In many ways, he represents the dilemma of the 'square peg in the round hole'.

[9] From Dr. Lohrasbe's report and, indeed, from the facts of what occurred, it appears that, at least at a basic concrete level, the accused knew what he was doing and that it was wrong. There was, after all, some degree of preparation and forethought evident in the robbery, and he afterwards took steps to avoid detection. However, the law requires that one not only know, but appreciate. It is now well settled that appreciation of the nature and quality of the acts includes an estimation and understanding of the consequences of those acts. This implies, at least at a very basic level, an ability to assess the impact and results of the acts on the victim and to make some connection between the acts and consequences for the victim and the accused himself. In this regard, Dr. Lohrasbe's report had this to say:

...[The accused] is grossly disordered "across the board" in his mental functioning and has particular difficulties, as noted above, with "executive functioning". The latter is, in my view, crucial to this assessment. Briefly, the phrase "executive functioning" is used to denote a variety of related cognitive processes such as the ability to appraise a situation accurately, generate opinions, initiate solutions, plan and sequence tasks, make decisions, self-monitor thoughts and emotions, and respond flexibly to the demands of a changing environment. With regards to particular actions, executive functions represent a crucial *capacity* to formulate plans based on realistic intentions, organize them into a plan of action, monitor its execution, and understand real-life consequences.

Applying that perspective (Mr. Baril-Blouin is a man who is functioning at the level of a disordered child and has grossly impaired executive functioning) to his mental state at the time of the predicate offenses therefore, the following comments can be made.

Independent of whether he can actually recall what he said and did at the time, based on the police report it does appear that he had a concrete awareness of his physical actions at the time. In addition, again based on the police report of his actions, he clearly had an intent to rob the Petro Canada store. He also appears to have had the knowledge that what he was doing was wrong, and took steps to evade apprehension. Hence, at a very concrete level it cannot be said that Mr. Baril-Blouin did not appreciate the nature of his actions, nor can it be said that he did not appreciate that his actions were legally wrong.

However, all available information suggests that his appreciation of those actions, and his knowledge of their wrongfulness, can reasonably be compared to the appreciation and knowledge of such actions by a disordered child.

...If extremely concrete criteria for the use of the words "appreciate" or "know" were to be applied to Max, then he may not meet the test under section 16.

If...the requisite test is an adult level of appreciation of ones actions, or knowledge of their wrongfulness, then the answer is clearly that Mr. Baril-Blouin meets the criteria on both arms of s. 16. I am of course aware that "adulthood" is not a well-defined concept. There are many extraordinarily immature adults, including many in our jails and prisons. Mr. Baril-Blouin's incapacities however are of an entirely different order; he is profoundly *undeveloped* and *maldeveloped* in his mental functioning across a range of realms that influence appreciation of one's actions and knowledge of their wrongfulness.

[10] Given the accused's almost total lack of executive functioning, it appears that the ability to make the step from knowing what he is doing, to appreciating the nature and consequences of his act, or applying knowledge that he has in a rational way, is almost entirely lacking. We are not talking here of mere impulsiveness or lack of care or concern. The cases in point speak of an accused lacking the basic ability to analyze and weigh, or lacking the capacity to judge, or the capacity to make moral judgments, or

the ability to make a rational choice. Those cases could have been speaking of Mr. Baril-Blouin.

[11] What I am about to say is in no way intended to establish a new legal test or to conflate entirely distinct legal concepts, but to simply describe the situation before the Court. Mr. Baril-Blouin's thought processes are those of a child of less than ten years old. A child of less than 12 is not criminally responsible. Accordingly, I find the accused not criminally responsible on account of mental disorder.

[12] MR. GOUAILLIER: Thank you, Your Honour. This is not something I have discussed with my friend, but I believe the intent at this point is to ask you to defer making a disposition and also defer the matter to the Review Board for the purpose of making a decision.

[13] MS. HAWKINS: Yes, that would be appropriate, I think.

[14] THE COURT: Yes, the matter should be referred to the Review Board to make a disposition.

[SUBMISSIONS RE DETENTION ORDER]

[15] THE COURT: Well, given some of the concerns expressed in Dr. Lohrasbe's report, in my view it would be appropriate the detention order continue in force until the Review Board makes a disposition; however, I will give you leave to bring the matter back before me should you think that circumstances are such that such an application could be made.

[16] MS. HAWKINS: Thank you.

[17] MR. GOUAILLIER: Thank you, that's appropriate. And the Crown is prepared to stay the remaining matters at this time.

[18] THE COURT: Thank you.

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FAULKNER T.C.J.