

Citation: *R. v. Charlie*, 2016 YKTC 68

Date: 20161215
Docket: 15-00149
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Lilles

REGINA

v.

DALE CHARLIE

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to s. 486.4 of the *Criminal Code*.

Appearances:

Keith D. Parkkari
David J. Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] LILLES J. (Oral): Mr. Charlie stands charged that on June 14, 2015, at Whitehorse, Yukon Territory, he did commit a sexual assault on A.B., contrary to s. 271 of the *Criminal Code*.

[2] Mr. Charlie had been drinking with A.B. and S.D. as well as smoking marijuana on June 14, 2015. Mr. Charlie stated that he has no recollection of the events beyond drinking to the point of intoxication and then passing out.

[3] A.B. and S.D. were also grossly intoxicated and went to sleep on a couch. S.D. woke up to observe Mr. Charlie engaged in sexual intercourse with A.B. Her pants had been removed. When S.D. verbally challenged him, Mr. Charlie stopped assaulting A.B. and left the room. A.B. was so intoxicated that S.D. was unable to awaken her.

[4] The police were called by S.D. Mr. Charlie was asleep on his bed when the police arrived and arrested him.

[5] The Bail Assessment Report prepared June 18, 2015, noted that Rose Charlie, Mr. Charlie's mother, "lamented that he needs someone to be there for him to act as an external brain".

[6] Later in that same report, the Bail Supervisor wrote:

The writer met with Mr. Charlie on June 15, 2015, at the Whitehorse Correctional Centre. He appeared to be disoriented and appeared to struggle with forming and articulating thoughts. When asked if he understood the nature of his charges he said that he did not. When it was explained to him that he had been charged with a sexual offence he appeared to have difficulty comprehending what this writer had said and then stated that he thought that he was arrested for drinking. Mr. Charlie appeared to indicate genuine surprise on the allegation of sexual assault.

[7] The Neuropsychological Assessment by Jo Nanson, Ph.D., a Registered Doctoral Psychologist, (date of assessment: August 22 and 23, 2005) was filed with the Court. This assessment is relevant, but should be considered in context. The report is dated. Counsel appear in agreement that Mr. Charlie's mental faculties have deteriorated over time and since the date of this assessment, which was 12 years

earlier. On the Wechsler Adult Intelligence Scale: Third Edition, Mr. Charlie received an overall score which places his functioning within the mildly retarded range.

[8] On the Wide Range Achievement Test: Third Edition, Mr. Charlie's academic skills fell at grade one to three level. His spelling was at a grade one level. He is functionally illiterate, and cannot read enough to follow the directions on a can of soup, a prescription bottle, or a menu. He cannot read any documents that the court would have for him, i.e., a waiver of rights.

[9] With respect to Mr. Charlie's language skills, Dr. Nanson stated as follows:

There is a significant difference between his receptive and expressive language. Like many individuals with FAS, his expressive language, the language he uses is much better than the language that he can understand. Because most people match their language to the speaker, most people will speak to Mr. Charlie using language, which is similar in complexity to the language that he uses. This level of language complexity is well in excess of his ability to understand language. Thus he gives a superficial impression of understanding what he is being told, but in reality his comprehension is much less. This can create major problems when he is in an interaction and appears to be understanding what is going on, but in reality he does not.

[10] On a number of additional tests, Mr. Charlie's scores were consistently moderately and severely impaired. The summary of Dr. Nanson's conclusions included the following:

He is currently serving a term of two years less a day in the Whitehorse Correctional Centre for a sexual assault on his common law partner and the mother of his children. He does not appear to understand the length of his sentence and asks the correctional staff every week or two, when he is

going home. He is very fearful that his partner will take the children and relocate to her community of Ross River.

He does not appreciate the seriousness of his offence nor does he relate what he did to the risk that his partner will re-locate. He need[s] treatment as a low functioning sex offender, which emphasizes learning to identify and prevent the behavioral triggers to his aggressive behavior, substance abuse treatment, and anger management.

[11] And later in the report Dr. Nanson states:

Mr. Charlie is not likely to be successful living independently in the community, when he is released. He will need supervised housing and sheltered employment, appropriate to someone with his intellectual and social deficits.

[12] The most recent report before the Court is that of Dr. Lohrasbe, dated September 30, 2016. Dr. Lohrasbe is an experienced psychiatrist who has provided reports and testified in Yukon courts on many occasions. At the start of the first interview with Mr. Charlie, he explained the purpose of the session in simple language to Mr. Charlie. Nevertheless, Dr. Lohrasbe concluded that Mr. Charlie was incapable of providing informed consent.

[13] Dr. Lohrasbe received a report from Mark Stevens, who is a community support worker and who has extensive experience in dealing with individuals who suffer from Fetal Alcohol Syndrome ("FAS"). Mr. Stevens stated that "Mr. Charlie is more profoundly affected than most people I've encountered. The first time I saw him he had no understanding of what was going on. And he misunderstands things every step of the way".

[14] Mr. Stevens was also present in court during this hearing. He advised the Court that even in a relaxed, supportive environment, Mr. Charlie has extreme difficulty understanding the simplest of things. He requires close supervision to function at all.

[15] Dr. Lohrasbe reviewed the reports pertaining to Mr. Charlie going back to 2005, including the ones I refer to in this decision. He noted that the decade of substance abuse since 2005 is likely to have had a deleterious effect on his capacities, perhaps severely so.

[16] Dr. Lohrasbe stated:

In my opinion, Mr. Charlie has a mental disorder despite the lack of psychotic symptoms. Moreover, although Mr. Charlie does not manifest with typical psychotic symptoms, he is functionally more disabled than many if not most people with typical psychotic mental disorders. When under pressure he becomes increasingly suspicious and harbours paranoid ideas, and his thinking becomes disorganized in a way that is not dissimilar to what is typically described as thought disorder (itself a manifestation of psychosis, as discussed above).

Hence in my view the threshold question is amply met; Mr. Charlie does have a mental disorder, and it is the mental disorder that directly bears on the legal issues related to fitness for trial.

[17] With respect to fitness, Dr. Lohrasbe describes Mr. Charlie as "fit but fragile."

[18] He concludes:

To summarize: From a psychiatric perspective, Mr. Charlie is capable of meaningful participation in the Court process, but barely so, and is easily distressed; when distressed, his mental capacities rapidly deteriorate [and] that may render him incapable of such participation so long as he remains

distressed. The length of proceedings may also be an issue. Hence input from his counsel on the actual days of trial proceedings may assist the Court.

[19] Clearly, to accommodate Mr. Charlie through the court process the Court will have to be flexible and sensitive to the needs identified by Dr. Lohrasbe. I am satisfied that this Court can accommodate Mr. Charlie and Mr. Charlie's needs, as recommended by Dr. Lohrasbe. I find on a balance of probabilities that Mr. Charlie is fit to stand trial.

[20] I turn now to consider whether Mr. Charlie meets the requirement of Not Criminally Responsible, as set out in s. 16 of the *Criminal Code*. Section 16 provides that “no person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong”.

[21] Mr. Charlie suffers from FAS as a result of neonatal exposure to alcohol, which the courts have consistently held to constitute a “mental disorder” as defined by the *Criminal Code*.

[22] A second component of s. 16, namely that the mental disorder rendered Mr. Charlie incapable of appreciating the nature and quality of his actions while committing the offence with which he is charged, is more difficult to assess.

[23] Mr. Charlie was severely intoxicated at the time and has no memory of the offence. It is therefore necessary to draw inferences from his cognitive limitations described in the reports before the Court, some of which I have already referred to.

[24] In particular, Dr. Lohrasbe concluded as follows, in his most recent report:

Hence to offer an opinion it is necessary to extrapolate from general consideration of his limited capacities relevant to both arms of S.16 based on his very limited cognitive capacities when he is sober. To reiterate, at his best, i.e. when he is calm and sober, Mr. Charlie's relevant capacities are chronically and significantly impaired. His capacities for rational understanding and for moral reasoning are basic and limited - even when sober and calm. It is reasonable to anticipate that they would be deleteriously and acutely impacted by significant intoxication with alcohol and/or marijuana. In my opinion, his mental capacities, including those relevant to S.16, were likely to have been grossly compromised at the time of the predicate offense.

[25] When I consider Dr. Lohrasbe's report along with those prepared in 2005 referred to earlier in these reasons, I am satisfied on a balance of probabilities, even in the absence of gross intoxication by alcohol, that Mr. Charlie would have been incapable of appreciating the nature and quality of the act or knowing it was wrong. In coming to this conclusion, I have considered the following decisions: *R. v. Baril-Blouin*, 2013 YKTC 34; *R. v. Sam*, 2010 YKTC 92; and *R. v. Mason*, 2005 YKSC 42. Accordingly, I find Mr. Charlie not criminally responsible for the charge before the Court on account of mental disorder.

[26] Counsel, my initial reaction is not to make a disposition at this time, but I am open to hearing from you. Subject to what you might propose, I suggest that this matter be referred to the Review Board and that, pursuant to s. 672.46, any release detention

order currently in force would continue until the Review Board holds its hearing within that specified time required by the *Criminal Code*.

LILLES T.C.J.