

Citation: *R. v. Chief*, 2016 YKTC 5

Date: 20160223
Docket: 15-10035
Registry: Watson Lake
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Faulkner

REGINA

v.

ASHLEY MINNIE CHIEF

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to section 486.5 of the *Criminal Code*.

Appearances:
Eric Marcoux
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] FAULKNER J. (Oral): On June 27, 2015, Watson Lake RCMP received a complaint from Audrey Chief that her daughter, Ashley, was acting strangely and requested that she be removed from the residence. Police attended and, at Ashley Chief's request, eventually took her to the Help and Hope for Families shelter in Watson Lake.

[2] At the shelter's front desk, Ms. Chief was greeted by K.L., a shelter employee, who checked Ms. Chief in and completed the necessary paperwork. Ms. Chief was

taken to her room and K.L. returned to her desk. Up to that point, Ms. Chief had seemed cooperative.

[3] Some minutes later, Ms. Chief returned to the front desk. She had a large butcher knife hidden behind her back. She told K.L. she wanted to chat. Suddenly, she produced the knife and attacked K.L., stabbing her with the knife. K.L. attempted to push Ms. Chief away and ran out of the building toward the shelter side yard with Ms. Chief in hot pursuit. This yard is enclosed by a fence and K.L. could not escape. In the course of the chase, K.L. slipped and was again attacked, suffering several additional stab wounds. At one point, K.L. almost had her throat cut.

[4] Eventually, K.L. managed to break free and ran back inside the building, leaving Ms. Chief trapped in the enclosed yard. K.L. was able to drive herself to the hospital. The police were summoned and Ms. Chief was arrested.

[5] The attack on K.L. was, to say the least, horrific. The events were captured on security cameras installed at the shelter. It is extremely difficult to watch the videos and one can scarcely imagine K.L.'s terror in being so inexplicably and savagely attacked. Fortunately, none of the stab wounds or cuts were life threatening and K.L. has physically recovered.

[6] For her part, Ms. Chief was later charged with attempted murder.

[7] Based on the Agreed Statement of Facts and the video recordings of the event, I found that Ms. Chief committed the acts that form the basis of the offence charged. The issue to be determined is whether or not Ms. Chief was, at the time, suffering from a

mental disorder so as to be exempt from criminal responsibility by virtue of s. 16(1) of the *Criminal Code*.

[8] Ms. Chief was examined by Dr. Jeanette Smith, a forensic psychiatrist based in Vancouver, British Columbia. From Dr. Smith's reports and her testimony at trial, it appears that Ms. Chief has had a lengthy history of mental disorder and has been hospitalized a number of times as a result. In Dr. Smith's opinion, Ms. Chief suffers from bipolar disorder. Ms. Chief had previously been prescribed olanzapine to control psychotic symptoms, but had discontinued the use of this medication about one month prior to the attack on K.L.

[9] The accused had been suffering psychotic episodes for some days, reporting to family members that people had been stabbing and killing her, she was being nailed to the cross, she was making friends with bears and dolphins, and so on. Indeed, her bizarre behaviour was the reason that her mother called the police and Ms. Chief was taken to Help and Hope.

[10] Significantly, in Dr. Smith's view, when the police attempted to interview Ms. Chief in the days after her attack, she still appeared psychotic, describing visions in which animals and children were being hurt, and saying that she was immortal. She remained angry and violent and could not be managed at the Whitehorse Correctional Centre and, as a result, was hospitalized. She later told the attending doctors that she had descended from heaven. Once back on anti-psychotic medication, Ms. Chief's mental state settled rapidly.

[11] Given this history and the utterly inexplicable nature of the attack on K.L., it was Dr. Smith's opinion that Ms. Chief was acutely mentally ill, psychotic, and delusional at the time of the attack. While she could appreciate that she was attacking her victim with a knife, she would not know that it was wrong. Most likely, in Dr. Smith's opinion, Ms. Chief felt herself under threat and mounted a pre-emptive attack in self-defence.

[12] In cross-examination, the Crown suggested to Dr. Smith some alternative theories as to what had occurred, such as the potential for the transference of anger or the existence of borderline personality disorder, but Dr. Smith's opinions were not shaken.

[13] The attack on K.L. was, as I have already said, bizarre, completely unprovoked, and utterly inexplicable. It seemed to Dr. Smith, as it seems to me, clear that at the time of the offence, Ms. Chief was suffering from a psychotic episode and her thinking was so disordered that she did not know that what she was doing was wrong.

[14] It is true that the theory of the accused having acted in self-defence may simply be her after-the-fact justification for what she did. Indeed, Dr. Smith's embrace of the idea that the accused acted in self-defence results primarily from the lack of any alternative explanation for what occurred. However, even if the accused's motives for the attack remain obscure, it is, in my view, clear that it was the result of thinking disordered to such an extent that the accused would not appreciate the wrongness of her actions.

[15] I have also considered the possibility that the accused may be malingering, but there is no evidence of this whatever. Indeed, at the outset, Ms. Chief insisted that she

did not want to be found not criminally responsible. However, this is far from the end of the matter.

[16] As the Crown points out, Ms. Chief reported ingesting LSD earlier on the day of the attack. This complicates the picture considerably. As I have said, it appears beyond doubt that Ms. Chief was psychotic at the time of the incident. From a medical view, it makes little difference whether the psychosis was pre-existing or was drug-induced. Psychosis is psychosis. However, from a legal perspective, the difference is profound. A psychosis resulting from a pre-existing medical condition can render an accused not criminally responsible by virtue of s. 16. On the other hand, self-induced psychosis from the voluntary ingestion of mind-altering substances is not a mental disorder within the meaning of s. 16 and is not a defence (See *R. v. Bouchard-Lebrun*, 2011 SCC 58).

[17] In this case, there is no actual evidence regarding how much LSD the accused ingested and no toxicological report. In the circumstances, Dr. Smith quite properly said that she could not determine the degree, if any, to which such drug abuse, if it occurred, would affect Ms. Chief's mental state. Most likely, in Dr. Smith's opinion, it would have exacerbated Ms. Chief's pre-existing mental condition.

[18] Despite the evidence of drug abuse, at the end of the day Dr. Smith remained of the opinion that the psychosis was not drug-induced. She pointed to the accused's long history of mental disorder; the reports of her being psychotic in the days before the attack; the fact that she remained disordered well after the attack; and her rapid improvement once back on anti-psychotic medication.

[19] On the evidence before me, I find that Dr. Smith's opinion is more likely than not the correct explanation for what occurred and the accused has therefore discharged her burden of proof. I am satisfied on a balance of probability that, at the time of the offence, Ms. Chief was suffering from a mental disorder that rendered her incapable of knowing that her acts were wrong, and she is therefore exempt from criminal responsibility.

[20] I am alive to the fact that the issue of potential drug use by the accused and its role in inducing the psychosis raises many difficult evidentiary questions, including the probative value of the accused's hearsay statements regarding drug use and the question of where the burden may lay with respect to refuting or establishing such use. However, I find that, taking the evidence of drug use and its effect on the accused's mental state at its highest, the preponderance of the evidence still warrants the finding that the accused suffered from a mental disorder within the meaning of s. 16.

[21] In my view, this is a matter where the disposition would be better left to the Review Board. Given the unprovoked and potentially lethal nature of the accused's acts, I think much further examination and review is in order to determine whether the patient requires inpatient care or is manageable in the community; and if so, under what regime. Accordingly, the matter of disposition is deferred to the Review Board. The status quo with respect to the detention of the accused should remain in effect pending their disposition.