

Citation: *R. v. Waranuk*, 2007 YKTC 82

Date: 20071018
Docket: T.C. 06-00590
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Faulkner

REGINA

v.

TIM A. WARANUK

Appearances:
Eric Marcoux
Tim Waranuk

Counsel for Crown
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] FAULKNER C.J.T.C. (Oral): Tim Waranuk stands charged with common assault, contrary to s. 266 of the *Criminal Code*. At a prior hearing, I decided that it had been proven beyond doubt that Mr. Waranuk committed the assault in question, although Mr. Waranuk does not believe it, and a number of his friends who have attended much of the trial apparently do not believe it. The evidence is simply overwhelming.

[2] The issue before me at this stage of the proceedings is whether or not the accused was, at the time of the commission of the offence, suffering from a mental

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

No person is criminally responsible for an act committed or an admission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or admission or of knowing that it was wrong.

A person is presumed not to be so exempt unless the contrary is proved on a balance of probabilities --

[3] THE ACCUSED: Excuse me, sir. What did you say? A person is -- is what?

[4] THE COURT: Is presumed not to be exempt unless the contrary is proved on a balance of probabilities by the party raising this issue, which in this case was the Crown.

[5] During the course of the trial, owing particularly to Mr. Waranuk's conduct of his own defence, there came to be reason to doubt Mr. Waranuk's sanity and his fitness to stand trial. As a result, a psychiatric examination was ordered. Mr. Waranuk complied with the order to attend for examination by Dr. Armando Heredia.

[6] THE ACCUSED: I'm sorry, I can't hear you, sir.

[7] THE COURT: Mr. Waranuk complied with the order to attend for an examination by Dr. Armando Heredia, a forensic psychiatrist practising in the Territory. Based on Dr. Heredia's report, I concluded that Mr. Waranuk was fit to stand trial, and the trial proceeded. The question of the application of s. 16, however, remained.

[8] I pause here to note that Mr. Waranuk has represented himself throughout the proceedings. I would have thought it would have been in Mr. Waranuk's interest to have had the assistance of counsel, and such counsel could have been provided on the fitness issue pursuant to s. 672.24 of the *Code*, or generally in aid of ensuring that Mr. Waranuk's right to make full answer and defence was respected. However, Mr. Waranuk made it quite clear that he would refuse the assistance of any counsel appointed by the Court.

[9] Dr. Heredia testified, and was clearly of the opinion that Mr. Waranuk was not criminally responsible, owing to mental disorder. He was of the view that Mr. Waranuk suffers from a mental disorder characterized by paranoid delusions which centre on the legal system, the police and the government. Dr. Heredia was unable to make a more specific diagnosis because Mr. Waranuk would not consent to the release of any past medical or psychiatric information.

[10] At the time of the offence, Mr. Waranuk was in the office of Larry Bagnell, the Yukon's Member of Parliament. He was seeking the assistance of Mr. Bagnell's office in sorting out difficulties that seem to have arisen in regard to Mr. Waranuk's application for old age pension. In a nutshell, the difficulty seemed to be that the government would not provide the pension without receiving certain information about residency, and probably other matters, which Mr. Waranuk adamantly refused to provide.

[11] When Mr. Waranuk went to Mr. Bagnell's office on the day in question, Ms. Buchanan, who is Mr. Bagnell's assistant, advised Mr. Waranuk that she had a solution to his problem. The solution she offered was to have Mr. Waranuk sign a release to

authorize Yukon Health Care to provide information to the Canadian government which would establish Mr. Waranuk's residency. Mr. Waranuk became enraged at this. He adamantly refused, as always, to provide any information or release, and became agitated and threatening. The two assistants decided to ask Mr. Waranuk to leave, and when he did not, attempted to escort him from the office.

[12] It was at this point that the assault on Ms. Buchanan and her co-worker occurred.

To quote from Dr. Heredia's report:

...Mr. Waranuk acted out aggressively and with poor judgment during a moment of rage based on the paranoid delusional belief that he was the victim of a general conspiracy against him. In my opinion, his actions on the day of the incident were more than likely related to his paranoia and perceived sense of danger, which could have impaired his ability to understand the nature and quality of his actions, to know that his actions were legally or morally wrong, or to rationally apply his knowledge of right or wrong to his actions.

[13] I agree with Dr. Heredia. In my view, his opinion is amply supported by what Mr. Waranuk said to Dr. Heredia during the interviews, leading to the preparation of a psychiatric assessment, as well as from the circumstances of the offence. Further corroboration can be found in Mr. Waranuk's actions, statements and demeanour throughout the course of the trial.

[14] It is quite clear to me that Mr. Waranuk honestly believes that he was himself a victim of maltreatment and an assault on him at the hands of Mr. Bagnell's assistants, when nothing could be further from the truth. His misperceptions about his treatment by government agencies in general, and Mr. Bagnell's assistants in particular, is echoed and further proved by his misperceptions of the trial itself.

[15] In short, he views the Crown and myself as part of the overall conspiracy. It is interesting to observe that although Mr. Waranuk clearly has delusions about the government, the police and the courts, he is obviously an intelligent, well-read man, able to function quite well in settings not involving the aforementioned adversaries. He has many friends who find him to be a thoroughly upright and engaging character. Indeed, one could not help but be struck by the night and day difference between Mr. Waranuk's interaction with his friends, several of whom he called as witnesses in his defence, and his dealings with the Crown witnesses, the prosecutor and the Court.

[16] At the end of the day, however, I am quite satisfied that Mr. Waranuk does indeed suffer from a mental disorder, and that the paranoid delusions he suffers from led him to entirely misapprehend his dealings with Ms. Buchanan, and to act without any realization, then or now, that his acts were wrong.

[17] The result: I find that Mr. Waranuk is not criminally responsible on account of mental disorder.

[18] THE ACCUSED: Do I get to speak now? Do I get to speak? We could have saved this here. I've been telling Dr. Heredia about these legal fictions. This is exactly what I told was going to happen before. They had no case against me. You had refused to look at the physical evidence of that case. You would not allow me. I -- the witnesses were taken off the stand here. The Crown was running the courtroom. He'd tell what would happen, when we come here. We -- I never got a -- an expedient trial and a -- a fair trial.

[19] Now the thing is, I -- I want this here to appeal this case right now. I'm not -- I'm not -- I do not suffer, and this is the onus on you two people that sent me to prove this here, that I have some mental disease. You could not prove it and it has -- must be demonstrated in this courtroom at that specific time, not just any whim or fancy of you, because you do not like me or because I've taken on, I'm talking truth to power and I've taken on these here agencies.

[20] Now, you've also heard witnesses that I'm not the only one, if you think I'm so paranoid, that I haven't had trouble with government agencies. This is a strange thing that there's a man right in this courtroom who testified, and he knows about this here, with the IRS, with the unemployment, with old age security. Now, what is the matter? Why do I have to release medical records to draw my old age pension, when all they needed to have was my old -- my -- my number, my -- my card, my old -- so this is why: Now I want to know why the Crown took over the courtroom here. You see, I told these people was going to happen way before. I knew exactly what you were going to say. Because now you do not allow me -- that will not allow me because there is no charge now, to appeal this here, but I told --

[21] THE COURT: No, no. No, no.

[22] THE ACCUSED: -- you before, I'm --

[23] THE COURT: Just -- just --

[24] THE ACCUSED: -- not going to let you do this.

[25] THE COURT: Just a minute --

- [26] THE ACCUSED: Now you're a taskmaster at this here.
- [27] THE COURT: Just a minute, Mr. Waranuk.
- [28] THE ACCUSED: You're a taskmaster at this here, changing from one --
- [29] THE COURT: Mr. Waranuk.
- [30] THE ACCUSED: -- from one --
- [31] THE COURT: Mr. Waranuk.
- [32] THE ACCUSED: Yes.
- [33] THE COURT: Sit down. You are --
- [34] THE ACCUSED: Look, you must --
- [35] THE COURT: You are --
- [36] THE ACCUSED: -- you must hear from me every now and again.
- [37] THE COURT: No. No, you are just --
- [38] THE ACCUSED: You don't like the truth. I know --
- [39] THE COURT: You are just --
- [40] THE ACCUSED: -- how much. I know --
- [41] THE COURT: No. You are just --
- [42] THE ACCUSED: -- how distasteful it is to you.

[43] THE COURT: No. You are just rehashing what you have said before. Now --

[44] THE ACCUSED: No. I -- I --

[45] THE COURT: Now listen to me; I want to tell you something.

[46] THE ACCUSED: What's that?

[47] THE COURT: You have every right to appeal my decision.

[48] THE ACCUSED: Yes, you're damn right I do.

[49] THE COURT: So do not think that you do not.

[50] THE ACCUSED: Well, that's what you're trying to do. I know what you're trying to do.

[51] THE COURT: So --

[52] THE ACCUSED: You're on a witch hunt. You brought the witch doctor in; I kicked the crap out of him on the stand. He's not -- I don't even think he's qualified to be a --

[53] THE COURT: Yes.

[54] THE ACCUSED: -- psychiatrist.

[55] THE COURT: All right. So the matter --

[56] THE ACCUSED: And I hope he never practises in this country anymore, get back to Mexico where he belongs.

[57] THE COURT: Yes. The only matter that is --

[58] THE ACCUSED: Now, I told you one thing when I was here before.

[59] THE COURT: The only matter that is left to be determined here --

[60] THE ACCUSED: Yeah.

[61] THE COURT: -- before you go --

[62] THE ACCUSED: Yeah.

[63] THE COURT: -- and get your appeal, is the matter of the disposition. I will hear first from the Crown on that.

[64] MR. MARCOUX: Yes, Your Honour. In this case, since Mr. Waranuk did not provide a lot of information on his past -- for his past condition to Dr. Heredia, Dr. Heredia mentioned to the Court that he was affected by a mental disorder of unknown nature. And when asked if Mr. Waranuk represented a danger to the public's safety, Dr. Heredia, if you recall, answered that he did not have enough information about his past record, mental record, and would need further examination.

[65] Mr. Waranuk has a prior from 1983. We are not sure what triggered -- well, we kind of know what triggered this, but could happen again, and I think, in the circumstances, I think Mr. Waranuk should go in front of the Review Board, and that you should not hold the disposition hearing at this moment.

[66] THE ACCUSED: If I might state this here thing that happened in 1983, that there 24 years you're still stuck on, is an assault charge that was \$150 fine. The man asked me outside, he started the fight, he got a lick and he went to the police, and a \$150 fine. It was just shameful that the judge couldn't -- that was the cheapest he could get away with because of this here. And yet these here people suffer from this obsession, which is a -- a delusional thing.

[67] Similarly when my mother passed away, I had to go to this quack, this charlatan because -- instead of going to her funeral, and that is because of Misty Buchanan and Jessie Stephe (sic). Now, Jessie Stephe, you've seen her up here in a boxer's pose, just wanting to get at me again. Now I haven't slept for 10 and a half months over this here, and I'm going to make sure maybe they -- these people don't sleep for another 10 and a half months, because they'll have to worry about me. Does this mean to say now that if -- my -- my mental capacity, that I cannot -- can I not get away, use that as any excuse for any court case I ever come up in? There's people here who have been 50 years in this here country, and there's different people every time, and they've known me for a long time. And regardless, I treat them because they weren't trying to slay me; but these people on the stand, you and him, were trying to slay me all the time, and I'm not going to let you do it.

[68] THE COURT: All right. In my view the --

[69] THE ACCUSED: Yeah, your view. Well, I got a different view from yours.

[70] THE COURT: Yes, well. The matter of disposition should be referred to the Review Board. As has been indicated, Mr. Waranuk has not provided information which would make the Court comfortable in feeling that it had the background --

[71] THE ACCUSED: Are you making me comfortable? Nobody's reporting -- hey, I'm not comfortable with this here. Now I don't need to -- I don't need to give you any information, and that's something you better get through your head.

[72] THE COURT: Yes, well. That is why you are going to the Review Board.

[73] THE ACCUSED: That's right. You think so.

[74] THE COURT: That is my order. Release conditions will continue.

FAULKNER C.J.T.C.