

SUPREME COURT OF YUKON

Citation: *R. v. Cornell*, 2012 YKSC 93

Date: 20121105
Docket: S.C. No. 11-00467
11-00467D
11-00594
11-00702
11-00442
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

CHRISTOPHER JONATHAN DALE CORNELL

Before: Mr. Justice R.S. Veale

Appearances:
David McWhinnie
David Tarnow

Counsel for the Crown
Amicus Curiae

RULING ON *ROWBOTHAM* APPLICATION DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): This ruling is on the second *Rowbotham* application in the matter of Her Majesty the Queen v. Christopher Cornell. Counsel for Christopher Cornell brings this second *Rowbotham* application (1988), 41 C.C.C. (3d) 1, for the appointment of state-funded counsel alleging that without the appointment of counsel Mr. Cornell's constitutional right to a fair trial in accordance with the principles of fundamental justice under ss. 7 and 11(d) of the *Charter* will be violated.

[2] In *R. v. Cornell*, 2012 YKSC 57, I ordered a stay of proceeding pursuant to

s. 24(1) of the *Charter of Rights and Freedoms*, on Information #11-00455A, until state-funded counsel was appointed. That application was brought by Mr. Cornell, appearing on his own behalf, and addressed an eight-count Information with a co-accused named Jessica Johnson, which includes an allegation of attempted murder on an RCMP officer in Haines Junction on September 26, 2011. The application was argued prior to Mr. Cornell's preliminary hearing on the charges.

BACKGROUND

[3] This *Rowbotham* application involves four additional Informations before the Territorial Court for preliminary hearings

- (a) Information 11-00702 alleges that on September 12, 2011, at or near Whitehorse, Mr. Cornell possessed stolen property, being a 1996 Dodge Ram truck of a value exceeding \$5,000 contrary to s. 354 of the *Criminal Code*. The Crown indicates that it is a relatively straightforward matter, involving no complex forensic evidence or *Charter* issues, with the issue being one of identification from a surveillance video camera.
- (b) Information 11-00442 alleges three counts arising from September 12, 2011, in Whitehorse, relating to the same 1996 Dodge Ram truck but adding mischief and possession of stolen property, being a boat and trailer, as well as dangerous driving. Again, the Crown says there are identity issues, but no complex forensic evidence or *Charter* issues.
- (c) Information 11-00467D alleges that on September 19, 2011, at Beaver Creek, Yukon, Mr. Cornell possessed stolen property being a 2003

Chevrolet, exceeding a value of \$5,000 and three laptop computers.

Identification will again be an issue, although a co-accused, Harold John, has pled guilty and been sentenced. Again, the Crown indicates no complex forensic evidence or *Charter* issues arise.

- (d) Information 11-00594 alleges that Mr. Cornell and co-accused Jessica Johnson, on September 26, 2011, at the Mendenhall area of the Yukon, between Whitehorse and Haines Junction, broke and entered a 1994 Suzuki motor vehicle and the Mendenhall community centre. It also alleges they possessed stolen property, being a 1997 Chevrolet Blazer. The Information as well alleges that Mr. Cornell had stolen property in his possession, being a Sturm Ruger rifle, which he was prohibited from possessing by virtue of a court order pursuant to s. 109 (1) of the *Criminal Code*, in addition to ammunition. The Crown takes the position again that these charges are neither sufficiently serious nor complex to require the appointment of counsel.

[4] This last Information has a clear nexus to offences with respect to which Mr. Cornell successfully brought his earlier *Rowbotham* application, including the attempted murder of a RCMP officer later that day in Haines Junction. It involves the same weapon, the same co-accused, and there is, as well, a close temporal connection.

DECISION

[5] In *R. v. Cornell, supra*, I set out the four elements that an accused must demonstrate in order to show that there is a serious risk he will not receive a fair trial in

the absence of state-funded counsel. In the context of a preliminary inquiry, the Court must also be satisfied that there are exceptional circumstances that justify appointing state-funded counsel at such an early stage of the proceedings.

[6] The Crown advises that it does not dispute the denial of legal aid, and an inability for Mr. Cornell to fund his own counsel. The Crown does submit that the charges are not serious enough to require counsel or sufficiently complex that Mr. Cornell does not have the capacity to deal with them without counsel. The Crown also says that the exceptional circumstances I relied on in my earlier decision are altered.

[7] I can say at the outset that I agree that Informations 11-00702, 11-00442, and 11-00467D are not sufficiently complex or serious to constitute a denial of Mr. Cornell's constitutional right to a fair trial.

[8] In the case of Information 11-00594, I also note that one of the firearm charges carries a mandatory minimum sentence of one year; however this is not determinate of seriousness.

[9] With respect to the eight-count Information, 11-00455A, which includes the attempted murder of a RCMP officer, I have already concluded that Mr. Cornell's right to a fair trial is implicated at the preliminary inquiry stage. I also found that his circumstances were exceptional. While Mr. Cornell's circumstances may have changed as the result of the appointment of state-funded counsel on that Information, I here find it an exceptional circumstance that Information 11-00594 has such a close nexus with the attempted murder charge temporally, with the same co-accused and the same weapon. Mr. Cornell could be prejudiced in his defence to the charges in both

Informations by the presence of counsel for Jessica Johnson, and an inability to obtain satisfactory discovery of the evidence at the preliminary hearing for the charges in 11-00594. As well, the alleged break and enter of the 1994 Suzuki Sidekick with the theft of two firearms also involves Harold John in addition to Jessica Johnson, Mr. Cornell's co-accused on the attempted murder Information, and it appears likely that Mr. John will be a significant Crown witness in the attempt murder proceedings. These considerations increase the complexity of the proceedings on this Information and also affect Mr. Cornell's jeopardy on both Informations.

[10] For these reasons, Mr. Cornell has satisfied me that the charges he faces on Information 11-00594 are sufficiently serious and complex to meet the *Rowbotham* test. I also find that there are exceptional circumstances and I order a stay of proceeding pursuant to s. 24 of the *Charter of Rights and Freedoms* on Information 11-00594 until state-funded counsel is appointed.

VEALE J.