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R. v. Campagna

Between
Her Majesty the Queen, and
Julia Jose Campagna

[1999] B.C.J. No. 2023
New Westminster Registry No. XO53416

British Columbia Supreme Court
New Westminster, British Columbia
Singh J.

Oral judgment: September 3, 1999.
Released: September 10, 1999.
(45 paras.)

Criminal law — Offences against person and reputation — Motor vehicles — Dangerous driving — Causing death or bodily harm — Punishments (sentence) — Discharge of accused — Circumstances giving rise to unconditional discharge.

Sentencing hearing of the accused Campagna for two counts of causing death by dangerous driving. Campagna was found not criminally responsible on account of her mental disorder. She caused a motor vehicle accident on May 30, 1998 that resulted in the death of two women. Campagna had no history of psychological, psychiatric or antisocial behaviour. Her psychiatrists agreed the incident resulted from a substance-induced psychosis. She was placed on medication and responded quickly and excellently. She was not on medication since October 1998. Campagna was released on strict bail conditions in July 1998. She complied with the conditions up to the date of this hearing which was in September 1999. Campagna was a disciplined high achiever who set reasonable and attainable goals. She did very well academically and vocationally. She was stable psychiatrically and had a clean bill of health psychologically. Once she was aware of her actions Campagna was extremely remorseful. She was determined not to repeat this conduct. She was free of alcohol and drug problems. The Crown submitted that Campagna was only entitled to a conditional discharge.

HELD: Campagna was granted an absolute discharge. A conditional discharge could not be granted on the basis of doubts or suspicions raised by the Crown. The evidence conclusively proved Campagna was not a significant risk to public safety.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 672.34, 672.45(1), 672.45(2), 672.47(3), 672.52(2), 672.54, 672.54(b), 672.54(c).

Counsel:

R. Bonner/C. Fedder, for the Crown.
D. Gaffar/D. Neilson, for the defendant.

¶ 1 **SINGH J.** (orally):— On the 1st of September, 1999, [1999] B.C.J. No. 2022, I found the accused not criminally responsible on account of mental disorder for the offences of dangerous driving causing the death of Monique Ishikawa and Kimberly Brooks on the 30th of May, 1998, pursuant to s. 672.34 of the Criminal Code, the applicable words of which read:

> Where the ... judge ... finds that an accused committed the act ... that formed the basis of the offence charged, but was at the time suffering from mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1), the ... judge shall render a verdict that the accused committed the act or made the omission but is not criminally responsible on account of mental disorder.

¶ 2 Subsequent to such finding and pursuant to s. 672.45(1) an application was made by the accused to hold a disposition hearing. Sections 672.45 (1) and (2) read:

> (1) Where a verdict of not criminally responsible on account of mental disorder ... is rendered in respect of an accused, the court may of its own motion, and shall on application by the accused or the prosecutor, hold a disposition hearing.
> (2) At a disposition hearing, the court shall make a disposition in respect of the accused, if it is satisfied that it can readily do so and that a disposition should be made without delay.

¶ 3 I indicated to counsel that the court was prepared to make a disposition because it was satisfied that it can readily do so and that a disposition should be made without delay.

¶ 4 That decision of the court was made for the following reasons:

> (a) the accused is now 28 years of age;
> (b) she was released on strict bail conditions as of the 10th of July 1998 and she has fully complied with those conditions up to the present time;
> (c) the incident that occurred on the 30th of May 1998 that lead to the charges was an isolated incident. The uncontradicted evidence is that the accused, apart from a single incident of depression as a result of the termination of a long relationship, has no history, medical or anecdotal, of experiencing any psychological, psychiatric or antisocial behaviour;

(d) the only history of any familial mental disorder is that the mother and sister suffered from bipolar mood disorders and Drs. Meldrum and Noone have a suspicion that this accused may, therefore, be genetically disposed to such disorders. However, Dr. Vath, whom Dr. Noone regards as very experienced, and who had the benefit of the opinion of the internationally known psychiatrist Dr. Dunner, has totally eliminated any such predisposition to bipolar mood disorder on behalf of the accused;

(e) all of the psychiatrists have agreed that this was a substance induced psychosis;

(f) the accused responded quickly and excellently with her medication and has not been on any such medication since October of 1998, a period in excess of ten months, without any relapse or decompensation;

(g) Dr. Vath testified that he did not see any need for him to supervise the accused medically and that the odds were infinitesimal that she would decompensate and that as long as she stayed away from stimulant medicines, he believes she would not experience any disorder;

(h) she is a high achiever, disciplined, sets reasonable and attainable goals and has done very well both academically and vocationally;

(i) she is a sociable and gregarious person, has a circle of friends and contact individuals and a good relationship with co-employees, all of whom are supportive of her;

(j) Dr. Noone testified that she is stable psychiatrically, that he found no evidence of a psychotic or neurotic personality and he gave her a clean bill of health psychologically.

¶ 5 Finally, a substantial body of evidence has been presented to the court both by these renowned psychiatrists and from a friend and a co-employee. Dr. Vath, furthermore, to satisfy himself that he was making an accurate diagnosis, carefully reviewed in some depth all of the history and antecedents with respect to this accused prior to the 30th of May 1998 and subsequently.

¶ 6 The court, on the totality of the evidence heard, was satisfied that all cogent and relevant information was before it to hold a hearing and to make a disposition.

¶ 7 Clearly, the finding of criminally not responsible by reason of a mental disorder does not brand this accused as a criminal or that she has committed a criminal act in the legal sense.

¶ 8 The court determined that the disposition should be made without delay.

¶ 9 The accused has been on strict bail conditions which she has fully complied with since July 1998 to the present time and thus, there has been a continuing curb on her liberty.

¶ 10 Up to the present time she has not been of any risk to herself or to society and it is, therefore, in the accused's interest that her liberty be secured so that there could be some stability to her physical,

mental, social, environmental and employment well being and that the stress that she has experienced since then to the present time should be significantly reduced.

¶ 11 Finally, she has shown an appreciation and an insight into her conduct and the tragic consequences of such conduct and is vigilant that such not occur again.

¶ 12 She is extremely remorseful.

¶ 13 She is free of any alcohol or drug problems. From the time that the incident occurred to the present time, the accused has been denied her right to drive a motor vehicle which is one of those essentials for the purposes of her employment.

¶ 14 Having determined that the court is satisfied that it can readily make a disposition and that it should be made without delay, s. 672.45(2) mandates that the court make a disposition in respect of this accused. This then triggers s. 672.54 which states:

> Where a court ... makes a disposition pursuant to subsection 672.45(2) ... it shall, taking into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is the least onerous and least restrictive to the accused:
>
> (a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court ... the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;
> (b) by order, direct that the accused be discharged subject to such conditions as the court ... considers appropriate; or
> (c) by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate.

¶ 15 Those subsections indicate and govern the court that the court can make one of three dispositions. However, s. 672.47(3) states:

> Where a court makes a disposition under s. 672.54 other than an absolute discharge in respect of an accused, the Review Board shall hold a hearing on a day not later than the day on which the disposition ceases to be in force, and not later than ninety days after the disposition was made, and shall make a disposition in respect of the accused.

Thus, s. 672.47(3) applies where the court has made a disposition under s. 672.54, other than an absolute discharge. In such a case the Review Board must then hold a hearing and make a disposition within 90 days of the court's disposition.

¶ 16 Section 672.54 of the Criminal Code of Canada was fully reviewed and interpreted by the Supreme Court of Canada in Winko v. British Columbia (Forensic Psychiatric Institute) (1999), 135 C.C. C. (3d) 129 (S.C.C.). I now summarize the significant dicta from that decision as to what McLachlin J., on behalf of the majority said.

¶ 17 Part XX.1 of the Criminal Code is a carefully crafted legislation to protect the liberty of the not criminally responsible accused to the maximum extent, compatible with that accused person's current situation and the need to protect public safety. (Paragraph 98).

¶ 18 Section 672.54 mandates the court to consider the need to protect the public from dangerous persons, together with the mental condition of the accused and the accused's integration into society and the accused's other needs. The court must then make the disposition that is the least onerous and least restrictive to the accused. If the court is unable to positively conclude on the evidence that the not criminally responsible accused poses a significant threat to the safety of the public, it must grant an absolute discharge because the court must make the order that is least onerous and least restrictive to the accused. (Paragraph 47).

¶ 19 The court must only deny the accused an absolute discharge if it is able to make a positive finding on the evidence before it that the accused is a significant threat to the safety of the public. Any doubts or any uncertainty entertained by the court is not sufficient to restrain the liberty of the accused. To reiterate, only on a positive finding by the court that the accused represents a significant risk to the safety of the public, can the liberty of the accused be restricted. (Paragraphs 48 and 49).

¶ 20 To make the determination whether the not criminally responsible accused is a significant threat to the safety of the public, the court must consider all of the available evidence that relates to the public protection, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused. The threat must be more than speculation. It must be supported by the evidence and it must be a real risk of physical or psychological harm to members in the community and the potential harm must be serious. A slight risk of grave harm or a high risk of slight harm will not suffice. The conduct leading to the harm must be criminal in nature.

¶ 21 To restrain the not criminally responsible accused's liberty under s. 672.54(b) and (c), that is, a conditional discharge or detention in custody in hospital can only be made if the court concludes that the accused poses a significant risk of committing a serious criminal offence. I repeat, to restrain the not criminally responsible accused's liberty under s. 672.54(b) and (c), that is, a conditional discharge or detention in custody in hospital can only be made if the court concludes that the accused poses a significant risk of committing a serious criminal offence. (Paragraphs 55 and 57).

¶ 22 Finally, McLachlin J. for the court summarized the duties of a court in interpreting s. 672.54 in paragraph 62, and I quote it in full because it encompasses more of the factors that I have summarized previously:

1. The court or Review Board must consider the need to protect the public from dangerous persons, the mental condition of the not criminally responsible accused, the reintegration of the not criminally responsible accused into society, and the other needs of the not criminally responsible accused. The court or Review Board is required in each case to answer the question: does the evidence disclose that the not criminally responsible accused is a "significant threat to the safety of the public"?
2. A "significant threat to the safety of the public" means a real risk of physical or psychological harm to members of the public that is serious in the sense of going beyond the merely trivial or annoying. The conduct giving rise to the harm must be criminal in nature.
3. There is no presumption that the not criminally responsible accused poses a significant threat to the safety of the public. Restrictions on his or her liberty can only be justified if, at the time of the hearing, the evidence before the court or Review Board shows that the not criminally responsible accused actually constitutes such a threat. The court or Review Board cannot avoid coming to a decision on this issue by stating, for example, that it is uncertain or cannot decide whether the not criminally responsible accused poses a significant threat to the safety of the public. If it cannot come to a decision with any certainty, then it has not found that the not criminally responsible accused poses a significant threat to the safety of the public.
4. The proceeding before the court or Review Board is not adversarial. If the parties do not present sufficient information, it is up to the court or Review Board to seek out the evidence it requires to make its decision. Where the court is considering the matter, it may find in such circumstances that it cannot readily make a disposition without delay and that it should be considered by the Review Board. Regardless of which body considers the issue, there is never any legal burden on the not criminally responsible accused to show that he or she does not pose a significant threat to the safety of the public.
5. The court or Review Board may have recourse to a broad range of evidence as it seeks to determine whether the not criminally responsible accused poses a significant threat to the safety of the public. Such evidence may include the past and the expected course of the not criminally responsible accused's treatment, if any, the present state of the not criminally responsible accused's medical condition, the not criminally responsible accused's own plans for the future, the support services existing for the not criminally responsible accused in the community, and the assessments provided by experts who have examined the not criminally responsible accused. This list is not exhaustive.

6. A past offence committed while the not criminally responsible accused suffered from a mental illness is not, by itself, evidence that the not criminally responsible accused continues to pose a significant risk to the safety of the public. However, the fact that the not criminally responsible accused committed a criminal act in the past may be considered together with other circumstances where it is relevant to identifying a pattern of behaviour, and hence to the issue of whether the not criminally responsible accused presents a significant threat to public safety. The court or Review Board must at all times consider the circumstances of the individual not criminally responsible accused before it.
7. If the court or Review Board concludes that the not criminally responsible accused is not a significant threat to the safety of the public, it must order an absolute discharge.
8. If the court or Review Board concludes that the not criminally responsible accused is a significant threat to the safety of the public, it has two alternatives. It may order that the not criminally responsible accused be discharged subject to the conditions the court or Review Board considers necessary, or it may direct that the not criminally responsible accused be detained in custody in a hospital, again subject to appropriate conditions.
9. When deciding whether to make an order for a conditional discharge or for detention in a hospital, the court or Review Board must again consider the need to protect the public from dangerous persons, the mental condition of the not criminally responsible accused, the reintegration of the not criminally responsible accused into society and the other needs of the not criminally responsible accused, and make the order that is the least onerous and least restrictive to the not criminally responsible accused.

¶ 23 I, therefore, now review the evidence which I am satisfied is full and complete with respect to the factors as mentioned in s. 672.54 to determine whether this accused poses a significant risk to the public safety or not.

¶ 24 Exhibit 17 is a letter dated August 27th, 1999, from Julie M. Busic of the United States Pre-Trial Services, who has attested that since July 16th, 1998, to the end of August 1999, this accused has reported regularly, made herself available for home visits, complied with all requests and conditions as required by the Canadian court and the United States Pre-Trial Services and had been subjected to twenty-one random tests which have all proved negative for the presence of drugs and/or alcohol.

¶ 25 On this hearing, letters of reference have been filed which can be succinctly summarized to indicate that this accused is a quick learner, is goal oriented, a team player and sociable, motivated, responsible and exerts maximum effort and is a high achiever.

¶ 26 Her ex-co-employee Marshall Dale and a present friend, Kate McGovern, have also testified. They have presented to the court the accused's disposition, attitude and performance both prior to the alleged incident and subsequently thereto that confirm that this was an isolated incident and that

the accused now is appreciative and has an insight as to her conduct and the possible causes for such conduct. They are supportive of her. Particularly, Kate McGovern is in constant contact with the accused, is aware of what symptoms to be on the lookout for and fully knows what she ought to do if any such symptoms present themselves. She is, furthermore, satisfied that the accused would be supportive and compliant of any steps taken by Kate McGovern for the security and well being of the accused and members of the community.

¶ 27 The accused also testified. It is clear that she now has a very firm insight into her conduct, the causes that may have lead to that conduct; her vigilance for any symptoms that may be indicative of any relapse and if so, the need for immediate medical attention; the requirement for abstinence from alcohol or any other substance except with the clear approval of a doctor; her acceptance of the remote possibility that she may be genetically predisposed to bipolar mood disorder and her obeyance of any directives and advice of her support groups.

¶ 28 She has been, as I stated previously, under strict bail conditions with which she has fully complied and has been fully compliant with her attendances upon her psychiatrists and bail supervisors and the regimen of medication prescribed for her.

¶ 29 Her past medical history is clear of any indication of a mental, psychological, psychiatric or personality disorder. Since this incident, at a time when she was acutely, mentally disordered which persisted for the next week or so, she had within four or five days responded quickly and progressively to the medication prescribed. She was on medication until the 1st of October 1998 and since then she has been off any medication without any indication of a relapse or a predisposition for such a relapse.

¶ 30 All of the collaterals, including those who have testified, those who have filed letters of reference and those whom the professionals have contacted, have all been positive with respect to this accused and have completely negatived the possibility of any risk, significant or otherwise, by this accused to the public safety.

¶ 31 I turn now to the medical evidence which requires greater deference because these are professionals and experts in the field regarding the mental stability of the accused and have assessed the likelihood of risk by this accused to the safety of the public.

¶ 32 Dr. Leeann Meldrum was a psychiatrist at the Forensic Psychiatric Institute that first saw the accused on the 2nd of June, 1998. Her conclusion was that the accused suffered from an acute substance induced psychosis that had a genetic genesis of bipolar mood disorder because the accused's mother and sister suffered from it. She made this conclusion because she was skeptical that the side-effects of the over-the-counter diet suppressant could have been exhibited for such a long period. However, by the 29th of June, 1998, Dr. Meldrum found that her mental state continued to be stable; there was no evidence of mood instability or psychosis and that the accused had developed insight into the nature of her difficulties. On the 7th of July, 1998, Dr. Meldrum stated that this was the first episode of mania and psychosis experienced by the accused and that she was vulnerable to this by virtue of her strong

genetic predisposition to a mood disorder which was likely induced by over-the-counter suppressants.

¶ 33 In her report of June 11th, 1998, that is within days of her seeing the accused, Dr. Meldrum opined that if the accused was to be released on bail or some form of community supervision she should be compliant to follow up the treatment of a psychiatrist and she should abstain from the use of alcohol or illicit substances and all over-the-counter non-prescription medications or preparations. Thus, it would be fair for the court to infer that at the very earliest, Dr. Meldrum did not consider the release of this accused into the community to be a risk.

¶ 34 Of greater import is the evidence of Dr. Noone and Dr. Vath, both of whom are very experienced and respected psychiatrists. Dr. Noone found the accused to be psychiatrically stable, no psychotic or neurotic personality disorders and gave her a clean bill of health psychologically. He testified as to the risk assessment of this accused. In this respect, he utilized the risk assessment guide that has been developed at the Forensic Institute and Simon Fraser University, which included both the historical and clinical factors as follows:

(a) any previous violence;
(b) the age when the first violence was committed because the younger the age at which it is committed, the higher the risk;
(c) instability in personal and social relationships;
(d) employment history and any problems and disruptions;
(e) substance abuse;
(f) any history of any major mental illness;
(g) any psychopathy;
(h) any indication of early maladjustment with respect to behavioural or emotional problems;
(i) any personality disorder;
(j) if any conditions of supervision had been imposed, was there any noncompliance or failure to follow directions;
(k) does the individual indicate any lack of insight; that is, any lack of understanding as to why the incident occurred;
(l) are there any current negative behaviour or antisocial attitudes;
(m) are there any present, active symptoms of any mental aberration or disorder;
(n) does the individual show impulsivity, because the higher the impulse reaction the greater is the risk;
(o) is the individual unresponsive or non-compliant with suggested treatment;
(p) are there any management plans that clearly indicate a lack of viability of those plans, such as a grade three level educated individual setting a goal of him going to university and finally becoming a lawyer;
(q) is the individual exposed to a destabilizing environment involving substance abuse or negative relationships or lack of social and family support or relationships;

(r) has the individual been exposed to stress and has the individual then been able to cope with that stress and would that individual be able to do so in the future.

¶ 35 Using the above criteria he found positive factors in favour of the accused. He found that the accused has a good insight of the circumstances and the causes that lead to the incident. She is totally asymptomatic of any mental illness. She is not even moderately impulsive but has set for herself carefully attainable goals. She has been gainfully employed. She has a good circle of friends, both in her employment and socially and has a supportive contact with her father. She is a gregarious sociable person. And finally, he found that she was able to manage her stresses and that given her healthy activities and being goal oriented, these factors would in fact minimize her stresses.

¶ 36 It was Dr. Noone's opinion that the only positive indicator of a risk factor was the family history of bipolar mood disorder and perhaps the propensity of this accused to suffer the same. However it was his opinion, considering her age and the antecedents without any prior history or any relapse and because he was loathe to totally eliminate any risk factor in any individual, he stated that the accused presented a very low risk of a relapse that would endanger the safety of society. In any event, he opined that if the accused would suffer from a bipolar mood disorder and in the absence of any stresses or stimulus, such a process would be a slow and progressive one, which would thus become clearly noticeable by the accused's support group and by herself.

¶ 37 Against all of these positive factors in favour of the accused, I am satisfied, with all due respect to Dr. Noone, whom I found to be very alert to the possibility of him making a wrong diagnosis, offered the old school opinion that perhaps this accused be clinically managed for 18 to 24 months.

¶ 38 Dr. Vath was her treating psychiatrist from the time of her release to the present time. To make an accurate diagnosis whether there was any propensity of this accused suffering from a bipolar mood disorder and with the concurrence of the internationally renowned psychiatrist, Dr. Dunner, he weaned the accused from the medication of lithium and after a careful monitoring, he positively concluded that this accused does not have any bipolar malady and that the incident in question was solely substance induced. It was his opinion that he saw no need for him to medically supervise her. He found her to be a totally compliant and exemplary patient. He too concluded that she was very insightful, deeply remorseful and greatly concerned of the pain that she has caused to the families; has subjected herself to a heavy work schedule and has been able to and will be able to, successfully withstand and manage stress. He found that she has already experienced the following extreme stress:

(a) she lost her job with its concurrent retirement and employment benefits;
(b) she suffered embarrassment as a result of the incident;
(c) she also suffered the stress and uncertainty of these pending legal proceedings and their consequences;
(d) she expressed the desire to seek employment.

Notwithstanding all of these stresses, apart from the usual anxiety experienced by any individual, she

showed no emotional disorders.

¶ 39 Dr. Vath considered these factors:

(i) that she had suffered no mental illness in the past;
(ii) she is presently living alone in an apartment;
(iii) she is well regarded at her employment;
(iv) she has a number of friends who are fully supportive;
(v) she has an insight into the incident and that her experience was unusual;
(vi) she was asymptomatic from then onwards;
(vii) and he concluded that he was satisfied that she presented an infinitesimal risk to society; in other words, any threat to society was insignificant.

¶ 40 The Crown on this disposition hearing has seriously urged upon the court that the accused be given a discharge with conditions because the court should make a positive finding on the evidence that this accused presents a significant risk to the public. The Crown says that when one looks at the cumulative factors, such a finding is fully warranted.

¶ 41 The factors that the Crown urges are:

(a) the inherently very dangerous criminal act of the accused on the date in question;
(b) that Dr. Meldrum had not been given an opportunity to make a risk assessment but she did find that the accused suffered an intense, extreme psychosis, more likely caused by the latent genetic bipolar disorder rather than substance induced, confirmed by the fact that this accused exhibited such mental disorder over a considerable period of days after the incident and that, therefore, the accused ought to be monitored for some time in the future because there is the possibility of this serious risk of conduct recurring;
(c) that Dr. Meldrum's opinion is somewhat supported by Dr. Noone in that even though he has held that the risk is low, he has invited the court to subject the accused to be monitored for a period of some eighteen to twenty-four months;
(d) that perhaps that court has not had available to it the further collateral evidence that would enable the court to make a final determination;
(e) given the nature of the seriousness of the conduct of the accused and the likelihood of such a disorder recurring then, by itself, such conduct is a significant risk to the public.

Therefore, the Crown says, an absolute discharge is inappropriate.

¶ 42 I pause here to say that the court has a solemn duty to uphold and apply the law. This is what I must do. I have reviewed in detail the law as it stands presently and as interpreted by the highest court of this land. Applying the law and in accordance with the guidelines by the Supreme Court of Canada, I

can come to no other conclusion but to disagree with the Crown's position.

¶ 43 I am satisfied that were I to accede to the Crown's submissions, I would be falling into the error that the Supreme Court of Canada cautioned against; namely, not to refuse to grant an absolute discharge based upon doubts or speculation or upon suspicions. I am satisfied on the whole of the evidence that this accused would not be a significant risk to the safety of the public.

¶ 44 Therefore, it follows that I order that the accused be absolutely discharged.

¶ 45 I direct that the Clerk of the Court, pursuant to s. 672.52(2) send, without delay, a transcript of the disposition hearing, any document or information relating thereto in the possession of the court and all exhibits filed with the court or copies of these exhibits, to the Review Board that has jurisdiction in respect of the matter.

SINGH J.

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