*R v St Croix*, 2021 NWTSC 13

Date:  2021 03 17

Docket:  S-1-CR-2019-000 111

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**-and-**

**TARIQ ST CROIX**

**RULING ON PUBLICATION BAN**

I) INTRODUCTION

1. On February 25, 2021 I sentenced Tariq St Croix on a charge of break and enter and commit aggravated assault on his former spouse, Marina St Croix. *R v St Croix*, 2021 NWTSC 12.
2. The attack on Ms. St Croix was violent and protracted: she was stabbed multiple times on her face, shoulder, chest and stomach. Police were called and attended the residence shortly after the attack. As part of their investigation, they took photographs of the scene and of Ms. St Croix's multiple injuries.
3. Before the date scheduled for the sentencing hearing, the Crown filed an Application seeking a publication ban of the photographs that were going to be filed as exhibits at the sentencing hearing. Media outlets were served with the Application, in accordance with this Court’s Practice Direction on Publication Bans dated August 24, 2020.
4. The sentencing hearing proceeded on February 11, 2021. At the start of the hearing, I issued temporary publication ban and sealing orders with respect to the booklet of photographs (Exhibit #4) on the understanding that the Crown's Application would be dealt with after Mr. St Croix was sentenced.
5. While the Notice of Application contemplated a publication ban for all the photographs filed at the sentencing hearing, Ms. St Croix made clear, through her Victim Impact Statement, that she did not want there to be a publication ban on all the photographs of her injuries. She wanted there to be transparency about what happened to her. She asked that there only be a publication ban of the photographs where her breasts are visible.
6. At the conclusion of the submissions as to sentence, I adjourned my decision to February 21st. On that date, after I imposed sentence, we returned to the publication ban issue. Crown counsel advised that Ms. St Croix had reconsidered her position, and that she wanted there to be a publication ban with respect to all the photographs. After a short recess during which Crown counsel had further conversation with her, he advised that she had returned to her original position, wanting only some of the photographs to be the subject of the ban. I asked her directly in open Court to confirm that this was the case, and she said that she wished there to be a publication ban only of the photographs where her breasts are visible.
7. Crown counsel confirmed that he was seeking an order that was aligned with Ms. St Croix's wishes. At the earlier appearance I had raised, of my own motion, the issue of whether the photographs should also be the subject of a sealing order, given that they show intimate parts of Ms. St Croix's body. Crown counsel confirmed that he was seeking that order as well.
8. Mr. St Croix did not take a position on the Application. No one appeared on behalf of any media outlets.
9. I indicated then that I would grant the Application, but I wanted to ensure there was clarity about the scope of the order being sought. To that end, I paginated the photographs in Exhibit #4. I asked Crown counsel to review it and confirm in writing which ones the Crown was asking be covered by the orders. The Crown later wrote to the Registry to advise that the orders it seeks are with respect to photographs #12, #15, #16, #18, #19 and #21.

II) ANALYSIS

1. As I noted in *R v Sutherland*, 2019 NWTSC 45, pp. 19-20, the open Court principle is a fundamental tenet in our democracy. It means that members of the public must generally have access to court proceedings. It also means that representatives of the media must have the ability to disseminate information about what happens in those proceedings. This usually implies having access to exhibits that were filed, and having the ability to publish their content.
2. The starting point is openness and access. Any decision restricting openness and access must be made in accordance with the legal framework and principles articulated by the Supreme Court of Canada in *R v Mentuck*, 2001 SCC 76. Broadly speaking, as noted in *Sutherland*, this means that in deciding whether restrictions should be put in place, the Court must consider whether those restrictions are necessary to prevent a serious risk to the administration of justice because other measures cannot prevent that risk, and that the salutary effects of the restrictions outweigh the deleterious effects of having them in place.
3. I have no difficulty concluding that it is appropriate to put some restrictions in place in this case. I find that there is a strong public interest in doing so.
4. Whenever police investigate criminal offenses, they are expected to gather and preserve as much evidence as possible about the events. When investigating a crime of violence, taking photographs of injuries sustained by a victim is very much part of that function. A picture is worth a thousand words, and in particular, when it comes to bodily injuries, a description in words is rarely as effective as a photograph to help the trier of fact get the true measure of what happened.
5. When, as here, photographs taken during the investigation are graphic and intimate, limiting public access to them and preventing their dissemination is necessary to prevent harm to the administration of justice. Victims of violence may be less inclined to seek help of the authorities if they know that one of the consequences of doing so will be that strangers will have access to, and be allowed to disseminate, graphic and sometimes very intimate photographs of their injuries. Aside from that concern, it is in the public interest to protect the privacy and dignity of victims of violent crime and their families. These are not new concerns, but they are especially pressing now, in this age of electronic media and social networks.
6. Restricting access and prohibiting the publication of the photographs in question is the only way to address the harm that their dissemination would cause. There is also no doubt in my mind that the overall benefits to the victim's dignity and privacy far outweigh any deleterious impact of imposing these limits on the openness of the process.
7. As for the sealing order, the same considerations apply. On balance, I find that the salutary effects of restricting access to the photographs that show the injuries to the victim’s breast outweigh the deleterious effects of curtailing the public’s access to them and the encroachment to the open court principle that it necessarily entails.
8. The restrictions I am imposing will not result in these proceedings being shrouded in secrecy. The sentencing hearing proceeded in open Court. All the victim’s injuries are described in the Agreed Statement of Facts and Victim Impact Statements which are exhibits in these proceedings and are accessible to the public and media. In addition, the orders that are being sought only pertain to 6 of the 24 photographs included in Exhibit #4. Most of the photographs, including several that show the victim’s injuries, will remain accessible. As a result, these orders will not prevent the public from understanding the events that led to Mr. St Croix being charged, what happened at his sentencing hearing, and the reasons why he received the sentence that he did.

III) CONCLUSION

1. Accordingly, I order the following:

1. Sealing Order

A) Photographs #12, #15, #16, #18, #19 and #21 will be removed from Exhibit #4 and will be retained in a sealed envelope on the Court file;

B) Anyone wishing to have access to these photographs will have to make Application to the Court, on at least 14 days’ notice to the Crown.

2. Publication Ban

A) The publication, transmission or broadcast of Photographs #12, #15, #16, #18, #19 and #21 is prohibited.

B) Anyone who has been granted access to those photographs and wishes to have the publication ban lifted must make Application to the Court, on at least 14 days’ notice to the Crown.

1. In the event that any Application is made to lift either Order, it will fall to the Crown to make Ms. St Croix aware of it and seek her input, as the Crown properly did in dealing with these issues at the sentencing hearing stage.
2. I direct that the Crown prepare a Formal Order reflecting these terms. The draft Order should be approved as to form by Mr. St Croix's counsel. Once it is filed, it will replace the temporary order that has been in place since the start of the sentencing hearing.
3. After the Order is filed, I direct the Clerk of the Court to do the following:

1. Remove Photographs #12, #15, #16, #18, #19 and #21 from Exhibit #4;

2. Seal those photographs in an envelope and affix a copy of the filed Order on that envelope;

3. Affix a copy of the filed Order on Exhibit #4. This will make it clear that some of the photographs originally included in that Exhibit have been removed.

 L.A. Charbonneau

 J.S.C.

Dated at Yellowknife, NT, this

17th day of March, 2021

Counsel for the Crown: Blair MacPherson / Jacqueline Halliburn

Counsel for the Accused: Kate Oja

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