Date: 2011 10 11
File: Y-2-YO-2011-000027

IN THE YOUTH JUSTICE COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-and-

D.B. (A Young Person)

REASONS FOR DECISION

of the

HONOURABLE CHIEF JUDGE ROBERT D. GORIN

Heard at:	Yellowknife, Northwest Territories September 30, 2011
Date of Decision:	October 12, 2011
Counsel for the Crown:	Ms. J. Patterson
Counsel for the Accused:	Ms. B. Rattan

s. 271 *Criminal Code*

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Introduction

[1] On September 30th of this year, counsel for D.B. applied for an adjournment of his trial, which had previously been set to be heard on October 6th. I denied the request for an adjournment, stating that written reasons would be provided. My reasons are set out in the following paragraphs.

Analysis

[2] D.B., who is 15 years old, was charged with sexually assaulting his niece, who was 4 years old on the dates alleged during the summer of 2010. Counsel for D.B. stated that her reason for requesting the adjournment was that she required further time to consult with "a psychologist or someone conversant with very young children and their proclivities." The reason why defence counsel wished to consult with an expert was due to factual circumstances that were revealed in the disclosure material she had reviewed.

[3] The disclosure material reviewed by defence counsel indicated that the child's behaviour had changed for the worse around the time of the dates alleged. However, it also indicated her living arrangements had changed dramatically around that same time. She had previously had been living with her mother, father and siblings. However, her mother left town with the complainant's siblings while the complainant remained in Fort Smith to live with her grandmother and father on

an alternating basis. She would live with her father during the two weeks of his employment rotation when he was not working. She would then live with her grandmother and her children during the time that her father was working.

[4] Defence counsel further advised that the disclosure material indicated that due to her change in behaviour, various people repeatedly asked the complainant whether anyone had touched her inappropriately before she ultimately responded in the affirmative.

[5] Counsel stated that the matter had originally been assigned to another lawyer but that in an effort to save costs, Legal Aid had re-assigned it to her. She said that she had first received the file on September 1st but that she had not yet consulted an expert. I find no reason to assign or allocate blame between the various parties involved. Suffice it to say that during the time between the last adjournment of the trial on August 16th and September 30th, a great deal more should have been done. It is essential when matters requiring advance preparation are transferred from one lawyer to another that steps are taken in order to ensure that that such preparation is carried out in a timely matter.

[6] Counsel acted appropriately in bringing the matter forward rather than waiting for the trial date to apply for the adjournment. However, October 6th, 2011, was the third occasion that this matter had been set for trial. Two days of court time had been set aside in order to ensure its completion.

[7] The last adjournment of the trial had been granted when the previous defence counsel stated that he needed further time to contact and consult with an expert in the behaviour of children. Such consultation has still not occurred. Consequently, if an expert were to be called as a witness, there is no way of knowing his or her available dates.

[8] In *Darville v. The Queen,* [1956] S.C.J. No. 82, 116 C.C.C. 113, 25 C.R. 1. , it was held that the conditions that must ordinarily be established in order to entitle a party to an adjournment on the ground of the absence of witnesses are:

> a) that the absent witnesses are material witnesses in the case;
> b) that the party applying has been guilty of no laches or neglect in omitting to endeavour to procure the attendance of these witnesses;

> c) that there is a reasonable expectation that the witnesses can be procured at the future time to which it is sought to put off the trial.

[9] I deny the request for an adjournment on all three of the grounds set out in the foregoing paragraph. Counsel has been appropriately candid in conceding that she should have done more when she first received carriage of this matter. Given this concession, as well as the reasons I have already articulated, I conclude that the Defence has not demonstrated that it is not guilty of laches or neglect.

[10] Moreover, having been provided with the details of the evidence concerning the complainant's behaviour during the dates alleged and the questioning which preceded her disclosure against D.B. - and not having been provided with the preliminary opinion(s) of any expert - I am unable to conclude it has been established that the contemplated expert evidence is material. I am far from being satisfied that the present case requires the assistance of persons with special knowledge on a topic on which the ordinary person is unlikely to form a correct judgment; see *R. v. D.D.*, [2000] 2 S.C.R. 275 at para 47. In other words, the necessity of such evidence is highly questionable.

[11] Finally, as previously stated, because there has not as yet been any real consultation with an expert, the expert's availability on future dates is unknown. Therefore, if the expert were ultimately to testify, a further adjournment would be occasioned.

[12] In exercising my discretion to refuse the requested adjournment, I have also borne in mind that D.B. is fifteen years old and was fourteen during the dates charged. S. 3 of the *Youth Criminal Justice Act* declares Canada's policy with respect to young persons. Subsection (1)(b)(v) of s. 3 states:

> 3.(1) . . . in order to promote the long-term protection of the public;
>
> . . .
>
> b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:
>
> . . .

> (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

[13] The offence alleged is now well over a year old. I find that any further delay would violate the principle set out in the foregoing subsection. In addition, the complainant was four years old during the dates charged and is still very young. The memories of children often fade quickly and a further adjournment could well result in the deterioration of important evidence.

Conclusion

[14] It is for the foregoing reasons that D.B.'s application for a further adjournment was denied.

Robert D. Gorin
C.J.T.C.

Dated at Yellowknife, Northwest Territories
This 12th day of October, 2011.

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