
CANADA / JUDGMENT

R. v. McDonald

2014 BCSC 2652

COURT

Supreme Court of British Columbia

DECIDED

6 June 2014

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. McDonald,

2014 BCSC 2652

Date: 20140606

Docket: 30925-5

Registry: Dawson Creek

Regina

v.

Thomas Anthony McDonald

Before: The Honourable Mr. Justice Fitch

Oral Ruling re Application for s. 752.1 Assessment Report

Counsel for the Crown:

Declan T.M. Brennan

Counsel for the Accused:

Tam C. Boyar

Place and Date of Hearing:

Dawson Creek, B.C.

June 6, 2014

Place and Date of Judgment:

Dawson Creek, B.C.

June 6, 2014

[1] THE COURT: This is an application by the Crown for an assessment report pursuant to s. 752.1 of the Criminal Code, R.S.C. 1985, c. C-46, following Mr. McDonald's conviction for manslaughter, a serious personal injury offence.

[2] Section 752.1 reads:

752.1 (1) On application by the prosecutor, if the court is of the opinion that there are reasonable grounds to believe that an offender who is convicted of a serious personal injury offence or an offence referred to in paragraph 753.1(2)(a) might be found to be a dangerous offender under section 753 or a long-term offender under section 753.1, the court shall, by order in writing, before sentence is imposed, remand the offender, for a period not exceeding 60 days, to the custody of a person designated by the court who can perform an assessment or have an assessment performed by experts for use as evidence in an application under section 753 or 753.1.

[3] The offence in respect of which Mr. McDonald has been convicted was committed in 1981. The parties are agreed that the provisions in s. 752.1 are procedural in nature and govern the application before me.

[4] The application arises in the following context.

[5] On September 26, 1981, Mr. McDonald shot and killed Earl Dean Jones in a rural area outside of Dawson Creek after being assaulted by Mr. Jones in a Dawson Creek bar earlier in the evening.

[6] Mr. McDonald left Canada for the United States the morning of the offence. Although he was regarded as a suspect in the homicide of Mr. Jones from the outset, the police and Crown considered themselves to have insufficient evidence to conduct a prosecution at that time, and the investigation was dormant for a substantial period.

[7] Mr. McDonald left the United States for England in about 2003.

[8] In 2004, Mr. McDonald was convicted in England of manslaughter in relation to Roger Wilton. The circumstances of that offence were described by the sentencing judge in these terms:

The circumstances under which Mr. Wilton met his death at your hands were truly horrific. With little or no warning you seized a 14 pound sledgehammer and, on your own admission, struck Mr. Wilton with it not just once but five or six times with all the force at your command.

The injuries caused by your actions as a result of the brutal act were appalling. According to the evidence of the very experienced pathologist called by the Crown, the hammer blow to the chest area, apart from breaking practically all Mr. Wilton's ribs, also effectively tore his heart from its roots. One of the numerous other blows was to his skull which was driven inwards by the force of the blow. The pathologist described the injuries as being... "as bad as it gets".

- [9] Mr. McDonald was sentenced to six years' imprisonment for this offence.
- [10] In 2007, Mr. McDonald was released on licence, or parole, by the English authorities. Mr. McDonald fled the United Kingdom without complying with the terms of his parole and eventually found his way back to Canada.
- [11] The police learned sometime in 2009 Mr. McDonald was back in Canada. They remounted the investigation and utilized an unsolved homicide technique commonly known as a "Mr. Big" investigation to target Mr. McDonald and determine his knowledge of or involvement in the killing of Mr. Jones in 1981.
- [12] In the course of that investigation, Mr. McDonald admitted that he shot Mr. Jones in retaliation for the assault Mr. Jones perpetrated against him in the bar that evening. At the conclusion of the Mr. Big investigation, Mr. McDonald was charged with first degree murder.
- [13] Following trial before me without a jury, I convicted Mr. McDonald of the included offence of manslaughter as I was not satisfied beyond a reasonable doubt that Mr. McDonald was shown to have had one of the two intents for murder when he fired the shot that killed Mr. Jones.
- [14] This application, then, follows my conviction of Mr. McDonald for the manslaughter he committed in 1981.
- [15] The Crown says that the test prescribed by s. 752.1 is easily met on the circumstances of this case. Mr. McDonald's counsel takes no position on the application itself.
- [16] The test on a s. 752.1 application is low. It calls upon the court to determine not whether Mr. McDonald will be found a dangerous offender or long-term offender, or whether it is likely he will be found a dangerous offender or long-term offender, but only whether reasonable grounds exist to believe that he might be so found.
- [17] Mr. McDonald had a relatively minor record prior to the English manslaughter conviction. It includes one common assault in Canada in 1980 and a resist arrest conviction from the United States in 1990. The rest of the record consists primarily of driving-related offences involving alcohol abuse.
- [18] The primary drivers of this application are Mr. McDonald's two convictions for manslaughter. He has now taken two lives. These two acts are at least capable of forming a pattern of behaviour within the meaning of what is now s. 753(1)(a): *R. v. Dow* (1999), 134 C.C.C. (3d) 323 (BCCA).

- [19] In addition, I would note that in the course of the police investigation, Mr. McDonald threatened to kill, with a pickaxe-like instrument, a person he believed owed him money for welding services. This event was independent of and formed no part of the Mr. Big investigation. It was not scripted by the police, who took steps to intervene and mitigate the risk that Mr. McDonald would pursue the matter once they found out about it.
- [20] The Crown also relies on Mr. McDonald's behaviour in and reactions to some of the more violent scenarios constructed by the police in the course of the Mr. Big investigation. The Crown says this demonstrates Mr. McDonald's failure to restrain his behaviour and his indifference to the reasonably foreseeable consequences his behaviour would have on others. The Crown says this behaviour may properly be considered not only on the s. 752.1 application but, should the Crown be so minded, on any dangerous offender or long-term offender application that might be brought hereafter. I need not resolve on this application the question of whether it is appropriate for the court to have regard to this body of evidence, and I decline to do so. I expect this will be a live issue should the application proceed at a subsequent date.
- [21] Suffice it to say that I am satisfied, on the basis of Mr. McDonald's history of offending and his behaviour outside of the police-created Mr. Big scenarios, that the s. 752.1 test is met in this case.
- [22] Mr. McDonald will, accordingly, be remanded for an assessment under s. 752.1, the remand not to exceed 60 days.
- [23] In accordance with the applicable provisions, the report shall be filed not later than 30 days after the end of the assessment period and made available to the Crown and to counsel for the defence.

"FITCH J."

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