

R. v. H.H., 2015 ONCJ 392 (CanLII)

Date: 2015-07-17

Docket: 2811 998

Citation: R. v. H.H., 2015 ONCJ 392 (CanLII), <<http://canlii.ca/t/gk9nk>>, retrieved on 2017-12-11

WARNING

The court hearing this matter directs that the following notice should be attached to the file:

A non-publication and non-broadcast order in this proceeding has been issued under [subsection 110\(1\)](#) and [111\(1\)](#) of the *Youth Criminal Justice Act*. This subsection of the *Youth Criminal Justice Act*, which is concerned with the consequence of failure to comply with an order made under [subsection 110\(1\)](#), read as follows:

110(1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

111(1) Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

COURT FILE NO.: 2811 998
DATE: July 17, 2015
Citation: *R. v. H.H.*, 2015 ONCJ 392

**ONTARIO COURT OF JUSTICE
(Central East Region)**

B E T W E E N:

Her Majesty The Queen

P. Thompson, Counsel for the Crown

- and -

H.H. and R.C.

**D. Hodson, Counsel for H.H.
D. Barrison, Counsel for R.C.**

))))) **HEARD:** Oct. 27, 28, 29, 30, 31/14
Nov. 4, 5, 6, 10, 13/14
Dec. 1, 4, 5/14
Mar. 11/15
Apr. 27, 28/15

JUDGMENT

BLOCK, J:

[1] **THE CHARGES:**

H.H. and R.C. are charged as follows:[i]

- (1) Between September 24, 2013 and October 4, 2013 R.C. procured T.T. to become a prostitute, contrary to the *Criminal Code of Canada*, s.212(1)(d) ,
- (2) Between September 1, 2013 and Nov 30, 2013 R.C. attempted to procure A.B. to become a prostitute contrary to the *Criminal Code of Canada*, s.212 (1)(d),
- (3) Between November 8, 2013 and December 31, 2013 R.C. failed to comply with a youth sentence which required her to attend each class and each day of school, contrary to the *Criminal Code of Canada*, s.137,

- (4) On October 2, 2013 H.H. obstructed Police Constable Kim of the Toronto Police Service, contrary to the *Criminal Code of Canada*, s. 129(a),
- (5) Between Sept 24, 2013 and October 4, 2013 H.H. failed to comply with a Youth Court order that she keep the peace and be of good behaviour
- (6) In the same time period H.H. procured T.T. to become a prostitute, contrary to the *Criminal Code of Canada*, s. 212 (1)(d),
- (7) In the same time period H.H. did exercise control, direction or influence over the movements of T.T. in such a manner as to show that she was aiding, abetting or compelling her to engage in prostitution, contrary to the *Criminal Code of Canada*, s. 212(1)h),
- (8) In the same time period H.H. lived on the avails of prostitution of T.T., who was under the age of eighteen, contrary to the *Criminal Code of Canada*, s. 212(2),
- (9) In the same time period H.H. exercised control over the movements of a person under the age of eighteen years, namely T.T. for the purpose of exploiting or facilitating the exploitation of T.T., contrary to the *Criminal Code of Canada*, s. 279.011 (1)
- (10) In the same time period H.H. intimidated T.T. to perform acts of prostitution, contrary to *Criminal Code of Canada*, s. 423 (1)(b),
- (11) In the same time period H.H. and R.C. did, for the purpose of enhancing the ability of a criminal organization to commit the indictable offence of trafficking in a person under the age of 18, knowingly participated in the activity of a criminal organization by counselling T.T. to perform acts of prostitution, contrary to the *Criminal Code of Canada*, s.467.11(1)

[2] There is agreement among counsel that convictions should be recorded on counts 3, 4 and 5. The crown invites dismissal of count 10.

[3] Crown counsel has applied for count 11 to be amended to replace the word “counselling” with the word ”facilitating”. The timing is unfortunate. In my view this amendment should have been brought before the conclusion of the crown’s case or, at very least, while it was still possible to recall witnesses who had been cross-examined with the earlier formulation of count 11 in mind. The proposed amendment would prejudice the defendant’s by expanding the basis for liability with the broader and more inclusive expression when cross-examination had been based on a narrower conception embodied in a more restrictive formulation. I will not grant the application.

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OVERVIEW

[4] T.T. accompanied a number of other youths and young adults to Toronto in the autumn of 2013. She was then 14. There was suggestion of a difficult adolescence and a stressful home life. She was not familiar with the big city, having traveled there only a few times before for brief trips. She had no money, no phone, no family and no friends in Toronto.

[5] During her absence, T.T. had sexual relations with a number of men for money. While she was gone her father conducted an intense search for her. He received very little assistance, but a lot of misinformation and some abuse from acquaintances of his daughter, including R.C., whom he contacted during the search.

[6] T.T. ultimately returned home after a ten day absence. She was sick, malnourished and exhausted. Her genitals were swollen, bruised and infected. Ultimately the charges summarized above were brought against Ms. H.H. and Ms. R.C. for their alleged roles in T.T.'s prostitution.

[7] The Crown called multiple witnesses including; female teenaged students of G.L.Roberts Secondary School, a nurse who treated T.T., a scientist who analyzed a bodily fluid sample of T.T., various johns, police witnesses and hotel security staff. In addition, the Crown provided extensive documentary evidence, including telephone records and video- footage of transportation facilities and hotel premises. The defendants called no evidence.

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EVIDENCE and ANALYSIS

[8] At noon on September 24, 2013 T.T., C.B., A.B., and R.C. met at G.L. Roberts secondary school in Oshawa. The gathering moved from the school property to the shores of Lake Ontario. The four girls smoked marijuana and discussed visiting Toronto for the purpose of prostitution.

[9] The lakeside meeting is a central feature of this case. As in any criminal case, I'm entitled to accept some, none or all of a witness's evidence. C.B., A.B. and G.C-C. were reluctant witnesses. They had clearly come to despise T.T. and believed her to be the cause of her own trouble. At the time of their testimony they were clearly motivated to disassociate themselves from the prosecution and express their sympathy with the defendants. Their identification with R.C. gives great power to their evidence inculcating her in this matter.

[10] C.B. and A.B. gave evidence about the meeting at the lake. C.B. testified that she heard R.C. ask both T.T. and A.B. whether they wanted to go to Toronto and make some money with her. She thought that the words “prostitution” and “escort” might not have been used but that everyone present would have been entirely aware that the obvious purpose of the conversation was to discuss going to Toronto to do sex-work. She testified that she had seen facebook messages in which R.C. had attempted to recruit A.B. for prostitution in the month preceding the lakeside discussion.

[11] A.B. said that the conversation at the lake was explicit and that T.T. was comfortable with the project. In her version R.C. asked T.T. if she wanted to go down to Toronto and make money. R.C. said to T.T. “you have to go fuck”. A.B. confirmed the evidence of C.B. that Ms. R.C. had attempted to recruit A.B. both that same evening and a month previously for prostitution in Toronto. A.B. also indicated that Ms. R.C. advised that her boyfriend Shakur would either drive her to Toronto or arrange a driver. A.B.’s evidence in this respect was corroborated both by the visit to Shakur’s home later that evening and by the text and mobile phone evidence presented at trial. A.B. also stated that a week or so prior the lakeside discussion T.T. had said that she needed money for weed and would prostitute herself to get it.

[12] G.C-C. was an unpleasant witness whose testimony was marked by her exertion to exculpate Ms. H.H. and Ms. R.C. and vilify T.T.. I accept the portion of her evidence where she reluctantly adopted previous testimony that R.C. had attempted to recruit her into prostitution about a month previous to the meeting at the lake. She recalled that Ms. R.C. had said that she had “N.C. and H.H. with me out there”. She was friends with T.T. at the time and told her of this conversation. T.T. then expressed interest in prostitution. G.C-C. directed her towards R.C. .

[13] I am unconvinced by T.T.’s evidence that she was unaware of the illicit purpose for the trip to Toronto. It defies common sense that she accepted that strangers would pay her way to the city and put her up in a hotel with no ulterior motive. Although there are many difficulties with the evidence of A.B., C.B. and G.C-C., I accept their evidence that T.T. anticipated prostituting herself, looked for an opportunity to do so and was recruited by R.C. during the lakeside discussion.

[14] I am not surprised that a 14 year old girl would refuse to admit her willingness to participate in the events described. The episode was both a physical and emotional disaster for young T.T.. In the months after the trip to Toronto she was harassed by H.H., became a pariah to the other participants in the lakeside discussion and has become notorious to her peers. Other than her testimony that she was ignorant of the purpose of the trip to Toronto and that she was reluctant to participate in the acts of prostitution, I accept T.T.'s narrative of September 24 – October 2, 2014. It is substantially corroborated by the evidence of the johns, the video-surveillance, security staff at the Metropolitan Hotel and the telephone records.

[15] The testimony of the teenagers from G.L.Roberts is powerful evidence that R.C. set herself up as a recruiter of teenage prostitutes amongst female students of that secondary school in general and T.T. and A.B. in particular.

[16] Prior to leaving for Toronto that evening T.T. attended the home of Shakur Noor, the sometime boyfriend of R.C.. I accept the evidence that T.T. was guided to this unfamiliar residence by R.C..

[17] That evening T.T., H.H., Cain Leach-Francis, R.C., Shakur Noor and Ismail Baker left Noor's home and were driven to the Oshawa GO station by an individual named "Tracy". They arrived at union station in Toronto at 10:38 pm. That group is captured by multiple video recordings on their trip from Oshawa to downtown Toronto and subsequently through their extended efforts to find accommodation at that night.

[18] Prior to departing for Toronto a series of text messages took place between 6:08pm and 8:45pm between the mobile phone number 289 996 1152 and the telephone number of Shakur Noor (905 995 5865). Extensive evidence of telephone records and witness testimony conclusively establishes that this mobile phone number belonged to Leach Francis, although Ms. H.H. clearly used the phone on multiple occasions. This evidence corroborates the link between Noor, Cain-Francis and H.H. in respect of the night of September 24, 2013.

[19] Once in Toronto Leach Francis unsuccessfully attempted to register at the Bond Place hotel. Shortly afterwards, he managed to register for one night at the

Knights Inn Hotel. The entire party briefly stayed at the Knights Inn with H.H., Cain Leach Francis and T.T. remaining in the room until morning.

[20] In the early morning of September 25, 2013 an escort advertisement was placed in Backpage.com using the number 289 996-1152.

[21] On September 26, 2013 Leach Francis registered at the Alexandria Hotel in Toronto. In the early morning hours of September 27, 2013 the number described above is used to place another escort advertisement in Backpage.com. This advertisement featured a suggestive rear-view photograph of T.T. and Ms. H.H..

[22] On September 30, 2013 Leach-Francis registered for one night at the Bond Place hotel, although Leach-Francis, T.T. and H.H. remained there until the morning of October 2, 2013. On September 30, 2013 289 996-1152 was used to place an escort advertisement in Backpage.com featuring the same photograph described above.

[23] On October 1, 2013 at 6:52 AM the same escort advertisement was placed in Backpage.com using 289 996-1152. Jordan Gross testified that he attended the Metropolitan Hotel to purchase sex in exchange for money and drugs from “Candi” and “Aubrey”, identified as T.T. and H.H. respectively. He rented the room at the inducement of “Aubrey”. Mr Gross struck me as an honest, if mortally embarrassed, witness. His interaction was mainly with Ms. H.H., who was clearly the leader and negotiator for the two girls, as she was on every other assignment recounted in the evidence.

[24] On October 2, 2013 Ms. Leisa Nicholls, a member of the Metropolitan Hotel security staff, attended room 1508 as a result of a reported fight and disturbance. She found Leach Francis, H.H. and T.T. present. There was a substantial amount of cash on the bed. The room was vandalized and in disorder. Ms. Nicholls insisted that the three remain present while she called the Toronto police. Leach Francis assaulted her and fled. H.H. remarked tearfully that he had stolen her money. She had extended discussion with Nicholls while T.T. remained largely silent. H.H. appeared to Nicholls to be the leader of the two girls.

[25] There was substantial evidence that Ms. H.H. played a supervisory role in the prostitution transactions. Jamie Ochoa testified that he attended the Alexandria Hotel on September 29, 2013 as a result of the backpage.com advertisement referred to above. He described making the arrangements for his attendance at the hotel to buy sex acts with a female using 289-996-1152. Video-surveillance footage established his arrival at the hotel at approximately 7:00 am on September 27, 2013. On the basis of that evidence, the telephone records evidence, the evidence of the advertisement photograph, T.T.'s evidence and Ochoa's testimony it cannot be disputed that he attended the hotel room occupied by H.H. and T.T.. The evidence strongly suggests that his discussions regarding the impending purchase of sexual services prior to his attendance took place with H.H. The evidence also establishes that the business discussion that continued after his arrival was with a dark haired girl, clearly H.H.. He described her as the leader. She responded to his concern that the two girls were of legal age. She asked him which girl he preferred. He chose T.T.. Having arranged the tryst, H.H. then left the hotel room with Leach-Francis while T.T. performed oral sex on Ochoa. His evidence of H.H.'s departure at that time is confirmed by the evidence of T.T. and the hotel video-surveillance. The evidence of H.H.'s use of 289-996-1152 confirms her leading role in arranging advertisement for the sexual services of the two girls.

[26] The evidence relating to H.H.'s leadership role in communicating with the johns and negotiating the particular acts is consistent with T.T.'s evidence that she overheard H.H. discussing the price of particular sex acts. Together with the dispute between H.H. and Leach-Francis over the cash in the Metropolitan Hotel this is strong evidence of H.H. personally profiting in the sex acts performed by T.T. for money. T.T. testified that she received no money and little food during the 10 day episode. There was no evidence contradicting her testimony on that issue.

[27] Expert evidence is not needed to establish the existence of a criminal organization. In this case there is no private code to decipher, no tattoos to interpret and no secret handshake. What is needed is evidence which satisfies the following definition of "criminal organization" embedded in [s. 467.1\(1\)](#) of the [Criminal Code](#):

467.1 (1) The following definitions apply in this Act.

"criminal organization"

« *organisation criminelle* »

"criminal organization" means a group, however organized, that

(a) is composed of three or more persons in or outside Canada; and

(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or

indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

It does not include a group of persons that forms randomly for the immediate commission of a single offence.

“serious offence”

« *infracion grave* »

“serious offence” means an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, or another offence that is prescribed by regulation.

[28] The existence of a crude criminal organization existing for the purpose of trafficking in under-age prostitutes on multiple occasions between September 24 and October 2, 2013 is proven beyond reasonable doubt by the totality of the evidence. In this scheme Leach-Francis rented the hotel rooms, he and H.H. organized advertising, H.H. negotiated, scheduled the sex acts and collected the fees and R.C. recruited the under-age prostitutes. All three of them to some degree arranged or facilitated the movement of the prostitutes to Toronto. Shakur Noor provided the rendezvous in Oshawa and accompanied the group to Toronto. There was nothing “random” in their association. Leach-Francis and H.H. were intimate. R.C. had previously organized a similar venture which employed the under-age prostitute H.H.. There was evidence that R.C. organized the ventures for the profit of her boyfriend Shakur Noor. These criminal acts may not have been well-organized, but they were certainly not random. The offences are numerous. Multiple counts on the information attract maximum sentences of five years or more and are therefore “serious” within the meaning of s. 467.1.

[29] Crown counsel has argued that T.T.’s knowledge, consent and attitude to the prostitution are no defence to the charges before me. These factors are relevant to count 11, where, as set out previously, the defendants are charged with “counselling T.T. to perform acts of prostitution”. The Oxford English Dictionary defines counsel as: “advise or recommend”^[ii]. T.T.’s apparent eagerness to experiment in the sex-trade before the September 24th lakeside meeting may well have made any advice or recommendation to participate in prostitution unnecessary. There is no direct evidence that either defendant advised her or recommended to her to work as a prostitute. There is no indirect evidence which would allow me to infer beyond a reasonable doubt that either defendant did anything other than organize that opportunity and offer it to T.T..

[30] There is no evidence that H.H. exercised control over T.T.’s movements during the September 24–October 2, 2013 period. There is considerable evidence that she influenced T.T.’s movements to keep her working in the sex trade by arranging

transportation between venues and by dissuading her from returning to Oshawa or contacting her mother by telling her that unnamed persons “were after her”.

[31] Despite the absence of direct evidence on the question there can be no reasonable doubt that both defendants knew T.T. to be under 18 years of age. T.T. was known to be a grade 9 student at G.L. Roberts. At trial she had the appearance of a teenager several years younger than H.H. and R.C.. H.H. went to some lengths to avoid or fudge the issue of her own age and that of T.T. with the client Jamie Ochoa. In a hostile post-offence Facebook message to T.T. dated January 21, 2014, H.H. wrote that she called “protective services” (*sic*) to make difficulty for T.T. and her family. I take this as confirmation that she knew of T.T.’s personal circumstances. H.H.’s criminal confederate R.C. was herself an under eighteen year old student at G.L. Roberts. H.H. was herself under 18 at the time. She took a leadership role with T.T. throughout the 10 days in question. It is very unlikely that she was unaware that T.T. was several years younger than herself.

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JUDGMENT

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[32] Count 1. Conviction

Count 2. Conviction

Count 3. Conviction

Count 4. Conviction

Count 5. Conviction

Count 6. Conviction

Count 7. Conviction

Count 8. Dismissed

Count 9. Dismissed

Count 10. Dismissed


Count 11. Dismissed for both Defendants

Written judgment released this 17th day of July, 2015

M. Block, Justice

Ontario Court of Justice

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- [i] I have summarized each count for brevity.
 - [ii] Oxford University Press 2002, at page 185

By **lexum** for the law societies members of the  Federation of Law Societies of Canada