

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Marchand*,
2016 BCSC 1680

Date: 20160624
Docket: X078555-2
Registry: New Westminster

Regina

v.

Russell Marchand

Restriction on Publication: Pursuant to 486.4(1) C.C.C.

Before: The Honourable Mr. Justice Bernard

Oral Ruling on Voir Dire #3

Counsel for the Crown:

W.L. Sayson, Q.C.

Counsel for the Accused:

S. Hutchison

Place and Date of Trial/Hearing:

New Westminster, B.C.
June 24, 2016

Place and Date of Judgment:

New Westminster, B.C.
June 24, 2016

[1] **THE COURT:** The application before the court is pursuant to s. 486.7 of the *Criminal Code*; more specifically, it is an application by the Crown to allow a courthouse dog to accompany a 14-year old complainant while she gives her testimony in the case at bar. The charges before the court include allegations of sexual assault, sexual touching, and invitation to sexual touching when S, the complainant, was 11 years of age.

[2] There is evidence that S has developmental disabilities. She has been diagnosed with partial Fetal Alcohol Syndrome, Oppositional/Defiance Disorder, Attention Deficit Hyperactivity Disorder, moderate mental retardation, and mild intellectual disability.

[3] There is evidence before the court, in this application, of portions of an interview with S in which she is questioned by a police officer in relation to the charges. It is evident from that audio-video recording, alone, that S has the aforementioned deficits and that she is, in particular, a very hyperactive child who is likely to benefit from any sort of calming influence while giving her testimony.

[4] There is no opposition to the order sought. There was no cross-examination of the dog handler, who testified to the use of dogs for witnesses similarly positioned to S. During the dog handler's testimony, Caber, the dog that would accompany S, was with the dog handler in the witness box. Caber sat quietly beside the handler as she testified; it was not apparent that Caber was even present.

[5] The testimony of the handler included evidence of the effectiveness of service dogs such as Caber in situations similar to the one before the court. The evidence was compelling that service dogs such as Caber have a calming influence on witnesses who must testify about difficult matters, and that these dogs allow the witness to effectively communicate his or her evidence, without creating interference or distraction.

[6] Steps were taken in advance of this application to ensure that the proposed presence of the dog would not be a distraction to S. The dog handler satisfied

herself that, while S finds comfort in the presence of Caber, she is not so distracted by Caber's presence that she cannot focus on her testimony.

[7] Section 486.7 of the Criminal Code is broadly worded, but there has been no suggestion that it does not encompass the instant application. The legislative provision obliges the court to consider various factors, listed as follows:

- (a) the age of the witness;
- (b) the witness's mental or physical disabilities, if any;
- (c) the right to a fair and public hearing;
- (d) the nature of the offence[s];
- (e) whether the witness needs the order to protect them from intimidation or retaliation;
- (f) whether the order is needed to protect the security of anyone known to the witness;
- (g) society's interest in encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process;
- (h) the importance of the witness's testimony to the case;
- (i) whether effective alternatives to the making of the proposed order are available in the circumstances;
- (j) the salutary and deleterious effects of the proposed order; and
- (k) any other factor that the judge or justice considers relevant.

[8] I do not intend, given the time and, more importantly, the lack of opposition to this order, to specifically address each of the factors, although each has been duly considered by me. There is no suggestion that the presence of the dog would be anything other than helpful to the witness and permit her to convey her evidence effectively. The order sought is, undoubtedly, in the interests of justice.

[9] The application is allowed. Caber will be permitted to accompany S during her testimony.

"Bernard J."