

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

REGINA

v.

BRENT GARRY BRADASCH

Publication of information that could disclose the identity of the complainant, witness or justice system participant has been prohibited by court order pursuant to section 486.5 of the *Criminal Code*.

Appearances:
Kevin Komosky
Lynn MacDiarmid

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): Brent Garry Bradasch stands convicted after trial of seven offences arising from an incident that occurred on March 18, 2007 in Haines Junction.

[2] The charges are: assaulting a peace officer engaged in the execution of his duty; Count 2, resisting a peace officer engaged in the execution of his duty; Count 3, uttering a threat to cause bodily harm to Corporal Kim MacKellar; Count 4, uttering a threat to cause bodily harm to Constable Wayne Gork; Count 5, committing an assault on A.R.; Count 6, breach of an undertaking by failing to keep the peace and be of good

behaviour; and Count 7, breach of an undertaking by failing to abide by a clause which forbade him to possess or consume alcohol.

[3] In addition, Mr. Bradasch has entered guilty pleas to two charges of breaches of recognizance. These occurred subsequent to Mr. Bradasch's release from custody on the charges arising from the 18th of March.

[4] The March incident arose when police in Haines Junction were called to Mr. Bradasch's residence in response to a complaint by A.R., then the offender's girlfriend, that Mr. Bradasch had assaulted her. The evidence established that the assault occurred after Ms. R. threw her purse at Mr. Bradasch. She was apparently angry that Mr. Bradasch was paying attention to another woman. Mr. Bradasch responded to the purse-throwing by punching Ms. R. in the face, causing a cut above her eye.

[5] On arrival, the officers were met by Ms. R., who was bleeding from the cut. On encountering Mr. Bradasch, Corporal MacKellar invited Mr. Bradasch to go outside to discuss the incident. Mr. Bradasch refused. Corporal MacKellar then advised Mr. Bradasch that he was under arrest for assault and the two officers attempted to escort Mr. Bradasch from the residence.

[6] Mr. Bradasch became instantly combative and a struggle ensued, with Mr. Bradasch fighting furiously to resist his arrest. All three men eventually ended up on the floor. It was only with great difficulty the two officers eventually succeeded in overpowering Mr. Bradasch and removing him, handcuffed, from the residence.

[7] Once in the police car and en route to the detachment, Mr. Bradasch was kicking the doors and uttering a constant stream of threats and abuse at the two officers, including threats to kick them and kill them once he was out, and adding that he was going to teach the youth of Haines Junction to fight the police.

[8] At the detachment Mr. Bradasch head-butted Corporal MacKellar as he attempted to escort Mr. Bradasch to cells, and there was a second fight in the detachment garage. Eventually, Mr. Bradasch was lodged in the cells.

[9] One additional significant fact that must be mentioned is that in his efforts to control Mr. Bradasch at his residence, Corporal MacKellar repeatedly used his taser on Mr. Bradasch. Corporal Gork also used his taser at the detachment. The tasing seemed to have little effect in subduing Mr. Bradasch.

[10] There was evidence that Mr. Bradasch had been consuming alcohol. At the time, Mr. Bradasch was on an undertaking with conditions that he keep the peace and be of good behaviour and to abstain from the consumption of alcohol.

[11] The subsequent breaches occurred in May and November of 2007. In May, Mr. Bradasch was found at his residence in Haines Junction despite a condition that required him to stay out of Haines Junction. The November incident involved consumption of alcohol in breach of a no alcohol term of his release order.

[12] Mr. Bradasch is 43 years old and a member of the Champagne Aishihik First Nation. He has a prior record, including three prior assault convictions. However, the most recent entry in his record was back in 1996.

[13] Following his conviction on the charges arising from the March incident, a pre-sentence report was ordered and sentencing was adjourned until January of 2008. Subsequently Mr. Bradasch was arrested for the November breach and remanded in custody. Faced with those circumstances, he elected to bring the matter forward for sentencing without a pre-sentence report.

[14] By my calculations, Mr. Bradasch now has approximately 34 days of pre-sentence custody. At the sentencing hearing, the Crown sought a global sentence in the range of eight to 12 months to be followed by a probation order for a period of two years. The Crown also sought a DNA order and a firearms prohibition.

[15] The defence contended for a sentence of three to six months and opposed both the DNA and firearms orders.

[16] The Crown proceeded summarily on all counts.

[17] In my view, a substantial custodial sentence is called for. The assault on Ms. R. was a serious one which caused her injury. The whole incident involving the police was as reprehensible as it was unnecessary. Police officers have often unpleasant and sometimes dangerous jobs to perform. In my view, those who add to that unpleasantness and danger must be deterred.

[18] In addition, of course, to the matters involving Ms. R. and the police, Mr. Bradasch has also committed numerous breaches of court-imposed release orders. Those breaches are also usually dealt with by way of custodial sentences.

[19] In fixing quantum sentence, I, of course, have regard to the fact that Mr. Bradasch is being dealt with for nine offences and obviously the global effect must be taken account of, as well as the fact that seven of the nine offences arose out of a single, though extended, incident.

[20] The Court must also have regard to the fact that Mr. Bradasch was tasered a number of times during the March incident. Obviously, he has no one to blame for that but himself. Had he cooperated initially or, having started to fight, desisted, had he not assaulted Corporal MacKellar at the detachment, none of the tasing would have happened. Still, the fact remains that he was subjected to the taser several times, and the pain and discomfort are part of the consequences that the accused has suffered as a result of the commission of the offences for which he is now being dealt with.

[21] With respect to the charges arising from March 18th, I impose the following sentences. Three months on the charge of assaulting a peace officer, three months consecutive on the charge of resisting arrest, two months on the charge of assault, two months on the threats charge, and one month upon each breach. The effective sentence, therefore, with respect to those matters is one of six months.

[22] On the two charges of breach of recognizance arising from May and November, I would have imposed a sentence in the range of 60 days in total. However, in light of the time already served amounting to 51 days at the usual rate of 1.5 to one, Mr. Bradasch is sentenced to one day on each count in addition to the time already served.

[23] Following release from imprisonment, Mr. Bradasch will be subject to a probation order for a period of 18 months. The terms will be:

1. You will keep the peace and be of good behaviour.
2. You will report to the court as and when required.
3. You will report within two working days to an adult probation officer and thereafter as, when and in the manner directed.
4. You will advise the probation officer forthwith of any change of name or address, and promptly notify him of any change of occupation or employment.
5. You will have no contact, directly or indirectly, with A.R. except with the prior permission of your probation officer in consultation with Ms. R. and Victim Services.
6. If directed, you will attend the Family Violence Prevention Unit for assessment and take such assessment and counselling as directed.
7. You will take such alcohol assessment, treatment and counselling as directed.
8. You will not possess or consume alcohol or controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner.
9. You will not attend at any place where alcohol is sold, except a restaurant which might be incidentally licensed for the sale of alcohol with meals.

[24] The victim surcharges are waived.

[25] In addition there will be an order whereby the offender will provide samples for the purpose of DNA analysis and banking. Given Mr. Bradasch's record and the violent

nature of several of the present offences, it is in the best interests of the administration of justice to make such an order.

[26] Additionally, given Mr. Bradasch's demonstrated propensity towards violence and threats of future violence, there is also good reason to impose a firearms prohibition. You are prohibited from having in your possession any firearm, ammunition or explosive substance for a period of five years following your release from imprisonment. I will, however, retain jurisdiction under s. 113(1)(a) of the *Criminal Code* for a period of 90 days should Mr. Bradasch be in a position to establish the required facts to the Court's satisfaction in order to obtain a limited licence for the purpose of sustenance and subsistence.

(PROCEEDINGS ADJOURNED)\

(PROCEEDINGS RECONVENED)

[27] MR. KOMOSKY: Thank you, Your Honour. I have one quick question, and then there is the matter of the remaining counts. The question I have is, the Crown had sought a no contact order with respect to A.L. I don't know if the Court had declined to do so or that it had been an oversight.

[28] THE COURT: Remind me.

[29] MR. KOMOSKY: That's the daughter who witnessed the assault and who did testify against Mr. Bradasch.

[30] MS. MACDIARMID: Ms. L. is not his daughter. I would certainly have opposed a no contact with his daughter. I believe it was another young witness, an underage witness who resides in Haines Junction.

[31] MR. KOMOSKY: Okay. Yes.

[32] UNIDENTIFIED SPEAKER: She was just visiting the Yukon. She's from B.C., I think.

[33] MS. MACDIARMID: Apparently she doesn't even reside in the Yukon any longer. There's no issue if it being requested by the victim.

[34] UNIDENTIFIED SPEAKER: There's going to be an appeal, anyway, so it doesn't matter (indiscernible).

[35] THE COURT: I will add her name.

[36] MR. KOMOSKY: Thank you, Your Honour. With respect to the remaining counts, the Crown directs a stay of proceedings.

FAULKNER C.J.T.C.