

Citation: *R. v. Brown*, 2008 YKTC 80

Date: 20081024
Docket: 08-00142
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

ROBERT JOHN BROWN

Appearances:
Kevin Komosky
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): The accused, Robert John Brown, stands charged with: on Count 1, assaulting Constable Kendra Hannigan, a peace officer engaged in the execution of her duty; on Count 2, with assaulting Constable Morran, a peace officer engaged in the execution of his duty; on Count 3, with an assault upon Constable Hannigan that caused bodily harm to her; on Count 4, with attempting to take a weapon that was in the possession of Constable Morran without his consent, that is a charge contrary to s. 270.1(1) of the *Criminal Code*; and lastly on Count 5, with resisting Constables Hannigan and Morran, peace officers engaged in the execution of their duty, by fighting.

[2] The undisputed evidence is that on July 3, 2008, the police received a report that Mr. Brown was at or near Jake's Corner in the Yukon. There were warrants extant for Mr. Brown's arrest so the police proceeded to Jake's Corner where they encountered Mr. Brown walking in the road allowance near the Alaska Highway south of Jake's Corner.

[3] On seeing the police car, Mr. Brown ran towards the car. The two officers, Constables Morran and Hannigan, got out of their car and asked the accused to stop and get on his knees. He did so. Mr. Brown was saying: "I'm Allah. I'm Allah. Will I be crucified? Will my blood be spilled?" The officers told Mr. Brown that he was under arrest.

[4] At that point he jumped up and attacked Constable Hannigan. Constable Hannigan attempted to use her taser but Mr. Brown managed to deflect the probes with his hands and arms. He ended up on top of Constable Hannigan, striking her and grabbing at her head. Primarily, Constable Hannigan was not fighting back but attempting to protect her weapons. Meanwhile, Constable Morran drew his baton and repeatedly struck Mr. Brown with it in an attempt to end the attack on Constable Hannigan.

[5] Mr. Brown jumped off Constable Hannigan and commenced struggling with Constable Morran, attempting to gain control of the baton. Constable Hannigan got up off the ground, whereupon she was again assaulted by Mr. Brown. Constable Morran tried unsuccessfully to use the baton to bring the accused under control. Constable

Morran then drew his service handgun. At this point, Mr. Brown ended the attack and put up his hands. He was told to get down on the ground and did so.

[6] The two constables then noticed that Mr. Brown was bleeding from a cut to the head. They offered first aid assistance which Mr. Brown declined. He did, however, agree to get into the police car. The constables then proceeded quickly towards Whitehorse. En route they met an ambulance that they had summoned by radio and Mr. Brown was transferred to the ambulance and then taken to the Whitehorse Hospital for treatment of his injuries.

[7] On these facts, it is clear that the accused has committed the acts that form the basis of each of the offences charged. However, it is also clear that at the time of the commission of these acts Mr. Brown suffered from a mental disorder so as to be exempt from criminal responsibility.

[8] The report of Dr. Lohrasbe, which was received in evidence, shows that the accused has a long history of mental illness and has been diagnosed as suffering from paranoid schizophrenia. He has had repeated psychiatric admissions since 2003 and it appears that over the last year his condition has deteriorated substantially.

[9] Part of Mr. Brown's symptoms include a particularly grandiose set of delusions, including the delusions that he is Allah, or ALA, a religious leader so surpassing that when Dr. Lohrasbe asked Mr. Brown why he thought he was the son of God, Mr. Brown was at pains to point out that God was his son.

[10] Concurrently, Mr. Brown believes that he is, as the leader of the good, under attack by the forces of evil, who are controlled by the United States. The Americans are intent on crucifying or otherwise assassinating him. Indeed, this delusion is so pervasive in Mr. Brown's thinking that during Dr. Lohrasbe's interview with Mr. Brown at the Whitehorse Correctional Centre, Mr. Brown begged Dr. Lohrasbe to ensure that he remained incarcerated for the next two years because otherwise the Americans would attack him and kill him.

[11] It was Dr. Lohrasbe's opinion that these beliefs were the catalyst for the events of July 3, 2008. Mr. Brown believed that he was under immediate attack by American forces, the police being their agents, and that they were intent on killing him.

[12] Clearly, if Mr. Brown acted under this belief, he did not appreciate the nature and quality of his acts, and certainly did not know that they were morally, or even legally, wrong.

[13] In the result, I find that Mr. Brown committed the offence as charged but is not criminally responsible on account of mental disorder.

[14] However, that does not completely dispose of the matter. In my view, at least one of the charges ought to be conditionally stayed, as rendering a verdict on all of the counts would offend the rule in *R. v. Kienapple*, [1975] 1 S.C.R. 729. I am satisfied that this rule is operable even where, as here, no convictions are in fact entered against the accused. See *R. v. Allen*, [1998] O.J. No. 5408, and *R. v. Davis*, [2002] O.J. No. 1970.

[15] That being said, I find that I should make the finding of not criminally responsible by reason of mental disorder on Counts 1, 2, 3, and 4.

[16] Although in many respects, Count 1, which is the charge of assaulting Constable Hannigan, a peace officer, while engaged in the execution of her duty, might be subsumed by the more serious charge of assault causing bodily harm to Constable Hannigan, it contains the additional distinct element of the assault being on a peace officer engaged in the execution of her duty.

[17] With respect to Count 5, it should be conditionally stayed because it is essentially the same delict as Counts 1, 2, and 3, since the method of resistance was fighting or, in other words, the assaults complained of in Counts 1, 2, and 3. See *R. v. Minet*, [2000] Y.J. No. 58, and *R. v. B.P.*, [2007] S.J. No. 756.

[18] Therefore, the finding of not criminally responsible is made with respect to Counts 1 through 4, and Count 5 is conditionally stayed.

FAULKNER T.C.J.