

Citation: *R. v. Karman*, 2018 YKTC 17

Date: 20180418
Docket: 16-00253B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

WILLIAM EDWARD KARMAN

Appearances:
Christiana Lavidas
André Roothman

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] CHISHOLM C.J. (Oral): William Karman is charged with two counts of having breached a condition of his probation order to remain 100 feet away from the place of residence of James Bucknell.

[2] The allegations stem from Mr. Karman driving his vehicle in the vicinity of Mr. Bucknell's residence, located in Haines Junction, on October 19 and 20, 2017.

[3] The evidence led at trial consisted of certain admissions, as well as the evidence of Mr. Bucknell, for the Crown; and Mr. Karman, for the Defence.

[4] The facts of this matter are straightforward.

[5] Mr. Karman takes no issue with the fact that he was subject to a probation order on the dates in question, including the condition to remain 100 feet away from Mr. Bucknell's place of residence.

[6] The evidence of the two witnesses at trial is similar in many regards.

[7] Mr. Bucknell testified that on October 19, 2017, he was on his property standing at the back of his truck when he observed Mr. Karman's black Dodge truck round the corner of the street beside the Bucknell corner lot and slow down considerably. From within the vehicle, Mr. Karman pointed at Mr. Bucknell and laughed. Mr. Karman was on the street at the end of Mr. Bucknell's driveway moving in the direction toward the Alaska Highway when this occurred. Mr. Bucknell was upset because the condition dictating Mr. Karman's ability to approach the Bucknell property had been only recently put in place.

[8] On October 20, 2017, Mr. Bucknell observed, from within his house, Mr. Karman's truck being driven on the side of the road closest to his property. This time, Mr. Karman was coming from the direction of the Alaska Highway. Mr. Bucknell exited his house, got into his vehicle, and followed the truck. The truck pulled into the Fas Gas parking lot and Mr. Bucknell noted that the driver was a tall male. He was confident that the driver was Mr. Karman.

[9] Mr. Karman does not deny having driven on the streets that border Mr. Bucknell's corner lot on the days in question.

[10] However, he denies, on the first occasion, slowing down at the end of Mr. Bucknell's driveway while pointing and laughing. He says he drove as required by the rules of the road on the area of Quill Crescent, which is furthest in distance from Mr. Bucknell's property.

[11] Regarding the second occasion, Mr. Karman agrees that he was driving from the Alaska Highway and that his path of travel should have been on the side of the road closest to Mr. Bucknell's property. However, he says he moved into the oncoming lane, which is furthest from the property as he passed the property on Quill Crescent, before rounding the corner onto Fireweed Street. Mr. Karman testified he drove in this fashion to ensure that he was at least 100 feet away from Mr. Bucknell's house.

[12] Measurements taken by Cpl. Hack establish that the furthest side of the travelled portion of the street is approximately 115 feet from the corner of the Bucknell residence; whereas the closest shoulder of the travel portion of the street is approximately 92 feet away from the residence.

[13] The two issues in this trial are:

1. What is the meaning of "place of residence"; and
2. Does the evidence prove beyond a reasonable doubt that Mr. Karman was within 100 feet of Mr. Bucknell's place of residence?

[14] The condition of the probation order that Mr. Karman is alleged to have breached reads that he:

Remain 100 feet away from any known place of residence of James Bucknell, Bobby Bucknell, Noah Bucknell, or Jeannine St. Marie.

[15] Mr. Bucknell resides in a house on a relatively large lot. It is clear from the evidence that if the wording of Mr. Karman's probation condition is interpreted as prohibiting him from being within 100 feet of Mr. Bucknell's lot, he was in breach of that condition on both October 19 and 20, 2017. If, on the other hand, the condition is interpreted to mean that he was to remain 100 feet away from Mr. Bucknell's house, the issue of whether he drove within that hundred foot perimeter can only be resolved after careful consideration of the evidence, as presented by the Crown and Defence.

[16] The term "place of residence" is not found in s. 732.1, (conditions of a probation order); s. 742.3 (conditions of a conditional sentence order); or the bail provisions of the *Criminal Code*. Nonetheless, "place of residence" language frequently appears in conditional sentence order and probation order conditions.

[17] In a conditional sentence order, "place of residence" is more readily interpreted as an actual structure, as courts typically impose a condition that requires the offender to "remain within" or "not be outside of it". Sometimes this term is modified to explicitly include "the land" or "the property" on which place of residence is situated, which furthers the impression that the term is best understood as referring to a physical house rather than a dwelling house and the property on which it is located. (See, for example, *R. v. Olenik*, 2017 BCPC 390, *R. v. Lee (Yin)*, 2018 BCPC 46, *R. v. Murphy*, 2004 NLSCTD 116, and *Canada v. Kelly*, 2014 NLTD(G) 85.)

[18] The language "place of residence" does appear as a term available for ss. 810.01, 810.011, 810.02, 810.1, and 810.2 peace bonds. Here, the *Code* contemplates a term requiring the defendants to "return to and remain at his or her place of residence at specified times".

[19] In *Canada (Attorney General) v. Driver*, 2016 MBPC 3, the Court considered this term to effectively contemplate "house arrest".

[20] In *R. v. Jarrar*, 2016 ONSC 5898, the term of the s. 810.2 peace bond recognizance in question required Mr. Jarrar to be "inside his place of residence" during specific hours. On the trial of an alleged breach, the Court found that in order to prove its case, the Crown had to establish that the accused had been "outside of his residence" during the curfew time set out in the recognizance.

[21] In *R. v. Campbell*, [1997] 3 S.C.R. 3, the Court considered the designation of a judge's place of residence in the context of a challenge to the constitutionality of the accused's trial, based on the question of the independence and impartiality of the tribunal. The Court found that the power of the executive to "designate the place at which a judge shall have his residence" to be unconstitutional. The place of residence, in this case, clearly referred to the community in which the judge was designated to reside.

[22] In *R. v. Duffy*, 2016 ONCJ 220, the Ontario Court of Justice looked at the *Health Insurance Act*, R.S.O. 1990, c. H.6 regulation, which defined "primary place of residence" as:

"Primary place of residence" means the place with which a person has the greatest connection in terms of present and anticipated future living arrangements, the activities of daily living, family connections, financial connections and social connections, and for greater certainty a person only has one primary place of residence, no matter how many dwelling places he or she may have, inside or outside Ontario.

[23] The term "place of residence" has also been considered in non-criminal contexts. Decisions in the family law area have considered the term "place of residence" to refer to a general geographic area.

[24] In *Gordon v. Goertz*, [1996] 2 S.C.R. 27, the Court referred to "place of residence" in the context of the country of residence of a child.

[25] A similar interpretation is found in *B.R. v. J.A.Y.*, 2009 NSSC 411, in which the Court was considering the "right to determine the child's place of residence", pursuant to Article 5 of the *Hague Convention*.

[26] In *Thomson v. Thomson*, [1994] 3 S.C.R. 551, para. 60, La Forest J. quoted from Lord Donaldson M.R. in *C. v. C. (Minor: Abduction: Rights of Custody Abroad)*, [1989] 2 All E.R. 465 (C.A.), as follows:

... I add for completeness that a 'right to determine the child's place of residence' (using the phrase in the convention) may be specific, the right to decide that it shall live at a particular address, or it may be general, eg. 'within the Commonwealth of Australia'.

[27] As such, there does not appear to be any universally accepted definition of the language "place of residence". Therefore, Mr. Karman cannot be faulted for interpreting

his probation condition to mean that he was prohibited from being less than 100 feet away from Mr. Bucknell's house.

[28] The ambiguity of the term "place of residence" must be resolved in his favour. (see *R. v. McIntosh*, [1995] 1 S.C.R. 686)

[29] The second issue is whether Mr. Karman was within 100 feet of Mr. Bucknell's place of residence.

[30] As indicated, it is common ground that if Mr. Karman drove on the side of the street closest to the Bucknell residence, he would have been contravening the condition of his probation order to remain 100 feet away from the Bucknell residence; whereas, if he drove on the side of the street furthest from the residence, he would not be in breach of this condition.

[31] On the first occasion Mr. Karman drove by the Bucknell residence, his direction of travel would, in the normal course, have meant that he was in the outside lane of the street and beyond the 100-foot perimeter. Mr. Karman has made a steadfast denial that he drove to the entrance of Mr. Bucknell's driveway, as testified to by Mr. Bucknell.

[32] On the second occasion, Mr. Karman was driving in the opposite direction past the Bucknell house. Therefore, the normal course of travel would have brought him within the 100-foot perimeter established by the probation order. However, Mr. Karman states that, while passing the house, he intentionally drove on the opposite side of the street in order to remain at least 100 feet away.

[33] Mr. Karman testified that, because of his work, he is very comfortable accurately estimating distances and that the manner in which he drove by the Bucknell residence put him clearly more than 100 feet away from it. Again, he was unwavering in his testimony.

[34] Mr. Bucknell's evidence is that he was in the basement of his house when he saw Mr. Karman's truck drive by it on the second occasion. He believed that Mr. Karman's truck was on the inside lane, closest to his house.

[35] The Crown bears the onus of proving its case beyond a reasonable doubt.

[36] As Mr. Karman has testified in this trial, I must consider whether I accept his evidence or whether it gives rise to a reasonable doubt as to his guilt. Even if I find his evidence to be untrue, I must still be satisfied that the evidence I accept proves the case beyond a reasonable doubt.

[37] In considering the evidence of Mr. Karman, I am struck by the lack of common sense and good judgment that he displayed in driving by the residence of Mr. Bucknell. Even though I accept that Mr. Karman had a valid purpose on both occasions for being in this part of the village, based on the evidence of an aerial map submitted, there was clearly another route that he could have taken to access the government maintenance building.

[38] Why he would take the chance of breaching his probation condition by travelling in the vicinity of Mr. Bucknell's house is beyond me. At the same time, some people are prone to bad decision-making.

[39] Having considered all of the evidence, although I prefer the testimony of Mr. Bucknell, in my view, it is not sufficient to override the evidence of Mr. Karman. I am not convinced that Mr. Karman is being untruthful. With respect to both charges, the state of the evidence leaves me with a reasonable doubt and, therefore, I must find Mr. Karman not guilty of both charges.

CHISHOLM C.J.T.C.