

Citation: *R. v. Sidhu*, 2013 YKTC 71

Date: 20130531
Docket: 12-00874
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Thompson

REGINA

v.

MANDEEP SINGH SIDHU

Appearances:
Noel Sinclair
Brian Beresh, Q.C.

Counsel for the Crown
Counsel for the Defence
(via teleconference)

REASONS FOR JUDGMENT

[1] THOMPSON T.C.J. (Oral): This matter must be decided based on the conversation between Mr. Mandeep Sidhu and Corporal Dunmall on the evening of December 2, 2012. It is necessary to consider the credibility and the reliability of each of these two witnesses' version of a certain conversation that took place between them, and in particular what Mr. Sidhu said.

[2] There was certain other evidence that was put before the Court and I will address it now at the onset because it really forms a backdrop to the conversation. There was an incident in May of 2012 where Constable West followed Mr. Sidhu for some distance on a road called Two Mile Hill and ultimately gave Mr. Sidhu a citation for a seatbelt violation. This infraction was disputed by Mr. Sidhu and eventually stayed. Mr. Sidhu

filed a formal complaint about Constable West, which was dealt with by the RCMP. I gain from that simply that there was a history between these two individuals.

[3] Then there was an incident which occurred earlier in the morning on December 2, 2012. This time it involved Mr. Sidhu being stopped by “The Ride” program check stop which pertains to drinking and driving and he was asked by an auxiliary constable at that time to produce his driver’s licence, which he produced, and Constable West was soon involved in this incident also. Mr. Sidhu was asked and complied with the request to pull over further to the side of the road, out of the main area where vehicles were being stopped, and he was compliant but certainly upset. First, he was not pleased with being stopped particularly at all, but certainly not when some time was taken, which, according to Constable West, was for a complete computerized check of Mr. Sidhu’s driving record to see if he was disqualified or where he was in terms of his driving privilege.

[4] To a certain extent it is fair to say that Mr. Sidhu proceeded to make a bit of a spectacle of himself, which he may indeed be entitled to do. He captured this on his own cell phone video, but as big a spectacle as he may or may not have made of himself, he was compliant with the stop, which morphed from a Ride checkpoint to a thorough and lengthy computerized investigation of his driver record conducted by Constable West. Constable West asserts that this was a legitimate and lawful traffic stop. In the end, I do not need to determine that because it really does not make a great deal of difference to the charge before the Court. Again, this was simply further history.

[5] There was some other history that I will mention, two other things that added to the history in terms of this check stop, was an unfortunate comment made by Constable West, apparently directed to anyone within earshot, just prior to letting Mr. Sidhu proceed on his way. Constable West said, something to the effect that “This is our recent mayoral candidate,” or words to that effect, and, further, I believe it was when asked about that by Mr. Sidhu, or called on it, if you want to call it that, he said something to Mr. Sidhu about, “You would have done a great job, Mandeep,” or “Mandy”; I was not really sure of what the first name was, if you will, which was employed by Constable West.

[6] I do not have to decide the lawfulness of this stop, as I say, but in the context of a motorist complaining about the length and legitimacy of a traffic stop, it seems poor judgment on Constable West’s part to give credence to any impression that Mr. Sidhu was stopped for anything other than legitimate reasons, and seemed to have the effect of aggravating Mr. Sidhu further. We know in short that Mr. Sidhu had two telephone conversations, one where he telephoned the 9-1-1 operator and used a bit of inelegant language about the stop, and received a call back from Corporal Dunmall in which he objected to the hour of the telephone call, but nonetheless they agreed to meet that same evening at 7:00 p.m. which is, as I said at the outset, really the subject matter of this case. What I have alluded to before is the background to this case.

[7] It is this conversation between Corporal Dunmall and Mr. Sidhu that is determinant of this charge of uttering a threat to cause death or serious bodily harm to Constable Andrew West on the 2nd of December 2012. Clearly, it is a question of credibility and reliability of each version of this conversation which took place between

them, and in particular what Mr. Sidhu said on that evening. Mr. Sidhu is entitled to an acquittal if his version of what was said and all the surrounding circumstances lead this Court to have a reasonable doubt. I am not going to go over each version and parse the words and look at this conversation in detail and what Corporal Dunmall says Sidhu said, what Mr. Sidhu says he said, but I will say this; what Mr. Sidhu says is that there was a conversation of this nature that is not a complete denial, but rather he proffers a different version of what he said at the time.

[8] The reliability of Corporal Dunmall's testimony wherein she alleges a threat is hampered by a lack of complete notes; in other words, verbatim rendering of what was said or recording of the conversation. She also exhibited some difficulty, and I say this with respect, and in some ways it is sort of a vicious circle; she did not have the complete notes, but in terms of some critical comments she could not place them in context or say exactly at what point in the conversation certain comments were made which she construed to be a threat. Further, Corporal Dunmall construed what Mr. Sidhu said to be an implied threat, and the threat alleged by her is largely dependent upon certain inferences that Corporal Dunmall drew regarding the comments she says Mr. Sidhu made. Again, Mr. Sidhu puts forward a different version of the conversation which, if accepted, certainly could be construed as not being a threat.

[9] In the end, I conclude that Mr. Sidhu's version might reasonably be true. Mr. Sidhu was largely unshaken in cross-examination, although, I will hasten to add that, having seen his cell phone video, he presented an entirely different side of his person or personality in the witness stand than he did in the recording he made on his own cell phone in the events of December 2, 2012, at the roadside.

[10] In the end, given Corporal Dunmall's lack of complete notes during the conversation or any recording thereof, it is, I feel, impossible for me to reach that degree of certitude necessary to convict Mr. Sidhu of making threats as alleged, or at all. Mr. Sidhu is entitled to an acquittal based on the reasonable doubt that I am left with as to the actual words uttered by him which Corporal Dunmall alleged to be a threat. In short, it is impossible for this Court to decide beyond a reasonable doubt that the threat was made, and I find as a matter of credibility and reliability that Mr. Sidhu's evidence might indeed reasonably be true in terms of reliability. Corporal Dunmall's evidence has somewhat inherent unreliability because of the reasons I have already stated. That is my decision. In this case, Mr. Sidhu is entitled to an acquittal. Thank you.

THOMPSON T.C.J.