

Citation: *R. v. Smarch*, 2007 YKTC 92

Date: 20071211
Docket: T.C. 07-00418
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

LLOYD BENEDICT SMARCH

Appearances:
Michael Cozens
Jennifer Cunningham

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] OVEREND T.C.J. (Oral): Mr. Smarch is charged with three offences. On the 3rd of October, he uttered a threat to Nadine MacIntosh to cause bodily harm to her. He threatened to use a weapon, namely a knife, and that he, without lawful authority, confined her.

[2] The undisputed facts are that this 19-year-old woman, on the date in question, was at the defendant's apartment on two occasions in the early morning hours of the 3rd of October 2007. She was under the influence of alcohol and drugs to such a degree that, for at least a portion of the evening leading up to her time at the defendant's apartment, she suffered blackouts. She was unable to recall what she did

during portions of the evening prior to her arrival at the defendant's premises. She was unsure of the amount of alcohol consumed. In addition to alcohol, she was taking morphine. Ms. MacIntosh has, on other occasions, inflicted injuries on herself while intoxicated. She suffered no injuries that particular evening. She left the residence by jumping out a second story window.

[3] Prior to exiting the window, she had had a strange conversation in the bedroom with Ms. Fred, in which she spoke loudly toward the door which led to the area where the defendant was, asking for "chip-ins and paper" and speaking softly to Ms. Fred, asking for assistance, while looking out the window. Ms. Fred had earlier heard an argument between the defendant and Ms. MacIntosh but had not heard anything to indicate violence or a struggle. Much of the time after her arrival at 12:30 to one o'clock, Ms. Fred had been asleep. Ms. MacIntosh was still under the influence of alcohol at the time she left the premises. Prior to going out the window, Ms. Sidney had suggested to Ms. MacIntosh she go out the front door. Ms. MacIntosh was aware that there were three locks on the front door and that the defendant had a habit of keeping the doors locked.

[4] Ms. MacIntosh said that she was threatened with a knife, and that she was thrown against a wall by Mr. Smarch on the second occasion she was in the room. She suffered, as I indicated earlier, no injuries. The police found two knives in the residence on their arrival; neither of the knives appear to be accurately described as a filleting knife, but one knife that was found near the door could reasonably be inferred to be long and narrow and tapered.

[5] The issue here is whether I can be satisfied beyond a reasonable doubt that Mr. Smarch has committed these offences based on the evidence of a witness who is, by her own admission, intoxicated throughout the time in question. Were I to take only the evidence of Ms. MacIntosh, I could not be satisfied the Crown had met its obligation. However, in this case, in those areas where it is material, there is some independent evidence by way of corroboration. In particular, there is evidence of an argument; that is the evidence of Ms. Fred which corroborates Ms. MacIntosh, the evidence of Ms. MacIntosh's bizarre conversation, speaking loudly towards the area where the defendant was, and quietly asking for help.

[6] I infer from that that this type of conversation was intended to distract Mr. Smarch from Ms. MacIntosh's real intention, which was to escape the premises. She was concerned that she could not exit the front door because she thought that were she to try to exit the front door, that she would be stopped because Mr. Smarch, if he did not see her, would necessarily hear her unlocking the three locks on the front door.

[7] Further evidence of corroboration of Ms. Fred is that Ms. MacIntosh exited the apartment through a second story window, dropping some distance to the ground, one that a witness said was perhaps four feet. After hanging from the window, the evidence of Ms. MacIntosh also was that while she was intoxicated during that portion of the evening, she was not "wasted," and by that, I infer her to mean that she had ability to recall the events of the evening. That is in part corroborated by Ms. Fred, who indicated that on a scale of 10, she would be about a five, which I again infer means that she was not severely intoxicated. The police officer said, however, on his arrival, she was intoxicated, but the admission of fact does not elaborate on what the police officer

meant by that. In addition, the corroborative evidence is that she was distraught when the police officer arrived shortly after the phone call.

[8] Based on that evidence, I am satisfied that the accused is guilty of Counts 1 and 2 in the Information. I dismiss Count 3. The evidence does not satisfy me beyond a reasonable doubt that Mr. Smarch unlawfully confined her. There is no evidence of intent to confine. She may have felt that she was confined, but that was nothing that emanated from the accused.

[9] Mr. Cozens, are you ready to deal with sentence at this time?

[Discussion re scheduling]

[10] THE COURT: All right. Nine o'clock tomorrow morning for disposition on Counts 1 and 2.

[11] MR. COZENS: The other file can --

[12] THE COURT: And the other two Informations adjourned to that time as well?

[13] MR. COZENS: Yes, we'll be in a position to resolve all matters at that time.

[14] THE COURT: All right.

OVEREND T.C.J.