

Citation: *Sjodin v. Ukrainetz*, 2012 YKTC 105

Date: 20121017
Docket: 12-00719
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Gower

BETWEEN:

JESSICA ALYSSA JADE SJODIN

APPLICANT

AND:

MICHAEL WAYNE UKRAINETZ

RESPONDENT

Appearances:
Michael Ukrainetz
Jessica Sjodin
Sophie Elasoff

Appearing on his own behalf
Appearing on her own behalf
On behalf of Victim Services Unit

REASONS FOR JUDGMENT

[1] GOWER T.C.J. (Oral): This is an application by Jessica Sjodin under s. 810(1) of the *Criminal Code* seeking a peace bond against Michael Ukrainetz. She alleges that Mr. Ukrainetz will cause personal injury to her in that he did on, September 13, 2012 in Whitehorse, “threaten her by an electronic device, to wit: “you’re lucky I don’t have you run over.” It is common ground that that message was received by Ms. Sjodin on her mobile cell phone as a text.

[2] It is important to recognize that the context of the allegation is that it is within a

family law dispute. Accordingly, I do not think the couple would object to me making reference to the background, although some of this technically is not in evidence. The couple have been in a common-law relationship since 2003 and they were married in 2009. They began separating in February of 2012. Ms. Sjodin indicates that during the marriage Mr. Ukrainetz was never physically violent with her, but since the separation he has been violent with her on two occasions. Those two occasions are identified as, firstly, March 18, 2012, and secondly, July 21, 2012.

[3] On the March 18th incident Ms. Sjodin alleges that the couple had signed a separation agreement a few days before, which is in evidence. That apparently was done on March 14th in the presence of witnesses. But then on March 18th, Ms. Sjodin alleges that Mr. Ukrainetz invited her to the family home, locked her in a bedroom and ripped a wedding ring off her finger, was screaming at her and would not let her leave the bedroom until she initialled changes that he had made to the separation agreement. She said she did not read the changes; she just initialled where he pointed so that he would let her out of the bedroom. The children were outside of the bedroom door crying while all of this was going on.

[4] Mr. Ukrainetz denies that allegation and says that his mother and step-father were at his residence when the signing of the changes to the separation agreement took place, and that they were there specifically to prevent any conflict and to prevent false allegations being made by Ms. Sjodin. The children were in the living room with their grandparents, he says, while Ms. Sjodin and he signed the changes to the separation agreement. He denies touching Ms. Sjodin, says that he did not remove her wedding rings, scream at her or trap her in the bedroom, and that she signed the

separation agreement voluntarily. That version of events is supported by an affidavit from Mr. Ukrainetz's mother, Jenny Jackson, who indicates that on approximately March 14, 2012, she was at the home of Mr. Ukrainetz and his three children and, while there, Ms. Sjodin came to the house to discuss and sign the separation agreement, but so as not to discuss the separation in front of the children, the couple went into a bedroom to talk. They went in willingly with no yelling, screaming or physical contact. The mother, Jenny Jackson, says she was nearby in the living room with the children while the couple were in the bedroom having their discussion, and at no time did she hear any raised voices, loud noises or noises of any concern. After completing their discussion, Ms. Jackson says that Ms. Sjodin left the home and did not appear to be physically harmed, scared or upset.

[5] That information was in an affidavit which was filed October 16, 2012. Today, being October 17, Ms. Sjodin obviously has not had a great deal of time to respond to that, but in taking the stand on the peace bond application today she testified that there was indeed an amicable meeting between the couple after the separation agreement was initially signed, that it did take place in the bedroom as described by Jenny Jackson and Mr. Ukrainetz, but that there was a third meeting which took place a couple of days after that, in the morning. This is the occasion that she is referring to in her allegation where she said that he locked her in the bedroom and ripped the wedding ring off her finger and was screaming at her. Mr. Ukrainetz specifically denies that there was ever a third meeting between the couple regarding the separation agreement.

[6] Before I move on to the second incident I would simply observe that it would seem to be somewhat inconsistent, based on the fact that the couple were in the

context of a separation and were having difficulties in that regard, that Mr. Ukrainetz would arrange a third meeting with Ms. Sjodin, as she alleges today, specifically when the second meeting, which everyone seems to be agreed happened in the way that Ms. Jackson says it happened, was specifically arranged in that fashion by Mr. Ukrainetz so as to prevent any conflict and to prevent false allegations. Why he would then risk a third meeting with Ms. Sjodin where she alone is present in his home without witnesses, leaves me questioning, to some extent, the veracity of Ms. Sjodin's allegation about that third incident.

[7] I now turn to the second incident, which is alleged to have occurred on July 21, 2012. At this point, Ms. Sjodin indicates that she and Mr. Ukrainetz were still thinking of getting back together, and they went to Dawson City for the music festival. She says that Mr. Ukrainetz became quite drunk and angry with her because she was talking to a group of men, which he said was inappropriate. They went back to their hotel room where she says that he became loud and was screaming at her, throwing her stuff into the truck. She hid in the bathroom and locked the door. He was yelling at her through the bathroom door to open the door and calling her a bitch. He was trying to break down the bathroom door. Ms. Sjodin says she was sitting on the floor in the bathroom with her back against the bathtub and her feet holding the door shut. She started screaming for help and after a few minutes the RCMP showed up. She says the police eventually coaxed her out of the bathroom, but they took Mr. Ukrainetz away to calm him down for the night. The couple then drove back to Whitehorse the following day in Mr. Ukrainetz's truck.

[8] Mr. Ukrainetz denies these allegations and specifically that he was drunk. He

said that after he left the fairgrounds of the music festival with Ms. Sjodin, she was belligerent in the vehicle and went straight to the bathroom when they got to their hotel room. He says that, due to Ms. Sjodin's previous history of cutting herself when she is upset, he tried to open the door of the washroom to check on her. In doing so, his arm was caught in the door when Ms. Sjodin leaned back against it. It was extremely painful and he made multiple requests for her to open the door, which grew louder each time, and each request was returned with a scream from Ms. Sjodin. He was eventually able to pull his arm free at one point and then sat in the hotel room waiting for Ms. Sjodin to calm down. The RCMP arrived shortly afterwards. He said that, on the trip home the next day, Ms. Sjodin asked partway home to drive for the remainder of the trip. He obliged, sitting in the passenger seat until they reached home, but no additional conversation took place. He says that if the defendant had feared for her safety, he did not believe she would have driven five and a half hours with him through an area without cell phone coverage.

[9] With regard to this incident, I am simply left with two opposing versions of what actually took place and I am not able to conclude that one version is more probable or likely to have happened than the other.

[10] In the case of *Bergeron v. Vaneltsi*, 2012 YKSC 19, Veale J. of this Court stated at para. 14:

"The imposition of a peace bond or recognizance requires the exercise of the court's preventative justice power [citations omitted]. Although s. 810 does not create an offence and it may be invoked on the civil standard on a balance of probabilities, there are nonetheless serious implications for a defendant brought before a justice under this section. A s. 810 peace bond can lead to significant restrictions on someone's

liberty. As well, where a justice determines that a peace bond is warranted, a defendant who refuses to enter into one can face a prison term of up to 12 months (s. 810(3)(b)). A breach of a term of a recognizance leads to a criminal prosecution under s. 811 [of the *Criminal Code*], and the potential for imprisonment of a term up to two years."

Therefore, courts should not approach applications for peace bonds lightly, given the potential for the respondent being put in criminal jeopardy. For that reason, although I am mindful that the evidentiary standard of proof is on a balance of probabilities, the evidence should nevertheless be cogent and compelling.

[11] I am also mindful that what is specifically at issue on this application is the alleged threat by texting, which is referred to in the Information, and the specific threat being, "you're lucky I don't have you run over." Ms. Sjodin has given evidence that this text was received by her on the evening of September 13, 2012. She assumed it was from Mr. Ukrainetz. She said she has a second cell phone that she only uses to communicate with him, and so that when it rings she knows it has something to do with the children and she can answer it right away. She says that the only people who know the phone number for this second cell phone are Mr. Ukrainetz, her mother and another gentleman by the name of Max Willie, and she says that this is the cell phone that the texts were sent to. There were three texts that she referred to in her evidence. The first reads, "Does your boyfriend know about your BP date?" Secondly, "Dumb cunt you don't deserve the kids, why don't you just kill yourself and do them a favor." The third one is the one that is alleged in the Information.

[12] Printouts of the last two texts were attached as an exhibit to Ms. Sjodin's affidavit. She explained that the phone number that appears below each of those texts

is actually the phone number of her lawyer, because she forwarded both messages to her lawyer for the purposes of the family law proceeding. There is no evidence whatsoever as to which particular phone number the texts originated from. Ms. Sjodin gave evidence today that these kinds of texts are sent online and they are not traceable. Her opinion that they came from Mr. Ukrainetz is based on the specific wording of the text and her interpretation of that wording.

[13] It also has to be remembered that Mr. Ukrainetz has indicated in his evidence that, since 2008, Ms. Sjodin has frequently been out with friends drinking and partying, that she has had numerous acquaintances, as well as sexual partners, over the years. So, I have to bear that information in mind as well.

[14] I also have to remind myself that I need to look at all of the evidence as a whole. I say that because I do not see myself as having to decide separately whether there was an assault on March 18, 2012, or separately whether there was an assault on July 21, 2012. Rather, that I must look at those preceding incidents as part of the evidence as a whole in determining whether Ms. Sjodin has met the test for a peace bond on this application. That test is that I must be satisfied on a balance of probabilities that she has reasonable grounds, subjectively and objectively, to fear that Mr. Ukrainetz will cause personal injury to her before ordering him to enter into a recognizance commonly known as a peace bond.

[15] The difficulty I have with the evidence is that I do not necessarily disbelieve Ms. Sjodin, but I did find that Mr. Ukrainetz was a credible witness in testifying here today. That leaves me, in terms of the context of the two incidents alleged by Ms. Sjodin, not

knowing whether they occurred or not. I am also reminding myself that it is Ms. Sjodin who has ultimately the onus of persuading me on a balance of probabilities. In other words, is it more likely than not that she has reasonable grounds, both subjectively and objectively, to fear Mr. Ukrainetz because of the alleged text that she says she received from him? At the end of the day, I am not satisfied on a balance of probabilities that that onus has been met, and I dismiss the application.

GOWER T.C.J.