

Citation: *R. v. Dion*, 2019 YKTC 4

Date: 20190117
Docket: 17-00693
Registry: Whitehorse
Heard: Haines Junction

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

DAVID RENE DION

Appearances:

Keith D. Parkkari

Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] COZENS J. (Oral): David Dion stood trial for offences contrary to ss. 129(a), 264.1(1)(a), 430(4), and 733.1(1) times two. I note that there is a third count that is a duplicate of Count 5, and that is Count 6 on the Information, and so the Crown is really only proceeding on Count 5. Take note that in Count 5 "influene" should read "influence".

[2] There was a *voir dire*. There was an argument that there was an unlawful arrest made in this case and defence was seeking a remedy that the charges be stayed. At the conclusion of the *voir dire*, I found the arrest was unlawful but I did not grant a 24(1) remedy staying the charges. The evidence in the *voir dire* was put over to the evidence at the trial.

[3] Crown is not seeking a conviction on the 129(a) charge on the basis that the arrest was unlawful. The refusal of Mr. Dion to get into the vehicle required the involvement of two officers to place him there. It is not a charge that can be sustained. As the arrest was unlawful, resisting an unlawful arrest is not a charge that there would be a conviction on.

[4] The Crown is not seeking a conviction on the mischief charge as well.

[5] The Crown is, however, seeking convictions on the keep the peace and be of good behaviour breach, not be outside of your residence if under the influence of alcohol breach, and the uttering threats.

[6] Defence is not contesting that there was evidence that Mr. Dion was outside of his residence under the influence of alcohol. The evidence certainly supports that and there is a conviction on Count 5.

[7] With respect to the uttering threats, what has been filed are excerpts from a two-hour and eight minute audio-video of the car ride in the police cruiser with Cst. Beckett to Whitehorse, after Mr. Dion had been arrested and was being transported. I am not going to go through what is said there. It is an exhibit in the file. It is continuous from 00:02:20 to 02:08:55. As far as the actual excerpts Crown has pulled out — and defence has not objected to — of comments that are most particularly threatening, there was a submission, of course, that there were further comments throughout.

[8] There is no question in my mind that these utterances clearly, in their own words, constitute threats to cause death to Cst. Beckett. It is not that common to see them go on for that long of a period on a car ride. I appreciate that Mr. Dion was intoxicated at the time — that we have evidence of. I also do not find it difficult to believe that he was still upset that instead of going home, he was going to Whitehorse, having been arrested.

[9] Defence argues that these are not, in these circumstances, comments that should be considered as being capable of allowing for a conviction on an uttering threat charge on the basis that they are a continuation of the resistance to getting in the police car and the resistance to being unlawfully arrested and, as such, should fall as being basically — not in defence's words but my words — sort of the fruits of the unlawful arrest and a continuation of the resistance of that unlawful arrest. To some extent, certain individuals are entitled to resist an unlawful arrest.

[10] Crown counsel's submission is that we do not actually know because we have no evidence from Mr. Dion why he was saying those words and, in the absence of any such evidence, it would be wrong to consider this as part of the unlawful arrest. The arrest was over, he was in the vehicle, and there are a number of ways Mr. Dion could have expressed his frustration of being unlawfully arrested that did not involve threatening to kill and do other things to Cst. Beckett.

[11] In my opinion, the arrest was completed; Mr. Dion was in the back of the car. There is a line and, in my opinion, the line was crossed here. I am not prepared to find that this is part of a continuous resistance. He physically resisted being placed in the

vehicle and he is not being held accountable for that in law because, to some extent, he was entitled to do that. He was arrested. He was in the back of the car. In my opinion, these comments, which are clearly threatening, are comments that stand separate and apart from the actual resistance to the unlawful arrest. They are a verbal expression of, I would expect, his frustration with the situation that he was in. He had a number of ways to express his frustration and, in my opinion, they do not include saying what he said to this police officer.

[12] I find that this is a separate transaction and constituted threats, and, as a result, I am going to convict Mr. Dion of the offence of uttering threats. On the basis of that, I am going to convict him of breaching the probation term that he keep the peace and be of good behaviour, by uttering threats.

[13] In saying this, I appreciate the circumstances. These are certainly not what I consider to be cold-blooded threats uttered with a sound mind with intent necessarily to carry them out. I think he was angry and frustrated, because that was evident right from the beginning of the detention that took place and it continued. That certainly is a factor that I can take into account at disposition. As well, I can take into account the fact that this followed from an unlawful arrest. These are mitigating factors that I can take into account at sentencing.

COZENS T.C.J.