

Citation: *R. v. Pang*, 2020 YKTC 51

Date: 20201217  
Docket: 19-00945  
Registry: Whitehorse

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

REGINA

v.

SHI YU PANG

Appearances:  
Noel Sinclair  
Shi Yu Pang

Counsel for the Crown  
Appearing on her own behalf

**REASONS FOR JUDGMENT**

[1] CHISHOLM C.J.T.C. (Oral): Shi Yu Pang is charged with five *Criminal Code* (the “Code”) offences, namely: assault causing bodily harm; assault; two counts of uttering death threats; and mischief. All of these offences are alleged to have occurred on March 13, 2020, in Whitehorse.

[2] The Crown called two witnesses at the trial, and Ms. Pang testified in her defence. The Crown also tendered video surveillance recordings.

[3] I will first give a summary of what I have determined to be the relevant evidence.

[4] Darlene Doerksen is the chief executive officer of the Multicultural Centre of Yukon (the “Centre”) located in downtown Whitehorse. The Centre is a gathering place for new Canadians but also makes available teachers and other resources for those who frequent the Centre. It is located on the second floor of a building which houses other tenants.

[5] Ms. Doerksen testified that Ms. Pang became a client of the Centre at the end of July 2018. Initially, she visited periodically, but her attendance increased to the point where she was there five days a week. While at the Centre, Ms. Pang frequented the computer area. Before March 13, 2020, there had never been any incidents while she visited.

[6] On March 13, 2020, while Ms. Pang was in the computer area, Ms. Doerksen indicated that an Internet outage occurred. Ms. Doerksen testified that she heard a ruckus in the reception area as Ms. Pang complained loudly about the outage. This caused Ms. Doerksen to exit her office in order to address the situation. She explained to Ms. Pang that the Internet outage was widespread. Initially, Ms. Pang responded well, but Ms. Doerksen continued to discuss it with her for approximately 20 minutes. Due to Ms. Pang’s difficulty in understanding, Ms. Doerksen made use of a piece of paper to make a visual aid.

[7] Ms. Doerksen testified that Ms. Pang became more agitated as time went on and accused her of lying about the outage by suggesting that the Centre had turned off the Internet. Ms. Doerksen attempted to defuse the situation; however, Ms. Pang suddenly became belligerent. Ms. Doerksen, who is a tall woman in comparison to Ms. Pang,

decided to sit down in an effort to de-escalate the situation. Ms. Pang accused Ms. Doerksen of selling drugs to fund the Centre, of killing both her own mother and Ms. Pang's mother. Ms. Pang's use of obscene and graphic language caused Ms. Doerksen to stand up and advise Ms. Pang that she must leave. Ms. Doerksen testified that she was concerned that others in the office, including staff members and some students, were upset by what was occurring.

[8] Ms. Pang threatened to kill Ms. Doerksen. According to Ms. Doerksen, Ms. Pang also knocked a container of pens and an array of business cards on the floor. She also pushed a computer screen monitor and threw another monitor that was used to provide information to visitors. During a scuffle that ensued, Ms. Pang pulled off Ms. Doerksen's necklace. When Ms. Pang came at Ms. Doerksen again, she tried to restrain Ms. Pang from behind. At this point, Ms. Pang bit her on the left arm, drawing blood.

[9] Ms. Doerksen testified that the owner of another business in the building, Mr. MacDonald, arrived and intervened. Ms. Pang grabbed a bottle of hand sanitizer and threw it at him. Ms. Doerksen testified that Ms. Pang displayed a lot of strength. However, Mr. MacDonald was ultimately able to restrain Ms. Pang and take her to the floor. He held her on the floor until the police arrived.

[10] The Crown played video surveillance footage during Ms. Doerksen's testimony. She testified that she recognized the recordings as video surveillance from the second floor of the building in which the Centre is located and from the time of this incident.

[11] Rory MacDonald is the owner of a clothing and shoe store named The Franchise. At the time of the alleged offences, his store was located on the first floor of the building in which the Centre is located. Mr. MacDonald testified that on March 13, 2020, at around 11:00 a.m., he heard a disturbance on the second floor. He described the disturbance as yelling which continued for five to ten minutes. Next, he heard what he believed to be items being thrown around. As a result, he decided to go upstairs to see if he could assist.

[12] In the first office on the left at the top of the stairs, Mr. MacDonald observed Ms. Pang being aggressive, and he noted a number of staff backed up against the wall. He observed items on the floor. He believed that Ms. Pang was in distress. Mr. MacDonald testified that Ms. Doerksen opened the door to have Ms. Pang leave, but that Ms. Pang ended up biting Ms. Doerksen on the arm. He described this injury as severe, with blood running down her arm. He described Ms. Pang as using “profanity-laced” language while he was present. She also was being threatening to others and specifically she threatened his life.

[13] Mr. MacDonald intervened after Ms. Pang injured Ms. Doerksen’s arm. As he tried to restrain Ms. Pang, she attempted to bite, scratch, and kick him.

[DISCUSSIONS]

[14] Although most of Ms. Pang’s attempts to kick him were unsuccessful, she did connect a few times, resulting in a substantial bruise on one of his legs. He described attempting to control her by holding her against the wall, but ultimately decided to take her to the floor. He testified that Ms. Pang displayed a surprising amount of strength

during his physical contact with her. Mr. MacDonald testified that he never heard Ms. Pang yelling for police assistance, as she suggested to him during cross-examination.

[15] Ms. Pang testified that she often accessed Internet at the Centre. After a while, she found the Centre was a bit strange, but that was just a feeling. Other people of Chinese origin attended, and she engaged in general conversation with them. Normally, she would not talk to anyone, including staff.

[16] On March 13, 2020, she attended the Centre. She had just sent an email message when the Internet stopped functioning. A woman who looked like Ms. Doerksen spoke to her and told her that the Internet was not working anywhere in the city. Ms. Pang testified that she could not understand that because there was still electricity. Ms. Pang conceded that she became upset when this woman told her to go elsewhere and confirm that the Internet was not functioning. The woman also invited her to sit down and talk. The woman wished to discuss immigration to Canada. The woman also stated that the Centre was not a government organization. Ms. Pang considered this odd, since there was a Government of Canada logo on the building. Ms. Pang became confused because the woman was unable to communicate clearly.

[17] Ultimately, the woman stood up, and because of her height, Ms. Pang felt threatened. She stood up as well. Ms. Pang testified that she knocked over the screen and monitor and hit the pen holder. She testified that she became more annoyed when the woman held her from behind and restrained her. She tried to break free and fight back. She also was perplexed when she observed a man come up the stairs and start

filming her. She agreed that she started to kick towards him as she attempted unsuccessfully to hit the camera away.

[18] She testified that she did not bite the tall woman who looked like Ms. Doerksen. She also believes that the video shown in court has been altered.

[19] When questioned in cross-examination as to whether she believed that the tall woman and Mr. MacDonald were involved in drug dealing, she indicated that she was uncertain. She denied having said to the woman that the woman was a drug dealer. Ms. Pang agreed that she used profanity, but indicated that the worst that she said was “fuck you”. She indicated that she never had an intention to harm anyone.

### **Application to Amend the Information**

[20] Before reviewing the legal principles that I must consider and deciding what evidence I accept, I turn to an application made by the Crown.

[21] In response to a question from the Court in submissions, the Crown made application to amend Count 5 of the Information pursuant to s. 601(2) of the *Code*. That count alleges that the defendant committed mischief by wilfully damaging the Centre’s computer equipment without legal justification or excuse and without colour of right.

[22] The Crown acknowledged that it was not alleging any loss or damage; however, it asked that Count 5 be amended to capture the language of s. 430(1)(c) of the *Code*, specifically, that the defendant obstructed, interrupted, or interfered with the lawful use, enjoyment, or operation of property.

[23] In *R. v. Careen*, 2013 BCCA 535, the British Columbia Court of Appeal upheld a decision of the trial judge to amend the Indictment because the amendment simply changed the wording of the count to what the accused “always understood the allegation against him to be” (see para. 13). The accused acknowledged such in his testimony. Accordingly, the Court of Appeal agreed with the trial judge that the accused had not suffered any prejudice.

[24] The Court in *R. v. Bédard*, 2018 QCCA 659, upheld the trial judge’s decision to allow an amendment to the Information during the trial in circumstances where the Crown had indicated its intention to do so prior to the commencement of the trial. Among other reasons, the trial judge had concluded that the amendment caused no prejudice to the accused’s defence.

[25] However, the matter before me may be distinguished from the above-noted case law. The Crown has offered no explanation as to variance in the evidence and the count, and this application to amend was made during submissions. There is no indication that Ms. Pang had been made aware prior to trial that the Crown would seek an amendment on this count, and there was no suggestion that the Crown’s case unfolded differently than expected. It is also of importance that the amendment being sought is a significant one.

[26] In *R. v. Tremblay*, [1993] 2 S.C.R. 932, the Supreme Court of Canada decided that although the decision explains that courts possess reasonably wide powers of amendment, s. 601 does not permit amendments that would cause the accused irreparable prejudice.

[27] In all the circumstances, I find that the proposed amendment would be very prejudicial to Ms. Pang, a self-represented defendant. As such, I dismiss the Crown's application to amend the Information.

[28] Accordingly, as there is no evidence to support a conviction with respect to Count 5, I find Ms. Pang not guilty.

### **Analysis**

[29] I am mindful that a trial is not a credibility contest. It is improper to decide a criminal case by choosing which version of events is preferable. Throughout the trial, the Crown maintains the burden of proving the essential elements of the offences beyond a reasonable doubt.

[30] As stated by the Court in *R. v. Campbell*, 2018 YKSC 37, at para. 4 — and I should point out, this is a decision of the Yukon Supreme Court:

... The decisive question is whether, considering the evidence as a whole, the Crown has proved the guilt of the accused beyond a reasonable doubt.

[31] Ms. Pang is presumed to be innocent. Also, as she has testified at trial, the principles set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, apply. These principles may be summarized as follows:

- if I believe the evidence of the accused, I must acquit;
- if I do not believe her testimony, but am left with a reasonable doubt by it, I must acquit;



- even if her evidence does not raise a reasonable doubt, I must consider, on the basis of the evidence I do accept, whether I am convinced beyond a reasonable doubt of her guilt.

[DISCUSSION]

[32] There is much common ground between the evidence of Ms. Pang and Ms. Doerksen:

- Ms. Pang was at the Centre on March 13, 2020.
- She became upset when told that there had been an Internet outage.
- She and a tall woman who worked at the Centre spoke for an extended period of time.
- Ms. Pang remained upset.
- Ms. Pang knocked items, including pens, a computer screen, and another monitor off a desk.
- There was a physical confrontation involving Ms. Pang and the tall woman.
- The tall woman restrained her from behind during her altercation with Mr. MacDonald.

[33] Also, there is much in common between the evidence of Ms. Pang and Mr. MacDonald:

- Mr. MacDonald came upstairs at the time of the incident.
- He was filming with his cellphone what was occurring. He and Ms. Pang became involved in a physical altercation.
- She kicked him.
- He took her to the floor and held her there until police arrived.

[34] The evidence differs in regards to who was the aggressor in each altercation. Ms. Pang says that she was acting in self-defence, whereas Mr. MacDonald and Ms. Doerksen say that Ms. Pang assaulted them.

[35] Although Ms. Pang is unsure Ms. Doerksen is the woman with whom she spoke and later became involved in an altercation, there is no doubt that it was Ms. Doerksen.

[36] Although there is nothing to suggest that Ms. Pang was trying to mislead the Court, her version of events is illogical. For example, on one hand, she testified that Ms. Doerksen suggested to her that she leave the building to determine if there was Internet service elsewhere; on the other hand, she stated that Ms. Doerksen engaged her in conversation to delay her from doing so.

[37] Also, Ms. Pang testified that when Ms. Doerksen stood up from her chair, she felt threatened, yet Ms. Pang's response to this perceived threat was not to leave, but instead to knock items and computer equipment off the desk.

[38] Additionally, Ms. Pang's evidence was internally inconsistent when she stated in her testimony that she was short-tempered, but denied in cross-examination that she

has this characteristic. She also testified that Mr. MacDonald had initiated violence towards her, whereas earlier in her testimony she stated that she began kicking Mr. MacDonald because he was filming her.

[39] I also find it significant that Ms. Pang acknowledged being angry from the time Ms. Doerksen suggested that she go elsewhere to check on the Internet outage to the point that she started kicking in the direction of Mr. MacDonald. In fact, as indicated, she was so angry, that she knocked items off the front counter. Ms. Pang disagreed with the Crown's suggestion that she had lost control, but that is clearly what occurred.

[40] Overall, I find Ms. Pang's evidence of the altercations, which is in dispute, to be unreliable, and I reject it. I do not believe her testimony in this regard, and it does not leave me in a reasonable doubt.

[41] It is important to note that even though I reject her evidence of the altercations in dispute, based on her own testimony, she assaulted Mr. MacDonald. There was no indication that she believed that he was threatening her or that she was defending herself from a threat. In any event, her actions were unreasonable in the circumstances.

[42] Ms. Doerksen's evidence was generally both internally and externally consistent. The one inconsistency that Ms. Pang pointed to between direct and cross-examination was of a minor nature and appeared to me to be an oversight on the part of Ms. Doerksen. Her evidence was consistent with that of Mr. MacDonald in terms of the alleged assault on her.

[43] Ms. Doerksen also testified in a measured fashion. For example, when asked if she had been concerned about the threat that she testified Ms. Pang made to her, she stated that she had not been. Instead, she felt that Ms. Pang was suffering, at the time, from some type of mental health issue.

[44] I accept Ms. Doerksen's evidence as it is both credible and reliable.

[45] Similarly, Mr. MacDonald testified in a manner that suggested he had no *animus* towards Ms. Pang. He presented his evidence in a straightforward manner and explained what happened step by step. He testified that he activated the video on his camera based on what he saw and heard after reaching the second floor and in order to protect himself. Although Ms. Pang argued strenuously that the fact that Mr. MacDonald deleted this video is suspicious, I accept his explanation that the police advised him that they did not require the video, as they had video surveillance footage from the Centre.

[46] Mr. MacDonald's evidence was generally consistent with that of Ms. Doerksen. The only major discrepancy is that he did not mention Ms. Pang throwing an object at him. However, I appreciate that this undoubtedly stressful incident happened over a short period of time some nine months ago. I do not find that this omission detracts from the reliability of his evidence.

[47] Mr. MacDonald also testified in a measured fashion, indicating that he did not take Ms. Pang's threat very seriously because of her obvious distress. He wondered whether her behaviour was precipitated by mental distress or the result of having consumed a substance.

[48] I find that Mr. MacDonald's evidence is both credible and reliable, and I accept it.

[49] Although, at the end of the day, it is unnecessary to my finding of credibility and reliability in relation to both these witnesses, I note as well that their evidence is corroborated by the video surveillance footage. The Crown led this evidence through Ms. Doerksen, who was present throughout the encounter. She testified that the recordings accurately depict what occurred on the morning in question.

[50] Ms. Pang argues that the video surveillance footage has been altered and is not a true representation as to what occurred. However, I have rejected much of Ms. Pang's evidence, including her description of the physical altercations.

[51] I find that the Crown has met the test for the entry of the video recordings into evidence (see *R. v. Bulldog*, 2015 ABCA 251).

[52] I am convinced beyond a reasonable doubt that the physical altercations were both initiated by Ms. Pang. Ms. Doerksen was acting lawfully to protect herself, her staff, and the Centre's property. Mr. MacDonald was acting lawfully in protecting himself and Ms. Doerksen. The injury inflicted by Ms. Pang on Ms. Doerksen meets the definition of bodily harm. Her bite to Ms. Doerksen's arm broke the skin and caused bleeding. Mr. MacDonald described it as severe. It left a mark on her arm. The injury was more than trivial or trifling.

[53] In the result, I find Ms. Pang guilty of assault causing bodily harm against Ms. Doerksen and assault on Mr. MacDonald.

[54] In terms of the two counts of uttering threats, the elements of the offence include: (1) the utterance or conveyance of a threat to cause death or bodily harm; and (2) an intent to threaten (see *R. v. McRae*, 2013 SCC 68). The words used by Ms. Pang in threatening, separately, Ms. Doerksen and Mr. MacDonald clearly constituted the uttering of threats of death.

[55] The fault element, or *mens rea*, is made out if it is established that the threatening words were meant to be taken seriously. The focus is on what Ms. Pang actually intended, not on how Ms. Doerksen or Mr. MacDonald viewed the words uttered. The circumstances in which Ms. Pang uttered the threats, while she was angry and upset and involved in a physical altercation, clearly establish that she intended the words to be taken seriously.

[56] As a result, I find her guilty of those two charges. As indicated earlier, I find her not guilty of the mischief charge.

[57] Lastly, the Crown has requested that I exercise my jurisdiction to order an assessment of the mental condition of Ms. Pang pursuant to s. 672.11(b) of the *Code*. To do so, I must have reasonable grounds to believe that such evidence is necessary to determine whether Ms. Pang was suffering from a mental disorder at the time of these offences that would exempt her from criminal responsibility.

[58] Section 16 of the *Code* sets out that a person is not responsible for an act while suffering from a mental disorder that rendered the person incapable of appreciating the nature or quality of the act or that it was wrong.

[59] Although there is some indication that Ms. Pang may have been experiencing some mental health or personality disorder issues on March 13, 2020, in my view, there is insufficient information to give me reasonable grounds to believe that these issues would exempt her from criminal responsibility.

[60] From the evidence before me, Ms. Pang appreciated the physical consequences of her actions. She also displayed an understanding that assaulting or harming another person is wrong.

[61] As a result, I decline to make an assessment order pursuant to s. 672.11(b).

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CHISHOLM C.J.T.C.