

Citation: *R. v. Bailey*, 2022 YKTC 33

Date: 20220715
Docket: 21-00773A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge McLeod

REGINA

v.

RODNEY MERVIN BAILEY

Appearances:
Sarah Bailey
Lorna Fadden

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] McLEOD T.C.J. (Oral): Mr. Bailey faces four charges. All are alleged to have arisen on January 28, 2022, and they are that: he uttered a threat to Mr. Peacock to cause death to Mr. Peacock, Ms. Hogan, and Mr. Marsh; secondly, that he assaulted Ms. Hogan; thirdly, that he committed an assault by choking Ms. Hogan; and fourthly, that he did break and enter Ms. Hogan and Mr. Peacock's residence at [redacted], in Whitehorse, and committed the indictable offence of theft.

[2] Obviously, on all of these counts, the Crown has to prove each and every element beyond a reasonable doubt. I agree with the Crown that Count 3, the assault by choking, while the assault is a lesser and included offence, there is already a count

covering the allegation of assault. The evidence of choking literally does not meet the test that I could find in the Oxford English Dictionary, because the evidence of Ms. Hogan was very clear that she was not injured, she did not think he was trying to kill her, there was no evidence of Mr. Bailey trying to stop her breathing or suffocate her or even press tightly on either side even though his hand was around her neck in a choking manner. But it does not meet the definition of choking, so I agree that there should be a dismissal of that charge.

[3] I heard evidence from three civilian witnesses. Ms. Hogan was the first witness. She said that she was in her room, which is a room that is locked off to everybody in the household, including her son — except Mr. Peacock, who is her life partner — the reason being that she is undergoing chemotherapy for cancer. She said she was in her room and on her bed. She said the room was always locked. She had had unwanted people in the residence and had clearly indicated to both of them, Mr. Duke and Ms. Hagen, that they should leave. She had finally given them two days to get out, but she had made it absolutely clear — and that evidence was not disputed in any way — that they were no longer welcome in that residence.

[4] Ms. Hogan said there was a knock on the door and she asked them to hold on. But thereafter, before she even had time to get off the bed, the door was opened and Mr. Bailey, who she identified not only in the court but in two other ways as well, came into the room and started challenging her, saying that he was the father, essentially, of one of her now unwelcome tenants.

[5] Ms. Hogan knows the unwelcome female tenant's mother. She also knew that the mother was dating a man called Roddy Bailey. Mr. Bailey, apparently, when he came into the room, introduced himself by his name.

[6] I find, despite the fact that Mr. Peacock and Ms. Hogan had never met Mr. Bailey before, that the Crown has proven beyond a reasonable doubt that Mr. Bailey was the one who came into Ms. Hogan's bedroom on the afternoon of January 28, 2022.

[7] The question is whether Mr. Bailey broke into the room — and it does not have to be a physical breaking. But there is more than that. Ms. Hogan said her bedroom was always locked and she said it was very easy to slip the lock with a butter knife. She did not know how they got in, but it was clearly a room that was off-limits.

[8] Mr. Bailey was a stranger in the house. He had no invitation into that residence and, least of all, into that room.

[9] I find that Ms. Hogan's evidence is one that is credible. Yes, her credibility was questioned on whether she had used drugs more recently than she said she had, which was a number of years of being clean. That does not affect her credibility in my view; she would not be the first and she will not be the last person who is not utterly truthful about her use or non-use of drugs. However, she was consistent in her evidence. She was not cross-examined on the circumstances that happened when Mr. Bailey came through the door.

[10] I find that Mr. Bailey was the one who was in front, because that is what Ms. Hogan said. She said Mr. Bailey came in first and he was followed by Mr. Duke.

[11] I find that Mr. Bailey was the person who pushed open the door and he came in, and then Ms. Hogan said that she got up from the bed and started screaming, in no uncertain terms, that Mr. Bailey was not welcome. He did not leave it at that point. He came towards her and he pushed her.

[12] Defence makes an argument that, well, if he had really pushed her up against the dresser, there would have been some injury. Ms. Hogan was very clear in her evidence and, in my view, very fair in her evidence. She never indicated that she was hurt. She never indicated that she was bruised. She never indicated that the pressing around her neck was any more than to push her back, and she said, “I’m a big woman. I pushed back as well.” I find her credibility to be completely untainted by any cross-examination.

[13] Ms. Hogan was very fair in her evidence. She did not in any way exaggerate, I find, and she was, in fact, extremely fair to Mr. Bailey — and even said that, “he said, ‘I didn’t know this was your room.’” and that he said that twice. Unfortunately, that is irrelevant to the fact that Mr. Bailey burst into a room that was closed. Even if he thought he had permission to be in the house from Mr. Duke, this room was off-limits and it was off-limits by a door that was closed and, according to Ms. Hogan, and not in any way disputed, locked.

[14] Therefore, I find, beyond a reasonable doubt, that Mr. Bailey broke and entered into Ms. Hogan’s room. I do not believe it is necessary for me to find whether or not Mr. Bailey knew he had permission to enter through the front door of the home or thought he had permission to enter through the front door of the home because Mr. Duke had a key and it is fair to assume that it could be that Mr. Bailey thought that it

was Mr. Duke's home, but certainly not a locked room in which he was the one who pushed through the door. I therefore find him guilty of that offence.

[15] Part of the offence is that he broke and entered and did commit the offence of assault. Ms. Hogan says that she got off the bed and went towards Mr. Bailey, and that he pushed her back. That is a touching, an exercise of force, which Mr. Bailey had no permission to do. Nor did he have any right to be in that room, so he could not say he was defending himself. That, in my view, is an assault, both in law and in fact.

Therefore, I find Mr. Bailey guilty of the offence of break and enter, and committing the offence of assault.

[16] With respect to the threats, there was testimony about two threats: one from Ms. Hogan, that when Mr. Peacock came home — apparently from walking the dog and/or going to the gas station — he came into the house and then he left with Mr. Bailey and Mr. Duke. What Ms. Hogan said was, “when Mr. Duke and Mr. Bailey left the house, we were threatened to not call the police.” She said, “he said, ‘tell your bitch she'd better not talk to the police.’” She said she took him at his word and that she did not want anything to happen to her family, and that is why she did not want to go to the RCMP when she went over to see her parents.

[17] Mr. Peacock did not testify as to that threat. He did testify, however, that when he accompanied, in two separate cars, Mr. Duke and Mr. Bailey to the gas station to obtain money, which it appears Mr. Duke owed Mr. Bailey — and it was somebody's contention that, if Mr. Peacock paid Mr. Duke, presumably for a drug supply, then Mr. Bailey would receive his money — Mr. Peacock said at that point, when they left,

Mr. Bailey threatened him and his family as well in saying, “don’t go to the police.” He said, “tell your wife not to call the police or you will see what happens.” The inference from that is that Mr. Bailey did not want anybody reporting this incident to the police. The inference from that, “or you will see what happens”, in the context of what occurred, can objectively — and clearly was, subjectively — and in a reasonable fashion, be taken to be a threat.

[18] Mr. Peacock said, “I took that to mean my wife and my family.” He said, “His tone of voice and body language said it all.”

[19] Whether both threats occurred, or just the one threat from Mr. Peacock, I have no reason to disbelieve either Ms. Hogan or Mr. Peacock. Whether both threats occurred or Ms. Hogan was repeating what Mr. Peacock had told her about the perceived threat or the threat, I find beyond a reasonable doubt that Mr. Bailey did not want the police involved in this, for obvious reasons, and he took it upon himself to threaten Mr. Peacock at the gas station, and it was to include not only his wife but anybody else in the household who were family members. Accordingly, I find Mr. Bailey guilty of the threat.

[20] With respect to the sole count of assault, I have already found that an assault did occur within the household and therefore there will be a finding of guilt on that charge.

McLEOD T.C.J.