

Citation: *R. v. Mayo*, 2019 YKTC 60

Date: 20191113  
Docket: 18-06358  
Registry: Whitehorse  
Heard: Faro

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

REGINA

v.

JOE MAYO

Appearances:

Arthur Mauro

Malcolm E.J. Campbell

Articled Student for the Territorial Crown

Counsel for the Defence

**REASONS FOR JUDGMENT AND  
REASONS FOR SENTENCE**

[1] CHISHOLM C.J.T.C. (Oral): Mr. Joe Mayo was charged that he provided liquor to a person under the age of 19 without being authorized to do so, contrary to s. 90(3) of the *Liquor Act*, RSY 2002, c 140. This is a straight summary conviction matter.

[2] Section 90(3) is a strict liability offence, which means that the Crown must prove the *actus reus* of the offence beyond a reasonable doubt. If the Crown does so, the defendant must establish that they exercised due diligence by taking all reasonable steps to avoid the act or omission which constitutes the offence.

[3] The Crown alleges that Mr. Mayo committed this offence on October 30, 2018, in the town of Faro. The parties agree that L.M. was working in the Faro Studio Restaurant on the day in question. She was 14 years of age.

[4] L.M. testified that after her shift, she drank alcohol in the bar adjacent to the Faro Studio Restaurant with a crew from a diamond drilling company. She indicated that she consumed alcohol to the point of being heavily intoxicated. She testified that Mr. Mayo was working as a bartender that evening. She considered Mr. Mayo to be her co-worker. In her duties working in the restaurant, she was permitted to enter the Studio Lounge to place drink orders for customers eating in the restaurant. Otherwise, she was not allowed in the bar.

[5] On October 30, at the end of her shift, L.M. testified that she took pizza orders from some members of the diamond drilling crew sitting in the bar, and then gave those orders to the cook. She ultimately left the bar very intoxicated with one of the diamond drilling workers. In between, she described herself drinking significant quantities of alcohol in the bar. She testified that she had a bottle of alcohol that she passed around to the others and that she had access to shots at the bar from another bottle. She recalls that she went outside at some point to smoke a cigarette. One of the people that she was associating with was outside with her, and that individual threw her bottle of alcohol in the air and smashed it on the ground. L.M. awoke the next day in a compromising situation.

[6] Mr. Mayo has lived in Faro for 33 years and has been the bartender at the Studio Lounge for over 14 years. He testified to having received training to learn the rules with

respect to serving alcohol in a licensed establishment. His practice is to ask patrons who appear to be under age for identification. If they are unable to produce proper identification, he directs them to leave the bar. Mr. Mayo testified that he is aware that if the rules regarding the service of alcohol are not followed, he could lose his job and be subject to penalties of a fine or even jail.

[7] Mr. Mayo testified that the restaurant adjacent to the bar closes at 8:00 p.m. On October 30, 2018, he recalls L.M. bringing her float from the restaurant to him at approximately 9:00 p.m. He keeps the money from the sales at the restaurant in a secure place. He testified that after this occurred, he refused her request for a bottle of Sour Puss, a liqueur, and later for a shot of alcohol. He refused to serve her alcohol because he knew that she was underage.

[8] Mr. Mayo testified that when L.M. was in the bar, she went over to the diamond drilling crew who were finishing a game of darts. Subsequently, she took two pizza orders from members of the crew for service later in the week. The crew members were at the bar finishing their drinks by this time. They paid their tab and left. L.M. exited the premises with the four crew members. Mr. Mayo indicated that all of this occurred within a matter of minutes. He believes that the crew members and L.M. left the bar together. Approximately an hour and one half later, she returned to the bar looking to buy a Sour Puss bottle to replace one that had been broken outside. He again refused her request. As Mr. Mayo was leaving the restaurant just before midnight, he saw L.M. with a crew member named Jared in the hallway between the lounge and the restaurant.

[9] L.M.'s evidence was generally clear and straightforward. She freely admitted that as the evening went on, her memory became impaired due to the consumption of significant amounts of alcohol. She struck me as a credible witness.

[10] Mr. Mayo stated that he had a clear recollection of the evening. He enforced the rules of the bar because he was concerned about his job. However, Mr. Mayo did not intervene when L.M. approached members of the diamond drilling crew to introduce herself, nor did he do so when she waited in the bar while the crew finished their beer and settled their tab. Based on his evidence, including his stated concern for his employment, Mr. Mayo should not have permitted her to remain, not only because she was only to be in the bar for work purposes, but also because he had already refused her alcohol. If he was as concerned with enforcing the rules as he portrayed, it would have been logical for him to direct her to leave the bar immediately after she had sought alcohol from him.

[11] The timing that Mr. Mayo describes is also problematic. He says the interactions that L.M. had with the crew were brief and that they all left the establishment soon thereafter. On the other hand, he states that he believes they departed at approximately 9:30 p.m. This approximate 30-minute period is much greater than the few minutes that he had earlier described. I also find it very unlikely that L.M. would have left the bar with strangers after having spent only a few minutes with them.

[12] After having considered Mr. Mayo's evidence, I reject it. I find that he permitted L.M. to stay in the bar, where she consumed alcohol. He has not raised any evidence to show that he took reasonable steps to prevent this from happening. After having

considered all of the evidence and on the basis of the evidence that I accept, I am convinced beyond a reasonable doubt as to the guilt of Mr. Mayo; therefore, I find him guilty of the offence charged.

[DISCUSSIONS]

[13] Mr. Joe Mayo has been found guilty of an offence contrary to s. 90(3) of the *Liquor Act*. On October 30, 2018, he provided liquor to a person under the age of 19 years without being authorized to do so.

[14] The facts, in brief, are that Mr. Mayo is a bartender at the local lounge/bar in Faro. He was the sole bartender on duty on the night in question and his co-worker who worked in the restaurant, L.M., was in the bar initially pursuant to her duties. She was taking the float from the restaurant to Mr. Mayo. However, he allowed her to stay in the bar where she consumed alcohol.

[15] Mr. Mayo has been in Faro for 33 years, and he has been an employee at the Studio Lounge for over 14 years in the capacity of bartender. He is 58 years of age, and from what I am told today, he has a good work history and no previous involvement with the law.

[16] The law that he has contravened is in place to prevent people under the legal age from consuming alcohol, which, in this case, led to some serious difficulties for L.M. However, I am not punishing him for what occurred after she consumed alcohol. The penalty is for permitting her to consume alcohol when she was under the age of 19. She was 14 years of age at the time, getting close to 15.

[17] I find the circumstances somewhat aggravating because based on her evidence, which I accepted, she spent some period of time in the bar, a time period that she was unable to calculate, but she went from being sober to heavily intoxicated by the time that she left the bar. I take into consideration the circumstances of Mr. Mayo and the fact that he has not been previously in trouble with the law and, quite frankly, the fact that he may have other consequences in terms of his employment as a result of this conviction.

[18] The Crown seeks a fine of \$1,000. The defence seeks a fine in the range of \$600 to \$700. The maximum penalty pursuant to the legislation is \$10,000. I believe that Mr. Mauro has indicated that there is a minimum penalty of \$500.

[19] MR. MAURO: No, not a minimum; a voluntary fine amount.

[20] THE COURT: A voluntary fine amount, then. Thank you for clarifying that.

[21] In the circumstances of the case, I will increase that voluntary fine amount to \$750 and allow Mr. Mayo six months' time to pay, as requested by Mr. Campbell.

[DISCUSSIONS]

---

CHISHOLM, C.J.T.C.