

Citation: *R. v. Emsley*, 2024 YKTC 29

Date: 20240704

Docket: 23-00577

23-00577A

23-00577B

Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Phelps

REX

v.

RAYMOND EMSLEY

Appearances:

Kathryn Laurie

Kevin Drolet

Counsel for the Crown

Counsel for the Defence

RULING ON APPLICATION

[1] PHELPS T.C.J. (Oral): Mr. Raymond Emsley is before the Court on three Informations, the first Information alleging an offence contrary to s. 344(1)(b) of the *Criminal Code*, that on November 11, 2023, he did steal cigarettes from Shaun Einarson and did use violence towards Shaun Einarson in doing so contrary to s. 344(1)(b) of the *Criminal Code*.

[2] The facts are that he was at a local store at the time of the offence. He took offence to not being served. He made a statement to Mr. Einarson along the lines of, "This is God's house" and that he did not need to pay for the items. During the

exchange, he pushed Mr. Einarson down to the ground and took the items that he was referring to, being cigarettes, pop, and a banana.

[3] Mr. Emsley is also before the Court for an offence contrary to s. 145(2)(a) of the *Criminal Code*, being that he failed to attend court without lawful excuse on January 17, 2024; and an offence contrary to s. 145(3) of the *Criminal Code*, that on February 21, 2024, he also failed to attend court.

[4] The Crown conveyed information to the Court, that was gleaned through conversations with Mr. Emsley's mother as well as the facts contained in the files that are before the Court, giving rise to concerns of his mental wellness. The Crown has made an application pursuant to s. 672.12 for an assessment of Mr. Emsley.

[5] Of particular concern is, on his most recent arrest, Mr. Emsley was located yelling and arguing apparently with himself due to auditory hallucinations he was having at the time. He has previously been subject to an NCRMD order. He did well on that order. However, as of late, after his discharge, he has stopped taking his medication and has been declining. There is concern that he will harm someone given the amount of anger expressed as he is struggling with his mental wellness.

[6] I note that at the last court appearance, which was for Mr. Emsley's bail application, he, himself, derailed the bail application and counsel was no longer able to get instructions from him to continue. On that occasion, there was a bail plan put forward for Mr. Emsley to reside with his mother with certain conditions.

[7] The Crown has made arrangements for Dr. Klassen to conduct the assessment next week from July 8 to July 12, 2024. He will do so remotely by video link with Mr. Emsley.

[8] Mr. Emsley has voiced his position regarding a proposed term of the bail application that he will not be assessed and will not consent to an assessment. I have not heard submissions to change that position on the part of Mr. Emsley. His mother has relayed to Crown counsel that she is concerned that he will not participate in any form of assessment, nor attend any meetings to do so.

[9] Being mindful of the s. 672.16 presumption against detention for the purpose of such assessment, the detention of Mr. Emsley is not required due to the fact that the assessment must be conducted in a hospital. However, it is quite clear that if Mr. Emsley is released, he has no intention of participating in such an assessment.

[10] I am satisfied that Mr. Emsley is required to be detained for the purpose of the assessment, and I so order.

PHELPS T.C.J.