

Citation: *R. v. Blankenburg*, 2010 YKTC 95

Date: 20100910
Docket: 09-00341A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

HANS JOACHIM BLANKENBURG

Appearances:

Richard Meredith
Ludovic Gouallier
Hans Blankenburg

Counsel for the Crown
Counsel for the Crown
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] Hans Joachim Blankenburg faces the following charges:

Count #1: On or about the 25th day of July, 2009, at or near Ross River, Yukon Territory, did unlawfully commit an offence in that: he did by in person knowingly utter a threat to Robin DICK to injure or kill an animal to wit: a dog, contrary to Section 264.1(1)(c) of the Criminal Code.

Count #2: On or about the 25th day of July, 2009, at or near Ross River, Yukon Territory, did unlawfully commit an offence in that: he did without lawful excuse point a firearm, to wit: 12 gauge shot gun, at Robin DICK contrary to Section 87 of the Criminal Code.

Count #3: On or about the 25th day of July, 2009, at or near Ross River, Yukon Territory, did unlawfully commit an offence in that: he did without lawful excuse, use, carry, or handle a firearm, to wit: a 12 gauge shotgun without reasonable precaution for the safety or other persons, contrary to Section 86(1) of the Criminal Code.

[2] The matter was set for trial on three occasions before it finally proceeded on June 16, 2010 at Ross River. The trial could not be completed on June 16, 2010, but had to be adjourned for continuation on August 30, 2010.

[3] Prior to August 30, Mr. Blankenburg advised the Court that he would like the assistance of a German interpreter and one was made available for the remainder of the proceedings.

[4] Although self-represented at trial, Mr. Blankenburg had previously been represented by counsel. At no time prior to August did Mr. Blankenburg or his counsel indicate that an interpreter would be required. However, at the opening of the trial, Mr. Blankenburg did express some reservations about his ability to understand what was being said to him.

[5] From my observation, it appeared that his problem was not so much one of comprehension but of hearing. Later, when the interpreter spoke to Mr. Blankenburg, she reached the same conclusion. However, Mr. Blankenburg denied having any hearing problems and the trial proceeded.

[6] As the trial proceeded, Mr. Blankenburg appeared able to express himself and to comprehend the evidence. While his understanding of some of the finer legal points (as for example, a *voir dire* to determine the admissibility of his statement to the police) was decidedly less than perfect, I am satisfied Mr. Blankenburg was able to receive a fair hearing.

[7] On July 25, 2009 Robin Wilk (Dick) and his partner, Diedra Etzel, decided to take a drive from their home in Ross River along the South Canol Road. With them were the couples' infant son, Diedra Etzel's mother, Margie Etzel, and Margie Etzel's dog.

[8] They stopped at Rose Lake to fish. Rose Lake is just off the Canol Road and there is a campsite by the lake. Hans Blankenburg and his wife had been camping at Rose Lake. Mr. Blankenburg's wife went over to talk to the new arrivals.

[9] Meanwhile, Margie Etzel's dog wandered off.

[10] Mrs. Blankenburg returned to their campsite, spoke to Mr. Blankenburg and then went into the couple's truck camper to prepare dinner.

[11] At this point, Mr. Blankenburg was seated on the beach near the lake preparing to cook some bacon on a grill. He had a loaded double-barrelled shotgun close at hand, propped up against a table. The shotgun has a break-open action. The barrels tilt at the rear to expose the breech allowing loading of shot shells and the extraction of spent shells. Mr. Blankenburg had the gun open, so it could not be fired. However, as Mr. Blankenburg himself put it, it takes a tenth of a second to close the action and ready the gun for firing.

[12] As Mr. Blankenburg sat there, the dog came into the Blankenburg camp. Mr. Blankenburg has given varying descriptions of what next occurred. Only he and the dog

know for sure because Mrs. Blankenburg was in the camper and the view of those in the Wilk/Etzel party was blocked by trees that separate the two campsites.

[13] At trial, Mr. Blankenburg testified that the dog ran toward him, catching him by surprise. He thought the dog was going to attack him. He sprang to his feet and grabbed his shotgun. As he did, he yelled at the dog. At the yell, the dog stopped some 3 to 5 metres away and crouched down, head on the ground and front paws splayed out. Mr. Blankenburg yelled again and the dog ran off.

[14] Enraged, Mr. Blankenburg, shotgun in hand, stormed off toward the site occupied by the Wilk/Etzel party. He encountered Mr. Wilk and yelled words to the effect that he would shoot the dog.

[15] According to Mr. Blankenburg, he added the qualifier that he would do so if the dog attacked him again.

[16] Meanwhile, I am satisfied, he was waving the gun around, including in the direction of Mr. Wilk.

[17] Significantly, Mr. Wilk reports that in addition to threatening to kill the dog, the accused was yelling that the dog was stealing from his (Mr. Blankenburg's) camp. This is important because Mr. Blankenburg also said something similar to the police when they arrived at Rose Lake to investigate the incident. He told Cst. Niman and Cst. Telep that "the dog was going to steal my meat and piss and shit all over camp."

[18] In my view it is unlikely in the extreme that Mr. Wilks could concoct such a detail out of thin air and the likelihood that Mr. Blankenburg did accuse the dog of stealing is heightened by the fact that he afterward told police much the same thing.

[19] If Mr. Blankenburg did accuse the dog of stealing, it tells the lie to his assertion at trial that the dog attacked him and he acted solely in self-defence. Mr. Blankenburg's explanation for this inconsistency, which is that he only later (after discussion with his wife) developed the theory that the dog was intent on stealing meat, is clearly untrue.

[20] It is beyond doubt that the dog did go into Mr. Blankenburg's camp, and in so doing, greatly upset Mr. Blankenburg who, as he made clear in his evidence, has a severe aversion to dogs. However, I do not believe the dog attacked him. Even if it did, it is clear, on Mr. Blankenburg's own testimony, that the attack, such as it was, had stopped and the dog had run away. Thus, the danger, if there was any, had substantially abated and there was no real justification in marching toward Mr. Wilk yelling threats to shoot the dog.

[21] More particularly, there was no justification in doing so while armed with a loaded shotgun. Mr. Blankenburg insists that he never closed the breech of the gun; the other witnesses distinctly recall that he did. Even assuming the action was not closed, the weapon was loaded and could easily and quickly be readied to fire. I have no hesitation in finding that this was a dangerous, irresponsible, and unjustified action on Mr. Blankenburg's part.

[22] Mr. Blankenburg maintained throughout that Diedra Etzel and Margie Etzel could not have witnessed any of the events as their view was screened by trees separating the two campsites. However, I am satisfied that the confrontation between Mr. Blankenburg and Mr. Wilk occurred close enough to the other camp that the two women could see (and hear) much of what occurred. To conclude otherwise would be to brand their evidence as a complete fabrication when both were, in fact, quite credible witnesses. For example, Diedra Etzel was careful not to overstate her evidence regarding Mr. Blankenburg's use of the gun, conceding her unfamiliarity with firearms. Margie Etzel was similarly careful to state the limitation on her observations as she was initially inside her vehicle and later, farther away than the other participants.

[23] For his part, Mr. Wilk also gave believable evidence. As I have already noted, his testimony as to the content of Mr. Blankenburg's threats would have been virtually impossible to concoct.

[24] Mr. Blankenburg's evidence, particularly on the crucial point of whether or not he was attacked by the dog, suffers from the fatal flaw of being entirely inconsistent with his utterances at the time and, later, to the police.

[25] In the result, I do not accept his evidence where it conflicts with the evidence tendered by the Crown, nor does it raise a reasonable doubt in my mind. I'm satisfied on the whole of the evidence that the charges have been made out.

[26] Although it is not necessary to decide on the legality of such action, it should be noted that Mr. Blankenburg's habit of sitting at the lake in a public campground armed with a loaded shotgun, is questionable in itself.

[27] Mr. Blankenburg somewhat dramatically described himself as alone in the wilderness and, more grandiosely, as the survivor of over a hundred bear encounters. While the Rose Lake site is not an officially designated campground, it is only a short distance off the South Canol Road, a public, though secondary, highway. The campground site is visited by several parties a day as Mr. Blankenburg himself acknowledged. Mr. Blankenburg was seated only a short distance away from the safety of his truck and camper. Thus, his perceived need to protect himself by keeping a loaded shotgun at hand strikes me as a little over the top.

[28] Be that as it may, I find that questionable behaviour rose to the level of criminal conduct when he took up his shotgun and confronted and threatened other persons in the campground when there was no lawful justification for so doing.

[29] I find the accused guilty on counts one and two. Count three is conditionally stayed.