Citation: *R. v. Carpenter*, 2018 YKTC 51

Date: 20180704
Docket: 18-00078
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**
Before His Honour Judge Neal

REGINA

v.

CHASE ALLEN LEE CARPENTER

Appearances:
Christiana Lavidas — Counsel for the Crown
Kelly Labine — Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] NEAL J. (Oral): Mr. Carpenter is before the Court on Information 18-00078, a four-count Information.

[2] Count 1 is an allegation of an assault cause bodily harm on Graham Michael Everitt on or about May 2, 2018.

[3] Count 2 is an allegation of a breach of a probation order that was put in effect on April 24, 2018, specifically Condition 1, an obligation to: “Keep the peace and be of good behaviour".

[4] Count 3 is an allegation, with respect to the same probation order, having occurred on or about May 2, 2018, namely, a breach of Condition 7 of that order: "Not be outside your residence if under the influence of alcohol".

[5] Count 4 is an allegation, with respect to the same probation order, having occurred on or about May 2, 2018, namely, a breach of Condition 8 of that order: "Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub".

[6] The matter before the Court today relates to an altercation that took place between the accused, Mr. Carpenter, and the complainant, Mr. Graham Everitt. This was an altercation that was fuelled by alcohol and ultimately resulted in very serious injuries to Mr. Everitt that required hospital treatment.

[7] The Court heard from three witnesses for the Crown and the accused for the defence. I will begin by considering the credibility and reliability of those witnesses.

[8] The first witness to testify was Mr. Everitt, the complainant. Mr. Everitt acknowledged at several points that he had real challenges in recalling specific details as a result of multiple concussions and other issues in his life. His evidence was equivocal on some points and there were several immaterial consistencies in other aspects of his evidence. Mr. Everitt was clear and detailed, however, with respect to how his face came to be so severely injured, that being by a kick inflicted by the accused. He was unshaken on cross-examination with respect to that fact.

[9] I find that Mr. Everitt was credible and trying to be honest and forthright, although operating under an obvious disability. Reliability was an issue, as some details in his evidence were incomplete and at times inaccurate. Overall, however, I do accept his evidence as honest and trustworthy.

[10] Constable Boehmer's evidence was forthright, trustworthy, and I accept him as a credible and reliable witness.

[11] The third Crown witness, Shane Frost, was neither credible nor reliable. By his own admission, Mr. Frost acknowledged that on the day in question he had consumed a 26-ounce bottle of vodka on the day in question before joining the accused near the river to continue drinking. Clearly, that amount of alcohol would have a profound effect on the ability of Mr. Frost to observe, recollect, and report on what he had seen.

[12] However, there are other issues associated with the credibility and reliability of Mr. Frost. During direct examination, he was initially equivocal, unable to recall details of anything that occurred on that day and could not even recall the statement having been given to police. It was only on cross-examination that his recollection seemed to improve. Initially, he had denied that he had ever seen the fight between Mr. Carpenter, the accused, and Mr. Everitt, the complainant. However, in cross-examination, he began to provide several important details as to how such a fight took place. Finally, of course, Mr. Frost acknowledged that he was a very close friend of the accused. His bias was evident in the way his evidence unfolded.

[13] I find that Mr. Frost was not an honest or trustworthy witness. His evidence lacks credibility or reliability, and I reject it.

[14] With respect to the accused, Mr. Carpenter, I find that he was not a credible or reliable witness either. Mr. Carpenter minimized his alcohol consumption and was inconsistent as to its effects on his actions on the day in question. At first, he left home and then went downtown and purchased a bottle of liquor so that he could meet up — and, ultimately, did meet up — with Mr. Frost to share that liquor.

[15] When challenged on that issue later by the Crown in cross-examination, Mr. Carpenter changed the story so that someone else had been sent inside the liquor store to buy the alcohol. That was completely inconsistent with his first version of events and lacks an airing of truth.

[16] Mr. Carpenter minimized dramatically his role in the altercation with Mr. Everitt, a man who was at least 15 years older and significantly smaller than Mr. Carpenter. He also minimized his responsibility for compliance with the probation terms concerning alcohol that were set out in the probation order.

[17] Finally, he minimized and was unable to provide an accurate rendition of the events involving his arrest. He initially denied that the police arrest had made him upset. He denied that he had completely lost it when dealing with the police in the attempt to both handcuff him and place him in the police car. He also minimized and equivocated on his actions while at the police station. He denied that he was a significant problem and indicated that he was not highly combative, although it is clear from the evidence that I do accept that Mr. Carpenter was indeed highly combative from the moment the police approached him.

[18] Overall, he was not a credible or reliable witness. His evidence is untrustworthy and I reject it.

[19] Concerning the tests in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, I cannot find that I accept the evidence of the accused nor am I left in any doubt by his testimony. On no branch of the tests in *R. v. W.(D.)* do I have doubt as to the culpability of the accused having been raised by his testimony.

[20] I make the following findings of fact, considering all of the evidence.

[21] On May 2, 2018, the accused left home and purchased a bottle of vodka from a liquor store in downtown Whitehorse immediately before meeting his friend, Mr. Frost. The two headed to the train station area adjacent to the river to continue to drink in public. The accused and Mr. Frost were drinking heavily in the area between the Millennium Trail and the 98 Hotel ("98") in Whitehorse.

[22] At some point, Mr. Everitt approached the two gentlemen and sought a drink from them. It was initially agreed to provide that but Mr. Carpenter became angry and hostile in his dealings with Mr. Everitt. Mr. Carpenter is six feet in height and approximately 180 pounds. Mr. Everitt was approximately five feet ten inches with an unknown weight, but is more than 15 years older than Mr. Carpenter.

[23] I considered the tests in *R. v. Blake*, 2000 YTTC 518, decision of Chief Justice Stuart, with respect to the definition of consensual fights and, in particular, in relation to the interaction between the accused and Mr. Everitt.

[24] I find that there was a brief verbal altercation between the accused and Mr. Everitt that quickly escalated to a scuffle with inconsequential blows being exchanged between the parties. To this point, I find the fight was consensual. However, Mr. Carpenter, the accused, significantly escalated the altercation by pushing Mr. Everitt, the older and smaller man, to the ground. The accused kicked Mr. Everitt, laying there defenceless, in the face to the right side of the mouth. The result was an upper right lip torn away in part requiring 24 stitches to repair. The injury was clearly indicative of an assault causing bodily harm to Mr. Everitt.

[25] Even the most generous interpretation of the facts would not support a consensual fight, as such, could not extend to the nature of the injuries sustained in Mr. Everitt or Mr. Carpenter. When kicked, Mr. Everitt was on the ground and defenceless. There is no reasonable inference of consent to the injuries sustained. There was no self-defence by Mr. Carpenter evident either, as the force used was entirely unreasonable and disproportionate to the risks that he faced.

[26] Considering all of the evidence, I am satisfied beyond a reasonable doubt the Crown has proven all elements of the offence as charged against the accused on counts 1 to 4 on the Information before me.

[27] On Count 1, I find that on May 2, 2018, in Whitehorse, the accused kicked Mr. Everitt in the face while Mr. Everitt was on the ground, resulting in a severe tear to the upper right lip of Mr. Everitt.

[28] With respect to Count 2, on May 2, 2018, while bound by a probation order made on April 24, 2018, the accused was in breach of Count 1 by failing to keep the peace and be good behaviour, as a result of his assault to Mr. Everitt.

[29] With respect to Count 3, on May 2, 2018, while bound by the same order, the accused was clearly under the influence of alcohol and was outside his place of residence without reasonable excuse. This is contrary to Condition 7 of the probation order.

[30] Finally, with respect to Count 4, again, with respect to the same probation order, I find a breach of Condition 8 as a result of the accused attending a liquor store in Whitehorse, without reasonable excuse, to purchase alcohol before meeting Mr. Frost.

[31] There was a similar breach as a result of the accused attending the 98 by being in the entry way to that establishment. The evidence before me shows the 98 as an establishment primarily designed to sell alcohol. In that regard, I have taken judicial notice of the decision of Challenger J. in *R. v. Shields*, 2014 BCPC 356, with respect to the meaning of the word "attend".

[32] Convicted on all four Counts.

[DISCUSSIONS RE SCHEDULING AND ADDITIONAL REPORTS]

[33] Consent remand, then, tomorrow at 1:45 p.m.

_____

NEAL T.C.J.