

Citation: *R. v. Dick*, 2007 YKTC 87

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Registry: Whitehorse
Heard: Ross River

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Faulkner

REGINA

v.

DENNIS IVAN DICK

Appearances:
Kevin Komosky
Keith Parkkari

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] FAULKNER C.J.T.C. (Oral): Dennis Ivan Dick was charged on two Informations, with a total of five offences, arising out of an incident that occurred on the 13th and 14th days of September 2006, here in Ross River in the Yukon Territory.

[2] The first Information charges him with assault with a weapon, aggravated assault and carrying a weapon, to wit: a baseball bat, for the purpose of committing an offence.

On the second Information, he is charged with uttering a threat to Nathan Moon to cause bodily harm to Mr. Moon, and with the breach of undertaking.

[3] All of these charges arise out of a confrontation between Mr. Dick and a group of people consisting of, as the main protagonists, Mr. Nathan Moon and Mr. Dwayne Tom. There apparently had been some bad blood between Mr. Dick on the one hand and the Moon-Tom faction on the other, and the incident which this trial dealt with arose as a result.

[4] I think it will be convenient to deal firstly with the evidence of the defendant. In my view, Mr. Dick's evidence was completely incapable of belief. He was contradicted by his own witness, Mr. Dendys, contradicted by the one apparently sober and dispassionate witness to all of the events, Fran Etzel, and, most tellingly, contradicted, and seriously so, by his own statements to the police, which were put to him when he testified.

[5] Most pointedly, it will be noted Mr. Dick never even mentioned to the police that he had used a knife to defend himself, as he now claims. In fact, apart from not mentioning it, he denies using a knife. Neither does he mention, as he now claims, going to the John Atkinson residence for assistance. In short, his whole claim of using a knife only in self-defence is, I am satisfied, a later concoction. In my view, Mr. Dick's claim of acting in self-defence must further fail in considering some of the other evidence in the case.

[6] Firstly, the evidence, in my view, establishes that Mr. Dick acted as the initial aggressor. Indeed, as even Mr. Dick's own witness indicated, it was Mr. Dick who

stopped the other group twice to confront Mr. Moon and Mr. Tom. It was, on Mr. Dick's own admission, he who armed himself with a bat to go over to the house where he knew his adversaries were, claiming that in the middle of the night he needed to retrieve some rings. It was the defendant who was walking by Fran Etzel's house, calling out to Mr. Tom to stop or come back. These were clearly not the actions of someone who is attempting to do nothing else but retire from conflict. So at the end of the day, Mr. Dick's evidence I find to be wholly unreliable. I place no weight on it whatsoever where it conflicts with the evidence of any other witness.

[7] Now, of course, the fact that I disbelieve Mr. Dick does not equate to proof of the Crown's case. The evidence of the Crown witnesses, with the exception of Fran Etzel I have already referred to, has to be viewed with some degree of caution. Firstly, there is obviously some bad blood between the Moon-Tom group, on the one hand, and Mr. Dick on the other. It is quite obvious that all of the witnesses in the Moon-Tom group were substantially under the influence of alcohol. However, it is clear that there was a confrontation which was obviously initiated by Mr. Dick at the outset. It is also clear that there was a fight, and it is also clear that Mr. Moon was seriously injured during the course of that fight. These essentials, I think, cannot be gainsaid, and in my view, they provide a sufficient basis for a conviction on some of the counts.

[8] I should say that I am satisfied that Mr. Moon and Mr. Tom were probably somewhat more anxious to pursue the altercation with Mr. Dick than they claimed. Mr. Moon, after all, had a stick, and the evidence of some of his friends was that it was he who went out to meet Mr. Dick. There is also evidence that might suggest that at least someone in the Moon-Tom camp had a knife. However, taking the Crown's

evidence at its highest for the defendant, it would be that the fight was more or less a consensual one. That being so, that does not provide Mr. Dick with a defence because those who are involved in a consensual fight are not entitled to resort to deadly weapons, nor to inflict serious bodily harm on their adversaries.

[9] Now, even in a consensual fight, if one were losing badly, and the other side were producing weapons and so on, and one was in fear of death or grievous bodily harm, one would still be entitled to a claim of self-defence, but I have already indicated why there is nothing in the evidence that is credible which would support that view of the transaction. Since self-defence is not available to the accused, and since the defence of consent, as I say, taking the matters at the highest for him is not available to him, it follows that he is culpable in law for the wounding of Mr. Moon.

[10] That being the case, I find Mr. Dick guilty on Count 2 of docket number 00376, which is the charge of aggravated assault. That charge is made out by the nature of and extent of the injuries to Mr. Moon, as testified to by the nurse practitioner. Count 3, which is the charge of carrying a weapon for the purpose of committing an offence, is similarly made out. Count 1, which is the charge of assault with a weapon, in my view, is subsumed by Count 2, and should be conditionally stayed.

[11] With respect to the second Information, which charges Mr. Dick with uttering threats and breaching an undertaking, there is evidence to support Count 1. Although the exact nature of what Mr. Dick was saying to Mr. Moon during some of these verbal confrontations is not entirely clear, I am satisfied that it at least amounted to a threat to cause bodily harm to Mr. Moon, and consequently that charge is proved. With respect

to Count 2, which is the charge of breach of undertaking, I do not recall hearing any evidence supporting that charge and that charge should be dismissed.

[DISCUSSION RE OTHER CHARGES]

[12] THE COURT: I will direct the preparation for the pre-sentence report. Bail will continue.

FAULKNER C.J.T.C.