

Citation: *R. v. Marada*, 2010 YKTC 82

Date: 20100513
Docket: 09-00941
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

STEVEN JOSEPH MARADA

Appearances:
Noel Sinclair
Melissa Atkinson

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] COZENS T.C.J. (Oral): Steven Marada has been charged with two offences, Crown having previously entered a stay of proceedings to a charge under s. 145(3) at the commencement of the trial. These two charges are, one, that he was carrying a hammer for a purpose dangerous to the public peace, the hammer being a weapon, contrary to s.88 of the *Criminal Code*, and two, that he uttered a threat to Amanda Ledgerwood to cause death to Amanda Ledgerwood, contrary to s. 264.1(1)(a) of the *Criminal Code*, through the use of the words, "You are fucking dead, bitch."

[2] Crown counsel called three witnesses at trial. These witnesses were the complainant, Amanda Ledgerwood, her younger brother, Christopher Ledgerwood, and

her mother, Patricia Ledgerwood.

[3] Testifying for the defence was Chris Devilliers, who was present at the time that these events took place.

[4] The basic circumstances surrounding the allegations and the evidence of the defence are that on March 18, 2010, Amanda Ledgerwood noted Steve Marada, whom she has known for some time and has had some issues with historically, coming down the street in his vehicle. She thought it was his vehicle, she looked out, confirmed it was and she went out to confront him about what she believed to be his involvement in the breaking of a picture glass window at her mother's place. As I understand, this occurred at 3:00 a.m. and it seemed to me in the evidence of the mother, that it was probably the same morning. Nothing turns on that. I will make it clear at this point in time, there is no evidence before the Court that Mr. Marada did this; it is simply her belief that he did this that the Court is dealing with. She went out and confronted him and she was angry and they ended up in a bit of a confrontation at his vehicle.

[5] The case for the Crown alleges that she confronted him and he, without any cause or reason or fear for his own safety, took a hammer out of his vehicle and brandished it in a threatening manner or in a manner that clearly was contrary to the public peace and that the hammer, although perhaps for an innocent purpose at first, was no longer being held as an innocent purpose and clearly was a weapon and intended for use in a manner that was contrary to the public peace. As he was doing this and leaving the scene, he basically said words to the effect that, "You are dead, you are fucking dead, bitch," thus constituting the threat to cause death to Amanda

Ledgerwood. In support of the Crown's case, Christopher Ledgerwood and Patricia Ledgerwood said they heard the same words. In a nutshell, that is the Crown's case.

[6] The defence case is that well, one, there was no hammer and that in fact Mr. Marada went outside to get a pack of cigarettes, at which point in time, he was accosted by Ms. Ledgerwood and she was throwing rocks at him or his vehicle, but either way, he was in front of his vehicle defending himself or his vehicle from the rocks and that Christopher Ledgerwood came out with a baseball bat. Defence's first position is there was no hammer but even if there was a hammer, it was not for a purpose dangerous to the public; in fact, that it would have been in the context of self-defence due to the presence of the bat and the throwing of the stones, and basically states the Crown has not proven beyond a reasonable doubt that these words were in fact said to Ms. Ledgerwood by Mr. Marada.

[7] The first consideration of the evidence of the witnesses. The witnesses called by the Crown all gave what I would consider to be consistent and uncontradictory evidence on the major points, internally, under direct and cross-examination and externally, when considered with the evidence of the other witnesses. There were differences such as Ms. Ledgerwood saying that her attention was focused on Mr. Marada and she thought that her brother had stayed up on the porch, when, in fact, his evidence and that of Patricia Ledgerwood was that he had actually gone down to where she was and stood behind her. There were some differences with respect to distances but I do not put any weight on the fact that Patricia Ledgerwood said it was about eight feet away because she also said it was two townhouses plus over, which, clearly, is far beyond eight feet and it is quite often in court that witnesses struggle with the concept of distances in feet

and metres, not usually to the extent of eight feet as compared to two townhouses over, but realistically that is not a factor that has any significance.

[8] With respect to the progress of events and what took place, I find the evidence of the Crown witnesses consistent internally and externally. Now, defence would suggest that this is on the basis of collusion having taken place, that there was opportunity for them to talk and come up with a story that is consistent. In fact, defence points, to some extent, that Ms. Ledgerwood in her initial statement to the police did not make any mention of the threatening words when asked by the interviewing officer. She did, in re-direct examination say, "But I went back shortly afterwards, called the officer and told her that I had forgotten that he had also said this to me."

[9] Crown witnesses denied throwing rocks, seeing any rocks thrown or the presence of a baseball bat. I accept that not all of the Crown witnesses could have seen everything that took place at the same time. It is clear from Patricia Ledgerwood's evidence, she was in and out dealing with the children in the house at the time and was tired and her memory was not as good, but she was also clear that, " But I know what I saw and this is what I saw."

[10] I find, firstly, on a whole of the consideration of all of the Crown's evidence, that I do not have any concerns about collusion. I do not have any concerns about the evidence being false or fabricated in any way.

[11] That is not, of course, the end of the matter because I need to consider the evidence of Christopher Devilliers and his evidence is that he was in the house, Mr. Marada came over, left to go back out to his car to get some cigarettes from the car. He

said the door was open, and it is not completely clear to me that, when he says the door was open, he meant after Mr. Marada got there or before Mr. Marada got there. I note that the Crown witnesses' evidence is that the door was open from the time Amanda Ledgerwood went out there, is how I understood it. Nothing major turns on that. But Mr. Devilliers says that he went to get the cigarettes and then he was going to come back in the house. He heard noise, he looked out the door, saw Amanda Ledgerwood throwing stones at Mr. Marada or at his vehicle, Mr. Marada moving his hands to try to protect himself, and then he saw a large male with a baseball bat approaching Mr. Marada. Mr. Devilliers at that time, who had intended to put his shoes on and go out to try to de-escalate what appeared to be the argument and situation, decided that this was too dangerous and, in fact, he was not going to go out. He indicated he had thought about calling the police, but did not do so because the next thing he noted was that he looked out and Mr. Marada was driving away.

[12] Now, there was nothing really in the demeanour of Mr. Devilliers that gives me any particular concern about his evidence. I need to assess his evidence in the context of all of the evidence and in the context of itself, as to whether it is internally and externally consistent. It is clearly inconsistent with the evidence of the Crown witnesses on the point of whether there was a baseball bat and the throwing of rocks. The Crown's witnesses, either together, in the opportunities when they were able to see the same thing, or individually, on the opportunities or the situations where they did not have opportunity to see it all, clearly denied both of those things: no throwing of rocks and no baseball bat.

[13] Mr. Devilliers' evidence was not particularly, I would say, internally inconsistent.

There are factors related to his evidence that do cause me some concerns. One concern right off the top is that Mr. Marada was arrested the same day, brought into custody on the same day, has remained in custody ever since, has had one prior conversation with Mr. Devilliers, earlier on, after he was brought into custody, and then one conversation yesterday. Mr. Devilliers has a story that would essentially indicate that Ms. Ledgerwood and this other individual were the ones that were perpetrating an assault on Mr. Marada or on his vehicle and said nothing about it to the RCMP.

[14] Now, the RCMP certainly had the ability to go to the neighbour's door, go to that door, to try to find out information. We do not know because the officers did not testify to what extent that the officers went in their investigation to try to find out what may have happened from the perspective of those inside the Devilliers household. That said, nothing stopped Mr. Devilliers from going to the police and saying what he saw, of his own accord, and he chose not to do so, despite the fact that Mr. Marada was in custody.

[15] There is an issue that he decided to stay inside because he was fearful when he saw the bat in the hands of a fairly large individual, which I find somewhat interesting. Mr. Devilliers is not a particularly small man himself, from what I can see in the courtroom, and it would seem a little unusual to leave Mr. Marada out there facing these two individuals alone, while accepting that a genuine concern for one's own safety could cause someone to do that.

[16] On that point, Mr. Devilliers did, at times, seem to minimize his acquaintance with Mr. Marada to that of, well, not really friends that hang out but it is clear that he has

known Mr. Marada a long time, since high school, that they have done things together as recently as a week or so before, were driving in Mr. Marada's vehicle, and "friend" is a word capable of many interpretations. Mr. Devilliers knew both but it seems to me on the evidence that he clearly, at this point in time anyway, was more closely acquainted with Mr. Marada than with Ms. Ledgerwood, at least in the way of what we would normally call friends. That is not to say that he has any hostility towards Ms.

Ledgerwood, because there was absolutely no evidence of that. But it does strike me as unusual, as I have said, that, one, he would not go to assist Mr. Marada by providing the police an alternate version of events of his own accord, or after speaking with Mr. Marada and finding out that Mr. Marada was in custody, and two, that he basically decided to not go outside when he saw the bat. These are all small pieces of evidence that I look at for considerations in looking at his evidence.

[17] There is also the issue of what Mr. Marada was or was not holding in his hand. Mr. Devilliers was unclear on that. Initially, when questioned about a hammer in the hand, he said he did not know what it was really. Then he said, well, he had his keys in his hand and that he was moving his hands, holding his keys, in order to defend himself against the rocks that were being thrown in his or his vehicle's direction. It certainly was a little ambiguous on that point.

[18] With respect to the criminal record, Mr. Devilliers has over 30 entries. He was pretty forthcoming on it and he says the last entries were four to five years ago. There was no perjury, no fraud, but there were thefts and break and enters. Clearly, a criminal record is a factor for consideration when assessing the credibility of an accused individual, because an extensive criminal record often is, and the courts have said,

indicative of a person's lack of respect for the administration of justice. But the law is also clear, the further removed one is from the time of the convictions, the less probative value that has on a person's credibility, and I do not really consider Mr. Devilliers' prior criminal history to be a significant factor in assessing his credibility.

[19] Overall, however, in looking at all the evidence in this case, the Crown's evidence, as set against the evidence of defence counsel, in the circumstances, I simply find that the evidence of Mr. Devilliers does not have the air of reality to it. I accept the evidence of the Crown witnesses as being what took place and I do not find that the defence evidence has raised a reasonable doubt. Therefore, there is a conviction on Count 1 and Count 2.

COZENS T.C.J.