

Citation: *R. v. Michel*, 2011 YKTC 4

Date: 20110201

Docket: 09-00930

Heard: Burwash Landing / Haines Junction

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

REGINA

v.

JUSTINA G. MICHEL

Appearances:  
K. C. Komosky  
Malcolm Campbell

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR DECISION**

**Overview**

[1] Justina Michel has been charged with three counts of having uttered threats to kill Wilfred Sheldon, Bertha Doris and Kluane Martin, contrary to s. 264.1(1)(a) of the *Criminal Code*.

[2] The trial commenced in Burwash Landing on September 15, 2010 and was concluded on January 27, 2011 in Haines Junction. Ms. Michel was acquitted of all charges. During the trial, I heard evidence from Mr. Sheldon and Ms. Doris, as well as from Ms. Johnson, who is Ms. Michel's aunt and who spoke to her shortly after the events which gave rise to these charges.

[3] Due to the circumstances from which these charges arose, and the fact that the trial was concluded in Haines Junction rather than in Burwash Landing, where the alleged offences occurred, I advised that I would provide written reasons for my decision, rather than simply making an oral pronouncement. These are my reasons.

### **Evidence**

[4] On March 16, 2010, a regularly scheduled Kluane First Nation Chief and Council meeting was set to take place in Burwash Landing. Prior to the meeting commencing, Ms. Doris, Ms. Martin and Ms. Michel were in the meeting room. It is unclear on the evidence as to whether Mr. Sheldon was also initially in the room and then left for a period of time before returning, or whether he first entered the room after an initial confrontation between Ms. Michel and Ms. Martin had taken place. Nothing turns on this.

[5] Ms. Michel initially became upset about there being no sugar for her coffee. She then walked over to where Ms. Martin was sitting and, while swearing, told her to get out of the chair she was sitting in. Ms. Martin told Ms. Michel there was another chair available for her. Ms. Michel sat in another chair but then got up and approached Ms. Martin, again swearing and telling her to get out of the chair or she would throw her out of it.

[6] Ms. Doris then went out and asked Wilfred Sheldon to come into the meeting room. Mr. Sheldon was the Chief of Kluane First Nation at that time.

[7] When Mr. Sheldon entered the room and sat at the table, Ms. Michel approached him. He testified that she was very upset at the time and she stated that she wanted to deal with her agenda item first. The issue Ms. Michel wanted to address was in regard to the condition of her residence. The residence belonged to the First Nation and Ms. Michel's concerns had been on the Council agenda for several months.

[8] Mr. Sheldon attempted to calm Ms. Michel down and told her that her matter would be dealt with later. When she did not calm down, he told her that if she didn't settle down the RCMP would be called. Ms. Michel became angrier and walked out stating, while looking at no-one in particular, that she would kill all the councillors and all the people in the community.

[9] In cross-examination, Ms. Doris agreed that she knew Ms. Michel was angry about her living situation and that she was just blowing off steam. Ms. Doris agreed that she did not take Ms. Michel's rant about killing the councillors and community members seriously.

[10] Ms. Doris testified that she had known Ms. Michel a long time and had not observed her to have acted in this way before.

[11] Mr. Sheldon testified that, while angry threats should be taken seriously as a matter of course, he did not feel threatened by Ms. Michel's comments, noting that she left when asked to do so. He also stated that, compared to two other similar incidents with other individuals, Ms. Michel's comments were the least threatening.

[12] Both Ms. Doris and Mr. Sheldon testified that the reason that the RCMP were called was due to a non-tolerance policy in operation at the time regarding such aggressive conduct. The purpose of the policy was meant to educate community members about appropriate behaviour and to foster respect. Mr. Sheldon testified that his objective in calling the RCMP was more for the purpose of achieving healing and treatment. He also noted the lack of resources in the community, including the lack of a continuous RCMP presence. He felt that by reporting such incidents, more files would be created and attention drawn to this lack of resources.

[13] When Ms. Michel returned to her Aunt's residence where she was living, she was noted by her Aunt, Ms. Johnson, to be shaky and upset. She told Ms. Johnson that she thought that she had done something wrong at the council chambers or band office.

[14] Ms. Johnson testified that Ms. Michel had been struggling with some mental health issues prior to and at the time of these events.

## Analysis

[15] In *R. v. Clemente*, [1994] 2 S.C.R. 758, at paras. 12 and 13, Cory J. set out the constituent elements of the offence of uttering a threat as follows:

...the *actus reus* of the offence is the uttering of threats of death or serious bodily harm. The *mens rea* is that the words be spoken or written as a threat to cause death or serious bodily harm; that is, that they were meant to intimidate or to be taken seriously.

To determine if a reasonable person would consider that the words were uttered as a threat the court must view them objectively, and review

them in light of the circumstances in which they were spoken, and the person to whom they were addressed.

[16] In cases where there is no explanation offered by an accused, such being the case before me, whether a threat is intended to be taken seriously and to cause fear and intimidation, must be determined by the words used, the context in which they were spoken, and the person to whom they were directed. (**Clemente** at para. 9).

### **Application to the Facts**

[17] The words uttered by Ms. Michel to kill Mr. Sheldon, Ms. Doris and Ms. Martin, clearly fall within the *actus reus* of the offence of uttering threats. I find, however, that the Crown has not proven beyond a reasonable doubt that Ms. Michel uttered these words with an intent to intimidate or instil fear in these individuals.

[18] I want to make it clear that the fact that neither Mr. Sheldon nor Ms. Doris felt fearful or intimidated by Ms. Michel's words is not determinative of the *mens rea* issue. It is Ms. Michel's intent that matters, not the actual impact of the words uttered upon the recipients. We also do not know what the effect of these words was upon Ms. Martin. That said, certainly the objectively-considered impact of the words upon the recipients remains nonetheless a factor to be considered when looking at all the circumstances.

[19] Neither does it matter what the intent was in reporting this incident to the RCMP. Again, it is Ms. Michel's intent in uttering the words that matters, not how Mr. Sheldon, Ms. Doris and Ms. Martin reacted.

[20] Ms. Michel was clearly very upset at what appears to have been a frustrating experience regarding her residence. I find that her words were an expression of her frustration and her desperation. She wanted the matter to be resolved, but she did not intend for her words to be taken seriously or to intimidate or cause fear.

[21] I note that Ms. Michel had just threatened to throw Ms. Martin out of her chair. Ms. Martin told her to find her own chair and, in the end, Ms. Martin did not relinquish her chair and was not subjected to a physical attempt by Ms. Michel to remove her. I note that Ms. Michel is not facing a charge of uttering threats by virtue of saying these words to Ms. Martin, but I do consider that this threat was not followed by action. This is also a factor in considering whether the subsequent threats to kill were intended to instill fear or intimidate.

[22] On the evidence before me, Ms. Michel does not appear to have a history of using threatening words or acting in such an aggressive manner. This appears to be a somewhat out-of-character incident. This increases the likelihood that her threat to kill the councillors and community members was not intended to be, and would not be, taken seriously.

[23] Mr. Sheldon testified that the words were uttered by Ms. Michel in a mumbling manner as she was leaving. She was not looking at anyone in particular. She has some underlying mental health concerns which may have contributed to the sense of frustration that she felt and thus may also have contributed to her response to this frustration. This is not a significant point in my decision, simply an additional factor.

[24] Ms. Michel's actions were clearly disrespectful and inappropriate, no matter how frustrated she may have been at the time. There is no place for such conduct. I find, however, that, in these circumstances, her actions were not criminal. I expect that she will conduct herself more respectfully and appropriately in future when bringing her issues before Chief and Council. I would encourage other citizens who may be experiencing difficulties or finding themselves frustrated with a particular situation to do the same.

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COZENS, T.C.J.