Citation: *R. v. Organ-Wood*, 2019 YKTC 54

Date: 20190612
Docket: 18-00350
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

HUNTER YVAN ORGAN-WOOD

Publication of information that could identify the complainant or a witness is prohibited by s. 111(1) of the *Youth Criminal Justice Act*.

Appearances:
Benjamin Eberhard — Counsel for the Crown
Amy Steele — Counsel for the Defence

REASONS FOR JUDGMENT

[1] COZENS T.C.J. (Oral): Hunter Organ-Wood has been charged with having committed the following offences: s. 344(1)(b) (robbery); s. 346(1.1)(b) (extortion); s. 279(1.1)(b) (kidnapping); s. 348(1)(b) (break and enter and commit assault); and s. 264.1(1)(a) (uttering threats).

[2] The trial commenced April 29, 2019. Identification and jurisdiction were admitted. Date and time were not admitted.

[3] In the course of the trial, a *voir dire* was entered and was conducted with respect to determining the voluntariness of a statement Mr. Organ-Wood provided to Cst. Smee.

At the conclusion of the *voir dire*, I ruled that the statement was voluntary. The statement and the evidence of Cst. Smee heard during the *voir dire* were therefore admissible in the trial proper.

K.F

[4] The complainant, K.F., who was 17 years old at the time of the alleged offences, testified in particular as to three separate incidents that occurred in May and June 2018, as well as providing his testimony regarding other events that occurred within the same time frame that provide further context.

Incident 3

[5] On June 12, 2018, K.F. was home alone at approximately 1 p.m. He was living with a friend at that time, T.C., at T.C. mother's residence. The doorbell rang and K.F., who could not see who was outside clearly through the opaque glass, opened the door. M.H.P. was at the door. Mr. Organ-Wood was standing two or three metres away on the porch behind M.H.P.

[6] K.F. knew both Mr. Organ-Wood and M.H.P. from prior contact with them. He had recently been invited through T.C. to go to Mr. Organ-Wood's residence, as Mr. Organ-Wood said that he wanted to meet him, although K.F. was not sure why. M.H.P. was there at the time. He had also attended school with M.H.P. and was aware of who he was.

[7] M.H.P. told K.F. to come outside. K.F. refused to do so and M.H.P. grabbed K.F. by the shirt when he tried to close the door. He pushed K.F. into the residence and

began to punch K.F. repeatedly in the head and chest and continued to kick him after he fell to the ground.

[8] K.F. stated that, at this point in time, Mr. Organ-Wood said that he (K.F.) had had enough, or that it was enough, and it was time to go. M.H.P. struck K.F. a couple more times and M.H.P. and Mr. Organ-Wood left.

[9] Mr. Organ-Wood never said anything else throughout the incident. He never touched K.F. or came into the residence.

[10] K.F. denied starting the fight or fighting back.

[11] K.F. stated that he received a message on Facebook shortly afterwards at 7:32 p.m. from “M.” on June 12 telling him to keep quiet.

[12] A Facebook page excerpt was filed as an exhibit that showed two messages at 7: 21 p.m. that said, "Come outside" and "We found buddy who snaked the weed". These last two messages came prior to the assault occurring.

[13] K.F. testified that these messages were all from M.H.P. with whom he was connected on social media.

[14] K.F. said that he had also received Snapchat communication from Mr. Organ-Wood's account. Mr. Organ-Wood had been added as a friend on K.F.'s Snapchat account for approximately two months. K.F. stated that, from viewing the

exhibit, which was a photo of this communication, he could tell that he had opened a message from Mr. Organ-Wood at a time frame just prior to the incident. Snapchat messages, however, do not get saved unless further steps are taken to do so, which were not done in this case.

[15] K.F. said that the message he received from Mr. Organ-Wood was about him having found the person who stole the marijuana. K.F. said that, although he had been connected to Mr. Organ-Wood for a couple of months, his only prior communications with him were in relation to locating T.C.

[16] K.F. said that, as a result of being struck, he could barely move his arm, had goosebumps on his head, and his rib cage was hurting. He denied losing consciousness. He went to the hospital the following day for examination. A medical report dated June 13, 2018 was filed. It makes note of there being no significant injuries.

[17] K.F. used ice packs and took Tylenol and Ibuprofen for the pain resulting from having been assaulted.

Incident 2

[18] K.F. testified to another incident that occurred within the approximately one-week time frame before the June 12 incident. On this occasion, he came from work and Mr. Organ-Wood and M.H.P. were at his residence.

[19] M.H.P. and Mr. Organ-Wood asked K.F. for the money that he owed. K.F. said that he had $80 on him. He gave it to them and said that he would pay the rest when

he was next paid from work. Shortly afterwards, while in the yard outside the residence, M.H.P. punched K.F. in the gut and pushed him to the ground. M.H.P. then said that K.F. had better pay up and made a gesture by sliding his thumb across K.F.'s throat, stating the next time it would be a knife. T.C. was also outside in the vicinity when this occurred.

[20] At the time of this incident, K.F. was uncertain as to where Mr. Organ-Wood was. He did not place him with M.H.P. when the assault and threat were made.

Incident 1

[21] K.F. also testified to an incident that had occurred approximately one week before the June 12th incident. On that day, he had been walking with T.C. on Falcon Drive in Whitehorse near Mr. Organ-Wood's residence. A vehicle being driven by M.H.P. pulled up and M.H.P. told K.F. to get into the vehicle, stating, "Get into the fucking car." T.C. told K.F. he should get in. Mr. Organ-Wood was in the front passenger seat and another individual, subsequently identified as C.M., was in the back seat.

[22] Mr. Organ-Wood got out of the front seat and went to the back seat, sitting behind M.H.P. K.F. got into the front passenger seat and M.H.P. reached across him and locked the door. M.H.P. then drove away at a high rate of speed. K.F. described M.H.P.'s driving as being fast and aggressive.

[23] M.H.P. accused K.F. of taking $500 worth of marijuana and said that K.F. needed to pay it back. He told him that he had two days to do so. He threatened to smash K.F.'s head into a window.

[24] Mr. Organ-Wood was looking at K.F. and smiling. K.F. told M.H.P. that he had not stolen any marijuana.

[25] K.F. stated that he was scared, anxious, and nervous. He was afraid that they, M.H.P. and Mr. Organ-Wood, would smash his head into the window and beat him up.

[26] K.F. acknowledged that he did not ask M.H.P. to stop the vehicle and let him out. He testified he did not believe that he could safely get out of the car.

[27] M.H.P. stopped the car a number of blocks away on North Star Drive and let K.F. out. K.F. walked home from there.

[28] Mr. Organ-Wood never said anything to him on this occasion and never touched him.

[29] K.F. testified he had not taken the marijuana and denied ever admitting to anyone having done so.

Mr. Organ-Wood

[30] Mr. Organ-Wood testified. He stated that he met K.F. approximately one year previously. He said that $500 worth of his and M.H.P.'s marijuana went missing on a day that K.F. was over at his house. He said that the marijuana was kept in a drawer in

his room. He said that while K.F. had been at his house before, he had never been in his room. He thought that K.F. took it, based on what T.C. told him.

[31] Mr. Organ-Wood said that he did not do anything when he first heard from T.C. that K.F. had taken the marijuana. He was not sure how he felt about it. He said that he never asked T.C. to tell K.F. to return the marijuana. He stated that he then asked K.F. about this and K.F. admitted to having taken the marijuana.

[32] Mr. Organ-Wood agreed that he was in the vehicle when K.F. got into the front seat, however, he said he did not say or do anything to K.F. He did not think that anyone in the vehicle said anything threatening to K.F. He said that the music was playing and he could not really hear anything coming from the front seat. He denied that there was any advance plan to get K.F. into the vehicle and threaten him.

[33] Mr. Organ-Wood stated that at the time K.F. said that M.H.P. punched and threatened him, he was out with C.M. to buy alcohol.

[34] With respect to the June 12 incident, Mr. Organ-Wood stated that he went with M.H.P. to K.F.'s residence in order to see if T.C. was home and to pick him up to go back to his house. He said that K.F. answered the door and began to fight with M.H.P. He stated that he told M.H.P. it was enough and to leave. He said what he did because he wanted the fighting to stop. He said that M.H.P. had never said anything to him about going there to beat K.F. up. He testified that he had originally told the RCMP in the statement he provided that he had not been at K.F.'s residence on that occasion because he was not sure what to say.

[35] Mr. Organ-Wood stated that he had no plan to try to get the money back from K.F. because he really did not care. He denied ever threatening K.F., demanding money from him, or taking any money from K.F.

C.M.

[36] C.M. testified that he was in the back seat of the vehicle driven by M.H.P. when M.H.P. saw K.F. walking and decided to pick him up. He said that he and Mr. Organ-Wood were talking in the back seat while M.H.P. was driving and K.F. was in the front seat. He said that he could not hear anything that was being discussed in the front seat. He denied knowing anything about stolen marijuana.

Submissions of Counsel

[37] Crown counsel's submission is premised on the fabrication of a story between Mr. Organ-Wood and M.H.P. about missing marijuana with a value of $500 being taken by K.F. in order to set K.F. up to extort money from him. Mr. Organ-Wood was complicit in this fabricated story and is guilty, at a minimum, in accordance with s. 21 of the *Code*, as a party to the actions of M.H.P. in all circumstances where he did not have direct involvement in striking, threatening, and confining K.F.

[38] Defence counsel submits that the Crown has not proven beyond a reasonable doubt that Mr. Organ-Wood was acting in concert with M.H.P. in any of the actions of M.H.P., and thus he cannot be convicted as being a party to any of the offences that may have been committed by M.H.P.

[39] Further, there is no evidence that Mr. Organ-Wood ever himself struck, threatened, extorted, confined, or stole from K.F. sufficient to convict Mr. Organ-Wood of any of these offences.

Analysis

[40] As Mr. Organ-Wood testified, the principles of ***R.*** v. ***W.(D.)***, [1991] 1 S.C.R. 742, apply.

[41] As Cory J. stated in paras. 28 and 29:

> 28 Ideally, appropriate instructions on the issue of credibility should be given, not only during the main charge, but on any recharge. A trial judge might well instruct the jury on the question of credibility along these lines:
>
> > First, if you believe the evidence of the accused, obviously you must acquit.
> >
> > Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.
> >
> > Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.
>
> If that formula were followed, the oft repeated error which appears in the recharge in this case would be avoided. The requirement that the Crown prove the guilt of the accused beyond a reasonable doubt is fundamental in our system of criminal law. Every effort should be made to avoid mistakes in charging the jury on this basic principle.
>
> 29 Nonetheless, the failure to use such language is not fatal if the charge, when read as a whole, makes it clear that the jury could not have been under any misapprehension as to

> the correct burden and standard of proof to apply: R. v. Thatcher, supra.

[42] As stated by Vertes J. in ***R.*** v. ***Campbell***, 2018 YKSC 37, at para 4:

> I must remind myself that a criminal trial is not a credibility contest. It is a trial to determine whether the Crown has proved the guilt of the accused on the specific charge alleged beyond a reasonable doubt. Therefore, it is wrong to decide a criminal case where, as here, there is conflicting evidence simply by deciding which version of events is the preferable one. The decisive question is whether, considering the evidence as a whole, the Crown has proved the guilt of the accused beyond a reasonable doubt.

[43] I find the evidence of K.F. to be reliable and credible. It is both internally consistent and is, in fact, to a large extent, externally corroborated by the testimony of Mr. Organ-Wood and C.M. insofar as the occurrences of certain events described by K.F. as having taken place. Mr. Organ-Wood's testimony and the evidence of C.M. do not raise any doubt in my mind as to the reliability and credibility of K.F.'s evidence.

[44] That said, the question for me is whether the evidence, as a whole and considered in its entirety, is capable of raising a reasonable doubt that Mr. Organ-Wood, either directly or as a party, is guilty of any of the offences for which he has been charged. That, of course, is premised on my finding of reliable and credible evidence that the charge has been made up through the case presented by the Crown.

[45] I appreciate that this is not a credibility contest between the evidence of K.F. and Mr. Organ-Wood. I cannot simply prefer the evidence of one above the other and then move to an acceptance of the evidence of one and a rejection of the evidence of the other as a consequence.

[46] The evidence of Mr. Organ-Wood was not particularly compelling in absolving himself of any criminal responsibility. His testimony verified that the events testified to by K.F., in fact, occurred at the times and places K.F. testified to, albeit from a somewhat different perspective and interpretation insofar as his involvement, if any, was.

[47] Mr. Organ-Wood, at times, was vague and unclear in his testimony. He struggled with memory issues and he did not in any meaningful way separate himself from the events that took place in a manner that could allow me to view him as having been taken by surprise by the actions of M.H.P., disconnected from them as an innocent bystander, or as having acted outside of the actions of M.H.P.

[48] In saying this, I appreciate that Mr. Organ-Wood had just recently turned 19 years of age at the time that he testified, that he had just turned 18 at the time of the events that resulted in these charges, that he did not present as being particularly sophisticated, and that he had to testify, not only when he was feeling somewhat ill, but for a portion of his testimony while a high school law class was in attendance as spectators in court, likely comprised on some individuals known to Mr. Organ-Wood.

Section 348(1)(b)

[49] With respect to the June 12 incident, the manner in which it unfolded was consistent with a prior intent to locate K.F. and either assault or intimidate him. There was no initial request made of K.F. to ascertain whether T.C. was there. There was no indication that T.C. was expecting M.H.P. and Mr. Organ-Wood to come over that day. In fact, it appears that T.C. was working out of town, something Mr. Organ-Wood stated

he was unaware of at the time, which strikes me as somewhat unusual in the circumstances.

[50] I am satisfied that M.H.P. and Mr. Organ-Wood attempted, through social media, to have K.F. come outside on his own in order to confront him. When he did not, M.H.P. and Mr. Organ-Wood went to the door, where K.F. was assaulted by M.H.P. As the assault occurred within K.F.'s residence without M.H.P. lawfully being inside the residence, I am satisfied that this constituted a s. 348(1)(b) offence in which an assault occurred.

[51] I am also satisfied that, in the circumstances, Mr. Organ-Wood was acting as a party to the actions of M.H.P. I reject Mr. Organ-Wood's “innocent explanation” for his presence there. I am satisfied beyond a reasonable doubt, based upon all the circumstances leading up to and including at the time of the incident, that M.H.P. and Mr. Organ-Wood went to K.F.'s residence with the express intent to continue the attempt to intimidate him in order to extort money from him. The incident unfolded in a manner that satisfies me it was a premeditated act by M.H.P. and Mr. Organ-Wood to confront K.F. in this matter.

[52] Therefore, I find Mr. Organ-Wood guilty of the s. 348(1)(b) offence as charged.

Section 344

[53] With respect to the incident that occurred at K.F.'s residence, where the s. 344 offence is alleged to have been committed, I am satisfied that both M.H.P. and Mr. Organ-Wood were acting in concert when money was demanded from K.F. and that

he provided them with the $80 he had in his possession. The taking of the $80 from K.F. was consistent with the plan to extort money from him.

[54] I am not, however, satisfied that Mr. Organ-Wood was involved either directly or as a party to the assault and threat that occurred somewhat contemporaneous in time to the demand for money and the obtaining of the $80. Mr. Organ-Wood does not appear to have been present at the time the assault and threat took place, and I cannot say that these acts of violence — the punching of K.F. and the threat by M.H.P. to K.F. made at this time — were committed in a manner that satisfies me Mr. Organ-Wood could be found guilty as a party.

[55] I am therefore acquitting Mr. Organ-Wood of the offence of robbery.

Section 279(1.1)(b)

[56] Section 279(1)(a) states that:

> Every person commits an offence who kidnaps a person with intent
>
> > (a) to cause the person to be confined or imprisoned against the person's will;

[57] I am satisfied that what occurred here, on the evidence of K.F., which I accept, is that he was kidnapped within the meaning of s. 279. The fact that he entered the car "of his own free will" must be considered in context. He was told to, "Get into the fucking car." M.H.P. reached across and locked the door. I am not sure why the door could not have simply then been unlocked by K.F., but that does not matter. The significance of the gesture should not be understated. Again, the context is important to understand

what was occurring at the time. There were threats made to K.F. by M.H.P. and K.F. was frightened as to what was occurring.

[58] Once the car started to drive away, something that was not necessarily made clear was going to happen when K.F. got into the passenger seat, he was unable to get out safely, in particular given the high rate of speed that I accept the vehicle was being driven.

[59] In order for the s. 279 offence to be committed, the amount of time that the unlawful confinement takes place over is not relevant in determining whether there was an unlawful confinement in the first place.

[60] I also find that Mr. Organ-Wood was a party to the s. 279 offence. He vacated his seat so that K.F. could get in. While he may not have said anything to K.F., only smiling at him, his participation, again, placed in context, satisfies me that he was complicit in the actions of M.H.P. It is important to note that telling K.F. to get into the car while T.C. was left behind on the sidewalk, driving away, and then leaving K.F. in a different location is inconsistent with an innocent explanation and, in my mind, consistent with the attempt to intimidate K.F. as a part of the plan to extort money from him.

[61] Mr. Organ-Wood is not in the same position as C.M., who was also present because there is nothing in the remainder of the evidence to connect C.M. to a plan to extort money from K.F.

[62] Therefore, Mr. Organ-Wood is guilty of having committed the s. 279 offence.

Section 264.1(1)(a)

[63] As stated above, I am not satisfied that Mr. Organ-Wood, either directly or as a party, threatened to cause bodily harm to K.F. at the time that the $80 was demanded from K.F. I appreciate that my finding below on the s. 346(1.1) charge involved the creation of a threatening and/or menacing atmosphere and that Mr. Organ-Wood was a participant in doing so.

[64] While this charge seems more likely premised on the actions K.F. testified to where M.H.P. drew a thumb across K.F.'s throat and threatened him, an act for which I find Mr. Organ-Wood not to be responsible, I am aware of the threat to smash K.F.'s head into the window of M.H.P.'s vehicle. In my opinion, this is a threat to cause bodily harm to K.F., based upon my findings above with respect to the s. 279 offence for which Mr. Organ-Wood has been charged. I am therefore convicting him as a party to s. 264.1(1)(a) offence.

[65] However, based upon the principle in ***R.*** v. ***Kienapple***, [1975] 1 S.C.R. 729, this charge is conditionally stayed, given my comments with respect to the s. 346(1.1)(b) offence comments and findings.

Section 346(1.1)(b)

[66] I am satisfied that, in the whole of the circumstances, M.H.P. and Mr. Organ-Wood were attempting to extort the sum of $500 from K.F. The "theft" of the marijuana worth $500 was, in my opinion, contrived by M.H.P. and Mr. Organ-Wood in order to extort this money from K.F.

[67] Section 346 of the *Criminal Code* reads, in part, as follows:

> 346 (1) Extortion - Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.
>
> (1.1) Extortion - Every person who commits extortion is guilty of an indictable offence and liable
> …
>
> (b) in any other case, to imprisonment for life.

[68] In ***R.*** v. ***Barros***, 2011 SCC 51, the Court explained the elements of offence of extortion under s. 346 as follows:

> 53 Extortion requires the Crown to establish beyond a reasonable doubt (i) that the accused has induced or attempted to induce someone to do something or to cause something to be done; (ii) that the accused has used threats, accusations, menaces or violence; (iii) that he or she has done so with the intention of obtaining something by the use of threats; and (iv) that either the use of the threats or the making of the demand for the thing sought to be obtained was without reasonable justification or excuse: see *R. v. Natarelli*, [1967] S.C.R. 539; D. Watt, *Watt's Manual of Criminal Jury Instructions* (2005).
>
> 54 Of particular pertinence in *Natarelli* is the instruction by Cartwright J. . . . speaking for the Court, that "one item in the accused's course of conduct" is not to be isolated, but taken in the context of the "course of conduct considered in its entirety" (p. 546). Although Cartwright J. was speaking in relation to whether the conduct was "justifiable or excusable", his observation applies with equal force to all of the elements of the charge of extortion.
>
> 55 The need to view the conduct of the accused in its entirety and in context was further addressed by the Ontario Court of Appeal in *R. v. Alexander* (2005), 206 C.C.C. (3d) 233, leave to appeal refused, [2006] 1 S.C.R. v. It was

> argued in that case that extortion was not made out because the "threats", however distasteful, were not themselves unlawful. Doherty J.A. commented:
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> > When an accused charged with extortion has used threats in an attempt to collect a legitimate debt, the trier of fact must consider all of the circumstances, including the nature of the threat and the nature of the demand, to determine whether the Crown has proved beyond a reasonable doubt that there was no reasonable justification or excuse for the threat. [para. 84]
>
> (See also *R. v. Royz* (2008), 248 O.A.C. 361
>
> …
>
> 61] The key element, as the Court recognized in *R. v Davis*, [1999] 3 S.C.R. 759, is the relationship between the alleged threats, etc. and the complainant's freedom of choice:
>
> > Extortion criminalizes intimidation and interference with freedom of choice. It punishes those who, through threats, accusations, menaces, or violence induce or attempt to induce their victims into doing anything or causing anything to be done… [T]he victim may be coerced into doing something he or she would otherwise have chosen not to do. [References omitted; para. 45.]
>
> Accordingly, a veiled reference may constitute a threat if it is sufficient, in light of all the circumstances, to convey to the complainant the consequences which he or she fears or would prefer to avoid: *R. v. McClure* (1957), 22 W.W.R. 167 (Man. C.A.), at p. 172. The courts have elsewhere adopted a similar contextual interpretation: *R. v. Hodson*, 2001 ABCA 111, 92 Alta. L.R. (3d) 262, at paras. 11-13; *R. v. Pelletier* (1992), 71 C.C.C. (3d) 438 (Que. C.A.).

[69] I find it strains credulity to the point of breaking that K.F., who had never been in Mr. Organ-Wood's bedroom, somehow ended up in there, searched through his dresser drawers, located the marijuana, and stole it. The accusation against K.F. of doing so is

without merit and I find this accusation was made in order to set him up and, through fear and intimidation, extort the $500 from him.

[70] The circumstances surrounding the incidents described above are clear evidence of the plan and attempt to extort money from K.F. I am satisfied that Mr. Organ-Wood was complicit with M.H.P. in this plan and attempt.

[71] Therefore, I find Mr. Organ-Wood guilty of having committed this offence as well.

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COZENS T.C.J.