

Citation: *R. v. Sidney*, 2009 YKTC 77

Date: 20090622
Docket: 08-00802
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Roy

REGINA

v.

RIEL RICHARD SIDNEY

Appearances:
Jennifer Grandy
Jennifer Cunningham

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] ROY T.C.J. (Oral): I understand that this Court is seized with the incident left by these two spouses and there is another court that deals with these family matters. I understand that sometimes it does happen that the spouses are using the courts to settle their own matters. I understand that there was some kind of mediation in the best interests of the kids but it did not succeed. Because one thing is sure; we can divorce from an adult but we cannot divorce from children. The Court does not want to put any oil on the fire but there is a case to be decided and it will be decided.

[2] Both spouses have given testimony. The complainant stated that on March the 3rd, around 10:30 in the morning, she made a call to the father and it lasted about two minutes. She had to call back because there was a problem with her phone and the

second call lasted for 15 minutes. She was in the bathroom while her two children were in the house, because these parties had been living together for about six and a half years, and they have two children, one of four and one of three.

[3] That morning she had received an e-mail, and this e-mail has been admitted by the father, mentioning immature - that is what he said, immature words - and, so to speak, hurting words towards the mother. Was it the match that ignited this fire? It could be.

[4] The mother states that she has received threats to be hurt, and this threat was to hurt anybody she was with, and she mentioned that the father has mentioned, "I'll kill you." After this conversation there was another element, a second e-mail sent by the father telling that they were to meet at the Canada Centre for swimming, concerning their child.

[5] The mother stated that it was not the first time, but this time she has decided to call the police officer. A person playing a role in these events is Adam Thompson (phonetic). A person playing another role is the new girlfriend of the father. There are six persons in this situation and the most fragile are the children, four years of age and three years of age. But this is not a family matter to be decided here.

[6] So when both are giving testimony, we have got to apply a decision rendered by the Supreme Court in a three-stage application, so to speak. If the defendant is giving testimony, the Court first must ask if the Court does believe what the accused, the defendant, is telling. If so, well, the Court will acquit the defendant. If the Court cannot follow what the defendant, the accused, is telling, but the testimony given brings doubt

in the judge's brain, then he will be acquitted. And if the Court cannot follow and the Court does not have any reasonable doubt in its mind, we go to a third stage; has the Crown proven its case?

[7] The father, in his testimony, said that he does remember everything. The father stated that he is no longer interested to reconcile with the mother. The father mentioned that he was the one who broke up. The mother is telling the opposite. So, with the testimonies heard, the Court cannot follow the testimony given by the father because he said that he does remember all. He denied completely the main topic, so to speak. The circumstances surrounding these events are not denied in this matter, but the main items are completely denied. He did not utter any threats and was so fast in reacting to what could happen to his former spouse concerning the persons she could be with. In the morning, that was the message.

[8] Unfortunately, this message was not produced, this e-mail, to have the exact words, but it has not been produced. The second message, as well, sent by the father concerning the Canada Centre, has not been produced as well.

[9] The Court cannot understand that the father is so interested, so fast, so concerned about what is going on for the mother after he said that he was the one who broke up. He is not interested at all to reconcile, and he stated that his actual girlfriend, as a mother, could be better than the mother of these children. So the Court cannot follow his testimony.

[10] Does this testimony bring doubt in the mind of the Court? It does not, for the same reasons.

[11] So we come to the third phase; has the Crown proven its case? The main point is to decide if these words were intended to be really perceived by the victim as intended. That is the main question, and with these two decisions brought by the defence, there is one from the Ontario Court of Justice, *R. v. Medeiros*, [2000] O.J. No. 2697, where there was an uttering a death threat, and it refers to the case of *R. v. Clemente*, [1994] S.C.J. No. 50, which decision from Cory J. of the Supreme Court.

... the mens rea of the offence is that the words spoken by the accused “were meant to intimidate or to be taken seriously”....

“It is impossible to think that anyone threatening death or serious bodily harm in a manner that was meant to be taken seriously would not intend to intimidate or cause fear. That is to say, a serious threat to kill or cause serious bodily harm must have been uttered with the intent to intimidate or instil fear....”

In this document:

In this case, the words alleged to constitute the death threat are “I’ll kill you”. While the words themselves are unambiguous, whether they amount to a threat to cause death depends on an objective assessment of the context in which they were spoken, the person to whom they were addressed and the circumstances in which they were uttered...

At paragraph 12, the judge said:

I think it is clear that Franca --

That is the name of the....

-- did not regard her ex-husband’s words as a declaration of any homicidal intention on his part, but rather as an expression of anger, hostility and outrage at her indifference to his efforts to see his son.

[12] In this case, there were different conflicts, and the mother said that her intention was to talk only about the children. The file was going correctly, positively, so to speak, with the letter produced by the defendant stating that the contacts between the children were improving.

[13] In this case, was there an intention? Was there fear? Because, again, of the presence of this third person, Adam Thompson, the mother said that it was just a friend, but the father was so fast, quick, interested by this third person, because it did start the day, on March 3rd, when he sent this message because of that third person in their lives, so to speak, the life of the father and the mother, this third person. Because this same father has stated that he was the one who has broken up, he said that he was not interested to reconcile, and why is he so interested in this third person? From the morning of the 3rd over the phone and on the second message as well, so to speak, because they were to go to the Canada Centre.

[14] So it was not words spoken out over the phone during a discussion, during arguments, during calling names; it was not the same case as the one presented by the defendant. It was because of this third person that there was this kind of threat, this kind of uttering, towards the mother. So the Court declares that the Crown has proven its case, and the Court does declare you guilty of the offence.

ROY T.C.J.