

Citation: *R. v. Boucher*, 2015 YKTC 30

Date: 20150728
Docket: 15-00007
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

DEAN ERNEST BOUCHER

Appearances:
Paul Battin
Lauren Whyte

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] Dean Boucher appeared before me for trial on July 28, 2015. While facing a five-count information, at the trial outset, the Crown indicated that they would be proceeding only with respect to counts 1 and 4: assault causing bodily harm and uttering a threat to cause death. Upon completion of the evidence, I convicted Mr. Boucher of the lesser included offence of common assault and dismissed the uttering charge. Due to time constraints, I indicated that I would provide brief written reasons to follow. These are my reasons.

[2] Both charges relate to an incident which occurred on April 2, 2015 in Carcross, Yukon. Many of the facts are not in dispute. Mr. Boucher, the complainant, Dominic Charlie, and Mr. Charlie's girlfriend, Natasha Smith, were at the residence of Bonnie James and Brian Schaub. With the exception of Mr. Charlie, all of the individuals were

consuming alcohol. Mr. Boucher and Ms. Smith were apparently old friends and went into the bathroom together and locked the door. Mr. Charlie became concerned due to Ms. Smith's level of intoxication, and began pounding on the bathroom door. He pushed on the door until he broke it in. It is at this point that the versions of events diverge.

[3] Mr. Charlie says Mr. Boucher punched him on the chin, and then punched him on the left side of the mouth three to four minutes later. Photos filed as exhibit 4 show a small bruise on Mr. Charlie's chin and a small cut above his lip.

[4] Mr. Boucher denies striking Mr. Charlie. He says the injuries noted in exhibit 4 must have occurred when the door struck Mr. Boucher in the back and he instinctively pushed the door backwards.

[5] The issue is one of credibility. In considering what evidence I accept, I am mindful of the decision of the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, which mandates that if I believe Mr. Boucher, I must acquit. Even if I do not believe his evidence, I must ask myself whether it nonetheless raises a reasonable doubt, and, if so, I must acquit. Even if I do not believe his evidence, and it does not raise a reasonable doubt, I must ask myself whether, on the basis of the evidence I do accept, I am satisfied beyond a reasonable doubt of Mr. Boucher's guilt.

[6] In assessing credibility, I have little difficulty in accepting the evidence of Mr. Charlie. By and large, he was consistent in his evidence and unshaken on cross-examination. His evidence is entirely consistent with the observed injuries as seen in exhibit 4, and he had not consumed any alcohol. There was one minor inconsistency in

that he apparently suggested to the police, on the night in question, that Mr. Boucher had attacked Ms. Smith, but agreed at trial this had not happened. It was evident, however, that at the time Mr. Charlie was clearly concerned about Ms. Smith's safety and was himself very upset and agitated. In light of the circumstances in which his comment was made to the police, this inconsistency does not cause me undue concern, and is insufficient to warrant rejecting Mr. Charlie's evidence.

[7] Mr. Boucher on the other hand, was not similarly credible. He provided minimal detail as to the sequence of events, raising questions as to the plausibility of his version. For example, he indicates that he was seated on the sink when speaking to Ms. Smith in the bathroom. At no time did he indicate a change in his position, yet he maintains that the door struck him in the back.

[8] In addition, he offered no supporting evidence of objectively demonstrable assertions. For example, he maintains that he suffered a significant injury to his back when struck by the door, and yet provides no photographic evidence to support this claim. Furthermore, his evidence is inconsistent with the photos filed as exhibit 4. I have difficulty seeing how the injuries suffered by Mr. Charlie would have occurred on Mr. Boucher's version of events.

[9] Some of Mr. Boucher's evidence is also overly convenient, suggesting that it was contrived to counter the allegations. This is seen in his response to the allegation that he told Cst. Potter he would hunt him down, to which Mr. Boucher says that he mentioned a few times that he was the subject of a witch hunt, and it is one of those references Cst. Potter must have mistaken as a threat.

[10] Lastly, I would note concerns with respect to the reliability of Mr. Boucher's evidence in light of his significant alcohol consumption.

[11] I should also note that the evidence of the two witnesses called on Mr. Boucher's behalf offered little in the way of support for his defence. Ms. James did not present as a reliable witness, and did not observe what actually occurred at the bathroom door. Mr. Schaub presented as an entirely truthful witness, but was clear that his recollection was impaired by his state of intoxication. He is also clear that while he recalls Mr. Charlie pushing on the bathroom door, he has no other recollection of what happened at the bathroom door.

[12] In the result, I am satisfied beyond a reasonable doubt that Mr. Boucher punched Mr. Charlie in the face twice. However, the evidence falls short in establishing bodily harm. The injuries suffered by Mr. Charlie are visible in exhibit 4; however, they are not injuries which, on the basis of the photos alone, would amount to bodily harm. Mr. Charlie sought no medical attention, and mentioned only that he had experienced some soreness for a few days. I have difficulty, without more, in concluding that the test for bodily harm has been met. Accordingly, the evidence is insufficient to persuade me beyond a reasonable doubt that Mr. Boucher is guilty of assault causing bodily harm, but sufficient to persuade me that he is guilty of the lesser included offence of common assault.

[13] With respect to the charge for uttering a threat to cause death, the Crown's case relies entirely on the evidence of Constable Jason Potter. Cst. Potter testified that he was called in as backup for Cst. Rouleau, the investigating officer. He says he and Cst.

Rouleau entered the home with the consent of Bonnie James. Mr. Boucher was seated inside. Cst. Potter arrested Mr. Boucher for assault and placed him in the police vehicle. Mr. Boucher was uncooperative and resisted. Once in the vehicle, Cst. Potter says Mr. Boucher stated, "I will hunt you down", which Cst. Potter considered to be a threat. Mr. Boucher denies having uttered the threat.

[14] While Mr. Boucher's denial was not persuasive for the same reasons discussed above in relation to the assault causing bodily harm charge, I nonetheless found that the evidence was insufficient to satisfy me beyond a reasonable doubt that Mr. Boucher had uttered the threat as described by Cst. Potter. I reached this conclusion on the basis of concerns I had with respect to Cst. Potter's evidence.

[15] Firstly, concerns were raised with respect to Cst. Potter's credibility. In exhibit 1, the Supplementary Occurrence Report prepared by Cst. Potter, he indicated that Bonnie James provided consent for the police to enter the home. The DVD played during cross-examination makes it clear that no such consent was given, in fact, on the DVD, one of the officers is heard to say that they were going into the house and Ms. James is heard to ask why. When asked about this discrepancy, Cst. Potter suggested that Bonnie James had given them standing permission to enter the home when called to the residence.

[16] Similarly, Cst. Potter indicated that he and Cst. Rouleau prepared their reports independently. When it was pointed out to him that several passages in the respective reports are virtually identical in their wording, he nonetheless maintained that the

reports were completed entirely independent of each other, an assertion which stretches credulity.

[17] Finally, I had concerns about the Cst. Potter's limited recollection with respect to the events. On cross-examination, he conceded that he may have been mistaken about the sequence of events. In addition, he had a notable lack of recollection with respect to anything said by anyone on the evening in question. In fact the only words he appears to recall being said are the five words which make up the substance of the threat. In the circumstances, I have concerns about the reliability of his recollection.

[18] Given the issues with respect to both the reliability and credibility of Cst. Potter's evidence, I am of the view that it would be unsafe to rely on his evidence to convict Mr. Boucher on the charge of uttering a threat to cause death. Accordingly, I am not satisfied beyond a reasonable doubt that the charge has been made out.

[19] It is for these reasons that I convicted Mr. Boucher on the lesser included offence of common assault and acquitted him on the offence of uttering threats.

RUDDY C.J.T.C.