Citation: *R. v. J.H.L*, 2019 YKTC 19

Date: 20190405
Docket: 18-00517
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REGINA

v.

J.H.L.

Appearances:
Paul Battin — Counsel for the Crown
Gregory Johannson — Counsel for the Defence

REASONS FOR JUDGMENT

[1] J.H.L. has been charged with uttering a threat to cause death contrary to s. 264.1(1)(a) of the *Criminal Code*. Two issues must be addressed in determining whether the Crown has met its burden in establishing guilt beyond a reasonable doubt:

1. Whether the evidence of Mary Perron is sufficiently reliable to establish that J.H.L. uttered the threat, thus establishing the *actus reus* of the offence; and

2. Whether the evidence is sufficient to establish that J.H.L. intended the words uttered to intimidate or instil fear, thus establishing the *mens rea* of the offence.

[2] While counsel for J.H.L. did not argue that the evidence was insufficient to establish the *actus reus*, I am nonetheless of the view that this issue needs to be

addressed because of the manner in which Ms. Perron testified. While the Crown also called the arresting officer, Cst. Gardiner, proof of the offence rests entirely on the evidence of Ms. Perron, the front desk clerk at the Chilkoot Inn, who was working the graveyard shift on October 27, 2018, the night of the offence.

[3] At trial, Ms. Perron was an extremely difficult witness to follow. She not only spoke extremely quickly, but her evidence was not delivered in a clear and chronological fashion, nor was she guided by the best efforts of counsel to draw out the evidence through their questioning. Rather, Ms. Perron's evidence was often not responsive to the particular question being posed and tended to jump around. However, this disjointed approach seemed to be specific to her unique communication style. There were no indicators that she was being deliberately evasive or attempting to mislead.

[4] However, her manner of testifying was sufficiently confusing to raise a threshold question with respect to whether her evidence can be said to be sufficiently coherent and reliable to establish the *actus reus* of uttering a threat to cause death.

[5] I have now had the opportunity to review the recording of the evidence. Having done so, I have concluded that while Ms. Perron's evidence at trial felt disjointed and difficult to follow, with the opportunity to slow the recording and to re-listen to her testimony, her actual evidence was surprisingly consistent throughout. I was left with residual confusion in relation to only one issue, that of timing. While it is very clear that the words forming the basis of the alleged threat were uttered by J.H.L. sometime during Ms. Perron's graveyard shift on October 27, 2018, where the threat fell within the

greater sequence of events is somewhat unclear. Specifically, I am left with a question, not about whether the words were uttered, but whether they were uttered before Ms. Perron wrestled J.H.L. outside or after she let him back into the building.

[6] However, I conclude that this residual uncertainty is not fatal. In determining if the evidence establishes the *actus reus*, I need only be satisfied beyond a reasonable doubt that the threatening words were spoken. Nothing in this case turns on the specific timing of the utterance. More importantly, the uncertainty with respect to timing does not give rise to concerns with respect to either the plausibility or the credibility of Ms. Perron's evidence.

[7] Overall, I am satisfied that Ms. Perron's evidence, notwithstanding the confusing delivery, is both credible and sufficiently reliable to satisfy me beyond a reasonable doubt that J.H.L. uttered a threat to cause death.

[8] Based on Ms. Perron's evidence, I make the following findings of fact: During Ms. Perron's shift on October 27, 2018, J.H.L. was sitting in the lobby of the Chilkoot Inn where he was a resident. He refused to go to his room, as he believed there was a ghost that was trying to kill him. Ms. Perron checked the room and noted nothing unusual. She did turn off the television, in the event something J.H.L. had seen or heard on the t.v. had influenced his perception. Ms. Perron was not sure if J.H.L. was hallucinating or on drugs, but indicated that she had noted that he had been acting strangely, making people nervous, and that he did not appear to be eating or taking care of himself.

[9] J.H.L. had cans of beer in his pockets and Ms. Perron told him that he could not drink in the lobby. He would have to go back to his room or outside if he wanted to drink. J.H.L. told her to "fuck off". Ms. Perron wrestled J.H.L. outside, but later let him back in because it was cold out.

[10] While, as noted, the sequence is a little unclear, at some point before or after being removed from the building, J.H.L. became aggressive and looked mad. J.H.L. was swearing at Ms. Perron and took a swing at her which she was able to block. J.H.L. told Ms. Perron that he had killed his parents and his girlfriend and that he had had sex with his girlfriend after she was dead. He went on to say that he was going to kill Ms. Perron and eat her.

[11] There is little doubt that these facts establish that a threat to cause death was uttered by J.H.L.; however, defence counsel submits that the evidence falls short of establishing the required *mens rea* of the offence.

[12] In *R. v. Clemente*, [1994] 2 S.C.R. 758, at p. 763, the Supreme Court of Canada made the following comments in relation to the *mens rea* of the offence of uttering a threat:

> … The *mens rea* is that the words be spoken or written as a threat to cause death or serious bodily harm; that is, 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 regard them objectively, and review them in light of the circumstances in which they were uttered, the manner in which they were spoken, and the person to whom they were addressed.

> Obviously words spoken in jest or in such a manner that they could not be taken seriously could not lead a reasonable person to conclude that the words conveyed a threat.

[13] Defence counsel argues that a consideration of the surrounding circumstances and manner in which the words were uttered in this case raise a doubt with respect to J.H.L.'s intention. There is no evidence to support a finding that the words were uttered in jest, but counsel argues that the threat appears to be part of an angry outburst that was impulsive and not meant to intimidate.

[14] In my view, the circumstances support a finding that the words uttered were meant to intimidate. The manner of delivery is indicative of an intention to instil fear. This includes the fact that J.H.L. was obviously angry and acting physically aggressive when he uttered the threatening words, including taking a swing at Ms. Perron Similarly, J.H.L.'s additional comments with respect to killing his parents and girlfriend, disturbing as they are, reinforce a finding that the threat was intended to intimidate and instil fear rather than being a spontaneous outburst.

[15] Finally, while the law is clear that the Crown need not prove that the person to whom or about whom the threat was uttered actually felt threatened or intimidated, it is a factor to be considered. Ms. Perron agreed that she did not actually believe that J.H.L. was going to kill and eat her, but she nonetheless felt nervous and was concerned about the possibility of him hurting himself, someone else, or her. This led her to contact the police. Clearly J.H.L.'s words and behaviour were concerning enough to her that she felt he presented a risk.

[16] Absent any other reasonable explanation, the clear anger, the physically aggressive behaviour, the accompanying comments relating to harming others all persuade me that the threat was intended to instil fear. If there is a question about intention, it relates, in my view, to the status of J.H.L.'s mental health at the time the offence was committed and the potential impact on the question of criminal responsibility, a question which will be addressed in the next stage of these proceedings.

[17] In the meantime, I am satisfied beyond a reasonable doubt that the Crown has established both the *actus reus* and the *mens rea* of the offence, and I find J.H.L. guilty of the offence of uttering a threat to cause death to Mary Perron.

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RUDDY T.C.J.