

Citation: *R. v. Krebs*, 2010 YKTC 105

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Registry: Whitehorse
Heard: Carcross

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

REGINA

v.

DARCY DOUGLAS KREBS

Appearances:
Noel Sinclair
Emily Hill

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Darcy Krebs is before me with respect to sentencing on four matters: two substantive offences, being driving while the concentration of alcohol in his blood exceeded the legal limit and assaulting a peace officer, and then there are two breaches of the abstain condition of his release.

[2] The substantive offences arose last October 10, 2009. The RCMP had received an anonymous report indicating that Mr. Krebs was driving while intoxicated. Constable

Leggett proceeded with an investigation and located the vehicle in a relatively remote area. He observed Mr. Krebs to be driving slowly, drifting from side to side. The vehicle was stopped. There was a passenger in the vehicle, that being Mr. Krebs' aunt, Daphne Johns. At that time, the officer noticed Mr. Krebs to be exhibiting some indicia of impairment, including slurred speech. There was also the noted smell of alcohol. An ASD demand was made which resulted in a sample registering as a fail. Mr. Krebs was arrested.

[3] While he was being taken to the vehicle, it appears that he attempted to persuade the officer not to arrest him and to look the other way. Upon arriving at the vehicle, he refused several times to get into the police vehicle. It was at this point that Ms. Johns appears to have gotten involved. She got out of the truck and began yelling. It appears she was equally intoxicated. She was ordered to get back in the vehicle. She initially did so, but then got out of the vehicle again, at which point she approached the officer telling him to let Mr. Krebs go. She began yelling and kicking and pushing at the officer, who pushed her away. He, at this point, attempted to use force to get Mr. Krebs into the vehicle. He was assaulted again by Ms. Johns. At this point, Mr. Krebs got actively involved in assaulting the police officer as well, by grabbing him and shoving him back at the same time that Ms. Johns had grabbed him. Mr. Krebs and the officer ended up on the ground in the ditch. It appears Ms. Johns then proceeded to punch and kick the officer several times, and Mr. Krebs, as well, began to kick and hit at the constable.

[4] The officer backed off from both of them, at which point the two of them came at him again. Pepper spray was used with little to no effect. Ms. Johns continued to

scream and punch at the officer, who ultimately took her to the ground and cuffed her while she continued to struggle. Mr. Krebs then came at the officer again, punching him in the face, taking him to the ground. There were several more punches and kicks until the officer was finally able to stun Mr. Krebs with a blow to his nose.

[5] I understand that this incident lasted some two to three minutes. I think it is important to note in the circumstances that we are talking about an officer who was doing his duty, and who was alone when attacked by these two individuals. It is also important to note that he was in a fairly remote area after dark.

[6] Mr. Krebs was ultimately returned to the detachment and provided breath samples, the relevant one registering at 230 milligrams percent. He was released on conditions on an undertaking to an officer in charge, including a condition that he abstain absolutely from the possession or consumption of alcohol.

[7] On December 11, 2009, he was found by the police in response to a report that he had been fighting with Ms. Johns, in an intoxicated state. He provided a sample of 306 milligrams percent. Later, on August 7th of this year, in responding to an unrelated complaint, the police learned that Mr. Krebs and Ms. Johns were drinking. They went to Ms. Johns' residence where, I understand, Mr. Krebs lives as well. They found Mr. Krebs in a bedroom pretending to sleep and noted indicia of both consumption and impairment. To Mr. Krebs' credit, it appears the police were not able to deal with him at that point in time and asked the two of them to come to the detachment the following morning, and he did so.

[8] He comes before the Court with a prior criminal record. It is not a lengthy criminal record, but it is an entirely related one which includes a refusal, and an assault peace officer in 1997, and a driving with more than 80 milligrams of alcohol in his blood in 2006.

[9] He has, as noted by defence counsel, an unusual background. He is now 38 years of age, a member of the Carcross/Tagish First Nation, but his ties with the community were severed at a young age when he was removed from the community, placed in foster care, and ultimately adopted. His foster mother, after the death of his foster father, moved Mr. Krebs to Switzerland at the age of six. It was, not surprisingly, a difficult adjustment for him, but did lead to his learning two or three additional languages. He did graduate high school, Grade 12, and has had a relatively positive employment history in a number of different fields, including construction and working on RVs. He has also recently applied to Yukon College with a view to pursuing a career as an electrician. Along the way, he has had a couple of difficult incidents including a serious motor vehicle accident and a workplace fall, both of which resulted in significant injuries, which have affected some of his options and opportunities.

[10] He ultimately reconnected with his home community in 1992 when advised by a social worker, who had found him in Switzerland, that his biological mother had passed away. He was able to return for the funeral and made some connections at that point with the community. He was then back and forth until moving to the Yukon in 2003. He had a fairly positive run of employment until 2008, when he recognized that drinking was becoming a significant problem for him. He checked himself into detox, took the

28-day program and felt that he had his drinking under control. It appears by the offences that are before me today that that was not the case.

[11] At this point, he moved to Carcross, and began living with his aunt, and began to drink again. He was on EI and, it appears, was going through some struggles, but he has recently started working again.

[12] I am advised that he does have a job upon his release; it being generally understood that there will need to be a custodial sentence as a result of the offences that bring him before the Court., firstly, because of the fact that Crown has filed notice, which binds me to ordering a minimum of 90 days with respect to the impaired driving count; and also, because of the facts of this offence, which, I think, are generally admitted to be quite serious. When we normally see offences of assaulting a police officer, very often it tends to be pushing and shoving or one or two blows. It is rare that we see something on this level in terms of what the officer was subjected to in this particular case, and that is extremely concerning for me. I think the officer was placed at significant risk in difficult circumstances.

[13] I do accept, for the purposes of this sentencing, that Ms. Johns appears to have been, of the two of them, perhaps the worst actor with respect to the assault of the police officer, but Mr. Krebs certainly did nothing to dissuade her and he actively joined her in the activities that she was engaged in, in terms of assaulting this peace officer. This is an incident in which there was very real potential for significant, serious consequences to, perhaps, all three of these individuals, but, in particular, the police officer, and he ought not to be put in that position when lawfully engaged in his duties.

So I do consider what follows the impaired driving offence to be extremely serious and I accept the submissions of the Crown that there needs to be a sentence that sends a deterrent and denunciatory message that it is simply not acceptable for individuals to treat the police in that way while engaged in their duties.

[14] I also accept, at the same time, that Mr. Krebs has entered an early guilty plea. He has made an apology to the officer, which was read into Court, and then forwarded to the officer. He does appear to recognize that his behaviour was wrong and inappropriate, and does appear to have support in the community, including Elaine Ash, who spoke on his behalf today, and spoke about the struggles that he has had in terms of finding his way, having been removed from his home community at such an early age. She also spoke of the things that he has been doing more recently that are more positive and that indicate that he has more positive long term plans.

[15] Crown is suggesting a sentence which would be in the six to 12 month range for the substantive offences, followed by consecutive sentences of 30 and 45 days on the breaches. Defence is suggesting a sentence which would amount to four months on the substantive offences and sentences of one and 15 days consecutive on the two breaches.

[16] In weighing everything that is before me, I must say I come down somewhere in the middle of the positions that have been taken by counsel before me today.

[17] With respect to the offence of driving while the concentration of alcohol in his blood exceeded the legal limit, with the filing of the notice, there has to be a sentence of three months with respect to that matter. I should say for the purposes of this decision,

it appears that the charges predated the recent amendments, which would have made it a mandatory four month minimum, but I accept, based on the submissions of counsel, that this falls before the amendment. Accordingly, there is simply no option but for me to order a three month or 90 day sentence in relation to the impaired driving count.

[18] With respect to the assault of a police officer, the defence position of one month consecutive, in my view, is low. It is something I would have considered had this been a pushing and shoving case or maybe a blow or two. In my view, this is much more serious than that. Although I will not go as high as I might otherwise, given the fact that I am of the view that Ms. Johns appears to have been the leader in that particular offence, I am satisfied that it warrants a sentence of three months consecutive to the impaired sentence.

[19] That leaves me with the two abstain breaches. Mr. Krebs is clearly an individual with an alcohol problem. I do tend to view abstain breaches somewhat differently than I would a breach of no contact or not attend. In this particular case, I am satisfied, given that there appears to have been some efforts at maintaining sobriety, that it is appropriate that there be a sentence of 15 days consecutive on each of those two breaches. Which brings us, I believe, if my math is correct, to a total of seven months to be served.

[20] There are a number of ancillary orders that I am required to attach. Those include, by virtue of the fact that there was an indictable election by the Crown with respect to the assault police officer, a mandatory firearms prohibition pursuant to s. 109. Accordingly, Mr. Krebs, pursuant to s. 109, you are hereby prohibited from having in

your possession any firearm, ammunition or explosive substance for a period of ten years.

[21] There is also a mandatory driving prohibition, which must be attached. The minimum is three years; I think that is the minimum for a third, yes. So there will be a three year driving prohibition.

[22] In addition, there will be an order that Mr. Krebs provide such samples of his blood as are necessary for DNA testing and banking, which is another mandatory order.

[23] Sorry, I do not have the information yet on operating the uninsured vehicle and consuming liquor in the vehicle. If you want to give me those quickly.

[24] CONSTABLE PLAMONDON: Yes, Your Honour. The vehicle has proved to be not insured.

[25] THE COURT: There was no valid insurance with respect to the vehicle?

[26] CONSTABLE PLAMONDON: There was no valid insurance and there was liquor located in the vehicle.

[27] THE COURT: Are those admitted?

[28] MS. HILL: Yes.

[29] THE COURT: Okay. Accordingly, there is going to be, with respect to the lack of the insurance, there will be a \$400 fine, and a \$60 surcharge. The liquor in the vehicle will be a \$500 fine, and a \$75 surcharge. I expect he needs a fairly

lengthy time to pay those. How long would he be looking for?

[30] MS. HILL: Normally, we don't go much beyond six months, but given his custodial status, I would ask the Court to consider 12 months.

[31] THE COURT: Okay. I do not have an issue with that in the circumstances. It is going to take him a while to complete his sentence and a while to get his feet back under him again. So there will be 12 months time to pay with respect to those. I am also considering the fact that they are fairly substantial fines in all of the circumstances.

[32] The remaining counts?

[33] MR. SINCLAIR: Stay of proceedings on the matters pertaining to Mr. Krebs.

[34] THE COURT: Thank you. Victim fine surcharge will be waived if I have not already done so. Mr. Krebs, you have a bit of time ahead of you in custody. You will need to go with the officer who is going to take you there. It is my hope that you are able to access some of the programming in jail, in terms of dealing with your alcohol problem.

[35] It is clear to me that you have support in this community. So hopefully once you are out again, you are able to get back on track and to pursue your plan to go to Yukon College and become an electrician. So good luck. Sorry, with respect to the two tickets, the remaining two are stayed?

[36] CONSTABLE PLAMONDON: Yes, Your Honour.

RUDDY C.J.T.C.