

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Reddemann*, 2003 YKSC 69

Date: 20031208
Docket: S.C. 03-00275A
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

JAMES HENRY REDDEMANN

Before: Mr. Justice L. Gower

Appearances:

Keith Parkkari
Samantha Wellman

For the Crown
For the Defence

**MEMORANDUM OF SENTENCE
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): James Henry Reddemann has entered a plea of guilty to a charge of breaking and entering a dwelling house in Whitehorse and committing the indictable offence of forcible confinement, contrary to s. 348.1(b) of the *Criminal Code*. That offence occurred on July 31, 2003.

[2] The facts are that Mr. Reddemann and a co-accused by the name of Clarke Fry attended at an apartment which was occupied and rented by Michael Sean Kaiser, who I will refer to as Sean Kaiser, and a friend, Jason Clark. Apparently, Sean Kaiser is a relatively young man and suffers from attention deficit disorder. For

whatever reason, he had some previous acquaintance with the two co-accused and allowed them entry into the apartment.

[3] The apparent reason for Mr. Reddemann and his co-accused to enter the apartment was to confront Mr. Kaiser and Mr. Clark about items that were taken from their own apartment a couple of days prior, principally, some \$200 worth of groceries and some other personal items.

[4] The Kaiser and Clark apartment was in somewhat of a state of disarray because they were about to move out later that day, but Reddemann and his co-accused went through the apartment searching for the allegedly stolen items and caused some further disarray in doing so.

[5] There were two entries. On that first entry, Mr. Reddemann and Mr. Fry confronted Kaiser and Clark about the alleged theft, but the allegations were denied by Kaiser and Clark. There was some assaultive behaviour. Mr. Reddemann was principally dealing with Mr. Kaiser, and Mr. Fry was principally dealing with Mr. Clark. They were pinned to their couches, they were punched in their head area and face, pushed into the couch, and some small household items such as salt and pepper shakers were thrown at them.

[6] It appears that went on for about half an hour to 45 minutes, although the time is not precise, and Reddemann and Fry then left the apartment. They then returned a short time later, this time through the balcony to the apartment, which was only about four feet off the ground.

[7] On this occasion, I am advised that Mr. Kaiser, because of his fear that they

would damage the door from the balcony, let them in a second time and it is this permission, or entry, in the face of that fear, which constitutes the illegal act of breaking and entering.

[8] Once in the apartment for the second time, the assaultive behaviour resumed. As before, Mr. Reddemann was primarily involved with Mr. Kaiser and Mr. Fry with Mr. Clark. Again, spice bottles and other small items were thrown at Mr. Kaiser, there was some water thrown on him; some dirt was thrown on him; and he was tied up with electrical cords, as was Mr. Clark. At one point, Mr. Reddemann heated up a butter knife on the stove and applied it to Mr. Kaiser's upper left abdomen, leaving a significant red welt for which Mr. Kaiser was later treated at the hospital. It was diagnosed as a second-degree burn and, apparently, there is still scarring present. The initial burn is apparent from the photograph entered as an exhibit.

[9] While applying the hot knife to Mr. Kaiser, either Reddemann or Fry said something to the effect that this was being done so that they would never do this again, i.e., the theft conduct that was being alleged.

[10] The two victims were unable to say how long the second event lasted. What we do know is that this incident started about 7:00 a.m., and, after the second event ended, Kaiser and Clark were able to clean themselves up and leave the apartment to go and discuss the matter with their parents, and by that time it was 9:05. So it was sometime in the vicinity of approximately an hour, perhaps, altogether, that they were in the apartment with Mr. Reddemann and the co-accused.

[11] The R.C.M.P. initially received an anonymous call from a neighbour who was aware of a disturbance in the next apartment. However, the victims themselves, after

leaving the apartment and contacting their parents, later that same day, did attend at the R.C.M.P. detachment to make their own statements.

[12] In making those statements, it was also revealed, at the end of the second incident, the two victims were tied with the electrical cords around their hands and told to lay on the floor. They were also told to count to 60 and not to call the police. At that point, Reddemann and Fry left the apartment.

[13] As I said, Mr. Kaiser was later seen by a doctor. The burn I have noted was diagnosed. There was also some bruising on his left leg and some bruising below his jaw line on the left side.

[14] Mr. Clark, although he principally received his injuries from the co-accused, Fry, had a previously almost healed cut on his left eye, which had been re-opened, and some bruising.

[15] Mr. Reddemann has been in custody for approximately four months and, therefore, if he receives the usual credit of double time for that remand, he would get approximately eight months credit. A joint submission has been made that Mr. Reddemann be sentenced to a term of imprisonment for an additional period of 18 months, which would be an effective sentence of 26 months.

[16] It is also jointly submitted that upon his release from imprisonment, he be subject to a probation order for a period of 12 months with certain conditions, which I will come to later, that he be prohibited from possessing any firearms, ammunition, or explosives for a period of ten years, and that he submit to providing a sample for DNA analysis, under s. 487.051 of the *Criminal Code*.

[17] Victim impact statements have been filed and, with the caveat that Mr. Clark is talking about injuries principally at the hand of Mr. Fry, I would like to note some of what he says, particularly on the emotional injuries portion of the statement. I quote:

This situation has had too much effect over my personality. I find I am more paranoid. I am always looking over my shoulders because I feel that I will see them again. I find my moods are too extreme, for example, I feel depressed all the time. Someone will say one thing and I overreact about it with words, attitude. I have had many people point out that I am a case of post-traumatic stress syndrome by my boss, parents and friends. In some ways I feel like I've totally changed my personality due to this crime. My family is always asking about how I am feeling and even more worried about me now, and I feel I should move away if need be. Overall, I am just scared.

He says later, under Additional Comments, and I am quoting:

I feel like I should always be hiding now or always watching over my back. I feel I am normal but not while during this crime. I felt like a tied up animal being beaten, helpless to defend myself and scared that it could happen any time. The fact that another person could do this to anyone chills my spine. I never want to see them again in my life for as long as I live.

[18] The statement from Mr. Kaiser, whom I have indicated apparently suffers from some form of attention deficit disorder, poignantly and simply says, under Emotional Injuries, "I do not feel safe." It is probably reasonable to presume that Mr. Kaiser has experienced some of the same kinds of feelings that Mr. Clark has stated more eloquently, but perhaps was unable to express them because of his disorder.

[19] The accused, Mr. Reddemann, has a criminal record; by my count, some nine convictions, from the time he was a youth, in 1997, through to 2003. He has one

prior offence of violence, being robbery in 1997, and one prior related offence of forcible entry in 2002. However, the amount of jail time that he has received as an adult has been relatively short, in periods of no longer than 30 days, from what I can tell.

[20] Mr. Reddemann's circumstances are that he is 24 years of age. He is, apparently, older than some of the other parties involved in this matter. He has lived in the Yukon for most of his life, with some exceptions; in the province of British Columbia, where he got into some trouble and spent some time in the justice system. His mother and stepfather reside here in the Yukon. I am told that his mother is supportive and has been visiting him while in custody. He is single. He has a grade 11 education. He, generally, is employed in the construction industry; specifically, doing gutter and siding work, although he has plans to work as an autobody apprentice. He admits that he has a problem with alcohol and also admits that this relates to most of his criminal record. It is noteworthy that he, apparently, has expressed an interest to seek counselling in custody for both alcohol addiction and anger management. I take it from the joint submission that that interest will extend after his release from custody.

[21] Defence counsel quite properly characterized this offence as senseless. I would add that it is also tending towards being brutal and even torturous.

[22] The facts speak for themselves, Mr. Reddemann. However, I am encouraged by your guilty plea and your acceptance of responsibility for what you have done. You have not sought to minimize this by challenging the facts. You have seen the picture and you know that this young man, Mr. Kaiser, may well carry that memory with him for the rest of his life. I am also encouraged by the fact that you have some

apparent willingness to seek whatever help is available to you in custody, and afterwards.

[23] I will say one thing, though, that if your problem is principally alcohol and possibly drug addiction, as I said to another gentleman a few days ago, you have to be the squeaky wheel, because there are not necessarily going to be the Cadillac types of programs in Whitehorse Correctional Centre. There may not be very much that is available to you, but you have to seek it out. You are the one who has to constantly be asking your case worker how you can get into these programs or those programs, or access to this individual or that, because if you are not the squeaky wheel, you are not going to get the help you need while you are inside. There are AA meetings there. There are NA meetings from time to time. There is a prison chaplain; there is a spiritual counsellor that attends on a regular basis. I am sure that if you have good behaviour inside, and you are showing a good-faith effort to get access to these people, then you will get access to them, and it may be that you can also get temporary absences, in the longer term, to attend for counselling or visits outside of the jail. But you have to pursue that with all your might if that is what you want, because you are coming to an age, at the age of 24, it is not uncommon to see young men get to about this age and realize that their life is a bit of a mess. Your record shows that, but you seem to be at an age where maybe you are growing up and maturing, and getting to the point where you want to turn that around, and I am hoping that you have the ability and sincerity to do that.

[24] I am going to accept the joint submission. I am going to sentence you to imprisonment for a period of 18 months. I am going to impose a probation order, to follow your release from imprisonment, for a further period of 12 months. The statutory conditions will apply.

[25] In addition to those statutory conditions of the probation order will be:

- (a) That you are directed to report to a probation officer within two working days of your release from prison, and thereafter when required by the probation officer and as directed by him or her.
- (b) That you are to take such alcohol and drug assessment, counselling, programming and treatment as may be directed by your probation officer, and attend a residential alcohol treatment, if so directed.
- (c) That you are also to take such other assessment, counselling, programming and treatment as directed by your probation officer, including treatment and counselling for anger management.
- (d) That you are to have no contact, directly or indirectly, with Michael Sean Kaiser or Jason Clark, and the warrant of your committal to jail will also be similarly endorsed that you not contact them directly or indirectly while you are serving this sentence.

[26] You will also be subject to a firearms prohibition, which is mandatory under s. 109 of the *Criminal Code*. So you will not possess any firearms, ammunition or explosives for a period of ten years from your release from prison.

[27] Pursuant to s. 487.051, I am making an order that you provide a DNA sample, recognizing that this is being sought jointly by both counsel but also taking into account the nature of the offence and the circumstances surrounding its commission.

[28] The remaining charges?

[29] MR. PARKKARI: Direct a staying of proceedings.

[30] THE COURT: Is there anything else?

[31] MS. WELLMAN: Given that Mr. Reddemann is going to be in custody for a lengthy period of time, would the Court consider waiving the victim fine surcharge?

[32] THE COURT: Yes. Thank you for reminding me.

[33] MR. PARKKARI: Nothing else from the Crown, My Lord.

[34] THE COURT: Thank you, counsel.

GOWER J.