

In the Court of Appeal for The Northwest Territories

Citation: R. v. Itsi, 2012 NWT CA 10

Date: 2012 06 05
Docket: AP 2004-000003
Registry: Yellowknife

Between:

Her Majesty the Queen

Respondent

- and -

Reginald William Itsi

Appellant

The Court:

**The Honourable Chief Justice Catherine Fraser
The Honourable Mr. Justice Calvin Tallis
The Honourable Madam Justice Carole Conrad**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Sentence by
The Honourable Mr. Justice J.E. Richard
Dated the 3rd day of March, 2004
(Docket: S-1-CR 2003000054)

**Memorandum of Judgment
Delivered from the Bench**

Conrad J.A. (for the Court):

[1] Reginald Itsi appeals his conviction for aggravated assault on one, Robert Robert. He appeals on grounds that the trial judge erred in law by failing to order a mistrial or failing to adequately instruct the jury with respect to inadmissible evidence. The arguments arise because during the cross-examination of the Crown witness, William Robert, Robert referred to an earlier conflict between the appellant and the victim, where he said the appellant had sliced and stabbed the victim with a knife. The defence counsel applied for a mistrial. That application was denied. The trial judge held that with proper instruction, the jury could focus on the incident of March 13, 2003, and disregard Robert's comments alluding to the earlier incident involving the appellant and the victim.

[2] The trial judge went on to instruct the jury as follows:

Now members of the jury I want to give you a careful instruction and I will remind you of this later on at the end of the trial. Mr. Itsi is here because he is charged with something that alleged to have happened in the area of Frosty's Pub on March 13th of last year. You are to disregard anything that has been said about what he may or may not have done at some other time or place. We don't judge people in a courtroom on their reputation or anything else they may have done. You have to focus on the March 13th incident at Frosty's Pub. Please keep that in mind.

[3] In his charge to the jury at the conclusion of the three-day trial, the trial judge again cautioned the jury about this particular part of Robert's evidence:

Now members of the jury, before I leave William Robert's testimony let me make one note for you. You will recall that when he was giving evidence William Robert started to talk about some previous act of violence that he says Mr. Itsi was involved in. That evidence is not relevant to any issue at this trial. And in particular you should not infer from that evidence that this accused man is a person who likely committed the charge he is charged with today. That part of William's evidence is irrelevant and should be ignored by you.

[4] The power of the trial judge to grant a mistrial is discretionary and an appellate court will not likely interfere with his or her decision (*R v Gregoire*, [1995] AJ No 355, 165 AR 292). The

decision is made only after evaluating the damage done or the prejudice caused by the inadmissible evidence. As stated by Madam Justice Arbour, writing for the majority in *R v Khan*, 2001 SCC 86 at para 32, [2001] 3 SCR 823, the question to be asked by the trial judge in deciding whether or not to grant a mistrial is whether the exposure of the jury to the inadmissible evidence “could have affected the jury to the point that the entire trial was compromised and that no remedy other than a new trial was available.”

[5] The trial judge here concluded that a strong and repeated instruction to the jury could overcome any potential prejudice to the appellant. We see no error, and will not interfere with his discretionary decision to refuse a mistrial. Moreover, his instructions were adequate to remove any potential prejudice to the appellant. They were clear, comprehensive and responsive to the problem. As a result the appeal is dismissed.

Fraser C.J.A.:

[6] Thank you counsel, and I do not recall if there was a sentence appeal. I believe there is in this matter, is it not so?

[Submissions Made]

[7] On the sentence appeal, the decision is unanimous and will be delivered by My Lord Tallis.

Tallis J.A.:

[8] Would you stand up please. Mr. Itsi, we have given very anxious consideration to your sentence appeal. And I want to tell you at the very outset that it gives us no pleasure to see a young man like you with such a lengthy record and in such difficulty with the law. We sincerely hope that you are able to turn your life around. And turning now to the sentence that was imposed upon you, we have decided to reduce your sentence by one year. This means that your sentence will now be a term of two years’ imprisonment. Since that is a penitentiary term, we want to emphasize that we think it is in your best interest that that term be served at the correctional centre here in Yellowknife. Accordingly, the revised warrant can be endorsed to that effect.

[9] Having said that, and mindful of what your counsel has said about the courses that you are taking in anger management, alcohol abuse and related matters, we want to encourage you and hope that you will continue while you are there to take those courses. Also, when you are released on day parole, which your counsel Mr. Boyd is somewhat optimistic that you will be granted, we hope that you will not view day parole as a licence to go out and get into trouble again. That is not the purpose of it. And in a sense I have to tell you, that in reducing this sentence, we are taking a calculated risk that you will take steps to turn your life around. You have a long record for a young man and personally I am well aware of some of the problems that have existed up in the Delta, but at the end of the day, that’s no way to run a community with violence, liquor and so forth. I am sure many people have mentioned that to you, including some of your relatives. So given the situation

that you find yourself in, at Fort MacPherson, I think there is much to be said for you having a pretty hard look at making a move, getting some training and education, if possible, and re-establishing yourself in a more hospitable climate and away from the violence that you have been living in.

[10] Now with that, I'm going to conclude my remarks on behalf of the Court, because we all share our deep concern about a young person carrying on with this type of thing. And, of course, you have been around long enough to know, if you keep repeating this kind of conduct, you will either be facing a murder or manslaughter charge. In any event, you are going to be getting a longer sentence. Your own community will not put up with this type of thing, and no other community will. We can do no more than wish you good luck and hope you take to heart the consideration that we have given you on this particular occasion. And, I add on behalf of the Court, we hope that you do not let us down, and I'm sure Mr. Boyd hopes that you do not let him down because he has worked very hard on assisting you in this particular case.

Appeal heard on January 18, 2005

Memorandum filed at Yellowknife, N.W.T.
this day of , 2012

“as authorized”

Tallis J.A.

Mr. Itsi:

[11] I just want ... will do my best that I could. You know. I am so far ... completed some programs and doing my best for the outcome.

Tallis J.A.:

[12] That's why I mentioned the programs you've been taking, because we are glad that you are attempting to improve your lot. So good luck.

Fraser C.J.A.:

[13] Thank you and thank you both counsel and good luck to you Mr. Itsi.

Appeal heard on January 18, 2005

Memorandum filed at Yellowknife, N.W.T.
this day of , 2012

Conrad J.A.

Appearances:

L. Charbonneau
for the Respondent

T. Boyd
for the Appellant

A 0001 AP 2004 000003

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