IC Cr. 90-000
[1990] NWTR 283

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

PETER OVAYUAK

Transcript of the Oral Judgment of His Honour Judge B. A. Bruser, sitting at Tuktoyaktuk, in the Northwest Territories, on May 31, A.D. 1990.

APPEARANCES:

MR. D. AVISON — For the Crown

MS. H. BREIER — For the Defence

Charge under Section 264.1(a) C.C.

THE COURT: The accused, Peter Ovayuak, is charged with -- I am summarizing the offence -- that on or about the 2nd day of April 1990, at the home he was living at in Tuktoyaktuk, he did knowingly utter a threat to his sister to cause serious bodily harm to her. There are two principles issues before the court, as I understand the position of the parties.

Firstly, the defence argues that the accused was not seriously making a threat to cause serious bodily harm to Marjory Ovayuak. Secondly, it is argued that the accused was so drunk that what he was doing did not amount to knowingly uttering a threat, and I emphasize the word "knowingly".

A third issue that might arise on the evidence, and which I must deal with, is whether or not the threat, if there was one, was conditional, and if so, the effect of his using the words,"if I had a gun I would shoot you" or to like effect.

I have assessed and weighed all the evidence; I will not review it all. I do, however, find Marjory Ovayuak to have been a credible witness, and I accept her complete version of what happened in the home. She testified in a genuinely teary-eyed manner. She was recounting an event that was frightening for her to relate. In fact, I formed the opinion that she was reliving the events, and she succeeded in bringing the court into the home at the

time.

In other words the narrative unfolded in a plausible manner, and I have no reason to reject anything she testified about.

That, of course,does not necessarily end the matter. The words she recalls her brother having used, apart from the swear words, were, as I indicated earlier, that if he had a gun that he would shoot her "right now". She felt genuinely scared. The children were awake and were frightened. The door was locked to the bedroom, and she felt the best course of action was to remain in that room until her brother either left or became quiet.

When she heard him say something about the gun, in her mind she knew he was serious. There was a gun, as far as she could recall, in a back room in the home. According to the accused there was at least one gun readily available if he wanted to get it.

The section of the Criminal Code does not require, in the circumstances before me, that Mr. Ovayuak would have had to have a gun in his hands at the time he made the threat.

According to him, he had been drinking and he wanted to get back into the home. The doors to the home were locked, so he had to crawl through the window and he was angry. He said "I sort of got angry and just forgot what I said." He doesn't recall

exactly what he said, but he did testify that he was angry because nobody was opening the door at the time, and the television was on, thereby leading him to believe that he was being ignored by somebody who was awake inside the home at the time that he wanted to get in.

According to the Supreme Court of Canada, in the Docherty decision referred to earlier in the exchange with counsel, the Court is entitled to infer intent from the fact of the conduct. However all of the evidence has to be looked at, in particular any evidence to the contrary must be taken into account in determining whether or not the Crown has proven each and every essential element beyond a reasonable doubt.

In the circumstances of what went on in the home, given the swearing, the words that were used, the banging about for about twenty minutes, I have no difficulty in concluding beyond a reasonable doubt that the accused was not joking in making the threat. He knew what was going on while he was inside the home; I infer suchfrom the evidence of both witnesses: the witness for the Crown, and from the accused himself. He was not so drunk as to be talking gibberish without knowing what he was saying.

I reject his testimony that he had an accident in the home with the broom and managed to break it in

that way. All of the evidence points to the conclusion, which I find as a fact, that he was angry. The anger continued during a twenty minute or so period. During that period when he discovered the door to the bedroom was locked, and in order to make his angry point, he knowingly uttered the threat to shoot the sister, thereby knowingly uttering a threat to cause serious bodily harm to her.

There is the last issue, though, which was raised. If the threat was a conditional one predicated by the word "if", is the offence made out? There are decisions annotated in Martin's Criminal Code, and I trust that counsel have those authorities before them.

Firstly this Court adopts the decision in Carons, a judgment of the Alberta Court of Appeal (1978) 42ccc 2nd, in which it was held that the Crown is only required to prove that the accused uttered the threat by one of the means specified; this the accused did in the case at bar. The Ontario Court of Appeal in the decision of Ross dealt with the issue of a conditional threat. In my view the threat in the case I am now dealing with did amount to a threat within the definition of the charging section. In other words the threat, while perhaps being made as conditional, was within the ordinary meaning of the word threat, thereby constituting an offence under the

section. It was a declaration of a hostile determination, it was a threat.

Sir, would you stand please. For the reasons given, I have found that the Crown has proven all of the elements of the charge against you beyond a reasonable doubt, and I find you guilty. You may be seated.

(AT WHICH TIME THIS MATTER WAS ADJOURNED)

Certified a Correct Transcript,

Loretta Mott

Loretta Mott, Court Reporter