SC CR 66 011

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

Upheld on appeal (1967) 62 WWR 385

ORAL REASONS FOR JUDGMENT OF HIS LORDSHIP THE HONOURABLE MR. JUSTICE WILLIAM G. MORROW, given at Inuvik, N.W.T., on the 6th day of December, A.D. 1966.

IN THE MATTER OF:

HER MAJESTY THE QUEEN

Respondent

- and -

PETER MUSSELLEM

Appellant

(Section 22(1) of the Liquor Ordinance)

Appearances:

~~Orval~~ O. J.T. Troy, ~~Esq., appeared on behalf of the Respondent~~ for the respondent.

~~Mark~~ M. M. deWeerdt, ~~Esq., appeared on behalf of the Appellant~~ for the appellant.

MORROW, J. (orally).

The facts in this case, unlike the law, are quite straightforward, and perhaps I could say, simple.

The evidence clearly establishes that on the occasion of the 26th or 27th of November, 1966, following a festive occasion in Inuvik, the accused appellant, having won a prize, decided - and one can sympathize with his decision - to have a party and celebrate his good fortune. Among the friends ~~that~~ who gathered at his house with his knowledge, for the purpose of good cheer, were two young girls, one being Martha Pingo. Both of them, by admission of Counsel and by evidence, are under ~~21~~ twenty-one years of age.

The charge on which the accused appellant was convicted by the Justice of the Peace, (I believe the date of the conviction was the 28th of November, 1966), was that he, on or about the 27th of November, A.D. 1966, at or near the Settlement of Inuvik, Northwest Territories, did unlawfully supply liquor to a person under the ago of ~~21~~ twenty-one years, to wit: Martha Ann Pingo, contrary to Section 22(1) of the Liquor Ordinance.

There is no question in my mind that liquor was supplied, and I interpret "supply", as used in the Ordinance in the absence of the definitive section, ~~to~~ in its ordinary sense, namely, that liquor was made available, and the evidence is clear enough that on at least one occasion the accused did hand a tin of beer, or can of beer, to Martha Ann Pingo.

The problem is that having got this far I am confronted with the question of whether the explanation of the accused appellant that he had no reason to think that this girl, or in fact both girls, although the second one is not part of the charge here, were under ~~21~~ twenty-one.

Now Section 22(1) of the Ordinance, which is the basic section for the charge, states, "except as provided in this Ordinance, no person shall supply liquor to any other person". "

That puts us in the position where we then have to scramble throughout the Ordinance to find what the exceptions are. Now there is a series of exceptions set out in Section 22(2), and Counsel for the Crown by his cross-examination has eliminated any excuse that may be found for the defence under this type of section.

Section 18 of the Ordinance is the one stating, no person shall purchase liquor except as provided in the Ordinance. That may help in the general interpretation problem, but, basically, I don't think we are too concerned with that section. We then go to Section 9(1), which states that every person/(a) a person under the age of 21 years is entitled to purchase liquor.

Now, it would appear that reading these together we get to the point where, subject to the questions of burden and mens rea, there has been the commission of an offence here, namely, that a person under 21 was supplied with liquor by the accused appellant.

However, I have the problem of whether this is a statute where there is an absolute liability in these circumstances, or whether an excuse, if accepted by the Court, constitutes a defence, or at least shifts the burden back to the Crown.

In this case, I accept the evidence of the accused appellant that, in the exuberance of the occasion, he did not address his mind to the age, or the possibility even that these two girls, or the one girl that we are concerned with, Martha Ann Pingo, was under 21. I had the girl herself stand down before me in the Courtroom, and according to her testimony, she was wearing the same garments as on

the occasion in question. I can't ~~put~~ quality myself as an expert on ages of young girls, or females, but I myself would have had difficulty in assessing the girl's age. I don't think my opinion in this regard matters, but it does make it easier for me to think that the accused appellant was justified under the circumstances.

Now ~~C~~counsel for the Crown has been very fair in the production of cases for my consideration. Both he and Mr. deWeerdt have done their best, bearing in mind that in Inuvik we do not have the facilities of a library with law books so we can research this type of problem. Presumably, this is the first time it has come before the Territorial Court, and I would like to have reserved judgment, and to have considered the authorities, and come down with a more careful pronouncement. However, because of the great distance we have come from Yellowknife, and the fact that this type of thing should not be left in abeyance, particularly where there was a gaol sentence, I think I should give my judgment now.

From what I can tell from the annotations in the cases referred to by ~~C~~counsel for the Crown, particularly R.~~vs~~.Donovan (1955) 16 W.W.R. 269, and R.vs.McLeod, ~~in~~ (1955) 14 W.W.R., ~~at Page~~ 97, it would appear that the Court must still consider the question, where the accused appellant had come up with an acceptable and plausible excuse or explanation, that it takes him, and removes him from the provision of the statute. I think it is the McLeod case that uses the phrase, the balance of probabilities.

Taking all into consideration, I am satisfied with that explanation given by the accused appellant, and for that reason I allow the appeal and find him not guilty.

Now in view of the circumstances that arose here, I am not the Crown pay costs, but I am directing that the

deposit that was paid as a condition of the appeal, and the fine and the Court costs be returned to the accused, or, if he so directs, to his ~~C~~counsel.

NOTE

The Crown appeal from the foregoing Judgment of Mr. Justice Jewers dismissed by the Manitoba Court of Appeal and now R. v. Musgrave in R. v. Musgrave (Que.)

(1967) 62 WWR 385. 3 CRNS 46. [1968] 3 CCC 90.