

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ROBERT ITSI

REASONS FOR DECISION

of the

HONOURABLE JUDGE B. E. SCHMALTZ

Heard at:

Inuvik, Northwest Territories

February 9, 2009 and February 13, 2009

Reasons filed:

February 23, 2009

Counsel for the Crown:

Brent Lepage

Counsel for the Defendant:

Thomas Boyd

(Charged under s. 129(a) of the *Criminal Code*)

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[1] Robert Itsi is charged that he:

on or about the 5 day of April, 2008, at or near the Hamlet of Tuktoyaktuk in the Northwest Territories, did willfully obstruct Cst. Stephen Brown ... engaged in the execution of his duty the investigation of a criminal offence by providing false identity to Cst. Stephen Brown contrary to s. 129(a) of the *Criminal Code*.

A. EVIDENCE

[2] For the most part, the evidence on this trial is straightforward and not in issue. Cst. Brown testified that on April 5, 2008, he received a complaint from Telecoms and as a result he attended the nursing station and spoke to Charlene Chicksi (first call). As a result of Cst. Brown's conversation with Ms. Chicksi, Cst. Brown had reasonable and probable grounds to arrest Robert Itsi. Cst. Brown made patrols in the community looking for Robert Itsi but did not locate him.

[3] Sometime later on April 5, 2008, Cst. Brown received another call (second call) and attended a residence in Tuktoyaktuk. He spoke with a male outside that residence; Cst. Brown testified that the individual was cooperative and was going to find a young girl's mother in order to calm down the situation which had initiated that call. Cst. Brown testified that he asked this individual his name, and

the individual said it was Jake Robert. The individual left and did not return. There was a young girl either inside or outside that residence who was very emotional. Cst. Brown believed he made notes in his vehicle at the time and noted the name of Jake Robert. While at the second call, Cst. Brown received another call (third call) and left the second call to respond to that call.

[4] In cross examination, Cst. Brown testified that his purpose in attending the second call was not to arrest Robert Itsi, but to respond to a “family dispute.” Cst. Brown also testified that there were multiple calls that night, that “there was a lot going on.”

[5] The following evening (April 6, 2008) Cst. Brown was called out to Ms. Chicksi’s house, at which time Robert Itsi was arrested there. At that time Cst. Brown recognized Robert Itsi as the individual he had spoken with the previous day that had identified himself as Jake Robert. Robert Itsi was cooperative when he was arrested.

[6] Robert Itsi contradicted Cst. Brown’s testimony only on the issue of whether or not he identified himself as Jake Robert at the second call. Robert Itsi testified that although he spoke to Cst. Brown telling him that he was going to find the young girl’s mother, Cst. Brown never asked him his name, and he never told Cst. Brown that his name was Jake Robert. Robert Itsi further testified that he had been with Charlene Chicksi on April 5, and that he knew he was on an undertaking at the time, one of the conditions being that he abstain from communicating with Charlene Chicksi. Robert Itsi testified that he did not know that the police had any dealings with Ms. Chicksi on April 5, and nor was he aware that the police were looking for him on April 5. He said that he had no reason to give the police a false name.

[7] The position of the Defence on this trial is twofold. First, Defence submits that the Crown has particularized the offence charged against Robert Itsi, i.e. that

Cst. Brown was engaged in “the investigation of a criminal offence”, and there is no evidence that Cst. Brown was investigating a criminal offence at the time that it is alleged that Robert Itsi provided Cst. Brown with a false name. Second, Defence submits that in any event, Robert Itsi did not provide a false name, or any name, to Cst. Brown at the second call.

[8] The Crown submits that the complaint received by Ms. Chicksi at the first call resulting in Cst. Brown having grounds to arrest Robert Itsi, was the criminal investigation in which Cst. Brown was obstructed. As I understand the Crown’s position, the Crown submits that that investigation would be ongoing at least until Robert Itsi was arrested.

B. PARTICULARIZATION OF THE OFFENCE CHARGED

[9] The Crown charged Robert Itsi with obstructing Cst. Brown in the execution of his duty being the investigation of a criminal offence. Section 129(a) of the *Criminal Code* states:

129. Every one who
(a) resists or willfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

...

is guilty of

(c) an offence punishable on summary conviction.

[10] The Crown has particularized the duty in which Cst. Brown was in the execution of when Robert Itsi is alleged to have obstructed Cst. Brown.

[11] Cst. Brown testified that though he was seeking Robert Itsi when he attended the second call, his purpose in going to the second call was not to arrest Robert Itsi. I understand by “seeking” he meant that he knew he had

grounds to arrest Robert Itsi and if he saw or came upon Robert Itsi, he would have arrested him. Cst. Brown testified however that the second call was in relation to a family dispute; no further information was provided with respect to that call, and indeed, Cst. Brown testified that he left that call shortly after as he received another important call. I cannot say that there is evidence on which I could find beyond a reasonable doubt that Cst. Brown was at the second call conducting a criminal investigation.

[12] However, as Cst. Brown had grounds to arrest Robert Itsi, I still must consider whether or not the arrest of Robert Itsi was one of the duties that Cst. Brown was engaged in at the time that Robert Itsi is alleged to have provided a false name. At the relevant time, Cst. Brown was responding to a family dispute, his purpose at the second call was not to arrest Robert Itsi, and nor was he there looking for Robert Itsi. I do not accept that simply because one of Cst. Brown's duties was to arrest Robert Itsi, that he was at all times engaged in the execution of that duty. Though Cst. Brown had a duty to arrest Robert Itsi, he was not engaged in that duty at the time he went to the second call. The words "in the execution of his [or her] duty" have to be given their ordinary meaning – I find those words mean the duty that the officer is engaged in at the time of the obstruction, and not all of the duties that an officer might have.

[13] The Crown having particularized the duty in which Cst. Brown was engaged in must prove that element of the offence. As McLachlin, J., as she then was, stated in *R. v. Saunders*, [1990] 1 S.C.R. 1020:

It is a fundamental principle of criminal law that the offence, as particularized in the charge, must be proved. ... The Crown chose to particularize the offence in this case ... Having done so, it was obliged to prove the offence thus particularized. To permit the Crown to prove some other offence characterized by different particulars would be to undermine the purpose of providing particulars, which is to permit "the accused to be reasonably informed of the transaction alleged against him", thus giving him the possibility of a full defence and a fair trial.

[14] In this case, the Crown has particularized that the duty that Cst. Brown was involved in at the time that Robert Itsi is alleged to have obstructed him was the investigation of a criminal offence. There is no evidence before me that Cst. Brown was investigating a criminal offence. Even on Cst. Brown's evidence, he left this call shortly after arriving to respond to an "important call". I find that on the evidence I cannot even draw the inference that Cst. Brown was investigating a criminal offence. If it may have been a criminal offence, it appears that it was not as important as the following call, or it may have been that Cst. Brown had completed his investigation of it. I can only speculate as to the nature of the investigation that Cst. Brown was involved in at the second call, and that is an impermissible road for me to start down. The evidence is lacking.

C. ELEMENTS OF THE OFFENCE

[15] Our Supreme Court in *R. v. Sutherland*, [2002] N.W.T.J. No. 41, sets out the elements of the offence of obstructing a peace officer in the execution of his or her duty:

- (a) that there was an obstructing of an officer;
- (b) that the obstructing affected the officer in the execution of a duty that he or she was then executing; and
- (c) that the person obstructing did so willfully.
(my emphasis)

[16] Even if there was evidence that Cst. Brown was involved in a criminal investigation, I would still not be able to find that the Crown had satisfied me on the second element set out above, i.e. that the obstructing affected Cst. Brown in the execution of the duty that he was then executing. There is absolutely no evidence that Cst. Brown was obstructed in any way on the investigation of the second call. Whether or not Robert Itsi told Cst. Brown that his name was Jake Robert had no effect at all on Cst. Brown's duty that he was then executing.

D. MENS REA

[17] There is no evidence before me that Robert Itsi knew that Cst. Brown had grounds to arrest Robert Itsi, nor that the police were looking for Robert Itsi at the time that it is alleged that Robert Itsi gave Cst. Brown the name Jake Robert. Consequently I would not find that if in fact a false name was given, that it was given in order to obstruct Cst. Brown in his duty to arrest Robert Itsi. That Robert Itsi knew that the police were looking for him, and therefore gave a false name may be a reasonable inference to draw. But it is certainly not in my mind the only reasonable inference that could be drawn from Robert Itsi giving the police a false name, if I were to find that he did give a false name. Robert Itsi may have had many different motivations for wanting to stay off the police radar so to speak, for example, he was involved to some extent with Ms. Chicksi at the time and socializing with her while on an undertaking to have no contact with her – he may have thought it was in his best interest that the police not readily know who he was.

[18] If I am wrong in my analysis of the law in this case, nevertheless on the facts of this case I could not find Robert Itsi guilty of the offence of obstruction. I am not sure that Robert Itsi told Cst. Brown that his name was Jake Robert. Cst. Brown candidly admitted that there was a lot going on that night. At first he was not sure when he made his notes, but thought that it was back at the detachment; he could not remember how many calls he had received that evening, other than to say there were multiple calls that night, and he may have had calls in between speaking to Robert Itsi, and making his notes. Later he testified that he had made the notes with respect to Jake Robert in his police vehicle before he received the third call that he had to respond to. I find that Cst. Brown was a credible witness, but I also find that he could have been mistaken as to when he made his notes; I find that as busy as Cst. Brown was on April 5, 2008, he may also be mistaken as to whether or not Robert Itsi gave him the name of Jake Robert, or gave him any name at all. To be clear I do not find that

Cst. Brown was in any way trying to mislead the court or not a completely truthful witness, but I am not sure that he could not be mistaken about whether or not the name of Jake Robert was give to him by Robert Itsi.

[19] Another way of saying that is on the evidence of this case I find that Robert Itsi's testimony that he did not give any name to Cst. Brown at least raises a reasonable doubt in my mind.

E. CONCLUSION

[20] In conclusion, on both the law and on the facts, I do not find that Robert Itsi willfully obstructed Cst. Brown in the execution of his duty, and count 3 on the Information will be dismissed.

Bernadette E. Schmaltz
Territorial Court Judge

February 23, 2009
Inuvik, Northwest Territories

R. v. Robert Itsi

2009 NWTTC 03

T-3-CR-2008000580

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