

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

CAMERON YUKON

REASONS FOR DECISION
of the
HONOURABLE JUDGE GARTH MALAKOE

Heard at: Deline, Northwest Territories

Date of Decision: September 10, 2015

Date of Trial: March 3, 2015

Counsel for the Crown: Kindra Lakusta

Counsel for the Accused: Nico Homberg

Ruling on *voir dire* on Charter Application
[Sections 264.1(1)(a)x2, 129(a)x2, 175(1) *Criminal Code*]

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A. INTRODUCTION

A.1 Issue

[1] The accused, Cameron Yukon, was arrested for public intoxication under the NWT *Liquor Act* shortly after he got off the scheduled flight into Deline, Northwest Territories. The RCMP had received information that Mr. Yukon was intoxicated and was carrying an amount of alcohol in excess of what was legally allowed under the local liquor regulations. After his arrest, Mr. Yukon became verbal and physical with the police officers resulting in charges of uttering threats, resisting arrest and causing a disturbance.

[2] The issue in this trial has to do with the arrest and subsequent treatment of Mr. Yukon. Mr. Yukon submits that since his detention and arrest violated the *Charter*, he was resisting an illegal arrest. Further, he submits that the uttering threats charges and the causing a disturbance charge should be stayed as a result of the police behaviour.

A.2 The Trial

[3] The trial on these charges began on March 3, 2015 in the community of Deline. The trial commenced with a *voir dire* in respect of a Notice of *Charter* Application filed by the accused on January 30, 2015. In the Notice, the accused sought to have certain evidence excluded. At trial, counsel for the accused, with the consent of the Crown, amended the Notice to add another prayer for relief, being a judicial stay of proceedings pursuant to section 24(1) of the *Charter*.

[4] Counsel agreed that if the Court did not exclude evidence or did not grant a stay of proceedings following the *voir dire*, then the evidence called by the Crown during the *voir dire* would be applied to the trial.

[5] The Crown called two witnesses during the *voir dire*: Cst. Joe Miller and Cst. Adam Mackinnon. Mr. Yukon did not call evidence on the *voir dire*. When the Court adjourned on March 3, 2015, dates were set for written submissions to be filed and on June 1, 2015, counsel provided oral submissions.

[6] The following is my decision on the *voir dire*.

A.3 Relief Sought

[7] In his Notice of *Charter* Application and subsequent verbal amendment, Cameron Yukon seeks the following relief:

- (a) An Order pursuant to section 24(2) of the *Canadian Charter of Rights and Freedoms* that Mr. Yukon's rights under sections 7, 8, 9, 10(a) and 10(b) were violated and the exclusion of all evidence gathered in connection to such violation(s); and
- (b) An Order pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* for a stay of proceedings.

[8] During written and oral submissions, the accused abandoned his application with respect to sections 8 and 10(a) of the *Charter*.

B. BRIEF OUTLINE OF THE FACTS

[9] On May 24, 2014, the RCMP in Deline received information about someone coming in on the scheduled flight from Norman Wells who could be intoxicated and who could be bringing in an excess amount of liquor. The information came from two sources. First, a female caller from Norman Wells had phoned in a complaint that a male by the name of Cameron Yukon and a female named Kathleen were at the Norman Wells airport. Mr. Yukon was reported as highly intoxicated and talking about partying in Deline with alcohol in his bags.

[10] Second, Cst. Martin of the RCMP in Tulita advised that he had been made aware of an intoxicated male that was on the plane that had come into Tulita from Norman Wells and which was leaving for Deline. Cst. Martin had observed the male on the tarmac. The male was intoxicated and stumbling a bit. Cst. Martin was told by a passenger that this male had access to alcohol in his bags. The female caller from Norman Wells had described Cameron Yukon as wearing a

black hoodie and that he was 5'10", 200 pounds and highly intoxicated. This description of Cameron Yukon matched the description of the male given by Cst. Martin.

[11] Consequently, when RCMP officers, Cst. Mackinnon and Cst. Miller went to the Deline airport, they were investigating reports of an intoxicated male who could be bringing in more than the amount allowed under the *Deline Liquor Restriction Regulations*.

[12] The officers located Mr. Yukon and the female standing outside the airport terminal beside a truck waiting for their luggage. Mr. Yukon appeared to be intoxicated. His feet were wider than shoulder width apart. He had a strong odour of alcohol on his breath. His eyes were red and watery and there was a slight slur to his speech.

[13] Cst. Mackinnon advised them that the RCMP had received complaints that Mr. Yukon was intoxicated and transporting excess amounts of alcohol into the community. In response, Mr. Yukon said, "yes" and made a comment that the police could look in his bags. Cst. Mackinnon advised that Mr. Yukon was being detained under the *Liquor Act* for investigation. Mr. Yukon replied, "no."

[14] At this point in the interaction, the demeanor of Mr. Yukon changed. He physically took an aggressive stance. Cst. Mackinnon was concerned about escalating behaviour and told Mr. Yukon "that he was under arrest for public intoxication."

[15] From this point forward, Mr. Yukon engaged in actions and words which resulted in the two charges of uttering death threats against Cst. Miller and Cst. Mackinnon (section 264.1(1)(a)); two charges of resisting arrest by Cst. Miller and Cst. Mackinnon (section 129(a)); one charge of mischief (section 430(3)) and one charge of causing a disturbance in a public place (section 175(1)). The mischief charge was stayed by the Crown at the beginning of the trial.

C. ISSUES IN *VOIR DIRE*

C.1 Introduction

[16] The accused has the burden to establish, on a balance of probabilities that there have been violations of his *Charter* rights. In considering the accused's application, it is appropriate to consider the following issues:

- (a) The Investigative Detention;

- (b) The Arrest;
- (c) Treatment of accused while under arrest; and
- (d) Right to Counsel.

[17] Each of these issues is dealt with separately below.

C.2 Investigative Detention

[18] When the two RCMP officers went to the Deline airport, it was for the purpose of investigating two complaints. First, that the male identified as Cameron Yukon was “intoxicated, swearing, talking about partying in Deline with alcohol in his bags possibly” and second, that a male matching Cameron Yukon’s description was intoxicated, had re-boarded the plane in Tulita and had access to alcohol in his bags.

[19] In my view, the police should have acted on these two complaints. They did. As Cst. Mackinnon stated, they went to the airport for the purpose of “entering into an investigation under the Deline Liquor Restriction of an intoxicated male that prompted two people to call the RCMP and complain about him being intoxicated.”

[20] Had the complaints been simply that there was an intoxicated male, I would have expected the police to have handled the situation differently. That someone has simply consumed alcohol prior to getting on an airplane is not an offence. Although there were complaints of “intoxication”, Mr. Yukon had been allowed on the plane both in Norman Wells and in Tulita. The ground staff and the airplane crew did not take any action with respect to him; nor did Cst. Martin, in Deline. They all had the opportunity to observe him. The RCMP in Deline would have expected that if Mr. Yukon’s level of intoxication was at a level that he was a nuisance to others or a danger to himself or others, then someone would have intervened in Norman Wells or Deline. Furthermore, Cst. Miller spoke to the pilot of the plane in Deline and was told that Mr. Yukon’s female companion “kept him in line.”

[21] At the point when Mr. Yukon had gotten off the plane in Deline, no further complaints about his level of intoxication or behaviour had come to the attention of the RCMP. When the RCMP located Mr. Yukon, he was standing by the truck talking to his friends in the truck and his female travelling companion.

[22] Section 87 of the *Liquor Act*, S.N.W.T. 2007, c.15, as amended states that

87. (1) No person shall be intoxicated in a public place.

[23] “Intoxicated person” is defined in section 1 of the *Liquor Act*

“intoxicated person” means an individual who appears to be under the influence of liquor, a drug, or another intoxicating substance;

[24] The *Liquor Act*, as it currently exists, gives a peace officer a great deal of discretion in dealing with an intoxicated person in a public place. First, the definition of “intoxicated person” is very broad given that to be intoxicated, the person must simply “appear to be under influence of liquor.” Second, the peace officer may arrest the individual under section 122, which states:

122. A peace officer may arrest without a warrant a person he or she finds committing an offence under this Act or the regulations.

[25] Third, a peace officer may “apprehend” the intoxicated person and hold him in custody for a period less than 24 hours and until the person responsible for his custody believes on reasonable grounds that, according to section 87(3):

- (a) the person in custody has recovered sufficient capacity that he or she would be unlikely to cause injury to himself or herself or be a danger, nuisance or disturbance to others; or
- (b) a person capable of taking care of the person in custody has undertaken to do so.

[26] The purpose of section 87 is to protect intoxicated people from doing themselves harm and from doing harm or being a nuisance to others. Although the discretion given to peace officers is broad, it is not vague. Vertes, J. stated the following with regard to the equivalent to section 87 in the predecessor *Liquor Act*:

22. I also do not think that use of the term “in an intoxicated condition” in s. 81(1) is so vague as to be arbitrary. To some extent, the term is amplified by the additional criteria stipulated in the subsection. More importantly, the term is one that is the subject of common experience, one that has a general public understanding, and one that has been the subject of many judicial pronouncements. In that regard I respectfully adopt the conclusion of the Alberta Court of Appeal in *R v. Blackplume* (1993), 7 Alta.L.R. (3d) 285, as well as the specific words of McClung J.A. in that case where he says (at page 286) that “the discretion given by the legislature to peace officers to detain drunks is ... a necessary and wholly defensible aspect of the day to day operation of law enforcement.”

[27] When the RCMP approached Mr. Yukon at the airport, nothing that they observed him to be doing gave them cause for concern. He did not appear likely to cause injury to himself or to be a danger, nuisance or disturbance to others. Furthermore, he appeared to be with others who could look after him. In the absence of further facts, I would be surprised if Mr. Yukon could be legally arrestable in this scenario.

[28] I prefaced the previous comments with “had the complaints simply been that there was an intoxicated male.” In fact, Cst. Mackinnon and Cst. Miller were also investigating a complaint that Cameron Yukon was bringing in an illegal amount of liquor to Deline. In this regard, the police had the complaint from the female caller in Norman Wells and their previous history with Cameron Yukon with similar offences.

[29] Given this information, the police had a “reasonable suspicion” that Cameron Yukon was committing an offence under the *Deline Liquor Restriction Regulations*. It was reasonable for Cst. Mackinnon to approach Mr. Yukon and advise him that the police “had received complaints that he was intoxicated and transporting excess amounts of alcohol into the community.” It was after this, that Mr. Yukon said “yes” and said that Cst. Mackinnon could look in his bags.

[30] In my view, the RCMP had the necessary grounds to make an investigative detention of Mr. Yukon. In fact, Cst. Mackinnon advised that Mr. Yukon was being detained under the *Liquor Act* for a *Liquor Act* investigation.

[31] In order for a police officer to detain someone for investigation, he must have a reasonable suspicion that there is a connection between that person and a recent or on-going offence. This was summarized by the Supreme Court of Canada in *R. v. Mann*, [2004] 3 S.C.R. 59:

[45] To summarize, as discussed above, police officers may detain an individual for investigative purposes if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such a detention is necessary ... [Emphasis added.]

[32] The investigative detention should be brief in duration.

[33] In *R. v. Panaktalok*, [2011] N.W.T.J. No. 64, this Court found that the law of investigative detention applies to the *Liquor Act*:

[69] Cst. Unger had a suspicion that Mr. Panaktalok was involved with the transportation of liquor into the community of Tuktoyaktuk in an amount in excess of what was allowed under the Regulations. It was for this reason he was detained. Although *R. v. Mann* deals with the investigation of a “criminal offence” as opposed to an offence under a territorial statute such as the *Liquor Act*, it is reasonable to impute that a limited power of investigative detention exists with respect to Territorial statutes as well.

[34] The detention of Mr. Yukon by Cst. Mackinnon was based on objectively and subjectively reasonable grounds.

C.3 The Arrest

[35] When Mr. Yukon was told that he was being detained for a *Liquor Act* investigation, he immediately said “no” and took an aggressive stance. It was clear to the officers that Mr. Yukon was not cooperating with the detention. They had limited options. They could have left Mr. Yukon alone and terminated their investigation. They could have arrested him for obstruction of justice. Cst. Mackinnon chose to arrest him pursuant to section 122 of the *Liquor Act*.

[36] In my view, at the point of arrest, the officers had observed signs of intoxication and with Mr. Yukon’s denial of the investigative detention and his change in behaviour, they had grounds to effect the arrest.

[37] Section 122 of the *Liquor Act* empowers the police officer to arrest without a warrant a person he finds committing an offence under this Act or the regulations. Note that the test here is not “reasonable and probable grounds” that someone is committing an offence. The test requires that the person being arrested is found committing an offence. It must be subjectively and objectively apparent that Mr. Yukon was intoxicated. Further, in my view, it must be subjectively and objectively apparent that Mr. Yukon was likely to cause injury to himself or be a danger, nuisance or disturbance to others. This view finds support in the existing case law.

[38] In *R. v. Minoza*, 2007 NWTTC 1, the Court was dealing with the arrest provisions of the *Liquor Act*, which at the time, stated:

81. (1) Where a peace officer finds a person who in the opinion of the peace officer is in an intoxicated condition in a public place and is likely to cause injury to himself or herself or to be a danger, nuisance or disturbance to others, the peace officer shall apprehend the person and deal with him or her in accordance with this section.

[39] The Court in *Minoza* held that a police officer could also arrest someone who was intoxicated under section 111 which stated:

111. A peace officer may arrest without a warrant a person whom the peace officer finds committing an offence under this Act or regulations.

[40] This is the equivalent of section 122 of the current *Liquor Act*.

[41] In *Minoza*, the Court said that section 81(1) required the peace officer to apprehend the intoxicated person with the stated preconditions; however section 111 gives the peace officer the discretion to either arrest or not arrest a person for that offence where the preconditions in section 81(1) are not met.

[42] The Court pointed out that the language in section 111 (now 122) is permissive, however:

26. That being said, section 111 does not allow for arrests based on “reasonable grounds”. Section 111 requires that the peace officer “finds” the person “committing” the offence before he may arrest him. It is well settled law that the words “finds committing an offence” means that the arrestor must find the person apparently committing an offence: *Regina v. Biron* (1975), 23 C.C.C. (2d) 513 (S.C.C.)

27. The test has been further refined in the case of *Roberge v. The Queen* (1983), 4 C.C.C. (3d) 304 (S.C.C.) where at page 9 Lamer J. on behalf of a unanimous court states:

Surely it must be “apparent” to a reasonable person placed in the circumstances of the arresting officer at the time.

[43] Cst. Mackinnon testified that “at the point where he denied the detention, I formed the opinion or the grounds that he was impaired in a public place or intoxicated in a public place, and I changed my thought process to an arrest.”

[44] A reasonable person standing in the shoes of the police officers would conclude that Mr. Yukon was intoxicated and was about to become aggressive in response to the investigative detention.

[45] Given that I have found the arrest to be legal pursuant to the *Liquor Act*, I do not have to decide whether or not the powers of arrest contained in sections 494 and 495 of the *Criminal Code* are applicable to territorial offences. In *Minoza*, the Court found that sections 494 and 495 are inapplicable because the offences created by the *Liquor Act* are not “indictable” or “criminal”. In *R. v. Akpalialuk*, 2013 NUCJ 12, the Nunavut Court of Justice declined to follow this proposition.

[46] Had Cst. Mackinnon arrived at the airport; immediately arrested Cameron Yukon for public intoxication and then undertaken a search of his luggage for alcohol, my analysis could very well have been different. The arrest powers for intoxicated persons under section 122 of the *Liquor Act* are not intended to be used as a shortcut to incidentally search baggage. As I said earlier, that was not the case here. Upon being placed under investigative detention, Mr. Yukon’s behaviour became a danger to others.

[47] My finding that the arrest was a legal arrest pursuant to the *Liquor Act* is based on the facts of the circumstances of this case: the nature and specificity of the complaints by the caller in Norman Wells and Cst. Martin in Tulita; the observations made by Cst. Miller and Cst. Mackinnon of Mr. Yukon; his reaction to the investigation and the investigative detention; and his previous history with the police. In my view, this was an unusual constellation of circumstances. My finding should not, in any way, be considered approval of a practice where the

police can arrest people for public intoxication simply because they have been drinking and are suspected of carrying excess liquor.

C.4 Treatment of Accused while under arrest

[48] After Mr. Yukon had been arrested for being intoxicated in public, he was escorted to the police truck by the two officers. At the rear door to the police truck, Mr. Yukon turned around in an effort to prevent the officers from placing him in the back of the truck. Mr. Yukon said to Cst. Mackinnon, “Fuck you. You belong in the ground.” He was lifted up and pushed into the back of the police truck and the door was closed. Mr. Yukon rolled onto his back and began kicking at the driver’s side rear door with his feet. Cst. Miller came around to the passenger side of the truck.

[49] Mr. Yukon began screaming. His words included the following: “You guys belong in the ground”; “You don’t belong here”; “pigs”; “faggots”. Cst. Mackinnon re-arrested Mr. Yukon for uttering threats. Cst. Miller turned on a recording device at this point.

[50] Cst. Miller saw Cameron Yukon drive his head into the plexiglass window separating the front part of the truck from the rear passenger part of the truck. This separation is known as the “silent patrolman”. There are six “bangs” which can be heard on the recording which Cst. Miller identifies as Mr. Yukon banging his head on the silent patrolman. Later on, Cst. Miller observed blood on the silent patrolman and blood on the face and cuts on the forehead of Cameron Yukon.

[51] The audio recording is about ten minutes in duration. Mr. Yukon is heard screaming, among other things, “Get out of town!”, “You don’t belong here” and “Pig!” At approximately two minutes and thirty seconds into the recording, Mr. Yukon says to Cst. Mackinnon, “I’m ready to die. Are you?” Later he says, “Hey, you fucking pig! Let’s go!” A few seconds later, he yells, “You and me go outside, go one-on-one!”

[52] At approximately six minutes into the recording, Mr. Yukon yells, “Hey! One-on-one! You’re two-on-one. I’ll beat you!” and then yells, “They wanna bury you man.”

[53] At the detachment, before removing Mr. Yukon from the vehicle, both officers took Mr. Yukon’s possessions and some alcohol into the detachment. They came back and told him to get out. He stepped out of the vehicle, pulled away from the officers, turned around and from the steps of the detachment, started yelling at a group of people who were watching. He yelled, “Come get these guys.” As he did, Mr. Yukon tripped and Cst. Mackinnon and the accused fell to

the floor in the detachment. Mr. Yukon resisted all procedures from this point until being put into the cell.

[54] Mr. Yukon was put into a cell and the door was closed between 5:35 p.m. and 5:40 p.m. Prior to getting into the cell, Mr. Yukon turned his back towards the interior of the cell, held on to the door and the frame and would not go in. He was pushed into the cell. For at least five to ten minutes, he screamed and yelled and kicked at the door. At 6:02 p.m., Cst. Miller observed Mr. Yukon to begin to calm and Mr. Yukon knocked on the door to get Cst. Miller's attention. At 6:15 p.m., Mr. Yukon said to Cst. Miller that he wanted to phone his father. Cst. Miller said that he would be allowed to speak with legal counsel once he was calm. At 9:39 p.m., Mr. Yukon was still banging on the door yelling and screaming obscenities at the guard. The following was said to the guard, GW: "I hope she dies"; "Fuck you, GW, you little faggot. I hope your fat wife fucking dies." "I hope C. fucking dies."

[55] At 9:34 p.m., Mr. Yukon said that he wanted to speak on the phone. Cst. Miller denied this request because "five hours after arrest, he is still agitated and aggressive."

[56] When asked why the officers did not seek medical attention for Mr. Yukon's injuries, Cst. Mackinnon testified, "Yea, we kept observing him. He was not losing consciousness. The blood was drying up. It wasn't continuously bleeding. And due to his violent behaviour, we didn't think it would be safe to have a nurse come into the cell block to see him."

[57] Between 11 p.m. and midnight, after he had calmed down, Cst. Mackinnon asked Mr. Yukon if he wanted to speak to counsel. Mr. Yukon said no. Cst. Mackinnon released Mr. Yukon at 11:09 p.m.

[58] The decision of Cst. Mackinnon to keep Mr. Yukon in cells until he was no longer a risk to himself or to others was appropriate.

C.5 Right to Counsel

[59] After the accused was arrested for public intoxication, he was taken to the police truck. He resisted being put into the truck and upon being put into the truck, uttered, "Fuck you. You belong in the ground."

[60] Cst. Mackinnon then arrested Mr. Yukon for uttering threats and read him his rights. Cst. Mackinnon asked whether Mr. Yukon wished to speak to counsel at that time. Mr. Yukon responded with, "Fuck you" and then, "I don't understand

shit.” Cst. Mackinnon decided it was necessary to lodge Mr. Mackinnon into cells until sober.

[61] Once at the detachment, Cst. Mackinnon testified that he was prepared to allow Mr. Yukon to access legal counsel if he would “stop threatening people within the building, stop swearing, stop kicking, stop screaming.” This happened shortly after 11 p.m. Mr. Yukon had been calm for 40 minutes. He was offered access to legal counsel but chose not to when he learned that he was being released on a promise to appear and an undertaking.

[62] The room in the detachment which is used by accused persons to phone legal counsel has two windows which overlook the road. It doubles as an interview room with camera equipment and as a kitchen with utensils. Cst. Mackinnon felt that because of the way Mr. Yukon was acting, for his safety and others, he could not be left alone in the interview room.

[63] Section 10(b) of the *Charter* states that “everyone has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right.” This imposes both an informational duty and an implementational duty on the police. Cst. Mackinnon fulfilled the informational duty upon Mr. Yukon being put into the back seat of the police truck.

[64] Mr. Yukon was arrested at 5:17 p.m. He was not given the opportunity to contact legal counsel until just after 11:00 p.m. According to Cst. Mackinnon, between the time of arrest and 11:00 p.m., “there were numerous times when he [Cameron Yukon] asked to talk to a lawyer.” Based on the testimony of Cst. Miller and Cst. Mackinnon, Mr. Yukon was not allowed to phone a lawyer for the following reasons: he was yelling and screaming in the cell; he was threatening the guards and the officers; he was physically resisting the officers; and it would have been unsafe to leave him alone in the telephone room.

[65] In *R. v. Luong (2000)*, 149 C.C.C. (3d) 571, the Alberta Court of Appeal stated in paragraph 12 that “the first implementational duty is ‘to provide the detainee with a reasonable opportunity to exercise the right (except in urgent and dangerous circumstances)’. *R. v. Bartle (1994)*, 92 C.C.C. (3d) 289 (S.C.C.) at 301”

[66] Cameron Yukon’s word to Cst. Mackinnon in the police truck were profane, loud, aggressive and largely unresponsive. The Court has had the benefit of listening to the 10 minute audio recording. There was no reasoning with Mr. Yukon in the state that he was in. If this behaviour lasted for the time indicated by the officers, it would have been not only unsafe to leave him alone in the phone room, but would serve no purpose. Given these circumstances, it was reasonable

for the police to require Mr. Yukon to demonstrate reasonable, calm and non-threatening behaviour before allowing him to contact legal counsel.

[67] Mr. Yukon's section 10(b) *Charter* right was not violated.

D. CONCLUSION

[68] The initial arrest of Cameron Yukon was legal and pursuant to the *Liquor Act*. He received his injuries as a result of his own actions in banging his head against the silent patrolman. He was kept in cells until it was appropriate to release him. The decision not to allow him to use the telephone while he was violent and threatening the police officers and guard was appropriate.

[69] I do not find that there were any breaches of the *Charter* as alleged by the accused and therefore do not need to decide the applicability of section 24 of the *Charter*.

[70] The application by the accused for exclusion of evidence or a stay of proceedings is denied.

Garth Malakoe
T.C.J.

Dated at Yellowknife, Northwest
Territories, this 10th day of
September, 2015.

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