PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v.Greencorn*, 2013 NSPC 115

Date: 20131120
Docket: 2569217
Registry: Pictou

Between:

Her Majesty the Queen

v.

Matthew David William Greencorn

VERDICT

Judge:	The Honourable Judge Del W. Atwood
Heard:	16 October, 20 November 2013, in Pictou, Nova Scotia
Charge:	Para. 348(1)(b) of the *Criminal Code*
Counsel:	Patrick Young for the Nova Scotia Public Prosecution Service Douglas Lloy for Matthew David William Greencorn

By the Court:

Synopsis

[1] Mr. Greencorn is charged with breaking into the home of Sean Cyr with intent to commit the indictable offence of mischief, contrary to para. 348(1)(b) of the *Criminal Code of Canada*.[1] This problem with the criminal law arose for Mr. Greencorn when he was highly intoxicated by the voluntary consumption of alcohol. There is no real dispute that Mr. Greencorn went into Mr. Cyr's home without Mr. Cyr's permission; nor is there a dispute that Mr. Greencorn wound up kicking open the door and interfering with Mr. Cyr's lawful use of his tenancy. Defence counsel raises the defences of intoxication and colour of right. There is no air of reality to either defence. For the reasons that follow, I am satisfied that all of the elements of the para. 348(1)(b) offence have been proven beyond a reasonable doubt, and I find Mr. Greencorn guilty of that offence.

Findings of fact

[2] The court heard from Sean Cyr, the tenant of the home where Mr. Greencorn found himself the early morning of 3 February 2013. The court heard

---

[1]The charge was worded originally as a para. 348(1)(a), breaking and entering with intent; the count was amended to the present para. 348(1)(b) wording on application of the prosecution with the consent of defence counsel.

also from Sergeant H. Dunbar of the Westville Policing Service who saw Mr. Greencorn at the scene; when Mr. Greencorn took flight, Sgt. Dunbar pursued and arrested him. Evidence was called by the defence at this trial: the court heard from Jordan MacKie; she had rented the premises occupied by Mr. Cyr up until September 2012 and is a friend of Mr. Greencorn's. Last of all, the court heard from Mr. Greencorn.

[3] I found the testimony of Mr. Cyr and Sgt. Dunbar credible and trustworthy. It is clear that Mr. Cyr had a good recollection of the morning's events; he had never encountered Mr. Greencorn before, and it was obvious to me that be bore him no ill will, notwithstanding Mr. Greencorn's invasive and ultimately combative conduct. As a non-drinker, Mr. Cyr was sober and alert when Mr. Greencorn confronted him.

[4] Sgt. Dunbar was on duty at the time of the incident; as an experienced and highly proficient officer, he described in detail what he saw and what he did.

[5] Defence counsel did not take much issue with the evidence of these two witnesses for the prosecution, and cross-examined them skilfully on indicia of Mr. Greencorn's alcohol intoxication. Both witnesses agreed that Mr. Greencorn was intoxicated significantly by alcohol.

[6] I found that Ms. MacKie was an earnest and truthful witness who recounted accurately her friendship with Mr. Greencorn; the two were certainly on very good terms, as Ms. MacKie favoured Mr. Greencorn with an open-door policy, up until the time she moved away from her rental trailer in September 2012. However, as her evidence pertained to the status of things fully five months prior to Mr. Greencorn's misadventure, it was of somewhat reduced materiality.

[7] Similarly of little effect was Mr. Greencorn's evidence; this is because he claimed not to remember much of the early morning of 3 February 2013 due to his high level of alcohol intoxication. The term used most frequently by Mr. Greencorn in the witness box in describing his recollection of events was: "It's all very blurry." Yet, Mr. Greencorn was quite sure that he had headed to Ms. MacKie's old place because he thought she still lived there. This singular island of clarity in what was otherwise an ocean of fog and haze–and on a point that might offer safe harbour–is, essentially, unbelievable. I am sure that Mr. Greencorn recognized the address from his earlier visits with Ms. MacKie; however, it is my finding that, in his drunken condition, Mr. Greencorn really did not care whether Ms. MacKie still lived there. He might have remembered the address. But did he show up looking simply for a friend's place to crash? If so,

why the remark to Mr. Cyr that he was looking for someone who owed him money?

[8] Based on all of this evidence, I find that, at around 3 a.m. on 3 February 2013, Mr.Greencorn was walking away in a drunken condition from a house party on Cowan Street, Westville. Simultaneously, Mr. Sean Cyr was resting in his rental mobile home at 2063 Spring Garden Road, Westville. Mr. Greencorn came upon that address; he might well have recognized it from visits he had made there many months before when the trailer had been rented by Ms. Jordan MacKie. Mr. Greencorn walked in, unbidden, through the front door; access was easy, as the door was not locked and did not fit snugly in the door casing. Alerted to this by the noise, Mr. Cyr got up and observed Mr. Greencorn in his home. Mr. Cyr asked Mr. Greencorn to identify himself; Mr. Greencorn did not do so, responding instead that he was looking for someone who owed him money–a strange comment, indeed, from one who now asserts a right of entry based on friendship with a former tenant. Mr. Cyr told Mr. Greencorn to leave and escorted him outside without difficulty. Soon after that, Mr. Cyr saw that Mr. Greencorn had re-entered and was wearing one of Mr. Cyr's shoes. Again, Mr. Cyr escorted Mr. Greencorn outside. After a passage of several minutes, Mr. Cyr heard what he described as "thumping"; he found his front door kicked in and Mr. Greencorn

standing on the porch. Mr. Cyr testified that "I asked him what his problem was", and said that he tried to get Mr. Greencorn to leave; Mr. Greencorn challenged Mr. Cyr to a fight and gestured combatively.

[9] Simultaneously, Sgt. Dunbar arrived on the scene, investigating a complaint of an impaired pedestrian in the area. He spotted Mr. Greencorn on Mr. Cyr's porch, illuminated the area with his alley light, and witnessed Mr. Greencorn kicking open the door and entering Mr. Cyr's trailer. Seemingly alerted to the officer's presence, Mr. Greencorn fled with Sgt. Dunbar in pursuit on foot. Once apprehended, Mr. Greencorn put it up, and had to be restrained by Sgt. Dunbar with some force. Mr. Greencorn told the officer: "You've got fucking nothing on me."[2] After having been driven to the police station, Mr. Greencorn refused initially to identify himself properly, giving his name variously as "Matthew Macdonald", then "Matthew MacLeod", and finally "Bill MacDonald". He declined to call legal counsel.

---

[2]Mr. Greencorn's utterances to Sgt. Dunbar were the subject of a confessional *voir dire*; at the conclusion of the *voir dire*, defence counsel admitted voluntariness pursuant to *R. v. Park*, [1981] 2 S.C.R. 64 and the utterances were received in evidence.

Legal analysis

[10] Section 321 of the *Criminal Code* defines "break" as follows:

> (a) to break any part, internal or external, or
>
> (b) to open any thing that is used or intended to be used to close or to cover an internal or external opening;
>
> . . . .

[11] Section 350 of the *Code* states:

> For the purposes of sections 348 and 349,
>
> (a) a person enters as soon as any part of his body or any part of an instrument that he uses is within any thing that is being entered; and
>
> (b) a person shall be deemed to have broken and entered if
>
> (I) he obtained entrance by a threat or an artifice or by collusion with a person within, or
>
> (ii) he entered without lawful justification or excuse, the proof of which lies on him, by a permanent or temporary opening.

[12] As was found by the Supreme Court of Canada, merely walking through the open doorway of a partially built house was caught by this provision.[3] Accordingly, I am satisfied beyond a reasonable doubt that Mr. Greencorn, by crossing the threshold of Mr. Cyr's home, knowing that he had no permission to go inside, broke into the Cyr dwelling. I find similarly that Mr. Greencorn interfered with Mr. Cyr's use and enjoyment of his home, and that he damaged it by kicking open the front door. Thus, the *actus reus* of breaking, entering and committing the offence of mischief has been made out beyond a reasonable doubt.

[13] This, however, does not end the inquiry as there remains the issue of *mens rea,* and Mr. Greencorn has raised the defences of intoxication and colour of right.

[14] The prosecution asserts that the defence of intoxication is not available to the accused, as the offence of breaking, entering, and committing the offence of mischief is a general-intent offence. It is trite law that voluntary intoxication operates as a defence to a general-intent offence–essentially negativing *mens rea*–only when the level of intoxication renders the actions of an accused as automatic or insane, as outlined in *R. v. Daviault* ; [4] as Cory J. noted in his opinion

---

[3] *Johnson v. The Queen*, [1977] 2 S.C.R. 646 at 652-3.

[4] [1994] S.C.J. No. 77 at paras.64-67.

in that case–concurred in by the majority–this would undoubtedly require the calling of expert evidence. None was presented to the court by Mr. Greencorn. However, it is essential to recognize that the defence of intoxication in a case charging a specific-intent offence does not require as onerous a proof; while in specific-intent cases, expert evidence might be needed to show that an accused's high level of impairment deprived him or her of the capacity to form the requisite specific intent, evidence of intoxication that were to raise a reasonable doubt about specific-intent *mens rea* would necessitate an acquittal.

[15] Therefore, the question arises: is the offence before the court one of specific or general intent? The prosecution asserts the latter, and relies on the well known decision of *R. v. Quin*.[5] In my view, *Quin* is not dispositive of this issue, as the charge in that case was breaking, entering and committing the indictable offence of assault causing bodily harm; as outlined in *Quin*, assault causing bodily harm is a crime of general intent.[6] However, this is a charge of breaking-in and committing mischief. Whether a break-enter-and-commit offence might require proof of a specific or general intent will depend upon the nature of the subsidiary charge; this was discussed comprehensively by the Ontario Court of Appeal in *R.*

---

[5][1988] S.C.J. No. 99.

[6]*See also*, *R. v. Munroe*, [1978] N.S.J. No. 537(A.D.).

v. Breese.[7] Accordingly, break and enter with intent under para. 348(1)(a) is a specific-intent offence, as is break and enter and commit theft, or break and enter and commit robbery, or break and enter and commit arson.

[16] But what of break and enter and commit mischief?

[17] The law on this point, too, is clear: mischief is an offence of general intent: *R. v. Schmidtke*.[8]

[18] Assessed on that basis, it is my view that there is no air of reality to the defence of intoxication–and that is the first threshold Mr. Greencorn must meet in advancing such a defence.[9] There is no expert evidence before the court on the issue of Mr. Greencorn's level of intoxication; furthermore, Mr. Greencorn's flight from Sgt. Dunbar and his verbal reactions when apprehended demonstrate that he was conscious of what he had done, far, far above the state of virtual unconsciousness which is required to raise a defence of intoxication in a general-intent-offence trial.

---

[7][1984] O.J. No. 72.

[8][1985] O.J. No. 84 (Ont.C.A.).

[9]See *R v. Cinous*, 2002 SCC 29 at para. 65; *R. v. Fontaine*, 2004 SCC 27 at paras. 69-70.

[19] With regard to the colour-of-right defence, again, I find that there is no air of reality to it. To argue that Mr. Greencorn somehow contorted a permission to enter Mr. Cyr's home because of his state of intoxication–and this fully five months after Ms. MacKie had quit the premises–would, in my view, have the result of allowing an intoxication defence in a case in which that defence is legally and factually unavailable to the accused.

[20] In saying this, I approach with caution the legal burden imposed upon an accused with respect to the colour-of right defence as set out in sub-s. 429(2) of the *Code,* which would be applicable in the defence of mischief charges. No constitutional issue was raised before me regarding that reverse-onus provision. However, even if it had been, and the Court were to have concluded that the reverse onus in sub-s. 429(2) violated para. 11(d) of the *Charter*–as was found to be the case in *obiter* in *R. v. Gamey*[10]–I would nevertheless have been satisfied that the prosecution had negatived the defence beyond a reasonable doubt, as there is simply no air of reality to the defence. Consider Mr. Greencorn's initial conduct: going in and telling Mr. Cyr he was trying to track down someone who owed him money; later, kicking open the door and challenging Mr. Cyr to a fight. Consider

---

[10][1993] M.J. No. 130 (C.A.)

as well the evidence of Mr. Greencorn's post-alleged-offence conduct. On this point, I caution myself strongly that this evidence ought not to be used here as evidence of consciousness of guilt, as it is of no probative value in determining Mr. Greencorn's level of culpability as between mischief and a break-enter-and-commit mischief charge; I apply most definitely the principles laid out by the Supreme Court of Canada in *R. v. Arcangioi*.[11] However, as was noted by that Court in *R. v. White*, post-alleged-offence conduct might be admissible properly in rebuttal of proffered complete or partial defences or to challenge credibility.[12] Mr. Greencorn ran from Sgt. Dunbar and resisted arrest when he was caught; he offered up a Cagney-like, you-got-nothing-on-me retort when told he was under arrest; finally, he identified himself falsely at the police station. These are actions completely inconsistent with an assertion of colour of right.

[21] Nevertheless, I am mindful that the rejection of a defence does not lead axiomatically to a conviction. This is because, applying the principles in *R. v. W.(D.)*, even if I should not believe the evidence of Mr. Greencorn, and even if that evidence should not leave me in a state of reasonable doubt, I must ask myself whether, based on the evidence I do accept, I find the prosecution to have proven

---

[11][1994] 1 S.C.R. 129 at paras. 39-45.

[12]2011 SCC 13 at paras. 64-79.

each and every element of the offence beyond a reasonable doubt; anything less than that must result in an acquittal.[13]

Conclusion

[22] Based on my evaluation of the evidence, I am satisfied beyond a reasonable doubt that Mr. Greencorn intentionally broke into the dwelling rented by Mr. Cyr, damaged that dwelling and interfered with Mr. Cyr's lawful use and enjoyment of it. I find Mr. Greencorn guilty as charged.

_____

J.P.C.

[13][1991] 1 S.C.R. 742 at para. 28.