

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN

- and -

LARRY INKSTER

CHARGE: S.86(1) C.C.C. - Unsafe Storage of Firearm

R E A S O N S F O R J U D G M E N T

HEARD BEFORE THE HONOURABLE MR. JUSTICE W. G. BEATTY,
on THURSDAY, MARCH 3, 2005
at BRACEBRIDGE, Ontario.

APPEARANCES:

Ms. C. MCGOEY,

Counsel for the Crown

C. MARTIN, Q.C.,

Counsel for the accused

5

10

15

20

25

30

ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

REASONS FOR JUDGEMENT, BEATTY, O.C.J. Page 1

CERTIFICATION ***** Page 8

Transcript Ordered: March 4, 2005.
Transcript Order Recv'd.: March 30, 2005.
Transcript Completed: March 31, 2005.
Counsel Notified: April 4, 2005.

REASONS FOR JUDGMENT

BEATTY, O.C.J.: (Orally)

5 Mr. Inkster is charged with unsafe storage of a
firearm on February the 16th, 2004, contrary to S.86(1)
of the Criminal Code.

10 Mr. and Mrs. Inkster lived in a home located in a
sparsely populated rural area. They were having
marital problems and Mr. Inkster moved into the
basement in the Spring of 2003. Their children are
grown and living on their own. Relations between
15 husband and wife continued to deteriorate and Mrs.
Inkster became concerned about her safety because of
her husband's drinking and increasingly angry
behaviour.

20 Mr. Inkster is a life-long hunter and usually
stored his firearms in his closet in the master
bedroom. He owns three rifles, a shotgun and a
crossbow. The rifles are a Winchester, Model 70 30.06,
bolt action rifle with magazine, a Remington semi-
25 automatic 30.06 with magazine, a Ruger 22 tube loader
and a 20 gauge break action shotgun.

30 During the hunting season in the Fall of 2003 he
moved the 22 rifle, shotgun and crossbow to his room in
the basement. When the children arrived to visit in
December Mrs. Inkster moved those weapons and an
ammunition pouch back into the master bedroom closet.

On February the 12th, 2004 Mr. and Mrs. Inkster had

R. v Larry Inkster
Reasons for Judgment - Beatty, O.C.J.

5 an angry confrontation and Mrs. Inkster fled the house to her sister's home in the early hours of February the 13th. She notified a police acquaintance by email of these events and that her husband had guns in the house. The police officer received the email upon his return to work on February the 16th and sent two officers to get her statement. She directed those officers to the closet where the firearms were stored. 10 Constable Kent seized the three rifles, shotgun, crossbow and bolts and the ammunition pouch containing 20, 30.06 cartridges and other hunting equipment. Constable Boyd received the firearms at the closet door and put them into bags for transport to the detachment. 15 None of the firearms had trigger locks. Both officers admitted they were not firearms experts although they had some familiarity with firearm safety because of their employment.

20 It is clear from the facts that the firearms were stored in the closet as was the pouch containing the 30.06 cartridges. No other ammunition was found in the house although Mr. Inkster said it was stored in his hunting duffle bag behind the headboard of his water bed in the basement. He acknowledges that the 25 cartridges and the hunting pouch in the master bedroom closet were likely all the ammunition in the house on February the 16th, 2004 as he had used the remainder.

30 Although Mrs. Inkster had taken over the master bedroom and would lock the door to preserve her privacy, the passage lock on the door was easily opened with a probe or a wire and Mr. Inkster had inspected

R. v Larry Inkster
Reasons for Judgment - Beatty, O.C.J.

5
the closet on at least one occasion since his wife put the 22 rifle, shotgun and pouch in the closet. She had told him that she had put the firearms where he always had stored them.

10
It is clear from the facts that Mrs. Inkster had not taken possession of the firearms to the exclusion of her husband so that he was no longer in possession of them under S.4(3) of the Criminal Code.

15
20
25
30
S.86(1) of the Criminal Code creates the offence of storage without lawful excuse of a firearm or ammunition in a careless manner or without reasonable precautions for the safety of other persons. Mr. Inkster was entitled to possess the firearms and to store them. The offence was made out if the storage is careless or without reasonable precautions for the safety of other persons. Mr. Inkster maintains that the firearms were safe, in fact, the evidence at trial is uncontroverted that the Remington 30.06 automatic could not be fired without a magazine and there was no ammunition found in the house to load the 22 rifle or the 20 gauge shotgun. It is also uncontroverted that the Winchester Model 70 30.06 bolt action rifle takes a magazine and cannot be fired without a bolt. A single cartridge possibly could be manually loaded in the breach without the magazine. Therefore, the Winchester is the only firearm that potentially could be a threat to the safety of others and then only if the bolt were installed. Mr. Inkster says the bolt was removed and stored in his basement bedroom in his hunting duffle bag, hidden behind the head board.

R. v Larry Inkster
Reasons for Judgment - Beatty, O.C.J.

5
10
15
Constable Kent was the officer who recovered the firearms in the master bedroom closet together with ten rounds of 30.06 in the hunting pouch. His notes do not confirm that the bolt was in the Winchester nor that the magazines were not installed in either of the 30.06 rifles or were otherwise found in the closet. When questioned on cross-examination he said he was "Pretty certain, sure, that he found the bolt in the rifle". He would have noted the bolt as being separate if it were not installed. He said, "The bolt would have been in the gun", and that he "Would not have put the bolt in the gun and did not see P.C. Boyd do so". He explained that he did not list the bolt for the 22 rifle separately in his notes because it was installed and that his notes do not say that the 30.06 rifle was without the magazine which implies to him that the magazine was in the rifle. On re-examination he said, "I believe the bolts were not removed".

20
25
30
Constable Boyd says that he stood at the closet door and received the firearms from Constable Kent, placed them in bags and prepared them for transport. He did not see Constable Kent put a bolt into any of the firearms or hear a bolt opening or closing. He says that the firearms were not assembled to appear other than they were seen in court. When presented as an exhibit the Winchester had the bolt installed. There is no evidence that the bolt was found either in the ammunition pouch in the closet or in the hunting duffle bag in the downstairs bedroom. There is no reason why the bolt would be installed in the Winchester after its seizure and I find as a fact that

R. v Larry Inkster
Reasons for Judgment - Beatty, O.C.J.

the Winchester was stored with the bolt installed on February 16th, 2004.

The offence under S.86(1) can be committed in two ways: by storage in a careless manner or by not taking reasonable precautions for the safety of others.

The definition of careless is examined in the leading case of *R. and Hundell*, [1993] 1 S.C.R. 867.

"Where carelessness is an essential element of a criminal offence it requires a marked departure from the standard of care of a reasonable person."

This interpretation is followed in *R. and Gosset*, [1993], 3 S.C.R. 76, *R. and Creighton*, [1993] 3 S.C.R. 3 and *R. and Chekov*, and unreported decision of Justice Thompson of the Ontario Court of Justice, General Division, as it then was.

In order to determine the reasonableness and whether the alleged conduct is a marked departure the Court must consider all of the circumstances and apply the objective test of the reasonable person.

The Crown led evidence from Constable Rawluk that there had been one break and enter of a cottage on this road in February of 2004 and one theft of a motor vehicle in the three years preceding February the 16th, 2004.

Mr. Inkster says the house is always locked and they have a German Shepherd dog which would discourage any break-in.

R. v Larry Inkster
Reasons for Judgment - Beatty, O.C.J.

5
Mrs. Inkster says that the patio door leading off the porch was never locked as the lock was missing and although the deck was ten feet off the ground it could be accessed by an old ladder as she had done once when she locked herself out.

10
Mr. Inkster said the lock was operative in February 2004 and that the ladder was very old and likely to collapse if it were used. He was not aware of any break-ins in the area and the neighbourhood was very sparsely populated, being on a dead-end street and particularly in winter.

15
Mr. Inkster had stored the ammunition pouch in his basement bedroom and Mrs. Inkster put it in the master bedroom closet when gathering up the 22 rifle, shotgun and crossbow in December, 2003. It's unclear if he subjectively knew that the ammunition pouch was there in the master bedroom closet.

20
Mrs. Inkster had no familiarity with the operation of the rifle and it's unlikely she could have loaded a single cartridge manually. Although it is conceded that the firearms were not stored in accordance with regulation under Paragraph 117(h) of the Firearms Act, S.86(2) is not an included offence as set out in *R. and Chekov*, nor is it proof in itself of carelessness.

25
30
I am unable to conclude beyond a reasonable doubt that the actions or inaction of Mr. Inkster constituted a marked departure from the standards of a reasonable person.

R. v Larry Inkster
Reasons for Judgment - Beatty, O.C.J.

5
10
15
20
25
30

Addressing the matter of reasonable precautions for the safety of others , it is incumbent on the Court not to speculate or make assumptions as to facts not in evidence. Whether the patio door was locked or not and whether the ladder was fit for climbing or not on February the 16th, 2004, either Mr. or Mrs. Inkster were present in the house almost all the time as was the German Shepherd dog. There is no evidence that the house was at high risk of a break-in, and the firearms were stored in an area concealed from the outside view and even an invited guest.

There is no evidence that Mrs. Inkster could operate the Winchester and it cannot be assumed that Mr. Inkster would threaten his wife with a firearm despite the volatile mix of high emotions, angry words and alcohol as their marriage deteriorated. He is an experienced hunter who has not used his firearms for unlawful purposes. There were no children present who could accidentally discharge the Winchester which required some degree of knowledge and dexterity to load a single cartridge. Objectively, the risk of harm coming to a person from the Winchester rifle was low.

I am not satisfied beyond a reasonable doubt that Mr. Inkster, by his actions or inactions did not take reasonable precautions for the safety of persons on the date alleged and therefore I must dismiss.

R. v Larry Inkster
Reasons for Judgment - Beatty, O.C.J.
Certification

PHOTOSTAT COPIES OF THIS TRANSCRIPT ARE NOT CERTIFIED AND HAVE NOT BEEN PAID FOR UNLESS THEY BEAR THE ORIGINAL SIGNATURE OF ELEANOR FLYNN AND ACCORDINGLY ARE IN DIRECT VIOLATION OF ONTARIO REGULATION 587/91, COURTS OF JUSTICE ACT, JANUARY 1, 1990.

FORM 2
CERTIFICATE OF TRANSCRIPT (Subsection 5(2))
EVIDENCE ACT

I, ELEANOR FLYNN, certify that this document is a true and accurate transcript of the recording of R. v Larry Inkster in the ONTARIO COURT OF JUSTICE held at 3 DOMINION STREET, BRACEBRIDGE, Ont., taken from Recording No.2411-03-0052-2005 which has been certified in Form 1.

Eleanor Flynn

Eleanor Flynn

March 31, 2005.

Certified Court Reporter, C.R.A.O.