REGINA v. MARSDEN

(1972), previously unreported
Ontario Provincial Court, Baxter J., 4 May 1972

BAXTER J.: You are charged before me that on or about the 12th February 1971, at the township of Alnwick, in the County of Northumberland you unlawfully did have in your possession a restricted weapon, to wit: a 22 calibre Western Six Shooter, for which you did not have a registration certificate issued to you, contrary to s. 91, s-s.(1)(b) of the *Criminal Code*, R.S.C. 1970, c. C-34, of Canada.

You appeared before me a year ago on the 25th March 1971, and pleaded not guilty to the charge and for various reasons the matter has been adjourned from time to time since that.

The judgment is -- this is a matter in which the defendant, Kenneth Melville Marsden is charged that on or about the 12th day of February 1971, at the township of Alnwick, in the County of Northumberland, he did unlawfully have in his possession a restricted weapon, to wit: a 22 calibre Western Six Shooter, for which he did not have a registration certificate issued to him contrary to s. 91, s-s. (1)(b) of the *Criminal Code* \, as it then was.

The defendant does not deny the allegations of the prosecution but submits in essence that being a member of the Mississauga Tribe of Indians on the reserve at Rice Lake, he is not subject to the provisions of the *Criminal Code* in respect of what he was doing at the time he was charged.

I have read exhibit number one being a treaty made on November 15th, 1923, between His Majesty the King and the Mississauga Indians of Rice Lake etc., put in evidence by the defendants as well as the sections of the *Indians Act*, R.S.C. 1970, c.I-6 and the regulations made thereunder referred to by the defence. I have also examined the law submitted by the Crown and all other relevant decisions which I was able to find having any bearing on the case before me.

Without reciting, at great length, the details of fact and law as found in these decisions I must conclude that the defendant, in the circumstances as disclosed in the instant case is most definitely subject to the provisions of the *Criminal Code* of Canada and therefore guilty as charged, and I so find.

Indeed I heartily subscribe to the opinion expressed by Meredith J.A. in *The King v. Beboning* (1908), 13 C.C.C. 405 at 413 [3 C.N.L.C. 517] (Ont. C.A.). His Lordship said:

The suggestion that the Criminal Code does not apply to Indians is also so manifestly absurd as to require no refutation.

Having been brought up in the County of Prince Edward, which borders on the Tyendinega Reserve and having gone to school with boys of Indian extraction, and having served here in the area of the Alderville Indian Reserve I personally fail to see or even suggest that the members of the band are not entitled to the protection of the *Criminal Code*. If this were the case it would be most unfortunate. They probably feel that way today about it too.

It is quite possible that Mr. Marsden, in view of the various arguments and various spheres of influence, Mr. Marsden probably feels he was entitled to do what he did and was not committing an offence. I feel that that is how he felt and coming to that conclusion I feel that this is a matter that could quite properly be dealt with by suspension of sentence and probation.

MR. BONNYCASTLE: I certainly would recommend suspended sentence in this case. It is clear that Mr. Marsden did not do it to flaunt the law.

MR. NORMAN ZLOTKIN: I am in agreement with the sentence.

HIS HONOUR: The sentence will be suspended without probation for a period of one year.