

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Faulkner)

REGINA

v.

CURTIS GORDON FARNSWORTH

David McWhinnie

Appearing for Crown

Gordon Coffin

Appearing for Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): The accused, Curtis Gordon Farnsworth, is charged with three offences: assaulting his wife, Lovona Farnsworth, uttering death threats to his wife, and, on a later date, assaulting Mrs. Farnsworth with a weapon, the weapon in question being a knife.

[2] Mrs. Farnsworth testified that around November 5th of last year, she and her husband had a argument. Mr. Farnsworth left to return to his job, and Mrs. Farnsworth fell asleep on the couch in the apartment occupied by the couple. Sometime later she awoke to find Mr. Farnsworth smothering her with a pillow. She struggled to get free so she could breathe. The accused initially told her that he wanted to kill her, but then removed the pillow saying he would not do so because he

loved her too much. The accused then again left the apartment.

[3] Mrs. Farnsworth also says that approximately two weeks later, around the 18th of November, there was another argument, during the course of which the accused grabbed her by the throat, pushed her onto a couch, held a kitchen paring knife at her throat and again threatened to kill her. This attack ended when the couple's six-year-old son kicked and bit the accused. The accused then got up and stabbed the knife into a pizza box. At that point, the apartment manager arrived in response to a noise complaint from the tenant in the apartment above that occupied by the Farnsworths.

[4] Christina Hemmings, the apartment manager, testified and confirmed that she had gone to the apartment in response to a noise complaint. She could hear arguing going on inside. She was let into the apartment by the accused, who appeared calm. Mrs. Farnsworth was hysterical.

[5] I am satisfied from the evidence of both Mr. and Mrs. Farnsworth that Mrs. Farnsworth immediately complained that the accused had pulled a knife on her or words to that effect.

[6] Mrs. Hemmings did not, however, see any knife. She did, however, notice a bruise on Mrs. Farnsworth's neck.

[7] Mr. Farnsworth's testimony, in essence, was that his wife's evidence was a complete and utter fabrication. He could think of nothing remotely resembling the incident with the pillow. He did, however, acknowledge that there was an argument the day the manager came to the apartment. He said that that argument had been

started by Mrs. Farnsworth because she was angry at him for failing to pick up her and the children at a place and time that they had agreed upon.

[8] In the course of this argument she attacked him with fists flying and he put his hand on her neck and pushed her in order to defend himself. He acknowledged that as soon as the manager entered, Mrs. Farnsworth complained that he had used a knife on her, but he had no idea of where or how that claim had originated.

[9] As is too often the case, the Court is asked to determine what occurred from the evidence of two diametrically opposed witnesses. There were two independent witnesses called. However, the first the woman, that lives in the apartment above, could say no more than there had been a loud argument going on and that she had called the manager as a result. The manager also confirms that there was an argument. The existence of an argument is one of the few areas of common ground.

[10] The manager also observed a bruise on Mrs. Farnsworth, but again this bruise is consistent with the evidence of either the complainant or the accused. As mentioned, the manager did not see a knife stuck in a pizza box, although the extent to which she surveyed the state of the apartment is unclear.

[11] With respect to the credibility of the witnesses, I first observed that Mrs. Farnsworth presented as a generally credible witness. Her evidence was given carefully and she was quite candid about a number of matters that put her in a bad light. For example, she acknowledged that her use of marihuana, especially when operating the couple's taxi cab, was a constant source of friction between the couple, and that she had lied to her husband in claiming that she had quit smoking marihuana. She also admitted that after the final incident she had called her brothers

to come to Whitehorse and assist her, partly in hopes that they would, as she put it, "deal with" Mr. Farnsworth. She also admitted that she had smoked marihuana after the knife attack. Lastly, she admitted that she had lied on occasion in the past.

[12] In contrast, Mr. Farnsworth struck me as, at once, both glib and sanctimonious. He portrayed himself as the long-suffering victim of his wife's mental instability and prevarication. However, his evidence regarding his wife's alleged mental difficulties was not put to Mrs. Farnsworth when she testified. Neither was she asked about the accused's claim that it was she who had started the second fight and the reason for that dispute. Also of note, as the Crown points out, is that Mr. Farnsworth took care to admit only those things which were independently verifiable, including the bruise on his wife's neck and her comment about the knife.

[13] As a result, I place no weight whatever on the evidence of the accused. There are nevertheless some cautions to be applied before accepting Mrs. Farnsworth's version unreservedly.

[14] It is to be noted that Mrs. Farnsworth did not immediately go to the police after the knife incident.

[15] She moved out, but left the children in the care of Mr. Farnsworth. Several days later, after her family had arrived to take her back to Alberta, she went to the police and made a complaint. She admitted that she went to the police, at least in part, to seek their assistance in regaining custody of her children from Mr. Farnsworth. It is obvious that this provides a motive for her to allege an assault by Mr. Farnsworth.

[16] It is also clear from Mrs. Farnsworth's cross-examination that there was a

significant prior history of disputes, particularly with regard to custody, as between Mr. and Mrs. Farnsworth.

[17] I also noted previously that when the apartment manager entered the apartment she did not notice the knife which Mrs. Farnsworth says was then stuck in the top of a pizza box. On the other hand, it seems less likely that the knife incident is a later fabrication given that Mrs. Farnsworth complained about a knife as soon as the apartment manager arrived, which by all accounts was very shortly, at the most a matter of minutes, after the incident is alleged to have occurred.

[18] Having weighed the evidence as carefully as I can, I find that it appears much more likely than not that the assaults and threats occurred essentially as described by Mrs. Farnsworth. Nevertheless, the difficulties with Mrs. Farnsworth's evidence, which I have already enumerated, make this one of the cases where, despite having a reasonably high degree of satisfaction as to what occurred, the so-called worm of doubt remains. That small degree of doubt must inure to the benefit of the accused. Accordingly the charges are dismissed.

FAULKNER T.C.J.