

Citation: *R. v. Gowdie*, 2008 YKTC 97

Date: 20081124
Docket: 08-00192
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

PAUL PEDRO GOWDIE

Appearances:
Edith Campbell
André Roothman

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

Overview

[1] COZENS T.C.J. (Oral): Paul Gowdie has been charged with assaulting Christine Spinder on or about June 8, 2008, contrary to s. 266 of the *Criminal Code*.

[2] Mr. Gowdie and Ms. Spinder had moved to Whitehorse from Vancouver in 2004 or 2005; there was some difference in the year in their evidence but nothing turns on it. By mutual agreement Mr. Gowdie moved out of the residence that they shared several months later. They remained in a relationship as friends, being intimate at times, including perhaps the week prior to June 8th, but never again resumed their relationship as a couple.

[3] After a party at Ms. Spinder's residence and a trip to a local bar with friends, Mr. Gowdie and Ms. Spinder were in her residence in the early morning hours of June 8, 2008, when a physical altercation occurred between them. Ms. Spinder claims that she was assaulted by Mr. Gowdie, a claim which he denies, other than admitting to using a restrained level of force to repel her initial use of force against him.

[4] Ms. Spinder and Constable Connelly testified for the Crown. Mr. Gowdie testified on his own behalf. Dr. Stephanie Buchanan was also called as a defence witness.

Issue

[5] The issue in this case is the credibility of the evidence of Mr. Gowdie and Ms. Spinder.

Analysis

Evidence

Christine Spinder

[6] Ms. Spinder's version of the altercation is that she and Mr. Gowdie were walking back to her residence after leaving the bar. They stopped in a park and had a discussion about a camping trip they were planning. When Mr. Gowdie mentioned bringing his own tent a verbal disagreement arose between them. Mr. Gowdie became an "iceberg" and began to walk back towards Ms. Spinder's residence and she followed behind him.

[7] Once at the residence, Mr. Gowdie told her he was not staying and went inside to get his satchel bag. She followed him and spoke to him, not liking it when he acted like this. They were standing on the back landing, with her in front of the stairs going downstairs and him about three and a half feet away. The landing was said by her to be approximately eight feet by ten feet.

[8] Mr. Gowdie grabbed her suddenly by her shoulders, swung her against the wall, causing her to strike her head against a post. He then shoved her down the stairs, maintaining a position "right on top of her" in a form of "continuous shove". She was "kind of falling", never standing, in what she characterized as a "push, drop, push, drop". Mr. Gowdie was yelling that he did not need a counsellor and that she was "sick". She is not completely sure what happened on the stairs.

[9] Ms. Spinder curled up in a ball at the bottom of the stairs for two to three minutes before going back into the kitchen. She wheeled Mr. Gowdie's bike from the living area out of the door, and threw it onto the driveway. She realized Mr. Gowdie was still in the house, and she was yelling at him to get out.

[10] She saw him in the kitchen talking on his cell phone, stating that she had "flipped". She asked him what he was doing and he hung up the phone. She then pushed him against the refrigerator and asked him how he could do this to her. Mr. Gowdie grabbed her by the neck and slammed her up against the counter in the kitchen, causing the counter to crack. She sank to the floor, sobbing, while Mr. Gowdie went through his satchel bag slowly.

[11] She then got up, went to the couch, and asked him to leave, which he did three

to five minutes later, or four to five minutes later.

[12] Ms. Spinder went to the RCMP later that evening to report the incident. She had bruising and a small cut on her hip, a scratch on her neck, light bruising on the left side of her face, a bruised shin and a bump on her head. She also had a sore back and basically hurt from head to toe.

[13] She admitted to being pretty tipsy at the time of the altercation. She also admitted to being very frustrated with Mr. Gowdie's attitude prior to the altercation.

[14] She was not sure how much Mr. Gowdie drank that night but believed him to be drunk, at least according to what Constable Connelly testified she told him.

[15] Ms. Spinder's explanation for Mr. Gowdie's actions include concerns about his use of prescription anti-depressant drugs as a contributing factor when combined with the alcohol he drank that night. That is simplistic, but that is one of the aspects of her explanations.

Paul Gowdie

[16] Mr. Gowdie's version of events leading up to the physical altercation is fairly similar. He denies, however, that he was drunk, stating that he had planned a bike ride for the next day and had drunk less than the full bottle of wine at Ms. Spinder's residence. He drank approximately one and a half glasses of beer, two Caesars, and three pints of water at the bar. He also drank some water at the residence.

[17] On the way home, both he and Ms. Spinder were in a fairly good mood until the

issue of the tent was raised at the park. He walked over to a plant that was nearby and Ms. Spinder walked home and he followed her. Ms. Spinder went into the residence first. Once inside she told him he had ruined the evening. He went to his bike in the living room and rolled it outside.

[18] When he came back into the house to get the rest of his belongings, Ms. Spinder was upset and irrational. She grabbed him by his hoodie and pushed him against the counter. As he went to go out the back door she pushed it against his right arm, pinning it, kicking him in the shins at the same time. He let go of the bike lock in his hand and pulled the door open. He pushed her against the wall, pinning her, saying, "This is not a game you want to play with me." He stopped pushing her and she slipped on the stairs. He went to grab her hand to help her up. She pulled away from him, screaming, and she ran down the stairs. He followed her down, grabbed her from behind to calm her, sat her down and told her that she needed help.

[19] After a minute he went back upstairs. She followed him, grabbing, hitting and punching him. She hit him in the face, causing the lens to fall out of his glasses. He was popping the lens back in his glasses and Ms. Spinder left momentarily.

[20] Mr. Gowdie made a phone call to a friend's home to, in his words, "embarrass the crap out of her," and Ms. Spinder came back into the residence. She asked him who he was talking to and began to hit and kick him. While still on the phone he pushed her forcefully against the counter and she fell down. He said on the phone, "Now I've done something." After attempting to make sure she was okay, he went to the back door, noticed his bike moved from where he had left it, went outside and found his bike

and the contents of his satchel bag scattered in the driveway.

[21] He then left and went to his friend's residence, the same residence that he had left the message on the phone.

[22] He states that he never tried to harm Ms. Spinder and any injuries received from the incident that were caused by him resulted from him defending himself. He does not recall grabbing her by the neck.

[23] Mr. Gowdie basically describes Ms. Spinder's actions as resulting from her being unwilling to let the relationship go, not accepting appropriate boundaries and being somewhat of a "drama queen".

Law

[24] When an accused person testifies, the rule set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, applies.

First, if you believe the evidence of the accused --

(That is assuming the evidence is exculpatory.)

-- ... you must acquit.

... if you do not believe the evidence of the accused but...
are left in a reasonable doubt by it, you must acquit.

... even if you are not left in doubt by the evidence of the accused, you still have to ask yourself whether, on the whole of the evidence that remains, you are satisfied beyond a reasonable doubt by that evidence of the guilt of the accused.

[25] There has been some elaboration on *W.(D.)*. The case of *R. v. Ay*, [1994] B.C.J. 2024, out of the British Columbia Court of Appeal, broke down one of the

components essentially into two components, which is:

If you do not know whether to believe the accused or the complainant, you must acquit;

If you do not reject the evidence of the accused you must acquit.

[26] Cases like these are not to be viewed as credibility contests where you prefer one witness' evidence over the other. Finding one witness credible does not necessarily mean that the other witness is not credible.

[27] There are a number of factors that you have to look at in assessing the credibility of the witness, and these include independent evidence of other witnesses, prior statements, the physical and emotional state of the witness at the time of the occurrence of the events that are being testified to, including levels of intoxication, and the demeanour of the witness on the stand.

[28] With respect to demeanour, much care has to be taken when assessing a witness' credibility in light of their demeanour. Hostile, confrontational witnesses may nonetheless be answering questions truthfully, and witnesses that are very polite and appear to be very honest can also not be telling the truth. Demeanour is a factor that needs to be taken into account, but it is one that needs to be taken into account very carefully.

[29] Ms. Spinder testified well. She was not argumentative; she was not combative. There is nothing in the manner in which she testified that causes me to have any concerns about her evidence.

[30] Mr. Gowdie was somewhat more confrontational in his cross-examination, and at times appeared to be a bit dismissive of the Crown's line of questioning and perhaps bordering a bit on arrogant at times. That said, given the limited probative value of demeanour evidence in assessing credibility, I cannot say that any real concerns arise from the manner in which he may have responded to certain questions.

[31] So really the question is, of what assistance is the remainder of the evidence in assessing and making a determination on credibility?

Other Evidence

[32] Constable Connelly observed the visible injuries that were suffered by Ms. Spinder. He took an initial statement, followed by an audio/videotape statement later. Some issues arose regarding differences in her testimony from her statements, such as her telling Constable Connelly Mr. Gowdie had slapped her three times. She then said in her testimony that slapping, or shoving, was an explanation that she gave, and that it did not make much of a difference to her. There was some uncertainty regarding exactly what had happened on the stairs, and she was cross-examined on that for a while.

[33] I note there was a supplementary occurrence report filed by Corporal Cluney, who was unavailable to testify, in which she said that Ms. Spinder told her Mr. Gowdie had punched her in the stomach.

[34] I find that nothing of great significance turns on the evidence of Constable Connelly and Corporal Cluney's evidence in the sense that it was a report that was filed,

and not examined on. They are factors to be taken into account but they are not in and of themselves necessarily irreconcilable, or anything that would cause me great concern.

[35] Dr. Buchanan adds little. Interestingly, she did not observe the bump on the head in the hairline area, and her testimony is that the medical examination was largely based on self-reporting. So it appears that that bump may not have been reported at the time to the doctor. Constable Connelly clearly saw it. Ms. Spinder testified that she had it and it was in the hairline area.

[36] Dr. Buchanan testified that the injuries could be consistent with a push down the stairs; it is really hard to tell, it just depends how you fall in how you are injured. It is not really clear in the evidence that there was a clear push all the way down the stairs. There is some uncertainty, even in Ms. Spinder's evidence, about exactly what happened on the stairs.

[37] The evidence of Dr. Buchanan did contradict that of Ms. Spinder on one point. As Dr. Buchanan testified, it is not her practice to tell patients that she must report an incident of violence like this to the RCMP, whereas Ms. Spinder testified that that is what Dr. Buchanan told her, that she had no choice but to call the police; "she" being Dr. Buchanan.

[38] So that is one contradiction in the evidence. There again, this is not necessarily irreconcilable when someone tries to think what happened in the past, but it is another factor to be taken into account.

[39] Within the evidence itself, one aspect of the evidence Crown counsel focused on in submissions is the unlikelihood, or even impossibility, of Mr. Gowdie being in the physical position of having his right arm outside of the door, an inside-swinging door, reaching back with his left arm for a satchel bag, and having Ms. Spinder pushing against the door. Crown counsel focused on the small area involved in the landing at the doorway entrance, having to move from the kitchen into the landing area, and the proximity of the door close to where the kitchen door was.

[40] I agree this seems to be pretty awkward, to say the least. That said, I do not find it to be impossible on the evidence.

[41] The second aspect of the Crown argument is the lack of injuries on Mr. Gowdie, given his evidence of Ms. Spinder's actions, other than his stating he had a sore eye for about two days. There is considerable size difference between Ms. Spinder and the larger Mr. Gowdie. I note in his evidence he did not say that she was striking him with great force. He also said he was wearing a sweater at the time and that she pinned his arm with the door, not that she slammed the door against it.

[42] The injuries to Ms. Spinder are consistent with her version of events. Mr. Gowdie's version is not able to so easily address each of these injuries, in particular the scratch on the neck or the bruises on the shin. That said, as he, by his evidence allowed for a brief period of time in which he states that Ms. Spinder was outside and throwing his bike and his belongings in the driveway, his inability to explain everything must be tempered somewhat. This is not to say that I can or will speculate that Ms. Spinder may have received other injuries while outside of Mr. Gowdie's presence; it

simply means his credibility is less affected as a result, because he cannot be expected to explain what may or may not have occurred in a time period when he was not there.

[43] Ms. Spinder admitted to a greater level of intoxication in cross-examination than she did in direct examination, initially saying she was tipsy and then deciding, "Well, if I told the police that I was pretty tipsy, then I will go that I was pretty tipsy," which of course is, to her credit, an admission of something she said earlier and an adoption of it on the stand.

[44] A fairly significant aspect of Crown's submissions was on the CD audio tape of the phone call Mr. Gowdie made to a friend in the middle of these events. What I have been able to discern from the tape is not a conversation, but the following from each of the parties. Sometimes there was overlap but I will split it out a little bit.

[45] Mr. Gowdie: "Hi guys. This is Christine spazzing out. No, I'm not doing anything whatsoever, but she's spazzing out. And I just want you to hear this right now recorded on your recorder so that you know I'm not the one causing anything here, she's just completely spazzing out on me."

[46] Ms. Spinder (quietly): "Who are you calling?", (something I could not discern on the tape from Mr. Gowdie), then Ms. Spinder, (quite loudly): "Get out of my house. Get out of my house."

[47] Mr. Gowdie: "I'm going to leave right now." There is a scream, some background scuffling sound.

[48] Mr. Gowdie again: "Nothing's been done here. She's pushed me up against the

wall, punched me in the face, and everything like that.”

[49] There is some screaming by Ms. Spinder at that time, and Ms. Spinder: “Get the fuck out of my house. Get out of my house.”

[50] Mr. Gowdie: “When my glasses show up and my black eye tomorrow.”

[51] Ms. Spinder: “You pushed me down the fucking stairs. Get the fuck out of my house.”

[52] Mr. Gowdie: “She didn’t get pushed.”

[53] Ms. Spinder: “Yes, you did; you threw me down the stairs.”

[54] Then there is a very loud double scream and Mr. Gowdie states: “Now I did something”, which coincides with the evidence that that is when he pushed her and she struck the counter. I have no problem accepting that the counter edge cracked as a result.

[55] After hearing the tape, Ms. Spinder admitted in cross-examination to being more upset at the time than she had originally testified to. She had stated originally she did not freak out, was really angry but was not screaming or hysterical, and that the phone was gone by that point. On that one, I alluded earlier to Ms. Spinder's evidence of his hanging up the phone. She did say that he placed it on the counter, and assumed he had hung up. So there is a little bit of ambiguity in what she meant by the phone being hung up at the time.

[56] It is clear, however, from listening to the tape, that Ms. Spinder was very loud,

very upset and was screaming at times. That said, I do not find that if her version of events is true, that anything she said on the tape or that was heard on the tape would necessarily be at all inconsistent with her version of events.

[57] I am also, however, not prepared to find that the tape is inconsistent with Mr. Gowdie's version of events. While taping what was occurring was perhaps not particularly thoughtful, I cannot say that his action in doing so undermines his credibility. His version of events can also be substantiated by what the tape reveals.

[58] The dynamics of domestic relationships, and the disputes and violence that occur at times within some of these relationships, can be difficult to reconcile. The history between the parties can be complex. While this background is often of great significance to the parties themselves and may well assist in understanding what happened, all too often it is difficult, if not impossible, to actually sort out what happened at a particular point in time.

[59] On consideration of all the evidence, I am unable to reject Mr. Gowdie's version of the events that occurred on the morning of June 8th. Further, given the admitted level of force that he used in the circumstances, I also find that the Crown has not proven beyond a reasonable doubt that this use of force was not self-defence in repelling an initial, unlawful assault against him.

[60] Mr. Gowdie is therefore acquitted of the charge of assault.

[61] Again, the test in *R. v. W.(D.)*, *supra*, and the application of law to these circumstances requires the Crown to prove beyond a reasonable doubt what happened

in a particular circumstance. In this case I simply cannot reject Mr. Gowdie's evidence. I am not saying that I prefer it. I am not saying I prefer Ms. Spinder's. I am not required to do that.

COZENS T.C.J.