

Citation: *R. v. Hendrie*, 2013 YKTC 6

Date: 20130125
Docket: 12-00738
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

CHARLES PATRICK HENDRIE

Appearances:

Kevin McGillivray
Charles Hendrie
Jennifer Cunningham

Counsel for the Crown
Appeared on his own behalf
Appeared as *Amicus Curiae*

REASONS FOR JUDGMENT

[1] Mr. Hendrie was charged as follows: On or about the 22nd day of September in the year 2012 at the City of Whitehorse in the Yukon Territory, did commit an assault on Rachel Netro-Hendrie contrary to Section 266 of the *Criminal Code*. Mr. Hendrie entered a Not Guilty plea. At trial there were three witnesses: Constable Pike who attended the scene after receiving a call from Beverly Bingham, the complainant's sister; Beverly Bingham; and the complainant, Rachel Netro-Hendrie. The accused did not testify.

[2] Constable Pike responded to the call received by the police from Ms. Bingham at 8:35 pm. She observed an injury to the complainant's left leg, took a statement from her

and recommended that she go to the hospital for treatment. Constable Pike then went to the Salvation Army, Mr. Hendrie's place of employment, and arrested him for assault.

[3] The injury to the complainant was a cut to her left leg, in her shin area. I was advised that she received two stitches at the hospital. The location and nature of the injury suggest that it resulted from contact with something that had an edge to it. It could not have easily resulted from contact with a flat surface.

[4] The complainant testified that she was standing on the back porch smoking a cigarette around 6:40 pm. The porch is about six feet by six feet in size with only one step down to a concrete pad. In other words, the porch was approximately one foot off the ground. She said that suddenly her husband, Mr. Hendrie, came up behind her, placed his hands on her back, and threw her down. She did not hear him approach, he did not say anything and then he left for work which began at 7:00 pm. She also testified that earlier in the day Mr. Hendrie had slept and then had a shower prior to work. She said Mr. Hendrie had not had anything to drink. She on the other hand, had consumed four glasses of wine, possibly a full bottle. She said she usually drinks that much daily, more if she is at a party. I would note that Ms. Netro-Hendrie is a rather petite woman in size and that the effect of consuming one full bottle of alcohol would normally have a more significant effect on her than on a larger person.

[5] She said that she went to a neighbour's house and called her sister, Ms. Bingham, prior to 7:00 pm. She stated that she called her sister again at 8:00 pm, after returning from the hospital. Ms. Bingham, on the other hand, said that the first call was

received by her around 8:00 pm. Ms. Bingham is probably correct as she called the police and that call was received after 8:00 pm.

[6] The complainant said that she was standing on the porch smoking. Ms. Bingham testified that the complainant told her that she was sitting on a stool and that she was knocked off the stool. The complainant further stated that there was no stool or chair on the porch. Ms. Netro-Hendrie admitted that she had slipped on that porch previously.

[7] The complainant was adamant that she had not told Constable Rice that she had cracked her hip as a result of the fall. The tape of her statement to the constable was played in court. In fact, she did tell the constable her hip bone was cracked. The complainant had no explanation for this discrepancy.

[8] I was advised that the complainant and her husband had been having marital problems although they had not contemplated separating at that time.

[9] Prior to the injury Ms. Netro-Hendrie had consumed a considerable amount of alcohol by her own admission. Her recollection of some of the events was contradicted in part by Constable Rice and by her sister Ms. Bingham. The injury described in the photographs is consistent with falling off a stool, as suggested by Ms. Cunningham. The marital difficulties she was experiencing around that time could have influenced her memory or her evidence. In all the circumstances, it would be dangerous to convict Mr.

Hendrie, as I am left with a reasonable doubt as to what happened that evening. Mr. Hendrie is acquitted of the charge before the court.

LILLES T.C.J.