

Citation: *R. v. J.H.L.*, 2019 YKTC 23

Date: 20190318  
Docket: 18-00509  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before Her Honour Judge Ruddy

REGINA

v.

J.H.L.

Appearances:  
Paul Battin  
Gregory Johannson

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] RUDDY T.C.J. (Oral): J.H.L. is facing charges in relation to common assault and resisting arrest on October 30, 2018. No issues have been raised with respect to jurisdiction or identification.

[2] The Crown's case relies upon three civilian witnesses and one police officer. J.H.L. testified in his own defence.

[3] Defence has raised an issue with respect to consent, namely whether or not the facts give rise to a defence of consent. In my view, the primary issue to be resolved is really that of credibility.

[4] In terms of assessing credibility, I am bound by *R. v. W.(D.)*, [1991] 1 S.C.R. 742, a case out of the Supreme Court of Canada. The test in *W.(D.)* says if I believe the evidence of J.H.L. I must acquit. Even if I do not believe the evidence of J.H.L., I must ask myself whether his evidence nonetheless raises a reasonable doubt and, if so, I must acquit. And thirdly, even if I do not believe his evidence nor find that it raises a reasonable doubt, I must still ask myself whether, on the basis of the evidence, I do accept I am satisfied beyond a reasonable doubt that the offences have been proven.

[5] The burden rests at all times upon the Crown. I think it is important to note that I can accept some, all, or none of the evidence of any of the witnesses that I heard.

[6] J.H.L.'s version of the events of October 30, 2018 is that he was dropped off at the Independent Grocers by a social worker. Carolyn Taylor, the manager at the store, began screaming at him to leave. He said, "Fuck you, fuck you". He said she then threw hot coffee in his face. J.H.L. pushed her and tried to grab her phone as she was calling the police.

[7] J.H.L. later testified that he dumped fentanyl on the ground in front of Ms. Taylor that he had in his pocket, which he says he had found it in the manager's vehicle the night before.

[8] With respect to the resist arrest, J.H.L. says that he was arrested some three days later and that the officer attacked him, took him to the ground, kneeled on his head and essentially, he says, beat him up without telling him why he was being arrested or even, I took from his evidence, that he was being arrested. J.H.L. says he was then beaten by five officers at the Arrest Processing Unit ("APU").

[9] In assessing J.H.L.'s evidence, I find that I do not believe or accept his evidence. I am satisfied that his version of events is what he believes, I did not get indicators of his deliberately being untruthful. There was nothing that suggested to me that he was deliberately trying to mislead the Court but, in my view, his evidence is clearly impacted by his mental health issues and is simply not reliable.

[10] Of particular note, J.H.L. testified to finding and disposing of large amounts of fentanyl in a number of places around Whitehorse, in a briefcase, in a shop, in a truck parked by a movie theatre, and in the store manager's car. With respect to the store manager's car, the one that directly relates to this incident, J.H.L. says that on the evening before the incident he found three to four cases of blue pills which he dumped on the ground. This would have been in the same general area that all of this took place.

[11] No one seems to have noticed a large amount of blue pills on the ground.

[12] It is also interesting to me that when he was asked about the level of certainty of his memory, J.H.L. said that his memory in relation to these incidents of finding and disposing of fentanyl in a multitude of places was actually more clear to him, a 10 out of 10, than his memory of the incident with Ms. Taylor, which he put at nine out of 10.

[13] In a similar vein, J.H.L. was apparently quite preoccupied with the belief that the arresting officer was trying to steal from him. He refers to the officer taking his wallet, and he believed that the officer was trying to steal his bank card because he says that he had some \$40,000 in the bank from doing odd jobs such as wood cutting under the

table, something that, quite frankly, is extremely difficult to believe given the circumstances in which J.H.L. was living.

[14] His evidence with respect to both the fentanyl and his bank account, in my view, were quite clearly incredible and raised for me serious concerns about his overall reliability.

[15] While I accept defence counsel's submission that there might be a difference between those memories which are accurate and those which are part of a delusion, the fact that there were some clearly pronounced elements of his evidence that simply are not believable make his evidence, overall, unreliable, from my perspective.

[16] I do not accept his version of events, nor do I find, for much the same reason, that his evidence raises a reasonable doubt for me.

[17] With respect to the evidence in relation to the assault, evidence was provided by the alleged victim, Carolyn Taylor, her friend and co-worker, Leslie Clugston, and another co-worker, Jomarie Decada.

[18] There were a great number of similarities between the evidence of the three. There were also, however, which is not at all unusual, some differences between their evidence, most notably in relation to the physical contact that occurred between J.H.L. and Ms. Taylor.

[19] All three noted that there was physical contact. Ms. Taylor speaks of one incident of physical contact in which J.H.L. raised his arm and struck her in the shoulder area.

[20] Mr. Decada speaks of one incident of contact which he describes as a push. Ms. Clugston testified to having seen both a push and a blow to the shoulder area of Ms. Taylor.

[21] I would note that with respect to Mr. Decada, he does not appear to have viewed everything, as he was helping a customer with her groceries, and there also appeared to me to be a bit of a language barrier that raised questions for me about the extent to which he fully understood what he was being asked. This was evident in his response to the use of the idiomatic expression by defence counsel in cross-examination, which I do appreciate, Mr. Johannson, your taking time to clear up because he clearly did not understand what was being said.

[22] So that causes me some concern about Mr. Decada's reliability because I think there was some question about the extent to which he really understood the questions being asked of him.

[23] With respect to Ms. Taylor, I actually find that, by and large, her recollection was good, but I think it was impacted by what was happening to her and the fact that she was clearly, as Ms. Clugston noticed, quite visibly upset with respect to what was happening, which I do think had an impact on whether she had a clear and full recollection of everything that occurred.

[24] When I consider all of the evidence, I find that it was Ms. Clugston's evidence, in my view, was the most complete and most accurate account of what happened in relation to the incident. And quite frankly, there were no indicators to me that suggested her evidence was in any way unbelievable.

[25] Based on her evidence, I would find the following facts.

[26] J.H.L. arrived at the Independent Grocer. Ms. Taylor asked him to leave the premises. J.H.L. stated repeatedly that he had found four cases of fentanyl in the store manager's car and that he could eat Ms. Taylor in a second. J.H.L. started to leave, but when he got to the corner of the building, he turned around and came back. Ms. Taylor asked him to leave again. He pushed her with both hands against Ms. Taylor's shoulder and chest area. Ms. Taylor began backing up, then tried to throw her coffee at J.H.L., but as the lid was on, that she effectively sprayed him with coffee in an attempt to keep him back. J.H.L. swung at Ms. Taylor with his right arm and struck her on the left shoulder and neck area. J.H.L. then left the area.

[27] Defence counsel has filed a case and has argued that even if I do not accept, as I have not, that Ms. Taylor sprayed the coffee before the push, the defence of consent arises on these circumstances and in particular notes Ms. Taylor's efforts to escort J.H.L. off the premises by remaining only two feet away.

[28] In my view, the issue of consent does not arise on the facts as I have found them.

[29] This is not a situation in which there was any animus that Ms. Taylor might have had for J.H.L., or even vice versa. In fact, Ms. Taylor was clear that she had escorted, in much the same way, J.H.L. off the premises on more than one occasion in the past without incident. However, she noted quite clearly that his behaviour was decidedly different in this particular instance than it had been in the past.

[30] In such circumstances, it is both her job and also her practice to escort J.H.L. off the premises, and in my view, doing so does not give rise to the notion that she would then somehow be consenting to his application of force, so I would reject consent as a defence in these circumstances and find that the offence of assault has been made out.

[31] With respect to the resist arrest, as noted already, I do not accept J.H.L.'s version of events. I would add, though, as pointed out by the Crown, all of the evidence, including the court record, indicates that J.H.L. was arrested on the same day that the incident occurred. His evidence that the arrest was three days later is another indication that there is some difficulty with the reliability and the clarity of his recollection.

[32] The Crown's case with respect to the resist arrest relies on the evidence of Cst. Lightfoot. With respect to the officer's evidence, I noted no issues with respect to his credibility or reliability, and I do not have any difficulty in accepting his evidence.

[33] I will note that J.H.L. did suggest that the officer did not identify himself or say why he was being arrested. I am satisfied on Cst. Lightfoot's evidence, and he was quite clear in saying he did not say he was a police officer, but he was also quite clear that both he and Cst. Perro were in full police uniforms. They both had fully marked police vehicles, so the fact that he did not identify himself verbally as a police officer does not cause me concern, as it would otherwise have been obvious on the circumstances.

[34] I am satisfied, however, on Cst. Lightfoot's evidence that he did tell J.H.L. that he was being arrested for assault. Based on his evidence, I would find the following.

[35] J.H.L. was speaking to Cst. Perro when Cst. Lightfoot arrived. Both officers, as I said, were in full uniform and marked police vehicles.

[36] Cst. Lightfoot told J.H.L. he was under arrest for assault and asked him to hold his hands behind his back. When Cst. Lightfoot grabbed J.H.L.'s arm and put one cuff on, J.H.L. actively resisted by pulling away and fighting, that he ultimately was taken to the ground before the officers could get the cuffs on him due to the fact that he continued to struggle.

[37] On the ground, J.H.L. grabbed a hold of Cst. Lightfoot's middle finger, which he twisted and bent back. Cst. Lightfoot did note his surprise at the strength and degree of resistance, given J.H.L.'s relative size, but said that with assistance he was able to get him into the police vehicle.

[38] During the trip to the APU, Cst. Lightfoot noted, and I accept, that J.H.L. ranted, calling Cst. Lightfoot a faggot, a baby killer, accusing him of selling fentanyl and of trying to steal from J.H.L.

[39] At the APU, J.H.L. continued to struggle and fight, requiring the assistance of another police officer and three Corrections officers to get him lodged into the cell and to remove the outer layers of his clothing, as is required by policy.



[40] Based on all of the evidence that I do accept and the facts as I have found them, I am satisfied, and satisfied beyond a reasonable doubt, that the Crown has established that J.H.L. is guilty of common assault and the resist arrest.

---

RUDDY T.C.J.