

Citation: *R. v. Raymond*, 2009 YKTC 81

Date: 20090707
Docket: 08-00697
Registry: Whitehorse
Heard: Faro

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

REGINA

v.

DARRELL CLAYTON RAYMOND

Appearances:
Kevin Komosky
Jennifer Cunningham

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] BARNETT T.C.J. (Oral): Mr. Raymond is charged here with having assaulted his spouse, Dawn Dussome, in Faro on the 4th of January, this year. This case, like many of its kind, is one which is puzzling just how it came about, and I think that if a judge giving his or her decision claims to have a precise understanding of the events, in the absence of a video recording of the material events, that he or she very likely risks pretending to understand too much.

[2] Mr. Raymond and Ms. Dussome have been together, at least until these events, for more than 16 years. They are the parents of two children. On the night of January 4th they were out having supper at a friend's place. They both tell me, and I do not

doubt, that they only drank a little bit, a couple of glasses of wine each. There is no suggestion that too much liquor was somehow at the bottom of these events; and I say that because that is often one of the issues in cases of this nature, but not in this case. It was a cold night - that is what you would expect, of course, early in January in Faro in the Yukon - but not a bitterly cold night; 20, 25 below.

[3] About ten o'clock at night, it was time to leave their friend's house and so Mr. Raymond went out to start the truck and warm it up for a few minutes; pretty ordinary sort of event. But he could not start the truck because the keys were not in it. He came back to the friend's house. He told Ms. Dussome that she should go and start the truck. She did that, but not until after having made a comment to him to the effect that he should find some other place to live, and probably it was rudely said. Why she would make that comment, I cannot figure that out from the evidence.

[4] But after the truck was warmed up, and after they had departed their friend's home and were on the way home, it is pretty clear, in fact it is very clear, that Mr. Raymond said to her that she could take the truck and find another place to live. I gather from his testimony that he was telling her that she could go to a cabin that the two of them had possession of or owned. Late at night on a cold night, and he meant it. That is very clear to me.

[5] There is a third person in the truck, and that is their two-year-old child, not quite two. It is also very clear, and I do mean very clear, that Mr. Raymond was intending, in fact determined, to take the child into the family home, to exclude Dawn, the baby's mother, his spouse, from the home, and leave her with the truck to go somewhere else.

Not surprising that Ms. Dussome was not going to accept being excluded from her home and parted from the baby in those circumstances.

[6] It is clear from the evidence that Ms. Dussome pushed Mr. Raymond. That is clear. He says that she came up behind him, while he is holding the baby, going into the house, and punched him on the side of the head or the back of the head many times, less than ten but not just once. He says he had some bruising that appeared within the next day or two. Ms. Dussome, who I believe did use the word punch when she first reported the matter to Corporal Blackjack, but in her testimony, while she talks of shoving, and says it was mutual shoving not just her shoving him, there was some back and forth shoving, but she says that is what it was, not her going up behind him and punching. When I try to assess those conflicting stories, it makes sense to me that events happened substantially, not exactly, but substantially, as Dawn Dussome said they did.

[7] Counsel have both mentioned the case of *R. v. W.(D.)*, [1991] S.C.J. No. 26, and I have read that case more than a few times. I have got a couple of pages of it here with me today. I have read the cases from the Supreme Court of Canada, some of them rather important I believe, that considered, and some say expanded, upon that case back in 2008. A judge presiding at a criminal trial of this nature often has to contend with what some people call a she said/he said pattern in the evidence. There are judges who have said to themselves, "Well, she says one thing, he says another; I cannot decide; there has got to be a reasonable doubt; I throw the case out." That is not a proper way for a judge to approach a case of this nature. There are other judges, hopefully not since Mr. Justice Cory's decision, but we have all heard of judges who

have taken the approach that, “I do not believe your evidence, sir; therefore, you must be guilty.”

[8] The Supreme Court of Canada has made it very clear in many cases, not just the *W.(D.)* case, that that approach is totally wrong. The question at the end of the day is does the Crown’s case, fairly assessed, prove the guilt of the accused beyond any reasonable doubt, and if not, even although the judge thinks that the offence probably occurred, if the case is not proved beyond a reasonable doubt, the accused person must be acquitted.

[9] So that kind of brings me to the last part of the material facts here. Ms. Dussome says that the shoving match, if I can call it that, escalated and that somehow Mr. Raymond, although he was holding the baby, kicked her three times in the chest, and on the third kick she fell to the ground, and that he then went in the house.

[10] It is clear that there was no further continuation of the confrontation. She got in her truck and went to a friend’s house and the police were called. I believe both parties telephoned the police, but the police came and arrested Mr. Raymond.

[11] A taped statement was taken from Ms. Dussome. I did not hear that or read it. The police seemed not to have been much concerned to talk to Mr. Raymond about these events. Mr. Raymond says that he did not kick Dawn Dussome once, twice or three times, not at all. He says that he was concerned that Dawn’s punching at him put the safety of the baby in jeopardy, and so that he was therefore pushing her backwards so that he could get in the house and the baby would not be at risk, and that somehow Ms. Dussome simply fell to the ground as he pushed her away.

[12] Mr. Raymond would have me believe that he was not angry throughout any of this, that he was restrained. He says he was taken aback by Dawn Dussome's comment made at the friend's house over the truck starting incident but that he never lost his cool.

[13] I am not sure what he would wish me to take from his belief that she had some prescription medications, which she denies, but some prescriptions which he says he saw, anti-depressants, and he also talked about her being on painkillers following a car accident and back trouble. I do not know how Mr. Raymond thinks that that might enter into this.

[14] But I have said that Mr. Raymond, I am totally satisfied, meant it when he said to Dawn Dussome, as they were approaching their house, their home, that, "You can take the truck and go find another place to live." Those are not restrained comments by a man who is keeping his cool; they are not chivalrous either, but they go a long way beyond that. This is a man who -- Mr. Raymond, you were angrier than you can acknowledge today and you were determined that you were going to take the baby into the house and she was not coming.

[15] I am not totally satisfied that you kicked her three times. I am not saying it did not happen, but it is not necessary for me to say that I find as a fact you kicked her three times. I do find as a fact that the shoving and pushing, which was going on on the part of both of you and was not a good thing, but it escalated, and Dawn Dussome did not fall to the ground merely because you pushed her backwards trying to keep your baby safe. She fell to the ground because she was assaulted in a manner that caused

her to go to the ground. I expect that she was kicked, but I know beyond a reasonable doubt that she was assaulted.

BARNETT T.C.J.