

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

REGINA

v.

PAUL STERRIAH

Kevin Drolet

Appearing for Crown

Malcolm Campbell

Appearing for Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): The accused, Paul Sterriah, is charged, on Count 1, with breaking and entering a dwelling house with intent to commit an indictable offence; Count 2, with committing an assault on Lizzie Dickson that caused bodily harm to her; and, on Counts 3 and 4, with breaches of a probation order to which the accused was then subject.

[2] Firstly, it is beyond doubt, and Mr. Campbell quite properly conceded, that Liza or Lizzie Dickson, who is an infirm elder of some 74 years of age, was the victim of a rather vicious beating in her own home. The only issue in the case is whether or not she is correct in identifying the accused, Paul Sterriah, as her assailant. Mrs. Dickson said that Mr. Sterriah kicked his way into her house by kicking in the door.

He then demanded money and assaulted her by administering repeated kicks to her face and upper body.

[3] As I have already indicated, Mrs. Dickson is an elderly woman and has a number of infirmities, not the least of which is that she has very poor eyesight. She is blind in one eye and has limited vision in the other eye. She also suffers some impairment to her hearing. However, my impression of her was that, while she has some hearing difficulties, she, nevertheless, has what might be described as functional hearing, as indicated by her performance as a witness, where she was able to hear, understand and respond to questions directed to her.

[4] With respect to her purported identification of Mr. Sterriah, there is no doubt in my mind that Lizzie Dickson is sure of her identification and is honest in making it. That is never the issue, or seldom the issue, in eye witness identification cases. The issue is not whether the witness is honest but whether the witness is correct.

[5] In my view, there is much to suggest that her identification is indeed correct, despite the obvious cognitive frailties -- or perceptual frailties, I'm sorry, that she has. It has to be remembered that, firstly, this was not a fleeting glimpse kind of situation. This was obviously an extensive encounter, which commenced with the breaking into her house, was followed up by demands for money, and then followed by an extensive assault.

[6] The accused, Mr. Sterriah, far from being a stranger to Mrs. Dickson, is, in fact, a person that Mrs. Dickson has known all her life and he is, moreover, a close relative. In addition to that is the fact that Mrs. Dickson obviously was not relying only on what little she would be able to see of her assailant but also upon the fact

that she was able to hear this person, and obviously there was conversation because the assailant was demanding money. Beyond that, Mrs. Dickson also indicates that the accused, in fact, identified himself at a point or points during the course of the dealings between the two.

[7] Taking all of these things together, I am satisfied that, as I said, despite her visual frailty in particular, that she is able to make a correct identification of her assailant .

[8] The accused testified and, in essence, denied any involvement in the matter. Essentially, what he said is that he had an alibi, that he was at various times at his own house or at the residence of an acquaintance, one Robinson Dick.

[9] There are a number of fatal frailties in the evidence of the accused and he is not, in my view, a witness who is credible or whose evidence is entitled to any weight. As to his evidence in general, he was remarkably unsure of most things save and except for his whereabouts on the 23rd and early hours of the 24th of April, about which dates he professed to have crystal clear recall.

[10] With respect to his claims as to his whereabouts on the 23rd and 24th, there are a number of things to be noted. Firstly, although the accused claims to have disclosed his alibi to Constable Gabriel, I am satisfied that that never occurred. Constable Gabriel was not even in town at the time that the accused was arrested, and no other evidence has been led, as the accused easily could have done, to show that the alibi was ever at any time disclosed over the long course of these proceedings.

[11] Beyond that, as has been pointed out, Mr. Dick, who supposedly was the person that the accused was with at the operative hours, was not called as a witness. It must be observed as well, that even if the accused did spend some time with Mr. Dick on the 23rd or the 24th, that would still leave him with ample opportunity to have assaulted Mrs. Dickson.

[12] There was also a somewhat curious alternate theory of the defence, developed during the -- perhaps I shouldn't say alternate, but additional theory of the defence, developed during cross-examination, to the effect that the assailant was not Paul Sterriah but Paul Sterriah's son, Stephen Sterriah, but there is not a shred of evidence to support such a theory.

[13] Taken together, the theories of the defence either as to the whereabouts of Mr. Sterriah or the possibility of Stephen Sterriah being the assailant, raise no doubt in my mind that Mrs. Dickson has been able to properly identify her assailant.

[14] It follows that there will be a conviction on Count 1 and Count 2.

[15] With respect to Counts 3 and 4, there will also be convictions on both counts since they allege different breaches of the probation order, but it would obviously be the case that any disposition with respect to those matters would have to be concurrent.

[16] MR. CAMPBELL: I would ask the matter of sentencing be adjourned and a PSR, a pre-sentence report, ordered with respect to Mr. Sterriah.

[17] MR. DROLET: Your Honour, the Crown is not opposed to

that but would be seeking the defendant's remand into custody pending sentencing.

[18] THE COURT: Do you have anything to say about that?

[19] MR. CAMPBELL: No.

[20] THE COURT: The accused is remanded in custody to await the preparation of a pre-sentence report. The date for the reception of that report and eventual disposition of the case will be fixed on Friday, the 7th of March at 2:00 p.m. in Whitehorse.

FAULKNER T.C.J.