

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Arntzen*, 2005 YKSC 45

Date: 20050504
Docket: S.C. No. 04-01534
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

HAAKON ARNTZEN

Before: Mr. Justice L.F. Gower

Appearances:

John Phelps

Edward Horembala, Q.C.

For the Crown

For the Defence

MEMORANDUM OF RULING DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): I am prepared to rule on the objection.

[2] According to my review of my notes, L.S. said, in direct examination, in answer to a question about her relationship with the accused, that she was afraid of him from the time she was little and that he was angry and that it did not get any better over time.

[3] She also said, in the context of when she left home finally, she said there was a lot of violence and anger, that she was afraid of the accused. When asked what the violence and anger was about, there was an objection by defence counsel, which I

overruled. She went on to say that the accused was violent and angry towards her, her mother, and her brother. There were allegations of twisting arms, fighting with her brother, and her mother, and herself, physical fighting.

[4] On cross-examination, defence counsel asked about her fearfulness of the accused, and it was in relation to the period when they lived on 11th Avenue, and that eventually lead to her referencing her moving out of the home at the age of 17. She said, L.S. said, "It was because of the accused, that was the reason. I was fearful of him and wanted out of the house."

[5] Now, I think I would agree with defence counsel that it didn't get as far as Ms. S. saying, I delayed my disclosure of these incidents because of my fear of the accused. However, she did mention several times her fear of the accused and her reason for her fear, at least in part, seems to be her perception or remembrance of violence in the home. Therefore, to deny the Crown an opportunity to ask H.J. about his relationship with the accused would deny the Crown an opportunity to potentially corroborate the credibility of Ms. S., and it is that issue which I feel this evidence is relevant to.

[6] As far as the general rule against calling evidence of bad character, I referred to Watt's *Manual of Criminal Evidence*. The edition I have is 2001, and it appears at 32.01, and I quote:

"As a general rule, [the prosecution] is *not* permitted to adduce evidence of [the accused's] bad character for the sole purpose of proving [the accused] guilty of the offence(s) charged on account of bad character. The rationale that underlies the rule is *not* so much concerned with relevance, or lack of it, as it is with fear of prejudice and compromise of [the accused's] right to a fair trial.

The general rule is *not*, however, without exception. Evidence of bad character may be adduced where [and one of the instances is where] it is *relevant* to an *issue* in the case, *otherwise* than through the prohibited chain of reasoning...."

[Emphasis already added]

[7] I find it is relevant to an issue in the case and I will allow the question.

GOWER J.