

Citation: *R. v. Barnett*, 2006 YKTC 115

Date: 20061120
Docket: T.C. 05-00324B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

REGINA

v.

TABETHA LYNN BARNETT

Appearances:
Jennifer Grandy
Malcolm Campbell

Counsel for Crown
Counsel for Defence

DECISION

[1] BARNETT T.C.J. (Oral): This is an application made by Mr. Campbell, who is counsel for Tabetha Lynn Barnett, that costs be awarded against the Crown because he says there was a failure to provide timely disclosure.

[2] Ms. Barnett was the alleged victim in an assault case that was scheduled for trial in, I believe, January of 2006. She apparently failed to appear at that trial and a witness warrant was issued for her arrest. In April of 2006, it is alleged she was the complainant saying that some person had shot at her. That complaint was apparently investigated, initially, by Constable Buxton-Carr of the Whitehorse RCMP detachment.

[3] In the report to Crown counsel, this statement appears:

When police asked the female her name she identified herself as Lynn Tatiana Guyette.

Later spelled as G-U-Y-E-T-T-E. Constable Buxton-Carr subsequently obtained a statement from her in regards to the alleged complaint.

[4] This incident led to an obstruction charge against Ms. Barnett. The allegation being that she gave a false name, presumably being aware that there was an outstanding warrant for her arrest dating back to January, and that this falsehood to Constable Buxton-Carr caused at least a brief investigation to learn who she really was.

[5] Mr. Campbell, or an associate of his, became involved as counsel for Ms. Barnett pretty early on. Routine requests for disclosure were made and some disclosure was provided. It seems fairly obvious, to me at least, that, in a case of this nature, a statement concerning her identity made allegedly to the officer who is initially investigating the complaint would be pretty obviously necessary to be reviewed by her counsel, and that would be obvious to him or her and also to Crown counsel.

[6] There is a fair bit of correspondence back and forth about disclosure. The matter got set down for trial on the 29th of November, although it was apparent to everybody that it was being set for trial although there had not yet been full disclosure. There were discussions between counsel about other matters, and I think there was a failure to address the obvious issue that Constable Buxton-Carr had said he obtained a statement from Ms. Barnett, identifying herself as Ms. Guyette, and yet the supposed statement was never forthcoming, and neither was there ever any explanation of why it was not forthcoming.

[7] Finally, on the 13th of November, Mr. Campbell writes a more specific letter to Ms. Grandy, at the Department of Justice, and this is a file fairly newly having crossed her desk, and we now know that the reason the supposed statement was not disclosed in any formal sense is that there was no formal statement. Perhaps you could figure that out by reading between the lines of information that had passed previously. I am not sure of that.

[8] Mr. Campbell now says that following the application he filed on the 16th of November, he now understands the situation, and that there is nothing which counsel would describe, or an RCMP officer turning his or her mind, really, directly, that the subject would describe as a "statement".

[9] Mr. Campbell says it has taken him a long time to get this far, a fact which Ms. Grandy does not dispute. It does seem to me, as I said earlier, that there was a failure here, a failure on the part, perhaps, of persons within the Department of Justice to treat the matter seriously enough, it not being what anybody could call a major case. Also, a failure, I think, within the detachment to recognize that a fairly simple response was needed, not just a bureaucratic response, but a direct response saying that although the report to Crown counsel speaks of a statement, there was in fact no formal statement to be disclosed, and any information that was received by Constable Buxton-Carr was made known in the information that had been given to Mr. Campbell.

[10] Mr. Campbell, I think this is not a case where the Court should exercise discretion to award costs against the Crown. Your letter of November 13th, was, as I sense matters, really the first occasion where you very specifically said, "Look, what I

need is this statement given to Constable Buxton-Carr." Your letter of November 13th, while pointing out that you had made quite a number of previous requests for disclosure which had not been totally fulfilled, did not suggest that your next step would be a motion. I do not say that to fault you any way at all, but the motion was filed three days later.

[11] MR. CAMPBELL: You are referring to the letter of the 5th of October or the 5th --

[12] THE COURT: The 13th of November.

[13] MR. CAMPBELL: The 5th of October is where I first specifically request the statement.

[14] THE COURT: That is not the point, Mr. Campbell, that I am trying to make. The point I am trying to make is that while I do sense a failure here, if your letter of 13th of November had said something to the effect, "I have made six previous requests for disclosure, this is my seventh request. If my request is not fulfilled within a week, then I intend to file an application and will ask for costs." I am not suggesting that you should have said that, but if there had been such a specific statement that had not produced the results that were required, then I think the situation -- the balance would have been tipped. I did say at the outset that I wanted a transcript. You tell me, Mr. Campbell, that your sense of the matter is that, for whatever reason, requests for disclosure from defence counsel are not always being adequately addressed. Ms. Grandy says she does not accept that as a general proposition.

[15] There will be no costs awarded against the Crown, I said that. I want the transcript delivered to Ms. Grandy, and she will, I presume, circulate it within her office for whatever it may or may not be worth, and Ms. Grandy, will you make certain that a copy of the transcript is delivered to an officer in charge of the detachment?

[16] MS. GRANDY: I will, thank you, Your Honour.

[17] THE COURT: I say that because if one reads newspapers, listens to the news, in many jurisdictions these days, and this is not new, but there are complaints about matters taking too long to get to trial. Generally, the proposition is that accused persons and their counsel are unnecessarily delaying things; that is generally. Sometimes there are stories where it is said that the prosecutor, counsel and police officers are responsible for delays, but the bottom line is that many people in this country think that too many trials take too long to get to court and too many cases take too long to get resolved. This, I think, it falls into that category.

[18] If somebody had turned his mind to the disclosure request here a few months ago, this matter would have been resolved when it should have been resolved, rather than having to be adjourned to the 24th of November to fix another date.

[19] Now, I said I was going to be as brief as I could, and I think I trespassed and went too long. The bottom line is that people did not turn their mind to this in the way that they should have, and it would have taken a lot less time if they had done that.
Thank you.

