

Citation: *R. v. Becker*, 2010 YKTC 73

Date: 20091218
Docket: 09-00362
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Luther

REGINA

v.

ROBERT WILLIAM BECKER

Appearances:
Bonnie Macdonald
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] LUTHER T.C.J. (Oral) Mr. Robert William Becker is charged on a four-count Information with an assault on Pamala Mullin on the 5th of August, 2009 and on August the 6th, 2009, and then with two breaches of probation, each from the 5th of August, 2009, one relating to abstaining from alcohol and the other, failing to keep the peace and be of good behaviour.

[2] On August 31st the Crown elected to go by way of Indictment, and in September, on the 21st, the accused elected to be tried in Territorial Court. Not guilty pleas were entered and here we are. The evidence in this matter was heard on December the 15th and the Court made a ruling, I believe it was yesterday. We are here now for the decision on the case on the whole.

[3] This is a difficult case for sure. The Crown's case largely consists of the statement made by Pamala Mullin to the police on August the 6th of 2009. The statement was taken between 8:35 p.m. and 9:02 p.m. So we have that statement, which the Court has admitted into evidence. In addition to that, we have other factors to consider, including spontaneous remarks made to the neighbour and the police and the presence of some injuries. The biggest question, of course, is what weight shall I give to the statement of August the 6th? That is the big question here, and it is not an easy decision to arrive at, given what is required of trial judges in terms of determining what is proof beyond a reasonable doubt. Of course in that regard, the Court is assisted by the Supreme Court of Canada's decisions in *R. v. Lifchus*, [1997] 3 S.C.R. 320, and *R. v. Starr*, [2000] 2 S.C.R. 144.

[4] There is no question that Pamala Mullin was angry and, in fact, was angry for good parts of both August the 5th and August the 6th. But, in my opinion, the overriding feeling expressed in the statement was one of being hurt emotionally. Pamala Mullin had been through DVTO experience with the accused and had stood by him. Now, with her longstanding and comforting friend and the police there at her place, with the accused having fled, she felt it important to pour out her hurt feelings, and that is exactly what she did. Pamala Mullin told her friend Serena Willis, "I'm hurting all over. Yes, he hit me." And when Serena Willis asked, "Shall I call the police?" "Yes," Pamala Mullin said, "I want to stop hurting."

[5] After that, the police and Serena Willis arrived and she immediately made a comment to Constable Horbachewsky, "I couldn't hold him off any more," and noted that she was holding a water bottle to her head when she said this. The Court accepts the

comments to both Constable Horbachewsky, and previously to Serena Willis, for the truth of the contents. These were clearly excited and spontaneous utterances, and the Court feels that there was no real possibility of concoction.

[6] What is prevalent throughout the entire statement are hurt feelings as she was recounting many things, including the events of the 5th and 6th of August. These feelings of hurt gushed forth without hesitation, without delay, without fancy and contrived language, and the Court feels that she was speaking and crying forth from her heart.

[7] As to the injuries, the Court feels that there is really no valid explanation for the swollen hand. The aspect of gardening is a lame explanation. As to her problems with eczema and bruising easily, that definitely does have some credibility, and I do not have any problem with that aspect of it. But it is important to notice not only the photos but also the descriptions of Ms. Willis and the police as to the state that Pamala Mullin was in when they arrived. She was very upset and there was noticeable redness and swelling to her facial area and to her hand.

[8] The defence has suggested that there would just be one reason for changing her story as early as two weeks after the event, and then in Court earlier in the week, and that was that it would be easier for her to take care of Codee (phonetic) because the accused could get through to him better than she could. But there is more to it than that. There are twisted emotions here that the Court may never understand, but clearly, I do feel that there is a lingering love and wanting on her part to have him back in her

life and, of course, there is an overall concern for the accused's health, should he be convicted.

[9] The case goes well beyond mere suspicions and goes well beyond a balance of probabilities. Ultimately, in the *Lifchus* case, triers of fact have to determine whether or not they can be sure that the accused committed the offences as alleged, and in this case, I feel that I certainly can.

[10] The accused was found hiding by the police. Why did he not stay there and give the police his side of the story? I am hard pressed to think that he was concerned about a potential charge under s. 733.1 for drinking on the last day of his probation.

[11] Pamala Mullin was very careful in walking the tightrope between being charged with giving a false statement to the police and essentially getting her boyfriend off. Many times she indicated she did not remember. Many times she indicated she was speaking about a previous incident. She did not want to be here, that was obvious. During the course of her time on the stand I studied her very closely as she was giving her evidence, and the Court rules that she was not telling the truth in court on the main points relating to the assaults.

[12] In the *voir dire* I have already commented fairly extensively on the fact that she had alcohol in her body. On August the 5th the Court is satisfied that there was at least one punch, and on August the 6th, several punches throughout the day, particularly after the police were called. Now, I can certainly see a situation where there would be, between a man and a woman, repeated arguments, very abusive name calling, and the woman being emotionally devastated and calling the police and, because of hurtful

statements made to her by her partner, then proceeding to make a long statement to get back at the partner, and then, subsequently, later recanting, realizing that she really does not want to do him any harm. But in this case, it goes a lot beyond that because of the fact that we have the injuries, some of which have not been adequately explained. We have the spontaneous utterances to the police and to the friend, and we have a lengthy statement with great detail where the overriding theme is one of hurt, rather than vengeance.

[13] Based on that, the Court is satisfied to register convictions on all counts.

LUTHER T.C.J.