

Citation: *R. v. Constantinescu*, 2006 YKTC 60

Date: 20041213
Docket: T.C. 04-00285
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

REGINA

v.

NICOLE CONSTANTINESCU

Appearances:
Samantha Wellman
James Van Wart

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): In this case, Nicole Constantinescu is charged with an assault on Roddy Petersson. The events happened last July. The accused and Mr. Petersson had been in a relationship, which was clearly a rocky one. During the course of the relationship a child had been born, and after the couple broke up, the difficulties continued over the care and custody of the child.

[2] Back in July, the accused and Mr. Petersson were sharing custody of the child and on the date in question, Ms. Constantinescu went to Mr. Petersson's residence to drop off the child. They had a conversation, which I gather started normally enough but

ended up with Mr. Petersson touching the ball cap that Ms. Constantinescu was wearing.

[3] There was some dispute as to the extent of this touching, but suffice it to say that Ms. Constantinescu was greatly annoyed by this gesture. However, she left Mr. Petersson's residence, and in fact drove away down the block, still being angry about what had happened. She turned around, went back to Mr. Petersson's, knocked on the door and then proceeded to confront Mr. Petersson about this unwanted touching.

[4] An argument ensued. Ms. Constantinescu says that, to quote her, "Mr. Petersson was getting in her face," whereupon she struck Mr. Petersson in the face with a closed fist. She then says that Mr. Petersson slapped her back. She then gave Mr. Petersson a shove, shoved him back into the interior of his residence. She then left.

[5] Mr. Petersson's version of the events is somewhat different. I will not go into his evidence in detail because it seems to me that in analyzing the evidence of both, I am not in a position to say that I can place no weight whatsoever on Ms. Constantinescu's version of the events and therefore the case, I think, falls to be decided on the version of the events she advances.

[6] Mr. Van Wart argued that what had occurred amounted to a consensual fight. I do not agree. It is true that there was a confrontation between the parties, but the mere fact that Mr. Petersson and the accused were arguing, even coupled with Ms. Constantinescu's assertion that Mr. Petersson was getting in her face, does not turn this into a consensual fight. Neither did Ms. Constantinescu suggest that the blow was

struck in self-defence or for some other reason that might justify the admitted application of force to the person of Mr. Petersson.

[7] That being the case, it seems to me that even on the accused's version of events there has been an assault and I find her guilty. I should say that, obviously, the fact that the assault occurred in the circumstances that it did will have a large bearing on what the disposition of the Court may be, but the circumstances alone do not provide a defence.

(Submissions by counsel)

[8] The assault that occurred in this case, was one that occurred in the context of the relationship that had broken down and a continuing difficult relationship over the custody of the child of the relationship.

[9] It also must be noted that prior to assaulting Mr. Petersson, Ms. Constantinescu, herself, had been touched by Mr. Petersson, who had tweaked her ball cap. This hardly amounted to what one could call an assault, but it was an unwanted touching and it did set Ms. Constantinescu off. During the course of the ensuing confrontation, Ms. Constantinescu, who is a fairly petite woman, did strike Mr. Petersson. She was herself struck back by Mr. Petersson thereafter.

[10] While I found that the assault by the offender, Ms. Constantinescu, amounted to a criminal assault, nevertheless, it was a single blow struck in very trying circumstances and I think must be considered as being at the very lowest scale of criminal assaults.

[11] Ms. Constantinescu has no criminal record and is twenty years of age. She is just now about to embark on finishing her high school and pursuing further education. Clearly it would be in her interest that she not be saddled with a criminal record arising out of this incident.

[12] I think it would be but rarely that a case of spousal assault or domestic violence, for that is what this was, would be dealt with by way of a discharge, but I think this is one of those rare cases. The only issue in my mind is the question of whether the discharge should be conditional or absolute. Mr. Van Wart argued ably for a conditional discharge, but he has failed to persuade me that I should not impose an absolute discharge and the discharge will be absolute.

[13] There would be some, I think, attractiveness in other circumstances to making the discharge conditional from the point of view of assisting to sort out the relationship between the parties by way of no contact orders and so forth, but I think that is better left in this case to civil proceedings, which are ongoing and, indeed, any issues of needed counselling, parental skills, training and so on, again, may well be addressed in the context of those proceedings.

[14] Given the offender's financial circumstances, the surcharge will be waived.