

Citation: *R. v. Dupont*, 2009 YKTC 128

Date: 20090930
Docket: 08-00758A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

GERALD FERDINAND DUPONT

Appearances:
Judy Bielefeld
Lynn MacDiarmid

Appearing for the Crown
Appearing for the Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): Gerald Ferdinand Dupont is charged with assault, assault causing bodily harm and uttering death threats. The first assault is said to have occurred on or about February 7, 2009. The assault causing bodily harm and uttering of threats allegedly occurred on February 12th of this year. The complainant in each case is Marlene Johns, who at the time was in a relationship with the accused.

[2] In my view, it is beyond doubt that Ms. Johns suffered a beating on or about February 12, 2009, having regard to the photographs of her injuries and the medical records that were tendered, even allowing that some of the bruising shown may be from another, earlier incident. The defendant's theory is that the injuries must have been suffered by Ms. Johns as she staggered around drunk on the evening of February 12th,

but it is crystal-clear to the Court that this is not a slip-and-fall case; it is an assault case. The injuries are simply too extensive and too varied for the Court to reasonably suppose that they were suffered accidentally.

[3] Ms. Johns says it was the defendant who assaulted her. The only possibilities are that it was the defendant or that it was someone else and that she has mistakenly or maliciously blamed it on the defendant. To suggest that she is mistaken would be sheer speculation, entirely unsupported by any evidence. In my view, it would be almost as much of a stretch to conclude that Ms. Johns was assaulted by someone else and that she has, for some perverse reason, attempted to pin it on the defendant. No motive whatever emerged for her to do such a thing. Moreover, Ms. Johns was an extremely reluctant witness. A false accuser would have brought much more enthusiasm to the task.

[4] The defendant testified and denied even laying so much as a finger on Ms. Johns. While he conceded that Ms. Johns had been in his residence on February 12th, he said that she eventually left and at that time had suffered no injuries. As stated, he offered the theory that she must have fallen down or otherwise been injured due to her advanced state of intoxication.

[5] I place no credence whatever on the defendant's version of the events. It must be noted that there were significant portions of what he said in flat contradiction to Ms. Johns' evidence that were not put to her in cross-examination, as the rule in *Browne v. Dunn*, (1893) 6 R. 67, H.L., requires. As well, his evidence contained many examples of minimizing, which had the effect of minimizing his credibility. For example, he

claimed initially to have consumed only two sips of vodka; later he called them two shots of vodka. However, these sorts of things are minor in the context of this particular case. At the end of the day, Mr. Dupont's evidence simply flies in the face of the clear weight of the evidence, especially the incontrovertible physical proofs of Ms. Johns' injuries.

[6] On the whole of the evidence, I am satisfied that Mr. Dupont did assault Ms. Johns on February 12th, and that the assault caused her bodily harm, in particular, a cut to her head requiring suturing to close. I am also satisfied that he threatened to kill her on that occasion.

[7] With respect to the claimed assault on February 7th, I am satisfied that such an assault occurred, although Ms. Johns provided only the barest outline of what occurred on that occasion.

[8] I find the accused guilty on Counts 1, 2 and 3.

FAULKNER T.C.J.