

Citation: *R. v. Good aka Smith*, 2010 YKTC 12

Date: 20091113
Docket: 08-00805
Registry: Whitehorse
Heard: Carcross

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

HELEN JUNE GOOD
aka HELEN JUNE SMITH

Appearances:
Bonnie Macdonald
Emily Hill

Counsel for the Crown
Counsel for the defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): Helen June Good, also known as Helen June Smith, is charged with assault causing bodily harm and uttering death threats. The alleged victim in each case is her husband, Robert Herschel Smith.

[2] This matter came to light on February 2, 2009, when Mr. Smith arrived at the Carcross Health Centre. Amongst other injuries were a cut on his nose and a swollen and sore jaw, which ultimately proved to have been fractured. Soon afterwards, Mr. Smith made a statement to the police implicating Ms. Good as the assailant. She was promptly arrested and charged.

[3] Based on the medical reports from the Carcross nursing station, Dr. Himmelsbach, who attended Mr. Smith in Whitehorse, the radiologist, and the

photographs taken by the police and Mr. Smith's relatives of his injuries, it is beyond any doubt that Mr. Smith was the victim of a serious assault.

[4] The sole issue before the Court is whether or not it has been proved beyond reasonable doubt that the accused, Helen Good, was the perpetrator. In answering the question, it is necessary to carefully analyze the evidence of Mr. Smith, because he is the only witness who gave evidence directly connecting the accused to the assault.

[5] On examination in chief, Mr. Smith initially claimed little recollection of the events, repeatedly taking refuge in the fact that he had been consuming alcohol. He could recall that an argument started and that Ms. Good had, in his words, "freaked out," and, in her rage, virtually trashed the house. On the subject of how he came by his injuries, he would say little. He did suggest that one Scott James may have assaulted him. As the examination progressed and Mr. Smith was invited to refresh his memory from his statement to the police, however, he began to slowly concede that Ms. Good may have, indeed, assaulted him. Eventually, he said that Ms. Good had assaulted him with a chair and her fists and kicked him in the legs. He also eventually acknowledged that Ms. Good had uttered threats to kill him.

[6] On cross-examination, Mr. Smith was quick to take the suggestion that he was not sure Helen Good had hit him and that he had been pressured by family into implicating her. He also agreed with the suggestion that it was Scott James who had assaulted him and caused the injuries to his face and jaw.

[7] A number of other witnesses were called, including several family members, mostly to deny that they had pressured Mr. Smith. Their evidence added little to the available evidence before the Court. Of more moment was the evidence of Constable

Hack, who had arrived at Helen Good's residence soon after the complaint and was able to confirm, to use Mr. Smith's words, that the place looked like a tornado had hit it. Furniture was overturned, kitchen and other household articles were strewn everywhere on the floor, and the door to the kitchen stove was smashed. Among the items on the floor were a dozen or more kitchen knives and pairs of scissors.

[8] Stanley (sic) James also testified. He confirmed Mr. Smith's evidence that at one point Mr. Smith had gone to the James' residence. Significantly, Mr. James described Mr. Smith as arriving with injuries on his face and jaw consistent with those suffered by Mr. Smith. Stanley James was not aware of any altercation between his son Scott James and Mr. Smith.

[9] Scott James also testified. He did not recall assaulting Mr. Smith and said that he had no reason to so. On cross-examination he conceded that he was drinking heavily at the time and sometimes becomes violent or has blackouts. He conceded that it was possible that he had assaulted Mr. Smith.

[10] That, in a nutshell, is the evidence before the Court.

[11] With regard to Robert Smith, it was obvious that he was a most reluctant witness. He clearly did not want to be testifying, and clearly did not want to implicate his wife. He tried desperately to avoid doing so. Unfortunately, from the accused's point of view, those admissions eventually wrung from him with such difficulty have the absolute ring of truth. It is quite true that having implicated Ms. Good in chief, Mr. Smith just as quickly recanted in cross by adopting the suggestions of the cross-examiner, that he could not be sure that Ms. Good had hit him, and that Scott James was the author of his injuries. This evidence reminded me of a drowning man, grabbing for the life preserver

being thrown at him by defence counsel. It did not affect my belief in the veracity of his hard-won admissions in chief. As Mr. Smith said when re-examined and asked if he told the truth when he implicated Ms. Good, "I'm kind of stuck here."

[12] It was suggested for the defence that Mr. Smith was, in any event, too intoxicated to give evidence on which it would be safe to convict. I have no doubt that Mr. Smith was substantially under the influence of alcohol, but Constable Hack and Pat Lincoln, the nurse who attended Mr. Smith to deal with his injuries, both of whom know Mr. Smith well, gave careful and convincing evidence that Mr. Smith was coherent and able to give an account of himself. I do not believe that Mr. Smith was intoxicated to the point that he would, for example, mistakenly identify the accused as his attacker.

[13] It was also argued that Mr. Smith was pressured by his relatives into implicating Helen Good, who is not on good terms with the family. However, the evidence suggests only that Mr. Smith's brothers and sister-in-law urged Mr. Smith to report the matter to the police. There was no evidence capable of even suggesting that they exhorted him to falsely accuse Ms. Good. Indeed, Ms. Good's name first surfaced at the nursing station, before Mr. Smith had any, or at least much, contact with his family.

[14] It is also true that Mr. Smith has additionally implicated Scott James as his assailant. Indeed, Mr. James' name was mentioned as early as Mr. Smith's attendance at the nursing station. Significantly, however, Mr. Smith made no mention whatever of Scott James in the course of his detailed statement to the police. I find the mention of Mr. James as simply a red herring, part of Mr. Smith's reluctance to get his wife into trouble. It is true, as Ms. Hill urged, that Scott James conceded that he could have assaulted Mr. Smith while intoxicated and had no memory of it. However, my

impression of the answer is that Mr. James would equally have agreed with the suggestion that he had done any number of other things in similar circumstances.

[15] In this connection, it is also important to recall that Stanley James describes Mr. Smith as arriving at his residence, which was also the residence of Scott James, with the injuries on his face already having been incurred. If so, this excludes Scott Smith as the culprit. In this regard, I see no reason to doubt Stanley James' evidence. He showed not the slightest hint of carrying a brief for any party to the proceedings, or of covering up for his son. In general, it can be said of Mr. James' evidence that he treated the questions from both the Crown and the defence with equal disdain.

[16] As well, it must be remembered that the disarray in Ms. Good's house is entirely consistent with Mr. Smith's description of Ms. Good as enraged and violent. I agree with Ms. Hill's assertion that this evidence does not directly prove that she was the assailant, but it is entirely consistent, not only with Mr. Smith's evidence as to how the matters concluded, but also consistent with the thesis that Helen Good was the assailant.

[17] At the end of the day, while cautioning myself about the many possible frailties in Mr. Smith's evidence, I accept that part of it which is credible and which proves beyond a reasonable doubt that Ms. Good was the assailant and caused the injuries to Mr. Smith that were observed thereafter by the nurse, the police and Mr. Smith's family. I find the accused guilty on both counts.

FAULKNER T.C.J.