

Citation: *R. v. Grant*, 2009 YKTC 105

Date: 20090424
Docket: 08-00677
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Maltby

REGINA

v.

EVAN GORDON GRANT

Appearances:
Peter Chisholm
André Roothman

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] MALTBY T.C.J. (Oral): This is a very unfortunate case, and one that, certainly from my perspective, is right on the line. But as Crown knows, any doubt is resolved in favour, if it is reasonable doubt, resolved in favour of the accused.

[2] It sounds to me that, once again, alcohol has befuddled the reasoning and logic and intelligence of otherwise reasonable people. Unfortunately, that happens very frequently. You get a situation which, if the parties were sober, could have been resolved, and it mushrooms. I must say I find the reasons for this whole thing starting to be rather vile, but that is just my personal preference, I guess. I hope some lessons have been learnt over this.

[3] There was an argument between the parties, a misunderstanding or whatever you want to call it, but jealousy, et cetera, that arose and ended in Mr. Grant and his common-law, Amy Wilneff, or girlfriend who was living with him. I am not going to go into the definition of what common-law is; that is not the matter here today before me. Mr. Grant just wanted to leave, get out of the bar. He did what I find to be a totally reasonable thing, and a thing that more people should do; he tried to walk away from the situation. Ms. Wilneff would not let him walk away from the situation; followed him to the bar. I might add that Ms. Wilneff did not give evidence here today.

[4] He took a cab because he realized he had had too much to drink to drive. Ms. Wilneff, who I understand is about five feet tall, considerably smaller than Mr. Grant, chose to drive home, which perhaps shows her lack of good sense and judgment at the time. She got home shortly after he did and would not let it rest. Possibly, if she said, "I'm going to sleep on the couch and we'll talk about it tomorrow," that would have been the end of it. But she did not, and she engaged Mr. Grant in an argument.

[5] It sounds like, from the description of Serenity Kemble who came along shortly thereafter, that it was badgering, equally badgering each other, and pushing, et cetera, and it was a mutual event that was occurring, except that Ms. Wilneff was slapping Mr. Grant on the face, three times. To his credit, he did not retaliate by use of force, other than pushing her away. When Ms. Kemble arrived, and she also had been drinking, she described this situation, where it was going on, shouting and swearing at each other, and pushing and shoving, et cetera. She got a shove, at one point, when she was involved, and so did her -- and her sister came in and got involved and punched Mr. Grant on the head, at least once or twice. It was a nasty scene.

[6] Mr. Grant's desire was to get everybody out of there so he could get rid of them and get rid of the conflict, and they would not leave. Eventually, after he had phoned the police and they did not come, and these people were keeping at it and at it and at it, and he was getting slapped and punched, et cetera, by these young women and he did not want to retaliate, he grabbed Ms. Wilneff by the pants and pulled her out of the house.

[7] Yes, it was not the smartest thing to put her out in a cold night, very cold night, but he said he had thrown the purse and some of her shoes there, and she was in the company of her good friends; friends good enough, close enough, that they, upon not hearing back from her on the cell phone, went up to her residence to check her out. I have no doubt that one or two of them would have offered her a couch to sleep on. I do not think Mr. Grant was particularly throwing her out to the wolves. She had friends there with a running car and a sober driver. So it is not as bad as it looks on first blush.

[8] Given the circumstances and the beating he was getting, his concern about his own safety and his possessions - and I find the evidence is there, his evidence, that she threatened to break his TV; I accept that or certainly it raises a reasonable doubt - the force that he used to get her out was not excessive. They were in a consensual pushing/shoving type match, except she was giving him worse than he was giving her, and he was justified in taking the actions that he did.

[9] I find him not guilty.

[10] Crown is not proceeding on Count 2 and 3, and, given the circumstances, I do not find that he breached his Probation Order. He tried to avoid not being of good

behaviour by leaving the place, and he was pursued by these people. Not pursued by all probably -- but certainly by Ms. Wilneff, who then escalated this thing. He was doing what he had to do so that he could have the peaceful enjoyment of his property, et cetera.

[11] So I find him not guilty of Count 4, as well.

[12] All right. Are you entering a stay on Count 2 and 3? Or are you just making no argument on that?

[13] MR. CHISHOLM: Just no argument.

[14] THE COURT: All right. Well, just so that you know, there is certainly reasonable doubt as to how Ms. Amy Kemble came upon her bruise on her right arm, which was when she fell down the stairs, et cetera, and her involvement, having heard that she punched him.

[15] As far as the assault on Serenity Kemble, it was either so minimal to not even be an assault, or a consensual shoving type, as she approached him. Certainly there was a reasonable doubt raised about that.

[16] So I find him not guilty of all four counts.

MALTBY T.C.J.