

Citation: *R. v. Jepp and Ladue*, 2012 YKTC 14

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Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

ROBERT RUSTY JEPP and
TERRY GORDON LADUE

Appearances:
Ludovic Gouaillier
Lynn MacDiarmid
Malcolm Campbell

Counsel for the Crown
Counsel for the Accused Jepp
Counsel for the Accused Ladue

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): This is the case of *Regina v. Terry Gordon Ladue* and *Regina v. Robert Rusty Jepp*.

Introduction:

[2] Mr. Ladue and Mr. Jepp are both charged with an assault causing bodily harm on the person of Joseph Steven Glada, an offence contrary to s. 267(b) of the *Criminal Code*. This assault took place in Ross River on November 6, 2010. Both were released

on undertakings with conditions. Mr. Jepp is additionally charged with breaching his undertaking on September 11, 2011, by consuming alcohol. Mr. Ladue and Mr. Jepp entered guilty pleas to these charges on January 5, 2012.

[3] Although they were charged separately with the s. 267(b) offence, counsel have agreed that it would be appropriate to sentence both accused at the same time.

[4] I am grateful to counsel for providing a detailed Agreed Statement of Facts describing the circumstances of the s. 267(b) charge. I also have the benefit of the Pre-Sentence Report for Mr. Ladue.

Circumstances of the offence:

[5] In the early morning hours of November 6, 2010, a drinking party took place at the residence of Mary Sidney. Among the guests were the complainant, Joseph Glada, Robert Jepp, and Terry Ladue. Everyone, including the accused and the victim, were very intoxicated.

[6] During the party, someone alleged that the complainant, Joseph Glada, had sexually interfered with the youthful niece of another partygoer, Terry Ladue. (A police investigation would later reveal there was no truth to the allegation.) When Ladue heard this allegation, he jumped over the coffee table and started punching Joe Glada on the head. Mr. Glada, who was sitting on the couch, slipped to the floor, possibly unconscious, where Mr. Ladue began kicking him, including in the head. Robert Jepp, who otherwise was not involved, joined in and also kicked Mr. Glada three or four times. Mandy Jepp, who is Robert's older sister, also participated in the assault by kicking Mr. Glada. At no time did Mr. Glada fight back. Joe Glada eventually got up from the floor,

and sat back on the couch. When he was on the couch, Mr. Ladue continued to assault Joe Glada.

[7] Mr. Glada was taken to the Ross River nursing station a few hours later. His memory of the incident was compromised by alcohol consumption and the injuries he received from the assault. He was subsequently medevaced to Whitehorse, and then to Vancouver for surgery.

[8] A report from the Whitehorse General Hospital, Medical Imaging Department, was filed as an exhibit, in addition to operative and consultation reports from the Vancouver General Hospital. The radiology report summarized the injuries as follows:

Complex facial smash fracture. There are mildly comminuted orbital floor fractures on both sides with herniation of orbital fat into maxillary sinus bilaterally. There are bilateral fractures of lamina papyracea. There are segmental fractures of anterior, as well as posterolateral left maxillary sinus. There are fractures involving medial maxillary sinus on both sides. Multiple nasal bone fractures are present. There is fracture of inferior left nasal turbinate, as well as the nasal spine.

Blood is noted throughout the sinuses, completely opacifying both maxillary sinuses.

In other words, bones in the eye sockets, nose and sinuses were broken. The photographs that were filed showed several significant lacerations on Mr. Glada's face, in addition to bruising and swelling. Both eyes were swollen shut.

[9] Blood can be observed in the photograph of Mr. Ladue's running shoes. This suggests Mr. Ladue kicked Mr. Glada in the head or face. No blood was observed on Mr. Jepp's boots.

Circumstances of Mr. Jepp:

[10] Mr. Jepp is a 25-year-old aboriginal man of small stature. He has a limited criminal record. At age 19, he was convicted of a drinking and driving offence, and in 2008 he was convicted of theft, mischief and another offence contrary to s. 253(b) of the *Criminal Code*. He has convictions for four property offences as a youth.

[11] Mr. Jepp has a limited education. He stated he had achieved Level 2, which I understand may be equivalent to Grade 9 or Grade 10.

[12] Mr. Henry Dick, who is Mr. Jepp's brother, is prepared to assist Mr. Jepp if the Court imposes a community-based disposition. He is prepared to take Mr. Jepp to the family trapline in Blind Creek, some seven kilometres from Faro. When Mr. Jepp is not residing there, he can live at his brother's home in Ross River. Mr. Dick is prepared to supervise him when he is in Ross River. I note that Mr. Dick is in court today.

Circumstances of Terry Ladue:

[13] Mr. Ladue is 47-year-old aboriginal man who grew up in foster homes and a group home. He has led a transient lifestyle, primarily in Ross River, and on the streets in Vancouver. He was a victim of sexual assault when in foster care. He has a Grade 10 education.

[14] He has several tickets relevant to mining, including a Class 1 driver's licence. He was recently laid off at the Selwyn Mine and expects to be called back in the spring. He has had previous employment in mining and construction. He prefers to work in camps as it helps him remain alcohol and drug free.

[15] Mr. Ladue has had a long problem with alcohol and drug abuse. He has been an intravenous user of cocaine. While an admitted alcoholic, he has been sober for a number of months. He has recently been residing with his brother, Gary Ladue, who maintains a sober home. He has been meeting with the local drug and alcohol worker, Lloyd Cesaer and they have been talking about sending Mr. Ladue to residential treatment.

[16] Mr. Ladue has an extensive criminal record going back to 1983, which includes property offences, three robbery convictions, two drinking and driving convictions and several convictions for breaching court orders. His last conviction was in 1993 for driving while disqualified. The lengthy interval since his last conviction provides a clear indication that Mr. Ladue can stay out of trouble if he is not drinking.

Principles of Sentencing:

[17] The offence before the Court is a very serious one, as are the injuries to Mr. Glada. Although charged as an “assault causing bodily harm”, it could have easily been charged as an “aggravated assault”. The victim, Mr. Glada, neither did or said anything to provoke the assault initiated by Mr. Ladue. He was grossly intoxicated and sitting on the couch. Mr. Ladue’s initial blows knocked him to the floor, apparently unconscious, yet the assault continued with Mr. Ladue, and then Mr. Jepp joining in, kicking the victim. As I mentioned earlier, the blood on Mr. Ladue’s shoes suggest that he kicked Mr. Glada in the head while Mr. Glada was on the floor.

[18] As a victim of sexual abuse himself, Mr. Ladue stated that he simply “lost it” when he was told that Mr. Glada had touched his niece inappropriately. He took no

steps to determine whether the information he received was true. It turned out it was not. His actions constitute “vigilantism” which must be strongly denounced.

[19] By his own admission, Mr. Ladue initiated the assault and was the leader. Mr. Jepp joined in when Mr. Ladue was on the floor.

[20] Both Mr. Ladue and Mr. Jepp are members of the Ross River First Nation. I take judicial notice of the fact that the Community of Ross River was significantly and adversely impacted by the Federal Government’s residential school policies. (See, for example, the recent decision of this Court, *R. v. Franklin Charlie (Jr)*, 2012 YKTC 5, (currently unreported).

[21] This is a serious violent offence. Denunciation and deterrence are therefore important considerations. (See *R. v. Wells*, [2000] 1 SCR 207).

Sentence for Mr. Ladue:

[22] The aggravating factors in sentencing Mr. Ladue include:

- A lengthy and serious criminal record;
- He was the instigator and leader;
- The assault was very serious, causing significant bodily harm;
- Mr. Glada needed to be medevaced to Vancouver for surgery;
- Mr. Ladue continued the assault by kicking Mr. Glada when Mr. Glada was on the floor, apparently unconscious;
- Mr. Ladue made no effort to get medical assistance for Mr. Glada after the assault;
- The assault, as I mentioned, was a form of vigilantism, where Mr. Ladue decided to take the law into his own hands in order to punish Mr. Glada for something he mistakenly thought Mr. Glada had done.

[23] The mitigating factors include:

- Mr. Ladue has had a difficult childhood, having been placed in several foster homes and group homes;
- Mr. Ladue was sexually abused as a child: he believes that is why he overreacted when he heard that his niece had been touched by Mr. Glada;
- Mr. Ladue is an alcoholic, but he has, in the past, been able to maintain sobriety for extended periods of time. This is reflected in his criminal record;
- He is remorseful. He expressed sincere apologies to Mr. Glada and the community during the sentencing hearing;
- He entered a guilty plea to the charge before the Court;
- He accepted responsibility for initiating the assault - and he said that Mr. Jepp would not have assaulted Mr. Glada had he not initiated the assault;
- He has been on bail conditions for over one year without a breach charge;
- He has met several times with Mr. Cesaer, the NNADAP worker in Faro, exploring treatment options.

I note that Mr. Cesaer is present in court today.

[24] Mr. Ladue has employment skills, a good work history and prospects for employment in the spring. I do not consider these to be mitigating factors in sentencing for a serious criminal assault.

[25] Mr. Ladue was intoxicated at the time of the offence. I do not consider this a mitigating factor. He is 47 years old, knows he is an alcoholic and knows that when he drinks he gets into trouble. He has not taken serious steps to address his alcoholism, except for abstaining from time to time.

[26] Mr. Ladue asked the Court to consider a conditional sentence of imprisonment. Defence counsel has filed several cases involving violence and charges of assault causing bodily harm that resulted in conditional sentences of imprisonment. In my view, these cases are distinguishable. For example, the decision in *R. v. Ward*, 2009 YKTC 67, is distinguishable. The injuries to the victim were minor in comparison to those suffered by Mr. Glada. In *Ward* the victim suffered a split lip, although he received

several punches to the head. In Mr. Ward's case, rehabilitation was of greater concern than in the case involving Mr. Ladue.

[27] *R. v. Everitt*, T.C. 95-01526A, involved an altercation where the victim was stabbed with a knife. Mr. Everitt received a conditional sentence of imprisonment. He was 20 years old and had no previous criminal record, both facts distinguishing Mr. Ladue's situation.

[28] The recent decision of *R. v. Johnson*, 2011 YKTC 70, is also distinguishable: the injuries were less serious; the accused was a young man, age 27; the accused's criminal record was limited; and the victim was the primary aggressor. Mr. Johnson was found guilty because he "used one kick too many".

[29] While the injuries suffered in *R. v. Larkin*, 2006 YKTC 50, were very serious, Mr. Larkin had no previous criminal record and no history of engaging in violence.

[30] *R. v. Hanson*, 2006 YKTC 43, was a spousal assault. Mr. Hanson grabbed his wife's arm, twisted it behind her back and pushed her to the floor. Her arm broke her fall but also resulted in a complex fracture which required surgery. Mr. Hanson had no previous criminal record. The seriousness of the injury was not readily foreseeable. The assault was not prolonged, as in the case of Mr. Ladue.

[31] Due to both the circumstances and seriousness of the offence, denunciation and general deterrence are the most important considerations in sentencing Mr. Ladue. In my view, these principles of sentencing cannot be met by imposing a conditional sentence of imprisonment. I am not satisfied that allowing Mr. Ladue to serve his

sentence conditionally would be consistent with the fundamental purpose and principles of sentencing as set out in the *Criminal Code*.

[32] In the result, Mr. Ladue is sentenced to a custodial term of 12 months, to be followed by one year of probation.

[33] The terms of the probation order are, in addition to the statutory terms:

1. Report to the Probation Officer within two working days of your release from custody, and thereafter, when and in the manner directed by your Probation Officer;
2. Remain within the jurisdiction of the Court, unless you have written permission from your Probation Officer;
3. Abstain absolutely from the consumption of alcohol or other intoxicating substances;
4. Participate in such alcohol abuse counselling, including residential treatment, as and when directed by your Probation Officer;
5. Take such other counselling, programming as may be directed, including mental health counselling;
6. Provide your Probation Officer with all necessary consents and releases in order to monitor your performance pursuant to this order;
7. You are to have no in person contact with Mr. Glada, except with the permission of the Probation Officer after consultation with victim services.

[34] The DNA order will go as requested by the Crown. It is mandatory in any case.

[35] The firearms order is discretionary. Mr. Ladue advised that he does not own any

firearms and does not engage in subsistence hunting and that such an order would not cause him hardship. Considering Mr. Ladue's criminal record and the seriousness of the assault on Mr. Glada, there will be a ten-year prohibition order pursuant to s. 110 of the *Criminal Code*.

[36] In the circumstances, the victim fine surcharges are waived.

Sentencing of Mr. Jepp:

[37] Mr. Jepp is a 25-year-old First Nations man with a limited record which does not involve any offence involving violence. He was sentenced on two occasions as an adult, in 2005 and 2008, for four offences: theft, mischief and twice for drinking and driving. His last entry was in 2008.

[38] His involvement in the assault was less than that of Mr. Ladue. He was not the instigator. He kicked Mr. Glada when he was on the floor. There was no blood on his shoes. I can infer that he did not kick Mr. Glada in the head.

[39] The criminal file indicates that another person, Mandy Jepp, aged 28, also participated in the assault on Mr. Glada when he was on the floor. I understand that Mandy Jepp may be Mr. Jepp's older sister, although I did not deal with her case. Her participation appears to be similar to that of her younger brother. She also pled guilty. She had no previous criminal record. She received a conditional sentence of imprisonment of six months.

[40] I am satisfied that the prerequisites for making a conditional sentence order pursuant to s. 742.1 apply in Mr. Jepp's case. Moreover, his sentence should, in my

opinion, be similar to that of Mandy Jepp for the s. 267(b) offence.

[41] Mr. Jepp is hereby sentenced to a conditional sentence of imprisonment for a period of six months on conditions as follows:

1. Keep the peace and be of good behaviour, and appear before the Court when required to do so by the Court;
2. Report to a Conditional Sentence Supervisor immediately upon your release from custody and thereafter when required by the Conditional Sentence Supervisor and in the manner directed by the Conditional Sentence Supervisor;
3. Remain within the Yukon Territory unless you have written permission from your Conditional Sentence Supervisor;
4. Notify the Conditional Sentence Supervisor in advance of any change of name or address, and promptly notify the Conditional Sentence Supervisor of any change of employment or occupation;
5. When in Ross River, reside in the residence of your brother, Mr. Henry Dick. When not in Ross River, you are to accompany Mr. Henry Dick to and reside at his trapline at Blind Creek, located seven kilometres from Faro;
6. When in Ross River, you are to remain within your place of residence except with the prior written permission of your Conditional Sentence Supervisor, except when you are in the actual presence of Mr. Henry Dick, or another responsible adult approved in advance by your Conditional Sentence Supervisor. You must present yourself at the door or answer

the telephone during reasonable hours for curfew checks. Failure to do so will be a presumptive breach of this condition;

7. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
9. You are to take such alcohol assessment, counselling or programming as directed by your Conditional Sentence Supervisor, and, having given the Court your consent, attend and complete a residential treatment program as directed by your Conditional Sentence Supervisor;
10. Take such other assessment, counselling and programming as directed by your Conditional Sentence Supervisor;
11. Have no contact directly or indirectly or communicate in any way with Joseph Glada except with the prior written permission of your Conditional Sentence Supervisor;
12. Participate in such educational or life skills programming as directed by your Conditional Sentence Supervisor;
13. Make reasonable efforts to find and maintain suitable employment and provide your Conditional Sentence Supervisor with all necessary details concerning your efforts;
14. Provide your Conditional Sentence Supervisor with consents to release information with regard to your participation in any programming,

employment or educational activities that you have been directed to do pursuant to this conditional sentence order.

[42] The DNA order is mandatory and will go as requested.

[43] I have considered and declined to make a firearms order. In any event, one was not requested by the Crown.

[44] Mr. Jepp will also be placed on probation for a period of six months. This period of probation is to follow his six-month conditional sentence. The terms of that probation order are:

1. To keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;
2. Report to a Probation Officer immediately upon termination of your conditional sentence order, and thereafter and when required by the Probation Officer and in the manner directed by the Probation Officer;
3. You are to remain within the Yukon Territory unless you have written permission from your Probation Officer;
4. You are to notify the Probation Officer of any change of employment or occupation;
5. Reside at the residence of your brother, Henry Dick, Ross River, Yukon Territory; abide by the rules of that residence and not change that residence without the prior written permission of your Probation Officer;

6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
7. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
8. Take such alcohol assessment, counselling and programming as directed by your Probation Officer and, having given the Court your consent, attend and complete a residential treatment program as directed by your Probation Officer;
9. Take such other assessment, counselling and programming as directed by your Probation Officer;
10. Participate in such educational or life skills programming as directed by your Probation Officer;
11. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
12. Provide your Probation Officer with consents to release information with regard to your participation in any programming, employment or educational activities that you have been directed to do pursuant to this probation order.

[45] Mr. Jepp also has a charge contrary to s. 145(3) of the *Criminal Code*. On September 11th he was observed to be in an intoxicated condition and staggering along

the road in Ross River. This was in breach of a bail condition not to consume alcohol. He pled guilty to this charge.

[46] An appropriate disposition of this charge would be 30 days in custody. As he has now served 30 days in custody prior to trial, I am crediting him with 30 days. It is therefore only necessary to impose a sentence of one day in jail deemed served today.

[47] The victim fine surcharges will be waived.

[48] Is there anything else?

[49] MR. CAMPELL: The remaining charges?

[50] THE COURT: The remaining charges, I think the Crown indicated that they would be stayed after sentencing on these matters.

LILLES T.C.J.