

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Lilles

REGINA

v.

DARREN MURPHY

Appearances:
Leo Lane
Darren Murphy
Melissa D. Atkinson

Counsel for the Crown
Appearing on his own behalf
Appearing as *Amicus Curiae*

REASONS FOR SENTENCE

[1] LILLES J. (Oral): Darren Murphy has been found guilty after trial of a charge of assault with a weapon, namely pepper spray; and mischief, breaking the windows of the residence in which Mr. Tessier and his partner were living at the time.

[2] Earlier, I gave very lengthy reasons as a result of a trial and a finding of guilt with respect to both of those charges. I am not going to review all the circumstances. I will merely note that there were some very serious aggravating factors present in this case.

[3] This involved an attack on Mr. Tessier's residence, his home. Mr. Tessier and his girlfriend were inside at the time. They were asleep. It was early morning.

[4] Mr. Tessier's girlfriend, Rebecca Carlberg, had been in a relationship with Mr. Murphy previously. There is a strong suggestion that this may have been a factor in the assault.

[5] Windows in the residence were broken, and Mr. Murphy sprayed pepper spray into the bedroom in a successful attempt to attack Mr. Tessier.

[6] Mr. Tessier gave chase, trying to stop the fleeing vehicle. He was holding on to it. The driver, who was not Mr. Murphy, took evasive action and Mr. Tessier was thrown from the vehicle. Mr. Murphy is also, to a certain degree, responsible for the actions of the driver because he was goading the driver on when Mr. Tessier was holding on to the vehicle.

[7] As Crown counsel has pointed out, this was a pre-meditated matter. It was planned, arranged, and it was very reckless and very dangerous.

[8] There are mitigating factors. Ms. Atkinson has underscored those at great length.

[9] He was 23 years old at the time, now 24 years old. He has no criminal record, is currently employed, and has been employed for some time.

[10] I mentioned earlier that, unfortunately, I cannot give him the benefit of more detailed information that may have come out in the Pre-Sentence Report that I ordered but could not be prepared because Mr. Murphy did not co-operate with the person who would have prepared it.

[11] This is a difficult case for all the reasons that Ms. Atkinson has indicated. On the one hand, we have a young man who, I suspect, is younger than his chronological age in terms of maturity. He is someone who, if we can use the term, is now "on the straight and narrow", has been working since this incident, and has not been in any subsequent difficulties with the law.

[12] On the other hand, the nature of the offence and the details of the offence are very serious. They involve a violation of a couple's home and attacking them with pepper spray.

[13] I am satisfied, based on the submissions, that specific deterrence is not an issue. However, general deterrence is of concern. There is a need to send a message to the community. It raises the question as to what extent the involvement of the court, the trial and the court process, including sentencing, in general terms, will meet the requirements of general deterrence.

[14] It is a very marginal case, but I am persuaded on the balance of probabilities that a conditional discharge, on these facts considering the personal circumstances of this offender, will provide sufficient deterrence to others.

[15] Mr. Murphy, you will be placed on probation for a period of nine months. The terms of that probation are that you:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;

3. Notify the Probation Officer in advance of any change of name, address or change of employment or occupation;
4. Have no contact directly or indirectly with Trevor Tessier and Rebecca Carlberg, the complainants in this case;
5. Not attend any known place of residence, employment, or education of Trevor Tessier or Rebecca Carlberg;l
6. Reside at such place as approved by your Probation Officer and not change that residence without notifying your Probation Officer;
7. Remain within the Yukon unless you obtain written permission from your Probation Officer;
8. Report to a Probation Officer within two working days, and thereafter, when and in the manner directed by your Probation Officer;
9. Abide by a curfew for the first two months of this order by remaining within your residence between the hours of 1:00 a.m. and 4:00 p.m. Those hours are intended to accommodate your current work hours. If your current work hours change, the curfew may be changed by your Probation Officer to accommodate your new work hours. Another exception to the curfew: except with the prior written permission of your Probation Officer and except in the actual presence of another responsible adult approved in advance by your Probation Officer. You must answer the door or the

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

10. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer and complete them to the satisfaction of your Probation Officer with respect to any issues identified by your supervisor, and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;
11. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code*.

[16] In the circumstances, I am not inclined to include an abstain clause.

[17] This probation order applies to both counts 1 and 2. As Count 1, the s. 267(b) offence, is a primary designated offence, there will be an order directing you to provide samples of bodily substances for the purpose of DNA analysis and banking.

[18] There will be a mandatory victim surcharge in the amount of \$200, \$100 for each offence; two months' time to pay.

LILLES T.C.J.