

Citation: *R. v. Sidney*, 2012 YKTC 27

Date: 20080417
Docket: 07-00188A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

SASHA TAMARA SIDNEY

Appearances:
Jennifer Grandy
Elaine Cairns

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): It is beyond doubt that 83-year-old Anton Andre was the victim of a home invasion style robbery on June 4, 2007. Mr. Andre, who lives alone in a residence just off the Alaska Highway, was awakened by a woman who wanted to borrow \$40 and pledged a camera as collateral for the loan. Some hours later, Mr. Andre was awakened again. The same woman was at the door wanting her camera. Mr. Andre asked for his \$40. The woman said she had it. Mr. Andre opened the door and was, without warning, pepper sprayed in the face. The woman and her male accomplice then entered the house. The woman and the male further assaulted Mr. Andre, and the woman then searched the house. The assailants fled with Mr. Andre's money, ID and two .22 rifles.

[2] The only issue in the case is whether the accused, Sasha Tamara Sidney, was the woman involved in this incident. The victim, Mr. Andre, picked Ms. Sidney out of a photo lineup. The lineup was a fair one, in my view, and conducted in accordance with current practice. However, Mr. Andre was not certain of his identification and, indeed, could not identify Ms. Sidney at trial as his assailant.

[3] Now, I should say that Mr. Andre struck me as an honest and careful witness who was not prone to speculate or overstate. He expressed himself as being 80 percent certain about his identification, and it could probably be said that 80 percent from him was as good as a hundred percent from some other witnesses. Regardless, if Mr. Andre's ID evidence stood alone, it would clearly be unsafe to convict.

[4] The Crown quite properly acknowledged that, if its case went no further than Mr. Andre, we would not be here at all, but the Crown's case goes much further than Mr. Andre. First, it was shown that Ms. Sidney was in the area at around midnight on the same day and thus had the opportunity to commit the offence. She was ID'd by a bar employee at the Casa Loma Hotel, which is not that far away from the Andre home. This employee knew Ms. Sidney well and I am satisfied that she has correctly identified her.

[5] Secondly, and much more significantly, the accused was also seen less than a kilometre and a half from Mr. Andre's residence within minutes before or after the crime. I am satisfied that Parks Officer Hilbach was correct when she ID'd Ms. Sidney as the operator of the vehicle that she stopped. Ms. Hilbach had encountered Ms. Sidney a number of times, and her identification of Ms. Sidney is corroborated by the fact that the

vehicle Officer Hilbach stopped was one that had been recently purchased by Ms. Sidney and perhaps another person. I should say that there was an apparent oversight by the Crown in not having Ms. Hilbach ID the accused from the dock. However, I am satisfied that the person the witness Hilbach was talking about was Sasha Sidney, the accused, and not some other Sasha Sidney, considering the matter of the concurrence of the vehicles. Officer Hilbach made note of the licence number of the vehicle, and that vehicle was, as I say, at least at that time, connected to Ms. Sidney by ownership. It should also be noted that Ms. Sidney was seen in close proximity to the locale of the robbery at a time of day when people are not ordinarily about doing their normal business and when traffic was normally very light.

[6] Third, and more importantly still, in my view, there was a footwear impression found in Mr. Andre's yard near the gate. That impression is entirely consistent with shoes that Ms. Sidney was wearing at the time of her arrest later in June of 2007. Corporal Giczi of the RCMP obtained an impression from a mark left by a shoe in the dirt near the gate in front of Mr. Andre's house, and that was compared with an impression from the shoe seized from the accused. The corporal can say that the tread pattern on both was the same and that the size was similar. The corporal indicated that it was impossible to be precise about the size as the impression size may vary somewhat depending on the surface, how the shoe was rolled as the print was made, and matters of that kind. However, he clarified that, to the extent that the tread pattern elements could be measured, they were the same in comparing the print from the scene with the print from Ms. Sidney's shoe.

[7] Now, the corporal obviously cannot say that it was Ms. Sidney's shoe that made the impression in Mr. Andre's yard by the gate. Any other shoe of a like make, model or size could have done so, and the runner, which was made by Saucony, is, no doubt, widely available. Still, the evidence is quite compelling. The impression was made in dirt in an area where the assailant would have walked. Being outdoors in loose dirt, such an impression would not likely have lasted past the next rain or a good, strong wind. As well, the passage of persons or vehicles through the gate area in Mr. Andre's yard would have soon obliterated the mark. Thus, in my view, the chance that the impression was made by someone other than the accused at some other time is extremely remote.

[8] In assessing whether the Crown has met its onus, it may be easiest to view the matter from the following perspective. It could be a coincidence or it could be a mistake by Mr. Andre in having picked out the accused from the photo lineup. It could be a coincidence that Ms. Sidney was at the Casa Loma during the same timeframe as the robbery. It could be a coincidence that Ms. Sidney was seen driving on the Alaska Highway less than a kilometre and a half from the robbery scene and within minutes of the occurrence. It could be a coincidence that Ms. Sidney was then in the company of a single male, as it was described by Mr. Andre that his assailants were a male and a female person. It could be a coincidence that Mr. Andre was told or, at least, heard the woman who attacked him saying she was coming from Carmacks, when Ms. Hilbach was told the same thing by Ms. Sidney. It could be a coincidence that Mr. Andre was told or heard that the woman who attacked him had a baby in her car, and then Ms. Hilbach sees a baby in the car driven by the accused. It could be a coincidence that the

man in the car was wearing a blue jacket, and a blue jacket was later found with Mr. Andre's ID in it, and I could go on.

[9] The point is the odds of all of these things having occurred together in some innocent fashion are simply astronomical. Ms. Cairns pointed out the many deficiencies and inconsistencies she says attend Mr. Andre's identification. She referred to such matters as height, hair, style, clothing, et cetera. But the case, of course, does not rest solely on Mr. Andre's identification. It rests on a combination of circumstances which, together, present a compelling case of guilt.

[10] I am satisfied the case has been proved beyond a reasonable doubt. I find the accused guilty on Counts 4 and 5. Counts 1, 2 and 3 are stayed.

FAULKNER T.C.J.