

Citation: *R. v. Parker*, 2011 YKTC 26

Date: 20101129
Docket: 10-11026
09-00522
09-00522A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

PATRICK ALLAN PARKER

Appearances:
Terri Nguyen
Kim Hawkins

Appearing for the Crown
Appearing for the Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): Patrick Allan Parker is charged with an offence contrary to s. 430(4) of the *Criminal Code*, specifically, that he did commit mischief by wilfully damaging without legal justification or excuse, and without colour of right, a window belonging to Kelly White, the value of which did not exceed \$5,000.

[2] On the evening in question, which was the 22nd day of August of 2009, Mr. Parker, the defendant, together with a number of his cohorts, went to the White residence. It appears they had no reason whatever to go there other than to commit mischief. There was a confrontation of sorts involving Mr. Parker and his cohorts, and

Dustin White, who is one of the White children. Dustin was at the house together with a number of his friends. There is some history of incidents between Mr. Parker and Dustin White, and no doubt this has something to do with why Mr. Parker and his buddies went to the White house. It also has something to do with why Dustin White was sufficiently concerned that he got a paint gun to attempt to get the unwanted visitors to leave. Mr. Parker and his cohorts did leave but soon returned, and a liquor bottle was thrown through a window of the White residence.

[3] The evidence appears clear and, indeed, it is common ground that the person who actually threw the bottle was Dylan Wabisca, who was one of Mr. Parker's associates on the evening in question. For his part, Mr. Wabisca claims that he decided to do that all on his own and without any urging from the defendant, Mr. Parker. As to what Mr. Wabisca's intentions were, and what Mr. Parker was or was not a party to, in my view, it is clear that Mr. Wabisca did not need to have a specific intention to hit and break the window. He threw the bottle toward the house intending to break the bottle, obviously, against the house or something nearby. So the fact that it struck a window is unfortunate, but it is not the law that Mr. Wabisca's intention in throwing the bottle toward the house had to extend to some sort of specific intention to hit and break the window. So if Mr. Parker was a party to the throwing of the bottle toward the house, then, in my view, the charge has been made out.

[4] Now, in that regard, the only person who would appear as to have seen the attack from the White group was Dustin White himself, who had gone outside and hidden himself where he had a vantage point of what was going on in front of the house. I should say that I am quite satisfied that Dustin White saw what went on. Firstly, he

has correctly identified who the actual person was that threw the bottle. If he had not seen the incident and was intending to concoct, he would have put the bottle in Mr. Parker's hand.

[5] Similarly, I am satisfied that Dustin White is truthful when he indicates that before the bottle was thrown it was passed from Mr. Parker to Mr. Wabisca, and, as Mr. Parker said words to the effect, "Aren't you going to throw the bottle?" the bottle was more or less immediately thrown at the house. Again, if Dustin White was intending to concoct, he would have had the defendant saying something much more dramatic like, "Throw it, throw it at the window," or something of that nature.

[6] So I am quite satisfied that Mr. White is giving truthful evidence. Now, it is true that the actual words may not be one hundred percent accurately reported by Mr. White, and it is true that the words could, in some interpretations, be somewhat equivocal along the lines of a question or so on. But I think what occurred has to be looked at in the context of the overall event. Clearly, Mr. Parker had gone to the house for no lawful purpose and with mischief afoot. He was outside the residence together with his buddies, taunting the White party to come out and fight. He was going onto the property. He picked up a garden light and either threw or made to throw it at the house. He urinated on the vehicle belonging to one of Mr. White's guests, and even after the police had arrived, and undoubtedly Mr. Parker had been told to be on his way, he returned to the residence and that was when the bottle was thrown.

[7] So in the overall context of what occurred, I am satisfied that Mr. Parker did indeed either urge, encourage, or counsel Mr. Wabisca to throw the bottle. To the

extent that Mr. Wabisca may claim otherwise, it is clear that he is an unreliable witness to the events since he was substantially intoxicated at the time.

[8] I find the accused guilty.

FAULKNER T.C.J.