Citation: *R. v. Stein*, 2016 YKTC 72

Date: 20160614
Docket: 15-00564A
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**
Before His Honour Judge Luther

REGINA

v.

SHANNON RAYMOND STEIN

Appearances:
Keith D. Parkkari — Counsel for the Crown
Lynn MacDiarmid — Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] LUTHER J. (Oral): Yesterday, the Court heard the trial wherein Mr. Shannon Raymond Stein was charged with offences under ss. 267(a); 344; 267(a), again; 279(2); 88(2); and 349(1) of the *Criminal Code*. That is basically it. We are not overly concerned with counts 6 and 7. This is all from court file 15-00564A.

[2] After a number of admissions, we heard evidence from Debbie Porter, a neighbour and acquaintance of Donald Lajoie; Mr. Lajoie, the main complainant; and then we heard from another neighbour, and a friend of his, Mr. James Flemming. In his defence, we then heard from Shannon Stein.

[3] The law on credibility and proof beyond a reasonable doubt has been clearly laid out by the Supreme Court of Canada and has been commented on in numerous cases.

[4] *R. v. Tucker*, 2015 CanLII 236 (NLPC), a decision of Gorman J., traced the development of this. At paras. 23-25, Gorman J. speaks to the burden of proof. There, the Supreme Court of Canada has given considerable help and guidance to trial judges throughout the country in the cases of *R. v. Lifchus*, [1997] 3 S.C.R. 320; *R. v. Starr*, [2000] 2 S.C.R. 144; and *R. v. J.M.H.*, 2011 SCC 45.

[5] In *Tucker* at para. 23, Gorman J. states:

> Any person charged with a criminal offence is presumed to be innocent until the Crown has proven beyond a reasonable doubt that she or he committed the offence with which that person is charged. The onus of proof, as regards proving guilt, never switches from the Crown to the accused. In deciding whether the Crown has proved its case to the criminal standard, I must consider the whole of the evidence and I may only convict if I am satisfied, that the Crown has established the accused's guilt beyond a reasonable doubt (see *R. v. Prokofiew*, 2012 SCC 49 and *R. v. Phelan*, 2013 NLCA 33).

[6] That, in addition to proving all the essential elements of the offence beyond a reasonable doubt, sets the overall picture for what is to be expected of the Crown in a criminal prosecution.

[7] This case largely depends on credibility, mostly as it pertains to the accounts given by the accused, Mr. Stein, and the complainant Mr. Lajoie. Mr. Flemming's evidence is not particularly in great conflict with that of Mr. Stein, the accused.

[8] As to credibility, we have to take a look at the case of *R. v. W.(D.)*, [1991] 1 S.C.R. 742. It is a three-step approach:

1. The trial judge should ask him or herself whether he or she believes the testimony provided by the accused. If so, an acquittal must be entered.

2. If the trial judge does not believe the testimony of the accused but is left in reasonable doubt by it, an acquittal must be entered.

3. The final step in the analytical process developed in *W.(D.)* requires the trial judge to consider the totality of the evidence presented to determine if the accused's guilt has been proven by the Crown beyond a reasonable doubt.

[9] Those aspects of the testimony of the accused that I do believe certainly do not cause me to conclude that acquittals must be entered. Many of those were on peripheral points and not the main aspects of the story.

[10] Quite often we end up in criminal courts with "he-said, she-said" situations, quite often in sexual assault cases, but even in this case we have what Mr. Stein said and what Mr. Lajoie said.

[11] *R. v. Wilson*, 2013 NBCA 38, at para. 29 states:

> ...our criminal justice system is not meant to be a simple credibility contest. Some people might present better than others, might be more articulate than others, or might be more persuasive than others. The law is not meant to impose criminal liability simply on the basis of who best presents or articulates his or her story. To say that criminal liability is a serious matter is an understatement. It is among the most serious of matters, having the potential to

> irreparably ruin lives. This is why more is expected from a criminal trial than a simple credibility contest.

[12] In *Wilson*, the prosecution was effectively grounded solely on the testimony of the complainant and the defence on the diametrically opposed testimony of the accused. That is not the case that was before me yesterday and before me this afternoon for a decision. There are other aspects of the case apart from what Mr. Stein said and what Mr. Lajoie said.

[13] In *R. v. Sandhu*, 2012 BCCA 500, the case of *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) was cited, a case heard some 40 years before the Supreme Court of Canada developed the test in *(W.D.)* and is still the law in B.C. and in this jurisdiction as well:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ...

[14] The video shows that, on October 20, 2015 around 5:30 p.m., the accused and Ms. Firth quickly approached the door of Donald Lajoie. Both were very much overdressed for the weather. And while it may have been 15 degrees below when they first arrived in the Yukon from British Columbia, it was obviously nicely above freezing on the day in question. Crown witness, Debbie Porter, testified that she and her

daughter were neighbours and they were appropriately attired in a sweater or light jacket. Later on in the video, a neighbour came by in his shirt, perhaps a sweater, but wearing his shorts. When the police came by, neither police officer had a coat on.

[15] While not as important, the Court noted that both Mr. Lajoie and Mr. Flemming were outside after the incident without an abundance of clothes and neither were seen to be shivering. Ms. Firth was wearing a hoodie and a bandanna. The accused had on a parka, white sunglasses, and a hat. The accused still had his sunglasses on inside, perhaps not wanting to be recognized. He really did not need to go back outside to the daylight to check something out. All he needed to do was remove his sunglasses inside.

[16] The accused knew from Ms. Firth about the rape and her acquiring bear spray. The accused also knew that she had been beaten badly. The accused knew Ms. Firth to be violent and totally unpredictable, as well as suicidal, yet he went to the room of Donald Lajoie with her. The video shows the accused getting something from his backpack and his pocket. We know not what it was.

[17] The Court accepts that either the accused or Ms. Firth said "robbery" or "being robbed", although I am more inclined to accept the evidence of Mr. Lajoie that the accused said it.

[18] Both the accused and Ms. Firth were on a downward spiral after a period of sobriety. The accused was doing heroin and cocaine for many of the days between October 16th and 30th. The accused was not thinking clearly. His judgment was

impaired, but he still knew right from wrong. There is no evidence that day whatsoever that Mr. Lajoie was impaired by alcohol or drugs.

[19] Money was of some concern to the accused, as he had resorted to his old tricks from his criminal career, that is, credit card fraud and things of that nature.

[20] I am not convinced that his father was supplying ample cash to him on a regular basis. There is no proof of this, other than the accused's assertion. If, in fact, he was getting enough dollars from his father, why did he need to resort to crimes for the dollars that he claims he needed?

[21] As to the scuffle between Ms. Firth and Donald Lajoie, the accused intervened to help Ms. Firth, who was actually quite capable in her own right of defending herself from a thin, 59-year-old man. It is implausible to think that Ms. Firth and the accused had a plan to simply buy 3.5 g of cannabis marijuana for $40. That would not have led to this series of criminal assaults and a major altercation which had Mr. Lajoie yelling out to his neighbour for help and to phone 9-1-1.

[22] How could a simple drug deal go so bad so fast?

[23] Why would drug purchasers dress as they did?

[24] Was Mr. Lajoie really a commercial drug dealer or did he just have some there for himself and his friends? It appears to me to be the latter. There is no evidence of packaging, nor scales, nor any of the other indicia of commercial drug trafficking.

[25] So if this was simply a small drug transaction, why were they both there when Ms. Firth was there by herself the week before?

[26] To his credit, the accused readily admitted his criminal record and addictions issues. Apparently, the accused did not have a violent history before this.

[27] As to Count 4, I have come to the conclusion that the accused and Ms. Firth did not forcibly seize and confine Mr. Lajoie against his will. Mr. Lajoie did find it necessary to yell out for help and for 9-1-1. Mr. Lajoie grabbed Ms. Firth first, in defence of his property and dwelling, when the concept of robbery was conveyed. But according to Mr. Lajoie himself, he held on to the accused to have him charged as the accused was trying to take off. Effectively, the Crown's main witness has basically persuaded me that Count 4 ought to fail.

[28] The Crown's evidence from Mr. Lajoie was, for the most part, credible and consistent with human reality; however, it was not 100 percent credible. For example, he wanted to gather evidence and yet he placed the cap and the glasses in the garbage, rather than just hold on to them for the police. However, in fairness, later, he did retrieve them for the police. Perhaps when he was sprayed, he was not thinking straight but I will go back to what I said before: he was not under the influence of alcohol or drugs, but he may have been under the influence of bear spray.

[29] I do accept, though, the evidence of Mr. Lajoie that he was sprayed inside by Ms. Firth. Outside, it was mostly Mr. Flemming who was sprayed, as he was hit hard and directly with the spray in a fairly large amount. Inside, it may not have been a direct hit on the face of Mr. Lajoie but, nonetheless, I conclude that he was sprayed and

accept his evidence having said so. He had to wash his shirt five times to get the spray out and, in fact, it was about a week before his eyes were better.

[30] I believe, based on the evidence, that both the accused and Ms. Firth in their drugged state put together a very foolish plan to rob Mr. Lajoie. Overdressed to avoid detection and recognition, they quickly went to his residence. Once inside, the accused told Mr. Lajoie he was going to be robbed. Mr. Lajoie grabbed Ms. Firth and as the scuffle worsened, Mr. Lajoie cried out for help to Mr. Flemming, hoping to turn the robbers over to the police.

[31] The accused knew that Ms. Firth was extremely unpredictable, had acquired drugs there before, and carried bear spray; and despite knowing all that, formulated a foolish plan to go and take things, under threat of violence, from Mr. Lajoie.

[32] After less than two minutes, the accused and Ms. Firth escaped and were not arrested until some 10 days later.

[33] Based on my analysis of the facts in this particular case, and the law, the Court is registering convictions on counts 1, 2, 3, and 6. The accused was, in large measure, a party to the offence and may, indeed, have been unduly persuaded and influenced by Ms. Firth but, nonetheless, he was there and he was part of all of this.

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LUTHER T.C.J.