

Citation: *R. v. Blankenburg*, 2005 YKTC 16

Date: 20050218
Docket: 04-00546
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

R e g i n a

v.

Hans Joachim Karl Blankenburg

Appearances:

Edith Campbell

Hans Blankenburg

Counsel for Crown

Appearing on his own behalf

REASONS FOR JUDGMENT

[1] Mr. Blankenburg was charged with assaulting his spouse, Sabine Wedekindhorns on the 1st day of December 2004. Trial of the matter was conducted before me on the 24th of January 2005. I adjourned the matter to Wednesday, January 26th for decision. Due to illness, the matter was further adjourned to Friday, January 28th, at which time His Honour Judge Faulkner appeared in my absence and dismissed the charge against Mr. Blankenburg at my direction. The following are my reasons for that decision.

The Evidence:

[2] Crown called three witnesses in support of the allegation of spousal assault: the complainant, Sabine Wedekindhorns, and the two investigating officers, Constables Gabriel and Aird. The defendant acted on his own behalf and took the stand in his own defence.

[3] Much of the peripheral evidence is not in dispute. The parties have been married for four years. Both are German and reside for part of each year in Germany, and part in a cabin on the Deep Creek Road in the Lake LaBerge area of the Yukon. The cabin consists of a large room, loosely partitioned into four areas: a kitchen, a sitting area, an office and a sleeping area. Following dinner in the evening of December 1st, 2004, Ms. Wedekindhorns retired to the sleeping area, while Mr. Blankenburg began to watch television in the sitting area. Ms. Wedekindhorns objected to the volume of the television, which could be heard through her earplugs. She confronted Mr. Blankenburg. An altercation ensued involving rolls of Christmas wrapping paper and liquor bottles. Mr. Blankenburg exited the cabin following the altercation wearing only sweat pants, a shirt and the felt liners of his boots. Mr. Blankenburg went to a neighbour's home. Ms. Wedekindhorns contacted the police. Mr. Blankenburg returned to the home and knocked on the door but did not gain entry. He returned to the neighbour's home, and the neighbour contacted the police on his behalf. The police attended at the residence.

[4] What is in dispute is the nature of the altercation between the parties.

[5] Ms. Wedekindhorns testified with the assistance of a German interpreter. With respect to the altercation, she says that she asked Mr. Blankenburg to turn off the television as he knew she was lying in bed. She was quite annoyed as this was not the first time he had the television on while she was in bed. Initially, he did not react when she asked him to stop watching the television, so she asked him to turn the television off after the news he was watching. He responded that he could watch as long as he liked. She told him that she is quiet in the mornings when she gets up, and asked him again to turn the television off after the news. He told her to be quiet. Contrary to her normal practice, she was not prepared to go to bed without an answer on this evening, and continued to ask him to turn the television off. He got up and an argument ensued. Ms. Wedekindhorns told him

perhaps it would be better if they both went their own ways. That night she realized the marriage was over and told him it would be better if he left.

[6] Mr. Blankenburg then went to the sleeping area where there were a number of rolls of Christmas wrapping paper on top of some suitcases. He grabbed them and started hitting Ms. Wedekindhorns. She tried to protect herself by moving her arm in front of her face. He hit her several times on the back as she protected herself by bending down. She hit him back with another roll of the wrapping paper, which she got from the bed. This surprised him, and he stopped hitting her.

[7] The two stood opposite each other. She was afraid he would hit her harder so she grabbed two liquor bottles from the shelf and held them beside her body as protection in case he attacked again. This again surprised him. She put the bottles back on the shelf. He grabbed her, turned her around and put her in a tight grip. He then manoeuvred her into the corner of the kitchen where the cupboard is, though did not push her into the cupboard. He let her go and took two or three steps back. She went around the cupboard to the door, opened the door and screamed.

[8] Mr. Blankenburg then left the cabin. She closed and bolted the door, and contacted the police. Mr. Blankenburg returned some time later and attempted to gain entry. Ms. Wedekindhorns called the police again to advise that Mr. Blankenburg was at the door.

[9] Mr. Blankenburg says that he was peacefully watching television when Ms. Wedekindhorns ordered him to shut down the television as she wished to go to bed. He says she then "went off suddenly". He stated that she was holding a roll of Christmas wrapping paper in each hand and began striking him repeatedly over the head with them. He put his hands and arms over his head for protection,

and ordered her to stop that nonsense. She struck him about 40 times, and then ordered him to leave the home. He told her that he would obey her order.

[10] Mr. Blankenburg went into the sleeping area, got a suitcase and began packing. At that point, Mr. Blankenburg says that Ms. Wedekindhorns came into the sleeping area holding a wine bottle in each hand high over her head, and attacked him, trying to smash the bottles on his head. He maintained that she was no match for him in a fight, but was concerned whether anyone would later believe that he was acting in self-defence, so he decided to leave. He ducked down and dashed past her out of the sleeping area. In so doing, he could not avoid touching her with his left shoulder. He ran out of the cabin and found himself outside in the cold and snow wearing his "shirtsleeves" and his felt boot liners. He ran to a neighbour's and begged for asylum.

[11] Mr. Blankenburg decided to wait there for a couple of hours until his wife calmed down. Approximately one and a half hours later he returned home. He found the door locked. His wife told him to get lost, and that she would never let him in again. He returned to the neighbour's. The neighbour dialled the police for him. He asked them to send a patrol to pick him up and help him get back in the house.

The Law:

[12] The sole issue in this case is credibility. It would be much easier if my task were simply a matter of determining which story is more believable and preferring one version over the other. In such circumstances, I would prefer Ms. Wedekindhorns evidence to that of Mr. Blankenburg. She testified in a clear and straightforward manner, and her version had a significantly higher air of reality to it.

[13] However, that is not the task before me today. The law is clear that, in dealing with the issue of credibility, I must apply the test set out in *R. v. W.(D.)*,

[1991] 1 S.C.R. 742. The three-part test requires first that if I believe the evidence of the accused, I must acquit. Secondly, if I do not believe the testimony of the accused but am left in a reasonable doubt by it then again I must acquit. Thirdly, even if I am not left in doubt by the evidence of the accused, I must ask myself whether on the basis of the evidence which I do accept, I am convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

Analysis:

[14] In applying the first part of the *W.(D.)* test, I found the version of events provided by Mr. Blankenburg to be implausible. Mr. Blankenburg presented as a very authoritarian individual who clearly does not like to display weakness or be contradicted. This could be seen in his adamant insistence that he does not suffer from a hearing problem when it was abundantly clear in the courtroom that he does. In addition, he went to great lengths to underscore his career as a police officer in Germany, and his knowledge of various fighting tactics. He made it clear that he could have easily disarmed the complainant. I also note his telling comment that he can no longer be alone in a room with Ms. Wedekindhorns in Canada, but that in Germany it would not be a problem, as the police do not mess in family affairs. This comment speaks volumes with respect to his attitude towards violence against women. For Mr. Blankenburg to meekly obey Ms. Wedekindhorns order to leave the house, and then to flee to a neighbour's to "beg for asylum" is entirely inconsistent with the personality and attitudes he displayed at trial.

[15] Mr. Blankenburg's version of events is implausible on its face. Firstly, he describes Ms. Wedekindhorns as having flown into a berserk rage, with virtually no provocation, while he was the soul of patience and reasonableness. I find that hard to accept. Similarly, his description that Ms. Wedekindhorns attacked him with the two wine bottles after he had already agreed to her demand to leave and while he was clearly attempting to comply by packing a suitcase is highly

improbable. She had what she wanted at that point, and it makes no sense that she would not only continue the attack, but would escalate the level of violence.

[16] I do not accept Mr. Blankenburg's version of events.

[17] Even though I do not believe Mr. Blankenburg, I must ask myself whether his evidence raises a reasonable doubt. In so doing, I found myself with one piece of his evidence that I could not reconcile with my view of the remainder of his evidence. Specifically, Mr. Blankenburg testified that when he fled the residence, he was attired only in his "shirtsleeves", track pants, and the felt liners from his boots notwithstanding the fact that it was winter. His inadequate attire is confirmed in the evidence of both police officers. On Ms. Wedekindhorns version of events, it would make absolutely no sense for Mr. Blankenburg to flee the house without stopping for appropriate outer clothing. He had the upper hand in the altercation. There was no reason for him to leave at all at that point, and certainly no reason for him to leave without putting on winter clothing. Instead, his attire, which, as noted, is independently confirmed, is more consistent with someone fleeing for safety reasons, which raises a question in my mind as to whether there may be some truth to Mr. Blankenburg's version. In all of the circumstances, I find that I am left in a reasonable doubt by the evidence of the accused.

[18] The three-part *W.(D.)* test is a progressive test. By this I mean that a finding favourable to the accused on the first part of the three-part test would end the matter without the need to explore the second or third part of the test. Thus, having decided in Mr. Blankenburg's favour with respect to the second part of the test, I need not apply part three of the test. However, I would like to make some comments about how I would apply part three of the test to the evidence in this case, as it reinforces my decision with respect to part two.

[19] Ms. Wedekindhorns clearly suffered injuries. Those injuries, as depicted in the photographs filed as an exhibit, were not insignificant. Both officers viewed the injuries and described them as scratches or scrapes. My difficulty arises in trying to reconcile the injuries as described and as viewed in the photos with Ms. Wedekindhorns version of events. She testified that she was struck with rolls of Christmas wrapping paper. In my view, the rolls of paper could not have caused the injuries suffered. Constable Aird testified that he felt the injuries were consistent with the description of events Ms. Wedekindhorns provided to him on the night in question, in which she apparently referred to being pushed into a shelving unit. Unfortunately, at trial, Ms. Wedekindhorns did not provide any evidence to this effect. She referred only to being struck by the rolls of wrapping paper.

[20] Clearly something happened to Ms. Wedekindhorns, but the version she provided at trial was not consistent with the injuries viewed. In such circumstances, I can only be left with a reasonable doubt as to what actually happened to Ms. Wedekindhorns and, by extension, whether Mr. Blankenburg was the cause.

[21] As I am left in a reasonable doubt on both parts two and three of the *W.(D.)* test, I have no option but to acquit Mr. Blankenburg. The charge of assault is hereby dismissed.

Ruddy T.C.J.