Citation: *R.* v. *Doucette*, 2006 YKTC 92 Date:20060905
Docket: T.C.01-00234
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Judge Ruddy

REGINA

v.
DAVID WAYNE DOUCETTE

Appearances:
David McWhinnie Counsel for Crown
Nils Clarke Counsel for the Defence

REASONS FOR DECISION

[1] RUDDY T.C.J. (Oral): Mr. Doucette is before me for a preliminary hearing in relation to a two-count Information alleging offences contrary to s. 267(b) and s. 334(b) of the *Criminal Code.* With respect to the assault causing, there is clearly some evidence before me sufficient to meet the test on a preliminary hearing, and indeed defence counsel has conceded such. Accordingly, there will be a committal in relation to Count 1.

[2] With respect to Count 2, that being the theft, that relates to a coat belonging to the complainant, Mr. Borle. His evidence was that he did not actually see the accused take the coat. However, he indicates that the coat was present prior and when he

looked the next morning the coat was gone. The evidence before me would suggest that the only other possible person that could have taken the coat would be Ms. Elias. I am assuming -- I am going to say Vicki because I do not believe his evidence was that it was Elias. His evidence simply was that it was Vicki and he did not know her last name. He did agree on re-direct that it was possible that she could have taken it.

[3] The question for me at this point in time is whether or not that evidence is sufficient to commit on the theft under. The defence has taken the position that absent Ms. Elias being present here at the prelim to explain what, if any, involvement she had in relation to the coat, I must take the view that there is insufficient evidence upon which to commit. The Crown has argued that there is at least a circumstantial case that Mr. Doucette took the coat and that Crown is not required to negative potential defences.

[4] I find this one particularly difficult because I think it would be fair to say this is about as close to being on the line as you get. However, I am of the view that the job I am required to do at a preliminary hearing is such that it would be appropriate to commit in relation to the charge. I think Crown is correct that there is some evidence, albeit admittedly extremely weak at this point in time, but it is not up to me, at this stage, to determine whether or not that is proof beyond a reasonable doubt. I am simply being asked to determine whether or not there is some evidence, and I am satisfied there is some, very little some, but some.

[5] Accordingly, there will be committal on Count 2 as well, and I would mention that Crown is aware they have their work cut out for them at this point in time.

[6] MR. MCWHINNIE: Yes, Your Honour. The date, Madam Clerk, for the Supreme Court arrangements would be what?

[7] THE CLERK: There is one September 12th and September 26th.

[8] MR. MCWHINNIE: Might I suggest the September 26th.

(Submissions by counsel)

[9] THE COURT: Thank you. I have just re-reviewed the test as it is set out in the annotation in the C*ode*. This is a problematic type of decision because we are not talking about direct evidence on this particular count. We are talking about circumstantial evidence. I would refer to the decision of the Supreme Court of Canada in *R*. v. *Arcuri* , [2001] 2 S.C.R. 828, which is annotated in Martin's, in which the test is set out as it relates to circumstantial evidence as being one where I must determine whether the evidence is reasonably capable of supporting the inferences that the Crown would be asking the jury to draw. They go on to say that I am not in a position to draw inferences from facts, nor assess credibility. I must merely make an assessment of the reasonableness of the inferences to be drawn from the circumstantial evidence.

[10] When I consider it in that light, I am still satisfied that there is some evidence. It is an inference that can be drawn. It is a reasonable inference in the circumstances. Do I think that there is enough there to convict on? No. But that is not what I am being asked today. I am being asked whether or not it is reasonable to draw the inference that Mr. Doucette took the coat if it was there before and it was not there after.

[11] While, as I said before, I think it is extremely weak, I am of the view that the evidence is sufficient for me to at least find at this stage that the inference is a reasonable one. And that is what I am being asked to do at a preliminary stage. So all that to say my earlier decision stands.

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RUDDY T.C.J.