

Citation: *R. v. Evans*, 2011 YKTC 38

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Registry: Dawson City

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Judge Ruddy

REGINA

v.

TRAVIS THOMAS EVANS

Appearances:  
Jennifer Grandy  
Nils Clarke

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCING**

[1] RUDDY T.C.J. (Oral): Travis Evans is before me for sentencing on five counts to which he has entered pleas of guilty. Two of those are offences of violence against two different girlfriends, one a common assault, one assault causing bodily harm, which was committed while he was on release for the first spousal assault. In addition, he has entered pleas of guilty to two counts of failing to comply with the abstain condition of his release order, and one further count for resisting arrest.

[2] All of the circumstances begin in April of last year. The RCMP were contacted with respect to an incident of domestic violence. Investigation indicated that Mr. Evans

had been drinking with his then spouse, Laura VanBibber. He became upset with her. He demanded the keys to the vehicle. She apparently was driving. He pushed her while she was driving. She went to Paula Farr's home, and she was on her way to the house when he pushed her to the ground. She tried to get into the Farr residence. He then, once she was inside, began pounding on the door, trying to gain entrance, which resulted in damage to the door, which amounted to approximately \$660. In addition to Ms. Farr and Ms. VanBibber, there were two small children in the home, ages one and six.

[3] Mr. Evans was arrested some time later in the early morning hours. He was uncooperative and found to be in possession of a small amount of marihuana. He was held in custody, but released on the 10th of May with conditions, including conditions that he abstain absolutely from the possession or consumption of alcohol, and that he have no contact.

[4] On the 13th of August at 5:30 in the morning there was a complaint received that Mr. Evans was arguing with his new girlfriend, Candice Johnson. The police attended. The two were in, it appears, the back yard and the police noted a number of DVDs strewn around in the alley, and a TV which had apparently been pushed off a deck. Ms. Johnson indicated later that she had thrown one of the DVDs, Mr. Evans had thrown the rest, and that he had pushed the TV off the deck railing to the ground below.

[5] He was asked to come to the police vehicle to speak with the police. At first he refused, but eventually did relent. They noted an odour of liquor on his breath. He was

arrested, at which point he began yelling at the police and began resisting arrest until he had to be taken to the ground by the officers. He was again released.

[6] On January 2nd there was another report of domestic violence. The police attended. They entered the home, located Mr. Evans inside, and found him to be under the influence of alcohol. He was advised he was under arrest. He, I believe, was lying on the ground, but drew up his fist and his leg as if he intended to hit the officers. He was told to roll over onto his stomach. He refused, and when the officers would come close, he would strike at them. Pepper spray was employed, although initially to no effect. Ultimately, they were able to get him subdued and rolled over, although he continued to resist arrest. A marihuana pipe with residue was found on his person after a search subsequent to arrest.

[7] They located his spouse the following day, and she indicated that the assault which had been complained of had actually occurred the day before. The two had been arguing. He ultimately pushed her into a wall, threw her to the ground, pulled her by the hair, kicked her in the shoulder area and tore the earring out of her left earlobe. A clump of hair was located in the garbage, and it was noted that she required some stitches to repair the damage to her ear. Both had been drinking.

[8] The last offence pled to is a rolled-up count, which involves two instances of breaching the abstain condition of his release order, the first on April 8th when he was located in the Westminster bar with a drink in his hand. He initially told the officers it was not his but they noted alcohol on his breath. Then on June 6th of this year there was a complaint from his spouse's father. When the police attended they located Mr.

Evans and Ms. Johnson in the back yard. There were two open beer cans between them and another open beer can on the other side of Mr. Evans. Alcohol was detected on his breath.

[9] He has spent some 21 days in remand. There is no dispute with respect to the appropriate length of sentence. Counsel are jointly submitting that 11 months would be appropriate, to be followed by a probationary term. The dispute arises in how that sentence ought to be served, with Crown suggesting the 11 months should be straight jail and defence suggesting a blended sentence, six months real jail, five months to be served conditionally within the community. I will say that in light of Mr. Evans's criminal history, which is extensive, including a number of related offences with five prior convictions for violence, including one prior conviction for spousal assault, and numerous convictions with respect to failing to comply with either release conditions or probation orders, in light of that record, I am of the view that the 11 months suggested is on the lower end of the range, on the very low end of the range, given the nature of the offences that are before me.

[10] I take no issue with it as an appropriate sentence in this case; however, when I consider two things; the steps that he has made over the past year, in particular, the employment with Han Construction. There is a letter from his employer which speaks very highly of him and his employment performance, and that is a significant positive for him. The second is that there were potential issues with respect to prosecution had this matter gone to trial, so I accept that the 11 months, while in my view on the very low end of the range, is appropriate when I consider those factors, which leaves me with the

question of whether or not it is appropriate for the sentence to be a blended sentence, partially straight custody, partially within the community.

[11] I will say that there are some positives, as I indicated, the employment and his performance in employment has been a positive. As well, there have been some efforts which he has made with respect to getting some programming. He had, after the first spousal assault, expressed an interest in participating in a DVTO-like program. There were two appointments made in Whitehorse, neither of which he was able to attend, and ultimately it was decided he should connect with Many Rivers for counselling here in Dawson City, which he apparently did on four or five occasions. He also completed two components of the Pursuit of Excellence. I am also advised by a letter from the Aboriginal Court Worker that he completed the Taking Back Your Power program with Phil Gatensby, as well as a knife-making workshop.

[12] So there are some positives, but when I consider the test to be applied for a conditional sentence, I am of the view that there is simply not enough before me to satisfy me that Mr. Evans can be compliant to the degree that is necessary for a conditional sentence. I was advised by his Bail Supervisor he has reported for the most part as directed, but he has missed some appointments. There is no room for that on a conditional sentence. Compliance has to be absolute, and I have concerns about Mr. Evans's ability to comply to that degree. I would note that, as mentioned earlier, his record includes a number of failures to comply. I would also note that his performance while on bail between April and today's date indicates a significant struggle with complying with release conditions, particularly the abstain condition, which would be

absolutely mandatory on a conditional, in my view. But I am not satisfied - Mr. Evans, you had your say - that he is able to comply with that condition.

[13] I also note he has been given two prior opportunities to serve sentences conditionally within the community. Both resulted in the sentences being collapsed and his having to serve the sentences in actual custody. I had wanted to mention as well, not only has his performance on bail in terms of complying with the conditions and, in particular, the abstain conditions, not been particularly good, but he also re-offended while on release and re-offended in a very serious way, when I consider the injuries that were caused.

[14] In my view, for me to order that even part of this sentence be served conditionally within the community, I have to be satisfied that in doing so it would not endanger the safety of the community, and to be so satisfied, I need to be satisfied that he could be fully compliant, and for the reasons mentioned, I am simply not satisfied that he could be. For those reasons, I am of the view that it needs to be a straight custodial term.

[15] Mr. Evans, I appreciate that you have made some changes, and I think those are positive changes. I hope you are able to pick those up when you are released, I do, because that is the direction you need to go in.

[16] THE ACCUSED: Everything that I set up already won't be there, though, when I get out [indiscernible].

[17] THE COURT: Well, here is the problem. It is your behaviour that keeps bringing you back. It is not anybody else's; it is yours.

[18] THE ACCUSED: I know, I know that.

[19] THE COURT: And when you stood up here and wanted to speak to me about what I should be doing on the sentence, everything you said to me was about you, and what you are --

[20] THE ACCUSED: [Indiscernible].

[21] THE COURT: Let me finish. Everything that you said was about you and what you were going to lose. You did not once say to me, "I'm sorry for what I did to these women."

[22] THE ACCUSED: Well, I am sorry. I've learned my lesson, and if you think I'm not sorry [indiscernible].

[23] THE COURT: Okay, but that is not at the forefront of your mind. What is at the forefront of your mind is how this affects you and what you are going to lose, and until you start thinking about the fact that there are consequences to your actions, and sometimes it means you lose things, until you recognize that, you are not going to be able to change your behaviour. If there is a change, it has got to come from you. You have made some steps, but you still breached. You still did not follow through, and you still hurt people. So with everything that is before me, I am just not satisfied that you are there yet. I hope you will be; I really do. When I read this letter from your employer it says to me that you have got something to offer, but you have got to make some really big changes before you get there, and you cannot offer, you cannot realize the potential you have if you are sitting in custody. But if you do not stop

drinking and get a handle on your behaviour, that is where you are going to be spending your time. So you need to spend these next several months figuring out how you get your life together and how you make those changes. I know you are sincere in saying you want to make changes, but your track record does not show me that you are that serious, that you are really following through.

[24] So I am just not satisfied that the test I am required to apply in deciding whether a conditional sentence is appropriate has been met. It is my hope that one day you figure out how you can realize the potential that you have, but you are just not there yet.

[25] The sentence is going to be as follows: With respect to the first of the two abstain breaches, the first in time, there will be a sentence of one day deemed served and credit will be given for the 21 days he has spent in remand. With respect to the first spousal assault, the s. 266, there will be a sentence of two months consecutive. With respect to the s. 267(b), there will be a sentence of six months consecutive. With respect to the s. 129(a), there will be a sentence of two months consecutive. With the remaining abstain breach, that being the one relating to April 8 and June 6, there will be a sentence of one month consecutive, for a total of 11 months.

[26] That 11-month sentence is going to be followed by a probationary term of 12 months on the following terms and conditions, Mr. Evans:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;

3. That you notify your Probation Officer in advance of any change of name or address and promptly notify the Probation Officer of any change of employment or occupation;
4. That you report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. That you abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
6. That you not attend any bar, tavern, off-sales or other commercial premises, including Gertie's, whose primary purpose is the sale of alcohol;
7. That you take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
8. That you report to the Family Violence Prevention Unit to be assessed and attend and complete the Spousal Abuse Program as directed by your Probation Officer;
9. That you take such other assessment, counselling and programming as directed by your Probation Officer;
10. That you have no contact, directly or indirectly, or communication in any way with Laura VanBibber or Candice Johnson except with the prior written permission of your Probation Officer in consultation with Victim Services and Family and Children Services, and the Dawson City RCMP;

11. That you provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this probation order;
12. That you make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts.

Any concerns or issues as it relates to conditions? No? Mr. Clarke?

[27] MR. CLARKE: Sorry, I'm having two conversations here.

[28] THE COURT: I was just saying, any issues relating to those conditions?

[29] MR. CLARKE: Well, so the no contact is the DVTO term, then?

[30] THE COURT: It is.

[31] MR. CLARKE: Is that what Mr. Evans has been on?

[32] MS. GRANDY: He was definitely on that with respect to the Laura VanBibber matter, as I understand it, but I believe there was a no contact on the other.

[33] THE COURT: It is unclear to me from this. It does not look like it is ticked, so it does not appear that he has been on it, but he is going to be on it for the probation order. In my view, it is appropriate in the circumstances that risk be managed in that fashion.

[34] MR. CLARKE: Sorry, is there -- is there feedback from Victim Services on that or?

[35] THE COURT: In terms of whether she wants it or does not want it?

[36] MR. CLARKE: Yes.

[37] THE COURT: Okay.

[38] MR. CLARKE: I mean in that there's been acceptance of responsibility now.

[39] THE COURT: Okay, fair enough. I am not saying that they should not have contact. I am saying that it should be appropriately managed based on the risk that is presented at any given time.

[40] MR. CLARKE: But there hasn't been one for five months. There hasn't been an order for five months.

[41] THE COURT: Well, he spent a portion of that time in custody as well.

[42] MR. CLARKE: He spent ten days in custody.

[43] THE COURT: Twenty-one is what I was told, but.

[44] MR. CLARKE: Well, whatever, but yes.

[45] THE COURT: Okay. I understand. We are talking about an assault causing bodily harm here, okay?

[46] MR. CLARKE: Mm-hmm, yes.

[47] THE COURT: And we are talking about him having committed it while on release for having committed another spousal assault. In the circumstances, I am of the view that it is appropriate to manage risk in this particular case with that condition. If he is doing well and he is not using and he is in programming and things are going well, I have no doubt he will be given permission to have contact with her. But in the circumstances, with two spousals and one prior on his record, there needs to be active management of risk in this case, so I am including the condition on the probation order.

[48] THE ACCUSED: So, is that just on the probation order so that while I'm doing my time, doing my 11 months, then there shouldn't be a no contact order because I'm in jail and --

[49] THE COURT: I did not add one for while you were in custody. If you want to push me, I will certainly consider it.

[50] THE ACCUSED: No, no, I'm just asking so I can have visits, so she can come and visit me while I'm in custody, though, right? That's fine?

[51] THE COURT: As long as everything is going well. You are supervised in those circumstances; I do not have an issue.

[52] THE ACCUSED: Can you put that in the order?

[53] THE COURT: What is that?

[54] THE ACCUSED: Can you put that in the order? Sometimes WCC really won't understand that.

[55] THE COURT: There is no order that relates to contact while you are in custody. There is no order. I have not put that in place. It is when you are on probation I want there to be active management of the risk issues so that nobody is put at risk.

[56] THE ACCUSED: Okay, thank you.

[57] THE COURT: I did not make an order as it relates to your time in custody. The only order relating to custody is that you have to serve 11 months in custody.

[58] MR. CLARKE: The other issue is that, I am not sure, respectfully, whether he should be ordered to complete the DVTO program specifically, or should there be discretion for the --

[59] THE COURT: The reason I put such other --

[60] MR. CLARKE: Yes, does it say such other?

[61] THE COURT: I put the general condition in, recognizing that he can do the Spousal Abuse Program if he is directed to do, if it is appropriate in the circumstances. I put in the general counselling condition, in the event that it is determined there is something more appropriate that he can do here. If you would like

me to add something that says, “or such other programming relating to domestic violence as he may be directed,” I can certainly add that.

[62] MR. CLARKE: That may be helpful, yes.

[63] THE COURT: Okay. So I will add:

8. That you report to the Family Violence Prevention Unit to be assessed and attend and complete the Spousal Abuse Program or such other program for domestic violence as directed by your Probation Officer;

[64] MR. CLARKE: As may be available in your community?

[65] THE COURT: Okay, I will say:

... attend and complete such assessment, counselling or programming with respect to domestic violence as and when directed;

It will not refer to the Spousal Abuse Program. They will take a look at what is available and they can order him into it.

[66] MR. CLARKE: Thank you.

[67] THE COURT: I would waive the victim fine surcharges, given his custodial status. Anything further?

[68] MS. GRANDY: If the remaining charges could be marked as withdrawn. The DNA order attaches to the s. 267.

[69] THE COURT: Mandatory with the s. 267(b). There will be -- any submissions on that point?

[70] MR. CLARKE: No, Your Honour.

[71] THE COURT: There will be an order, Mr. Evans, that you provide such samples of your blood as are necessary for DNA testing and banking. It is a mandatory order because of the s. 267(b) offence.

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RUDDY T.C.J.