

Citation: *R. v. Germaine*, 2009 YKTC 104

Date: 20090904
Docket: 08-00820B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

WILLIAM NORMAN GERMAINE

Appearances:
Noel Sinclair
Robert Dick

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] CAMERON J.P.T.C. (Oral): Essentially, two allegations of breach have been made, the first being a breach of curfew condition for Mr. Germaine. His curfew is from 7:00 to 7:00. He is aware that that is what his timing is, as he indicated, as is his partner, Ms. Johns.

[2] The evidence that we have in that regard, I think, we have to be fairly cautious about. The report to Crown counsel simply says approximately 07:00 hours, that the police attended at Montana Services. They are not indicating that is when they got the complaint. They attended a complaint at approximately 07:00 hours. The notes indicate 7:02, from Plamondon I believe, and, basically, seven o'clock, from Leggett. So the fact that once the police became involved, Mr. Germaine was, essentially, required

to remain there as part of their investigation, I think, is an allowance that the Court can accept, that Mr. Germaine, had he not been, essentially, detained or required by the police to answer questions, whatever, may very well have made it back in time, or certainly very close to the time of his curfew.

[3] I am content, from the maps that have been made, that their accuracy is of limited value, I think, as far as distances go. I am personally familiar with the layout of Carcross to a certain degree, and I do know the places he is talking about and I do know that they are relatively close to each other in distance. The indication of a three to four minute walk, I think, is not unreasonable at all, in indicating the distances between the two.

[4] We are also talking about an evening where, if somebody is screaming and yelling at the top of their lungs, they may very well be heard, within that distance, and I am content to accept that evidence as having, quite possibly, occurred.

[5] So firstly, I would not feel comfortable in confirming the breach of the curfew. So I am going to dismiss the allegation of the breach of the curfew.

[6] That brings us, then, to the breach of the drinking, which ultimately, of course, would be the more serious of the two breaches. Mr. Germaine was given a chance on the 19th of August. It was made very clear to him that he had to deal with his drinking problem, his longstanding drinking problem.

[7] I think Mr. Dick's point that Mr. Germaine is not a sophisticated individual falls true with Mr. Germaine's testimony here today. One might say, inasmuch as Mr.

Germaine has to understand and try to stay sober, why would he tend to involve himself with someone who is drinking and out of control, especially when it is that close to his point of curfew? Probably, in an ideal world, the answer would be that that would go against Mr. Germaine. But I am not convinced that it should go against Mr. Germaine.

[8] I found Mr. Germaine's testimony on the stand to be very forthright, to be very believable. He was not shaken when questioned about specific situations. He maintained what his recollections were, and I think that that tells me that it is very possible that what was occurring was exactly as Mr. Germaine described it.

[9] The discrepancies between Mr. Germaine and Ms. Johns are, again, not something that I found to be blatant enough to say, "Okay, this concerns me." Mr. Germaine's recollection was that he and Ms. Johns had seen each other throughout the day, had not spent the entire day together. Ms. Johns was more of the view that they had spent the day together. But again, I can understand how interpreting what one's view of spending the day together is might be different to what the other's might be.

[10] So having said all that, Mr. Germaine, I am content that -- you have convinced me that there is a probability that it occurred as you say. As such, I am going to dismiss the allegation.

[11] I am going to direct that you be released today to continue your conditional sentence, that the sentence should continue as before, however, from August 31st. So you have not lost any of the time between then and now. That will certainly go towards your sentence. I just remind you that it is very, very important that you follow through with this programming and that you maintain your sobriety.

[12] In future, perhaps, draw on Ms. Johns and/or others as to whether or not it would be smart to run off to assist somebody in a similar situation that close to your curfew. You have got to remember that, even if, say, this had happened at nine o'clock at night and you ran off to assist him, then you would be in breach.

[13] THE ACCUSED: Yes.

[14] THE COURT: Right. So the reason that you are not in breach of your curfew is because it was close to curfew time, and it certainly could have fit in to where you were clearly intending to stay where you were supposed to be during your curfew. So decisions like that, sometimes it assists to go to your partner, go to your mother-in-law or other sober supports within the community, and ask them what you should do. Ask if it is proper that you should be doing this or doing that. It is commendable that you want to assist people like Garrick (phonetic), who clearly is currently having a very tough time. That is commendable. But take care of yourself first, because you are in a precarious situation.

[15] THE ACCUSED: Yes.

[16] THE COURT: All right. Okay.

[17] THE ACCUSED: Thank you.

[18] THE COURT: Thank you.