

Citation: *R. v. Porter*, 2008 YKTC 101

Date:20081202
Docket: 07-10170
Registry: Watson Lake

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

VALENTINE EDWARD PORTER

Appearances:
Peter Chisholm
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): In this case, Valentine Edward Porter is charged with an assault on Kenny Stewart that caused bodily harm to Mr. Stewart, contrary to s. 267(b) of the *Criminal Code*.

[2] The incident occurred in Mr. Porter's home on the 9th of March, 2008. According to Mr. Stewart, after a long night of drinking and in a severely intoxicated condition, he found himself, by means he is unable to fully explain today, in Mr. Porter's house, where he retired to one of the bedrooms to sleep it off.

[3] He was awakened by a number of blows being rained onto him by Mr. Porter. Mr. Porter was armed with what Mr. Stewart took to be a baseball bat. Mr. Stewart was

struck a number of times and suffered a number of injuries, the most significant of which was a broken arm, which he said was suffered when he held the arm up to protect his head and the arm was struck by the bat wielded by the accused.

[4] After the attack, Mr. Stewart says he took Mr. Porter up on his invitation to quit the premises. He eventually made his way to the Watson Lake Hospital where he was treated by Dr. Secerbegovic, who called the police. The report of Dr. Secerbegovic and the photographs taken by the police substantiate the injuries described by Mr. Porter (sic) and include an abrasion on his jaw and ear, a cut on his throat, a significant bruise on his upper back and, as I have already mentioned, a broken arm.

[5] The evidence of Mr. Porter is that he was living alone in the house at the time. He had gone out to a friend's to watch videos and drink some beer and when he returned home, expecting to be alone, he discovered that Mr. Stewart was in the house. He was somewhat nervous about this, as well as upset, and he asked Mr. Stewart to get out of the house. Mr. Stewart pleaded to be allowed to stay, whereupon Mr. Porter grabbed what he described as a fire stick, a piece of wood, and struck Mr. Stewart two or three times with the stick, again telling Mr. Stewart to get out. Mr. Stewart then said that he would leave, and did in fact leave.

[6] It should also be mentioned that Mr. Stewart indicates that after the incident where he was struck several times with the bat, that as he was leaving the premises Mr. Porter menaced him with a knife which he described as an X-Acto knife, producing the cut on Mr. Stewart's throat which is shown in the photographs and was also described by the attending physician. For his part, Mr. Porter denies ever wielding a knife.

[7] I think, given Mr. Stewart's advanced state of intoxication and his lack of memory as to how he found himself in Mr. Porter's home, it must be assumed in Mr. Porter's favour that Mr. Stewart was, at the least, a trespasser in his house and that Mr. Porter was entitled to request him to leave and if he refused or resisted leaving, to use force to put him out. Indeed, a trespasser who resists being put out is deemed to be committing an assault.

[8] The difficulty for Mr. Porter is that the force he used was obviously very substantial and Mr. Porter was forced to admit that he really would not have had much of a problem in physically assisting Mr. Stewart out of the house for the obvious reasons that Mr. Porter is obviously a strapping young man and in the condition that Mr. Stewart was in he certainly could not have gone 15 rounds with anybody. Indeed, Mr. Porter was forced to admit that, really, he overreacted to the situation.

[9] There is no suggestion that Mr. Stewart made any resistance to being put out of the house other than not leaving as quickly as Mr. Porter would have liked and verbally protesting being put out. There is no suggestion he made any physically threatening move toward Mr. Porter whatsoever. In those circumstances, there is no suggestion that Mr. Porter was acting in self-defence in any way. He was simply acting to put out a trespasser, and in so acting he was entitled to use necessary force, which I agree he need not have measured to a nicety but, even with the crudest of measuring instruments, this was excessive and clearly caused significant bodily harm to Mr. Stewart.

[10] I find Mr. Porter guilty as charged.

FAULKNER T.C.J.