

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Chief Judge Lilles)

REGINA

v.

LAZARETH GABRIEL SIMON

Sue Bogle

Appearing for Crown

Gordon Coffin

Appearing for Defence

REASONS FOR JUDGMENT

[1] LILLES C.J.T.C. (Oral) This is an appropriate time to make a few comments with respect to bail in domestic violence cases. In this particular case, we are dealing with Lazareth Gabriel Simon. The matters before the court are fairly serious, involving a weapon and several complainants individuals. I infer from the fact that he is in this court, that at least one of these individuals, and I am not sure which, is in an intimate relationship with him. One of the victims is Rena Simon.

[2] All crimes of violence or threats of violence are serious matters. Those that occur in the context of familial or intimate relationships present more serious problems to the administration of justice. It is really only within the last decade or so, beginning with the landmark decision of *R. v. Lavallee*, [1990] 1 S.C.R. 852, the justice system became sensitized to the complexity and the risks associated with domestic violence cases.

[3] The *Criminal Code* also makes it clear that all persons charged with criminal

offences have a right to bail. Of course, that is why we are here today, dealing with Mr. Simon's matters. Although faced with serious allegations, he has a right to bail provided that the provisions of s. 515(10) are met, that the Court is satisfied with the primary, secondary and so called public interest test set out in that part of the *Criminal Code*.

[4] Sometimes people who are released, re-offend. This is obviously of concern, but when the re-offending is in the area of physical or psychological harm to others, then everyone's concern, the court's concern, the community's concern, is heightened considerably.

[5] The decision of the Alberta Queen's Bench, *R. v. E.M.B.*, [2000] A.J. 91, reviewed these concerns as they relate to domestic violence cases in a very insightful way. I adopt the comments of Mr. Justice Peter Martin, in the *E.M.B.*, *supra*, case. He notes that the proper administration of justice requires that the judge determining bail understand the circumstances of the offence and the background of the offender in order to decide whether the offender is likely to resort to further violence or intimidation if released.

[6] Domestic violence cases require the Court to be especially vigilant in bail applications. This is because, unlike many other crimes, there is a continuing relationship and a greater likelihood of repetition. Moreover, at the time of separation or planning of separation or when court intervention causes a separation, the risk of further physical injury actually increases; some studies have indicated that the risk increases dramatically. The statistics from Juristat (Statistics Canada) indicate that the risk of homicide also increases around the time of separation. Of all homicides in Canada, spousal homicides constitute 17 percent; add the boyfriend/girlfriend

homicides and it goes up to 23 percent; add other family homicides and the total is 39 percent.

[7] Earlier, in addressing the Crown, I asked whether the accused had previous criminal convictions. In cases of spousal or intimate partner assault, it is difficult for the Court to address the bail question without having answers to a number of questions. Justice Martin sets these clearly in his decision:

[8] whether there is a history of violence or abusive behavior, and, if so, details of the past abuse in this or other relationships;

[9] whether the complainant fears further violence if the accused should be released, and if so, the basis for that fear;

[10] the complainant's opinion as to the likelihood of the accused obeying terms of release, in particular, no contact provisions.

[11] The complainant's views merit consideration, because the complainant probably knows the offender better than anyone. Any information that he or she can provide can be most valuable in assisting the Crown and the Court in evaluating risk, whether bail should be granted and if so, up on what terms. For example:

[12] does the accused have any drug or alcohol problems or a history of mental illness?

[13] the history of the accused obeying court orders, particularly no contact orders; and

[14] information with respect to any weapons that the accused might own or possess or otherwise have access to. Without this kind of information, it is very difficult to make informed decisions as to bail in domestic violence cases.

[15] This information is also important for the police, in deciding whether to arrest the accused or to release him on conditions of a recognizance pursuant to s. 498. It follows that police upon attending on a domestic violence call, should endeavour to get answers to as many of these questions as possible. Police attending the scene should attempt to obtain information about the following indicators by questioning the complainant and family members. The prosecutor should be prepared to provide this information at a subsequent bail hearing or sentencing if available:

- [16] threats, fantasies, or history of homicide or suicide,
- [17] weapons (threats, use access to),
- [18] obsessiveness about partner or family,
- [19] separation (actual or perceived),
- [20] stalking behavior,
- [21] acute depression,
- [22] use of choking,
- [23] access to partner, children, and other family members,
- [24] dangerous behavior increasing in degrees - taking personal risks,
- [25] symbolic days or events,
- [26] sexual abuse of partner,
- [27] alcohol or drug abuse,
- [28] repeated calls to police,
- [29] hostage-taking,
- [30] prior history of serious criminal misconduct,
- [31] harm to animals.

Since domestic violence is rarely an isolated occurrence, victims should also be sensitized to these risk factors as part of their safety plan.

[32] On the facts of this case, taking into account all of the information placed before me, including the period of time Mr. Simon has been in custody awaiting this hearing, and taking into account the supervision that he will have at the ARC, I am quite comfortable making the order that the Crown has proposed.

[33] The bail will be granted on the terms discussed earlier.

[34] MR. COFFIN: Will that be on an undertaking?

[35] THE COURT: I think in the circumstances, it should be on an undertaking. I have not heard, that there is anyone in Whitehorse who is in a position to support him. I have just inferred from the fact that he is from Pelly Crossing that his familial contacts are there and he is less likely to have that kind of support in this community.

[36] MR. COFFIN: Yes, I think that is true.

[37] THE COURT: Is that fair? It will be way of an undertaking.

[38] MR. COFFIN: And adjourned to the 20th of January?

[39] THE COURT: 20th of January at 1:30 p.m.

LILLES C.J.T.C.