

Citation: R. v. Twiss
2001 YKCA 0009

Date: 20010822
Docket: YU0444
Registry: Whitehorse

COURT OF APPEAL FOR YUKON TERRITORY

ORAL REASONS FOR JUDGMENT

BEFORE THE HONOURABLE

Mr. Justice Hollinrake

August 22, 2001
Vancouver, B.C.

BETWEEN:

REGINA

RESPONDENT

AND:

DOUGLAS RICHARD TWISS

APPELLANT

S. Goldberg appearing for the Appellant

Kevin Drolet appearing for the (Crown)
Respondent (in Whitehorse by
telephone)

[1] **HOLLINRAKE, J.A.**: This is a motion to admit the appellant to judicial interim release following conviction on a number counts, the most serious of which is discharging a firearm with intent to cause bodily harm contrary to s. 244(a) of the **Criminal Code**. He shot a man with whom he was having, at the very least, a verbal altercation, in the leg. I understand from what I have been told that this victim has lost a foot as a result of this.

[2] The trial was heard before a judge sitting with a jury. Mr. Goldberg who appears before the court today as an agent says that the charge was not a fair one in terms of the reference to the evidence. The defence here was self-defence. Mr. Goldberg says there was evidence given by a number of young people which was favorable to the accused on the issue of self-defence, and that evidence was either not referred to by the judge in his charge to the jury, or was not referred to in the detail that Mr. Goldberg says it ought to have been in fairness to the self-defence position of the accused.

[3] The Crown says that this was basically a simple straightforward trial and the question before the jury comes down to simply whether or not when the accused shot the victim he did so in self-defence or in anger. The evidence was such

that the jury could have gone one way or the other. I should note here that the accused did testify in his own behalf.

[4] In response to Mr. Goldberg's attack on the reference to the evidence in the charge the Crown says that this was a three-day trial in terms of the evidence. The jury was charged on the fifth day following submissions made by counsel. The Crown takes the position in all of the circumstances the charge cannot be said to be other than fair and balanced.

[5] Counsel agree that whether or not the appeal can be said to be frivolous within s. 679 of the **Criminal Code** is whether there is any reasonable prospect of success in the appeal. I have concluded that while it perhaps cannot be said this charge is perfect, it is not one that the Court of Appeal would interfere with and, in my view, this motion for judicial interim release must fail on the ground that the Court cannot be satisfied that the appeal is not frivolous, and on that ground alone I would dismiss the motion.

[6] I should go on in these reasons to refer to the Court Report Bail Assessment. I do this because the Crown took the position that I could not be satisfied that the detention of the accused is not necessary in the public interest. I have read the assessment and it is one that is not favourable to

the accused on the issue of detention not necessary in the public interest. However, Mr. Goldberg points out that this is a report made in which the participants in the report, that is those writing it, do so on the basis that he is guilty of the charge which is now before the Court of Appeal. For instance the report says that Mr. Twiss does not demonstrate any remorse for committing the current offence. According to court reports he maintains that he shot the victim in self-defence. Then the writer goes on to say "the facts of this case do not bear this out." That I read as being in support of Mr. Goldberg's contention that the Court should not place any great weight on the report which is entitled "Court Report - Bail Assessment". I confess that I have some reservations about coming to a conclusion on the basis of what is in that report. However, deciding as I have that the appellant has not satisfied me that the appeal is not frivolous I need not deal with the issue of whether or not the detention of the accused is not necessary in the public interest.

[7] I dismiss the motion.

(discussion with counsel)

[8] Mr. Goldberg, when I concluded my reasons, said he was concerned about the recharge. I do not place any weight in my

decision one way or the other on that. That should be recorded.

"The Honorable Mr. Justice Hollinrake"

Correction: The citation should be R. v. Twiss 2001 YKCA 0009; the Docket no. is YU0444