

SUPERIOR COURT OF JUSTICE

(CRIMINAL)

HER MAJESTY THE QUEEN

v.

SCOTT VICTOR LITTLE

R E A S O N S F O R J U D G M E N T

(from Vol. IV)

RENDERED ORALLY BY THE HON. MR. JUSTICE ROBERT L. MARANER
On Friday, the 17th day of October, 2008, at Ottawa

CHARGES: s. 267(b), s. 430(4) and s. 267(a) of the *Criminal Code*

Appearing:

M. Cole

Counsel for the Crown

M. Crystal

Counsel for the Accused

SUPERIOR COURT OF JUSTICE

(CRIMINAL)

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REASONS FOR JUDGMENT

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TRANSCRIPT ORDER DATED: Oct. 20, 2008

ORDER RECEIVED
AND AUDIOTAPES REQUESTED: Oct. 22, 2008

AUDIOTAPES RECEIVED: Oct. 22, 2008

TRANSCRIPT COMPLETED: Nov. 23, 2008

TRANSCRIPT DELIVERED:

Friday
October 17, 2008.

(10:03 a.m.)

REASONS FOR JUDGMENT

MARANGER J. (orally):

The accused before the court, Scott Victor Lythe, stands charged on three counts:

- That on or about the 16th day of September in the year 2007 at the City of Ottawa in the East Region, he did commit an assault on Jocelyn Bastien, causing her bodily harm.
- He is further charged that on the 16th day of September in the year 2007 he caused mischief by willfully damaging a closet door, being the property of Jocelyn Bastien of a value not exceeding \$5,000.
- He is further charged that on the 20th day of September, 2007 at the City of Ottawa, he did, in committing an assault on Jocelyn Bastien, carry a weapon, namely a knife.

The allegations in this case arise as a result of a volatile domestic relationship that started in May 2007. In July 2007, the accused and the complainant moved into an apartment together at 1177 Cummings Street in Ottawa. The accused paid the first and last month's rent and in all likelihood also paid a security deposit. He put these charges on his VISA card.

The couple had an extremely volatile relationship. The complainant had contact with the police on a few occasions, alleging that she had been assaulted by the accused.

In this case the Crown presented evidence via the complainant as well as some of the investigating officers who attended the original scene on the 16th and who took statements from the complainant. Two separate 9-1-1 telephone calls were filed, those being the recording of the calls made by the complainant on the 16th of September and on the 20th of September, 2007, along with actual transcripts of the calls.

In terms of dealing with the charges, I will deal with the two assault charges firstly.

The allegation of September 16th, 2007 really comes down to two different versions of what took place.

The complainant testified that she got into an argument with the accused about his drinking. She admitted grabbing his throat. She acknowledged that they shoved each other around, that he went into the bedroom to get away, that he opened the closet door in an aggressive manner - and she heard that - and it was broken, that she entered the bedroom and that she grabbed his arm, and that he pushed her across the room with sufficient force that her feet would have left the ground, and then she landed. It was determined later that her elbow was in fact fractured from the fall.

The accused Mr. Lytle testified that in the bedroom specifically, he entered to get his clothes and leave, to leave the apartment. She came at him, that he extended his arms defensively to, in essence, repel her, and that she, for all intents and purposes, bounced off of his arms and landed on the floor and would have been injured in that fashion.

When a court of criminal jurisdiction is called upon to decide a case such as this where there are two versions of an event and where an accused testifies the Court is obligated to apply the analysis in R. v. W.(D.), which stipulates that if a court believes an accused's version of events that demonstrates that he is not guilty, then he must be found not guilty; and even if the court does not believe the version of events described by an accused but if that testimony raises a reasonable doubt in the mind of the trier of fact, then an acquittal must also be entered; and the third prong of the W.(D.) test is that even if the court does not believe the accused and his evidence does not raise a reasonable doubt in the mind of the trier of fact, he is only to be convicted if all of the other evidence presented at trial that is accepted proves the guilt of the accused beyond a reasonable doubt.

In this case, both versions of the events on September 16th, 2007 are plausible. As to the testimony of the complainant and the accused, they are, at the very least, equally worthy of belief.

I would say this in this case:

- I find that Mr. Lytle, in general terms, was trying to get away. Ms. Bastien didn't want him to leave.
- I further find that she was probably more the aggressor than was Mr. Lytle. She grabbed him by the throat. That is uncontroverted. She admitted to that.
- She kicked him as he was leaving the apartment. She "got her last licks in," so to speak.

– Her injury was more likely than not caused by her falling down as she was deflected off of Mr. Lyttle.

And I find the accused not guilty of count one on the indictment.

With respect to the September 20th, 2007 incident, this is an incident respecting an allegation of an assault with a weapon, namely a knife. The facts in relationship to that charge are simply: Ms. Bardon testified that Mr. Lyttle came at her, was threatening her and approaching her with a large butcher knife from the kitchen of their apartment. In relationship to that, she testified and gave her version of events, and in some respect her version of events was corroborated by a 9-1-1 call where she's heard speaking with a 9-1-1 dispatcher and explaining that her boyfriend was coming at her with a knife.

Mr. Lyttle testified that he never did this, that he did not lift up the knife or even touch the knife on the night in question; and, in some respects, his version of the events is also corroborated in the 9-1-1 call, where in the background he's heard yelling that he didn't have a knife.

Now, in this case, I would say that based on the second prong of the W.(D.) analysis, it would be irresponsible to convict on the evidence before the Court.

I find Mr. Lyttle not guilty on the basis that his evidence at least raises a reasonable doubt in my mind. Whether I believe him or not is not particularly important. His evidence at least raises a

reasonable doubt in my mind, and I find him not guilty of count three on the indictment.

With respect to the mischief charge, I find Mr. Little not guilty on the basis of the defence of colour of right.

The evidence clearly supports a plausible belief on his part that he had a leasehold interest in the apartment. The fact that he paid the first and last month's rent and probably paid a security deposit on the apartment gives him that colour of right.

I even have some doubt that he willfully damaged the property. He was trying to leave the apartment. He was angry. He opened the door aggressively. It came off its rails.

I am not convinced beyond a reasonable doubt that there was any substantial damage to the property in any event; however, primarily, I am acquitting on the basis of colour of right.

Robert L. Maranger, Justice

I, Leona M. Scott, certify that this document is a true and accurate transcription of the reasons for judgment which were rendered orally on the 17th day of October, 2008 in the matter of:

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such matter having been heard in the Superior Court of Justice (Criminal) located at 161 Elgin Street in Ottawa. This transcription has been taken from audio recording 36-329 and has been produced, with the assistance of my own notes made at the time, to the best of my skill and ability.

Nov 24/08

Date

Leona M. Scott
Certified Court Reporter