

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

TYLER SAMUEL GREEN

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Transcript of the Oral Reasons for Judgment delivered  
by the Honourable Justice L.A.M. Charbonneau, sitting  
at Tuktoyaktuk, in the Northwest Territories, on  
February 20th, A.D. 2007.

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APPEARANCES:

Mr. B. Lepage: Counsel for the Crown

Ms. K. Payne: Counsel for the Accused

(Charges under s. 249(1)(a), 268, 267(a) C.C.)

1 THE COURT: Tyler Green is charged on a  
2 three-count indictment alleging that offences  
3 were committed on the 9th of December, 2005. He  
4 is charged, first, with having operated a motor  
5 vehicle in a public place in a manner that was  
6 dangerous to the public. He is charged with  
7 having committed an aggravated assault on Diamond  
8 Klengenberg by wounding him on the same date. He  
9 is charged with having assaulted Diamond  
10 Klengenberg using a weapon, to wit: a knife.

11 At this trial, the Crown called Diamond  
12 Klengenberg, the alleged victim, as well as  
13 Constable Chris Pittman, a member of the RCMP who  
14 was involved in this investigation.

15 The Crown also filed two exhibits; Exhibit  
16 number 1 being a letter from Dr. Lawrence  
17 Fawcett. That letter describes the injuries that  
18 were observed after Diamond Klengenberg was  
19 admitted to the Inuvik Hospital on December 9th,  
20 2005. Without referring to the letter in its  
21 entirety, it describes a "fairly large"  
22 laceration or cut to Mr. Klengenberg's left  
23 flank, an injury of approximately two to three  
24 centimetres in length and at least six to seven  
25 centimetres in depth, as well as another injury  
26 to Mr. Klengenberg's left wrist, and it describes  
27 the treatment that Mr. Klengenberg received for

1           those injuries.

2           Exhibit 2 consisted of six photographs that  
3           show - in particular photographs number 2, 3 and  
4           4 - this cut to Mr. Klengenberg's flank, and  
5           photographs 5 and 6 showed the same injury once  
6           it was cleaned by the staff at the nursing  
7           station. That was the case presented by the  
8           Crown.

9           The defence called Sam Pingo, who is the  
10          accused's father, to testify about some of the  
11          events that he was aware of from the night in  
12          question.

13          Before referring to the evidence itself, I  
14          want to refer to some of the legal principles  
15          that apply in this case. I do not propose to  
16          refer to all of the legal principles that apply  
17          in this case, but I want to underscore a few that  
18          are particularly relevant and which I have  
19          considered carefully.

20          The first, of course, is the presumption of  
21          innocence. Mr. Green does not have to prove  
22          anything. He is presumed innocent throughout  
23          this trial, and the standard of proof remains  
24          always with the Crown.

25          The second principle is that the standard of  
26          proof that the Crown is held to is a high one.  
27          It is proof beyond a reasonable doubt. That

1 means more than possible, likely or even probable  
2 guilt. It is not the same thing as absolute  
3 certainty, but it is closer to absolute certainty  
4 than it is to probability.

5 Reasonable doubt can arise from evidence or  
6 from the lack of evidence. It can also arise  
7 from the credibility of witnesses. I remind  
8 myself, as I must, that in assessing credibility  
9 I can accept some, none or all of what a witness  
10 says. It is not an all or nothing proposition.

11 So those are some, not all, but some of the  
12 legal principles that are applicable in this  
13 case, in my view.

14 There are a few things that are not in  
15 issue, it would seem. There is no question that  
16 Mr. Klengenberg got injured and had to be treated  
17 for a fairly significant cut on his right side.  
18 That injury is visible in the photos. It is  
19 described in Exhibit 1. It was also described by  
20 the police officer who testified. I am satisfied  
21 that that is the type of injury in law which  
22 constitutes wounding within the meaning of  
23 section 268 of the Criminal Code.

24 As a matter of law, I am also satisfied that  
25 if it is proven beyond a reasonable doubt that  
26 Mr. Green attacked Mr. Klengenberg with a knife  
27 in the manner that was described in the evidence,

1           that would constitute an assault with a weapon  
2           within the meaning of our criminal law.

3           I am further satisfied that if it is  
4           established beyond a reasonable doubt that  
5           Mr. Green chased Diamond Klengenberg with a  
6           snowmobile in the manner described by  
7           Mr. Klengenberg, trying to hit him or bump him to  
8           the point that Mr. Klengenberg had to hide behind  
9           some sort of a pole on the side of the road, that  
10          would make out the offence of dangerous driving  
11          under section 249 of the Criminal Code.

12          But the real issue in this case is, really,  
13          whether it has been proven beyond a reasonable  
14          doubt that Mr. Green did those things.

15          The only direct evidence that I have about  
16          what happened in that house is the evidence of  
17          Mr. Klengenberg himself. In assessing his  
18          credibility - and we all know that the assessment  
19          of credibility is not an exact science - I have  
20          considered his demeanour as a witness. I have  
21          noted that there were times where he did not  
22          answer questions directly or his answers were  
23          slightly off topic in comparison to the question  
24          asked, but I have also noted that this happened  
25          both when he was being asked questions by the  
26          prosecutor and when he was being asked questions  
27          by defence counsel.

1           His version of events is that he went to the  
2           house of Gale Jacobson in the morning hours of  
3           December 9th. He had one drink before going  
4           there. He had a glass while he was there, as I  
5           understand, but said that shortly after he got  
6           that glass Mr. Green came in. He said Mr. Green  
7           became rowdy, that he pulled out a knife.  
8           Mr. Klengenberg described that knife. He said  
9           that Mr. Green swung the knife at him. I should  
10          say that Mr. Klengenberg said that he came to the  
11          Jacobson house with Mason, but that Mason left  
12          before the incident itself actually happened.

13                 Mr. Klengenberg said that this was how he  
14          got his injuries: He said he got poked on the  
15          side with the knife and got injured on his hand  
16          or wrist trying to defend himself. He said that  
17          he could not leave the house and that he ran to a  
18          room hoping to get out the window, but the window  
19          was boarded. He said the accused came after him,  
20          that Mr. Klengenberg hid in a bathroom, that the  
21          accused stabbed at the door, and that at one  
22          point Sandra Chicksi came in, and at that point  
23          Mr. Klengenberg was able to run out of the house.

24                 He further said that the accused chased him  
25          with a ski-doo, that he was, "trying to bump  
26          him," that at one point Mr. Klengenberg stood or  
27          hid behind a pole, which I understand to be

1           either a telephone or electric pole on the side  
2           of the road, and eventually was able to go to  
3           Jessie Punch's, or Jessie Panaktalok's, residence  
4           and that from there he called the police.

5           Mr. Klengenberg was cross-examined by  
6           defence counsel. He was challenged in many  
7           respects of his version of events. He was  
8           unshaken in that cross-examination and reiterated  
9           several times that it was Mr. Green who caused  
10          his injuries and that it was essentially for no  
11          reason.

12          The second witness called by the Crown was  
13          Constable Pittman, and his evidence is important  
14          from the perspective of the timeline. My  
15          understanding of Constable Pittman's evidence is  
16          that he got a call at 3:00 in the morning from  
17          Diamond Klengenberg. At that point Constable  
18          Pittman was dealing with a prisoner in the  
19          cellblock at the detachment and was on his own,  
20          so he asked the caller to call back. He  
21          testified that a few minutes later Diamond  
22          Klengenberg called back, and, based on the  
23          information he received from Mr. Klengenberg,  
24          Constable Pittman went to the Panaktalok  
25          residence, but Mr. Klengenberg was not there.

26          Then Constable Pittman said that based on  
27          what he learned at the Panaktalok residence he

1           drove out to Reindeer Point, which, he says, is  
2           about five kilometres away and is where Diamond  
3           Klengenberg lives. Constable Pittman went to  
4           that location, knocked on the door. Judy  
5           Klengenberg answered. Mr. Diamond Klengenberg  
6           was not there, but as the officers were leaving  
7           they saw Mr. Klengenberg walk towards them. They  
8           determined relatively quickly that he had  
9           injuries, so they took him to the health centre.

10           Constable Pittman explained what happened at  
11           the nursing station. That is when he took the  
12           pictures. There were various things that were  
13           done by the nursing staff to deal with the  
14           injuries and assess Mr. Klengenberg's condition.

15           Constable Pittman said it took about an hour  
16           for him to deal with Mr. Klengenberg. He  
17           testified that there was some indication that  
18           Mr. Klengenberg had been consuming alcohol, but  
19           my understanding of his evidence was that  
20           Mr. Klengenberg was not particularly intoxicated,  
21           which I note is consistent with Mr. Klengenberg's  
22           version about how much or how little he had had  
23           to drink that night.

24           After having been at the health centre,  
25           Constable Pittman and his colleague, based,  
26           again, on information they had received, went to  
27           the residence of Rita Green and Sam Pingo, the



1 accused's parents. He described asking Ms. Green  
2 if they could speak to the accused. He said they  
3 waited outside. He said they heard what he  
4 thought might have been yelling or thumping,  
5 although he acknowledged that this was muffled  
6 and he was not entirely sure what it was that was  
7 going on in the house.

8 He said that eventually Ms. Green came back  
9 to the door and was insistent that the police go  
10 in. Then he described how they attended one of  
11 the rooms, that the accused was there, that he  
12 was upset, that Ms. Chicksi was also there and  
13 upset at the police. Then Constable Pittman  
14 described how he tried to calm Mr. Green down.  
15 Fortunately, for all involved, the situation did  
16 calm down, settle down, and Mr. Green was taken  
17 outside of the residence without incident.

18 I should add that Constable Pittman  
19 testified that when they approached the residence  
20 he saw a snowmobile outside the residence  
21 matching the description that had been given to  
22 him by Mr. Klengenberg. He noted that the  
23 muffler was warm. He recognized the machine as  
24 Mr. Pingo's machine, and he testified that he had  
25 seen the accused driving that machine around town  
26 on previous occasions before this incident  
27 happened.

1           Now I turn to the evidence of Mr. Pingo, who  
2 testified that he, too, remembers the events of  
3 that night. He said that he took his ski-doo out  
4 that night to go check on his dog team. My  
5 understanding of his evidence is that he keeps  
6 his dogs about three-quarters of a mile out of  
7 town. In cross-examination he was asked how long  
8 it would take to go and return, go to his dogs  
9 and return, and his answer was 20 minutes. My  
10 understanding of the evidence is that he also  
11 said that on the night in question it took him  
12 about 45 minutes to check on his dogs.

13           Mr. Pingo said that he came back from  
14 dealing with his dogs shortly after 4, I believe  
15 he said 4:05 or 4:10 in the morning, and then  
16 about 20 or 25 minutes later was when there was a  
17 knock on the door and it was the police.

18           Mr. Pingo confirmed that his son was upset, that  
19 he did not want to go with the police. He also  
20 testified that Mr. Green, his son, does not have  
21 permission to use his ski-doo and, to his  
22 knowledge, does not use his ski-doo.

23           I will pause here to note that under the  
24 circumstances of this case I draw no inference  
25 from the fact that Mr. Green was upset or  
26 confrontational at the point in time the police  
27 attended his residence. I say this because what

1 is commonly referred to as post-offence conduct  
2 can only be used to draw an inference of guilt if  
3 it is consistent with guilt and not consistent  
4 with any other explanation.

5 In the circumstances, I am not saying that  
6 Mr. Green's behaviour was excusable or  
7 appropriate, but I am not prepared to draw any  
8 adverse inference from the fact that he was upset  
9 at that point in time, because there are other  
10 reasons why he might have reacted that way. In  
11 fact, there are often situations where people do  
12 not necessarily react in the best of ways when  
13 they are being approached by the police, but that  
14 is not something that in the circumstances of  
15 this case I find helpful in deciding on what  
16 happened and the events alleged to have happened  
17 earlier on in the evening.

18 Part of what defence counsel has argued this  
19 afternoon is that it is not possible for things  
20 to have happened in the way Mr. Klengenberg  
21 described if Mr. Pingo's evidence is believed. I  
22 have examined that argument carefully in light of  
23 the evidence, and I have come to the conclusion  
24 that even if I accept Mr. Pingo's testimony -  
25 and, in fact, I do - I do not think it means that  
26 Mr. Klengenberg's version is necessarily untrue  
27 or inaccurate. This finding depends on how one

1 understands the evidence about the timeline, as  
2 both counsel have pointed out.

3 My understanding of the evidence that I have  
4 on this timeline, if I start in the middle of it,  
5 is this. From Mr. Pingo's evidence, it is  
6 shortly after 4:00 that he returns from having  
7 looked after his dogs, and he testified he was  
8 there for about 45 minutes, which means that he  
9 would have left maybe around a quarter after 3,  
10 3:30 or so, and he said that it is about 20, 25  
11 minutes after his return that the police showed  
12 up.

13 Going back to what Constable Pittman  
14 testified to, he says he got the first call at 3  
15 a.m., that Mr. Klengenberg had to call him back;  
16 he asked him to call him back a few minutes  
17 later. Then Constable Pittman and his colleague  
18 had to go to the Panaktalok residence, then to  
19 discover that they needed to go to Reindeer  
20 Point, which is five kilometres away, and then  
21 they dealt with Mr. Klengenberg and brought him  
22 back to the nursing station and spent about an  
23 hour with him and then would have gone to the  
24 Green residence.

25 So on my understanding of that timeline, it  
26 all can very well fit together, because if the  
27 incident happened sometime before 3:00 in the

1 morning, Mr. Green and Ms. Chicksi would have  
2 been back at Mr. Pingo's residence before  
3 Mr. Pingo went out to deal with his dogs, take  
4 care of his dogs.

5 The one thing that remains unclear is how  
6 Mr. Klengenberg would have gotten to Reindeer  
7 Point, considering the evidence about how far it  
8 is and how much time it would take to walk. But  
9 we know that the call to the police was made at 3  
10 a.m. and that a relatively short time later  
11 police officers spoke to Mr. Klengenberg at  
12 Reindeer Point. So I infer from that, and I find  
13 as a fact, that Mr. Klengenberg did not walk to  
14 Reindeer Point. It is difficult to imagine how  
15 he would have walked five kilometres with the  
16 injury he had. But, in any event, based on the  
17 evidence that I have heard, I am satisfied that  
18 he had to get there in some other way. I do not  
19 recall Mr. Klengenberg testifying specifically as  
20 to how he got to Reindeer Point. But, in any  
21 event, the most important part of this is that I  
22 find that when I look at Mr. Pingo's evidence, it  
23 does not, in fact, contradict the timeline that  
24 emerges from the Crown's case.

25 Now, Mr. Pingo also said Mr. Green did not  
26 have permission to use the snow machine, and  
27 Constable Pittman testified that he did see

1 Mr. Green using it a number of times before all  
2 this happened. This does not mean that Mr. Pingo  
3 did not tell the truth. It may simply mean that  
4 sometimes his son uses his machine without his  
5 permission.

6 I accept that the warm muffler on the  
7 ski-doo that Constable Pittman was able to  
8 observe or feel is not proof that the snow  
9 machine was, in fact, used in the incident  
10 involving Mr. Klengenberg. Because, as I have  
11 said, I do accept Mr. Pingo's testimony about  
12 what he remembers of that night, and I accept  
13 that he used his ski-doo to go check on his dogs,  
14 and that may well explain why the muffler was  
15 warm.

16 So, having accepted Mr. Pingo's testimony,  
17 but having concluded that it does not actually  
18 contradict the timeline advanced in the Crown's  
19 case, I am left with having to consider the  
20 Crown's evidence, because, of course, it has to  
21 satisfy me beyond a reasonable doubt of the  
22 accused's guilt, and this is now what I must turn  
23 to.

24 The only evidence about what happened or  
25 what caused Mr. Klengenberg's injuries is the  
26 evidence of Mr. Klengenberg. As I have said, he  
27 was not shaken on cross-examination. There is no

1 other evidence, in my assessment of it at least,  
2 that contradicts his version.

3 There are some concerns about the manner in  
4 which he testified, but, as I have said, I noted  
5 some of these concerns seemed to emerge equally  
6 when the Crown prosecutor was questioning him and  
7 when the defence counsel was questioning him. So  
8 my assessment is not that Mr. Klengenberg was  
9 trying to be evasive. He seemed to have  
10 difficulty understanding some of the questions,  
11 but I do note that despite firm cross-examination  
12 by defence counsel, who, as was her duty to do,  
13 challenged him thoroughly on what he had said, he  
14 remained firm and insistent that it was Mr. Green  
15 that stabbed him and injured him.

16 I have considered carefully whether a  
17 reasonable doubt arises from the lack of evidence  
18 in this case. As I raised when I asked questions  
19 of Crown counsel during submissions, I have taken  
20 into account that Gale Jacobson was said to have  
21 been present during these events; that Sandra  
22 Chicksi was also said to be present; that Mason,  
23 whatever his last name is, was at least there for  
24 the beginning or part of it; that there was no  
25 evidence of a knife being found; no evidence, in  
26 fact, of a search for the knife or no other  
27 evidence that corroborates the version of

1 Mr. Klengenberg, apart from the injuries. But I  
2 cannot speculate about what this evidence would  
3 be or why it was not called.

4 In the end, it comes back to the simple  
5 question of whether or not I can accept Diamond  
6 Klengenberg's testimony about how he got injured.  
7 Based on how he responded to the questions and  
8 how firm he was and observations I made during  
9 his evidence, I do accept his evidence, and I am  
10 satisfied that he was injured in the manner he  
11 described by Mr. Green.

12 For those reasons, I am satisfied beyond a  
13 reasonable doubt that Mr. Green was the one who  
14 stabbed him, and, for reasons I have already  
15 given, in my view, that means that Mr. Green must  
16 be convicted on all three counts of the  
17 indictment.

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Certified to be a true and  
accurate transcript pursuant  
to Rules 723 and 724 of the  
Supreme Court Rules.

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Jill MacDonald, CSR(A), RPR  
Court Reporter