

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MATTHEW JAMES KUPTANA

Transcript of the Decision by The Honourable Justice
S. H. Smallwood on the application to change plea,
sitting in Yellowknife, in the Northwest Territories,
on the 23rd day of August, 2016.

APPEARANCES:

Ms. W. Miller: Counsel for the Crown
Mr. J. Bran: Counsel for the Defence

Charges under s. 271 x 2 Criminal Code of Canada

No information shall be published in any document or
broadcast or transmitted in any way which could identify
the victim or a witness in these proceedings pursuant to
s. 486.4 of the Criminal Code of Canada

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1 MS. MILLER: Good afternoon, Your Honour.

2 THE COURT: Good afternoon.

3 MR. BRAN: Good afternoon. If there
4 are no concerns or objections I'd ask that
5 Mr. Kuptana be able to sit with me at counsel
6 table.

7 THE COURT: Any concerns?

8 POLICE OFFICER: No concerns, Your Honour.

9 THE COURT: Thank you. You can sit
10 beside your lawyer.

11 Matthew James Kuptana is applying to
12 change his guilty plea to sexual assault,
13 which is alleged to have been committed against
14 M. K. on April 26th, 2015. Mr. Kuptana asserts
15 that as a result of the death of a relative that
16 he was not thinking clearly and he was confused
17 when he entered his guilty plea in this court.
18 Defence counsel has also referred to that
19 there was no confirmation of the guilty plea
20 in the transcript of events, which was prepared,
21 apparently questioning whether the guilty plea
22 was validly recorded.

23 Mr. Kuptana was charged on April 27th,
24 2015, with committing a sexual assault allegedly
25 on M. K. the day before. He was released on
26 a promise to appear, which was confirmed by
27 a justice on April 27th, 2015. On July 28th,

1 2015, he appeared in court with counsel. At
2 that time reading of the charge was waived
3 and the Crown elected to proceed by indictment,
4 and the accused elected trial by judge and
5 jury, requesting a preliminary inquiry. The
6 matter was adjourned to September 1st, 2015,
7 to confirm the preliminary inquiry date, and
8 also to September 22nd, 2015, for the preliminary
9 inquiry. On September 1st, 2015, Mr. Kuptana
10 appeared again with different counsel. At that
11 time the matter was adjourned to September 15th,
12 2015, to confirm the date, and the preliminary
13 inquiry date of September 22nd, 2015, was also
14 maintained.

15 Mr. Kuptana was arrested and charged with
16 committing another sexual assault, this time
17 allegedly on C. K., on September 19th, 2015.
18 Both matters were brought before a Justice
19 of the Peace on September 19th, 2015, and
20 the accused was remanded in custody over to
21 September 22nd, 2015. On that date Mr. Kuptana
22 appeared in Territorial Court on both sexual
23 assault charges. A lawyer, Michael Martin,
24 appeared with him, and the matters were
25 adjourned to September 29th, 2015. The
26 preliminary inquiry did not proceed on
27 that date.

1 On September 29th, 2015, Mr. Martin
2 appeared for Mr. Kuptana. At that time the
3 Crown proceeded by indictment on the September
4 19th, 2015 sexual assault charge, and both
5 sexual assault matters were adjourned to
6 October 6th, 2015. On October 6th, 2015,
7 Mr. Kuptana appeared again with Mr. Martin.
8 He elected trial by judge alone on the September
9 19th, 2015 sexual assault charge, and re-elected
10 to trial by judge alone on the April 26th, 2015
11 sexual assault charge. The preliminary inquiry
12 was waived and Mr. Kuptana was ordered to stand
13 trial on both charges.

14 The Crown subsequently filed indictments
15 on both sexual assault charges. On December
16 14th, 2015, Mr. Kuptana appeared in this court
17 with Mr. Martin as his counsel. He was arraigned
18 on both sexual assault charges and guilty pleas
19 were recorded on both counts. The matter was
20 adjourned to January 4th, 2016, so that counsel
21 could submit their availability for a sentencing
22 date to be held in Inuvik. On January 4th,
23 2016, Mr. Martin appeared for the accused and
24 the matter was scheduled for April 18th, 2016,
25 in Inuvik for sentencing.

26 On April 13th, 2016, Mr. Martin applied
27 and was granted permission to be removed from

1 the record. Mr. Kuptana was present in court
2 and the matter was adjourned to May 2nd, 2016,
3 for new counsel, Mr. Bran, to review the file
4 and to meet with Mr. Kuptana. On May 2nd,
5 2016, Mr. Bran appeared for Mr. Kuptana and
6 advised that Mr. Kuptana wished to change one
7 of his pleas from guilty to not guilty. The
8 application to change Mr. Kuptana's plea of
9 guilty to the sexual assault alleged to have
10 been committed on M. K. on April 26th, 2015,
11 was subsequently heard before me on August
12 8th, 2016.

13 No affidavits were filed on the application.
14 Mr. Kuptana testified regarding the circumstances
15 surrounding the entry of his guilty pleas. The
16 transcript of proceedings from December 14th,
17 2015, has been filed, as well as the criminal
18 record of the accused. While it is somewhat
19 lengthy I am going to re-produce what was said
20 before Justice Shaner in entering the pleas as
21 it is relevant to the application:

22
23 COURT CLERK: Matthew James Kuptana,
24 on or about the -- you stand charged
25 that on or about the 19th day of
26 September, 2015, at or near the
27 Town of Inuvik, in the Northwest

1 Territories, did commit a sexual
2 assault on C. K., contrary to
3 Section 271 of the Criminal Code.
4 Do you understand the charge as
5 it is read to you?
6 ACCUSED: Yes.
7 COURT CLERK: How do you plead to
8 this charge, guilty or not guilty?
9 MR. MARTIN: The plea is guilty.
10 Correct, Mr. Kuptana?
11 ACCUSED: Yes.
12 COURT CLERK: The accused pleads
13 guilty, Your Honour.
14 THE COURT: Thank you. Mr. Martin,
15 have you discussed the provisions
16 of Section 606 of the Criminal Code?
17 MR. MARTIN: Yes, I have reviewed
18 Section 606(1.1) of the Code with
19 him, Your Honour. I am satisfied
20 that it is fully informed and
21 voluntary, complying with that
22 section. He understands he's
23 giving up his right to a trial,
24 that there will be an entry
25 on the criminal record. He's
26 admitting the essential elements
27 of the offence, and he understands

1 the Court is not bound by any
2 submissions made between the
3 parties.

4 THE COURT: Thank you. I will
5 ask the clerk to then arraign
6 Mr. Kuptana and take his plea
7 on the other matter, which is
8 S-1-CR-2015-118.

9 COURT CLERK: Matthew James Kuptana,
10 you stand charged that on or about
11 the 26th day of April, 2015, at
12 or near the Town of Inuvik, in the
13 Northwest Territories, did commit
14 a sexual assault on M. K., contrary
15 to Section 271 of the Criminal Code.
16 Do you understand this charge as it
17 is read to you?

18 ACCUSED: Yes.

19 COURT CLERK: How do you plead to
20 this charge, guilty or not guilty?

21 MR. MARTIN: The plea to that
22 is guilty as well. Correct,
23 Mr. Kuptana?

24 ACCUSED: (No verbal response).

25 COURT CLERK: Thank you.

26 MR. MARTIN: And again, I'm
27 satisfied it complies with

1 Section 606(1.1).

2

3 Following this counsel and the Court
4 discussed scheduling of the sentencing
5 before adjourning the matter to January
6 4th, 2016. It is the second charge that
7 Mr. Kuptana now wishes to change his plea
8 to not guilty.

9 On the application Mr. Kuptana testified
10 that he is 46 years old. He grew up in
11 Ulukhaktok and speaks English and Inuvialuktun,
12 although he prefers to speak Inuvialuktun.
13 He attended school up to grade 5 but did
14 not complete that grade. At the time of
15 his arrest he was living with his common-law
16 partner in Inuvik and he was working full-time
17 as a security guard at the hospital.

18 Mr. Kuptana testified that his nephew,
19 Alex Akhiatak, was living in Ulukhaktok. He
20 had contacted Mr. Kuptana on Facebook, asking
21 if he could stay with him for a few weeks.
22 Mr. Kuptana said no because he did not have
23 enough room at his house, and that about four
24 days later, on July 1st, 2015, Mr. Akhiatak
25 committed suicide. Mr. Kuptana testified that
26 afterwards he felt bad and blamed himself and
27 he began drinking a lot.

1 Following his arrest on September 19th,
2 2015, Mr. Kuptana was remanded into custody.
3 In his testimony Mr. Kuptana agreed that
4 he had reviewed the charges with a lawyer,
5 he had discussed entering the pleas with
6 a lawyer, he had reviewed the offer from
7 the Crown with a lawyer, and that he gave
8 instructions to his lawyer to take the deal,
9 that he came to court and entered guilty pleas
10 to both counts of sexual assault, and that when
11 he entered his guilty pleas he knew what was
12 going to happen afterwards.

13 When asked to explain what he was thinking
14 when he pled guilty Mr. Kuptana testified that
15 he was not really thinking and was grieving.
16 He described other relatives who passed away
17 while he was in custody and he had been grieving
18 for several months. Mr. Kuptana was asked
19 whether his feelings caused confusion in court,
20 to which he responded "yeah." When he was asked
21 about what he was confused about he said that
22 he was grieving his nephew and blamed himself.
23 He said that he was confused in court because
24 he was grieving the loss of his family and
25 was stressed out because of the loss of family
26 members.

27 Mr. Kuptana was asked about whether he

1 told anyone, including his lawyer, that he
2 was confused, and he responded no, that he
3 kept it to himself. In cross-examination,
4 Mr. Kuptana acknowledged that he had a
5 criminal record, which was entered as an
6 exhibit. Mr. Kuptana has 13 entries on his
7 criminal record, starting in 1992 and continuing
8 to 2014. He has been convicted for six offences
9 against the administration of justice, four
10 offences of violence, two drug offences and
11 a property offence.

12 Mr. Kuptana agreed that he had been in
13 court before, he had entered guilty pleas before,
14 and he knew that a guilty plea meant that there
15 would not be a trial. He agreed that he had
16 spoken to a lawyer about the charges, knew that
17 there was an offer from the Crown that dealt with
18 both charges, and knew that the date in court in
19 December was to enter his pleas to the charges.

20 Mr. Kuptana agreed that he understood that
21 he was going to enter guilty pleas to both sexual
22 assault charges, and he agreed that he understood
23 what was going on in court and that he did
24 enter guilty pleas to both counts. Mr. Kuptana
25 referred in cross-examination to being confused,
26 but was not able to articulate clearly what part
27 of the process in court that he was confused

1 about. His responses to the questions about
2 his confusion frequently referred to the fact
3 that he was grieving at the time.

4 A guilty plea entered in open court by
5 an accused who is represented by counsel is
6 presumed to be a valid plea. Where the accused
7 seeks to set aside the plea he bears the onus
8 of demonstrating that the plea is not valid,
9 R. v. Eastmond, 2001 CanLII 7498, paragraph 6.

10 The Supreme Court of Canada in Edgey
11 [1975] 2 S.C.R. 426 held that an accused
12 may change his plea if there are valid
13 grounds for doing so. The Supreme Court
14 did not specifically determine what constituted
15 valid grounds, but gave non-exhaustive examples,
16 such as the accused never intended to admit
17 a fact which is an essential element of the
18 offence, or the accused may have misapprehended
19 the nature and/or effect of the guilty plea,
20 or never intended to plead guilty at all.
21 Where a valid ground has been established
22 the presiding judge then has the discretion
23 to strike the plea of guilty.

24 Dealing first with the issue of whether
25 the accused entered a plea of guilt. While
26 the transcript does not record a verbal response
27 when the accused was asked by his counsel whether

1 he agreed that he was pleading guilty, it is
2 apparent that it was the accused's intention
3 to plead guilty, and that is what transpired
4 in the courtroom. The plea of guilty was
5 stated by Mr. Martin, counsel for Mr. Kuptana,
6 and counsel are permitted to state the plea
7 on behalf of the accused when the accused is
8 present.

9 There is no indication on the transcript
10 that the accused did not agree to the plea of
11 guilty, and everyone, the judge, crown counsel,
12 defence counsel, the court clerk and the accused,
13 proceeded on the basis that the accused had pled
14 guilty. In addition, the accused testified on
15 the application that he intended to plead guilty
16 and that it was his recollection that he had pled
17 guilty. In the circumstances I conclude that the
18 accused did plead guilty on December 14th, 2015,
19 to the sexual assault on M. K.

20 With respect to the plea, the accused
21 testified that he had reviewed the charges
22 with a lawyer, he had discussed entering the
23 pleas with a lawyer, he had reviewed the offer
24 from the Crown with a lawyer, he gave his lawyer
25 instructions to take the deal that had been
26 offered, he came to court with the intention
27 of entering guilty pleas to both counts of

1 sexual assault, and did enter guilty pleas
2 to both counts of sexual assault.

3 Mr. Kuptana also testified that when
4 he entered his guilty pleas he knew what
5 was going to happen after. The accused,
6 while not highly educated, was familiar with
7 the court process, having been convicted for
8 other offences as recently as 2014, and having
9 agreed that he had pled guilty to other offences
10 before. It cannot be said that the accused
11 misapprehended the nature and/or effect of the
12 guilty plea or never intended to plead guilty
13 at all.

14 The argument of the accused centers
15 around his confusion at the time and his
16 ongoing grieving process as a result of the
17 death of his nephew and another relative prior
18 to entering his plea. It is not surprising
19 that the events that Mr. Kuptana described
20 caused him grief, caused him to blame himself
21 for his nephew's death, and that the grieving
22 process would be one that would be ongoing for
23 months, if not longer. The death of a relative
24 is difficult, and when you are in custody it can
25 be difficult to deal with without the support
26 of loved ones or family. However, there is no
27 suggestion that as a result of this Mr. Kuptana

1 did not understand or know what he was doing when
2 he entered his guilty plea. Indeed, his evidence
3 was that he did know what he was doing.

4 In the end, I am not certain what Mr.
5 Kuptana was confused about, but his confusion
6 does not appear to relate to anything regarding
7 the court process itself or what transpired in
8 the courtroom on December 14th, 2015. There
9 has been no evidence presented that suggests
10 that the accused does not intend or never
11 intended to admit a fact which is an essential
12 ingredient of the offence. That issue has not
13 been explored. It has not been argued that the
14 accused was under a misapprehension regarding the
15 facts which constitute an essential ingredient of
16 the offence.

17 In the circumstances I am not satisfied
18 that Mr. Kuptana has demonstrated valid grounds
19 for being permitted to change his plea, and
20 I decline to exercise my discretion to permit
21 him to change his plea from guilty to the
22 charge of having sexually assaulted M. K.

23 Counsel, in terms of providing availability,
24 I take it, Mr. Bran, that Mr. Kuptana still
25 wishes to have the sentencing occur in Inuvik.
26 Was that the plan?

27 MR. BRAN: Mr. Kuptana is advising me

1 that he does wish to continue with the process
2 taking place in Inuvik, and he wishes to have
3 a translator for his next appearance so that
4 he can have that hearing in his own language.

5 THE COURT: In terms of counsel providing
6 availability, how long will you need? I am
7 assuming a day in Inuvik or do you think it
8 will be longer?

9 MS. MILLER: Well, Your Honour, I did
10 have a conversation with Mr. Bran prior to
11 the decision about perhaps we may need a
12 pre-sentencing conference to determine length.
13 Depending on what may or may not be admitted
14 as far as the facts go there could be an issue
15 there. So perhaps if we could send in dates
16 and actually have a pre-sentencing conference.
17 It does sound a bit odd, but I think that that's
18 the best way to move forward without wasting any
19 time as far as getting up there and something
20 happening in Inuvik. It's the Crown's view that
21 we should probably try to sort things out before
22 we set a date and go up there, and the Crown can
23 send in availability for a short conference with
24 a judge, and I will speak to Mr. Bran further as
25 well as to anticipating possible issues before
26 we go up there.

27 THE COURT: Mr. Bran?

1 MR. BRAN: I do agree that perhaps a
2 few steps should be taken or can be taken prior
3 to making all of the arrangements for a date
4 in Inuvik. What I'm thinking might be helpful
5 as well is possibly having an Agreed Statement
6 of Facts drafted, provided to me by the Crown.
7 Perhaps then, once that has been done perhaps
8 we can attempt to have that filed in court with
9 Mr. Kuptana being here in person. If that's
10 something that's agreeable to my friend and
11 the Court perhaps his matters can be adjourned
12 to a docket day here in Yellowknife, perhaps
13 September the 12th, and if an Agreed Statement
14 of Facts can then be drafted, reviewed in court
15 with the accused present, if that process can
16 take place on say the 12th, if everything goes
17 smoothly with that process then perhaps the
18 next step could be to actually set a sentencing
19 date, knowing that we have an Agreed Statement
20 of Facts, we know that it's accepted by the
21 accused, who will confirm that in court in
22 person. I think that might be a prudent
23 step if everybody's in agreement with that.

24 THE COURT: Okay.

25 MS. MILLER: That's fine, Your Honour.
26 I actually was going to send something to
27 Mr. Bran for review. Whether or not it

1 happens in court or with him reviewing it
2 with Mr. Kuptana it's agreeable to the Crown.

3 THE COURT: We will then adjourn it
4 to September 12th, to be spoken to on the
5 chambers list at 10 a.m., and counsel can
6 hopefully exchange an Agreed Statement of
7 Facts by then and discuss the scheduling of
8 the sentencing to be held in Inuvik. So there
9 will be a form 19 to that date. Is there
10 anything else that is needed in this matter?

11 MS. MILLER: Not from the Crown, Your
12 Honour, thank you. That's my only matter.

13 THE COURT: Thank you.

14 MR. BRAN: And again, was that 10 a.m.
15 on the 12th?

16 THE COURT: Yes.

17 MR. BRAN: Thank you.

18 THE CLERK: Excuse me, Your Honour.

19 That's for both matters, correct?

20 THE COURT: Yes, for both matters.

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22

23 Certified to be a true and
24 accurate transcript, pursuant
25 to Rules 723 and 724 of the
26 Supreme Court Rules.

26

27 _____
Joel Bowker
Court Reporter