R. v. Kuptana, 2017 NWTSC 4 S-1-CR-2015-000118

S-1-CR-2015-000119

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- V -

MATTHEW JAMES KUPTANA

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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.

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APPEARANCES:

Ms. W. Miller: Counsel for the Crown

Mr. J. Bran: Counsel for the Defence

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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,

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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.

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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

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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

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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

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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

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1 Section 606(1.1).

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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.

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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

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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

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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

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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

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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

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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

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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?

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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

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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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23 Certified to be a true and

accurate transcript, pursuant

24 to Rules 723 and 724 of the

Supreme Court Rules.

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27 Joel Bowker

Court Reporter

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