*R v Greenland,* 2018 NWTSC 54 S-1-CR-2018-000001

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JAYDEN GREENLAND

Transcript of the Reasons for Decision delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 12th day of July 2018.

APPEARANCES:

Mr. A. Godfrey Counsel for the Crown

Mr. P. Harte Counsel for the Accused

(Charges under s. 268(2), 264.1(1)(A), 88(2) of the *Criminal Code of Canada*)

1. THE COURT: Jayden Greenland is charged
2. with aggravated assault, uttering death threats,
3. and for having in his possession a knife for a
4. purpose dangerous to public peace.
5. These charges stem from events alleged to
6. have happened on October 7, 2017, in Fort
7. McPherson. Mr. Greenland was arrested on October
8. 8th for these matters. He was ordered detained
9. after a show cause hearing held on October 16th,
10. 2017, and was detained on a secondary ground. He
11. was committed to stand trial after a preliminary
12. hearing held in December 2017.
13. He had initially elected to have his trial
14. by judge and jury, but later re-elected to have
15. it before a judge sitting alone. Originally,
16. based on the availabilities provided by counsel,
17. his trial was scheduled to proceed in December
18. 2018. Through his counsel, at an appearance in
19. regular criminal chambers, Mr. Greenland
20. expressed concern about this and the delay. The
21. Court asked the Crown to review its
22. availabilities and see whether it could be
23. available for an earlier trial date as defence
24. had provided a number of availabilities during
25. the fall. The Crown did send in revised
26. availabilities, and on that basis, the trial was
27. moved up a few months, and it is now scheduled to

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| 1 | proceed commencing September 19th, 2018, | in |
| 2 | Inuvik. |  |
| 3 | Mr. Greenland is now eligible for a | bail |
| 4 | review under Section 525 of the Criminal | Code. |
| 5 | He applies for release based on a change | of |

1. circumstances since his original bail hearing.
2. At the hearing earlier this week, the Crown
3. conceded, quite fairly, that there had been a
4. change in circumstances since the original bail
5. hearing, but it does maintain its opposition to
6. Mr. Greenland's release.
7. The allegations are that on the date of
8. these events, there were two gatherings happening
9. in Fort McPherson. One was a birthday party,
10. which was mostly alcohol-free, taking place at
11. House 221. The alleged victim, Abraham Stewart,
12. was at that party. He was 17 years old at the
13. time. Another person, about the same age, named
14. Tony Alexie was also there. Mr. Stewart and
15. Mr. Alexie were consuming alcohol. The second
16. gathering was at House 226. The accused and
17. others were at a party at that house and were
18. consuming alcohol.
19. At about 2:00 in the morning, Mr. Alexie was
20. not feeling well, and he decided to go home.
21. Outside, he was confronted by the accused. The
22. accused pushed him around. Mr. Alexie went back
23. inside House 221 and asked Jessica Blake for
24. help. Ms. Blake asked Mr. Stewart to walk
25. Mr. Alexie home. Both of them went outside and
26. were, again, confronted by the accused. An
27. argument started which escalated to a physical
28. fight between the accused and Mr. Stewart. It is
29. alleged that punches were exchanged and that the
30. two grappled with each other and were holding
31. onto each other. The accused at one point had
32. his right arm around Mr. Stewart's lower back.
33. It is alleged that using his left arm, he stabbed
34. Mr. Stewart repeatedly. Others intervened and
35. pulled them apart. It is alleged that the
36. accused said to Mr. Stewart he was going to kill
37. him.
38. Ms. Blake took the knife away from the
39. accused, but it is alleged he pulled out a second
40. one and uttered a threat to those present that he
41. would kill them all. People then dispersed.
42. Ms. Blake took Mr. Stewart to the health centre
43. and reported the incident. Police received the
44. complaint shortly after 2 AM.
45. At the hearing this week, photos were filed
46. showing multiple stab wounds to Mr. Stewart's
47. back. There were nine stab wounds in total, and
48. they were on the right side of his chest, the
49. right side of his back, and his side under his
50. right arm as well as his abdomen. He required
51. stitches and received medical treatment in Inuvik
52. for those injuries.
53. The accused has a criminal record of some
54. significance despite his young age. He has
55. multiple convictions for failing to comply with
56. court orders. He also has other convictions that
57. give rise to concerns. He has a recent
58. conviction for pointing a firearm. That offence
59. occurred in July 2017, and he was sentenced for
60. it in August 2017, just a few months before the
61. events giving rise to this charge. He has an
62. assault from 2017 and another assault conviction
63. from 2015 as well as a conviction for resisting
64. arrest in 2015. There are also numerous other
65. convictions on his record. He was bound by two
66. separate probation orders at the time of these
67. alleged events.
68. At the bail hearing held in October 2017,
69. the Crown indicated its concerns were based on
70. the secondary ground. The prosecutor at that
71. hearing said the Crown may consent to the release
72. subject to a suitable surety being proposed. The
73. proposed surety at that point was the accused's
74. mother. It was proposed that he would live with
75. her in Edmonton. She testified by phone at the
76. bail hearing.
	1. The reasons of the justice of the peace show
	2. that, initially, the justice of the peace was of
	3. the view that the release plan may have some
	4. advantages in that it would have the accused
	5. reside in a location far away from the witnesses
	6. in this matter. However, it is clear from the
	7. Reasons that the justice of the peace was not
	8. impressed by the testimony of the surety as far
	9. as her ability to keep the accused out of trouble
	10. or the prospects of having him returned to Fort
	11. McPherson to be tried.
	12. The plan being proposed now is very
	13. different as is the proposed surety. This time,
	14. the proposed surety is Annie Kaye. She is the
	15. accused's grandmother. She testified by phone
	16. earlier this week at some length. She and her
	17. husband are retired and live an alcohol-free
	18. life. They have three camps where they propose
	19. to spend most of their time this summer. The
	20. proposed plan is to have the accused be with them
	21. at those camps and to keep him occupied with
	22. various tasks that need to be done at those
	23. locations.
	24. Two of these camps are accessible by road
	25. and, admittedly, are in areas where other people
	26. stay. There is a fair bit of traffic between
	27. those locations and Fort McPherson. The third is
77. accessible only by boat and is some distance down
78. the river from Fort McPherson.
79. Ms. Kaye also testified about some of the
80. issues that Mr. Greenland faced growing up about
81. his parents' alcohol abuse, lack of guidance and
82. supervision, and other things that she believes
83. are at the root of his current difficulties. It
84. is obvious that she cares deeply for him and that
85. she will continue to support him and do what she
86. can to assist him. That is very much to her
87. credit. She is obviously concerned about the
88. accused and the trouble he has been getting
89. himself into. She wants to give him the
90. opportunity to do something more positive than
91. just sitting idly in jail.
92. She says if he does not listen to her or
93. does not do what she and her husband say, she
94. will call the police. She has called the police
95. on her own son when he has misbehaved in the
96. past. I will say that I have no difficulty
97. believing that she would do her duty as a surety,
98. and she would report to the authorities if the
99. accused did not obey all his conditions.
100. The Crown fairly conceded that unlike what
101. was the case in the last show cause hearing,
102. there are no concerns with this surety. The
103. differences in the plan and the strength of the
104. surety do constitute a material change in
105. circumstances. The Crown continues to have
106. concerns about public safety. The prosecutor
107. made reference during the review hearing to
108. concerns that the local RCMP have. These are
109. related, in part, to rumours of comments that
110. were said to have been made by the accused to the
111. effect that he intended to carry out the threat
112. that he is alleged to have made at the time of
113. the altercation with Mr. Stewart.
114. This matter, as I understand, was
115. investigated by police, and they felt they could
116. not lay a charge. It goes without saying that if
117. police felt the information was insufficient to
118. give rise to reasonable and probable grounds to
119. believe an offence had been committed and base a
120. charge on, I can hardly rely on that information
121. as part of these proceedings. So that aspect of
122. what I have been told, I have disregarded.
123. I also heard other concerns expressed,
124. through the prosecutor, from some of the RCMP
125. members in Fort McPherson, about having received
126. several calls for service that had involved this
127. accused in the recent past. Their perception
128. that there is an escalation in his behaviour,
129. that he is increasingly showing lack of concern
130. for others. Again, I must be very careful about
131. attaching any weight to this kind of information.
132. Defence did not object to it being presented, and
133. I did not hear full submissions about the
134. admissibility of this type of information.
135. The rules of evidence are relaxed at a bail
136. hearing but up to a point only. I have attached
137. very little weight to this information. However,
138. I do recognize that the accused's criminal
139. record, in particular, the recent entries, do
140. show an escalation in his conduct, and that is a
141. proper consideration for me in making this
142. decision.
143. I am also left with very, very serious
144. allegations. The second ground of detention is
145. concerned with public safety. More specifically,
146. the question is whether the accused's detention
147. is necessary for the protection or safety of the
148. public, including any victim or witness, having
149. regard to all the circumstances including any
150. substantial likelihood that the accused will, if
151. released, commit an offence or interfere with the
152. administration of justice.
153. A person with an extensive criminal record
154. is still presumed innocent and still has the
155. constitutionally protected right to reasonable
156. bail, as much so as a person who does not have a
157. criminal record. But as a matter of practical
158. reality, where someone has accumulated as
159. extensive a criminal record as this accused has,
160. including numerous failures to comply with court
161. orders, and when there are recent convictions for
162. crimes of violence, that raises serious issues as
163. far as whether conditions included in a court
164. order can alleviate public safety concerns that
165. arise.
166. The release plan has some merit and
167. strength, but two of the three cabins are in
168. locations where other people go and where alcohol

12 may be found. They are also areas that are

1. accessible by road and areas that see
2. considerable traffic to and from the community
3. where the witnesses to be called at this trial
4. reside. In addition, inevitably, the surety and
5. her husband would need to come into town for
6. supplies from time to time. The bottom line is I
7. can order, as part of release conditions, that
8. the accused always be in the presence of one of
9. his grandparents. I can order him not to drink.
10. I can order him to follow their directions and
11. obey their rules. But the success of the plan is
12. entirely dependent on the accused abiding by
13. those conditions. Even the surety said, in her
14. testimony, "It will be up to him".
15. The problem is that the risk is not simply
	1. that he will disobey his grandmother. The risk
	2. is that he will disobey his grandmother and
	3. behave in the manner he has behaved in the recent
	4. past and commit further offences.
	5. I am convinced of the sincerity of the
	6. proposed surety, and I know she would do
	7. everything she can to keep her grandson out of
	8. trouble. But as she said herself in her
	9. evidence, she has always been stern with him, and
	10. he knows it. She has talked to him about things.
	11. She has been in his life, and despite her
	12. efforts, whatever she has told him and however
	13. stern she has been with him, she does not appear
	14. to have been able to influence or control his
	15. behaviour.
	16. As I said, these allegations are very
	17. serious. The trial is a few months away. If it
	18. proceeds as scheduled, it will have taken place
	19. within less than a year of the events giving rise
	20. to this charge. As I said in giving my decision
	21. on the *Sunrise* bail review earlier this
	22. afternoon, a trial in this Court cannot be
	23. expected to be accommodated as quickly as a trial
	24. in the Territorial Court.
	25. The surety has the best of intentions. And
	26. I heard and I considered her plea to the Court to
	27. give this accused a chance to be released pending
		1. trial and do some productive things. But despite
		2. her best intentions, I am not satisfied that the
		3. plan adequately addresses the public safety
		4. concerns that exist in this case and all the
		5. circumstances. The application is dismissed and
		6. the detention order will continue.

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8 PROCEEDINGS ADJOURNED

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1 CERTIFICATE OF TRANSCRIPT:

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1. I, Roxanne M. Johanson, certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Calgary, Province of
7. Alberta, this 21st day of September 2018.

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1. Roxanne M. Johanson, CSR(A)
2. Official Court Reporter

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