

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DENECHO NOEL CALVIN KING

Transcript of the Reasons for Judgment delivered by The Honourable Justice A.M. Mahar sitting in Yellowknife, in the Northwest Territories, on the 6th day of July, 2018.

APPEARANCES:

Mr. A. Godfrey:	Counsel for the Crown
Ms. J. Andrews:	Counsel for the Crown
Mr. J. Bran:	Counsel for the Accused

(Charges under s.235(1), s.239(1)(b), s.268 of the
Criminal Code)

1 THE COURT: Thank you. Please have a
2 seat. This decision will be published either as
3 an edited version of the transcript of what I say
4 here today, or as a written decision.

5
6 Introduction:

7
8 In the early morning of December 14th, 2014,
9 police in Yellowknife were notified of two
10 badly-injured men at the Sunridge Apartments.
11 They arrived at Unit 323 to find John Wifladt and
12 Colin Digness on the floor in the entry hall.
13 Neither one was fully conscious or responsive.
14 There was a significant amount of blood on both
15 of the men and the surrounding area. They were
16 both clearly in distress.

17 Unit 323 was ordinarily occupied at the time
18 by Colin Digness and his teenage son, Daylan.
19 Daylan was not home that night having stayed over
20 at a friend's place.

21 Emergency medical personnel arrived on the
22 scene. Colin Digness had suffered trauma to his
23 head and was bleeding from his abdomen. The
24 extent of John Wifladt's injuries was not as
25 obvious at first, but both clearly needed
26 immediate treatment. They were transported by
27 ambulance to the Stanton Regional Hospital.

1 Further treatment revealed that
2 Colin Digness had suffered multiple lacerations
3 to his face and eye, including a deep 9 to
4 10-inch laceration to his forehead and a 2-inch
5 laceration above his left eye as well as a stab
6 wound to his abdomen which lacerated his small
7 bowel.

8 Results from the autopsy of John Wifladt
9 showed numerous injuries which included two stab
10 wounds to the upper left back of his torso being
11 roughly 2 inches and 8 inches in depth. The
12 deeper wound penetrated his chest cavity,
13 perforated his diaphragm and penetrated his
14 spleen, which caused massive blood loss which led
15 to his death. He also suffered two stab wounds
16 to the head which did not penetrate his skull.

17 John Wifladt died from blood loss a few
18 hours after arriving at the hospital.
19 Colin Digness was sent by air ambulance to
20 Edmonton where he remained for a number of weeks.
21 The injuries to both his head and abdomen have
22 potentially permanently affected his vision,
23 cognitive function, and digestive system.

24 John Wifladt never regained consciousness
25 and was, thus, unable to provide any information
26 about what had happened. Due to his injuries and
27 possibly his level of intoxication, Colin Digness

1 has no memory of what occurred.

2 After an extensive investigation lasting
3 many months, police charged Denecho King with the
4 murder of John Wifladt and the attempted murder
5 of Colin Digness, as well as aggravated assault
6 on Colin Digness. The trial proceeded over a
7 period of roughly four weeks this past April,
8 2018.

9

10 Summary of the Evidence At Trial:

11

12 Most of the evidence produced by the Crown
13 was not directly challenged by the defence. The
14 issues concern the conclusions that can or cannot
15 be drawn from the evidence and whether or not the
16 conclusions I draw and the facts I find as a
17 result are sufficient to prove the guilt of the
18 accused beyond a reasonable doubt. The following
19 is a summary of the evidence which was either
20 conceded or not directly challenged and which I
21 accept as true. I will also mention the evidence
22 that is contested and which will require further
23 analysis.

24

25

26

27

There was an extensive amount of evidence
called by the Crown during the four-week trial.
We heard from virtually all of the police
officers involved at every level of the

1 investigation, lab technicians and scientists,
2 numerous civilians, taxi drivers, and emergency
3 medical personnel. There were numerous exhibits
4 filed including maps, photographs, diagrams, CCTV
5 footage, and expert reports. There were also a
6 number of agreed statements of fact filed
7 covering evidence not in dispute.

8 The defence did not present any evidence.

9 I am not going to attempt to summarize all
10 of the evidence in this decision, only that which
11 I believe relevant to the general narrative and
12 the issues I need to decide. I have considered
13 all of the evidence during my deliberations.

14 The Crown has clearly established
15 jurisdiction and date and time; the defence has
16 helped to narrow the issues by very fairly
17 conceding the nature of the injuries suffered by
18 the two men, what caused these injuries, and the
19 cause of death of John Wifladt. What remains is
20 the question of whether or not the Crown has
21 proven beyond a reasonable doubt the identity of
22 the person who caused these injuries, and if so,
23 the degree of responsibility of that person.

24
25 Narrative Evidence Relating to John Wifladt,
26 Colin Digness, and Sunridge Apartments:

27

1 Colin Digness had been drinking both at home
2 and around town on the evening of December the
3 13th, 2014. He met up with John Wifladt at some
4 point, but, in any event, they were together
5 drinking at the Gold Range Bar shortly after
6 midnight.

7 He and John had been best friends for a long
8 time. They had no history of fighting with each
9 other, and the most that could be said was that
10 they occasionally argued about hockey.

11 They went to a house party at Joanne Black's
12 in N'dilo where they were confronted by Duncan
13 Sangris, who accused them of drinking his beer.
14 The confrontation was broken up before it
15 resulted in a fight.

16 They left the party by taxi at 3:58 a.m. and
17 arrived at Sunridge Apartments at 4:08 a.m. They
18 were described by the taxi driver as intoxicated,
19 and they appeared to be arguing about what they
20 planned to do next.

21 Sunridge Apartments is a three-storey
22 building. The apartment directly below Unit 323,
23 Unit 224, was, at that time, occupied by Kristie
24 Modeste, Johnny Ongahak, and their infant child.

25 At approximately 4 a.m., Kristie Modeste
26 responded to a knock at the door. She looked
27 through the peephole and saw Denecho King. He

1 asked for Johnny. Denecho and Johnny Ongahak are
2 long-time friends. He had visited them before,
3 most recently a few weeks back to borrow some
4 gloves. He was known to her and she clearly
5 recognized him. They spoke through the door.
6 She told him Johnny was busy with their daughter
7 and Denecho left.

8 About 20 minutes later, at approximately
9 4:20 a.m., Kristie Modeste was disturbed by what
10 she recalled as loud banging coming from
11 upstairs. Johnny Ongahak's recollection was of
12 loud music and thumping. In any event, there was
13 a disturbance and he went upstairs to speak to
14 Colin Digness. The two men knew each other
15 casually and Johnny had occasionally had to ask
16 Colin to turn down his music. He had never
17 encountered any unpleasantness when doing so.

18 When he got upstairs, the door to 323 was
19 ajar. He pushed it open and found the two men on
20 the floor. There was blood everywhere. Colin
21 was trying to get up, was disoriented, and
22 nonresponsive. Johnny went downstairs and told
23 his girlfriend to call an ambulance then ran back
24 upstairs. He stepped across John Wifladt and
25 walked through the living room to turn down the
26 music. Both men were still unresponsive. Johnny
27 Ongahak went back downstairs, spoke to dispatch,

1 then waited for the police to arrive.

2 Police arrived at 5:00 a.m. Johnny Ongahak
3 showed them to the door of 323. The conduct of
4 the police and EMTs was unremarkable and is only
5 relevant to my assessment of the DNA evidence, so
6 I will deal with it later.

7 Colin Digness owned a collection of three
8 Japanese-style ornamental swords which were
9 normally displayed in a stand in the living room.
10 These swords were for display purposes only,
11 having blunt edges. They were three different
12 lengths ranging from dagger size to a long sword.
13 When police arrived on the scene, the display had
14 been overturned, the sheathes scattered, and the
15 two longer swords were on the floor close to the
16 injured men with blood on their blades.

17 The swords were seized and sent for DNA
18 analysis. There was no indication that the
19 shortest sword had been used.

20 There was no evidence that Denecho King was
21 known to either Colin Digness or John Wifladt, or
22 that he had ever before visited Unit 323.

23

24 Narrative Evidence Relating to Denecho King:

25

26 Denecho King spent the afternoon and evening
27 of December 13 drinking at Fort Gary Apartments

1 with Sam Kelly, Danika Fehr, and Candace Minoza.
2 At some point he became angry and threw a chair
3 against the wall. He also injured his right arm
4 on a glass window near the outside side entrance
5 to the apartment building, which caused bleeding.
6 He left the apartment building at 12:55 a.m. in a
7 taxi with Fehr and Minoza. This was captured on
8 CCTV.

9 Shortly after, he became upset with Danika
10 Fehr and crawled into the backseat of the cab to
11 assault her. He was bleeding enough in the cab
12 that the driver had to clean it with sterilizing
13 wipes before continuing his night. Denecho left
14 the cab and the driver dropped the women off at
15 the Raven Bar.

16 Denecho King was next seen on CCTV entering
17 Fort Gary Apartments at 2:00 a.m., then leaving
18 at 3:26 a.m. The next time he is seen is by
19 Kristie Modeste at 4 a.m. at Sunridge Apartments,
20 as I have already described.

21 The CCTV outside of Northern News Services
22 filmed Denecho King walking towards the Northern
23 Lights Motel at 5:08 a.m., where he was filmed by
24 the motel CCTV talking to the night concierge,
25 James Curtis, at 5:09 a.m. Denecho was a friend
26 of Mr. Curtis' cousin, and he had known him for
27 some time. He can be seen talking in an animated

1 fashion to Mr. Curtis, making swinging motions
2 with both hands and gesturing to his forehead.
3 Mr. Curtis does not appear to be paying much
4 attention to Denecho. He was watching a
5 documentary at the time.

6 His first recollection is that Denecho King
7 had been talking about "defending himself from a
8 couple of guys with a bat or something." Under
9 cross-examination, Mr. Curtis agreed that he was
10 not certain if Denecho King was talking about two
11 guys or one, or when what he was talking about
12 had happened.

13 Denecho King then went to Room 24 of the
14 Northern Lights Motel where he continued drinking
15 with a number of young men from Behchoko. He was
16 seen on CCTV with two of these men leaving the
17 Northern Lights, arriving at Mac's Convenience
18 Store and returning to the Northern Lights all
19 between 5:25 and 5:43 a.m.

20 A number of people were in and out of Room
21 24 including Lou Koyina. Everybody who attended
22 Room 24 that night was intoxicated, most heavily
23 so. Mr. Koyina testified to a comment that he
24 says he heard Denecho King make. Mr. Koyina
25 testified that he remembers Denecho King saying
26 "I killed two guys". Mr. Koyina was drunk at the
27 time and did not remember the comment a couple of

1 days later. The defence takes the position that
2 Mr. Koyina's evidence is neither reliable nor
3 credible. I will address this later.

4 Denecho King slept in Room 24. He was still
5 sleeping when the other occupants of the room
6 left. One of the men had lost one of his shoes,
7 so he took Denecho's shoes. These shoes were
8 later seized and tested but did not provide any
9 meaningful evidence.

10
11 Forensic Evidence: Initial Investigation,
12 Fingerprints, Blood Pattern Analysis, and DNA:

13
14 Members of the Forensic Identification
15 Section of the RCMP did an initial inspection of
16 the hallways and staircases of Sunridge
17 Apartments. They did not find any areas of blood
18 staining or other issues that would have required
19 further investigation. The main investigator
20 acknowledged that there was a smear in the main
21 staircase that appeared to be blood, as well as a
22 noticeable stain to the carpet at the entrance to
23 Unit 323. He did not test the smear stain
24 because he knew that main staircase was the route
25 taken by the emergency medical personnel as they
26 were transporting the injured men and did not
27 believe that the stain would be meaningful. He

1 did not test the stain at the entrance to 323
2 because, in his opinion, it did not appear to be
3 a blood stain. There were no blind swabs or
4 random samples taken from the doorknobs, handles
5 or railings of the entrance, corridors, or
6 stairwells.

7 Selective areas inside Unit 323 were checked
8 for fingerprints. Prints were found on the sword
9 sheaths, some of which remain unknown. The
10 handles and blades of the swords were not checked
11 for fingerprints in order not to compromise DNA
12 analysis. Denecho King's fingerprints were not
13 found in Unit 323.

14 DNA analysis confirmed that blood found on
15 the blade of the medium-length sword belonged to
16 Colin Digness. This sword had been located on
17 the living room floor, close to where Colin
18 Digness was found in the hallway. DNA analysis
19 confirmed that blood found on the long sword
20 belonged to John Wifladt. This sword, which had
21 a bent blade, was originally located on the
22 hallway floor beside where John Wifladt was
23 laying. It is clear and not disputed that the
24 medium-length sword caused the injuries to
25 Colin Digness and the long sword caused the
26 injuries, including the fatal injury, to
27 John Wifladt.

1 This was further confirmed, in part, by the
2 findings of the blood pattern analyst. There
3 were two castoff patterns, made by drops of blood
4 leaving a moving blood source, on the same small
5 wall at the end of the hall. They were basically
6 vertical, forming a line of dots from the lower
7 part of the wall up to approximately head-height.
8 One came back as blood from John Wifladt, the
9 other as blood from Colin Digness.

10 Blood pattern analysis was also able to
11 confirm that the men were injured roughly where
12 they were found, at the end of the living room
13 closest to the hall and into the hall.

14 Before being taken into evidence, the long
15 sword was moved to the living room by one of the
16 first responders in order to get it out of the
17 way of the medical personnel. This was done by
18 picking the sword up by the guard with a gloved
19 hand. The swords appeared to have been moved
20 slightly a second time, so that one sword was
21 placed to the other side of the second sword.
22 There was no evidence as to how this occurred.
23 The emergency medical personnel who assisted the
24 scene all testified to having seen swords and to
25 having consciously avoided touching them. Given
26 the tight quarters and the obvious priority given
27 to helping the injured men, I accept that it is

1 possible that one of the EMTs may have touched
2 the nearest sword with his boot, and I have
3 factored this into my analysis.

4 The swords were moved again during the blood
5 pattern analysis. This was in the usual course
6 of the investigation, it was done with gloved
7 hands, and there was nothing noteworthy about it.
8 It does appear, however, that a piece of paper,
9 apparently left behind by the medical personnel,
10 moved a few inches and ended up under the handle
11 of one of the swords during the blood pattern
12 analyst's investigation. No explanation for this
13 was given.

14 The swords were placed in separate paper
15 exhibits backs and transported to the detachment
16 evidence locker. During transportation, the
17 point of the long sword poked through the paper.
18 It was jiggled back into the bag and the hole was
19 taped up. The paper exhibit bags were placed in
20 a locked gun case for shipment to the forensic
21 laboratory. Upon arrival at the lab, the tape
22 holding the bag containing the longer sword had
23 come loose.

24 I have already referred to the DNA results
25 obtained after testing the blood on the sword
26 blades. The DNA technician also took a swab from
27 the handle and guard area of both swords,

1 specifically avoiding any spots of apparent
2 blood. Despite this, one of the samples tested
3 positive after a presumptive test for hemoglobin,
4 which did not prove that the sample was in fact
5 blood, only that hemoglobin was present. These
6 samples were both known in one case and believed
7 in the other case to be epithelial or skin DNA.
8 The results of DNA testing showed a strong
9 primary profile in both samples with minor
10 profiles which were insufficient for analysis.
11 The DNA was present in what was referred to as a
12 surprisingly large and very similar amount on
13 both handles and matched the known sample from
14 Denecho King.

15 The opinion of the DNA expert was that the
16 amount of epithelial DNA on the handles indicated
17 primary transfer. In other words, Denecho King
18 had handled the swords. This was challenged by
19 the defence. While it was conceded that
20 Denecho King's DNA was found on the handles, the
21 way in which it got there is disputed.

22
23 Crown Position:

24
25 The Crown says that the evidence establishes
26 beyond a reasonable doubt that Denecho King was
27 the person who killed John Wifladt, that he

1 either intended to cause his death or intended to
2 cause him bodily harm that he knew was likely to
3 cause his death and was reckless with whether he
4 died or not, making him guilty of second degree
5 murder. The Crown says the evidence also shows
6 beyond a reasonable doubt that Denecho King
7 intended to kill Colin Digness, making him guilty
8 of attempted murder.

9 The Crown points out that Denecho King was
10 seen in Sunridge Apartments, where he did not
11 reside, very close to the time that John Wifladt
12 and Colin Digness were injured. They say that
13 the fact that Denecho King's DNA was found on the
14 sword handles is compelling evidence, that the
15 movements made in the Northern Lights Motel lobby
16 about an hour later amount to a re-enactment of
17 the violence, and that the comment made to Lou
18 Koyina simply confirms what is proven by the DNA.

19
20 Defence Position:

21
22 The defence argues that the Crown has not
23 proven beyond a reasonable doubt that
24 Denecho King is the person who committed these
25 crimes. The defence acknowledges that
26 Denecho King's DNA was on the handles of the
27 swords, but argues that this DNA could have been

1 deposited through transfer and contamination and
2 is therefore not conclusive of guilt. The
3 alternate possibility suggested by the defence is
4 that Colin Digness and John Wifladt came into
5 contact with Denecho King's DNA as they made
6 their way into Sunridge Apartments and up the
7 stairs to Unit 323, by touching door handles,
8 railings, and possibly the floor removing their
9 shoes. It is known that Denecho was in the
10 building very close to the same time as when the
11 men arrived home.

12 They then carried this DNA with them into
13 the residence and got into a sword fight, perhaps
14 playfully at first, leaving Denecho King's DNA on
15 the sword handles. There is evidence that
16 John Wifladt and Colin Digness play-fought with
17 the swords at least once after watching a Star
18 Wars movie making lightsaber sounds as they did
19 so.

20 There is a profile picture from Facebook
21 showing Colin Digness in a pose with two of the
22 swords, which defence suggests makes this
23 possibility more plausible. As well, the gaming
24 console was on when police arrived on scene, and
25 Digness acknowledged playing both hockey and
26 combat games on the system at other times.

27 Defence suggests that the large amount of

1 DNA found on the sword handles could be
2 explained, in addition to the above scenario,
3 through further contamination by police and
4 emergency medical personnel, all of whom
5 presumably could also have come into contact with
6 Denecho King's DNA in the hallways and staircases
7 of Sunridge Apartments.

8 Dealing with the CCTV footage from inside
9 the lobby of the Northern Lights Motel, defence
10 put into evidence that Denecho King had in
11 December of 2014 just been released from jail
12 after serving a sentence for attacking another
13 man with a machete. Defence suggests that
14 Denecho King could just have easily been
15 describing that incident to James Curtis as the
16 attack on Digness and Wifladt.

17 Dealing with the comment that Lou Koyina
18 says he heard Denecho King make in the motel
19 room, defence argues that both Mr. Koyina's level
20 of intoxication and the fact that he did not
21 remember the comment for some time makes his
22 evidence unreliable and that it should be
23 disregarded.

24
25 Analysis:

26
27 Denecho King is presumed to be innocent of

1 these charges unless and until the Crown proves
2 his guilt beyond a reasonable doubt. This
3 presumption of innocence persists throughout the
4 trial and deliberation process. The burden of
5 proof never shifts from the Crown.

6 Proof beyond a reasonable doubt is
7 significantly more than proof of likely or
8 probable guilt, although it is less than proof to
9 an absolute certainty. A common way of putting
10 this is: "Am I sure of the guilt of the
11 accused?" If I am not sure, then the Crown has
12 not satisfied its burden and I must find the
13 accused not guilty.

14 This inquiry must be conducted without
15 sympathy or prejudice. Family members of both
16 the victims and the accused sat through this long
17 and difficult trial. I have sympathy for
18 everyone involved. For the family of
19 John Wifladt, who lost a beloved son and brother;
20 for Colin Digness and his family, and for
21 Denecho King and his family as well, as he faces
22 one of the most serious charges in Canadian law.
23 Triers of the fact, juries and judges, must put
24 their sympathies and other feelings aside and
25 decide criminal cases dispassionately and
26 objectively, which I have done.

27 The evidence in this case is circumstantial,

1 which means that the trier of fact is asked to
2 draw an inference. There were no eyewitnesses to
3 the events in Unit 323 on the morning of December
4 14th, 2014 who can tell us what happened.

5 There are a number of ways in which the
6 interplay of circumstantial evidence with the
7 requirement for proof beyond a reasonable doubt
8 has been articulated. It is generally accepted
9 that in order to find guilt based on
10 circumstantial evidence, the trier of fact must
11 be satisfied beyond a reasonable doubt that guilt
12 is the only rational conclusion that can be drawn
13 from the evidence. This is the approach that I
14 have adopted in my deliberations.

15 The circumstantial evidence in this case
16 comes from the sequence of events before and
17 after the offence, involving as well the
18 interpretation of things the accused did and is
19 alleged to have said as well as from the forensic
20 evidence.

21 The sequence of events, which I have already
22 described in the summary of the evidence, has
23 Denecho King arriving at the door to Kristie
24 Modeste and Johnny Ongahak's apartment at
25 Sunridge Apartments at approximately 4:00 a.m.
26 He spoke to Ms. Modeste through the door and said
27 he was looking for Johnny Ongahak. He was told

1 Mr. Ongahak was busy and he left the door.

2 John Wifladt and Colin Digness arrived at
3 almost exactly the same time, at 4:08 a.m. At
4 approximately 4:20 a.m., Kristie Modeste was
5 disturbed by loud banging upstairs and sent
6 Johnny Ongahak up to Colin Digness' apartment to
7 deal with it. Mr. Ongahak found the injured men
8 at approximately 4:30 a.m.; police arrived at
9 5:00 a.m. At 5:08 a.m., Mr. King is seen on CCTV
10 walking up to the Northern Lights Motel.

11 Given the way these events unfolded, there
12 was a very short window of time in which the
13 violence in Unit 323 could have occurred, between
14 4:08 a.m. and approximately 4:30 a.m. What this
15 sequence tells me is that the time Denecho King
16 spent at the Sunridge Apartments coincides almost
17 exactly with what must have been the time of the
18 incident. He left the Fort Gary Apartments at
19 3:26 a.m. and arrived at the Northern Lights
20 Motel at 5:08, so we know he could not have been
21 at the Sunridge Apartments for very long. The
22 defence suggests that this was an innocent
23 coincidence which explains the presence of
24 Mr. King's DNA. If so, this is a striking
25 coincidence.

26 On the CCTV footage, Denecho King can be
27 seen swinging his arms appearing to hold an

1 object or objects. At times, he appears to be
2 holding two objects in tandem, at others he
3 appears to have two hands on one object. He
4 gestures to his forehead, where Mr. Digness was
5 severely injured. Mr. Curtis did not have a
6 clear memory of what Mr. King was talking about.
7 Defence suggests that Mr. King was describing
8 another incident in which he injured another man
9 with a machete and for which he had very recently
10 been released from jail. I believe it is far
11 more likely that what he was describing was
12 something that had happened at the Sunridge
13 Apartments less than an hour before where we
14 know, as a fact, that he happened to be at
15 precisely the time in question. The similarity
16 between the events and the apparent depiction on
17 CCTV is another striking coincidence.

18 We know that Denecho King went from the
19 lobby of Northern Lights Motel to Room 24, where
20 he drank with a number of intoxicated young men
21 from Behchoko. One of these young men was
22 Lou Koyina. Mr. Koyina had never met Mr. King
23 and referred to him as "the kid," although, he
24 recalled him identifying himself as "Denecho."
25 He testified that he remembered asking Denecho
26 about the cut on his arm, to which Denecho
27 replied "I killed two people."

1 Mr. Koyina testified that he did not recall
2 this when he gave his first statement to the
3 police on December 16th, 2014. His testimony was
4 that "I did not know it until they said he had
5 killed two people". He provided a second
6 statement on November 18th, 2016, in which he
7 relayed the comment that he testified to.
8 Mr. Koyina was an unsophisticated witness and his
9 narrative did not follow a particularly logical
10 sequence, but I found him to be honest and
11 credible. There were several inconsistencies
12 between the statements, which I did not find
13 damaging to his credibility. He honestly
14 described being quite drunk at the time in
15 question saying he was a "9 out of 10". This
16 level of intoxication has an impact on the extent
17 to which I can rely on his evidence, as does the
18 timing of his recollection. Common sense and
19 experience tells me that it is not unusual for
20 highly-intoxicated people to forget things they
21 have seen and heard, only to remember them later
22 when some external information or stimulus
23 triggers that memory. I find that Lou Koyina
24 honestly believes that Denecho King said "I
25 killed two people", and I find it more probable
26 than not that he did say this. That is as far as
27 I can go with that evidence. That this would

1 have been said a couple of hours after the
2 incident is another striking coincidence.

3 We also know that Denecho King had been
4 drinking for many hours, beginning the afternoon
5 of the day before. We know that he had lashed
6 out at three other occasions before arriving at
7 the Sunridge Apartments, throwing a chair,
8 breaking a window, and beating up a woman in the
9 back of a cab. I have been careful not to give
10 this evidence too much weight in my analysis. It
11 is an error to assume that an accused person
12 acted violently on one occasion because they had
13 acted violently on another. However, this
14 evidence does form part of the sequence of
15 events, and I have, therefore, considered it,
16 although in an extremely limited way.

17 The Crown does not need to prove every fact
18 beyond a reasonable doubt before that fact can be
19 considered by the trier of fact in determining
20 whether or not the Crown has proven the guilt of
21 the accused beyond a reasonable doubt. The Crown
22 needs to prove all of the necessary elements of
23 the offence or offences to this standard, not
24 every fact that supports that proof.

25 The swords were tested for DNA evidence.
26 Search technologist Rebecca Montoya took swabs of
27 a number of areas on the swords. Two of these

1 swabs was a single swab taken from the handle and
2 guard of each of the swords, with an attempt made
3 to avoid any red-brown staining in areas where it
4 was believed they may have been handled with a
5 view to collecting any skin cells that may have
6 been deposited. Both of these swabs were also
7 subjected to a screening test for blood. The
8 swab taken from the longer sword, which has been
9 proven to be the weapon that caused the fatal
10 injury to John Wifladt, tested positive, which
11 means that blood may have been present. A swab
12 taken from the other sword did not.

13 The DNA expert called by the Crown was
14 Kenneth Hunter. He was called to interpret the
15 findings of the DNA analysis. The two swabs from
16 the handles came back with a "surprisingly
17 significant amount of DNA" with the same donor
18 profile, eventually matched to Denecho King,
19 "significantly more than you would expect from a
20 handle", and I quote, "roughly ten times the
21 usual DNA." Mr. Hunter said that he "felt very
22 confident in stating that the primary transfer
23 was most likely."

24 There were secondary, insufficient profiles
25 found as well, but they were significantly less
26 present than the primary profile. Of the 12
27 nanograms of DNA found on the swab from the long

1 sword, 75 to 85 percent was Mr. King's. Of the
2 10.15 nanograms of DNA found on the swab from the
3 medium sword, 90 percent was Mr. King's.

4 Primary transfer means direct handling.
5 Mr. Hunter also suggested that some liquid, like
6 sweat, may have assisted in the transfer, and
7 that the transferor was most likely the last
8 person who handled the swords.

9 This is compelling and potentially damning
10 evidence. I am, as always, mindful of the
11 presumption of innocence and the burden on the
12 Crown. The defence only has to raise a
13 reasonable doubt. They do not have to disprove
14 this evidence, nor do they have to prove an
15 alternative.

16 Defence suggested a number of hypotheses to
17 Mr. Hunter. He was very ably cross-examined in
18 relation to several articles on DNA transfer.
19 Mr. Hunter acknowledged that transfer can occur,
20 that contamination can also take place, but was
21 firm in his position that transfers of these
22 kinds could not have resulted in the amount of
23 DNA found or the way in which it was found.

24 I am mindful as well of the danger of
25 allowing expert opinion evidence to usurp the
26 function of the trier of fact. Mr. Hunter
27 provided opinion evidence, but it is up to me, as

1 it is with every witness, to decide how much of
2 his evidence I accept as fact.

3 The alternative scenario suggested by
4 Mr. Bran proposes Mr. Wifladt and Mr. Digness
5 attacking each other, but my analysis applies to
6 any possible assailant or assailants other than
7 Denecho King.

8 Even if I were to decide to give limited
9 weight to the expert opinion evidence in the area
10 of transfer DNA, in order to accept that somebody
11 other than Denecho King wielded the swords that
12 night, the following would all have to have
13 occurred:

14 First: That Mr. King left a tremendously
15 significant source or sources of DNA in the
16 hallways and staircases of Sunridge Apartments,
17 which was not found by the RCMP during their
18 search of these areas.

19 Second: That Colin Digness and
20 John Wifladt, or unknown person or persons came
21 into contact with this surprisingly significant
22 source of DNA with either both hands each, or
23 each with their dominant hand, and picked up a
24 significant quantity of Denecho King's DNA as
25 opposed to the DNA of any of the other 30 or so
26 people who actually live in Sunridge Apartments.

27 Third: That both of these people with their

1 hands then managed to handle the swords with
2 great force and violence leaving virtually only
3 Denecho King's DNA and not their own DNA, which,
4 presumably, is all over their own hands which are
5 covered in their own skin cells.

6 I have considered this suggestion a long
7 time and very carefully, and I find it to be so
8 implausible to be almost impossible.

9 Defence also argued that the amount of DNA
10 found on the sword handles could have been
11 augmented by contamination through the actions of
12 the police and the emergency medical technicians.
13 While defence did point out several instances of
14 theoretical contamination, most involved contacts
15 with boots or fingertips and gloves. Again, we
16 would have to assume a significant source of
17 Denecho King's DNA, and that these personnel came
18 into contact with this DNA as opposed to that of
19 anybody else in the apartment building. It has
20 to be borne in mind that we are talking about
21 skin cells, not blood. We know that the DNA on
22 the shorter sword specifically tested negative
23 for the presence of blood, and the other only
24 indicated the possible presence of blood. We
25 know that both the swords were handled in roughly
26 the same fashion with roughly the same amount of
27 DNA on them. At least one of the findings would

1 require a major source of Denecho King's skin
2 cells located in a place such that police and
3 medical personnel could have walked in or handled
4 it to the degree required to result in a
5 significant transfer. I find this suggestion to
6 be highly unlikely and reject the suggestion that
7 it could account for the amount of DNA found on
8 the sword handles.

9 Denecho King was a stranger to Colin Digness
10 and John Wifladt. These highly implausible and
11 unlikely scenarios, which are the only possible
12 innocent explanations for how Denecho King's DNA
13 ended up on the handles of the weapons used to
14 injure one and kill the other of these two men,
15 also have to be seen in the context of the rest
16 of the evidence.

17 Putting together the presence of
18 Denecho King at the Sunridge Apartments at the
19 exact, narrow time that the men were injured, the
20 compelling DNA evidence, and the pantomime
21 motions made by Mr. King in the Northern Lights
22 Motel lobby, the only rational conclusion I can
23 reach is that the DNA was deposited by
24 Denecho King when he used the swords to injure
25 Colin Digness and ultimately kill John Wifladt.

26 There is evidence that Denecho King had been
27 consuming alcohol and was intoxicated at the time

1 of this incident. Murder and attempted murder
2 are crimes of specific intent and there are
3 occasions when drunkenness can operate to reduce
4 what otherwise would have been murder to
5 manslaughter, a crime of more general intent. We
6 have evidence from CCTV footage showing Mr. King
7 at 3:36 a.m. and 5:08 a.m., shortly before and
8 shortly after the incident. He appears
9 coordinated and fluid in his motions. There is
10 nothing to indicate that he was intoxicated to
11 the extent that he was incapable of forming the
12 specific intent required.

13

14 Decision on the Offences Charged:

15

16 The injuries to both men were extreme, with
17 both suffering deep puncture wounds to the body
18 as well as blows to the head. In order to be
19 found guilty of second-degree murder, a person
20 must either intend to kill or intend to cause
21 bodily harm that they know is likely to cause
22 death and be reckless whether death ensues or
23 not. In order to be found guilty of attempted
24 murder, the person must intend to kill. For
25 aggravated assault, all that is required is
26 objective foresight of bodily harm.

27

However Denecho King found himself in Colin

1 Digness' apartment, I do not believe that he went
2 there intending to hurt anyone. The weapons used
3 were found on site, not carried by Mr. King. If
4 anything, based on his behaviour at other times
5 on the 13th and 14th, he was simply looking for
6 people to party with. Whatever happened happened
7 very quickly.

8 I have no doubt, given the nature of the
9 injuries, that in the heat of the moment Mr. King
10 intended to cause bodily harm that he knew was
11 likely to cause death and he was reckless as to
12 whether death ensued. I do have a doubt as to
13 whether he actually intended to kill either John
14 Wifladt or Colin Digness.

15 I, therefore, find Denecho King guilty of
16 second-degree murder in the death of the
17 John Wifladt and aggravated assault on
18 Colin Digness.

19 -----

20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the Town of Fort Providence, Northwest Territories, this 31st day of October, 2018.

Certified Pursuant to Rule 723
of the Rules of Court



Karilee Mankow
Court Reporter