*R v King*, 2018 NWTSC 66 **S-1-CR-2016-000118**

# 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.

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**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:

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1. In the early morning of December 14th, 2014,
2. police in Yellowknife were notified of two
3. badly-injured men at the Sunridge Apartments.
4. They arrived at Unit 323 to find John Wifladt and
5. Colin Digness on the floor in the entry hall.
6. Neither one was fully conscious or responsive.
7. There was a significant amount of blood on both
8. of the men and the surrounding area. They were
9. both clearly in distress.
10. Unit 323 was ordinarily occupied at the time
11. by Colin Digness and his teenage son, Daylan.
12. Daylan was not home that night having stayed over
13. at a friend's place.
14. Emergency medical personnel arrived on the
15. scene. Colin Digness had suffered trauma to his
16. head and was bleeding from his abdomen. The
17. extent of John Wifladt's injuries was not as
18. obvious at first, but both clearly needed
19. immediate treatment. They were transported by
20. 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
21. has no memory of what occurred.
22. After an extensive investigation lasting
23. many months, police charged Denecho King with the
24. murder of John Wifladt and the attempted murder
25. of Colin Digness, as well as aggravated assault
26. on Colin Digness. The trial proceeded over a
27. period of roughly four weeks this past April,

8 2018.

9

10 Summary of the Evidence At Trial:

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1. Most of the evidence produced by the Crown
2. was not directly challenged by the defence. The
3. issues concern the conclusions that can or cannot
4. by drawn from the evidence and whether or not the
5. conclusions I draw and the facts I find as a
6. result are sufficient to prove the guilt of the
7. accused beyond a reasonable doubt. The following
8. is a summary of the evidence which was either
9. conceded or not directly challenged and which I
10. accept as true. I will also mention the evidence
11. that is contested and which will require further
12. analysis.
13. There was an extensive amount of evidence
14. called by the Crown during the four-week trial.
15. We heard from virtually all of the police
16. officers involved at every level of the
17. investigation, lab technicians and scientists,
18. numerous civilians, taxi drivers, and emergency
19. medical personnel. There were numerous exhibits
20. filed including maps, photographs, diagrams, CCTV
21. footage, and expert reports. There were also a
22. number of agreed statements of fact filed
23. covering evidence not in dispute.
24. The defence did not present any evidence.
25. I am not going to attempt to summarize all
26. of the evidence in this decision, only that which
27. I believe relevant to the general narrative and
28. the issues I need to decide. I have considered
29. all of the evidence during my deliberations.
30. The Crown has clearly established
31. jurisdiction and date and time; the defence has
32. helped to narrow the issues by very fairly
33. conceding the nature of the injuries suffered by
34. the two men, what caused these injuries, and the
35. cause of death of John Wifladt. What remains is
36. the question of whether or not the Crown has
37. proven beyond a reasonable doubt the identity of
38. the person who caused these injuries, and if so,
39. the degree of responsibility of that person.

24

1. Narrative Evidence Relating to John Wifladt,
2. 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,
28. then waited for the police to arrive.
29. Police arrived at 5:00 a.m. Johnny Ongahak
30. showed them to the door of 323. The conduct of
31. the police and EMTs was unremarkable and is only
32. relevant to my assessment of the DNA evidence, so
33. I will deal with it later.
34. Colin Digness owned a collection of three
35. Japanese-style ornamental swords which were
36. normally displayed in a stand in the living room.
37. These swords were for display purposes only,
38. having blunt edges. They were three different
39. lengths ranging from dagger size to a long sword.
40. When police arrived on the scene, the display had
41. been overturned, the sheathes scattered, and the
42. two longer swords were on the floor close to the
43. injured men with blood on their blades.
44. The swords were seized and sent for DNA
45. analysis. There was no indication that the
46. shortest sword had been used.
47. There was no evidence that Denecho King was
48. known to either Colin Digness or John Wifladt, or
49. that he had ever before visited Unit 323.

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24 Narrative Evidence Relating to Denecho King:

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1. Denecho King spent the afternoon and evening
2. of December 13 drinking at Fort Gary Apartments
3. with Sam Kelly, Danika Fehr, and Candace Minoza.
4. At some point he became angry and threw a chair
5. against the wall. He also injured his right arm
6. on a glass window near the outside side entrance
7. to the apartment building, which caused bleeding.
8. He left the apartment building at 12:55 a.m. in a
9. taxi with Fehr and Minoza. This was captured on
10. CCTV.
11. Shortly after, he became upset with Danika
12. Fehr and crawled into the backseat of the cab to
13. assault her. He was bleeding enough in the cab
14. that the driver had to clean it with sterilizing
15. wipes before continuing his night. Denecho left
16. the cab and the driver dropped the women off at
17. the Raven Bar.
18. Denecho King was next seen on CCTV entering
19. Fort Gary Apartments at 2:00 a.m., then leaving
20. at 3:26 a.m. The next time he is seen is by
21. Kristie Modeste at 4 a.m. at Sunridge Apartments,
22. as I have already described.
23. The CCTV outside of Northern News Services
24. filmed Denecho King walking towards the Northern
25. Lights Motel at 5:08 a.m., where he was filmed by
26. the motel CCTV talking to the night concierge,
27. James Curtis, at 5:09 a.m. Denecho was a friend
28. of Mr. Curtis' cousin, and he had known him for
29. some time. He can be seen talking in an animated
30. fashion to Mr. Curtis, making swinging motions
31. with both hands and gesturing to his forehead.
32. Mr. Curtis does not appear to be paying much
33. attention to Denecho. He was watching a
34. documentary at the time.
35. His first recollection is that Denecho King
36. had been talking about "defending himself from a
37. couple of guys with a bat or something." Under
38. cross-examination, Mr. Curtis agreed that he was
39. not certain if Denecho King was talking about two
40. guys or one, or when what he was talking about
41. had happened.
42. Denecho King then went to Room 24 of the
43. Northern Lights Motel where he continued drinking
44. with a number of young men from Behchoko. He was
45. seen on CCTV with two of these men leaving the
46. Northern Lights, arriving at Mac's Convenience
47. Store and returning to the Northern Lights all
48. between 5:25 and 5:43 a.m.
49. A number of people were in and out of Room
50. 24 including Lou Koyina. Everybody who attended
51. Room 24 that night was intoxicated, most heavily
52. so. Mr. Koyina testified to a comment that he
53. says he heard Denecho King make. Mr. Koyina
54. testified that he remembers Denecho King saying
55. "I killed two guys". Mr. Koyina was drunk at the
56. time and did not remember the comment a couple of
57. days later. The defence takes the position that
58. Mr. Koyina's evidence is neither reliable nor
59. credible. I will address this later.
60. Denecho King slept in Room 24. He was still
61. sleeping when the other occupants of the room
62. left. One of the men had lost one of his shoes,
63. so he took Denecho's shoes. These shoes were
64. later seized and tested but did not provide any
65. meaningful evidence.

10

1. Forensic Evidence: Initial Investigation,
2. Fingerprints, Blood Pattern Analysis, and DNA:

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1. Members of the Forensic Identification
2. Section of the RCMP did an initial inspection of
3. the hallways and staircases of Sunridge
4. Apartments. They did not find any areas of blood
5. staining or other issues that would have required
6. further investigation. The main investigator
7. acknowledged that there was a smear in the main
8. staircase that appeared to be blood, as well as a
9. noticeable stain to the carpet at the entrance to
10. Unit 323. He did not test the smear stain
11. because he knew that main staircase was the route
12. taken by the emergency medical personnel as they
13. were transporting the injured men and did not
14. believe that the stain would be meaningful. He
15. did not test the stain at the entrance to 323
16. because, in his opinion, it did not appear to be
17. a blood stain. There were no blind swabs or
18. random samples taken from the doorknobs, handles
19. or railings of the entrance, corridors, or
20. stairwells.
21. Selective areas inside Unit 323 were checked
22. for fingerprints. Prints were found on the sword
23. sheaths, some of which remain unknown. The
24. handles and blades of the swords were not checked
25. for fingerprints in order not to compromise DNA
26. analysis. Denecho King's fingerprints were not
27. found in Unit 323.
28. DNA analysis confirmed that blood found on
29. the blade of the medium-length sword belonged to
30. Colin Digness. This sword had been located on
31. the living room floor, close to where Colin
32. Digness was found in the hallway. DNA analysis
33. confirmed that blood found on the long sword
34. belonged to John Wifladt. This sword, which had
35. a bent blade, was originally located on the
36. hallway floor beside where John Wifladt was
37. laying. It is clear and not disputed that the
38. medium-length sword caused the injuries to
39. Colin Digness and the long sword caused the
40. injuries, including the fatal injury, to
41. 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
42. possible that one of the EMTs may have touched
43. the nearest sword with his boot, and I have
44. factored this into my analysis.
45. The swords were moved again during the blood
46. pattern analysis. This was in the usual course
47. of the investigation, it was done with gloved
48. hands, and there was nothing noteworthy about it.
49. It does appear, however, that a piece of paper,
50. apparently left behind by the medical personnel,
51. moved a few inches and ended up under the handle
52. of one of the swords during the blood pattern
53. analyst's investigation. No explanation for this
54. was given.
55. The swords were placed in separate paper
56. exhibits backs and transported to the detachment
57. evidence locker. During transportation, the
58. point of the long sword poked through the paper.
59. It was jiggled back into the bag and the hole was
60. taped up. The paper exhibit bags were placed in
61. a locked gun case for shipment to the forensic
62. laboratory. Upon arrival at the lab, the tape
63. holding the bag containing the longer sword had
64. come loose.
65. I have already referred to the DNA results
66. obtained after testing the blood on the sword
67. blades. The DNA technician also took a swab from
68. the handle and guard area of both swords,
69. specifically avoiding any spots of apparent
70. blood. Despite this, one of the samples tested
71. positive after a presumptive test for hemoglobin,
72. which did not prove that the sample was in fact
73. blood, only that hemoglobin was present. These
74. samples were both known in one case and believed
75. in the other case to be epithelial or skin DNA.
76. The results of DNA testing showed a strong
77. primary profile in both samples with minor
78. profiles which were insufficient for analysis.
79. The DNA was present in what was referred to as a
80. surprisingly large and very similar amount on
81. both handles and matched the known sample from
82. Denecho King.
83. The opinion of the DNA expert was that the
84. amount of epithelial DNA on the handles indicated
85. primary transfer. In other words, Denecho King
86. had handled the swords. This was challenged by
87. the defence. While it was conceded that
88. Denecho King's DNA was found on the handles, the
89. way in which it got there is disputed.

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23 Crown Position:

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1. The Crown says that the evidence establishes
2. beyond a reasonable doubt that Denecho King was
3. the person who killed John Wifladt, that he
4. either intended to cause his death or intended to
5. cause him bodily harm that he knew was likely to
6. cause his death and was reckless with whether he
7. died or not, making him guilty of second degree
8. murder. The Crown says the evidence also shows
9. beyond a reasonable doubt that Denecho King
10. intended to kill Colin Digness, making him guilty
11. of attempted murder.
12. The Crown points out that Denecho King was
13. seen in Sunridge Apartments, where he did not
14. reside, very close to the time that John Wifladt
15. and Colin Digness were injured. They say that
16. the fact that Denecho King's DNA was found on the
17. sword handles is compelling evidence, that the
18. movements made in the Northern Lights Motel lobby
19. about an hour later amount to a re-enactment of
20. the violence, and that the comment made to Lou
21. Koyina simply confirms what is proven by the DNA.

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20 Defence Position:

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1. The defence argues that the Crown has not
2. proven beyond a reasonable doubt that
3. Denecho King is the person who committed these
4. crimes. The defence acknowledges that
5. Denecho King's DNA was on the handles of the
6. swords, but argues that this DNA could have been
7. deposited through transfer and contamination and
8. is therefore not conclusive of guilt. The
9. alternate possibility suggested by the defence is
10. that Colin Digness and John Wifladt came into
11. contact with Denecho King's DNA as they made
12. their way into Sunridge Apartments and up the
13. stairs to Unit 323, by touching door handles,
14. railings, and possibly the floor removing their
15. shoes. It is known that Denecho was in the
16. building very close to the same time as when the
17. men arrived home.
18. They then carried this DNA with them into
19. the residence and got into a sword fight, perhaps
20. playfully at first, leaving Denecho King's DNA on
21. the sword handles. There is evidence that
22. John Wifladt and Colin Digness play-fought with
23. the swords at least once after watching a Star
24. Wars movie making lightsaber sounds as they did
25. so.
26. There is a profile picture from Facebook
27. showing Colin Digness in a pose with two of the
28. swords, which defence suggests makes this
29. possibility more plausible. As well, the gaming
30. console was on when police arrived on scene, and
31. Digness acknowledged playing both hockey and
32. combat games on the system at other times.
33. 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

1. after serving a sentence for attacking another
2. man with a machete. Defence suggests that
3. Denecho King could just have easily been
4. describing that incident to James Curtis as the
5. attack on Digness and Wifladt.
6. Dealing with the comment that Lou Koyina
7. says he heard Denecho King make in the motel
8. room, defence argues that both Mr. Koyina's level
9. of intoxication and the fact that he did not
10. remember the comment for some time makes his
11. evidence unreliable and that it should be
12. disregarded.

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25 Analysis:

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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
28. Mr. Ongahak was busy and he left the door.
29. John Wifladt and Colin Digness arrived at
30. almost exactly the same time, at 4:08 a.m. At
31. approximately 4:20 a.m., Kristie Modeste was
32. disturbed by loud banging upstairs and sent
33. Johnny Ongahak up to Colin Digness' apartment to
34. deal with it. Mr. Ongahak found the injured men
35. at approximately 4:30 a.m.; police arrived at
36. 5:00 a.m. At 5:08 a.m., Mr. King is seen on CCTV
37. walking up to the Northern Lights Motel.
38. Given the way these events unfolded, there
39. was a very short window of time in which the
40. violence in Unit 323 could have occurred, between
41. 4:08 a.m. and approximately 4:30 a.m. What this
42. sequence tells me is that the time Denecho King
43. spent at the Sunridge Apartments coincides almost
44. exactly with what must have been the time of the
45. incident. He left the Fort Gary Apartments at
46. 3:26 a.m. and arrived at the Northern Lights
47. Motel at 5:08, so we know he could not have been
48. at the Sunridge Apartments for very long. The
49. defence suggests that this was an innocent
50. coincidence which explains the presence of
51. Mr. King's DNA. If so, this is a striking
52. coincidence.
53. On the CCTV footage, Denecho King can be
54. seen swinging his arms appearing to hold an
55. object or objects. At times, he appears to be
56. holding two objects in tandem, at others he
57. appears to have two hands on one object. He
58. gestures to his forehead, where Mr. Digness was
59. severely injured. Mr. Curtis did not have a
60. clear memory of what Mr. King was talking about.
61. Defence suggests that Mr. King was describing
62. another incident in which he injured another man
63. with a machete and for which he had very recently
64. been released from jail. I believe it is far
65. more likely that what he was describing was
66. something that had happened at the Sunridge
67. Apartments less than an hour before where we
68. know, as a fact, that he happened to be at
69. precisely the time in question. The similarity
70. between the events and the apparent depiction on
71. CCTV is another striking coincidence.
72. We know that Denecho King went from the
73. lobby of Northern Lights Motel to Room 24, where
74. he drank with a number of intoxicated young men
75. from Behchoko. One of these young men was
76. Lou Koyina. Mr. Koyina had never met Mr. King
77. and referred to him as "the kid," although, he
78. recalled him identifying himself as "Denecho."
79. He testified that he remembered asking Denecho
80. about the cut on his arm, to which Denecho
81. 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
82. have been said a couple of hours after the
83. incident is another striking coincidence.
84. We also know that Denecho King had been
85. drinking for many hours, beginning the afternoon
86. of the day before. We know that he had lashed
87. out at three other occasions before arriving at
88. the Sunridge Apartments, throwing a chair,
89. breaking a window, and beating up a woman in the
90. back of a cab. I have been careful not to give
91. this evidence too much weight in my analysis. It
92. is an error to assume that an accused person
93. acted violently on one occasion because they had
94. acted violently on another. However, this
95. evidence does form part of the sequence of
96. events, and I have, therefore, considered it,
97. although in an extremely limited way.
98. The Crown does not need to prove every fact
99. beyond a reasonable doubt before that fact can be
100. considered by the trier of fact in determining
101. whether or not the Crown has proven the guilt of
102. the accused beyond a reasonable doubt. The Crown
103. needs to prove all of the necessary elements of
104. the offence or offences to this standard, not
105. every fact that supports that proof.
106. The swords were tested for DNA evidence.
107. Search technologist Rebecca Montoya took swabs of
108. a number of areas on the swords. Two of these
109. swabs was a single swab taken from the handle and
110. guard of each of the swords, with an attempt made
111. to avoid any red-brown staining in areas where it
112. was believed they may have been handled with a
113. view to collecting any skin cells that may have
114. been deposited. Both of these swabs were also
115. subjected to a screening test for blood. The
116. swab taken from the longer sword, which has been
117. proven to be the weapon that caused the fatal
118. injury to John Wifladt, tested positive, which
119. means that blood may have been present. A swab
120. taken from the other sword did not.
121. The DNA expert called by the Crown was
122. Kenneth Hunter. He was called to interpret the
123. findings of the DNA analysis. The two swabs from
124. the handles came back with a "surprisingly
125. significant amount of DNA" with the same donor
126. profile, eventually matched to Denecho King,
127. "significantly more than you would expect from a
128. handle", and I quote, "roughly ten times the
129. usual DNA." Mr. Hunter said that he "felt very
130. confident in stating that the primary transfer
131. was most likely."
132. There were secondary, insufficient profiles
133. found as well, but they were significantly less
134. present than the primary profile. Of the 12
135. nanograms of DNA found on the swab from the long
136. sword, 75 to 85 percent was Mr. King's. Of the
137. 10.15 nanograms of DNA found on the swab from the
138. medium sword, 90 percent was Mr. King's.
139. Primary transfer means direct handling.
140. Mr. Hunter also suggested that some liquid, like
141. sweat, may have assisted in the transfer, and
142. that the transferor was most likely the last
143. person who handled the swords.
144. This is compelling and potentially damning
145. evidence. I am, as always, mindful of the
146. presumption of innocence and the burden on the
147. Crown. The defence only has to raise a
148. reasonable doubt. They do not have to disprove
149. this evidence, nor do they have to prove an
150. alternative.
151. Defence suggested a number of hypotheses to
152. Mr. Hunter. He was very ably cross-examined in
153. relation to several articles on DNA transfer.
154. Mr. Hunter acknowledged that transfer can occur,
155. that contamination can also take place, but was
156. firm in his position that transfers of these
157. kinds could not have resulted in the amount of
158. DNA found or the way in which it was found.
159. I am mindful as well of the danger of
160. allowing expert opinion evidence to usurp the
161. function of the trier of fact. Mr. Hunter
162. provided opinion evidence, but it is up to me, as
163. it is with every witness, to decide how much of
164. his evidence I accept as fact.
165. The alternative scenario suggested by
166. Mr. Bran proposes Mr. Wifladt and Mr. Digness
167. attacking each other, but my analysis applies to
168. any possible assailant or assailants other than
169. Denecho King.
170. Even if I were to decide to give limited
171. weight to the expert opinion evidence in the area
172. of transfer DNA, in order to accept that somebody
173. other than Denecho King wielded the swords that
174. night, the following would all have to have
175. occurred:
176. First: That Mr. King left a tremendously
177. significant source or sources of DNA in the
178. hallways and staircases of Sunridge Apartments,
179. which was not found by the RCMP during their
180. search of these areas.
181. Second: That Colin Digness and
182. John Wifladt, or unknown person or persons came
183. into contact with this surprisingly significant
184. source of DNA with either both hands each, or
185. each with their dominant hand, and picked up a
186. significant quantity of Denecho King's DNA as
187. opposed to the DNA of any of the other 30 or so
188. people who actually live in Sunridge Apartments.
189. 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
190. require a major source of Denecho King's skin
191. cells located in a place such that police and
192. medical personnel could have walked in or handled
193. it to the degree required to result in a
194. significant transfer. I find this suggestion to
195. be highly unlikely and reject the suggestion that
196. it could account for the amount of DNA found on
197. the sword handles.
198. Denecho King was a stranger to Colin Digness
199. and John Wifladt. These highly implausible and
200. unlikely scenarios, which are the only possible
201. innocent explanations for how Denecho King's DNA
202. ended up on the handles of the weapons used to
203. injure one and kill the other of these two men,
204. also have to be seen in the context of the rest
205. of the evidence.
206. Putting together the presence of
207. Denecho King at the Sunridge Apartments at the
208. exact, narrow time that the men were injured, the
209. compelling DNA evidence, and the pantomime
210. motions made by Mr. King in the Northern Lights
211. Motel lobby, the only rational conclusion I can
212. reach is that the DNA was deposited by
213. Denecho King when he used the swords to injure
214. Colin Digness and ultimately kill John Wifladt.
215. There is evidence that Denecho King had been
216. consuming alcohol and was intoxicated at the time
217. of this incident. Murder and attempted murder
218. are crimes of specific intent and there are
219. occasions when drunkenness can operate to reduce
220. what otherwise would have been murder to
221. manslaughter, a crime of more general intent. We
222. have evidence from CCTV footage showing Mr. King
223. at 3:36 a.m. and 5:08 a.m., shortly before and
224. shortly after the incident. He appears
225. coordinated and fluid in his motions. There is
226. nothing to indicate that he was intoxicated to
227. the extent that he was incapable of forming the
228. specific extent required.

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14 Decision on the Offences Charged:

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1. The injuries to both men were extreme, with
2. both suffering deep puncture wounds to the body
3. as well as blows to the head. In order to be
4. found guilty of second-degree murder, a person
5. must either intend to kill or intend to cause
6. bodily harm that they know is likely to cause
7. death and be reckless whether death ensues or
8. not. In order to be found guilty of attempted
9. murder, the person must intend to kill. For
10. aggravated assault, all that is required is
11. objective foresight of bodily harm.
12. 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.

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# 2 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby 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 Town of Fort Providence, Northwest
7. Territories, this 31st day of October, 2018.

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1. Certified Pursuant to Rule 723
2. of the Rules of Court

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1. Karilee Mankow
2. Court Reporter

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