

IN THE YOUTH JUSTICE COURT OF THE NORTHWEST TERRITORIES  
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

S.K.

(A Young Person)

Transcript of an Excerpt from Proceedings (Ruling re  
Reverse Onus Show Cause) heard before The Honourable  
Judge R.D. Gorin, in Yellowknife, in the Northwest  
Territories, on the 6th day of June, A.D. 2007.

APPEARANCES:

Ms. S. Smallwood: Counsel on behalf of the Crown

Mr. P. Falvo: Counsel on behalf of the Young Person

-----  
Charges under ss. 145(5) C.C. and 334(b) C.C.

1 (EXCERPT FROM PROCEEDINGS - RULING RE REVERSE ONUS  
2 SHOW CAUSE, YOUTH JUSTICE COURT)

3

4 THE COURT: Mr. K., a young person, is  
5 charged with theft contrary to section 334(b) of  
6 the Criminal Code and failing to attend court  
7 contrary to subsection 145(5) of the Criminal  
8 Code. Given that one of the charges is under  
9 section 145(5), if this were in an adult court,  
10 the applicability of sections 515(6) and 515(10)  
11 of the Criminal Code would be very clear.  
12 Section 515(6)(c) of the Criminal Code provides  
13 that:

14 Notwithstanding any provision of  
15 this section, where an accused is  
16 charged ...  
17 (c) with an offence under any of  
18 subsections 145(2) to (5) that is  
19 alleged to have been committed while  
20 he was at large after being released  
21 in respect of another offence  
22 pursuant to the provisions of this  
23 Part ... the justice shall order  
24 that the accused be detained in  
25 custody until he is dealt with  
26 according to law, unless the  
27 accused, having been given a

1           reasonable opportunity to do so,  
2           shows cause why his detention in  
3           custody is not justified, but where  
4           the justice orders that the accused  
5           be released, he shall include in the  
6           record a statement of his reasons  
7           for making the order.

8           Subsection (10) deals with the grounds that  
9           the court is required to consider, and were this  
10          matter in adult court the accused would have to  
11          satisfy the court why he ought to be released on  
12          all three of the grounds that I am about to go  
13          through.

14          Subsection (10) of 515 states:

15          For the purposes of this section,  
16          the detention of an accused in  
17          custody is justified only on one or  
18          more of the following grounds:

19          (a) where the detention is necessary  
20          to ensure his or her attendance in  
21          court in order to be dealt with  
22          according to law;

23          (b) where the detention is necessary  
24          for the protection or safety of the  
25          public, including any victim of or  
26          witness to the offence, having  
27          regard to all the circumstances

1 including any substantial likelihood  
2 that the accused will, if released  
3 from custody, commit a criminal  
4 offence or interfere with the  
5 administration of justice; and  
6 (c) on any other just cause being  
7 shown and, without limiting the  
8 generality of the foregoing, where  
9 the detention is necessary in order  
10 to maintain confidence in the  
11 administration of justice, having  
12 regard to all the circumstances,  
13 including the apparent strength of  
14 the prosecution's case, the gravity  
15 of the nature of the offence, the  
16 circumstances surrounding its  
17 commission and the potential for a  
18 lengthy term of imprisonment.

19 The third ground that I have just referred  
20 to has been read down by the Supreme Court of  
21 Canada to expunge the words "without limiting the  
22 generality of the foregoing", so that it is only  
23 in relation to the specific criteria set out in  
24 that subsection that an accused can be detained  
25 on the "any other just cause" ground set out in  
26 515(10)(c).

27 This is a matter in Youth Justice Court and

1 sections 28 and 29 of the Youth Criminal Justice  
2 Act are applicable. I will start off with  
3 section 28. Section 28 of the Act provides that:  
4 Except to the extent that they are  
5 inconsistent with or excluded by  
6 this Act, the provisions of Part XVI  
7 (compelling the appearance of an  
8 accused and interim release) of the  
9 Criminal Code apply to the detention  
10 and release of young persons under  
11 this Act.  
12 What that means is the provisions of section  
13 515 apply except where they are specifically  
14 altered by those of the Youth Criminal Justice  
15 Act.  
16 Section 29(2), to some extent, alters the  
17 provisions of the Criminal Code dealing with  
18 judicial interim release. Section 29(2) states  
19 that:  
20 In considering whether the detention  
21 of a young person is necessary for  
22 the protection or safety of the  
23 public under paragraph 515(10)(b) of  
24 the Criminal Code, a youth justice  
25 court or a justice shall presume  
26 that detention is not necessary  
27 under that paragraph if the young

1           person could not, on being found  
2           guilty, be committed to custody on  
3           the grounds set out in paragraphs  
4           39(1)(a) to (c) (restrictions on  
5           committals to custody).  
6           The present matter presents a case where  
7           section 39(1)(a) to (c) would apply if Mr. K.  
8           were found guilty of the charges he faces and  
9           were being sentenced on the matters that I have  
10          before the court. If that were to occur, I could  
11          not sentence him to custody. However, that does  
12          not mean that these proceedings are not reverse  
13          onus. They are reverse onus. Mr. K. has to show  
14          cause why he ought to be released but to do so he  
15          need only address the first and the third grounds  
16          set out in subsection 515(10) of the Criminal  
17          Code. I am to presume that his detention is not  
18          necessary in order to protect the public as set  
19          out in section 515(10)(b) of the Criminal Code,  
20          given the fact that he could not be committed to  
21          custody if he were found guilty and sentenced on  
22          these particular offences that I now have before  
23          me.  
24          The word "presume" as it is used in section  
25          29(2) of the Youth Criminal Justice Act is  
26          important because in my view in using the word  
27          "presume", parliament has indicated its intention

1           that, like all presumptions, it can be rebutted.  
2           Here, the Crown has not attempted to do so.

3           At the end of the day under the current  
4           circumstances that I have before me, I am left  
5           with a situation where the within proceedings  
6           dealing with the judicial interim release of the  
7           accused are reverse onus. Mr. K. has to show  
8           cause why he ought not to be detained but only in  
9           relation to the first and third ground. The onus  
10          is on the Crown to show why he ought to be  
11          detained on the second ground. As stated, the  
12          Crown has not attempted to do so.

13          Studies of mock juries have indicated that  
14          lay people have a great deal of difficulty in  
15          comprehending some legal concepts - not all of  
16          them but some of them. The legal concept which  
17          often seems to cause mock juries the most  
18          difficulty are onuses: legal onuses, evidentiary  
19          onuses and onuses of persuasion. In my view, the  
20          Youth Criminal Justice Act has created a very  
21          complicated scheme where the present  
22          circumstances I have before me apply. I wonder  
23          about the ability of anyone without formal legal  
24          training to understand how to sort out all of  
25          these different onuses.

26          In any event, I will do my best to sort them  
27          out now.

1           As I have indicated, the Crown has not  
2           attempted to show cause why the young person  
3           should be detained under the secondary ground and  
4           in my view the young person has adequately  
5           addressed the primary and the tertiary grounds  
6           here in court today.

7           He is quite young; he was born in 1989, in  
8           August. He has a criminal record but it is quite  
9           brief and it is quite minor.

10          The package which has been worked on and  
11          proposed by Mr. Falvo is practicable and it is on  
12          that basis that I will order that the young  
13          person, Mr. K., be released upon his entering  
14          into an undertaking before me here today.

15          In particular, I am satisfied that the  
16          arrangements which have been made with his  
17          sister, N.R., are sufficient to address the  
18          concern which I had in relation to the primary  
19          ground.

20          He will be released upon his entering into  
21          an undertaking. In addition to the statutory  
22          conditions, the undertaking will provide the  
23          following: He is to have no contact whatsoever  
24          with J.G.; he is to reside at the residence of  
25          N.R., his sister; he is also not to be outside of  
26          that residence between the hours of 10:30 p.m.  
27          and 9:30 in the morning; he is to obey all of the



1 rules of the home of N.R.; he is to have no  
2 visitors during the hours of the curfew.  
3 Anything else?  
4 MS. SMALLWOOD: Sir, I would just ask that he  
5 not attend Centre Square Mall.  
6 THE COURT: All right, thank you. He is  
7 not to attend within 25 meters of Centre Square  
8 Mall. That means you've got to cross the street  
9 if you're going by that building. Do you  
10 understand that?  
11 THE YOUNG PERSON: Yes, Your Honour.  
12 THE COURT: Anything else?  
13 MS. SMALLWOOD: Nothing, Your Honour.  
14 MR. FALVO: No, Your Honour, thank you.  
15 THE COURT: Return date?  
16 MS. SMALLWOOD: I would suggest next Monday at  
17 1:30 for Youth Court.  
18 THE COURT: Fine. So ordered.  
19 You're in custody right now. You remain in  
20 custody until you sign that undertaking.  
21 THE ACCUSED: Yes, sir.  
22 THE COURT: I believe that that's  
23 everything, is it not?  
24 THE COURT CLERK: Yes, sir, until 1:30.  
25 (ADJOURNMENT)  
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

Certified to be a true and  
accurate transcript pursuant  
to Rule 723 and 724 of the  
Supreme Court Rules of Court.

---

Annette Wright, RPR, CSR(A)  
Court Reporter