

SUPREME COURT OF YUKON

Citation: *R v Kotchea*
2022 YKSC 74

Date: 20221019
S.C. No. 20-01518
Registry: Whitehorse
Heard: Watson Lake

BETWEEN

HIS MAJESTY THE KING

AND

DAVID KOTCHEA

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Sarah Bailey

Appearing on his own behalf

David Kotchea

Appearing as *Amicus Curiae*

Kevin Drolet

This decision was delivered in the form of Oral Reasons on October 19, 2022. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): I have reviewed the essential elements of each of the offences: ss. 348(1)(a) and 268(2) of the *Criminal Code*, R.S.C., 1985, c. C-46 (“*Criminal Code*”). I am not going to repeat each of the essential elements of each of these offences, as I did state those for the record yesterday when I provided

Mr. Kotchea an explanation of the charges that he was facing and the Crown's obligations.

[2] As the Crown stated in her opening statement, which of course is not evidence but it sets out the theory of the Crown's case, the crux of the Crown's case was the evidence of K.S and A.M.

[3] I have listened carefully to their evidence yesterday and today and, given how it emerged, I am of the view that the essential elements of the offences have not been proven beyond a reasonable doubt.

[4] I have borne in mind when considering this the fundamental principle of presumption of innocence and the high standard of the burden of proof on the Crown of beyond a reasonable doubt. It is more than probable guilt, more than likely guilt, and not as high as absolute certainty, but somewhere in between the two.

[5] In this case, I do have a reasonable doubt that Mr. Kotchea broke and entered into [redacted], Yukon, with the intent to commit an indictable offence contrary to s. 348(1)(a) of the *Criminal Code*. I also have a reasonable doubt that he committed aggravated assault by wounding K.S. and A.M. contrary to s. 268(2) of the *Criminal Code*. Therefore, I will acquit Mr. Kotchea of counts 1, 2, and 3 of the indictment on that basis.

DUNCAN C.J.