

SUPREME COURT OF YUKON

Citation: *R. v. Grunerud*, 2008 YKSC 85

Date: 20081027
S.C. No.: 08-01501A
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

KEVIN ROY GRUNERUD

Publication of evidence taken or information given at show cause hearing has been prohibited by court order pursuant to s. 517(1) of the *Criminal Code*.

Publication of evidence taken at preliminary inquiry has been prohibited by court order pursuant to s. 539(1) of the *Criminal Code*.

Before: Mr. Justice R.S. Veale

Appearances:

Peter Chisholm
J. Robert Dick

Counsel for Crown
Counsel for defence

REASONS FOR JUDGMENT (Bail Review)

INTRODUCTION

[1] This is an application for a bail review under s. 520 of the *Criminal Code*.

Mr. Grunerud was detained by a Justice of the Peace on September 19, 2008, on the secondary ground under s. 515(10)(b) of the *Code*. The issue is whether Mr. Grunerud has shown cause why his detention is not justified on the secondary ground for the

protection or safety of the victim or on the tertiary ground of being necessary to maintain confidence in the administration of justice.

[2] It is a striking feature of this case that Mr. Grunerud has a significant amount of community support that in normal circumstances would lead to his release on conditions.

[3] On September 23, 2008, I ordered that Mr. Grunerud's application for bail be dismissed. He is remanded into custody pending his trial, which has now been set for December 15, 2008.

BACKGROUND

[4] Mr. Grunerud stands charged with eight counts for events on March 4, 2007, including breaking and entering, unlawful confinement, assault, threat of death, three breaches of undertaking and mischief.

[5] He is also charged with eight counts relating to an incident on November 14, 2007, which include assault on the same victim, assault using a weapon, an additional assault with a weapon on another person, dangerous driving and four breaches of recognizance.

[6] It is alleged in all of these charges that Mr. Grunerud's consumption of alcohol is a factor. Mr. Grunerud has three impaired driving convictions from 1998, 2004 and 2006.

[7] There are also two outstanding Territorial Court charges for breach of undertakings and one conviction for assault on December 29, 2006, for which he has yet to be sentenced. However, he was released on the conditions that have led to the allegations of breach in the multiple counts before this Court February 5, 2007.

[8] The February 5, 2007 conviction was for assaulting his common-law spouse on December 29, 2006. His spouse and son had driven with him from Watson Lake to Whitehorse. Mr. Grunerud was drinking while driving and they argued on the trip. When

they arrived home, he slammed the victim's head against the edge of a microwave and shoved her into a stove in the presence of their 2-year-old son. When she tried to use the phone, he ripped it out of the wall and threw her to the floor. When she got up, he slammed his head into her nose. He continued to assault her on and off over a period of two hours. She sustained a nasal fracture, tenderness on her neck, upper shoulder and jaw.

[9] Mr. Grunerud pled guilty on February 5, 2007, to this offence and was released into the Domestic Violence Treatment Option program. This is a Territorial Court program that emphasizes treatment and rehabilitation for offenders. His release conditions stipulated that he not have contact with his common-law spouse without the permission of his bail supervisor. He breached this condition on February 6, 2007, leading to the two s.145 charges now in Territorial Court.

[10] The RCMP allege that in the incident of March 4, 2007, Mr. Grunerud showed up at the home of his spouse and son in an agitated and intoxicated condition. When she would not open the door, he took a sledgehammer from the truck and smashed open the door to her house.

[11] Upon entering the house, it is alleged that he threatened to kill her and started to lunge at her. She hid in the bathroom with her son. Mr. Grunerud used the sledgehammer to pound on the bathroom door. The RCMP have verified the damage to both the front and bathroom doors. Fortunately, the RCMP arrived just as Mr. Grunerud gained access to the bathroom.

[12] Mr. Grunerud remained on consent remand until April 23, 2007, when he was released on strict bail conditions into the custody of his mother. He was apparently to

reside and work in Dawson City and have no contact with his common-law spouse. This appeared to resolve the situation until November 14, 2007.

[13] On that date, Mr. Grunerud located his spouse at a new location in Whitehorse. It is alleged that he gained access to her apartment building and when she arrived with their son, he entered her apartment. He kicked, hit and choked his spouse in the presence of the child. She was able to get out of the apartment with their son. She got into her vehicle and was rammed by Mr. Grunerud who was in his truck. The RCMP confirmed the damage to her vehicle and a doctor confirmed scratches and bruising to her face and neck.

[14] The RCMP did not apprehend Mr. Grunerud that night. He failed to appear in court as required on November 26, 2007, and a warrant was issued for his arrest.

[15] On January 15, 2008, Mr. Grunerud was in Tumbler Ridge, British Columbia, with his common-law spouse and child. He was working for an employer who requested that he change a tire. That employer smelled liquor on Mr. Grunerud's breath. The allegations are that Mr. Grunerud became very agitated and struck his employer with a flashlight on the shoulder and head.

[16] The RCMP arrested him a short time later and he was charged with obstructing a peace officer, breaking his previous undertaking not to consume alcohol or contact his common-law spouse.

[17] At this time, the Yukon warrant was executed and he was returned to Whitehorse. He has been in custody since January 15, 2008. He had a trial scheduled for Tumbler Ridge on October 16, 2008, but the outcome is not known to this Court.

[18] As for the Yukon charges, Mr. Grunerud had a preliminary inquiry on April 2, 2008, and a trial date set for September 9, but Mr. Grunerud changed counsel and requested an adjournment. A new trial has been set for December 15 – 17, 2008.

[19] The allegations with respect to the incidents on March 4, 2007, and November 14, 2007, have not been proven, nor are they required to be for the purpose of this bail review hearing. Nevertheless, the strength of the Crown's case is a factor to be considered. Mr. Grunerud's only response in this show cause hearing is that he and his common-law spouse were living together on a consensual basis which would affect the strength of the Crown's case on the breaking and entering charges. The significance of this evidence is that it contradicts his spouse's evidence that she was hiding from him and he was essentially stalking her. That does not change the fact that any contact with her put Mr. Grunerud in breach of his undertakings.

THE BAIL RELEASE PLAN

[20] As I indicated at the outset, Mr. Grunerud has strong community support for release on strict conditions. His former employer in Dawson City has offered to post a cash bond of \$10,000 and act as a surety while he is on their gold mining property. This employer operates a placer mine whose operations will cease at the end of October, 2008.

[21] A Whitehorse contractor is also prepared to act as a surety and provide employment starting in November through until his trial.

[22] In addition, Mr. Grunerud's mother is prepared to be a surety and have him reside with her. She has always been supportive and encouraged him to turn himself in when he was on the run. She is also able to provide a no deposit bail in the amount of \$5,000.

[23] Mr. Grunerud has filed an affidavit. He states that there is no longer a relationship between himself and his former common-law partner. He explained that he had a relationship with her in March and November 2007, which he asserts “would have given a different perspective to the allegations than if she and I had shared a residence at the relevant times”. He says that their living arrangement varied depending upon whether he was in camp or not. His point is that his spouse had not been hiding from him at all, as presented at the original bail hearing on August 19, 2008.

[24] He also swears that he was not in Whitehorse on November 14, 2007, and has an alibi. He believes he was with his spouse in Whitehorse from November 24 to 28, 2007.

[25] He swears that his relationship is now over and they have gone their separate ways.

ANALYSIS

[26] The standard of review in an application for a bail review in this jurisdiction is that the court exercises an independent discretion, with due regard for the original order. Fresh evidence can be considered. See *R. v. Taylor*, 2004 YKSC 16, which follows *R. v. Carrier* (1979), 51 C.C.C. (2d) 307 (Man.C.A.).

THE SECONDARY GROUNDS

[27] Under s. 515(10)(b) of the *Code*, the court must be satisfied that there is a “substantial likelihood” that if released from custody, Mr. Grunerud will commit a criminal offence and that his detention is necessary for the protection and safety of the complainant and their child.

[28] The thrust of the submission of Mr. Grunerud's counsel is that it is the relationship with his common-law spouse that is the problem, and if that relationship no longer exists there can be no concern under this ground.

[29] I am not satisfied that Mr. Grunerud's statement that the relationship is over has any significance. Despite several court orders, which in effect terminated his relationship by no-contact orders, Mr. Grunerud has followed his inclination and ability to resume that relationship at will. The best evidence as to the substantial likelihood of Mr. Grunerud committing another assault is his past propensity to do just that in the face of court orders to the contrary.

[30] In addition, I am prepared to take judicial notice of the fact that some domestic relationships defy common sense and spouses do return to an abusive relationship on the expectation or hope that the abuse will end because they love their partner. Here, it seems to be the case that the abuse is alcohol-related and the absence of alcohol does offer some reprieve from the abuse. However, there is no evidence that Mr. Grunerud has received any treatment for his alcohol problem, which can only be described as severe.

[31] Finally, I would be remiss if I did not mention the plight of the child who has witnessed these events. That child's protection and safety is paramount. That child has no choice but to witness the abuse and can face severe emotional and psychological consequences.

[32] While one must always bear in mind that these are allegations with respect to the sixteen counts before the Court, Mr. Grunerud has pled guilty to the assault of December 29, 2006, for which he has not been sentenced. Indeed, it is his release following this

plea which has led to the present allegations. The RCMP have also confirmed the physical evidence of his assaultive behaviour. I conclude that his detention is justified for the protection of his common-law spouse and child.

THE TERTIARY GROUNDS

[33] The Crown submits that Mr. Grunerud's detention is also justified under s.515(10)(c) of the *Criminal Code* "in order to maintain confidence in the administration of justice" considering all the circumstances including:

- (1) the apparent strength of the prosecution's case;
- (2) the gravity of the offence;
- (3) the circumstances surrounding the commission of the offence; and
- (4) the potential for a lengthy term of imprisonment.

[34] The test for this ground is whether a reasonable member of the community would conclude that a denial of bail is necessary to maintain confidence in the administration of justice. See *R. v. Hall*, 2002 SCC 64.

[35] There has been a debate about whether the tertiary ground is necessary at all, as the facts would usually apply to the primary and secondary grounds. However, McLachlin C.J. stated at para. 31 of *Hall*, that:

I conclude that a provision that allows bail to be denied on the basis that the accused's detention is required to maintain confidence in the administration of justice is neither superfluous nor unjustified. It serves a very real need to permit a bail judge to detain an accused pending trial for the purpose of maintaining the public's confidence if the circumstances of the case so warrant. Without public confidence, the bail system and the justice system generally stand compromised. While the circumstances in which recourse to this ground for bail denial may not arise frequently, when they do it is essential that a means of denying bail be available.

[36] McLachlin C.J. added at para. 41:

The judge must, moreover, be satisfied that detention is necessary not just to any goal, but to maintain confidence in the administration of justice. (emphasis already added)

[37] The circumstances of this case require the detention of Mr. Grunerud to maintain confidence of the community in the administration of justice. The reasons are obvious:

1. the Crown has an apparently strong case having independently confirmed the personal injuries and damage to property that is alleged;
2. the offences are serious on an individual basis, and overwhelmingly grave given his recent assault conviction, and the ultimate risk of personal and psychological injury to this mother and child;
3. the alleged offences were committed using a knife, sledgehammer and truck as weapons contributing to the danger for the mother and child;
4. there is potential for a lengthy term of imprisonment even considering the almost 12 months of pre-trial custody.

[38] The most significant circumstance is that Mr. Grunerud's alleged acts have all occurred in the face of court orders attempting to protect the mother and child who are the victims of these actions. Mr. Grunerud has demonstrated a blatant and dangerous disregard of court orders and the safety of others. It would be folly to give him another chance in the light of his past behaviour and the community would justifiably lose confidence in the administration of justice.

[39] Mr. Grunerud's application for bail is dismissed.