

# SUPREME COURT OF YUKON

Citation: *R. v. Magill*, 2012 YKSC 79

Date: 20120926  
Docket: S.C. No. 12-00450A  
12-00451  
Registry: Whitehorse

BETWEEN:

**HER MAJESTY THE QUEEN**

AND:

**DAVID SID MAGILL**

**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*.**

Before: Mr. Justice S. Goudge

Appearances:

Ludovic Gouaillier  
Jennifer Cunningham

Counsel for the Crown  
Counsel for the Defence

## **REASONS FOR JUDGMENT DELIVERED FROM THE BENCH**

[1] GOUDGE J. (Oral): The accused, David Magill, has been detained for 71 days pursuant to an order based on the secondary ground, namely a substantial likelihood that the accused, being in a small community, would engage in collusion with potential witnesses, thereby interfering with the administration of justice.

[2] In my view, the release plan now put forward constitutes a significant change in the circumstances presented to the Justice of the Peace. The accused will be residing with his father some 400 kilometres from the small community where his presence

caused the Justice of the Peace concern. This significantly reduces any risk of future collusion.

[3] Together with the sureties now proposed, the release plan put forward casts a different light on his release. When coupled with the presumption of innocence, the Crown's acknowledgement that the accused may not have been the instigator of the past incident of collusion alleged by the Crown, that the Crown's case could not be described as overwhelming and that the accused has, essentially, no criminal record, I conclude that the release order sought shall now be granted.

[4] The essential terms, from my perspective, must include:

1. Continuing residence with his father in Marsh Lake.;
2. Staying away from Ross River;
3. The sureties as proposed;

[5] Now, there is a question for me, Ms. Cunningham, because several of the sureties proposed are conditional upon him being permitted to go to Ross River which, from my perspective, he ought not to be. So I do not know whether that takes them out of the sureties game.

[6] MS. CUNNINGHAM: I believe they can still be sureties. I just had them in place in case he was in Ross River, but they can still be sureties for him.

[7] THE COURT: Well, are they willing --

[8] MS. CUNNINGHAM: Yes, they are willing.

[9] THE COURT: I mean that is the question. If he is not in Ross River, they are going to have difficulty supervising him.

[10] MS. CUNNINGHAM: That's correct.

[11] THE COURT: Did you explain that to him?

[12] MS. CUNNINGHAM: Yes. He could also have the two Whitehorse as the combination.

[13] THE COURT: Yes, certainly the two Whitehorse are -- and it is going to be better. I am going to leave it to you and the Crown to see if you can work out any further details. There is the sureties. There is the no contact. For me, the most important thing there, Mr. Gouaillier, is contact with witnesses, okay? I do not know how broad the order was at first instance. It may have gone beyond that, but that is, for me, the main focus, and I would like you to talk about that level of detail. So talk about the sureties, talk about the witness prohibition, and if work and counselling are to be part of the order I am prepared to include them as well. Again, I leave that up to you. So I am going to arise for five minutes and let you talk about those four things: the detail on the sureties, the prohibition on contact, anything you want about work, and counselling.

[14] MS. CUNNINGHAM: Your Honour, just before I forget, I am going to ask for a publication ban on the proceedings here. I forgot to do that at the very beginning and I just wanted to ask for that before I forget again.

[15] THE COURT: Sure.

[DISCUSSION RE SURETIES AND RELEASE ORDER DETAILS]

[DISCUSSION RE PUBLICATION BAN]

(PROCEEDINGS STOOD DOWN)

(PROCEEDINGS RECALLED)

[PUBLICATION BAN GRANTED]

[SUBMISSIONS BY MR. GOUAILLIER]

[16] THE COURT: Let me just see where we are at globally, Mr. Gouaillier. Are you together on the conditions that should attach to the release order except for this detail about witness prohibition?

[17] MS. CUNNINGHAM: Correct. Yes.

[18] MR. GOUAILLIER: Yes.

[19] THE COURT: So I can leave it to you to settle the other conditions that should go into the release order apart from the ones that I began with, that is, residing with the father in Marsh Lake, staying away from Ross River, the sureties, I have settled; all the sureties you proposed will be sureties, even the ones residing in Ross River. Wording and counselling I will leave to you.

[DISCUSSION RE CONSUMPTION OF ALCOHOL CLAUSE]

[20] THE COURT: Non-consumption of alcohol is a condition in the order.

[21] All we are fussing about is who is on the list of people that, Mr. Magill, you are not permitted to have any contact with. Okay. Your suggestion, Mr. Gouaillier is, one person comes off the list that was on the Justice of the Peace's order; is that right?

[22] MR. GOUAILLIER: That is right, Jenny Caesar.

[23] THE COURT: And the others stay on.

[24] MR. GOUAILLIER: The others stay on --

[25] THE COURT: Subject to permission either from the Court or from the bail supervisor.

[DISCUSSION RE SURETIES]

[26] THE COURT: We have now settled all the terms of the release order.

[27] MR. GOUAILLIER: I am sorry, the only thing I was going to add is, again, the common practice is, in addition to a not consume alcohol, the practice is to seek and not attend bars and taverns and so on.

[28] THE COURT: I am fine with that. I am going to do that, Ms. Cunningham.

[DISCUSSION RE NO-CONTACT ORDER]

[29] THE COURT: I think if we just say "No contact" he understands, and Ms. Cunningham will reinforce that means any means of contact, and in today's world

that is a multiplicity of ways. It is simpler than to start to specify, because otherwise you get all balled up in new technology. Okay?

[30] MR. GOUAILLIER: There was a condition not to attend Ross River, but I'm not sure if you made the residence, when we had our discussion prior to breaking --

[31] THE COURT: With the father in Marsh Lake, that is what I said.

[32] MR. GOUAILLIER: And to change the prior residence without permission.

[33] THE COURT: Okay.

[34] MR. GOUAILLIER: Thank you.

[35] THE COURT: Thank you both.

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GOUDGE J.