

Citation: *R. v. Rutley*, 2012 YKTC 32

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Docket: 10-11451

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10-11453

10-11047

11-11010

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11-11015

Registry: Dawson City

Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Worship Justice of the Peace Morrison-Harvey

REGINA

v.

DARREN TROY RUTLEY

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*.

Appearances:

Michael Preston
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] MORRISON-HARVEY J.P.T.C. (Oral): Mr. Rutley is before the Court for a judicial interim release hearing. Mr. Rutley is in a reverse onus show cause, which means Mr. Rutley is required to show cause why he should be released. It is not the Crown's application to show cause why he should be detained.

[2] Mr. Rutley comes before the Court with a release plan with a surety in Dawson City who is willing to provide a residency for Mr. Rutley. There are a number of things

that concern me with regard to any release plan that Mr. Rutley may have put forward before the Court.

[3] Firstly, I am going to speak to his criminal record. Although Mr. Rutley's criminal record is somewhat dated, there are a number of related convictions with regard to the current charges before the Court. He has two assault convictions, one assault causing bodily harm, a fail to appear, a fail to comply with a recognizance, and a fail to comply with a probation order.

[4] There are some concerns with regard to the nature of the encounters that Mr. Rutley has recently had with the courts. On the 1st day of March, in Dawson City, Mr. Rutley had an impaired driving charge. There is an impaired driving conviction on his record from January of 2009 as well. Mr. Rutley was released on those matters and given a promise to appear.

[5] On the 9th day of July, Mr. Rutley comes to the attention of the RCMP again as a result of a call, the allegation being that Mr. Rutley was passed out intoxicated in the middle of the street. Not the most serious of events, but while the RCMP were trying to assist Mr. Rutley he became very uncooperative and belligerent. He was then arrested and there were a number of threats uttered to the police officers. Not to minimize the nature of those charges, but it is often the case for individuals who are very intoxicated to say things that they would not necessarily say when they are sober, but that is not the end of it.

[6] Again, Mr. Rutley comes to the attention of the RCMP on the 21st of July, observed in the El Dorado where there is the allegation that he was failing to comply

with conditions of release by failing to abstain from alcohol. Again, a serious matter, but not the most serious of offences that come before the Court.

[7] Of greatest concern are the offences that come before the Court on August 2nd. Mr. Rutley had an impaired driving charge, was released on a promise to appear, came to the attention of the police again, was released on process, did not comply with that process, and comes to their attention again on the 2nd of August. The allegations of those charges are very serious.

[8] There is an indication that perhaps Mr. Rutley was intoxicated earlier in the evening; however, the RCMP were not able to speak to Mr. Rutley until a number of hours later and, by counsel's submission, Mr. Rutley was not intoxicated at the time. I am very cognizant of the fact that these are simply allegations at the time and I take into account counsel's comments on that, that there is certainly a different version of events from Mr. Rutley's perspective, and those will be triable issues. But to be in someone else's home in the wee hours of the morning, to have the response of the allegations that are before the Court to that extreme, to that extent, and, while apparently not under the influence of alcohol, are very serious concerns, in my view.

[9] Mr. Rutley has proposed his release basically with conditions that would be standard conditions on any release in terms of the charges before the Court, the difference being that he has suggested a surety. Mr. Rutley is not a young man with a limited criminal record who has provided a surety that can provide constant supervision and that he would abide by the rules or conditions of his release. I am not satisfied that

the release plan that has been put before me is enough to address the secondary grounds that the Crown has raised.

[10] I am not detaining Mr. Rutley on his criminal record, but he is being detained on the secondary grounds.

MORRISON-HARVEY J.P.T.C.