

Citation: *R. v. Silas*, 2011 YKTC 22

Date: 20110420  
Docket: 10-00617A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Chief Judge Cozens

REGINA

v.

JOHN KYLE SILAS

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

Appearances:

Terri Nguyen

Nils Clarke

Appearing for the Crown

Appearing for the Defence

**REASONS FOR JUDGMENT**

[1] COZENS C.J.T.C. (Oral): John Silas is before the Court for show cause. He has been remanded in custody since November 20, 2010, with respect to, firstly, an allegation of a very serious aggravated assault on Mr. Loren Jules who was in a vehicle with Mr. Silas and allegedly was the victim of this unprovoked assault with a broken cider bottle that caused numerous wounds, requiring medical treatment to Mr. Jules, including a very deep, significant wound to his neck. Fortunately for Mr. Jules, the wound that he received, however, and from whomever he received it, did not strike a carotid artery or jugular vein, and cause him to suffer more injury or perhaps death, had

it done so. Secondly, there were breach charges that consumed part of the time that he has been in remand, perhaps up to 90 days of it, since November the 10th.

[2] The matter was set for trial last week, but the Crown brought an adjournment application that was granted on the basis of DNA evidence that will not be available until the end of July. Though the Crown in Whitehorse and the RCMP here made some requests, several requests, it appears that the delay was attributable to some problems with the lab. Ultimately, while not through the inaction of anyone here in Whitehorse, necessarily, there is a Crown delay that has necessitated an adjournment of this three-day trial to a date that, at the earliest, could be August 23rd to 25th or in September.

[3] This is Mr. Silas's first show cause hearing. There had been a bail assessment report prepared before that looked at the YARC, but not only was Mr. Silas denied by the Yukon Adult Resource Centre due to past history there, the recommendation of the Bail Supervisor was that, even had he been accepted to the YARC, his past violent history does not provide any assurances that Mr. Silas would be able to maintain sobriety or remain out of trouble with the law, and the writer did not support his release at that point.

[4] His criminal record is lengthy. It includes convictions; two assault convictions as a youth, I believe about seven assaults, assault with a weapon, assault bodily harm convictions as an adult, the two most recent of which appear to have arisen in Pelly Crossing, for which he was sentenced on January 12, 2010 on a s. 267(a) of four months time served, and placed on probation for a year, and on June 22nd of 2010, assault simpliciter for which he received, in conjunction with a s. 279(2) offence, seven months jail and one year of probation. Mr. Silas had been released from jail

approximately a week prior to the date which these allegations arise from. There are assault convictions in 2009, 2007, 2006, 2003 and numerous charges for failing to comply with court orders.

[5] The plan put before the Court is for Mr. Silas to be released to reside with his mother in Pelly Crossing in her residence, and work two weeks in, two weeks out, as a driller's helper, commencing May 15, 2011.

[6] MR. CLARKE: Your Honour, sorry, just a brief clarification, six weeks, six weeks in.

[7] THE COURT: Oh, sorry. Six weeks in?

[8] MR. CLARKE: Yes, six weeks in.

[9] THE COURT: Sorry, I misheard that, six weeks in and two weeks out. Thank you. The job is intended to last until approximately the end of October, which would mean until the time that the trial is likely to proceed in this matter, barring any further adjournment applications.

[10] Mr. Silas is a First Nations individual with community contacts, who, when sober, presents in one manner, but when under the influence of alcohol has a history of violent behaviour, and I am not sure whether it is alcohol-related or not, but a history of not complying with court orders.

[11] The primary grounds are not of concern; the secondary and tertiary grounds are more of concern. Crown has indicated its position that if convicted of the aggravated assault, Crown would be seeking a penitentiary sentence, in addition to the time already served in custody, regardless of whether the trial proceeds in August or September.

There is no question the allegation is very serious, and no question that the jeopardy Mr. Silas faces is extremely serious should he be convicted of this offence, and with his record, I can appreciate and understand the Crown's submission as to the length of the period of incarceration they would be seeking.

[12] There is no question that there is a secondary ground concern, and there is no question that this is one of those cases where, based on the history and the allegation, that the tertiary grounds come into play. The question is whether the plan of release is such that that concern can be brought down to where his release is justifiable in law.

[13] I am satisfied, barely, that Mr. Silas can be released, but it will be a release plan that is founded on this employment, and if this employment does not materialize, this release plan will fall apart. So this employment needs to materialize as indicated, and be maintained as indicated. I am not satisfied that this is a case where he could be released, and if the employment falls through, well, he can try and get another job, and there would be release. This is as close to not being released as you can possibly get.

[14] I keep in mind the principles related to detention, release, incarceration of First Nations individuals, and the avoidance of incarcerations of any individuals if there are other alternatives. This is potentially a viable alternative if it materializes, and if Mr. Silas does what he is expected to do, and if the employment materializes. If it does not materialize, or if something happens, well, Mr. Silas would find himself, even if it is not necessarily through an intent or choice of his own, that he would likely be brought into custody and a new plan would have to be drawn up, and then presented to the Court.

[15] The release, in my opinion, based on work, cannot take place until the time that he would be going to camp. I am not prepared to release him today. So you will be

released; the 15th is a Sunday, and the 13th is a Friday. It would seem to me that being released on the 13th day of May would allow you time to get any materials you need, get there, and get out to work. I will put on the record that should information come that he will need to be out, for example, it says on or about the 15th, if employment is going to start on the 13th, I am prepared to re-open the issue of the date of release - I will put that on the record - so he can be released on time, because I want Mr. Silas out at camp as soon as possible and with as little of a gap in between. I am going to put, because there is some uncertainty, it could be later than the 15th, I do not want it to be much later, and I am going to put a "by no later than" date to commence employment, and if there is going to be an issue there, that matter is going to have to be brought back before me. You will be able to make it here for the 13th of May?

[16] CAROLINE SILAS: Yes, I will be.

[17] THE COURT: Okay. He will be released to his mother, and how do I spell your full name?

[18] CAROLINE SILAS: Caroline.

[19] THE COURT: Is it with a K or a C?

[20] CAROLINE SILAS: C. C-a-r-o-l-i-n-e.

[21] THE COURT: Okay. Caroline Silas, on the 13th day of May 2011.

1. You are to keep the peace and be of good behaviour; and appear before the Court when required to do so;
2. You are to report to a Bail Supervisor immediately upon your release from custody and thereafter when and in the manner directed by the Bail

Supervisor;

3. You are to remain within the Yukon Territory unless you have the prior written permission of the Bail Supervisor or permission of the Court;
4. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
5. You are to not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
6. You are to have no contact directly or indirectly or communication in any way with Loren Jules;
7. You are to maintain employment with Superior Diamond Drilling Incorporated under the supervision of David E. McLellan with such employment starting no later than May 20, 2011. This employment is to be at a dry camp and on a work schedule of approximately six weeks in and two weeks out.

If there are any changes to the schedule that are going to be noted, the Court needs to deal with it. I am going to leave it with the Court; I am going to leave it more restrictive.

8. At all times when not at this dry camp in the employment of Superior Diamond Drilling Incorporated or travelling directly to or from the Mayo airstrip in relation to this employment, you are to remain in your place of residence except with the prior written permission of your Supervisor;
9. At all times when you are leaving Pelly Crossing to go to your employment, and returning to Pelly Crossing from your place of

employment, you are to advise the RCMP at the time of departure and at the time of return in Pelly Crossing;

10. You are to provide your Bail Supervisor with a copy of your work schedule, and notify the Bail Supervisor in advance of any change of that work schedule;
11. When in Pelly Crossing you are to contact the Pelly Crossing RCMP detachment daily; this contact can be by telephone;
12. You are to reside at the residence of your mother, Caroline Silas, and not change that residence.

If there is going to be a need to change residence, it can come back before the Court.

13. You are not to be in possession of any firearms, knife, or other weapon or ammunition or explosive substance;

obviously, as a driller's helper, except for purposes directly related to your employment.

Okay.

[22] The residence is House 31, Pelly Crossing; that can be added.

[23] Those were all of the terms I was considering placing on the bail. Now, the question I have, and, Madam Clerk, did you have a question first or not?

[24] THE CLERK: I'll listen then [indiscernible].

[25] MR. CLARKE: The one -- just before I forget, you would require a time of release on May the 13th, at like 8:00 or 9:00 in the morning or 10:00 in the morning or?

[26] THE COURT: What time can you be there to pick him up in the morning?

[27] CAROLINE SILAS: On Sunday?

[28] THE COURT: No, it is Friday.

[29] MR. CLARKE: On Friday.

[30] THE COURT: He will be released Friday and work is intended to start about Sunday, and he will have to get to Mayo for that.

[31] CAROLINE SILAS: Okay. If he could be -- that will take me about four hours from Pelly, driving.

[32] THE COURT: So you will leave in the morning.

[33] CAROLINE SILAS: What time is he released?

[34] THE COURT: That is what I am figuring out. I do not want to put a restrictive time on, because I do not know how administratively it is going to work in there and I am not going to start putting them on conditions. At some time after 8:00 a.m., but it is going to be into your care, so if for some reason you end up in Thursday night, you can pick him up at 8:00 in the morning or thereabouts, whenever they are administratively able to release him. Actually, I recall that sometimes releases took place as early as 7:00. So I am going to say after 7:00 a.m., but it has to be to you, so nothing is going to be confused there.

[35] Mr. Silas does not have a driver's licence, does he?

[36] MR. CLARKE: No.

[37] THE COURT: So how would he be getting to Mayo airstrip?

[38] MR. CLARKE: He anticipated his mother.

[39] THE COURT: All right. Are you going to be driving him to the Mayo airstrip?

[40] CAROLINE SILAS: (No audible response).

[41] THE COURT:

14. You are to travel from Pelly Crossing to the Mayo airstrip for the purposes of employment, in the company of your mother, Caroline Silas, or such other person as may be approved in writing in advance by your Bail Supervisor.

Okay. In case something arises.

[42] Now, I am looking at s. 515 here, and my read of s. 515 is he can be released on an undertaking, a recognizance without sureties and non-cash deposit; a recognizance with sureties, without deposit; with the consent of the prosecutor, into a recognizance, without sureties, in such amount and with conditions as the justice directs and on his depositing such sum of money. I am not certain that there is, and I researched this yesterday, and I am willing to be enlightened, where is it that there is jurisdiction to have cash bail and a surety. I mean the plain reading does not seem to contemplate that, and as I read this section, it does not seem to contemplate that, and it does not seem to contemplate "or any

other such combination thereof." Because he is ordinarily a resident in this territory, because if he is not ordinarily a resident, he can enter into a recognizance with or without sureties in amount as directs and upon depositing money. So it only seems to contemplate that combination if he lives outside of the Yukon ordinarily. So if my interpretation is correct, it is either cash bail or it is a surety and non-cash.

[43] MR. CLARKE: And with the cash, the prosecutor would have to consent?

[44] THE COURT: Well, it is kind of interesting; is it not? So the proposal is \$700 cash, but we also have, as I understand, Ms. Silas, you are prepared to be a surety for John, and you are prepared to put up a non-cash deposit; in other words, a surety, and put up that risk, a certain amount of money that if he breaches, and is convicted, you could end up finding yourself in a position where the Crown could seek to have that money forfeited. So we call it non-cash. It is sort of like bail, except you do not actually put the cash up. You are prepared to do that?

[45] CAROLINE SILAS: Yes.

[46] THE COURT: Which means I would throw it back to Ms. Nguyen, again, assuming it is one or the other, which you would prefer.

[47] MS. NGUYEN: This is rather a difficult question to answer since he's breached in his surety's care before, and --

[48] THE COURT: I mean I do not have all of the details of that. The difference, cash bail, he stands to lose \$700 if he breaches and if there is estreatment.

non-cash, his mother stands to lose it, and it puts her in a situation where if she is aware of any breaches, she has something to lose there, and would probably have more incentive to report them, or render as a surety. Do you understand what that means, that if you are concerned that he is not complying, you can get a hold of the Court Registry and say, "I do not want to be a surety anymore," at which point in time he would be arrested, taken into custody, and then there would be a new hearing.

[49] MS. NGUYEN: I would suggest, sir, that, not entering into the question that --

[50] THE COURT: Right.

[51] MS. NGUYEN: -- you posed at this point, I'd rather have a better look at that. I would prefer that it be a more significant no deposit from surety; \$1,000 just doesn't seem to be enough either. I would suggest -- he has been released on recognizances in the past. So the amount, even though it's not cash, ought to be somewhat more significant than \$1,000.

[52] THE COURT: Well, my thought had been that if it was going to be non-cash, it would be a \$1,500 non-cash deposit. Are you prepared to stand at risk of losing \$1,500 as a surety? I mean, I guess that is the point as a surety, a surety stands out there and says, "I am going to believe he is going to comply with these conditions, and I am prepared to put at risk \$1,500." It is not uncommon for sureties to render when they start to have concerns, he is not listening, he is not doing what he is supposed to do, and sureties phone, and they render, and when they render, they are off the hook for the \$1,500, but that puts an obligation on you to do that, which you are

here, I mean on the one hand, supporting his release plans, saying it will work, but I guess the question is, how far do you want that support to go?

[53] CAROLINE SILAS: Well, my real interest is that I really want him to go to work.

[54] THE COURT: Well, yes.

[55] CAROLINE SILAS: And I'm very strict in my house, and I don't want him drinking in there and I have a tendency to keep the locals away from my place too.

[56] THE COURT: Yes, and actually, on that note, I meant to include in the residency, "and abide by the rules of the residence." So in the residency clause that will be involved, you have to do what you are told in the house. But my question is, my understanding, from what is happening here today, is that you believe that if he has this work, that he can stay in your house, not drink, and stay out of trouble between now and the time of trial, right? You believe that. The question is, are you prepared to be a surety for that without any cash deposit?

[57] CAROLINE SILAS: Yes.

[58] THE COURT: Yes, and the amount that I am suggesting would be appropriate would be \$1,500 that you stand to lose, potentially, should he breach, should he be convicted of the breach, and should the Crown try to recover that money in a court application, and be successful in that application. Right. I mean, that is it, there are steps that need to be gone through, and so are you prepared to stand as a surety on the basis of a \$1,500 --

[59] CAROLINE SILAS: Well, I do not believe that he will [indiscernible] on the release, and do what he has to do.

[60] THE COURT: You are prepared to contact the Court Registry --

[61] CAROLINE SILAS: Yes.

[62] THE COURT: -- and say, "I can't be a surety anymore" if you have concerns that he is not following?

[63] CAROLINE SILAS: Yes, I will.

[64] THE COURT: All right, then. It will be \$1,500 non-cash surety, which means you will have to sign the paperwork and you will be provided a copy as well.

[65] Mr. Silas, do you understand all of these terms?

[66] THE ACCUSED: Yes, I do. Yes, I understand.

[67] THE COURT: You understand that your mom is putting stuff up at risk here?

[68] THE ACCUSED: Yes.

[69] THE COURT: All right. It is going to be a few more weeks in custody until then, because that is the way it needs to be. Okay.