

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Kobylanski*, 2018 NSSC 281

Date: 20180924

Docket: Halifax, Nova Scotia, CRH. No. 451703

Registry: Halifax

Between:

Her Majesty the Queen

v.

Michael Raymond Kobylanski

DECISION

APPLICATION TO ADJOURN TRIAL DATES

Restriction on Publication: s486 and s. 517 cc

Judge: The Honourable Justice Christa M. Brothers

Heard: September 24, 2018 in Halifax, Nova Scotia

Oral Decision: September 24, 2018

Written Decision: November 5, 2018

Counsel: Sylvia Domaradzki and Alex Keaveny, Crown Counsel
Michael Raymond Kobylanski, Self-Represented

By the Court:

[1] Mr. Kobylanski brings this motion to adjourn his trial which is scheduled to begin before judge and jury on October 15, 2018 and run until November 1, 2018.

The trial involves a four-count Indictment, which reads:

Michael Raymond Kobylanski, stands charged that he between the 1st day of December, 2014 and the 23rd day of June, 2015, at or near Halifax, in the Province of Nova Scotia, did:

1. unlawfully utter a threat to J.C. to cause bodily harm or death to the said J.C., contrary to Section 264.1(1)(a) of the *Criminal Code*;
2. AND FURTHER that he at the same time and place aforesaid, did sexually assault J.C., contrary to Section 271 of the *Criminal Code*.
3. AND FURTHER that he at the same time and place aforesaid, did without lawful authority confine J.C., contrary to Section 279(2) of the *Criminal Code*;
4. AND FURTHER that he at the same time and place aforesaid, in committing a sexual assault on J.C., threatened to use a weapon or an imitation of a weapon, to wit, a hammer, contrary to Section 272(1)(a) of the *Criminal Code*.

[2] I have reviewed the materials filed by Mr. Kobylanski, received on September 21, 2018. This motion to adjourn was preceded by a motion by Mr. Kobylanski to remove his lawyer, Eugene Tan, and a motion by Mr. Tan to withdraw as counsel of record. These motions were granted.

Mr. Kobylanski's Position

[3] Mr. Kobylanski has articulated several reasons for seeking the adjournment of his trial and states that his appeal from a conviction for assault must take place before his retrial on the remaining four-count Indictment. Mr. Kobylanski has raised several arguments that will not be reiterated in this decision, but I have both heard from him and reviewed his materials.

[4] In summary, Mr. Kobylanski seeks an adjournment of his three-week trial by judge and jury in order to allow him time to find new counsel to represent him, as he contends that he is not capable of self-representation at a jury trial. In that regard, I refer to his submissions in court, where he articulated that he does not have the ability to provide full answer and defence, nor to be provided a fair and impartial trial, if he is self-represented. Mr. Kobylanski also mentioned that the consequences here, with regard to the four-count Indictment, are far too severe for someone who was limited to nothing more than some reading and comprehension of law books.

[5] Mr. Kobylanski argued that he would require years of education to be in a position to conduct a jury trial. He further argued that just because he may be able to write a brief does not mean he is able to present his case in a three-week trial "before 12 people."

Crown's Position

[6] Crown counsel received notice of this motion to adjourn on the very morning of the court appearance. Crown counsel did not seek more time to present arguments, but made submissions outlining the Crown's opposition to this adjournment request.

[7] Crown counsel reviewed what they contend is a history of Mr. Kobylanski discharging his lawyers, including Mr. Kidston, Mr. Hughes, and now Mr. Tan. I note that Mr. Kidston was removed in or around June 2017, with a trial to begin in September 2017. Mr. Hughes was removed during a bail hearing.

[8] The Crown raises Mr. Kobylanski's motivation for seeking this adjournment and refers to what the Crown characterizes as a pattern of conduct, arguing that Mr. Kobylanski cannot continue to obtain adjournments simply by firing counsel.

Analysis

[9] Crown counsel's submissions do weigh heavily in my consideration and my concern for the emerging pattern of releasing or discharging counsel followed by an adjournment request.

[10] Crown counsel pointed to the decision of Farrar, J.A. , in relation to Mr. Kobylanski's failed motion to appoint counsel in *R. v. Kobylanski*, 2018 NSCA 76. In denying the application, Farrar, J.A. stated:

15. This appeal is not particularly complex. It involves Mr. Kobylanski being convicted of one count of assault and being sentenced to 20 months in prison. Mr. Kobylanski had a fundamental misunderstanding of this Court's ability to impact his retrial. He was of the view that if this appeal was successful on the assault charge that would impact the Crown's ability to retry him on the other charges. With respect, the other charges are not before this Court and Mr. Kobylanski has not yet been convicted of anything with respect to those charges. This Court has no ability to stay or otherwise address them.

[11] I have also considered Farrar, J.A.'s statements about Mr. Kobylanski's ability to represent himself on appeal, including the following:

18 Mr. Kobylanski ably articulated his arguments on his enumerated grounds of appeal, including citing case law in support of his position.

19 In my view, even if Mr. Kobylanski raises additional grounds of appeal before me, his written materials satisfy me that he is quite capable of presenting argument on any additional ground of appeal.

20 I am satisfied that Mr. Kobylanski has the ability to present his appeal without the assistance of counsel. His submissions to Legal Aid, his affidavit in support of this motion and his submissions to this Court shows an ability to understand the issues and to effectively communicate them to the Court.

[12] In commenting on Mr. Kobylanski's ability to self-represent, Farrar, J.A. was referring to Mr. Kobylanski's ability to present an appeal of a conviction concerning one count of common assault. This is vastly different from a three-week jury trial on a four-count Indictment. I have heard that Mr. Kobylanski is

intending to seek legal counsel and, as he stated in court, he wishes to be represented by counsel at any trial.

[13] While Crown counsel raised the possibility that court-appointed counsel may be available to conduct the cross-examination of the complainant, this is not the only aspect of the upcoming trial which poses potential difficulties with regard to the conduct of the trial by Mr. Kobylanski if he is forced to self-represent. There are still several Crown witnesses, as noted by Ms. Domaradzki; there is the issue of openings and closings before the jury, the selection of the jury, challenges for cause based on publicity, and the possibility that Mr. Kobylanski may choose to testify. Additionally, there are issues concerning rules of evidence and procedure which I accept would be difficult for anyone who is self-represented in these circumstances, and I accept that they could present difficulty for Mr. Kobylanski.

Conclusion

[14] I am giving Mr. Kobylanski an opportunity to retain counsel to assist him in making full answer and defence at his trial.

[15] I am satisfied that I should exercise my discretion to grant this adjournment to allow Mr. Kobylanski time to locate counsel. However, I want to be very clear that I do not make this decision lightly. If Mr. Kobylanski removes counsel again

before the next scheduled trial dates, he may very well be in a position where he will have to self-represent. Adjournments are not limitless commodities.

Brothers, J.