
Get Out of Jail Free Card?

By Brian Dale Giesbrecht

Recently, a jury's acquittal of a white man for the killing of an Indigenous man is highlighting some of the deepest divisions in this country.

One of those divisions is between people living on reserves, and the farmers and townspeople living in the vicinity of those reserves. From the reports I have read, the Red Pheasant First Nation, where Colten Boushie lived with his mother, Debbie Baptiste and her family, sounds like most of the reserves on the prairies that I am familiar with; communities of chronic unemployment, where welfare dependency and alcohol abuse have become a way of life.

The residents of these communities are often held hostage by corrupt administrations, and can only watch as their young people descend into a destructive lifestyle. Unfortunately, these young people have little to do except party, with liquor and drugs as the constant. Heavy drinking and drug use often leads to criminal activity that erupts on reserve communities first, and sometimes spills over into adjoining communities, in the form of theft and break and enters.

Not all Indigenous communities, in fact, are like this. One reserve to the southeast of my rural home is noted for its progressive and peaceful lifestyle. However, most of the First Nations communities would more closely resemble the picture painted of the Red Pheasant First Nation. One such community to the northeast of my home, is notorious for groups of mainly young people trespassing on private property, stealing, and destroying property.

Anyone attending a provincial court sitting in a town or city close to such a First Nation community will immediately notice the disproportionate number of Indigenous people charged with criminal offences. This disproportion exists not because police lay too many charges, but because so many offences are being committed by Indigenous people from these lawless places.

The majority of the farmers and townspeople living close to these dysfunctional communities, as well as many of the residents of those First Nations, feel trapped. They are afraid, not only for their property, but for the safety of their families, as some of these theft situations have involved violence.

This is what happened on Gerald Stanley's farm the day Colten Boushie died. The five people clearly entered his property intending to steal a vehicle. It was proved that these young people were not there to fix a flat tire, even though the media tries to portray it that way. The group attempted to steal a vehicle from a nearby farm, smashing the window of the vehicle with a rifle they had with them in a botched theft attempt. The rifle – damaged, but loaded and operational – was with the five when they trespassed on the Stanley property. In fact, it was found right beside the body of Boushie in the SUV he was driving.

As soon as they entered onto the property, one member of the group jumped into a truck that Stanley was fixing for one of his neighbours. He exited that truck and got onto one of Stanley's ATVs and attempted to start it. Meanwhile, Stanley's son smashed the windshield of the 2003 Ford Escape that Boushie was almost certainly driving, in an attempt to stop the brazen theft that was in progress. The driver of the Escape, promptly smashed it into a vehicle that belonged to Stanley's wife.

The situation was out of control, and was even more dangerous by the fact that the group had been drinking heavily. One of the five testified that he had consumed thirty shots of liquor that day. Colten Boushie's blood alcohol was over .3, four times the legal driving limit. It was in that alcohol-fueled, and highly volatile atmosphere that Boushie was killed. Anyone in the immediate vicinity of the Stanley farm could just as easily have been killed that day.

And only now are we discovering disturbing details about the criminal records of the members of this group.

So, an important questions we need to ask ourselves: How would any of us behave in a life and death situation like this?

It's impossible to know. But, the experts inform that in unpredictable life and death situations, our primitive brains take over. There is an adrenaline rush, and it is fight or flight. Our basic instincts kick into gear and we become solely focused on saving our own lives, and the lives of our loved ones.

We see this phenomenon in police high speed chase situations, when a police officer's life is in jeopardy. Often the officer is accused of overreacting when he forcefully subdues the offender. What is not understood is that the officer is still in a primitive response mode when this occurs, and he is not thinking rationally.

This is the mode the Stanley family was in when their peace was violently shattered that day. They found themselves in a highly unpredictable, fast-moving, and terrifying situation. Anything can happen in such circumstances – and the results are all too often tragic.

And for farmers like Gerald Stanley, it seems that break-ins and theft from residents for the Red Pheasant First Nation were not uncommon.

Violence is not always involved with the thefts, but it is not uncommon. In fact, twenty years ago another Baptiste – Colin – took part in the murders of two Saskatchewan farmers a short distance from the Stanley farm. The Court of Appeal dealt with his appeal:

[Baptiste and Caldwell] while armed, decided to steal gas from a farm residence. The co-accused, Caldwell, held the two residents of the house [Tetarenko and Kipp] at gunpoint while the respondent searched for other weapons. Before leaving the house the co-accused discharged the rifle killing Kipp. He then shot Tetarenko and the two men left the house, stole fuel, the respondent shot the farm dog, and they left together.¹

This case is well known to the farmers within the vicinity of the Red Pheasant First Nation..

What happened at the Stanley farm that day is the rural equivalent of a violent home invasion. The only real difference between a city and a rural home invasion, is that in the country, the next farm may be miles away, and the police could be hours away.

But, here's the thing:

No charges have been laid against the group of young people who carried out this farm invasion. It is clear that a whole raft of possible charges – some extremely serious – have been committed, but to date there are no charges at all. What is going on? A "get out of jail free" card for home invaders? A new, and very disturbing, racially-based charging policy?

Could it have something to do with the fact that our Prime Minister, and his Justice Minister, immediately jumped into the fray, not only criticizing the judge and jury, but baldly stating that too many Indigenous people are being taken into the criminal justice system? Even a high profile senator weighed in claiming that the jury's verdict represented a "dark day for Canada". How much influence does their irresponsible tweeting have on the administration of justice in this country? Are the Prime Minister and his Justice Minister telling the police that there are to be two distinct sets of rules, depending on one's race? Will we be able to find juries to deal with highly charged cases like this in the future as a result of these thoughtless tweets? There is such a case being heard in Winnipeg right now – the case of Tina Fontaine. Will tweets from the most powerful people in Canada pervert the course of justice in that case?

Our Prime Minister seems to be committed to adding to the legal differences between Indigenous people and the mainstream, instead of trying to dismantle this destructive, divisive system.

What about the way the media described this as a case of young people innocently going onto a farm for help with a flat tire? This is blatantly untrue. This is a case of intoxicated young criminals, armed with a loaded weapon, brazenly entering the property to steal. This happened in broad daylight. It was an "in your face" home invasion. Yet the CBC and other mainstream media insist on repeating the lie that this is a case of a young man who died while trying to get a tire fixed.

¹This appeal has been paraphrased from the Court of Appeal for Saskatchewan: <https://ca.vlex.com/vid/r-v-baptiste-c-681152273>

Our federal politicians and mainstream media are not the only ones acting irresponsibly. What about the families and community leaders on the Red Pheasant First Nation? What are they doing to control their young people, or to show a proper example? Why are they not taking responsibility, by acting responsibly themselves? Corrupt leadership makes it next to impossible for the decent families in the community to succeed, and only aggravates the inherent dysfunctionality of the reserve system. Why are the chiefs' organizations not dealing honestly with this corruption, instead of exploiting the issue to further their financial agenda?

Finally, why does the federal government continue to fund such a corrupt and broken system, while turning a blind eye to the legitimate safety concerns of law ordinary citizens, and leaving the law-abiding residents of these First Nation reserves to the mercies of their corrupt leaders?

It took an Indigenous politician to do the right thing in this unfortunate case.

Winnipeg MP Robert-Falcon Ouellette recognized the devastation that had been experienced by both the Boushie-Baptiste family and the Stanley family. He reached out to both of sides. Although he later backtracked after facing vicious criticism from strident chiefs with an agenda. But, his initial reaction was the right one.

In fact, Robert-Falcon Ouellette did what the Prime Minister should have done in the first place.

About the Author



Brian Dale Giesbrecht received his education at United College and The University of Manitoba, where he obtained his LLB in 1972. He worked with Walsh, Micay and Co., and then joined Legal Aid Manitoba in 1975 to become Senior Attorney and the first Area Director for western Manitoba in Brandon. Appointed to The Provincial Court (Family Division) in 1976, he heard child welfare cases and general family matters until he transferred to the Criminal Division in 1989. During his career he served on the National Family Court Committee, and various provincial court committees. He was an Associate Chief Judge from 1991 to 2005, and he became Acting Chief Judge in 1993. Among the notable cases he heard was the Lester Desjarlais Inquiry. His report strongly criticized the government's decision to devolve child welfare responsibilities to racially based child-care agencies. Following his retirement from the Bench in 2007, Mr. Giesbrecht has written extensively for various publications. His main theme has been the need to abolish The Indian Act and the separate systems of government that exist in Canada.