

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

-and-

ROSCO DANIELS

Respondent

Publication Ban There is an order prohibiting the broadcast or the publication of the evidence taken at the judicial interim release hearing pursuant to section 517 of the *Criminal Code*, R.S.C. 1985, c.C-46.

MEMORANDUM OF JUDGMENT

[1] This matter came before me as an application under s. 525 of the *Criminal Code*, R.S.C. 1985, c. C-46 on Monday, April 30, 2012. Ultimately, on May 4, 2012, I determined that Mr. Rosco's detention should continue on the primary ground. These are the reasons.

[2] The accused, Mr. Rosco Daniels, was arrested on January 13, 2012 on charges of aggravated assault. He has been detained since his arrest. He was provided with the opportunity to seek release on January 16, 2012, but declined to do so.

[3] The grounds upon which Mr. Daniels bases this application are set out in the Notice of Motion filed on his behalf. Among these are that he has arranged a surety and he has accommodation in Yellowknife. There is an affidavit sworn by Mr. Daniels in support of his application in which he sets out a release plan. He deposes that:

1. he is motivated to find gainful employment;
2. he has lived in Yellowknife on and off since 1992;
3. he has been in a spousal relationship for the past 18 years and he has two children who live in British Columbia (the spouse's place of residence are not specified, but I presumed it to be in British Columbia); and
4. if released, he would reside with his "sister" at "5654 Bison Street" in Yellowknife

[4] Mr. Daniels also attached a copy of his criminal record as an exhibit. There are convictions for various offences, including several resulting from non-compliance with conditions, between 1989 and 2003. There is no record of any other offence until 2011 when Mr. Daniels was convicted of possession of cannabis marihuana, impaired driving, driving while disqualified and a failure to comply.

[5] Mr. Daniels did not give testimony at the hearing on April 30, but his proposed surety, Ms. Tanya McLeod, did. She said that Mr. Daniels would live with her at her residence at Bison Apartments and she indicated that her address is actually 5456 - 52nd Street in Yellowknife, not 5654 Bison Street, as stated in Mr. Daniels' affidavit. She said that she lives there with her two children and that Mr. Daniels would have his own room there. She clarified that she is not, in fact, Mr. Daniels' sister, but that they are very close, like siblings. (No explanation was offered on Mr. Daniels' behalf as to why he deposed that Ms. McLeod is his sister). Finally, she testified that she is employed full time with the Government of the Northwest Territories.

[6] Based on the information given in her testimony, it appeared that Ms. McLeod was a responsible person with strong ties to Yellowknife and, in the circumstances, she would be a suitable surety.

[7] After reading Mr. Daniels' affidavit, hearing testimony from Ms. McLeod and

the submissions of both Crown and defence counsel, I determined that Mr. Daniels should be granted judicial interim release. His past history of convictions for non-compliance raised concerns about whether or not he would appear in court as required, as did his admission that he lived in Yellowknife “on and off” since 1992 and his seemingly strong family connections outside of the Northwest Territories. Nevertheless, it appeared these concerns could be addressed through appropriate conditions as well as a surety. The conditions imposed included a requirement that Mr. Daniels reside with Ms. McLeod at 5456 - 52nd Street in Yellowknife and that he abide by a curfew requiring him to be in that residence from 9:00 p.m. to 7:00 a.m. each day. Ms. McLeod provided an Acknowledgment of Surety in which she promised to pay \$250.00 in the event that Mr. Daniels did not comply with the conditions of bail.

[8] Following the hearing, the Deputy Clerk prepared the Recognizance. Ms. McLeod signed it. Subsequent to that, but before Mr. Daniels signed it, it came to the Court’s attention that Supreme Court civil records show that Ms. McLeod was evicted from 5456 - 52nd Street in December of 2011 (see *S-1-CV 2011 000182 and S-1-CV 2011 000183*). This would, of course, make it impossible for Mr. Daniels to comply with an important condition of bail. It also cast doubt on the Ms. McLeod’s suitability to act as a surety.

[9] At my direction, Crown and defence counsel, as well as Mr. Daniels, attended before me on the afternoon of April 30 and I indicated what information had come to my attention. A further hearing was scheduled for May 4, 2012 and I ordered that Mr. Daniels’ remand continue in the meantime. I also indicated that the matter of Ms. McLeod’s residence must be addressed.

[10] When this matter came before me on May 4, 2012, defence counsel indicated that attempts to reach Ms. McLeod were unsuccessful and she was not produced to give testimony. Thus, the issue of her residence and where, exactly, Mr. Daniels would live, was not resolved. There was no alternate surety proposed and, although defence counsel proposed that Mr. Daniels make a cash deposit, he could not show that he had a place to live if he was released.

[11] As noted above, Mr. Daniels’ past history of convictions for non-compliance, coupled with his somewhat tenuous connection to Yellowknife, raised concerns about whether or not he would attend court as required. They were calmed by evidence that Mr. Daniels had a place to live and, moreover, he would be staying

with a surety who had strong connections to both Mr. Daniels and the community. These circumstances, in turn, made it feasible for the Court to impose conditions that would ensure his attendance. Unfortunately, Mr. Daniels does not have a place to live other than with Ms. McLeod. The Court's own records of eviction proceedings taken against Ms. McLeod, however, are completely at odds with her testimony about where she lives. In the circumstances, meaningful conditions cannot be imposed and the application must be denied

K. Shaner
J.S.C.

Dated this 10th day of May 2012

Counsel for the Applicant: Glen Boyd
Counsel for the Respondent: Nikolaus Homberg

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MEMORANDUM OF JUDGMENT OF
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