

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LESLIE ROBERT FIRTH

Transcript of the Decision held before The Honourable
Justice L.A. Charbonneau, sitting in Yellowknife, in the
Northwest Territories, on the 27th day of August, 2018.

APPEARANCES:

Mr. B. Green: Counsel for the Crown
Ms. J. Cunningham: Counsel for the Accused

(Charges under s. 244.2, s.267(a), s.264.1(1)(a) of the
Criminal Code)

There is a ban on the publication , broadcast or
transmission of the evidence taken , the information given
or the representations made and the reasons for decision
until such time as the trial has concluded pursuant to
s . 517 of the *Criminal Code*

1 THE COURT: Mr. Firth faces charges
2 arising from events alleged to have happened on
3 January 9th, 2018. These charges are having
4 discharged a firearm while being reckless to the
5 life or safety of another person; using a firearm
6 in the commission of an assault against Gladys
7 Aleekuk; and uttering threats to cause death to
8 Gladys Aleekuk.

9 On January 17th, 2018, Mr. Firth had a show
10 cause hearing before a justice of the peace. At
11 the conclusion of that hearing, he was ordered
12 detained on the secondary ground. He now applies
13 for a review of his detention.

14 The Supreme Court of Canada decided in *R v*
15 *St. Cloud* that the door to a bail review like
16 this one is only open in certain situations. One
17 of those situations is when there has been a
18 material change in circumstances since the
19 original bail hearing.

20 Here, this is what the request for review is
21 based on: The Crown is not arguing that the door
22 is not open for review. The Crown concedes that
23 there have been material changes in
24 circumstances, but the Crown continues to oppose
25 release on the secondary ground. The Crown takes
26 the position that the changes in circumstances
27 are not significant, and they do not justify a

1 different conclusion on the analysis of whether
2 Mr. Firth's detention is necessary for public
3 safety reasons.

4 The Crown maintains the allegations that
5 were put forward at the January bail hearing.
6 This is what they are in summary, and at this
7 stage, of course, they are only allegations.

8 In January 2018, Mr. Firth and Ms. Aleekuk
9 had been in a relationship for just over a year.
10 On the evening in question, he was at a cabin
11 that Ms. Aleekuk owns at Airport Lake near
12 Inuvik. Ms. Aleekuk went to the cabin to check
13 on Mr. Firth. She was concerned for him because
14 there had been a news story about children dying
15 in a house fire in eastern Canada. Mr. Firth
16 lost his children in similar circumstances many
17 years ago, and Ms. Aleekuk was worried about the
18 news story triggering him.

19 When she arrived at the cabin, she found him
20 there with one of his friends, Mr. Peter Semmler.
21 They were drinking alcohol, according to her.
22 She confronted Mr. Semmler about bringing alcohol
23 to the cabin. Part of the overall context is
24 that Mr. Firth had been trying to maintain his
25 sobriety, and that was one of the reasons for him
26 being at the cabin. Mr. Firth became upset about
27 Ms. Aleekuk's intervention. He left the room and

1 came back with a rifle, loaded it, and pointed it
2 at Ms. Aleekuk.

3 He made comments about being tired and sick
4 of people interfering in his life. He pointed
5 the firearm in her direction, a few feet to the
6 side of her head, and fired. He left the room
7 and returned shortly thereafter carrying the
8 firearm on his side. He said words to the
9 effect, "You want another one? You want another
10 one?" And approached her again. She grabbed the
11 barrel of the rifle.

12 For a time, they both held on to the rifle.
13 He was again saying things along the lines of
14 being sick of people getting into his life. She
15 let go of the rifle eventually. Mr. Firth left
16 the room again, and this was when Ms. Aleekuk got
17 out of the cabin and called the police to report
18 what was happening. They told her to get in her
19 truck. After she spoke to police, which was some
20 distance away from the cabin, Mr. Firth arrived
21 by Ski-Doo. He was still carrying the rifle over
22 his shoulder. He said to her words to the
23 effect, "You're happy now? You called the cops.
24 I don't care anymore. My girls are gone. I'll
25 just wait for them." Ms. Aleekuk was still on
26 the phone with police at that point, and they
27 told her to drive away, and she did.

1 The next day, the police attended the cabin
2 with Ms. Aleekuk's consent. They found a hole in
3 one of the walls close to a chair. Mr. Firth was
4 arrested. I understand from what was said at the
5 hearing that he was in Ms. Aleekuk's company at
6 the time of his arrest. He was interviewed at
7 two different times by police officers. In the
8 first statement, he denied any wrongdoing. In
9 the second one, he initially denied any
10 wrongdoing as well, but eventually admitted that
11 he discharged the firearm.

12 His version of what happened in that second
13 statement is different from what Ms. Aleekuk said
14 in her statement in different ways. For example,
15 he told the officer that he was not drinking any
16 alcohol that night. He said he was sleeping and
17 woke up to Ms. Aleekuk striking him, and that he
18 must have "snapped," and that's why he fired.

19 In January 2018, Mr. Firth was under a
20 firearms prohibition order. That order was the
21 result of a sentence imposed on him in 2016 for
22 uttering threats.

23 Mr. Firth has a lengthy criminal record.
24 Without referring to it in detail, it includes a
25 steady stream of convictions for criminal
26 offences commencing in 1976 and continuing on
27 until his last convictions in March 2016. This

1 was for the uttering threats I just mentioned, as
2 well as a conviction for drinking and driving.
3 There are numerous convictions for breaches of
4 court orders of various kinds on this record.
5 Several breaches of probation and breaches of
6 undertakings or recognizances. The record also
7 includes numerous convictions for crimes of
8 violence. There are assaults, uttering threats,
9 assault with weapon, assault causing bodily harm,
10 assault with intent to resist arrest, careless
11 use of firearm, and the most serious conviction,
12 for sexual assault in 1997, which resulted in the
13 imposition of a sentence of four-and-a-half years
14 imprisonment. That was the only time Mr. Firth
15 received a sentence in the penitentiary range.
16 Most of the jail terms he received are counted in
17 months. Although on a few occasions, he was
18 sentenced to more than one year imprisonment
19 globally.

20 At the original bail hearing, the release
21 plan presented was that Mr. Firth would go live
22 at the cabin of his sister and her husband, which
23 is about a two-hour drive or ride outside of
24 Inuvik. By all accounts, Mr. Firth is very
25 skilled on the land, and there were numerous
26 tasks that his sister testified he would be able
27 to assist with at the cabin. His sister was the

1 proposed surety. She testified that she had no
2 concerns about his behaviour at this cabin as it
3 is a place where people engage in traditional and
4 bush activities, there's no alcohol, and people
5 are happy when they are there. The evidence
6 painted a picture of a highly-functional and
7 positive environment at that cabin. The relative
8 proximity from town would also have enabled
9 Mr. Firth to report to police regularly if
10 required.

11 The Crown did not have any concerns with a
12 surety herself, but argued that given Mr. Firth's
13 history of alcohol abuse and of violence and of
14 noncompliance with court orders, no plan could
15 alleviate the public safety concerns arising from
16 these allegations. The justice of the peace was,
17 clearly, impressed with the surety and impressed
18 with the plan, but he nonetheless concluded that
19 as good as it was, the plan could not alleviate
20 the public safety concerns arising from the
21 criminal record.

22 I turn now to the circumstances as they were
23 presented to me at the hearing of this
24 application. The release plan that is being
25 proposed now is that Mr. Firth would live in
26 Yellowknife with his friend, Elaine Briere.
27 Ms. Briere swore an affidavit in support of this

1 application, and she also testified at the
2 hearing. She answered all the questions in a
3 straightforward manner and came across to me as
4 an honest, reliable person. She and Mr. Firth
5 have known each for a long time, and were at one
6 point in a relationship. They have a son
7 together who's now 26. She has two other
8 children aged 21 and 15. Ms. Briere and
9 Mr. Firth have remained friends. They get along,
10 and they respect each other. Ms. Briere's home
11 is a nondrinking home. She has space for
12 Mr. Firth. She's never been a surety before, but
13 she is prepared to act as one now.

14 She testified she will call the police if he
15 does not comply with his conditions, she has
16 discussed the matter with her children, and
17 everyone is in agreement with Mr. Firth living
18 with them. She testified she understands this
19 matter could be pending for a long time, and that
20 her responsibilities as a surety would last until
21 the matter is over. She said she is prepared to
22 take on those responsibilities for as long as it
23 takes.

24 In his own affidavit, Mr. Firth deposes that
25 he wants to access treatment and counselling to
26 deal with his alcohol and grief issues and his
27 trauma. He deposes that he will comply with

1 conditions, that he respects Ms. Briere, and that
2 he would not want to do anything that could
3 result in her being subject to a forfeiture of
4 the recognizance. He deposes that he has work
5 lined up in Yellowknife if released, and as he
6 has been steadily employed over the years, it
7 seems realistic to think that if released, he
8 would, in fact, be able to find work in
9 Yellowknife.

10 The preliminary hearing into this matter has
11 now proceeded. There has also been a pretrial
12 conference, held the same day as the bail review,
13 where the various legal issues that are
14 anticipated to arise at trial were discussed.

15 As is usually the case, at the original bail
16 hearing, allegations were read in by the
17 prosecutor; no witnesses were called. The
18 evidence in support of the allegations was not
19 tested in any way. Now that the preliminary
20 hearing has proceeded, there is a lot more
21 information about what the Crown's case will rest
22 on and look like and some of the challenges the
23 Crown will face. And there are two main elements
24 in this respect: the evidence of Ms. Aleekuk, and
25 the evidence about Mr. Firth's statement to the
26 police, which the Crown hopes to rely on as part
27 of its case.

1 The testimony of Ms. Aleekuk at the
2 preliminary hearing was, in very significant
3 ways, different from the account of events she
4 gave in the statement she gave to police the
5 night of the events. Her evidence at the
6 preliminary hearing was that she contacted police
7 sometime after these events, saying that what she
8 said in her statement was not true. The
9 investigator did not want to take a further
10 statement from her as he believed her initial
11 account was the true one. Ultimately,
12 Ms. Aleekuk contacted a lawyer. What she told
13 the lawyer is in line with her evidence at the
14 preliminary hearing: That she was intoxicated on
15 the night in question; that she has several
16 blackouts about the evening; that she does not
17 remember what she told the officer, as she was in
18 a blackout state at the time of this statement.
19 Assuming Ms. Aleekuk maintains this version of
20 events at trial, the Crown intends to call her,
21 confront her with her statement, and attempt to
22 have the statement ruled admissible for its truth
23 under the principled exception to the
24 inadmissibility of hearsay. Ms. Aleekuk's
25 statement was video recorded, but was not taken
26 under oath. A transcript of the statement was
27 filed at the bail review hearing, so I have the

1 benefit of that.

2 A second important piece of the Crown's case
3 at trial will be Mr. Firth's second statement to
4 police. A transcript of that statement was also
5 filed at the review hearing. The voluntariness
6 of the statement will be an issue at the trial.
7 The officer who took Mr. Firth's statement
8 testified at the preliminary hearing. He was
9 questioned, among other things, about the fact
10 that he did not preserve the footage of the
11 cellblock video recordings for the period of time
12 when Mr. Firth was in custody prior to giving his
13 statement. The officer explained that there are
14 cameras running 24 hours a day, seven days a week
15 that record everything that go on in the
16 cellblock area, but those are on a cycle of time
17 after which the recording gets taped over. It is
18 possible to extract footage before the tape over
19 happens, but not after. He explained that
20 typically the footage would only be preserved if
21 there is an incident or alleged incident at the
22 cellblock. In this case, he knew of no reason to
23 preserve the recording. By the time the issue
24 was raised, the footage had already been taped
25 over as part of the usual cycle.

26 The officer was also questioned about an
27 interruption during the statement. The statement

1 was audio- and video-recorded, and the officer
2 was also recording it with the handheld recorder
3 as a backup. At one point, Mr. Firth said he
4 wanted a cigarette, and that he would talk after.
5 He and the officer left the room for that
6 cigarette break. The recording system in the
7 interview room got turned off. The officer also
8 turned off the handheld recorder. He explained
9 that he did so because he considered that to be a
10 break from the statement. He was asked about
11 what they talked about during the break, and
12 although he could not remember it verbatim, he
13 explained the conversation was about hunting,
14 boating, and activities on the land. The officer
15 said he did not think there was any conversation
16 about Ms. Aleekuk.

17 The Defence argues that the plan now being
18 presented is a strong one; that there is no
19 reason to doubt the surety's ability to do what
20 she said she would do. Mr. Firth would live in
21 Yellowknife, as opposed to being at a cabin a few
22 hours away from Inuvik. This added distance from
23 where Ms. Aleekuk lives, the Defence argues,
24 means that the potential for she and Mr. Firth to
25 have contact would be more remote. This is
26 relevant both to her safety and to potential
27 interference with the administration of justice.

1 The Defence argues that an important change
2 in circumstances is that the Crown's case is not
3 as strong as it might have appeared at the time
4 of the initial bail hearing. The Defence argues
5 that because the statement Ms. Aleekuk gave to
6 police was unsworn, the Crown will very much have
7 an uphill battle on the hearsay application. As
8 for the statement to police, Defence argues that
9 even if it is admitted, it is not altogether
10 clear what admissions were made by Mr. Firth. In
11 addition, the Defence argues that the
12 voluntariness voir dire will be an uphill battle
13 for the Crown as well given that part of the
14 exchange between the officer and Mr. Firth was
15 not recorded.

16 The Crown argues that the changes in
17 circumstances do not have any real impact on the
18 analysis on the secondary ground. The Crown
19 argues that when one reviews Ms. Aleekuk's
20 statement to police, it belies the notion that
21 she was in a blackout when she gave it. The
22 Crown takes the position that it has a reasonable
23 chance of success on the hearsay application,
24 even if Ms. Aleekuk maintains her current version
25 of events. Crown takes the position that this is
26 a classic case of a serious incident of domestic
27 violence where the complainant is recanting.

1 Ms. Aleekuk has never told police that she
2 fears Mr. Firth. Even in her statement to the
3 police, the night of these events, she said she
4 did not fear him. As I said, they were together
5 when he was arrested. But the Crown maintains
6 that there is concern for her safety and concerns
7 for interference with the administration of
8 justice.

9 As for Mr. Firth's statement, the Crown
10 argues that what he said, when read in the
11 context of the full exchange with the officer, is
12 very inculpatory, and will be of considerable
13 assistance to the Crown if the statement is ruled
14 admissible. The Crown takes the position that
15 the interruption in the recording will not be
16 fatal to its case on admissibility, particularly
17 since immediately after the cigarette break the
18 officer states that nothing about the case was
19 discussed during the break, and Mr. Firth does
20 not say anything that would indicate
21 disagreement.

22 The Crown argues, much as it did at the
23 initial hearing, that even accepting that the
24 surety is well intended and is a good surety, the
25 Court cannot have confidence that Mr. Firth will
26 comply with release conditions.

27 The right to bail is constitutionally

1 protected, closely linked to the presumption of
2 innocence and of crucial importance in our
3 justice system.

4 The Supreme Court has reaffirmed this last
5 year in the opening paragraph of its decision in
6 *R v Antic*, 2017 SCC 27 when it said:

7 The right not to be denied bail
8 without just cause is an essential
9 element of an enlightened justice
10 system. It entrenches the effect of
11 the presumption of innocence at the
12 pretrial stage of the criminal trial
13 process, and safeguards the liberty
14 of accused persons.

15 The just cause that can serve as a reason to
16 order the detention of an accused person in our
17 system is one or more of the three grounds set
18 out in the *Criminal Code*. Here, only the
19 secondary ground is engaged.

20 The secondary ground justifies detention
21 where the detention is necessary for the
22 protection or safety of the public, including any
23 victim or witness to the offence or of any person
24 under the age of 18 years, having regard to all
25 the circumstances including any substantial
26 likelihood that the accused will, if released
27 from custody, commit a criminal offence or
interfere with the administration of justice.
That's set out in Section 515(10) (b) of the *Code*.

Some key elements of this description are,

1 first, that the detention must be necessary, not
2 simply helpful or convenient; second, the mere
3 possibility that an accused may commit another
4 offence is not sufficient to justify detention.
5 The threshold is higher and is "substantial
6 likelihood"; and, third, even a substantial
7 likelihood in the commission of an offence does
8 not on its own suffice; it has to be linked to a
9 threat or a risk to the safety of the public.

10 Any decision on bail involves a risk
11 assessment analysis. No one has a crystal ball
12 and can predict with any degree of certainty
13 whether a person will or will not comply with
14 release conditions, will or will not be able to
15 abstain from consuming liquor, will or will not
16 commit further offences. Simply put, there is no
17 way of being sure either way, and that goes in
18 both directions. The Crown will never be able to
19 show in a determinative way that the accused will
20 commit a further offence and harm someone if
21 released; and an accused will never be able to
22 show in a determinative way if he or she will not
23 commit any further offence.

24 Past conduct is one of the things courts
25 look at in this effort to assess what a person's
26 future behaviour may be. This is why a person's
27 criminal record is relevant at a bail hearing.

1 Some might say that is just judging someone on
2 their past and isn't fair, but in assessing
3 future risk, one cannot ignore past conduct,
4 especially repeated past conduct. The criminal
5 record should never be the only consideration,
6 but it certainly is a consideration.

7 In this case, the criminal record is
8 particularly troubling for several reasons.
9 First, it is very lengthy and spans several
10 decades with very few gaps; Second, it contains
11 numerous crimes of violence, including some very
12 serious ones; and, third, it contains numerous
13 convictions for not complying with court orders.

14 We know that a criminal record that includes
15 a lot of breaches can be misleading. For
16 example, if a no-alcohol condition was part of
17 the release terms, the breach conviction could
18 represent simply someone having consumed alcohol,
19 and nothing else having happened, no other crime
20 having been committed. On the whole, Mr. Firth's
21 record of conviction suggests that a number of
22 substantive offences were committed while he was
23 bound by court orders.

24 In addition, after being sentenced to
25 four-and-a-half years imprisonment for sexual
26 assault and being released on parole, he violated
27 his parole conditions and was recommitted to

1 custody. He has driven motor vehicles while he
2 was prohibited. He has a strong pattern of not
3 actually complying with release terms and court
4 orders, even when the stakes are high.

5 It is argued that this release plan is
6 better than the previous one because it
7 contemplates the accused living much further away
8 from Ms. Aleekuk than was the case under the
9 original plan, and that is true. On the other
10 hand, the first plan contemplated Mr. Firth being
11 essentially at a bush camp some distance from the
12 community of Inuvik and without easy access to
13 alcohol. While it has been said that he is
14 capable of abstaining, the criminal record
15 suggests a long-lasting issue with alcohol. If
16 Mr. Firth lived in Yellowknife, even in an
17 alcohol-free home, alcohol would be readily
18 accessible to him. There are two liquor stores
19 here, several bars and licenced premises where
20 alcohol is sold. So while the plan is stronger
21 from the point of view of keeping the accused and
22 Ms. Aleekuk apart, (acknowledging that there is
23 no guarantee they would not be in contact,
24 particularly as she has said from the beginning
25 that she doesn't fear him and was with him at the
26 time of his arrest), the plan is weaker as far as
27 potential access to alcohol.

1 The seriousness of the allegations also
2 comes into play when examining the secondary
3 ground. Here we have an allegation of a firearm
4 being discharged inside a house, pointed a short
5 distance away from a person's head. This,
6 especially in the face of the criminal record
7 that includes numerous convictions for serious
8 violent crimes, including convictions for assault
9 with weapon and a conviction, albeit dated, for
10 careless use of a firearm, is of great concern.

11 It is very clear that there are triable
12 issues in this case; I certainly agree with
13 Defence on that point. The strength of the
14 Crown's case is not referred to in the
15 description of the secondary ground whereas under
16 the tertiary ground, it is spelled out as one of
17 the factors to consider in the analysis. This
18 does not mean that the strength of the Crown's
19 case is entirely irrelevant to the analysis under
20 the secondary ground. Public safety concerns
21 will naturally be greater if the Crown appears to
22 have a solid case on allegations that involve
23 very dangerous conduct or conduct where serious
24 harm was caused. But the strength of the Crown's
25 case is not as directly relevant as it is for the
26 analysis under the tertiary ground.

27 To the extent that the strength of the

1 Crown's case is relevant, it goes without saying
2 that the task of the bail hearing judge or the
3 bail review judge is not to try the case. As far
4 as the issue of whether Ms. Aleekuk's statement
5 will be ruled admissible, a full analysis will
6 have to be conducted once all the voir dire
7 evidence has been called. The fact that the
8 statement to police was not sworn will be a
9 factor, but the statements were audiotaped and
10 videotaped, and the trial judge will have the
11 benefit of seeing and hearing the statement.
12 Although, I did not view the statement at this
13 hearing, I was given the transcript, as I have
14 mentioned. Without going too far into the
15 analysis for present purposes, because it is not
16 my task, I will say that on its face, the
17 transcript, in my view, does seem to belie the
18 contention that it was given by someone in a
19 highly-intoxicated state. That being said, it is
20 also not going to be a clear-cut case for
21 admissibility.

22 As for the accused's statement, again, it is
23 not for me at this stage to engage in a full
24 analysis of whether it will be ruled voluntary.
25 The significance of there being no footage of the
26 cellblock during the period of time when
27 Mr. Firth was there will depend on what is

1 alleged to have taken place during that time, and
2 the evidence of the people who were involved in
3 guarding him. As for the fact that the cigarette
4 break was not recorded, again, the significance
5 of that will depend on the evidence adduced at
6 the voir dire.

7 One thing that I can say from the review of
8 the transcript is that it does seem to me that
9 the things said by Mr. Firth, when considered in
10 the context of the whole of the statement, would
11 be helpful to the Crown if this statement is
12 admitted. He acknowledges firing the gun, talks
13 about having snapped, talks about having wanted
14 to leave the area afterwards because he did not
15 want anything else to happen. If the Crown fails
16 on the hearsay application, and Mr. Firth's
17 statement is admitted, it may not assist the
18 Crown on all the counts of the indictment, but it
19 will assist the Crown on the careless discharge
20 count, which is obviously very serious.

21 As I said already, the strength of the
22 Crown's case is not as directly relevant to the
23 secondary ground as it is when release is opposed
24 on the tertiary ground. If the Crown had an
25 extremely weak case, that would play a part in
26 the analysis, because it does relate back to the
27 risk assessment that I referred to earlier. The

1 same would be true if the allegations did not
2 disclose conduct that suggests a high degree of
3 risk to the public. Here, the allegations are of
4 conduct that presents an extremely high public
5 safety risk, not just to Ms. Aleekuk herself, but
6 to others. The Crown's case is not a "slam
7 dunk," far from it, but it is also not at the
8 weakest end of the spectrum, in my view. The
9 plan has some strengths, but Mr. Firth's track
10 record of compliance with court orders, probation
11 release terms, driving prohibitions, and his
12 failure to abide by his parole conditions in
13 circumstances where he knew the stakes were very
14 high makes it very difficult for me to have
15 confidence that he will comply with conditions I
16 would impose on him this time. And that,
17 combined with the accessibility of alcohol in his
18 proposed city of residence, leaves me with great
19 concerns.

20 On the whole, I find that Mr. Firth's
21 continued detention is necessary on the secondary
22 ground. I have no doubt about the surety's good
23 intentions or even about Mr. Firth's good
24 intentions at this time, but on the whole of the
25 evidence, in my view, there is a substantial
26 likelihood that he will commit a further offence
27 if released, and that this would jeopardize the

1 safety of the public. For those reasons, the
2 application is denied.

3 -----

4
5

6 **CERTIFICATE OF TRANSCRIPT**

7

8 I, the undersigned, hereby certify that the
9 foregoing pages are a complete and accurate
10 transcript of the proceedings taken down by me in
11 shorthand and transcribed from my shorthand notes
12 to the best of my skill and ability.

13 Dated at the City of Yellowknife, Northwest
14 Territories, this 19th day of September, 2018.

15

16 Certified Pursuant to Rule 723
17 of the Rules of Court

18

19

20

Karilee Mankow

21

Court Reporter

22

23

24

25

26

27