

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

COLTEN MCNEELY

Transcript of the Proceedings held before The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 16th day of July, 2018.

APPEARANCES:

Mr. B. MacPherson: Counsel for the Crown
Mr. C. Davison: Counsel for the Accused

(Charges under s. 235(1) of the *Criminal Code*)

***Ban on publication pursuant to s.517 and 522(5) of the
Criminal Code***

1 THE COURT: Colten McNeely is charged with
2 second-degree murder, and he now applies for
3 release. I am not going to repeat all the
4 details of the allegations here this afternoon.

5 The events giving rise to this charge
6 occurred in Fort Good Hope on September the 3rd,
7 2017.

8 The day before, the deceased was arguing
9 with his common-law spouse over text messages, as
10 she had been out consuming alcohol for the past
11 day or so, he had been taking care of their young
12 children, and he was upset about this. I heard
13 that in the text exchange, the deceased expressed
14 his displeasure about his spouse's drinking and
15 her lack of loyalty towards him. The exchange
16 ended with him saying he no longer wanted to be
17 in a relationship with her.

18 The accused ran a bootlegging operation in
19 Fort Good Hope at the time. He was living at his
20 grandparents' house. I heard that behind that
21 house there was a shed where he stored equipment
22 and hosted social gatherings. This shed was
23 known around the community as "Colten's Shack."

24 On September 2nd, Mr. McNeely had made a
25 trip to Norman Wells and had brought back alcohol
26 to be sold in the community. Just past midnight
27 on September the 3rd, the deceased went to

1 Colten's Shack and bought two mickeys of alcohol
2 from the accused. A while later, the deceased's
3 spouse came to Colten's Shack wanting to purchase
4 mickeys and have some water. I heard that the
5 accused walked with her to his grandparents'
6 house to get the alcohol and water.

7 Shortly after that, the deceased arrived
8 back at Colten's Shack. He was intoxicated and
9 angry, and he was looking for his spouse. He
10 learned from others who were at the shack that
11 she was in the house with the accused, and that
12 made him angry. Part of the context of this is
13 that he was aware that she and the accused had
14 had a brief affair the previous year.

15 The deceased yelled and swore and walked to
16 the house. His spouse left through the back
17 door, and the accused came out the front door and
18 was confronted by the deceased, who demanded to
19 know where his spouse was. He started hitting
20 the accused. The accused did not fight back at
21 that point. He tried to explain why he and the
22 deceased's spouse had been in the house together,
23 but the deceased did not believe him and
24 continued to hit him. The accused ended up with
25 a bloody nose as a result of this confrontation.

26 Two women who had been at the shack came
27 towards the door to try to calm the deceased

1 down. Eventually the assault stopped and the
2 deceased left, walking away down the road and
3 onto the driveway that leads to a trail into the
4 woods. Sometime after, the accused followed him
5 and there was a further altercation. During that
6 altercation, it is alleged that the accused
7 stabbed the deceased multiple times on his chest
8 and side and that one of the stab wounds pierced
9 the heart.

10 In his statement to the police -- the
11 admissibility of that statement will have to be
12 determined at trial -- the accused said that
13 after the deceased walked away, he went back to
14 the shack, retrieved the knife, and walked into
15 the woods towards where the deceased was. There
16 was yelling back and forth. He did not tell the
17 deceased he had a knife with him. There was a
18 further physical confrontation during which the
19 deceased head butted the accused, and the accused
20 stabbed him with the knife.

21 One of the young women who had been at the
22 shack heard the deceased's calls for help. She
23 ran towards where the two of them were in the
24 woods. When the accused saw her, he dropped the
25 knife and ran. He ran some distance and then
26 called the RCMP's operational call centre saying
27 that the deceased had pulled a knife on him.

1 Several people on the scene tried to assist
2 the victim, and emergency personnel were called,
3 but he was pronounced dead shortly thereafter.
4 As I have already noted, one of the stab wounds
5 pierced his heart.

6 At the time of these events, the accused was
7 on an undertaking. That undertaking had been
8 entered into on July 28th, 2017. It included
9 conditions to keep the peace and be of good
10 behaviour and not to consume alcohol. It is
11 alleged that the accused was consuming alcohol on
12 the day of these events.

13 The facts alleged as part of the bail
14 hearing also include reference to two other
15 matters involving the accused. That surfaced
16 when the police were investigating these events.
17 The first is that a man named Ryan Proctor, who
18 is a friend of the accused, reported that
19 two weeks before the events that gave rise to
20 this charge, the accused came to his house and
21 was upset at someone. He had a knife in his
22 possession and was talking about "sticking" a man
23 named Domi. Mr. Proctor took the knife away, and
24 I heard that he gave it back to the accused
25 sometime later. It is not specified when.

26 The second incident dates back a few years.
27 No one reported it to police and there are

1 inconsistent accounts about what actually
2 happened, but it involved the accused and a
3 person named Gerald Pierrot. Mr. Pierrot's
4 version or recollection of the events is that he
5 saw the accused being assaulted by two men. He
6 stepped in to help him, and the accused pulled a
7 hatchet from his pants and struck him in the face
8 with it.

9 The accused's version of this incident,
10 which was discussed with him during the same
11 statement to police that I have referred to
12 already, was that he had been beaten, that after
13 the beating a friend gave him the axe for
14 protection, and that sometime later, while he was
15 sleeping, Mr. Pierrot tried to wake him, and the
16 accused struck him in the face with the axe.

17 According to him, this occurred while he was
18 in a blackout state. It is not entirely clear
19 how he remembers or how he came to believe this
20 to be the version of events if he was in a
21 blackout state. In any event, there are
22 inconsistent versions of what happened on that
23 occasion. And as I said, the police was not
24 called by anyone involved.

25 The accused has a criminal record, which
26 includes only one entry for failure to comply
27 with a no-contact condition on an undertaking.

1 He was convicted of this in 2014 and received a
2 fine.

3 The accused has been in custody since his
4 arrest, and this is the first time he applies for
5 bail.

6 Because of the charge he faces, the onus is
7 on him to satisfy the Court that his detention is
8 not necessary for any of the grounds listed in
9 the *Criminal Code*. His release plan is to go
10 live with Jolean Modeste in Norman Wells and to
11 have her be his surety. She is prepared to sign
12 a recognizance in the amount of \$5,000, without
13 deposit, to support his release. The accused
14 would also commit to paying that sum of money in
15 the event of a breach.

16 Ms. Modeste testified by telephone at the
17 bail hearing. When she was asked what her
18 relationship to the accused is, she said she is
19 like an aunt to him, although technically, as she
20 said, they are cousins. She has known him since
21 he was born, but has seen him less frequently in
22 the past several years because she moved to
23 Norman Wells for work several years ago. But she
24 has continued to see him on occasion when she
25 visits Fort Good Hope.

26 She is employed full time as a client
27 service manager for the Government of the

1 Northwest Territories, and she has worked for the
2 GNWT for the last 17 years. She confirmed that
3 she knows the charge that the accused faces, that
4 she is familiar with the release conditions being
5 proposed, and that she is willing and able to
6 enforce them.

7 She explained the living arrangements at her
8 residence. She has an adult daughter and
9 12-year-old son, and she testified about her work
10 schedule and her ability to check in on the
11 accused regularly if she were to be his surety
12 and be under her responsibility to do so. She
13 expressed a clear intent to supervise him, and
14 that if he failed to check in with her or comply
15 with his conditions or any of her rules of the
16 house, she would report him to the police.

17 She said that she would be able to pay
18 \$5,000 in the event of a breach, but that it
19 would be a financial hardship for her, and she
20 has no intention of allowing that to happen. She
21 also expressed confidence in the fact that, given
22 the relatively small size of the town of Norman
23 Wells, she would become aware fairly quickly if
24 the accused was taking steps to leave the
25 community in contravention of his conditions.

26 On cross-examination she was asked if there
27 is alcohol in her home, and she said that right

1 now there is. She occasionally consumes alcohol,
2 as does her daughter. In response to the
3 question I asked about whether she was prepared
4 to have her home be an alcohol-free home for the
5 whole period where the accused is staying with
6 her, she answered that she was prepared to do
7 that.

8 One of the witnesses, the deceased's
9 common-law spouse, now lives in Norman Wells.
10 Ms. Modeste confirms that she knows this person
11 and that she lives about a five-minute walk from
12 her house. Obviously this is a concern.

13 As the Crown fairly conceded, Ms. Modeste
14 testified in a very straightforward manner and
15 appeared to be a very straightforward person.
16 She answered questions on cross-examination as
17 readily as she answered the questions put to her
18 in her examination in chief. I am satisfied that
19 she understands the responsibility she will be
20 taking on as a surety, and that she would be
21 prepared to contact the police if she had any
22 concerns about the accused breaching his
23 conditions.

24 The *Criminal Code* reverses the onus on bail
25 hearings for certain charges that are considered
26 more serious, and murder is one of them. But an
27 accused charged with murder still benefits from

1 the presumption of innocence and from the
2 constitutionally protected right to reasonable
3 bail.

4 The Defence has filed written submissions
5 that outline the legal framework that governs
6 this application, and I do not understand there
7 to be anything contentious about that framework.
8 As is often the case, the assessment of whether
9 this particular accused should be released and
10 has met his onus is very much fact driven.

11 The Crown maintains its objection to the
12 accused's release on the primary and secondary
13 grounds. This is not because of any identified
14 weaknesses in the release plan. The Crown
15 candidly confirmed that, in its view, under the
16 circumstances, no plan would alleviate the
17 concerns about granting the accused bail.

18 The primary ground is concerned with whether
19 the accused will attend his trial. Any time a
20 person faces a very serious charge where the
21 jeopardy is high, it can be argued that there is
22 an enhanced risk that the accused will be tempted
23 to flee to avoid facing any potential
24 consequences of a trial. At the same time, this
25 risk has to be assessed in the overall context of
26 the matter.

27 Here we have an accused who has spent his

1 whole life in Fort Good Hope, and the plan
2 proposes to have him reside in another small
3 community in the Sahtu region. His surety has
4 lived there for many years. It is not hard to
5 imagine that if the application is granted and
6 the accused goes to live with her, the whole town
7 will be aware of the situation.

8 It would not be that simple for this accused
9 to simply disappear, especially if there are
10 tight reporting conditions and the surety takes
11 her role seriously and does supervise his comings
12 and goings, which she has said, under oath, she
13 is prepared to do. She stands to lose a lot of
14 money if she does not and there is a breach.

15 The Crown raised as a concern the fact that
16 the accused fled the scene immediately after the
17 altercation when the young women showed up after
18 having heard the deceased's cries for help.
19 However, it is also common ground between the
20 parties that the next day he turned himself in to
21 the RCMP. In my view, his initial flight, when
22 looked at in this context, does not enhance the
23 primary ground concerns. I am satisfied that it
24 is possible to craft a combination of conditions
25 that will address any concerns that exist under
26 the primary ground.

27 As for the secondary ground, the concerns

1 under that ground relate to public safety,
2 including the substantial likelihood of
3 commission of other offences or of there being
4 interference with the administration of justice.
5 It is, of course, a grave concern that the
6 accused was placed on an undertaking at the end
7 of July, and that despite this, he continued his
8 bootlegging activities and he consumed alcohol in
9 breach of the no-alcohol condition.

10 Certainly at that point, being on process
11 did not seem to have much of an effect on him.
12 That is of concern, as is his conviction for the
13 breach of the no-contact order a few years back.
14 Overall, it does not paint a picture of someone
15 who has a great deal of respect for the court
16 process or court orders. And as is the case for
17 any release plan, the basic premise has to be
18 that the accused will respect the release
19 conditions, and that is what will serve to
20 prevent any further crimes or any interference
21 with the administration of justice. In other
22 words, if the Court cannot have confidence that
23 the conditions will be respected, it does not
24 matter how good the plan is.

25 The Crown also has concerns about the other
26 recent incidents where the accused appears to
27 have been intending or prepared to resort to the

1 use of weapons to settle disputes. It is always
2 a concern when there are indications that someone
3 is thinking of using weapons to settle disputes.

4 The allegation that a few weeks before this
5 incident the accused expressed to his friend the
6 intention to stick someone is disturbing, but it
7 appears the friend took the knife away without
8 difficulty, returned it to the accused some time
9 later, and that nothing more came of it. There
10 is no indication that the accused took any steps
11 to follow through on his stated intention.

12 As for the second incident, there are very
13 different versions of what happened, and on both
14 versions, the accused was the one who was
15 initially attacked by others. What actually
16 happened that day remains fairly unclear, and I
17 find it difficult to rely on that particular
18 allegation to any extent for the purposes of the
19 decision I have to make today.

20 The strength of the Crown's case is
21 specifically listed as a factor to be considered
22 under the tertiary ground. That does not mean it
23 is irrelevant to the other grounds. With respect
24 to the primary ground, arguably the temptation to
25 flee may be greater if the Crown's case is
26 stronger. And with respect to the secondary
27 ground, a very strong case on a very serious

1 offence suggests a higher level of concern
2 regarding public safety.

3 Here there are elements of the Crown's case
4 that lend some strength to it in that there are
5 eyewitnesses, the weapon was recovered, and there
6 is forensic evidence tying it to the accused.
7 There is also a warned statement that will be of
8 some assistance to the Crown if it is ruled
9 admissible. But there is nothing before me on
10 this hearing that enables me to form any kind of
11 even preliminary view as to how that issue might
12 get resolved at trial once it is litigated.

13 But even with all of that, there will remain
14 a triable issue relating to what exactly occurred
15 between the accused and the deceased in that
16 final confrontation in the woods, and what the
17 accused's state of mind and intent was. It
18 appears that the Crown's case will demonstrate
19 fairly clearly that the deceased was the initial
20 aggressor and was quite persistent in his attack.
21 The outcome of this case will turn out findings
22 to be made as to what happened after the accused
23 followed him in the woods and what the accused
24 intended when he followed him in the woods.

25 I note as well that while part of the
26 Crown's concerns are related to the incident
27 involving Mr. Proctor when Mr. Proctor took the

1 accused's knife away, it is also part of the
2 facts before me that Mr. Proctor described the
3 accused as usually mild mannered; the kind of
4 person who gets drunk and goes home.

5 The Crown has argued that the evidence
6 adduced at the hearing establishes the beginnings
7 of a pattern of conduct on the part of the
8 accused, one that involves using weapons. I do
9 not think the evidence establishes such a
10 pattern. Of course, there is no need for such a
11 pattern to be established before detention can be
12 ordered on the secondary ground. I simply note,
13 since the submission was made, that I do not see
14 such a pattern being established here.

15 The Crown is also concerned, and
16 understandably so, about potential interference
17 with witnesses. Here, one of the witnesses lives
18 in Norman Wells, a short distance from where it
19 is proposed that the accused will live. The
20 proximity with witnesses is not an unusual
21 consideration in this jurisdiction when bail is
22 examined, and we must be very careful that the
23 small size of our communities and that potential
24 proximity does not result in virtually
25 eliminating any possibility for people to be
26 released pending trial.

27 As I said already, the right to reasonable

1 bail is constitutionally protected, and it is
2 constitutionally protected for people who live in
3 large places just as it is for people who live in
4 smaller places. The advantage of a small place,
5 as the surety noted during her evidence, is that
6 it is much more difficult for people to do things
7 they are not supposed to be doing and remain
8 undetected.

9 Although the Crown's concern are perfectly
10 understandable, and there always are concerns in
11 a murder case, having carefully considered the
12 plan, I am of the view that it does address the
13 concerns under the primary and secondary grounds.
14 The Crown has not attempted to rely on the
15 tertiary ground, and in my view, that is a wise
16 decision as I do not see that ground being
17 engaged in the circumstances of this case.

18 I want to make it very clear to the accused
19 and to the surety -- and for that I count on
20 defence counsel to make this clear to the surety,
21 because she is not here today and she is not on
22 the phone today -- that this Court will not be
23 inclined to leniency if the release terms are not
24 strictly complied with. This is a very serious
25 matter.

26 It is to be expected that the trial will not
27 proceed for some time, and this is a release plan

1 that will be very onerous, both for the accused
2 and for the surety. It is going to be in place
3 for quite some time. So it is very important
4 that everyone remain as determined and as
5 committed to this plan in the months to come as
6 they are today. The surety stands to lose a lot
7 of money if she does not do the things she has
8 said under oath that she would do, and the
9 accused stands to lose his pre-trial freedom if
10 there are any breaches, no matter how minor.

11 For these reasons, I am going to grant the
12 application and release Mr. McNeely on a
13 recognizance with Jolean Modeste as the surety in
14 the amount of \$5,000 without deposit. And here I
15 am going to list the conditions. I have a few
16 questions as I go along. But, Mr. McNeely,
17 listen very, very, very carefully to these
18 conditions.

19 The first is that you will keep the peace
20 and be of good behaviour. That means not
21 committing offences, staying out of trouble. The
22 second is that you appear before the Court when
23 and as required. The third is that you remain in
24 regular contact with your defence counsel,
25 Mr. Harte. It is your responsibility to remain
26 in contact with him. The fourth is that you
27 reside at 1 Carcajou Avenue in Norman Wells and

1 not change your residence without an order from
2 the Court.

3 The fifth is that you follow all the rules
4 of the house as communicated to you by
5 Jolean Modeste. The sixth is that you remain in
6 Norman Wells except if you are required to travel
7 outside of Norman Wells for the purpose of
8 attending Court. The seventh is that you abstain
9 from the possession and consumption of alcohol
10 and not be in any house or premise in which
11 alcohol is stored or consumed.

12 Mr. Davison, I would appreciate if you make
13 sure that Mr. Harte communicates to the surety
14 that that means that for the duration of this
15 matter, her home has to be an alcohol-free home,
16 and that is why I asked that question at the
17 hearing, and she said she was prepared to do
18 that.

19 But, Mr. McNeely, if that changes, or if for
20 whatever reason someone brings alcohol in their
21 home, it is not for you to find another place to
22 live. You have to surrender yourself to the
23 police, because then you will no longer have an
24 alcohol-free home to live. Do you understand
25 that?

26 THE ACCUSED: Yes.

27 THE COURT: The next condition is that you

1 are to report in person to the Norman Wells
2 detachment every day from Monday to Friday and
3 report in person or by phone every Saturday or
4 Sunday to -- and this is where I need counsel's
5 help -- is it Greg Thompson the name of the bail
6 supervisor that Mr. McNeely --

7 MR. MACPHERSON: It's Scott Thompson.

8 THE COURT: Scott Thompson. He is a
9 probation officer. He is in Norman Wells, and it
10 will be up to you to find out how to contact him.
11 But I basically want you reporting seven days a
12 week. But on Saturday and Sunday, I will permit
13 you to do it by phone to Mr. Thompson.

14 The next condition is that you will provide
15 a sample of your breath or urine that are
16 suitable for analysis on the demand of a peace
17 officer who has grounds to suspect you have
18 alcohol or a controlled substance in your body.
19 This is just to make sure they can do the
20 necessary checks. You are to comply with a
21 curfew and remain inside the residence at
22 1 Carcajou Avenue between 7 p.m. and 7 a.m.

23 The next condition is that you present
24 yourself at the door of the residence if you are
25 asked to do so by a police officer or by the bail
26 supervisor for the purpose of ensuring your
27 compliance with the curfew. I heard that there

1 is no landline at that house and a cell phone can
2 be used from anywhere, so I fully expect the
3 authorities will conduct regular, in-person
4 curfew checks. And if you are asked to come to
5 the door, you have to come to the door yourself.

6 Mr. Harte had proposed the condition that
7 you not be in possession of any firearms, and I
8 am going to include that condition, but I am also
9 going to include a knife on the list. You are
10 not to be in possession of any knife, firearm,
11 crossbow, prohibited or restricted weapon,
12 ammunition, prohibited ammunition, or explosive
13 substance.

14 You are not going to be permitted to have
15 any contact, direct or indirect, with any other
16 persons that are going to be listed at what is
17 going to be the appendix of this recognizance,
18 and I am going to get that from the Crown. And
19 you are not allowed to be within 15 metres of
20 their residences. This is especially important
21 for the witness who lives in Norman Wells. And
22 you know who she is. You have to stay away from
23 her, and you cannot communicate with her. If you
24 find yourself in a place where any of these
25 people are, it is your responsibility to leave,
26 no matter where it is.

27 Now, I gather that the preliminary hearing

1 has been completed? I saw an indictment filed
2 recently.

3 MR. MACPHERSON: Yes.

4 THE COURT: Okay. So the last condition
5 is going to be that you are going to be
6 required -- we do not know when that will be yet,
7 but you are going to turn yourself into the
8 custody of the RCMP in Norman Wells no less than
9 five days before the date scheduled for your
10 trial, and you will find out that date from
11 Mr. Harte. And I want you to turn yourself in so
12 that there is no last-minute temptation to flee.

13 And the last condition, unless counsel
14 suggests another one is, just to make sure
15 everyone is able to monitor what you are doing,
16 you are going to have to keep a copy of your
17 recognizance on you at all times. And that was a
18 condition that was suggested by your counsel.

19 You have not been in court a lot. You do
20 not have a very long criminal record,
21 Mr. McNeely, but the evidence before me is that
22 you have not taken release conditions seriously
23 until now. You are in a very different category
24 of situation now than you were when you were
25 released in July 2007. You are not going to get
26 any more chances, and so I hope that you will not
27 prove me wrong by having released you today.

1 Your aunt is taking a big commitment in agreeing
2 to take you in, and I hope you do not let her
3 down either. I want to emphasize that Condition
4 Number 5 is that you follow her rules.

5 And, again, Mr. Davison, I would like this
6 to be communicated to the surety. I want her to
7 have some abilities to make Mr. McNeely check in
8 with her if she thinks it is necessary. She will
9 be right there. She will see what is going on.
10 And if she decides she wants him to check in with
11 her at lunch every day or however many times a
12 day, whatever her rules are then, are the rules
13 for the duration of this recognizance.

14 That is why I say I know it is going to be
15 onerous and hard on her and on you, possibly, as
16 well. But it is not just my conditions. I am
17 making it harder because it is also her rules for
18 her house. So keep that in mind because you have
19 to listen to what she has to say. And you heard
20 her last week. She said you have two choices,
21 you follow her rules or you go back to jail, and
22 I got the impression she was quite serious.

23 I will ask first, does the Crown have a list
24 of witnesses that can be turned into -- I was
25 contemplating Appendix A being the list of
26 conditions and Appendix B being the list of
27 witnesses.

1 MR. MACPHERSON: Yes, Your Honour.

2 THE COURT: Thank you. And is there
3 anything I have overlooked in conditions the
4 Crown wanted to see? I have included the ones in
5 your submissions, but is there anything that you
6 think should be added to strengthen this?

7 MR. MACPHERSON: I think it had been
8 contemplated at one time -- I don't know if this
9 was in a draft by Mr. Harte, but a no-attend
10 taverns or bars, because there are those places
11 in Norman Wells.

12 THE COURT: Yes, I saw that. You are
13 right. I just want to double check, but I think
14 that would be part of not being in a place where
15 alcohol is consumed or stored.

16 MR. MACPHERSON: Okay.

17 THE COURT: Right? I mean, that was my
18 intention. It is the house --

19 MR. MACPHERSON: Yes.

20 THE COURT: -- but it is any place where
21 alcohol is consumed or stored, which would
22 include a private residence and also a bar.

23 MR. MACPHERSON: Very well. And the other was
24 the specific no-go to Fort Good Hope, simply
25 because it is possible to, I think, get to Fort
26 Good Hope and back in the course of a day,
27 especially on the winter road. But I know

1 that --

2 THE COURT: But if he is not supposed to
3 leave Norman Wells, he would be in breach of that
4 condition if he went to Fort Good Hope, right?

5 MR. MACPHERSON: Oh, right.

6 THE COURT: I went broader because, I
7 mean, the requirement is that he is not leaving
8 Norman Wells.

9 MR. MACPHERSON: Yes.

10 THE COURT: To go anywhere.

11 MR. MACPHERSON: That's fine.

12 THE COURT: You understand that includes
13 you are not going to Fort Good Hope, right,
14 Mr. McNeely?

15 THE ACCUSED: Yes.

16 THE COURT: If there is anything along the
17 lines of a medical emergency -- obviously if an
18 accident happens and you need to be medivaced,
19 for example, you would not be in breach. But
20 anything that is not something like that, even if
21 you think you have a very good reason, whether it
22 is work or anything else, to leave Norman Wells,
23 you will have to speak to Mr. Harte, and you will
24 have to get the Court to permit you to do it, and
25 we will have to make sure that your surety is in
26 agreement as well.

27 So changing this is not going to happen

1 easily. It is only going to be done on
2 application to this Court in the same way this
3 whole hearing had to be in front of this Court.
4 Do you understand.

5 THE ACCUSED: Yes.

6 THE COURT: Is there anything that is not
7 clear from your perspective, Mr. Davison?

8 MR. DAVISON: The only thought I had was
9 going back to the last possibility that you
10 raised, and that was if he had to leave for a
11 medical emergency. In other matters where I've
12 been involved, we've addressed that by way of
13 inclusion, that if that happens, he would still
14 let the RCMP know so that they know he's not in
15 Norman Wells and not at home. And then possibly
16 also an obligation to return to Norman Wells as
17 soon as practicable or as soon as possible after
18 the medical emergency has been addressed. I
19 don't know if the Court wants to go that far or
20 not.

21 THE COURT: Well, I think the kind of
22 emergency I am contemplating would be a real
23 emergency.

24 MR. DAVISON: Yes.

25 THE COURT: And if that were to happen, I
26 am sure no police officer would lay a breach
27 charge, and the surety would be aware. I am

1 trying to leave very little to the discretion
2 here, and so I have done that.

3 MR. DAVISON: All right.

4 THE COURT: But thank you. Thank you for
5 those comments.

6 MR. DAVISON: Thank you.

7 THE COURT: Anything else from the Crown?

8 MR. MACPHERSON: Another -- it occurred to me,
9 Your Honour, when you mentioned the trial, that
10 there will likely be a voir dire before the
11 trial. And I just raise that as an issue so
12 he -- if we just accept that the voir dire makes
13 up part of the trial, and he then has to
14 surrender himself --

15 THE COURT: Well, how about the condition
16 reads five days before any day scheduled for
17 these proceedings?

18 MR. MACPHERSON: Very well.

19 THE COURT: It would be -- I mean, that is
20 a very good point. I know the pretrial
21 conference is already scheduled, and perhaps
22 those kinds of details can be addressed. But,
23 yes, my intention is that whenever you are
24 required to attend court, you turn yourself in
25 five days in advance. To be honest that is
26 simply to make sure they have time to look for
27 you if you do not turn yourself in, which I hope

1 will not happen.

2 Now, I do not know -- I will leave it to the
3 pretrial conference to have the discussions about
4 issues like venue and where things are to happen,
5 but are there any other conditions that I have
6 missed?

7 MR. MACPHERSON: No, that's fine. Thank you.

8 THE COURT: All right. Mr. Clerk, I am
9 going to give you this document. This is going
10 to be Appendix -- I will just read, actually,
11 sorry.

12 THE COURT CLERK: Yes, Your Honour.

13 THE COURT: I will read this into the
14 record. These are the people you are not allowed
15 to have contact with, Marissa McNeely,
16 Jeanette Kakfwi, Harley Pierrot, Ryan Proctor,
17 Dylan Kakfwi, Tylan Drybone, Janelle Pierrot,
18 Gerald Pierrot, Cora Rabisca, Antoine Tobac,
19 Willy Winters, Michelle Grandjambe,
20 Danielle Clark, Trent T'selie, and
21 Sabrina Sturman, okay?

22 THE ACCUSED: Okay.

23 THE COURT: So that will become
24 Appendix B, Mr. Clerk.

25 THE COURT CLERK: Yes, Your Honour.

26 THE COURT: I will be able to email you a
27 list of conditions, I expect.

1 It is going to take a little while to get
2 the documentation prepared, Mr. McNeely, because
3 your surety also has to sign it. I think I am
4 going to ask -- once the transcript of my
5 decision is filed, I am going to direct the clerk
6 to send an extra copy to Mr. Harte so that it can
7 be sent to the surety. I want to make sure that
8 the surety is fully aware of the comments I have
9 made, particularly towards the ends of this
10 decision.

11 MR. DAVISON: And just so I'm clear,
12 Mr. Harte was anticipating the documents would
13 now be sent to the RCMP in Norman Wells for the
14 surety's signature.

15 THE COURT: I am going to stay out of
16 that.

17 MR. DAVISON: Okay.

18 THE COURT: Mr. Clerk, how do you
19 normally --

20 THE COURT CLERK: Yes, Your Honour. We would
21 fax a copy -- a signed copy of the recognizance
22 to the RCMP detachment, and then they will fax it
23 back once it's signed by the surety.

24 THE COURT: All right.

25 MR. DAVISON: Thank you.

26 THE COURT: Thank you. Anything further
27 on this?

1 MR. DAVISON: Not that I know of.

2 THE COURT: Anything further from the
3 Crown?

4 MR. MACPHERSON: No, thank you.

5 THE COURT: All right. Well, thank you
6 for your submissions, Counsel.

7 And, Mr. McNeely, we do not know what date
8 this is going to be scheduled for because there
9 is going to be a pretrial conference, but as I
10 say, these conditions are likely to be in force
11 for a long period of time. So just remember it
12 is up to you at this point whether you are able
13 to stay out of custody, but you do have to
14 strictly comply with all of these. If you are in
15 breach and I am the one dealing with the
16 application to release you, it is going to be
17 very much an uphill battle. I want you to
18 understand that.

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CERTIFICATE OF TRANSCRIPT

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

Dated at the City of Edmonton, Province of Alberta, this 1st day of August, 2018.

Certified Pursuant to Rule 723 of the Rules of Court



Kaylene Davidsen, CSR(A)
Court Reporter