*R v McNeely*, 2018 NWTSC 42 **S-1-CR-2018-000038**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**COLTEN MCNEELY**

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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.

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**APPEARANCES:**

Mr. B. MacPherson: Counsel for the Crown

Mr. C. Davison: Counsel for the Accused

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

***B a n o n p u b l i c a t i o n p u r s u a n t t o s . 5 1 7 a n d 5 2 2 ( 5 ) o f t h e C r i m i n a l C o d e***

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.
7. The day before, the deceased was arguing
8. with his common-law spouse over text massages, as
9. she had been out consuming alcohol for the past
10. day or so, he had been taking care of their young
11. children, and he was upset about this. I heard
12. that in the text exchange, the deceased expressed
13. his displeasure about his spouse's drinking and
14. her lack of loyalty towards him. The exchange
15. ended with him saying he no longer wanted to be
16. in a relationship with her.
17. The accused ran a bootlegging operation in
18. Fort Good Hope at the time. He was living at his
19. grandparents' house. I heard that behind that
20. house there was a shed where he stored equipment
21. and hosted social gatherings. This shed was
22. known around the community as "Colten's Shack."
23. On September 2nd, Mr. McNeely had made a
24. trip to Norman Wells and had brought back alcohol
25. to be sold in the community. Just past midnight
26. on September the 3rd, the deceased went to
27. Colten's Shack and bought two mickeys of alcohol
28. from the accused. A while later, the deceased's
29. spouse came to Colten's Shack wanting to purchase
30. mickeys and have some water. I heard that the
31. accused walked with her to his grandparents'
32. house to get the alcohol and water.
33. Shortly after that, the deceased arrived
34. back at Colten's Shack. He was intoxicated and
35. angry, and he was looking for his spouse. He
36. learned from others who were at the shack that
37. she was in the house with the accused, and that
38. made him angry. Part of the context of this is
39. that he was aware that she and the accused had
40. had a brief affair the previous year.
41. The deceased yelled and swore and walked to
42. the house. His spouse left through the back
43. door, and the accused came out the front door and
44. was confronted by the deceased, who demanded to
45. know where his spouse was. He started hitting
46. the accused. The accused did not fight back at
47. that point. He tried to explain why he and the
48. deceased's spouse had been in the house together,
49. but the deceased did not believe him and
50. continued to hit him. The accused ended up with
51. a bloody nose as a result of this confrontation.
52. Two women who had been at the shack came
53. towards the door to try to calm the deceased
54. down. Eventually the assault stopped and the
55. deceased left, walking away down the road and
56. onto the driveway that leads to a trail into the
57. woods. Sometime after, the accused followed him
58. and there was a further altercation. During that
59. altercation, it is alleged that the accused
60. stabbed the deceased multiple times on his chest
61. and side and that one of the stab wounds pierced
62. the heart.
63. In his statement to the police -- the
64. admissibility of that statement will have to be
65. determined at trial -- the accused said that
66. after the deceased walked away, he went back to
67. the shack, retrieved the knife, and walked into
68. the woods towards where the deceased was. There
69. was yelling back and forth. He did not tell the
70. deceased he had a knife with him. There was a
71. further physical confrontation during which the
72. deceased head butted the accused, and the accused
73. stabbed him with the knife.
74. One of the young women who had been at the
75. shack heard the deceased's calls for help. She
76. ran towards where the two of them were in the
77. woods. When the accused saw her, he dropped the
78. knife and ran. He ran some distance and then
79. called the RCMP's operational call centre saying
80. 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
81. inconsistent accounts about what actually
82. happened, but it involved the accused and a
83. person named Gerald Pierrot. Mr. Pierrot's
84. version or recollection of the events is that he
85. saw the accused being assaulted by two men. He
86. stepped in to help him, and the accused pulled a
87. hatchet from his pants and struck him in the face
88. with it.
89. The accused's version of this incident,
90. which was discussed with him during the same
91. statement to police that I have referred to
92. already, was that he had been beaten, that after
93. the beating a friend gave him the axe for
94. protection, and that sometime later, while he was
95. sleeping, Mr. Pierrot tried to wake him, and the
96. accused struck him in the face with the axe.
97. According to him, this occurred while he was
98. in a blackout state. It is not entirely clear
99. how he remembers or how he came to believe this
100. to be the version of events if he was in a
101. blackout state. In any event, there are
102. inconsistent versions of what happened on that
103. occasion. And as I said, the police was not
104. called by anyone involved.
105. The accused has a criminal record, which
106. includes only one entry for failure to comply
107. with a no-contact condition on an undertaking.
108. He was convicted of this in 2014 and received a
109. fine.
110. The accused has been in custody since his
111. arrest, and this is the first time he applies for
112. bail.
113. Because of the charge he faces, the onus is
114. on him to satisfy the Court that his detention is
115. not necessary for any of the grounds listed in
116. the *Criminal Code*. His release plan is to go
117. live with Jolean Modeste in Norman Wells and to
118. have her be his surety. She is prepared to sign
119. a recognizance in the amount of $5,000, without
120. deposit, to support his release. The accused
121. would also commit to paying that sum of money in
122. the event of a breach.
123. Ms. Modeste testified by telephone at the
124. bail hearing. When she was asked what her
125. relationship to the accused is, she said she is
126. like an aunt to him, although technically, as she
127. said, they are cousins. She has known him since
128. he was born, but has seen him less frequently in
129. the past several years because she moved to
130. Norman Wells for work several years ago. But she
131. has continued to see him on occasion when she
132. visits Fort Good Hope.
133. She is employed full time as a client
134. service manager for the Government of the
135. Northwest Territories, and she has worked for the
136. GNWT for the last 17 years. She confirmed that
137. she knows the charge that the accused faces, that
138. she is familiar with the release conditions being
139. proposed, and that she is willing and able to
140. enforce them.
141. She explained the living arrangements at her
142. residence. She has an adult daughter and
143. 12-year-old son, and she testified about her work
144. schedule and her ability to check in on the
145. accused regularly if she were to be his surety
146. and be under her responsibility to do so. She
147. expressed a clear intent to supervise him, and
148. that if he failed to check in with her or comply
149. with his conditions or any of her rules of the
150. house, she would report him to the police.
151. She said that she would be able to pay
152. $5,000 in the event of a breach, but that it
153. would be a financial hardship for her, and she
154. has no intention of allowing that to happen. She
155. also expressed confidence in the fact that, given
156. the relatively small size of the town of Norman
157. Wells, she would become aware fairly quickly if
158. the accused was taking steps to leave the
159. community in contravention of his conditions.
160. On cross-examination she was asked if there
161. is alcohol in her home, and she said that right
162. now there is. She occasionally consumes alcohol,
163. as does her daughter. In response to the
164. question I asked about whether she was prepared
165. to have her home be an alcohol-free home for the
166. whole period where the accused is staying with
167. her, she answered that she was prepared to do
168. that.
169. One of the witnesses, the deceased's
170. common-law spouse, now lives in Norman Wells.
171. Ms. Modeste confirms that she knows this person
172. and that she lives about a five-minute walk from
173. her house. Obviously this is a concern.
174. As the Crown fairly conceded, Ms. Modeste
175. testified in a very straightforward manner and
176. appeared to be a very straightforward person.
177. She answered questions on cross-examination as
178. readily as she answered the questions put to her
179. in her examination in chief. I am satisfied that
180. she understands the responsibility she will be
181. taking on as a surety, and that she would be
182. prepared to contact the police if she had any
183. concerns about the accused breaching his
184. conditions.
185. The *Criminal Code* reverses the onus on bail
186. hearings for certain charges that are considered
187. more serious, and murder is one of them. But an
188. accused charged with murder still benefits from
189. the presumption of innocence and from the
190. constitutionally protected right to reasonable
191. bail.
192. The Defence has filed written submissions
193. that outline the legal framework that governs
194. this application, and I do not understand there
195. to be anything contentious about that framework.
196. As is often the case, the assessment of whether
197. this particular accused should be released and
198. has met his onus is very much fact driven.
199. The Crown maintains its objection to the
200. accused's release on the primary and secondary
201. grounds. This is not because of any identified
202. weaknesses in the release plan. The Crown
203. candidly confirmed that, in its view, under the
204. circumstances, no plan would alleviate the
205. concerns about granting the accused bail.
206. The primary ground is concerned with whether
207. the accused will attend his trial. Any time a
208. person faces a very serious charge where the
209. jeopardy is high, it can be argued that there is
210. an enhanced risk that the accused will be tempted
211. to flee to avoid facing any potential
212. consequences of a trial. At the same time, this
213. risk has to be assessed in the overall context of
214. the matter.
215. 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
216. use of weapons to settle disputes. It is always
217. a concern when there are indications that someone
218. is thinking of using weapons to settle disputes.
219. The allegation that a few weeks before this
220. incident the accused expressed to his friend the
221. intention to stick someone is disturbing, but it
222. appears the friend took the knife away without
223. difficulty, returned it to the accused some time
224. later, and that nothing more came of it. There
225. is no indication that the accused took any steps
226. to follow through on his stated intention.
227. As for the second incident, there are very
228. different versions of what happened, and on both
229. versions, the accused was the one who was
230. initially attacked by others. What actually
231. happened that day remains fairly unclear, and I
232. find it difficult to rely on that particular
233. allegation to any extent for the purposes of the
234. decision I have to make today.
235. The strength of the Crown's case is
236. specifically listed as a factor to be considered
237. under the tertiary ground. That does not mean it
238. is irrelevant to the other grounds. With respect
239. to the primary ground, arguably the temptation to
240. flee may be greater if the Crown's case is
241. stronger. And with respect to the secondary
242. ground, a very strong case on a very serious
243. offence suggests a higher level of concern
244. regarding public safety.
245. Here there are elements of the Crown's case
246. that lend some strength to it in that there are
247. eyewitnesses, the weapon was recovered, and there
248. is forensic evidence tieing it to the accused.
249. There is also a warned statement that will be of
250. some assistance to the Crown if it is ruled
251. admissible. But there is nothing before me on
252. this hearing that enables me to form any kind of
253. even preliminary view as to how that issue might
254. get resolved at trial once it is litigated.
255. But even with all of that, there will remain
256. a triable issue relating to what exactly occurred
257. between the accused and the deceased in that
258. final confrontation in the woods, and what the
259. accused's state of mind and intent was. It
260. appears that the Crown's case will demonstrate
261. fairly clearly that the deceased was the initial
262. aggressor and was quite persistent in his attack.
263. The outcome of this case will turn out findings
264. to be made as to what happened after the accused
265. followed him in the woods and what the accused
266. intended when he followed him in the woods.
267. I note as well that while part of the
268. Crown's concerns are related to the incident
269. involving Mr. Proctor when Mr. Proctor took the
270. accused's knife away, it is also part of the
271. facts before me that Mr. Proctor described the
272. accused as usually mild mannered; the kind of
273. person who gets drunk and goes home.
274. The Crown has argued that the evidence
275. adduced at the hearing establishes the beginnings
276. of a pattern of conduct on the part of the
277. accused, one that involves using weapons. I do
278. not think the evidence establishes such a
279. pattern. Of course, there is no need for such a
280. pattern to be established before detention can be
281. ordered on the secondary ground. I simply note,
282. since the submission was made, that I do not see
283. such a pattern being established here.
284. The Crown is also concerned, and
285. understandably so, about potential interference
286. with witnesses. Here, one of the witnesses lives
287. in Norman Wells, a short distance from where it
288. is proposed that the accused will live. The
289. proximity with witnesses is not an unusual
290. consideration in this jurisdiction when bail is
291. examined, and we must be very careful that the
292. small size of our communities and that potential
293. proximity does not result in virtually
294. eliminating any possibility for people to be
295. released pending trial.
296. 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
297. that will be very onerous, both for the accused
298. and for the surety. It is going to be in place
299. for quite some time. So it is very important
300. that everyone remain as determined and as
301. committed to this plan in the months to come as
302. they are today. The surety stands to lose a lot
303. of money if she does not do the things she has
304. said under oath that she would do, and the
305. accused stands to lose his pre-trial freedom if
306. there are any breaches, no matter how minor.
307. For these reasons, I am going to grant the
308. application and release Mr. McNeely on a
309. recognizance with Jolean Modeste as the surety in
310. the amount of $5,000 without deposit. And here I
311. am going to list the conditions. I have a few
312. questions as I go along. But, Mr. McNeely,
313. listen very, very, very carefully to these
314. conditions.
315. The first is that you will keep the peace
316. and be of good behaviour. That means not
317. committing offences, staying out of trouble. The
318. second is that you appear before the Court when
319. and as required. The third is that you remain in
320. regular contact with your defence counsel,
321. Mr. Harte. It is your responsibility to remain
322. in contact with him. The fourth is that you
323. reside at 1 Carcajou Avenue in Norman Wells and
324. not change your residence without an order from
325. the Court.
326. The fifth is that you follow all the rules
327. of the house as communicated to you by
328. Jolean Modeste. The sixth is that you remain in
329. Norman Wells except if you are required to travel
330. outside of Norman Wells for the purpose of
331. attending Court. The seventh is that you abstain
332. from the possession and consumption of alcohol
333. and not be in any house or premise in which
334. alcohol is stored or consumed.
335. Mr. Davison, I would appreciate if you make
336. sure that Mr. Harte communicates to the surety
337. that that means that for the duration of this
338. matter, her home has to be an alcohol-free home,
339. and that is why I asked that question at the
340. hearing, and she said she was prepared to do
341. that.
342. But, Mr. McNeely, if that changes, or if for
343. whatever reason someone brings alcohol in their
344. home, it is not for you to find another place to
345. live. You have to surrender yourself to the
346. police, because then you will no longer have an
347. alcohol-free home to live. Do you understand
348. that?
349. THE ACCUSED: Yes.
350. 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
351. is no landline at that house and a cell phone can
352. be used from anywhere, so I fully expect the
353. authorities will conduct regular, in-person
354. curfew checks. And if you are asked to come to
355. the door, you have to come to the door yourself.
356. Mr. Harte had proposed the condition that
357. you not be in possession of any firearms, and I
358. am going to include that condition, but I am also
359. going to include a knife on the list. You are
360. not to be in possession of any knife, firearm,
361. crossbow, prohibited or restricted weapon,
362. ammunition, prohibited ammunition, or explosive
363. substance.
364. You are not going to be permitted to have
365. any contact, direct or indirect, with any other
366. persons that are going to be listed at what is
367. going to be the appendix of this recognizance,
368. and I am going to get that from the Crown. And
369. you are not allowed to be within 15 metres of
370. their residences. This is especially important
371. for the witness who lives in Norman Wells. And
372. you know who she is. You have to stay away from
373. her, and you cannot communicate with her. If you
374. find yourself in a place where any of these
375. people are, it is your responsibility to leave,
376. no matter where it is.
377. 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.
378. Your aunt is taking a big commitment in agreeing
379. to take you in, and I hope you do not let her
380. down either. I want to emphasize that Condition
381. Number 5 is that you follow her rules.
382. And, again, Mr. Davison, I would like this
383. to be communicated to the surety. I want her to
384. have some abilities to make Mr. McNeely check in
385. with her if she thinks it is necessary. She will
386. be right there. She will see what is going on.
387. And if she decides she wants him to check in with
388. her at lunch every day or however many times a
389. day, whatever her rules are then, are the rules
390. for the duration of this recognizance.
391. That is why I say I know it is going to be
392. onerous and hard on her and on you, possibly, as
393. well. But it is not just my conditions. I am
394. making it harder because it is also her rules for
395. her house. So keep that in mind because you have
396. to listen to what she has to say. And you heard
397. her last week. She said you have two choices,
398. you follow her rules or you go back to jail, and
399. I got the impression she was quite serious.
400. I will ask first, does the Crown have a list
401. of witnesses that can be turned into -- I was
402. contemplating Appendix A being the list of
403. conditions and Appendix B being the list of
404. 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
405. that --
406. THE COURT: But if he is not supposed to
407. leave Norman Wells, he would be in breach of that
408. condition if he went to Fort Good Hope, right?
409. MR. MACPHERSON: Oh, right.
410. THE COURT: I went broader because, I
411. mean, the requirement is that he is not leaving
412. Norman Wells.
413. MR. MACPHERSON: Yes.
414. THE COURT: To go anywhere.
415. MR. MACPHERSON: That's fine.
416. THE COURT: You understand that includes
417. you are not going to Fort Good Hope, right,
418. Mr. McNeely?
419. THE ACCUSED: Yes.
420. THE COURT: If there is anything along the
421. lines of a medical emergency -- obviously if an
422. accident happens and you need to be medivaced,
423. for example, you would not be in breach. But
424. anything that is not something like that, even if
425. you think you have a very good reason, whether it
426. is work or anything else, to leave Norman Wells,
427. you will have to speak to Mr. Harte, and you will
428. have to get the Court to permit you to do it, and
429. we will have to make sure that your surety is in
430. agreement as well.
431. 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

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| --- | --- | --- |
| 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 |

1. reads five days before any day scheduled for
2. these proceedings?
3. MR. MACPHERSON: Very well.
4. THE COURT: It would be -- I mean, that is
5. a very good point. I know the pretrial
6. conference is already scheduled, and perhaps
7. those kinds of details can be addressed. But,
8. yes, my intention is that whenever you are
9. required to attend court, you turn yourself in
10. five days in advance. To be honest that is
11. simply to make sure they have time to look for
12. you if you do not turn yourself in, which I hope
13. will not happen.
14. Now, I do not know -- I will leave it to the
15. pretrial conference to have the discussions about
16. issues like venue and where things are to happen,
17. but are there any other conditions that I have
18. missed?
19. MR. MACPHERSON: No, that's fine. Thank you.
20. THE COURT: All right. Mr. Clerk, I am
21. going to give you this document. This is going
22. to be Appendix -- I will just read, actually,
23. sorry.
24. THE COURT CLERK: Yes, Your Honour.
25. THE COURT: I will read this into the
26. record. These are the people you are not allowed
27. to have contact with, Marissa McNeely,
28. Jeanette Kakfwi, Harley Pierrot, Ryan Proctor,
29. Dylan Kakfwi, Tylan Drybone, Janelle Pierrot,
30. Gerald Pierrot, Cora Rabisca, Antoine Tobac,
31. Willy Winters, Michelle Grandjambe,
32. Danielle Clark, Trent T'selie, and
33. Sabrina Sturman, okay?
34. THE ACCUSED: Okay.
35. THE COURT: So that will become
36. Appendix B, Mr. Clerk.
37. THE COURT CLERK: Yes, Your Honour.
38. THE COURT: I will be able to email you a
39. 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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# 2 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 1st day of August, 2018. 11
8. Certified Pursuant to Rule 723 of the
9. Rules of Court 14

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1. Kaylene Davidsen, CSR(A)
2. Court Reporter

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