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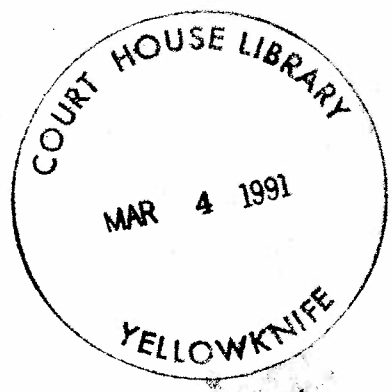
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

RICHARD DENNIS FIRTH



Transcript of the Reasons for Sentencing delivered by His Honour Judge B. A. Bruser, sitting at Inuvik on the 6th day of March, A.D. 1990, Tuesday. in the Northwest Territories

ALLAN FERGUSON	Counsel for the Crown
JOYCE LILLEGRAN	Counsel for the Defence



1 THE COURT:

2 The accused is charged that between the 24th day of
3 August, 1989, and the 6th day of September 1989, in Inuvik,
4 he did unlawfully sell liquor, contrary to section 77(c) of the
5 Liquor Act.

6 Counsel have already referred me to the definition of a
7 sale within the meaning of section 2, (1) paragraph 5 of
8 the Liquor Act. Sale includes the supplying or distribu-
9 ting by any means whatsoever of liquor. That is the material
10 part of the definition for our purposes,

11 The central issue now is, whether or not the Crown has
12 established beyond a reasonable doubt, that one or more of the
13 boxes handled by Mr. Milner contained liquor.

14 The evidence is largely circumstantial, apart from Mr.
15 Milner actually dealing with the accused,

16 the boxes, and the waybills. What is inside the boxes
17 is essential.

18 Mr. Milner worked at the material time for Western Arctic
19 Air. Part of his work was to deal with the handling of
20 freight. Included in that job was the making of waybills
21 for the shipping of freight. Three waybills were filed with
22 the court, being exhibits 1, 2, and 3.

23 The accused was identified as the person who brought the
24 boxes to Western Arctic Air on the three dates, being August
25 25th, August 26th, and August 29th. Most of what is written
26 on the waybills was written by Mr. Milner. The accused put
27 his signature in one location and whoever received the boxes

1 in Tuktoyaktuk apparently wrote his or her signature in the
2 appropriate location. The boxes in each case were sent
3 collect and were to be paid for in cash respecting the freight costs.

4 In Exhibit 1 the description is "one case of whiskey".
5 I will ignore the weight for the time being. Exhibit 2
6 is "one Vodka". Once again, I will ignore the weight.
7 Exhibit 3 is "one case of Special Old Whiskey". Again I
8 ignore the weight.

9 I have difficulty with the weight description because
10 Mr. Milner did not supply any independent testimony such as
11 weighing the boxes or even picking them up. He looked at a chart.
12 I have no evidence as to the accuracy of the chart. And so
13 I will proceed on the basis that the weight is to be ignored.

14 I found it noteworthy that Mr. Milner noted the boxes
15 had not been opened before. To him they were like original
16 boxes. There was no tape on any of them. He said unless
17 somebody glued them perfectly they were originally sealed
18 boxes. His words, regarding the first one were, "it's an
19 original box".

20 I accept the testimony of Mr. Milner that the three boxes
21 had not been opened.

22 As indicated earlier part of his work was then to deal
23 with boxes. He was entitled, in my view, to give an opinion
24 without being qualified as an expert, that the boxes apparently
25 had been or were in a sealed condition at the time he dealt
26 with them.

27 In assessing the circumstantial evidence before the court

1 I must be cautious. I do not apply the same degree of weight
2 to the testimony of Mr. Milner or to the documents regarding
3 the contents as I would if Mr. Milner had looked inside the
4 boxes. However, in doing this I must not engage in specula-
5 tion or possibilities.

6 In examining the waybills it is apparent that the
7 accused in each case signed a document in which the description
8 of the pieces and contents was liquor. There is nothing before
9 me to indicate he doubted that in any way. Any rational
10 conclusion other than that of the boxes containing liquor would
11 be to engage in conjecture.

12 It is true that no person is required to explain or to
13 deny suspicious circumstances but, as stated by the Ontario
14 Court of Appeal in the case of the Crown against Stevens
15 (1984) 11 CCC 3(d) 518 once a prima facie case is made
16 out by the Crown the accused runs the risk of conviction if
17 there is not evidence before the court which may come from the
18 Crown's case to explain or contradict the prima facie case.

19 I have before me not one waybill, not two, but three.
20 One dealing with an apparently sealed in it's original
21 condition.

22 I find that the Crown has proven beyond a reasonable
23 doubt that each box contained liquor within the meaning of the
24 Liquor Act.

25 For me to entertain a reasonable doubt as to whether or not
26 the accused was making a gift of the liquor would be to engage
27 in conjecture without more -- I am not going to speculate

1 He brought the liquor in and he sent it to two different
2 people in Tuktoyaktuk on three different days. In doing so
3 he was engaged in the activity of selling liquor within the
4 meaning of the Liquor Act.

5 Would you stand up, sir.

6 For the reasons given I find the Crown has proven its
7 case. I find you guilty. You may take a seat.

8 (SUBMISSIONS)

9 THE COURT: Mr. Firth, would you stand
10 up? Do you want to say anything? Your lawyer has done a
11 thorough job on your behalf. I expect she has told me
12 everything that is to be said,

13 Regarding the liquor offence there is no evidence that
14 it was a commercial act. If, for example, you
15 had been driving a Grueben's Transport Truck and had been
16 going back and forth on the highway transporting liquor to
17 Tuktoyaktuk, there would be a very stiff
18 penalty. In this case I accept what your lawyer has said,
19 namely, that you did not know that what you did was wrong.

20 As I said to your counsel it takes a certain amount of
21 mental and legal agility to work one's way through the
22 Liquor Act. However, the unlawful transportation of liquor
23 has to be discouraged in this region and for that matter
24 throughout the Territories. Liquor causes too many serious
25 problems where it is abused.

26 There will be a fine of \$500 in default 60 days imprison-
27 ment. A victim of crime surcharge will be added on to that

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of \$75.00 The same default period will apply. Your fine is higher than that I gave to Dolly Sydney. Your means to pay are greater than hers.

For the other matter there will be a fine of \$75.00 The low fine reflects the minimum quantity or ten days in default, consecutive. There will be a victim of crime surcharge of \$11.00 and the same default period will apply to that.

(DISCUSSION RE TIME TO PAY)

(CONCLUDED)

*Certified correct
Peggy Fitzgerald*