

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

WILLIAM ROBERT ALEEKUK

REASONS FOR DECISION
of the
HONOURABLE CHIEF JUDGE ROBERT GORIN

Heard at:	Inuvik, Northwest Territories
Date of Decision:	March 30, 2023
Date of Written Judgment:	April 5, 2023
Counsel for the Crown:	Clare Brackley
Defence Counsel:	Kate Oja

[Ruling on Admissibility of Video Evidence]

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

WILLIAM ROBERT ALEEKUK

A. INTRODUCTION

[1] The Accused is charged with attempted murder, discharging a firearm with intent to wound, and aggravated assault. All charges result from an incident in which the accused shot the victim who was in his truck at the time the firearm was discharged.

[2] The Crown asks that video evidence taken from the Quickstop Convenience Store located next door to where the shooting occurred be admitted into evidence. The video evidence in question is comprised of four videos showing the area immediately around the Quickstop. One video shows a space or driveway that is located between the Quickstop and the Mad Trapper bar, which is an establishment next door to the Quickstop and the place outside of which the shooting occurred. Another shows the exterior of the front of the Quickstop and is angled toward the Mad Trapper. Another shows the front of the Quickstop, angled in the opposite direction. Yet another is of the side of the Quickstop located opposite to the side between the Quickstop and Mad Trapper. The videos are capable of being played in an array that shows all four of them at the same time.

[3] The video evidence, particularly, the video of the side of the space between the Quickstop and the Mad Trapper is noteworthy in that the Crown says they show the activity of the shooter immediately before and after the shooting. I will refer to the video of the space between the Quickstop and Mad Trapper as the “Quickstop Side Video”. Another video taken at the Quickstop that is particularly

significant is taken from the front of the Quickstop and angled in the direction of the Mad Trapper. I will refer to this video as being the “Quickstop Front Video”.

[4] The difficulty that the Crown must overcome is that there was a loss of continuity of the video evidence before the police received it. The Crown however submits that there is sufficient evidence to establish that the video evidence is reliable and that it accurately recorded what is shown within each of the videos. The Crown submits that the lack of continuity of the video evidence has been overcome and it should therefore be admitted into evidence.

[5] Defence counsel submits that some of the corroborating evidence that the Crown relies on is suspect and opposes the Quickstop video evidence being admitted.

[6] I agree with the position of the Crown and have decided that all of the videos taken from the Quickstop are admissible.

B. ANALYSIS

[7] Constable Briere viewed the Quickstop video evidence while at the Quickstop during the same night of the shooting incident. She took a video of the video recordings with her cell phone as they played while she was watching them. Although her cellphone video recordings are not as clear as the actual Quickstop video recordings themselves, one can easily see that they depict exactly what is portrayed in the Quickstop videos she recorded. Also, while her cellphone recordings are far shorter than the Quickstop videos themselves – her recordings show only the relevant portions of the Quickstop videos shortly before and after the shooting – they are identical to the Quickstop videos with the exception of their lesser resolution. The only other deficiency in her cellphone recordings is they do not record the Quickstop video taken from the side of the Quickstop that shows the “Roost” side of the establishment. The other three videos were all playing at the same time on an array when she recorded them. However, for some reason the Quickstop video taken of the side of the Quickstop facing the Roost was not part of that array at the time of Constable Briere’s recording.

[8] Constable Briere also individually recorded the video of the “Quickstop Side Video”, showing the space between the Quickstop and Mad Trapper, by itself without the other videos playing at the same time. That video was taking up the whole screen of the display monitor when she recorded it. As noted, she also recorded that same video at the time she recorded the three videos simultaneously as set out in the preceding paragraph.

[9] Briefly, the cellphone recordings that Constable Briere took of the Quickstop videos show that in the Quickstop Side Video, a white sedan that the Crown alleges was the shooter's car, pulls into the space between the Quickstop and Roost. Her cellphone recordings show the white sedan stopping, and someone getting out the passenger's side going toward the street from where the car had pulled in. While the person is walking toward the street, they are angled in the direction of the Mad Trapper. The alleged shooter then gets out of the driver's side of the vehicle and follows in the same direction going toward the road and Mad Trapper and walking out of frame. He can then be seen starting his way back to the car about 15 seconds after walking out of the frame. Once at the car, he takes something out of the car that he puts on his head and then takes something else out of the car and goes back toward the Mad Trapper apparently holding the object he had taken out. He walks out of frame once again. A short time later, he runs back to the car, puts things inside of it, and backs the car out of the space proceeding out of frame.

[10] Her cellphone recording shows that in the Quickstop Front Video, the white sedan drives into the space between the Quickstop and Mad Trapper. It later shows the feet of someone walking past the corner of the Mad Trapper Bar. It then shows the lower legs and feet of someone proceeding to the side of the Mad Trapper and staying there for a few seconds and going back in the direction of where the car would have been. It then shows the lower legs and feet of someone walking out toward the Mad Trapper bar. It then shows the truck of the victim after he was shot, crashing into the front steps of the Quickstop and taking them out. There is too much dust to see whether there were feet going back toward where the car would have been parked. However, the white sedan is then seen pulling out of the space and driving by the front of the Quickstop towards the Roost.

[11] Constable Briere's cellphone recording of the video taken from the front of the Quickstop that angles toward the Roost also shows the front step being taken out by the truck and the white sedan then proceeding by the same spot in the same direction.

[12] Constable Briere's cellphone recordings of the three Quickstop videos I have referred to are all identical to three of the Quickstop videos that the Crown seeks to enter into evidence. Although Constable Briere's video recordings are shorter and do not have the same level of detail as those the Crown seeks to adduce, they are otherwise identical to those videos. As I have said, her cellphone recordings do not include the Quickstop video of the Quickstop's side that faced the Roost.

[13] The Quickstop video that Constable Briere did not record – the video from the side of the Quickstop facing the Roost – shows the truck colliding with the front steps of the Roost and taking them out and then stopping in front of the Roost after colliding with a truck located in front of it. It shows the car that had pulled out of the space driving by the Quickstop and Roost and proceeding on.

[14] While testifying, Constable Briere viewed the three videos that correspond to the ones that she recorded. At the time those videos were being shown to Constable Briere, their playback was somewhat choppy. However, she said they were the same as the ones she viewed and recorded shortly following the time of the shooting.

[15] Tyler Stillie, who worked at the Quickstop said that sometime after the events, he downloaded all the Quickstop videos. The equipment was recording properly, there were no gaps and the video had not been altered in anyway.

[16] I note as well, that the video evidence in dispute, aligns with other video evidence that is not in issue that was taken from across the street from the Quickstop, Mad Trapper and Roost from the Inuvialuit Development Corporation building. The video evidence taken from the Inuvialuit Development Corporation building comprises two videos, one taken from the front of the building angled toward the location of the Mad Trapper, and another taken from the side of that building and shows the front of the Quickstop and the front of the Roost.

[17] The video taken from the front of the Inuvialuit Development Corporation building shows the front of the Mad Trapper bar, the front part of the space between the Mad Trapper and Quickstop and most of the front of the Quickstop building. It shows that at approximately the same time as indicated in the Quickstop videos what appears to be the same white sedan as seen in the Quickstop videos, pulling into the space between the Quickstop and Mad Trapper and proceed down the space. It eventually proceeds out of view with the view being blocked by the Quickstop building. However, it then shows the first individual who left the white sedan walk out from the space and go to the truck of the victim. It shows another individual stepping out from the same space and staying in the same spot at the corner of the Mad Trapper as the feet that are shown in the Quickstop Front Video. The video taken from the front of the Inuvialuit Development Corporation building has a momentary glitch in it and appears to skip forward with the individual standing at the corner of the Mad Trapper then disappearing. However, after that someone comes out of the space with a long arm and proceeds to the truck in front of the Mad Trapper and fires shots at or close to the driver while the driver attempts to flee in the truck. The truck proceeds

forward rapidly and takes out the front step of the Quickstop. The shooter runs back into the space. The white sedan then pulls out and drives away in the same direction indicated in the videos that were taken from the front of the Quickstop.

[18] The video taken from the side of the Inuvialuit Development Corporation building shows the front of the Quickstop and the Roost building located next door. It shows the white sedan enter the space, the truck colliding into the front step of the Quickstop and then proceeding to crash into a parked truck and stopping in front of the Roost, and the white sedan then pulling out of the space and driving by the Quickstop and Roost in the same direction that the truck was going at the time it stopped finally stopped. The white sedan then continues and proceeds out of frame.

[19] These are videos of very distinctive events. In my opinion, they align perfectly. From what is recorded in those videos, it appears that the date/time stamp of the videos is a minute off the date/time stamp of the video evidence the Crown seeks to have entered. However, the same date is indicated. The Inuvialuit Development Corporation building videos indicate that the truck crashed into the front steps of the quick stop on October 10, 2021 at 12:22 a.m. and approximately 47 seconds. The Quickstop videos indicate that that crash occurred October 10, 2021, at 12:23 a.m. and approximately 41 seconds.

[20] The Quickstop videos and the Inuvialuit Development Corporation building videos all appear to show the same vehicles and the same individuals who are depicted in the Quickstop videos. They are all doing the same things with the exception of those occasions when they are out of view of one or more of the videos.

[21] The victim testified he saw the vehicle pull into the place that is depicted in the Quickstop videos I have referred to. He was not in a position to see the vehicle when it ultimately parked. He testified that he saw the accused driving the vehicle. However, I find that at that time he was not in a position to see the driver. Daphne Francis said she was with the accused in the vehicle when it pulled in. Mr. Marshall, said he saw the accused standing in the spot indicated in the Quickstop video taken from the front and angled toward the Mad Trapper and in the video taken from the front of the Inuvialuit Development Corporation building.

[22] Although Mr. Marshall does not recall Ms. Francis being present, all three witnesses described events highly consistent with those depicted in the Quickstop videos.

[23] In the case of *R. v. Nikolovski*, 1996 CanLII 158 (SCC), [1996] 3 S.C.R. 1197 the Supreme Court of Canada held:

28 Once it is established that a videotape has not been altered or changed, and that it depicts the scene of a crime, then it becomes admissible and relevant evidence. Not only is the tape (or photograph) real evidence in the sense that that term has been used in earlier cases, but it is to a certain extent, testimonial evidence as well. It can and should be used by a trier of fact in determining whether a crime has been committed and whether the accused before the court committed the crime. It may indeed be a silent, trustworthy, unemotional, unbiased and accurate witness who has complete and instant recall of events. It may provide such strong and convincing evidence that of itself it will demonstrate clearly either the innocence or guilt of the accused.

[24] In *R. v. Bulldog*, 2015 ABCA 251, the Alberta Court of Appeal in interpreting this passage stated the following at paragraph 28 providing its interpretation of the first sentence in the above paragraph:

[. . .] “*Once it is established that a videotape has not been altered or changed, and that it depicts the scene of a crime, then it becomes admissible and relevant evidence.*”

This statement does not state a *necessary* condition for admission, but rather a *sufficient* condition. It does not, even implicitly, preclude admission of video recordings under other circumstances. Indeed, where an alteration *enhances* a video recording, its accuracy might well be served by such an alteration: *R v Jamieson*, [2004] OTC 369 at paras 36-37, [2004] OJ No 1780 (QL) (SCJ).

[25] The court held that the degree of accuracy of the recording should be the ultimate concern of a court when determining admissibility. It went on to state at paragraph 37:

[. . .] A trial judge is entitled to authenticate a video recording by using circumstantial evidence of one or more witnesses, provided such evidence establishes to the requisite standard of proof that the video in question is a substantially accurate and fair depiction of what it purports to depict. [. . .]

[26] In *Bulldog*, the video was ultimately determined to be admissible. Correctional officers gave evidence that was consistent with what the video depicted. Additionally, they had witnessed a recording of the altercation before the DVD copy was generated. They both said that the video recording they saw was the same as the one played in court.

[27] I have concluded that the videos taken from the Inuvialuit Development Corporation building greatly corroborate the accuracy of all the Quickstop videos

including the portions of the videos taken from both sides of the Quickstop. The admissibility of the videos from the Inuvialuit Development Corporation building are not in question and they were entered into evidence.

[28] The evidence of Constable Briere and Mr. Stillie also corroborate that evidence. In particular the video taken by Constable Briere of the Quickstop Videos is also important corroboration.

[29] What is seen in the Quickstop videos is consistent with and corroborated by the evidence of Jeremy Tyler, Dan Marshall, and Daphne Francis, in different respects. Those testimonies are largely consistent with each other as well as the videos.

[30] Defence counsel argues that I should not use Daphne Francis' evidence to corroborate the Quickstop videos, since I would not then be able to use the videos to corroborate her testimony which on its own, she submits, was weak. She said that if I were to use her evidence to corroborate the videos and rule them admissible on that basis, and then use the videos to corroborate her evidence, I would ultimately be engaging in bootstrapping the weight of her evidence.

[31] I am not sure that I agree with defence counsel's submissions in this respect. While I agree that there are concerns with the evidence of Ms. Francis I am of the opinion that consistent evidence can be mutually corroborative. I see no reason why "Evidence A" cannot be used to corroborate "Evidence B" simply because "Evidence B" has been used to corroborate "Evidence A". My view is that highly consistent pieces of evidence can corroborate each other.

[32] Mutual corroboration is certainly not prohibited. It is well established that a witness requiring corroboration can independently confirm the evidence of another witness so long as collaboration between them is excluded. Most recently, in *R. v. Gallant*, 2019 BCCA 193, at para 33, leave to appeal refused [2020] SCCA No 124, the Court of Appeal stated:

33. It is not disputed that one unsavoury witness can confirm the evidence of another, provided the jury is properly instructed.

[33] I appreciate that in this case Ms. Francis's evidence would be being used to establish the admissibility of the videos in issue. However, if the threshold for those videos to be ruled admissible is met in part through her evidence, why should they then not be used to corroborate her testimony? The video evidence and her testimony are completely independent of one another. There is no possibility of

collaboration. In my opinion, there is no logical distinction between the present circumstances and those of *Gallant*, (supra).

[34] That said, I have no hesitation in finding that even without considering Ms. Francis's evidence, the other evidence I have referred to is ample evidence to corroborate the videos in dispute. I find that evidence sufficiently corroborative of the accuracy of all the Quickstop videos to establish to the requisite standard of proof that they are substantially accurate and fair depictions of what is depicted in them.

C. CONCLUSION

[35] I have concluded that the Quickstop videos have been adequately authenticated and are therefore admissible as evidence in the accused's trial.

Robert Gorin
Chief Judge of the
Territorial Court

Dated at Yellowknife, Northwest Territories,
this 5th day of April, 2023.

R. v. Aleekuk, 2023 NWTTC 05

Date: 2023 04 05

File: T-1-CR-2022-000803

**IN THE TERRITORIAL COURT OF
THE NORTHWEST TERRITORIES**

BETWEEN:

HIS MAJESTY THE KING

-and-

WILLIAM ROBERT ALEEKUK

**REASONS FOR DECISION
of the
HONOURABLE CHIEF JUDGE
ROBERT GORIN**

[Ruling on Admissibility of Video Evidence]