

AMENDED ORIGINAL

R v Aleekuk, 2024 NWTTC 06

T-1-CR-2022-000803

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HIS MAJESTY THE KING

- v -

WILLIAM ROBERT ALEEKUK

Transcript of the Reasons for Judgment delivered by the Honourable Chief Judge R.D. Gorin, sitting in Yellowknife, in the Northwest Territories, on the 31st day of March, 2023

APPEARANCES:

C. Brackley:

Counsel for the Crown

K. Oja:

Counsel for the Defence,
appearing via teleconference

Charges under s. 239, 244(1), and 268(2) of the *Criminal Code*

Amended Original to add citation May 31/2024

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1 (TELECONFERENCING COMMENCES)

2 THE COURT: Please be seated. I see that
3 Mr. Aleekuk is in the dock.

4 THE ACCUSED: Good morning.

5 THE COURT: I see Ms. Brackley is in the courtroom.
6 Good morning.

7 A. DEPARDE: Good morning, Your Honour.

8 THE COURT: And, Ms. Oja, you are in the courtroom in
9 Inuvik. I see that as well.

10 K. OJA: Yes. Good morning, Your Honour.

11 THE COURT: Good morning.

12 (DECISION)

13 THE COURT: William Aleekuk stands charged with
14 attempted murder, using a firearm with intent to wound,
15 and aggravated assault contrary to sections 239, 244,
16 and 268, respectively. All three charges arise from the
17 same physical act on the part of the perpetrator. The
18 events are alleged to have occurred on October the
19 10th of 2021, at or near Inuvik.

20 The victim in this case, Jeremy Tyler, was
21 sitting in the driver's seat of his truck located outside the
22 Mad Trapper bar in Inuvik. It was dark out. An
23 individual armed with a shotgun came out from a space
24 located between the Mad Trapper and the Quick Stop
25 Convenience Store that is next door. That person
26 walked up beside the driver's side of Mr. Tyler's truck,
27 carrying a shotgun. From short range, he shot at the

1 side of the vehicle twice.

2 In addition to shattering the driver's side
3 window, he injured Mr. Tyler with a number of pellets
4 that struck the left side of his head and shoulder area.
5 As well, the shooter shot the 'B' pillar located
6 immediately behind the driver side window at the same
7 height where the driver's head would typically be
8 located. The two shots were fired two or three seconds
9 apart.

10 The issues I have to determine are
11 whether it has been proved beyond a reasonable doubt
12 that Mr. Aleekuk was the shooter, and if so, whether the
13 other essential elements of each of the charged
14 offences, in particular their requisite intent, have all
15 been proved beyond a reasonable doubt. I will deal
16 first with the issue of identification.

17 I will not review the evidence of Mr. Tyler
18 in its entirety. However, he testified that he was sitting
19 in his truck immediately in front of the Mad Trapper on
20 MacKenzie Road in Inuvik, where he was employed,
21 during a break while on his shift as a doorman. The
22 truck does not have a rear seat and therefore no rear
23 side windows. Mr. Tyler was seated with his manager,
24 Dan Marshall, who was in the passenger seat next to
25 him.

26 Mr. Tyler said he saw Mr. Aleekuk go by
27 in his vehicle. From his testimony, their vehicles were

1 pointed in the same direction. He said he saw
2 Mr. Aleekuk driving, and Mr. Aleekuk turned off
3 MacKenzie Road and turned right, driving into an area
4 between the Mad Trapper and the Quick Stop
5 Convenience Store next door. He lost sight of the
6 vehicle when it drove into the area.

7 From the evidence that was provided, it
8 has been established that the area is only accessible
9 from MacKenzie Road and cannot be entered or exited
10 from any other direction. The space that the car
11 entered was essentially a driveway with a dead end
12 that appears to run roughly the same depth as the
13 Quick Stop and Mad Trapper buildings. Mr. Tyler
14 would not have been able to see exactly where the
15 vehicle parked since it drove out of view, past the
16 corner of the Mad Trapper building so that the building
17 blocked his view.

18 Mr. Tyler testified that a person named
19 Daphne Francis then came out of the space between
20 the Mad Trapper and the Quick Stop. She talked with
21 Mr. Tyler through the passenger's window. Both
22 Ms. Francis and Mr. Marshall then left and went to the
23 Mad Trapper. Mr. Tyler was about to go into the Mad
24 Trapper when he saw Mr. Aleekuk at the window of his
25 vehicle.

26 He testified that he was able to see his
27 face and eyes. The gun was pointed at him. He was

1 shot and then left the scene in his vehicle. However,
2 on cross-examination, he said that Mr. Aleekuk had his
3 face hidden with some sort of covering and that he was
4 able to recognize him from his eyes.

5 Daphne Francis testified that she had
6 gone to the Mad Trapper bar with Mr. Aleekuk. She
7 went in a white car Mr. Aleekuk was driving. She has
8 known Mr. Aleekuk for years. There was no one else.
9 in the car. She said they proceeded in the same
10 direction described by Mr. Tyler and parked in the same
11 area that Mr. Tyler saw the vehicle enter before it
12 disappeared from his view.

13 She got out of the vehicle and went to
14 Mr. Tyler's truck, where she spoke with Mr. Tyler
15 through the passenger side window. There was
16 another male on the passenger side who she doesn't
17 remember. She then went to the bar. She remembers
18 people rushing out of the bar around this time. While
19 she was testifying, she seemed very tired and
20 disinterested in the proceedings, at some points staring
21 off into space and being nonresponsive, and at others,
22 appearing to fall asleep.

23 Dan Marshall testified that immediately
24 before the shooting he was in Mr. Tyler's truck, along
25 with Mr. Tyler. The truck was parked in front of the
26 Mad Trapper. He stayed there for about 10 minutes.
27 The truck was running. He saw an older white Ford, or

1 what he describes as an older white Ford, pull into the
2 space described by Mr. Tyler and Ms. Francis. He did
3 not recall Ms. Francis or anyone else being present
4 beside the truck, talking to Mr. Tyler.

5 However, at one point, about three to four
6 minutes after the car pulled in the space while he was
7 in the truck with Mr. Tyler, Mr. Marshall saw
8 Mr. Aleekuk come out from around the corner of the
9 Mad Trapper bar, next to the space that the car had
10 entered. He described him at one point poking his head
11 around the corner. However, during cross-
12 examination, after being shown a video of someone
13 stepping out at that same location, he allowed that the
14 whole body of Mr. Aleekuk was around the corner and
15 that he was not acting suspiciously. The video
16 recording evidence that I will refer to establishes that
17 the person observed by Mr. Marshall returned to the
18 white vehicle he had been driving.

19 Mr. Marshall said he saw the face of
20 Mr. Aleekuk, who he had known for a year or two, and
21 said that Mr. Aleekuk was 10 to 20 feet away.
22 Mr. Aleekuk had been in the Mad Trapper earlier that
23 day before shift change and was drinking at that time. I
24 note that the truck would have been pointed in the
25 direction of the person he described as being
26 Mr. Aleekuk when he stepped out from the space next
27 to the Mad Trapper.

1 Mr. Marshall would have been facing the
2 direction of the person he saw. The area where he saw
3 Mr. Aleekuk was a little lit up, according to Mr. Marshall.
4 He also said Mr. Aleekuk, as I have said, had been in
5 the bar earlier that day before shift change.
6 Mr. Aleekuk then returned to the space he had come
7 from and went out of sight.

8 Mr. Marshall then returned to the bar and
9 heard three bangs. He also said that Mr. Aleekuk
10 came back to the bar about 20 minutes after the
11 shooting. Mr. Marshall was not in the vehicle when the
12 shots were fired. He recalled hearing three shots very
13 soon after leaving the truck while he was approaching
14 the entrance of the Mad Trapper.

15 A number of security videos taken from
16 the Quick Stop were entered as evidence. A video
17 from the Quick Stop taken from its side depicting the
18 area between the Quick Stop and Mad Trapper, which
19 is indicated as Cam 15 in the video evidence and which
20 I will refer to as the Quick Stop side video, shows a
21 white sedan vehicle pulling into that area and parking.
22 The side video is taken from behind where the white
23 sedan parked and shows the back and left side of the
24 sedan after it was parked.

25 The only way a vehicle can enter or exit
26 that space is from MacKenzie Road. The video
27 evidence clearly establishes that the vehicle entered

1 from MacKenzie Road. While the individuals in the
2 video cannot be clearly identified from the video,
3 someone from the passenger side gets out and walks
4 back toward the front of the Mad Trapper, ultimately
5 walking out of the video frame.

6 A video from the front of the Inuvialuit
7 Development Corporation building across the street
8 from the Mad Trapper and Quick Stop, which I will refer
9 to as the IDC front video, then shows that individual
10 proceeding from the space to the right side of
11 Mr. Tyler's truck and apparently interacting with the
12 people inside it. The time stamps indicated on the
13 Quick Stop videos and the IDC videos are very close.
14 The Quick Stop side video shows someone getting out
15 of the driver's side of the white sedan after the
16 passenger left. The driver goes toward MacKenzie
17 Road and the side of the Mad Trapper. This is toward
18 the spot where Mr. Marshall says he saw the accused.

19 A video taken from the front of the Quick
20 Stop building, which is indicated as Cam 1 and which I
21 will refer to as the Quick Stop front video, shows that
22 person proceeding toward the same spot at that time.
23 His entire body cannot be seen, but his feet are still in
24 the video frame at the time he stops at the same spot
25 described by Mr. Marshall and then almost immediately
26 proceeds back in the general direction where the white
27 sedan would have been.

1 with that object and walks out of frame.

2 One cannot see what he has on his head
3 at this point. However, at no point does he take off the
4 balaclava he had put on earlier. The IDC front video
5 then shows that person leaving the space between the
6 Mad Trapper and Quick Stop at around the same time
7 Ms. Francis and Mr. Marshall proceed from the truck to
8 the Mad Trapper. The individual walks in front of
9 Mr. Tyler's truck. While on the sidewalk, he takes out
10 what appears to be a long gun and walks to the driver's
11 side, perhaps a foot away from the front fender. He
12 then angles away from the truck, toward the middle of
13 MacKenzie Road, and is beside the truck.

14 The truck begins to move forward and he
15 fires into the side of the vehicle twice while aiming the
16 shotgun. At the time he shot at the vehicle, he had the
17 stock of the rifle at shoulder height and was holding it in
18 a posture one would assume if aiming a long gun. He
19 appears to have been aiming the shotgun at Mr. Tyler.

20 Between the first shot and second shot,
21 the shooter takes a couple of steps, attempting to follow
22 along with the truck while on its left-hand side at the
23 time the vehicle is driving away. There appears to be a
24 distance of around five feet between the muzzle of the
25 long gun and the driver's side window when it is
26 discharged the first time. The distance at the time of
27 the second shot appears to be around 15 to 20 feet.

1 The IDC front video shows that the shots
2 were fired two to three seconds apart. The truck was
3 not yet moving rapidly when either of the shots were
4 fired. However, it then continued to accelerate,
5 eventually crashing through and taking out the front
6 steps of the Quick Stop. It crashed into a parked car
7 and then stopped in front of the Roost Restaurant
8 located further down MacKenzie Road. The Quick
9 Stop front video shows Mr. Tyler's truck taking out the
10 front step of the Quick Stop. So does a separate Quick
11 Stop video, marked Cam 3, also taken from the front of
12 the Quick Stop, but which points away from the space
13 next to the Mad Trapper and in the direction of the
14 Roost Restaurant located on the other side of the Quick
15 Stop further up the street.

16 Yet another Quick Stop video, marked
17 Cam 16, shows the vehicle, after it took out the front
18 step, proceeding by the front of the Roost, crashing into
19 a white vehicle and finally stopping. The IDC, a front
20 video, shows that immediately after the shooting, the
21 shooter appeared to place, pick up or attempt to pick up
22 an object or objects from the road around where he had
23 fired the shots. The IDC front video then shows him
24 running back to the space where the white sedan would
25 have been located.

26 He proceeds out of view. However, the
27 Quick Stop side video shows him running to the parked

1 white sedan and getting into it rapidly, immediately after
2 Mr. Tyler's truck is shown as finally stopping, as
3 depicted in the Quick Stop video marked as Cam 16.
4 The Quick Stop side video then shows the white sedan
5 backing out and leaving the space depicted in that
6 video. The sedan proceeds out of frame. However,
7 the IDC front video shows the sedan then back out of
8 the space onto MacKenzie Road and proceed forward,
9 leaving the scene, driving by the front of the Quick
10 Stop, away from where Mr. Tyler had previously been
11 parked.

12 The Quick Stop front videos also show
13 the white sedan driving by the Quick Stop after backing
14 out. The vehicle was being driven in a normal and
15 controlled manner. I note that all the videos indicate at
16 least roughly the same time in their timestamps. The
17 IDC front video shows that between 20 and 25 minutes
18 after the shooting a white sedan proceeded from the
19 direction where the white sedan driven by the shooter
20 had left.

21 The sedan appears to have a black spare
22 wheel located on the rear left side of the sedan, so it
23 was on the sedan being used. The evidence of the
24 police was that the black wheel appeared to be a spare.
25 One can see the same sort of black spare wheel on the
26 left rear of the sedan and the Quick Stop side video.
27 Also, the two videos show that the vehicle has a badge,

1 presumably indicating the vehicle's make or model in
2 the same location of the front left quarter panel. From
3 the angle, it is not possible to see whether, like the
4 sedan in the Quick Stop side video, it had a sunroof.
5 The IDC front video shows that after returning to the
6 area, the white sedan parked across the street from the
7 Mad Trapper.

8 After parking it, the driver then gets out of
9 the sedan and proceeds toward the Mad Trapper bar.
10 Although the video is not completely clear, the
11 individual seems to have a gait similar to the person
12 depicted in the Quick Stop side video. He also appears
13 to be dressed in a consistent manner, with a black
14 jacket. However, the clothing is not distinct. I also note
15 that when the IDC front video showed the point in time
16 immediately before the shooting, when the white car
17 drove by Mr. Tyler's truck pulled into the space
18 between the Mad Trapper and the Quick Stop, one can
19 see the left rear wheel is black like a spare wheel and is
20 different from the right front, which appears to be a
21 regular wheel. This is also the case with the sedan that
22 later parked across the street from the Mad Trapper.

23 Once again, due to the angle from which
24 the IDC front video was taken, one cannot see whether
25 there is a sunroof. Mr. Aleekuk was arrested in the
26 Mad Trapper shortly after the white sedan was parked
27 across the street from the Mad trapper. Hours later, an

1 empty shell casing was found on the street around the
2 spot where the shooting had occurred.

3 The white sedan that was parked across
4 the street from the Mad Trapper following the incident
5 was determined to belong to Mr. Aleekuk. It was
6 photographed by the police and appears to have been
7 similar to the white sedan that is depicted in the videos
8 passing Mr. Tyler's truck, pulling into the scene next to
9 the Mad Trapper, or the space next to the Mad
10 Trapper, and leaving the scene. Like the sedan
11 depicted in those videos, it was white. It had lights and
12 styling on the back of the sedan that appear to be
13 identical. It had a black wheel on the left back that was
14 different from the wheels on the front. It had a make or
15 model badge that was identically located and similar in
16 shape and size on the front left quarter panel.

17 The sedan in the Quick Stop side video
18 had a sunroof. Unfortunately, when the police finally
19 photographed the sedan parked across the street from
20 the Mad Trapper the next day, there was a layer of
21 snow over the top of the sedan and the roof of the
22 sedan that cannot be seen in the photographs.
23 Nevertheless, given the small population of Inuvik and
24 the unique aspects of the sedan that I have referred to,
25 I am satisfied it is the same sedan that the shooter was
26 driving earlier.

27 Shortly after the incident, the police

1 observed a soft long gun case in the sedan parked
2 across the street from the Mad Trapper. They
3 searched the sedan, as a result of their public safety
4 concerns. The case was empty.

5 However, because they were unsure
6 what type of firearm had been used in the shooting,
7 they also searched a black duffel bag located in roughly
8 the same spot. The duffel bag had no firearms in it.
9 However, three shotgun shells were found inside. One
10 of them had previously been discharged. The other
11 two had not been discharged. They were all 12-gauge
12 shells, which were of the same red colour and had the
13 same markings on them, indicating the type of shot, the
14 number of pellets, the total weight of the pellets. Not
15 only did the plastic portion of the shell have the same
16 red colour, the base of the shell was a metallic silver
17 colour in all cases.

18 All shells were marked as being
19 Winchester brand, 12 gauge, on the base. As stated,
20 those shells were identical to the spent cartridge found
21 on the road in the approximate location where the
22 firearm had earlier been discharged. While pellets
23 were extracted from Mr. Tyler's wounds, which are
24 depicted in the photographic evidence that was
25 entered, the type of shot was never analyzed. That
26 said, the pellets were photographed, and I think it is
27 very apparent from the appearance of the wounds and

1 the circumstances of the actual shooting that the
2 wounds were from a shotgun.

3 Crown counsel suggests that the
4 presence of the spent cartridge in the sedan is
5 consistent with the video depiction of the shooter twice
6 picking up or attempting to pick up an object or objects
7 from the ground following the shooting and before
8 departing the scene on foot. She suggests that all of
9 the factors I have referred to prove beyond a
10 reasonable doubt that it was Mr. Aleekuk who shot
11 Mr. Tyler.

12 Defence counsel suggests that there
13 were problems with the evidence referred to by the
14 Crown. She suggests that Mr. Tyler's identification
15 evidence is suspect. He testified he saw Mr. Aleekuk
16 driving by him before pulling into the space beside the
17 Mad Trapper. She says this would have been unlikely
18 given the height of the truck compared to the height of
19 the sedan. I agree with her on this point. From the
20 video footage, I do not see how Mr. Tyler would have
21 been in a position to view the driver from where he was
22 seated.

23 Defence counsel points out that it would
24 have been difficult for Mr. Tyler to identify the shooter
25 as Mr. Aleekuk based simply on his eyes immediately
26 before he fired the shots. I agree with her on this point
27 as well. Additionally, his evidence appeared

1 inconsistent on whether or not he was able to identify
2 Mr. Aleekuk from his whole face or just his eyes.

3 Mr. Tyler also testified to other
4 observations that are contradicted by the video
5 evidence. He said that he turned on the truck and left
6 after the shot, or at the time of the first shot,
7 Mr. Marshall said that the truck was running when he
8 was in it. It appears from the video that the truck was
9 already running. One can see vapour appear to be
10 emanating from the exhaust. The vehicle was in
11 motion before the shots were fired.

12 Mr. Tyler said the white sedan was
13 driving recklessly and fast. I did not observe any
14 reckless driving by the white sedan in the video
15 evidence. Mr. Tyler said he was not sure if the driver's
16 side window was open or closed at the time of the
17 shooting. I think it is pretty clear it was closed, based
18 on the evidence that it was completely smashed out
19 following the shooting. The glass was blown into the
20 interior of the truck.

21 Mr. Tyler testified to three shots being
22 fired but had described only two shots in a statement
23 he had provided earlier. While testifying, he admitted
24 that he was not sure. He testified he was shot more
25 than one time. The video shows only two shots, and
26 one of those shots hit the 'B' pillar behind the driver's
27 side window. And from the pattern of shot on the

1 window, the indentations that were made, it appears
2 that the shot was concentrated on the pillar and did not
3 spread further.

4 Mr. Tyler also admitted on cross-
5 examination that all of the shotgun pellet wounds to his
6 head and other parts of his body could have been
7 caused by only one shot, depending on how he was
8 positioned at the time. That said, Mr. Tyler was
9 testifying about an extremely rapidly unfolding set of
10 circumstances, which would have been highly
11 traumatic. He was shot in the side of the head. It is not
12 surprising that there are some discrepancies in his
13 evidence. Although he has a significant criminal
14 record, I find that when he was testifying he was doing
15 his best to remember things accurately.

16 I also agree with defence counsel when
17 she says that Daphne Francis was not an impressive
18 witness. She appeared reluctant to attend. Her
19 demeanour in testifying was striking in that she did not
20 appear to take the proceedings seriously. While
21 testifying, she stared off into the distance and at times
22 closed her eyes, appearing to fall asleep. She had to
23 be reminded repeatedly to verbalize her answers.

24 Defence counsel submits that I should
25 not accept her evidence without external corroboration.
26 Defence counsel also states that the evidence of
27 Mr. Marshall is suspect since he does not remember

1 Ms. Francis being present. He did not identify
2 Ms. Francis as being the person next to the truck
3 depicted in the IDC front video. However, there was
4 clearly someone in that video at the time he was there.

5 He said that he saw Mr. Aleekuk peer
6 around the corner of the space next to the Trapper and
7 then go away. Defence counsel points out that he was
8 10 to 20 feet away and that it was nighttime. She
9 points out that there was a lot of foot traffic and vehicle
10 traffic around the scene of the shooting between the
11 time of the shooting and the time the shell off the road
12 was recovered hours later. She also submits that
13 following the shooting but before the shell on the road
14 was recovered, an ATV drove through the scene and
15 that ATV's are often used in hunting.

16 The concerns that defence counsel has
17 raised might result in a reasonable doubt on identity if I
18 were viewing any of the identification evidence I have
19 referred to in isolation; however, I am not. When I view
20 all of the foregoing evidence in its totality, I find that the
21 chances of the shooter being anyone other than
22 William Aleekuk are miniscule. The video and
23 photographic evidence establish striking similarities
24 between the vehicle of the shooter and the vehicle
25 which is owned by Mr. Aleekuk and which was driven to
26 a spot across the street from the Mad Trapper before
27 the person driving it exited and proceeded to the Mad

1 Trapper where Mr. Aleekuk was arrested shortly
2 afterwards.

3 The video evidence is consistent with
4 what Mr. Marshall described when he said that he saw
5 Mr. Aleekuk peering around or standing around the
6 corner of the space where the Quick Stop side video
7 shows that the white sedan had parked and later
8 proceeded to back out. The Quick Stop side video and
9 Quick Stop front video are consistent with this, as is the
10 IDC front video. The Quick Stop side video shows the
11 driver exit the driver's side door shortly after the female
12 occupant exited the passenger side of the vehicle. It
13 shows that he walked in the direction that was toward
14 the spot where Mr. Marshall said he saw Mr. Aleekuk.
15 He kept walking, stepped out of view on the Quick Stop
16 side video, but proceeded back to the white vehicle
17 very shortly afterwards.

18 The Quick Stop front video shows that
19 same individual's feet and shows that he stopped
20 around the spot described by Mr. Marshall before
21 proceeding back to the vehicle. The IDC front video
22 shows the individual proceeding to and standing at that
23 spot. Based on that video, he would have been in
24 complete view of Mr. Marshall.

25 There is the momentary glitch in the
26 video where it skips forward so that one cannot see him
27 proceeding back to the vehicle; he simply disappears.

1 However, it is apparent from the Quick Stop side video
2 and Quick Stop front video that the portion that is
3 missing as a result of the glitch is very brief in duration.
4 The parts of the IDC front video that I have just
5 described are entirely consistent with the Quick Stop
6 side video and Quick Stop front video. The videos
7 strongly corroborate the testimony of Mr. Marshall.

8 I will note that when Ms. Francis was
9 shown the Quick Stop side video where the driver of
10 the white sedan is shown walking, she was asked if she
11 could identify the driver. She identified that person as
12 Mr. Aleekuk, but seem to do so based primarily on his
13 gait. There was no *voir dire* on her ability to provide
14 video recognition evidence, and I therefore give no
15 weight whatsoever to that aspect of her testimony.

16 However, Ms. Francis testified that she
17 was driven to the space next door to the Mad Trapper
18 by Mr. Aleekuk. She has known him for many years.
19 She testified that she spoke with Mr. Tyler from the
20 passenger side of his vehicle. Mr. Tyler's evidence and
21 the video evidence is consistent with this.

22 Even though Mr. Marshall does not
23 remember her there, it is clear in the IDC front video
24 that someone was standing beside the vehicle at the
25 spot described by both Mr. Tyler and Ms. Francis, while
26 Mr. Marshall was in the vehicle. It also seems clear that
27 that person was talking to a person or persons in the

1 vehicle. Someone consistent with the appearance of
2 Ms. Francis can be seen in the video evidence
3 depicting the place where the white sedan was parked
4 and the video of the spot where Mr. Tyler had been
5 parked.

6 Her evidence as to what she did
7 immediately following being driven to the Mad Trapper
8 is completely consistent with the videos. The videos
9 show that a vehicle stopped where she said it stopped.
10 Someone got out of the passenger side, as she said
11 she did. That person proceeded to the passenger side
12 of Mr. Tyler's truck, as she said she did. She appeared
13 to talk to people in the truck, as she said.

14 Ms. Francis says she talked through the
15 passenger side window with Mr. Tyler, who is on the
16 driver's side. The video evidence shows someone
17 speaking to a person or persons in the truck from the
18 passenger side. She said that someone was seated on
19 the passenger side in the vehicle. The video shows
20 that. The video also shows that the person who was
21 talking to the people inside the vehicle then proceeded
22 toward the Mad Trapper bar before the shooting, just as
23 Ms. Francis testified she did.

24 I find her evidence is largely corroborated
25 by the video evidence and by the evidence of Mr. Tyler
26 on where she was and what she was doing around the
27 time leading up to the shooting. I accept that she is the

1 person depicted in the video footage I have just
2 described. I also accept her evidence that it was
3 Mr. Aleekuk who drove her to the Mad Trapper and
4 parked in the space next door to the Mad Trapper at
5 that time.

6 Also, the close match of the gauge,
7 colour, and descriptors on the outside of the shell
8 casings retrieved from the scene and in Mr. Aleekuk's
9 vehicle are important. They were all the same gauge,
10 colour, and markings. They appear physically identical.
11 They are all marked as being heavy game. They all
12 have identical markings, indicating that the shot was
13 number four. The weight of the shot is one and one-
14 quarter ounces and that the case is two and three-
15 quarter inches long. The base of the shells were the
16 same metallic colour. They were all marked as being
17 Winchester brand and 12 gauge.

18 In the video evidence, the shooter is seen
19 to be attempting to pick up an object or objects from the
20 ground immediately after the shooting. We know from
21 the video that two shots were fired. While there was a
22 danger of the scene being contaminated, the presence
23 of one empty shell at the scene and an identically
24 empty shell in a black bag in the back of Mr. Aleekuk's
25 vehicle is still significant evidence of him being the
26 same person as the shooter under the circumstance.

27 The video and photographic evidence

1 establishes striking similarities between the shooter's
2 vehicle and the vehicle owned by Mr. Aleekuk and
3 driven to and parked across the street from the Mad
4 Trapper. Although Mr. Marshall described it as being a
5 white Ford and the police officer's evidence was that it
6 was a white Pontiac Bonneville, I am satisfied that the
7 vehicle they saw across the street from the Mad
8 Trapper was the same vehicle that the shooter drove. I
9 find that the rear of the vehicle driven by the shooter
10 and the vehicle owned by Mr. Aleekuk are identical.
11 There are also other similarities I have noted.

12 After parking the vehicle across the street
13 from the Mad Trapper, the driver exited and proceeded
14 toward the Mad Trapper. Mr. Aleekuk was arrested in
15 that establishment shortly thereafter. Under all of the
16 circumstances that I have described, I am of the view
17 that there is no other reasonable conclusion other than
18 it was Mr. Aleekuk who shot Mr. Tyler. There is no
19 reasonable possibility that the shooter was somebody
20 else. The entirety of the evidence leads inexorably to
21 that conclusion. The chances of the number of errors
22 and coincidences that would be required to come to
23 any other conclusion are extremely low.

24 In spite of carefully listening to defence
25 counsel's very capable submissions and considering
26 them at length, I have no uncertainty in finding that
27 identity is established. I am satisfied it has been proved

1 beyond a reasonable doubt. I find that the case is not
2 at all close on this issue.

3 The elements of the offence. First, I will
4 deal with the issue of whether or not the Crown has
5 proven beyond a reasonable doubt that a firearm was
6 used in the commission of the offences. The use of a
7 firearm is an essential element of the offence, contrary
8 to section 244(1) of the *Criminal Code*: Discharging a
9 firearm with intent to wound. The attempt murder
10 charge has also been particularized to have been
11 committed with a firearm.

12 I find it has been proven beyond a
13 reasonable doubt that there was a weapon used and
14 that it was a firearm. The IRC front video shows
15 flashes of light coming out of the end of the muzzle that
16 Mr. Aleekuk was pointing at the side of Mr. Tyler's
17 truck. People could hear shots being fired, although
18 Mr. Marshall initially thought he was hearing a car
19 backfiring.

20 The weapon completely blew out the
21 driver's side front window. Numerous pellets were
22 found in the left side of Mr. Tyler's head, following the
23 wounds being inflicted. Another shot appears to have
24 hit the 'B' pillar of the driver's side, with the shot pattern
25 similar to the pattern on Mr. Tyler's head. A spent
26 shotgun casing was found at the scene and another
27 very similar spent shotgun casing was found in the

1 black duffel bag in Mr. Aleekuk's vehicle.

2 I will now deal with the other essential
3 elements of the offences charged, in particular their
4 requisite intent. I will first deal with aggravated assault.
5 Aggravated assault is a general intent offence. There
6 must simply be an intention to apply force to the victim,
7 directly or indirectly. As well, because aggravated
8 assault is a general intent offence, if the accused is
9 reckless under the circumstances as to whether such
10 force will be applied, that is sufficient to make out the
11 requisite criminal intent. Recklessness occurs where
12 the accused behaves in a specific manner, knowing
13 that his conduct could result in the prohibited conduct.
14 Therefore, in the case of an assault, knowingly running
15 the risk that force will be applied to the victim without
16 consent will suffice.

17 Additionally, in the case of an aggravated
18 assault, there is no need to actually intend to maim,
19 wound or disfigure the victim. The desire to bring about
20 the consequences of the assault is unnecessary so
21 long as any reasonable person would inevitably realize
22 that the victim would be subject to a risk of bodily harm.
23 So the risk of bodily harm is objective (See *R v*
24 *Nanemahoo*, 2011 ABCA 182 (CanLII), *R v DeSousa*,
25 [1992] 2 SCR 944, per Sopinka, J.)

26 All of that having been said, it is
27 unnecessary to consider whether there was

1 recklessness on the part of Mr. Aleekuk. I find that the
2 Crown has proven beyond a reasonable doubt that
3 there was actual intent on the part of Mr. Aleekuk to
4 apply force to Mr. Tyler when he discharged the
5 shotgun. The direction that the shotgun was aimed,
6 along with the short range that was present at that time,
7 makes that clear. At least one shot hit the window. At
8 least one shot put pellets in Mr. Tyler's head and
9 shoulder. One of the shots hit the 'B' pillar immediately
10 behind Mr. Tyler's head. If Mr. Aleekuk was not trying
11 to apply that force, why not aim the shotgun at different
12 parts of the truck or over top of the truck? If it was his
13 intent to simply scare Mr. Tyler, it would have been very
14 easy for him to do that.

15 The necessary elements are made out.
16 Mr. Aleekuk intentionally applied force to Mr. Tyler.
17 Any reasonable person in Mr. Aleekuk's position would
18 have been able to see that firing the shotgun, as
19 Mr. Aleekuk did, would have subjected Mr. Tyler to a
20 risk of bodily harm. The bodily harm suffered by
21 Mr. Tyler was sufficient to make out an aggravated
22 assault wounding.

23 Mr. Tyler suffered serious injuries.
24 Numerous pellets hit his body and head. His skin was
25 perforated in a number of places. Pellets had to be
26 removed from his body, including his head. Both the
27 *actus reus* and *mens rea* of the count of aggravated

1 assault have been proven beyond a reasonable doubt.

2 Section 244 of the Code states (as read):

3 Every person commits an offence who
4 discharges a firearm at a person with intent to
5 wound, maim or disfigure, to endanger the life of
6 or to prevent the arrest or detention of any
7 person, whether or not that person is the one at
8 whom the firearm is discharged.

9 I conclude that section 244 creates a
10 specific intent offence. Actual intent to wound, maim or
11 disfigure must be established, according to the wording
12 of the section. Traditionally, words and phrases such
13 as "with intent to," "for a fraudulent purpose," "corruptly"
14 or "willfully and knowingly," indicate that Parliament
15 wishes to require specific intent; see *Leary v The*
16 *Queen*, [1978] 1 SCR 29, per Dickson, J., as he then
17 was, at pages 40-41. In *Leary*, while Justice Dickson
18 was dissenting from the majority, it was only on other
19 issues.

20 Since discharging a firearm with intent is
21 a specific intent offence, recklessness will not suffice,
22 although I note parenthetically that willful blindness
23 would. However, it is sufficient if the accused carries
24 out the discharging of the firearm knowing that it will
25 result in the wounding, maiming or disfiguring of the
26 victim. In other words, the intention can be oblique as
27 well as direct. If the consequences are virtually certain

1 from the subjective perspective of the accused, that is
2 sufficient, whether or not he commits the act with that
3 specific purpose in mind.

4 As I have said, I find that Mr. Aleekuk
5 intentionally fired the shotgun at Mr. Tyler. He fired
6 through the driver's side window at one point. As I
7 have said, any reasonable person would have known
8 that bodily harm would occur. However, that is not
9 dispositive of the issue as to whether Mr. Aleekuk shot
10 Mr. Tyler for the purpose of wounding him or knowing
11 that his actions would wound him.

12 Nevertheless, given the range of the
13 shots and the type of weapon and ammunition used by
14 Mr. Aleekuk, and also taking into account the part of the
15 body that was shot, I find that Mr. Aleekuk must have
16 known that the blast would wound Mr. Tyler, even
17 though one of the shots was fired through the closed
18 driver's side window. I find that this has been proven
19 beyond a reasonable doubt. I find, as I have said, he
20 was aiming at Mr. Tyler. I find he was aiming at his
21 head. As stated, this has, in my opinion, been proved
22 beyond a reasonable doubt.

23 Mr. Tyler was shot in the head and the
24 vehicle he was driving also received another blast that
25 was in close proximity to his head. When the shotgun
26 was discharged, it was being aimed by Mr. Aleekuk in
27 the usual manner long guns are aimed with the stock at

1 his shoulder and the barrel at the same level as his
2 eyes. He was in close range to Mr. Tyler and the truck.
3 If Mr. Aleekuk simply intended to scare Mr. Tyler and
4 intended to miss or simply intended to damage the
5 truck, it would have been very easy for him to direct his
6 shots away from Mr. Tyler.

7 Even taking into account that the shot
8 that hit Mr. Tyler's head appears to have been fired
9 through a closed window, I find that it has been proven
10 beyond a reasonable doubt that Mr. Aleekuk was
11 aiming at the head of Mr. Tyler with intent to wound him
12 at the times that he pulled the trigger. Once again, I
13 can find no other rational or reasonable conclusion than
14 that at that particular moment he wanted Mr. Tyler
15 dead. In other words, he was shooting to kill.

16 Attempted murder is set out in section
17 239 of the Code. 239(1) states that "every person who
18 attempts by any means to commit murder is guilty of an
19 indictable offence." It is very well established that
20 attempted murder, like all attempts, is a specific intent
21 offence. Unlike murder itself, only an actual intention to
22 kill will suffice to make out the *mens rea* of the offence.
23 Whether or not that *mens rea* is established in a
24 situation where a firearm is used will depend upon a
25 number of factors, including the type of firearm that is
26 used, the part of the body at which the shot was aimed,
27 the type of ammunition used, and any barriers between

1 the accused and the victim, and, in my opinion in
2 particular where a shotgun is used, the distance from
3 the firearm to the victim at the time of the shooting.

4 As I have stated, in the present case,
5 Mr. Aleekuk shot at the victim twice. One of the shots
6 hit the 'B' pillar between the driver's side window and
7 the box located immediately behind it. Mr. Aleekuk
8 fired one shot when there was about five between the
9 firearm's muzzle and the driver's side window. The
10 second shot was taken from 10 to 15 feet away. The
11 shots fired resulted in the driver's side window being
12 completely blown out. As stated, the shots were fired
13 at close range and the accused received multiple
14 pellets in his head.

15 Once again, I note the pattern of the shot
16 appears to be concentrated around the back of
17 Mr. Tyler's left ear. The pattern appears similar to that
18 of the shot that hit the 'B' pillar. Once again, if it was
19 not Mr. Aleekuk's intention to shoot Mr. Tyler in the
20 head, why would he have not fired over the truck or at
21 another spot on the truck? Why would he not have
22 fired at the rear or front fenders of the truck or other
23 spots less close to Mr. Aleekuk's head? If that was his
24 intention, it would have been easy to intentionally miss
25 hitting Mr. Tyler while at that range. Also, why fire two
26 shots, and why pursue the vehicle to get closer before
27 taking the second shot?

1 He was aiming the gun at Mr. Tyler's
2 head and doing so from close range. I appreciate that
3 the shot that was in the shells that were expended was
4 not the heaviest shot available. The evidence with
5 which I was provided and to which no objection was
6 taken was that that type of shot is used for killing
7 rabbits or birds such as ducks or even geese.
8 However, given the short range from which the gun
9 was fired on both occasions, given that it was aimed at
10 the victim's head, and given the number of shots fired, I
11 am satisfied that it has been proven beyond a
12 reasonable doubt that Mr. Aleekuk fired the shotgun at
13 Mr. Tyler with the intention to kill him. I am satisfied
14 that the evidence establishes that there is no other
15 reasonable conclusion under all of the circumstances.

16 Other than the elements of identification,
17 the weapon being a firearm, and the criminal intent
18 required for each of the offences, the further elements
19 of the offence are not an issue. In any event, I find that
20 all of the necessary elements of each of the offences
21 have been proven beyond a reasonable doubt. The
22 evidence clearly establishes that the offences occurred
23 in Inuvik, in the Northwest Territories, in the time frame
24 alleged in the information before me.

25 I find Mr. Aleekuk guilty of all three
26 charges, and convictions will be entered accordingly.

27 I wish to thank both Ms. Oja and

1 Ms. Brackley for their very capable assistance during
2 this trial. Now, counsel, before we deal with a date for
3 sentencing, I do not -- I certainly do not propose to do it
4 today, I am going to ask that the victim impact
5 statement, which is attached to the court file, be
6 unsealed and provided to counsel. I will also take a
7 look at it. Ms. Oja, you are not here right now, but it will
8 be a scanned and sent to you.

9 K. OJA: Oh, thank you, Your Honour.

10 THE COURT: All right. And I will review it later. I am
11 wondering if the Crown's going to be alleging a criminal
12 record. I see no reason why that cannot be tendered at
13 this time.

14 C. BRACKLEY: Yes, Your Honour, I do have a record.
15 Just for Ms. Oja's benefit, because I can't physically
16 show it to her --

17 THE COURT: Sure.

18 C. BRACKLEY: -- it is two pages in length. The last
19 conviction would have been September 27, 2017.

20 THE COURT: All right.

21 K. OJA: Your Honour, I just -- I don't have any way of
22 reviewing that with Mr. Aleekuk right now and so --

23 THE COURT: You have not reviewed it with him
24 previously?

25 K. OJA: Not before today, Your Honour.

26 THE COURT: Okay. All right.

27 K. OJA: I'm sure we did at the bail stage. But just

1 because I can't see what Ms. Brackley is handing up --

2 THE COURT: Okay.

3 K. OJA: -- I'd prefer to be able to do that at sentencing.

4 THE COURT: Well, I will stand court down for half an
5 hour and I will allow you to do that. But I would like to
6 see it today.

7 I note that there are three victim impact
8 statements, Madam Clerk?

9 THE CLERK: Says there is three.

10 THE COURT: Yeah, three separate ones. All right.
11 Thanks. Okay. So once that is done, we can set a
12 date. I will stand court down for half an hour to give you
13 that opportunity, Ms. Oja. And I am wondering, are you
14 going to be requesting a pre-sentence report under the
15 circumstances?

16 K. OJA: Yes, I am, Your Honour.

17 THE COURT: Okay. All right. So this matter will be
18 stood down for the time being.

19 (ADJOURNMENT)

20 THE COURT: Please be seated. Counsel, Ms. Oja.

21 K. OJA: Thank you, Your Honour. I was -- yes, I was
22 able to confirm that the criminal record the Crown has
23 handed up to the Court is the same copy I had
24 previously of that.

25 THE COURT: All right. Thank you. So Exhibit S-1 at
26 this point then. That has been reviewed --

27 K. OJA: And --

1 THE COURT: -- and it is admitted?

2 K. OJA: Yes, Your Honour.

3 THE COURT: Great. Just give me a second, please.

4 **EXHIBIT S1: CRIMINAL RECORD.**

5 THE COURT: All right. Thank you. You were saying?

6 K. OJA: With respect to the Victim Impact Statements,
7 there are two of them -- I'd like the opportunity to review
8 those with Mr. Aleekuk and potentially make comments
9 at a later point if there is anything that I see as perhaps
10 going further than the scope of a victim impact
11 statement.

12 THE COURT: Oh, absolutely, of course.

13 K. OJA: Okay. Great.

14 THE COURT: But there is no reason why I cannot take
15 a look at them in the interim.

16 K. OJA: No.

17 THE COURT: Good. Thank you.

18 K. OJA: Absolutely not.

19 C. BRACKLEY: I also just wanted to advise Your
20 Honour, the -- I spoke to the Victim Services worker
21 briefly and I understand that there may be one or two
22 more Victim Impact Statements coming as well.

23 THE COURT: Sure. And that is fine as well. I just want
24 to get as much before me as I can --

25 C. BRACKLEY: Yes.

26 THE COURT: -- today. I think that makes sense. So
27 you are asking for a pre-sentence report?

1 K. OJA: Yes, I am.

2 THE COURT: All right. I am going to direct that a
3 pre-sentence report be prepared and filed with the
4 Clerk of the Court. I will figure out the deadline for that
5 when we figure out a date for sentencing submissions.
6 Counsel had an opportunity to discuss those with each
7 other?

8 C. BRACKLEY: We have, Your Honour. Firstly, I think
9 we both take the position it makes sense for this matter
10 to be heard in Inuvik where the incident occurred.

11 THE COURT: I agree.

12 C. BRACKLEY: And also, I believe, given availability,
13 we are likely looking at some point in the summer. I'd --
14 I'll let Ms. Oja speak to her availability in May and June.

15 THE COURT: All right. Well, you know what would be
16 a great idea, I think, is if you discuss your available
17 dates, the dates on with -- which you are both present
18 with Madam Clerk --

19 C. BRACKLEY: Okay.

20 THE COURT: -- and come up with a list of available
21 dates. I can deal with that later today, perhaps at 2:00.
22 Does that make?

23 C. BRACKLEY: It does. Thank you.

24 THE COURT: Okay. Does that make sense to you,
25 Ms. Oja?

26 K. OJA: It does, Your Honour. I do know that the sheriff
27 here is -- there is an issue of flights.

1 THE COURT: All right.

2 K. OJA: And so I could perhaps just call in.

3 THE COURT: Well, sure. We could deal with that

4 perhaps in half an hour then.

5 K. OJA: That is agreeable, Your Honour.

6 THE COURT: I think that makes sense too.

7 C. BRACKLEY: Yes, it does. Thank you.

8 THE COURT: Okay. So half an hour. This matter is

9 stood down for now. Mr. Aleekuk can be taken away

10 from the time being. But you will be back here, Sir, in

11 half an hour when we set the date for your sentencing.

12 THE ACCUSED: Can I just go to NSCC and appear

13 from video from there?

14 THE COURT: No, it is only going to be half an hour.

15 THE ACCUSED: Okay.

16 (ADJOURNMENT)

17 THE COURT: Please be seated. All right, counsel.

18 Ms. Oja, I understand that you are going to be

19 unavailable from May the 15th to June the 15th

20 approximately?

21 K. OJA: Yes, that's right, Your Honour, with jury trials on

22 either side of that period.

23 THE COURT: Sure. Right. And it is likely to take six

24 weeks to get the pre-sentence report done. What I am

25 going to do is I am going to add an additional date to

26 the Fort McPherson circuit that is set, I believe, during

27 the week of July the 10th — that is correct — and I will

1 add a Friday on to that. I will do that circuit. And it will
2 therefore be July the 14th, at 9:00 in the forenoon that
3 we deal with the sentencing in Inuvik. Deadline on the
4 pre-sentence report, I am thinking June the 30th at
5 4 p.m. Anything further, counsel?

6 C. BRACKLEY: Nothing for today, Your Honour.

7 THE COURT: Okay. Form 19, of course, to that date --

8 C. BRACKLEY: Yes.

9 THE COURT: -- in person, Madam Clerk. And,
10 counsel, once again, thank you very much for your hard
11 work in relation to this matter.

12 K. OJA: Thank you, Your Honour.

13 C. BRACKLEY: Thank you, Your Honour.

14 THE COURT: Okay. So we will adjourn until 2:00 now.
15 Great.

16 **(PROCEEDINGS ADJOURNED TO JULY 14, 2023,**
17 **AT 9:00 A.M., IN INUVIK, IN THE N.W.T.)**

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1 **CERTIFICATE OF TRANSCRIPT**

2 Veritext Legal Solutions, Canada, the undersigned, hereby
3 certify that the foregoing pages are a complete and accurate
4 transcript of the proceedings transcribed from the audio
5 recording to the best of our skill and ability. Judicial edits
6 have been applied to this transcript.

7

8

9 Dated at the City of Toronto, in the Province of Ontario, this
10 27th day of May, 2024.

11

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13 *Veritext Legal Solutions, Canada*

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15 _____
Veritext Legal Solutions, Canada

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