

# SUPREME COURT OF YUKON

Citation: *R v Silverfox*, 2021 YKSC 53

Date: 20211013  
S.C. No. 20-01513  
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

RESPONDENT

AND

CHARABELLE SILVERFOX AND LYNZEE SILVERFOX

APPLICANTS

**Publication of evidence taken at the preliminary inquiry is prohibited by court order pursuant to s. 539(1) of the *Criminal Code*. This ban is no longer in effect.**

Before Justice K. Wenckebach

Counsel for the Crown

Leo Lane and  
William McDiarmid

Counsel for Charabelle Silverfox

Jennifer Cunningham

Counsel for Lynzee Silverfox

Jennifer Budgell

**This decision was delivered in the form of Oral Reasons on October 13, 2021. The Reasons have since been edited for transcription without changing the substance**

## REASONS FOR DECISION

### INTRODUCTION

[1] Wenckebach J. (Oral): Charabelle Silverfox and Lynzee Silverfox are co-accused in connection with the death of Derek Edwards.

[2] Charabelle Silverfox was initially charged with three offences: first-degree murder, contrary to s. 235 of the *Criminal Code*, forcible confinement, contrary to

s. 279(2) of the *Criminal Code*, and offering an indignity to human remains, contrary to s. 182(b) of the *Criminal Code*.

[3] Lynzee Silverfox was initially charged with two offences: first-degree murder and forcible confinement.

[4] A preliminary inquiry was held, and the preliminary inquiry judge committed Charabelle Silverfox and Lynzee Silverfox on the charges of first-degree murder, forcible confinement, and offering an indignity to human remains. Lynzee Silverfox was committed on the charge of offering an indignity to human remains based on the Crown's submission that the evidence adduced at the preliminary inquiry supported her committal on the charge.

[5] Charabelle Silverfox and Lynzee Silverfox have applied to this Court to quash their committal to stand trial on the charge of offering an indignity to human remains.

## **FACTS**

[6] On December 13, 2017, Derek Edwards was killed in a house in Pelly Crossing. A witness, Vance Cardinal, identified that Charabelle Silverfox and Lynzee Silverfox were the perpetrators.

[7] During the preliminary inquiry Mr. Cardinal provided testimony, but only very reluctantly. He gave inconsistent evidence and Crown counsel often referred Mr. Cardinal to his police statement in order to refresh his memory. He did, however, testify that he was with Charabelle Silverfox, Lynzee Silverfox and Mr. Edwards at the house on the night Mr. Edwards was killed. He said that an altercation occurred, and Charabelle Silverfox punched Mr. Edwards and hit him with an object.

[8] He also testified that he saw Charabelle Silverfox and Lynzee Silverfox drag Mr. Edwards down the stairs into the basement. He then said he witnessed Charabelle Silverfox and Lynzee Silverfox stab Mr. Edwards. After that he left the house.

[9] Dr. Matthew Orde, a forensic pathologist, performed the autopsy on Mr. Edwards and testified at the preliminary inquiry about the kinds of injuries Mr. Edwards incurred. There are four kinds of injuries Mr. Edwards incurred which are pertinent to this application: blunt force and chop type wounds to Mr. Edwards' head; 12 injuries most likely caused by arrows, mainly to the head; 13 stab wounds to Mr. Edwards' chest; and a cut across Mr. Edwards' neck.

[10] Of those four types of injuries, Dr. Orde stated that the arrow wounds, one stab wound, or the cut across the neck could have caused Mr. Edwards' death. He could not state which set of injuries caused the death, nor in which order the injuries were sustained.

[11] He did provide a time estimate as to how long Mr. Edwards' death would take through each injury. With regard to the stab wound, Dr. Orde stated that death would have taken place within minutes. It could have taken many minutes, a few minutes, or less than a minute.

#### **PRELIMINARY INQUIRY DECISION**

[12] In summarizing Dr. Orde's testimony, the preliminary inquiry judge noted that the evidence did not establish the order of infliction of the wounds, a timeline for them, or whether any wound was inflicted after Mr. Edwards had died. However, the arrow wounds were more likely to have occurred after death.

[13] Having reviewed the evidence, the preliminary inquiry judge concluded that there was no direct evidence that Charabelle Silverfox or Lynzee Silverfox had interfered with Mr. Edwards' body after he had died. He determined, however, that there was circumstantial evidence upon which a jury could infer that some of the injuries were delivered after Mr. Edwards died, that the delivery of the wounds was an indignity or interference to Mr. Edwards, and that this indignity or interference was intentional. He therefore committed both Charabelle Silverfox and Lynzee Silverfox on the s. 182(b) charge.

### **ISSUES**

- A. Is there any evidence upon which a jury could conclude that some of the injuries inflicted on Mr. Edwards occurred after he died?
- B. Did the preliminary inquiry judge err in concluding that there was evidence of a joint venture?

### **ANALYSIS**

- A. *Is there any evidence upon which a jury could conclude that some of the injuries inflicted on Mr. Edwards occurred after he died?*

[14] Counsel to Charabelle Silverfox and Lynzee Silverfox submit that the preliminary inquiry judge made a factual error in rendering his decision. His decision to commit them on the s. 182(b) charge was based on this erroneous finding of fact. He further compounded his error by applying the law incorrectly.

[15] They also submit that there is no evidence from the preliminary inquiry upon which a jury could properly conclude that any of the injuries were inflicted after Mr. Edwards died. As a result, the preliminary inquiry judge committed a jurisdictional

error when he committed Charabelle Silverfox and Lynzee Silverfox on the charge of s. 182(b).

[16] Counsel to Charabelle Silverfox and Lynzee Silverfox state that the preliminary inquiry judge made an error when setting out Dr. Orde's evidence about whether Mr. Edwards incurred injuries after he had passed away. In his decision, the preliminary inquiry judge stated that Dr. Orde testified that the arrow wounds were "more likely" to have been inflicted after Mr. Edwards died. Charabelle Silverfox and Lynzee Silverfox say, however, that Dr. Orde did not state that the arrow wounds were *more likely* to have been incurred after death, but only said that they were *possibly* incurred after death.

[17] This error is material, as this misapprehension led the preliminary inquiry judge to conclude that a jury could find that the arrow wounds were inflicted after death, and on this basis, committed the applicants on the s. 182(b) charge.

[18] The error is not simply based on the facts, however. The preliminary inquiry judge committed Charabelle Silverfox and Lynzee Silverfox on the probability that an arrow wound was inflicted after death. However, an accused may only be committed on a charge if the evidence, if believed, could prove an element of the offence beyond a reasonable doubt. The judge was therefore mistaken about the burden of proof in a preliminary inquiry.

[19] Crown counsel's response is that, ultimately, it does not matter if the preliminary inquiry judge erred in his decision. The question before me is whether any judge would find that there is evidence upon which a reasonable jury, properly instructed, could find that Charabelle Silverfox and Lynzee Silverfox are guilty of s. 182(b).

[20] I find that the preliminary inquiry judge did make a factual error. In his testimony Dr. Orde said only that the arrow wounds may have been inflicted after Mr. Edwards' death, and not that it was more likely to be true that they were inflicted after he died.

[21] It is, however, unclear what impact this factual error had on the preliminary inquiry judge's decision. In deciding to commit Charabelle Silverfox and Lynzee Silverfox to trial on the s. 182(b) charge, the preliminary inquiry judge stated:

[57] There is no direct evidence that either of the defendants interfered with Mr. Edwards' body after he was deceased. However, there is circumstantial evidence that could allow a reasonable jury, properly instructed, to draw the inference that certain of the injuries occurred after Mr. Edwards was deceased, perhaps most likely, although not necessarily, the arrow wounds.

[22] The preliminary inquiry judge did not explain what circumstantial evidence he was relying on in committing Charabelle Silverfox and Lynzee Silverfox to trial on the s. 182(b) charge. In the end, however, I do not need to examine the basis upon which the preliminary inquiry judge committed Charabelle Silverfox and Lynzee Silverfox. I agree with Crown counsel that the question before me is not about the evidence upon which this preliminary inquiry judge committed the applicants. Rather, the question is whether there was evidence upon which any judge could commit Charabelle Silverfox and Lynzee Silverfox on the s. 182(b) charge.

[23] Crown counsel says that the evidence that provides the necessary basis upon which a jury could find Charabelle Silverfox and Lynzee Silverfox guilty of s. 182(b) is:

- Dr. Orde testified that one of the stab wounds inflicted on Mr. Edwards could have caused his death;

- he also testified that this stab wound would have caused death in a matter of minutes; maybe many minutes, a few minutes, or less than a minute;
- the stab wounds were clustered together;
- Vance Cardinal saw Charabelle Silverfox and Lynzee Silverfox stab Mr. Edwards, after which he left; and
- during the course of the attack upon Mr. Edwards in the basement, as well as being stabbed, the following occurred:
  - Mr. Edwards was moved around the basement;
  - his throat was cut;
  - he suffered chop-like injuries to his head; and
  - he sustained 12 arrow injuries.

[24] Crown counsel submits, therefore, that a jury could find that Mr. Cardinal saw Charabelle Silverfox and Lynzee Silverfox stab Mr. Edwards. The jury could then infer that all the stab wounds, given that they were clustered, occurred at the same time, including the wound that was sufficient to kill Mr. Edwards. From there the jury could also conclude that it would have taken longer than Dr. Orde's time estimate for death to move Mr. Edwards, cut his throat, inflict other injuries to his head, and shoot him with arrows 12 times. As such, there is evidence upon which a reasonable jury, properly instructed, could find that Mr. Edwards incurred some of the injuries after he died.

[25] Counsel to Charabelle Silverfox and Lynzee Silverfox disagree with the Crown's assessment of the evidence. Specifically, they disagree that there is any evidence that Mr. Cardinal witnessed Charabelle Silverfox and Lynzee Silverfox deliver the stab

wound that killed Mr. Edwards, or that any other stab wound was delivered at the same time.

[26] In this case the Crown's theory is based on circumstantial evidence. In *R v Acuri*, 2001 SCC 54, the Supreme Court of Canada said that, in preliminary inquiries where circumstantial evidence is used to prove an element of the offence, the preliminary inquiry judge must engage in a limited weighing of the evidence. In describing the court's task the Court stated:

[23] ... The judge must therefore weigh the evidence, in the sense of assessing whether it is reasonably capable of supporting the inferences that the Crown asks the jury to draw. This weighing, however, is limited. The judge does not ask whether she herself would conclude that the accused is guilty. Nor does the judge draw factual inferences or assess credibility. The judge asks only whether the evidence, if believed, could reasonably support an inference of guilt.  
[emphasis already added]

[27] The principal issue here is whether the number and clustering of the chest wounds could reasonably lead to the inference that all the chest wounds were delivered at the same time. I believe that, as a matter of "...common sense and human experience" (*R v Mitchell*, 2014 ONSC 3502 at para. 56), a jury could conclude that Charabelle Silverfox and Lynzee Silverfox, having started to stab Mr. Edwards, would then deliver all the stab wounds at once rather than stop, engage in other actions, then return to stab him 11 more times in a clustered area.

[28] There was, therefore, evidence upon which a jury could conclude that Charabelle Silverfox and Lynzee Silverfox were guilty of interfering with or causing an indignity to human remains.



B. *Did the preliminary inquiry judge err in concluding that there was evidence of a joint venture?*

[29] Counsel for Charabelle Silverfox and Lynzee Silverfox made the alternative submission that there was no evidence upon which the preliminary inquiry judge could commit them as co-principals on the charge of s. 182(b).

[30] The evidence the preliminary inquiry judge referred to in committing the applicants on s. 182(b) is:

- Vance Cardinal testified that Charabelle Silverfox and Lynzee Silverfox dragged Mr. Edwards upstairs and to the basement, and stabbed him;
- there was evidence that Charabelle Silverfox and Lynzee Silverfox tried to convince Magdalene Silverfox to hang up a 911 call she had made;
- Charabelle Silverfox and Lynzee Silverfox were present at the Mayo Liquor Store the day before Mr. Edwards was killed, were together at Darrin Lucas' home shortly after the events, and the fact that they are "known to be together regularly";
- evidence that they made after-the-fact statements to third parties while they were in custody; and
- evidence of bloodstains on the applicants' clothing and Lynzee Silverfox' hands, which were revealed to be Mr. Edwards' blood.

[31] The applicants take issue with some of the evidence the preliminary inquiry judge relied on to make his decision that they were acting jointly. They also state that the evidence only supports the inference that the applicants were co-principals in the first

degree murder and unlawful confinement charges, and not in interfering with or committing an indignity to human remains.

[32] Charabelle Silverfox and Lynzee Silverfox concede that the first piece of evidence cited by the preliminary inquiry judge and perhaps the second could constitute some evidence of a joint venture between them. That is sufficient to uphold the preliminary inquiry judge's finding. I am also satisfied that there was sufficient evidence that a jury could infer that the actions of Charabelle Silverfox and Lynzee Silverfox were part of a joint venture specifically on the s. 182(b) charge.

### **CONCLUSION**

[33] I therefore deny Charabelle Silverfox' and Lynzee Silverfox' application.

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WENCKEBACH J.