

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Silverfox*, 2007 YKSC 52

Date: 20070924
Docket: S.C. No. 07-01508
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

WAYNE SILVERFOX

Before: Mr. Justice L.F. Gower

Appearances:
Kevin Komosky
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is an application by Wayne Silverfox, formerly known as Wayne Johnnie, the accused person, for review of his detention under s. 525 of the *Criminal Code*. That section, according to some of the annotated cases, requires the Court to interest itself in a prompt trial, as well as needless detention, and to inquire, if there is delay, whether circumstances have changed for the accused.

[2] There is no question of unreasonable delay in this matter as the charge arose from an incident on June 12, 2007, and the matter is set for a jury trial to commence October 15, 2007. However, I am to consider s. 525(4) of the *Criminal Code*, which

requires me to satisfy myself that the continued detention of the accused is justified within the meaning of s. 515(10). That subsection, of course, sets out the primary, secondary and tertiary grounds which may be considered by the Court.

[3] I have to say that, in general terms, having reviewed all the materials and having heard the submissions of both counsel, including what Mr. Silverfox has just told me a moment ago, I am inclined to agree with the submissions of the Crown, and adopt those submissions as part of my reasons. This is not a situation where circumstances have changed since the detention order was made by the Justice of the Peace on June 14th. At that time, there was a bail supervision report prepared by probation officer Troy Cairns, who indicated that he had been working with Mr. Johnnie since his probation order was made on February 16, 2005 in the Territorial Court and, therefore, would have been relatively familiar with Mr. Johnnie.

[4] At that time, Mr. Cairns was not supportive of release and felt that, as evidenced by Mr. Johnnie's criminal record, he posed a significant risk to re-offend if he continues to use alcohol. That report noted that Mr. Johnnie, a.k.a. Silverfox, has a criminal record that dates to 1973, with 64 entries. It includes 11 convictions for driving while under the influence of alcohol and 13 convictions for driving while disqualified, as well as 10 convictions for failing to appear in court.

[5] Now, I recognize that the failing to appear convictions are dated and I believe the most recent one was in 1980. However, within the last 10 years alone, Mr. Silverfox has been convicted for driving while disqualified four times, most recently in February 2005. There were two such convictions as well as a refusal or failure to provide a sample

conviction. That, to me, indicates a significant risk that Mr. Silverfox would not abide by any order for his release. This case is further complicated by the fact that Mr. Silverfox was on probation at the time of the current alleged offence. As I understand it, he does not deny that he was drinking, presumably in violation of his probation order, but simply that he was not driving on the occasion. I agree with the Justice of the Peace in the first instance, that the secondary grounds are of concern as a result and the public's safety would be at risk if Mr. Silverfox was released.

[6] I appreciate that Mr. Silverfox denies that he was the driver and says that there are two witnesses who will support him in that regard, one of whom, I understand, to be his son. It is not entirely clear whether the arresting officer had seen the individual seen to be the driver, who exited the black SUV in the field after the chase, whether the RCMP officer had that individual within sight the whole time during the foot chase, up to the point of apprehension. On the other hand, the transcript of the bail hearing on June 14th indicates that the rear window of the SUV was open, giving the officer a relatively clear view of the occupants. According to the allegations, the officer kept his eye on the person exiting from the driver's side of the vehicle and chased that individual, subsequently apprehended him, and determined that that person was the accused.

[7] Now, Mr. Silverfox maintains that a lot of what has happened in his criminal record happened when he was young and foolish, but that simply is not borne out by what I have just said, particularly with respect to the convictions which he has added to his criminal record in the last 10 years.

[8] For all of these reasons, I am going to order that the accused continue to be detained until his trial on October 15th.

[9] Have I missed anything counsel?

[10] MR. COFFIN: No, My Lord.

[11] MR. KOMOSKY: No, My Lord.

[12] THE COURT: Thank you.

[13] THE CLERK: My Lord, I have a question: Is the certificate of change of name to be entered as an exhibit?

[14] THE COURT: No, that can be returned to the accused.

[15] THE CLERK: Thank you.

[16] THE COURT: The bail supervision report can be returned to the Crown and the transcript to Mr. Coffin.

[17] THE CLERK: Thank you, and is there a name change involved?

[18] THE COURT: There has been no application.

[19] THE CLERK: Thank you.

[20] THE COURT: All right, thank you.

GOWER J.