

# SUPREME COURT OF YUKON

Citation: *R. v. Tuckey*, 2012 YKSC 89

Date: 20121012  
Docket S.C. No.: 12-00264  
12-01506  
Registry: Whitehorse

BETWEEN:

**HER MAJESTY THE QUEEN**

AND:

**SYDNEY GARTH TUCKEY**

Before: Mr. Justice R.S. Veale

Appearances:

Noel Sinclair  
Jennie Cunningham

Counsel for the Crown  
Counsel for the defence

## **REASONS FOR JUDGMENT DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This is an application for release before trial by Sydney Garth Tuckey, who goes by the name Gary. The indictment before this Court charges that on October 21, 2011, he possessed cocaine for the purpose of trafficking. That charge is based on allegations that arise out of Mr. Tuckey and his girlfriend, Ms. Richards, being found on a street near the Chilkoot Motel, as I understand it, and a transaction that allegedly took place with a Mr. Michael O'Brien, who subsequently pled guilty to possession of proceeds of crime.

[2] Significantly, I suppose, is that Mr. Tuckey was in a green Taurus, which is

owned by his mother, Islay Briemon, and Islay Briemon figures into this matter because Mr. Tuckey would like to have her as his surety and reside with her.

[3] Now, I should just make a comment on the issue about whether this Court should hear the application, and I concluded that, based on s. 551, this Court does have jurisdiction, and should take jurisdiction, because the indictable offence is now before this Court. However, it still leaves the issue of how he gets before the Court, and I will deal with that.

[4] The original release terms, I understand, were that he was, help me here, Mr. Sinclair.

[DISCUSSION]

[5] THE COURT: The indictable offence is alleged to have taken place on October 21, 2011. Mr. Tuckey spent approximately three days in custody, and was then released on October 24 on a \$3,000 cash deposit from him and a \$500 no deposit from Islay Briemon. There were nine conditions, but he was to have no contact with Ms. Richards, his co-accused, as I understand it, on the indictable offence that is alleged, and he was to reside at 64 Garnet Crescent, which is the residence of his mother, Islay Briemon, and he was not to have possession of a cell phone, pager, or any electronic, communicator device. That is a computer, is it not, Mr. Sinclair?

[6] MR. SINCLAIR: Yes, sir.

[7] THE COURT: In any event, on May 31, 2012, Mr. Tuckey was charged with two offences, alleging:

1. That he did not comply with the condition 9 in the previous recognizance because he had a cell phone in his possession.

And Count 2:

2. On May 31st, 2012, it is alleged he was in direct contact with Janet Richards.

[8] After May 31, 2012, he was remanded into custody until August 13, 2012, at which time he was released on somewhat similar conditions, but he was released to live in Carcross at 22 Nicole Street, which is the residence of William Martin and Anne Wally, under the strict condition that he was not to leave that residence unless he was in the direct company of either William Martin or Anne Wally, or he had the written permission of his Bail Supervisor. Mr. Martin provided an additional cash deposit of \$1,000.

[9] The change that has occurred is not that there are any allegations of any breaches or further offences, but Mr. Martin has come before the Court under s. 767, which permits a surety to come before the Court and discharge his obligation under the recognizance by giving the person into the custody of the Court. Now, Mr. Martin is doing that under s. 767, but he is not discharging his obligation as a surety, if I understand that.

[10] MS. CUNNINGHAM: Correct, he just can't follow the two terms, 8 and 9.

[11] THE COURT: Right. The reason for that, a reason that I accept, given the evidence of Mr. Martin, is that his sister, I believe, has cancer and she is going to be coming to live at his residence and he will no longer be able to have Mr. Tuckey at his residence.

[12] So the application now is under s. 767.1, which permits the Court to substitute a surety, if the Court is satisfied that it is appropriate to do so. Section 769 was raised by counsel as to whether the judicial interim release should be applied for to this Court, or be referred back to a Justice of the Peace, or Territorial Court. I concluded that, given the wording of s. 551, I believe that it was appropriate for this Court to make that decision because, firstly, s. 767.1 certainly gives the Court the power to make the substitution, and it struck me as being appropriate now that the indictable offence is before this Court that the judge of this Court make a decision under what is, essentially, a new application for judicial interim release, where the onus is on Mr. Tuckey to establish that detention is not necessary to ensure his attendance in court, and that it is not necessary to protect the public or --

[13] MR. SINCLAIR: We are not relying on the tertiary grounds.

[14] THE COURT: No, I understand that. Or a substantial likelihood that he will commit a criminal offence.

[15] So, as I indicated, I heard the evidence of Mr. William Martin. The evidence of Mr. Martin was generally positive in terms of Mr. Tuckey's ability to abide by the strict conditions of the August 13th recognizance. The specific sections that come into play in the application now is the section [sic] 8 condition required that he be released into the care and custody of William Martin, and condition 9 required that he Reside at 22 Nicole Street, Carcross, Yukon, not leave that residence unless he was in the company of either William Martin or Anne Wally, or he has the permission of his Bail Supervisor.

[16] The application before me is to substitute Islay Briemon in both condition 8 and

condition 9, and that the residence be at 64 Garnet Crescent, which is in Whitehorse and which is with his mother, Islay Briemon being his mother. Islay Briemon did not take the stand, but information was communicated through counsel that she works. What are the work times?

[17] MS. CUNNINGHAM: Approximately 9:00 until 2:30, three times a week.

[18] THE COURT: She works three days a week as a hairdresser?

[19] MS. CUNNINGHAM: Correct.

[20] THE COURT: In the Granger subdivision, which I presume is close to the residence of Garnet crescent.

[21] ISLAY BRIEMON: I'm about four blocks from where I work.

[22] THE COURT: Thank you. She has indicated through Ms. Cunningham that she is prepared to continue working, which would result in a requirement that there be a condition that Mr. Tuckey, essentially, have house arrest, except when he leaves with Ms. Briemon, his mother, or that she will not continue to work, and he will remain in her presence all the time at the house. Is that the way --

[23] MS. CUNNINGHAM: It was an either/or.

[24] THE COURT: It is an either/or.

[25] MS. CUNNINGHAM: But I mean I was asking for the clause to be the same as it is in 9, with simply replacing -- if it is easier to look at the current bail; I wasn't asking it be changed, it was strict, and I wasn't asking for it to be any different.

[26] THE COURT: But it is different.

[27] MS. CUNNINGHAM: It could be different, if you ask that Islay Briemon not work. Then it would be different, and she said she would be in his company at all times. Or, if Your Honour so chooses, it could be the same as 9, with replacing the address and the people. In my respectful submission, I think leaving it as it is seems sufficient since he was doing well on the bail as it was, but it is your choice and the surety has offered that to the Court as an option.

[28] THE COURT: You did not make any submission on that because you obviously did not want to deal with that, Mr. Sinclair, but is there any difference in the conditions, from your perspective, of whether it is essentially a house arrest when Ms. Briemon is not at the house?

[29] MR. SINCLAIR: In my submission, Mr. Tuckey cannot be relied upon to keep the peace and be of good behaviour if he is left on his own to any extent.

[30] THE COURT: Fair enough. Thank you. So the question is whether Mr. Tuckey has shown cause of why he can be released under s. 515. One of the major concerns of the Crown, Mr. Sinclair, was that there are two outstanding charges in British Columbia dating from 2008, which have not been addressed by Mr. Tuckey. One being a trafficking charge, and the other being a theft under charge. And as he has submitted a moment ago, he is not of the view that Mr. Tuckey can be alone at any time because of his acknowledged drug addiction that has been outstanding for a very long time.

[31] I should indicate for the record that Mr. Tuckey is 54 years old. He is not a young man. My view of the matter is that Mr. Tuckey was released on August 13, 2012, under very strict conditions, and has, to all appearances, abided by those conditions. I have concerns about him and his addiction, particularly the allegations that arise in May. I have to say to him that if he continues down this road, he is going to be spending the rest of his life in jail. But we do have a presumption of innocence, and my view is that in this particular circumstance he has shown cause since August 13th, with the assistance of Anne Wally and William Martin.

[32] I am going to give him an opportunity to continue in that vein, so that conditions 8 and 9 will be changed so that he:

8. Is released into the care and custody of Islay Briemon.
9. He will reside at 64 Garnet Crescent in Granger subdivision in Whitehorse, and not leave that residence unless he is in the direct company of Islay Briemon.

I am making this order on the assumption that Ms. Briemon will no longer be working, because if she were to continue to work, I would put him under house arrest while she is at work. I do not know whether we have to deal with that in some fashion.

[33] MR. SINCLAIR: In terms of enforcing the term, I would suggest that we make the order read that he is to be in the direct -- under the direct supervision of Islay Briemon at all times.

[34] THE COURT: Fair enough. That is the order. Did you have an issue with that?

[35] MS. CUNNINGHAM: Well, I am just trying to understand to make sure, perhaps that is Your Honour's intention, but the original order -- it is a house arrest when she is not there. He is not to leave the residence unless he is with her. So I am not sure if we need, unless you have a completely different intention, that --

[36] THE COURT: No, I am accepting the Crown's submission on that.

[37] MS. CUNNINGHAM: I am just trying to understand it. It was --

[38] MR. SINCLAIR: It was your suggestion, was it not, Ms. Cunningham?

[39] THE COURT: He is under her supervision, 24 hours a day, seven days a week.

[40] MS. CUNNINGHAM: Sorry, you both spoke at the same time, I am just trying to --

[41] THE COURT: Well, do not listen to him.

[42] MS. CUNNINGHAM: Well, it is hard not to when he is closer and louder than you are, Your Honour.

[43] THE COURT: He is closer and louder?

[44] MS. CUNNINGHAM: Well, a little bit. I am trying to -- so it is not that he is not leaving the residence, it is that he should always be with his mother at all times? So if she wants to run to the store, he has to run to the store?

[45] THE COURT: That is right. It is a strict condition.

[46] MS. CUNNINGHAM: All right. Can we leave the “or unless you have the prior written permission of the Bail Supervisor”?

[47] THE COURT: Oh, yes. No, it remains the same, except for that change that the Crown has requested.

[48] MS. CUNNINGHAM: Okay.

[49] THE COURT: Now, is there anything further? I am not of a mind to make any changes unless you have something that just does not fit.

[50] MS. CUNNINGHAM: Well, I do. I have exactly that, yes.

[51] THE COURT: Go ahead. Try it on.

[52] MS. CUNNINGHAM: So, first of all, in clause 12, when it says “not to attend the city of Whitehorse,” I think that would be something I could try on you.

[53] THE COURT: Is a big problem there.

[54] MS. CUNNINGHAM: Yeah, with some confidence.

[55] THE COURT: What do you want to do with that one because -- I guess we just have to take that out.

[56] MS. CUNNINGHAM: I think we take that out.

[57] THE COURT: Just have to delete that, do we not, Mr. Sinclair?

[58] MR. SINCLAIR: Yes.

[59] THE COURT: Delete 12.

[60] MS. CUNNINGHAM: Yes. Then, the other one is the second sentence in number 3, and I am sure my friend would agree this has become kind of --

[61] THE COURT: Just before we get to that, just to assist the clerk in this matter, condition 8 is fairly clear. Condition 9 is exactly the same, except that William Martin or Anne Wally is replaced by Islay Briemon. Is that right, Mr. Sinclair?

[62] MR. SINCLAIR: Yes, and the new address.

[63] THE COURT: Yeah. 64 Garnet Crescent, or whatever it is.

[64] THE CLERK: Could I just confirm that spelling for Islay Briemon?

[65] THE COURT: I-s-l-a-y

[66] MS. CUNNINGHAM: Correct. B-r-i-e-m-o-n.

[67] THE CLERK: Thank you.

[68] THE COURT: Then, condition 12 will be deleted. Is that it then, Ms. Cunningham?

[69] MS. CUNNINGHAM: No, there is one more.

[70] THE COURT: Oh, you are going to try your luck at another one?

[71] MS. CUNNINGHAM: Yes. The second sentence in the third clause, this is just a lawyer issue, it is not something my client would have mentioned to me, but it is

just something I think has constitutional issues and we do not really put in bails anymore.

[72] THE COURT: Which is what?

[73] MS. CUNNINGHAM: "Provide a sample of your breath or urine for analysis upon demand by a Police Officer or Bail Supervisor who has reason to believe that you may have failed to comply with this condition."

[74] THE COURT: Mr. Sinclair?

[75] MR. SINCLAIR: She is correct. It is the *Shoker* issue.

[76] THE COURT: Yes. So in condition 3 then, delete the second sentence. That is it?

[77] MS. CUNNINGHAM: That is all. Yes.

[78] THE COURT: Great.

[79] MR. SINCLAIR: So the other conditions would all --

[80] THE COURT: Yes. Oh, all the other conditions apply.

[81] MR. SINCLAIR: -- carry through. Yes. Thank you.

[82] THE COURT: Yes, to make it clear.

[83] THE CLERK: So Mr. William Martin will remain as a surety.

[84] THE COURT: He will, but his name will not be in any of the

conditions, as I understand it.

[85] MS. CUNNINGHAM: Correct.

[86] MR. SINCLAIR: You had inquired about the computer and --

[87] THE COURT: Yes. I have to tell you that my reading of -- is that in this one?

[88] MR. SINCLAIR: It is not actually number 7.

[89] MS. CUNNINGHAM: It is not in the current bail.

[90] THE COURT: It is :

7. Do not possess any cell phone, pager, other mobile --

That is quite different, is it not?

[91] MR. SINCLAIR: Well, it doesn't apply to a desktop computer, and if these things are all merging into one --

[92] THE COURT: Yes. They certainly are.

[93] MR. SINCLAIR: So I do not know how --

[94] THE COURT: You would like to add that.

[95] MS. CUNNINGHAM: I would strongly --

[96] MR. SINCLAIR: Well, I do not see how we practically can, because

Mr. Tuckey is going to want to continue his upgrading and online work, and I do not intend to --

[97] MS. CUNNINGHAM: It is also how he communicates with both of his lawyers.

[98] MR. SINCLAIR: Yeah.

[99] MS. CUNNINGHAM: By email as well.

[100] MR. SINCLAIR: So I think we are going to have to --

[101] THE COURT: He only has one, you are just an agent.

[102] MS. CUNNINGHAM: I am an agent, but that is how he communicates with lawyers.

[103] MR. SINCLAIR: Take our chances on that one.

[104] THE COURT: Okay.

[105] So I do want to say to you, Mr. Tuckey, that there were a lot of reasons to throw you back in jail. So that you are not -- it is not an issue of yourself, but it is an issue of what you are doing to society when you continue to deal in drugs. I appreciate you have an addiction and that makes it difficult, but it is not going to look good on you if you come to trial and there is more stuff out there. It is a no-win situation for you at your age. You do not want to be spending the rest of your life up there at the Whitehorse Correctional Institute, or wherever you get sent. So I trust that you will comply with these conditions. Do you mean to do that?

[106] THE ACCUSED: I sure do, Your Honour, totally, 100 percent.

[107] THE COURT: Ms. Briemon, you are taking a lot of risks in this matter as well. I know he is your son, and you know him well, but it is an onerous condition on you, and I am looking to you to comply with these conditions.

[108] ISLAY BRIEMON: I will, yes.

[109] THE COURT: Does she end up signing this as well? Yes. So you will have a copy of it so you can read it thoroughly, because you have not read that before, to this point, to understand what he is not permitted to do. Okay?

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VEALE J.