

SC CR 75 092  
w/o

CR 02953

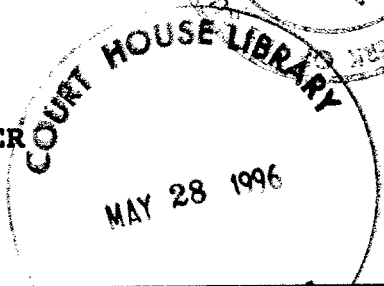
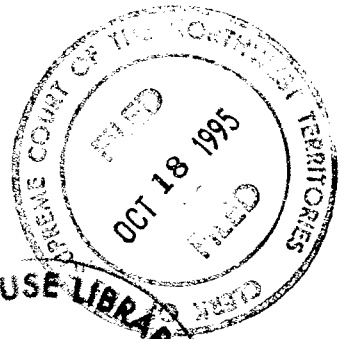
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

GILBERT BOUVIER



---

Transcript of Reasons for Sentence delivered by The Honourable Mr. Justice J.Z. Vertes, sitting at Fort Providence, in the Northwest Territories, on Friday, October 13, A.D. 1995

---

**APPEARANCES:**

Mr. J.A. MacDonald: For the Crown  
Mr. S.M. Shabala: For the Defence

(Charges under Section 249(3) of the Criminal Code)

1 THE COURT: The accused, Gilbert Bouvier, has been  
2 convicted by a jury on a charge of dangerous driving  
3 causing bodily harm, contrary to Section 249(3) of the  
4 Criminal Code. The possible maximum penalty for this  
5 offense is 10 years imprisonment.

6 The offense arose after a drinking party outside of  
7 Fort Providence. The accused was driving his truck  
8 back to town in the early morning hours of August 13th,  
9 1994. There were a large number of intoxicated persons  
10 riding in his truck, including in the open back of the  
11 truck. He stopped on the road to pick up the victim  
12 who had been walking along the road. He backed up his  
13 truck as the victim stood in the middle of the road.  
14 As he did so, he struck the victim, who fell beneath  
15 the back of the truck. He then moved the truck forward  
16 causing the victim to be again struck by the rear axle  
17 of the truck. As a result, the victim suffered  
18 fractures to his leg and ribs. He was medevaced to  
19 Edmonton and hospitalized for his injuries. After the  
20 incident, the accused asked others to take the blame  
21 for the incident since he did not have insurance for  
22 his vehicle.

23 The jury also acquitted the accused on a charge of  
24 impaired driving causing bodily harm. I can only  
25 conclude, therefore, that while there was some evidence  
26 that the accused may have been drinking, there was  
27 insufficient evidence or proof of impairment. From my

1 recollection of the evidence, I think this was a  
2 reasonable conclusion. Nevertheless, the jury was  
3 obviously convinced that the accused drove in a manner  
4 that was dangerous to the safety of others.

5 While I cannot place undue emphasis on the  
6 consequences of the accused's driving, I recognize that  
7 the Criminal Code mandates more severe sentences where  
8 the consequences are more severe. Hence the maximum  
9 penalty of ten years. This is also reflected by the  
10 policy of the courts in imposing terms of imprisonment  
11 for this type of offense so as to deter others from  
12 similar dangerous conduct.

13 Counsel have referred me to a number of other cases  
14 which reflect a wide range of sentences. They are of  
15 doubtful value since each case stands on its own  
16 particular facts. In many of those cases, sentences  
17 for dangerous driving were combined with those for  
18 other offenses, so it is somewhat inaccurate to simply  
19 look at one aspect in isolation. The variation in  
20 sentences is also not surprising since they depend on  
21 the particular case's mix of aggravating and mitigating  
22 circumstances. The general principle, however, is the  
23 same: deterrence is to be emphasized.

24 Here the accused's driving is far from the worst  
25 example of dangerous driving. There is no evidence of  
26 an ongoing pattern of dangerous driving - no weaving or  
27 excessive speed (although there was some evidence that

1 the vehicle was moving fast). The incident occurred on  
2 a narrow dirt road in the dark with no other vehicles  
3 around. The element of dangerousness, it seems to me,  
4 rests on the accused's failure to keep careful watch as  
5 he was backing up his vehicle, his failure to stop in  
6 time, and his action in moving the vehicle forward  
7 again.

8 Defence counsel suggested that I should take into  
9 account in sentencing evidence of what may be regarded  
10 as contributory negligence on the part of the victim.  
11 By his own admission, the victim was standing in the  
12 middle of the road while the truck was backing up. His  
13 vision was blocked because he was trying to take off a  
14 backpack.

15 Contributory negligence may be a factor in a civil  
16 case, but I know of no authority that makes it a factor  
17 in sentencing on a criminal case. This was no  
18 accident. By the jury's verdict, they found that the  
19 accused's dangerous driving was a cause of the bodily  
20 harm. This makes it a criminal act. He must be  
21 sentenced accordingly.

22 The victim's injuries, while severe, have not  
23 resulted in permanent disability. His healing is not  
24 yet complete, however, since he still suffers from  
25 numbness in one leg periodically. This has  
26 detrimentally affected his lifestyle and his  
27 employability.

1           The accused is 26 years old. He is married and has  
2 two young children. He works off and on as a labourer  
3 and has future employment prospects at a pulp mill. He  
4 also has a record of five criminal convictions between  
5 1987 and 1993. They are, however, unrelated and appear  
6 to be relatively minor, although he has previously  
7 served time in jail.

8           Outside of his personal circumstances, there are  
9 few mitigating factors here. The most that can be said  
10 in his favour is the relatively short-lived  
11 circumstances of the offense itself. He has apologized  
12 here in court to the victim, and I take that at face  
13 value even though it comes at such a late date.

14           Having considered all of these factors, I have  
15 concluded that I must impose a term of imprisonment.  
16 That term can be kept relatively modest. In addition,  
17 however, I will impose a driving prohibition since the  
18 Criminal Code recognizes that as an aspect of  
19 sentencing in driving-related offenses. The ability to  
20 drive, as Crown counsel noted, is a privilege, not a  
21 right. When one abuses that privilege, there is no  
22 reason why one should not lose it.

23           Stand up, Mr. Bouvier.

24           On the conviction for dangerous driving causing  
25 bodily harm, Count 2 of the Indictment, I sentence you  
26 to serve a term of imprisonment of six months. In  
27 addition, I will make an order pursuant to Section

1           259(2) of the Criminal Code prohibiting you from  
2           operating a motor vehicle for a period of two years.

3           You may have a seat. You may sit down.

4           Under the circumstances, Counsel, I will not impose  
5           a victim of crime fine surcharge.

6           (REASONS FOR SENTENCE CONCLUDED)

7

8

9

Certified Pursuant to Practice Direction #20  
dated December 28, 1987.

10

11



12

---

Jane Romanowich  
Court Reporter

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27