

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER BETWEEN:

HER MAJESTY THE QUEEN

Complainant

-and-

ANNAWALKALOO E7-396

Respondent

A transcript of the proceedings of a trial held on the 4th day of June A.D. 1974 at Yellowknife, N.W.T., before His Lordship The Honourable Mr. Justice W. G. Morrow.

Appearances: Orval J. T. Troy, Esq., Q.C. appeared on behalf of the Crown

David H. Searle, Esq., Q.C. appeared on behalf of the Defendant

THE COURT: Are you both ready gentlemen?

MR. TROY: Yes My Lord.

MR. SEARLE: Yes My Lord.

THE COURT: I guess we will have to take a plea. Does this person need an interpreter?

MR. SEARLE: No My Lord.

THE COURT: All right.

MR. TROY: My Lord, as a precaution I have approached the Interpreter Corps and have two interpreters in Court this morning. They are here.

THE COURT: Perhaps we should have the names of the two persons, the two interpreters, so we can give them recognition. Just before we start, would you give the Clerk your name please, each of you.

(The two names given the Clerk were L.H. Saunders and Betty Gruben).

THE COURT: If you haven't any other work this morning, perhaps you will stay in case we find we need you. Thank you. All right, could we have a plea please.

THE CLERK: Annawalkaloo, you stand charged that you on or about the 15th day of January A.D. 1974 at or near Frobisher Bay in the Northwest Territories, did unlawfully cause the death of Ineak E7-183, and did thereby commit non-capital murder, contrary to Section 218(2) of the Criminal Code.

Q. Do you understand the charge?

A. Yes.

THE CLERK: And how do you plead?

MR. SEARLE: The plea is not guilty to the charge of non-capital murder My Lord, and pursuant to Section 534(6) of the Criminal Code, the Defence enters a plea of guilty to the lesser and included offence of manslaughter.

THE COURT: Mr. Troy, you have heard the motion by Mr. Searle. What is the position of the Crown?

MR. TROY: Well, due to the fact My Lord, that the accused at the time of the offence had a blood alcohol level of over .22, it would seem that that would be the appropriate plea because drunkenness reduces non-capital murder to manslaughter.

THE COURT: You are not opposing it?

MR. TROY: No Sir.

THE COURT: All right, I will exercise my discretion under Section 534(6) as I understand it, and the situation will now be the accused stands not guilty of the offence charged, but stands as having plead guilty to the lesser offence of manslaughter. Are you ready to discuss sentence?

MR. SEARLE: Yes My Lord.

MR. TROY: My Lord, I would like to review the circumstances leading up to the events of this charge, and plea, to the Court.

THE COURT: All right.

MR. TROY: Around eight o'clock on the 15th of January of this year, a Mr. William Carr of Frobisher Bay contacted the R.C.M.P. and stated that Annawalkaloo was at his door, and that she was in an excited condition, and she was covered with blood. Constable Munroe and Corporal Cousins went to her home, which was House 379 in Frobisher Bay around 8:05 in the evening, and they were met by Mr. Carr outside of the residence, and by that time Annawalkaloo had gone back into the house, and the police entered the house and seated in a sofa chair on one side of the living room part of the house, this was a small house, was an adult

male Eskimo. His head was leaning to the left side, and Annawalkaloo was sitting on his lap at that time. She was crying, "You are all right, you are all right", and when Constable Munroe went to check this man he noticed that there was a wound in the top of his head, with a large amount of blood in his hair, and his clothing, some of his clothing was on the floor beside the chair, and beside the chair, in his lap, was about half or two-thirds of a forty ounce bottle of gin.

Annawalkaloo advised the police at that time that this was her husband. They checked him for pulse beat, and were unable to find one and they had to forcibly remove Annawalkaloo from his lap, and on the floor beside his left foot was a .22 calibre rifle, with the barrel turned away towards the opposite wall. The police immediately called for assistance, and for a doctor and an ambulance from the Frobisher Bay General Hospital at that time. Annawalkaloo at this time was in a state of hysteria, and she had been drinking, and she was worried about whether her husband was going to be all right. The doctor arrived, Dr. Brass. He checked the man in the chair, the husband of the accused, and he found no pulse, no respiration, and pronounced him dead at 8:21 p.m. Because Annawalkaloo was in a very hysterical and intoxicated condition at that time she was taken to the police car, pardon me, to the police station, and held there pending further investigation.

Now during the course of the investigation the police found some empty expended 22 cartridge shells in the house on the floor, in an approximately three foot square area approximately six feet in front of the chair in which the deceased had been sitting, and there were other live shells lying around in the house.

as well, and as I mentioned previously, found on the lap of the deceased an open forty ounce bottle of Gilby's gin, which was approximately half full, and a pair of snowmobile boots and a hat which were on the floor beside his feet were also taken into custody. The police observed that there were three bullet holes in the wall behind where the deceased was sitting, and one was three feet two inches from the floor and the second was four feet six and a half inches, and another four feet nine and a half inches from the floor. There were no other bullet holes to be found, but these were behind the chair in which he was sitting. The only notable wound on the body was a bullet type wound on the top of the head. There was a three-quarter inch cut above the left eyebrow, and this had been a result of the wound and the bullet going into the head and the bullet lodged somewhere down the jaw area. It was almost instant death, and the autopsy showed that this man died from the bullet wound in the top of his head.

The police interviewed a taxi driver by the name of John Christian Jansen, of Baffin Cab, and he said that he had received a call at approximately 8 p.m. to pick up a person at House 606 in Frobisher Bay and he drove this person to House 379. This person was Ineak, the deceased, and while he was parked outside the house, he noticed a female in the house, and when he was driving away he heard the shot or something that sounded like a shot from a rifle coming from this house.

Now at 10.28 p.m. that evening the police took a breathalyzer test of the accused, and at that time the test indicated a reading of .18, or 180 milligrams of alcohol for 100 millilitres of blood,

and that would mean My Lord that two and a half hours earlier, around 8 o'clock, the reading would be .21 or .22, somewhere in that area. There were also blood samples taken from the body of the deceased, and one sample was in a preservative, and I am not sure what the significance is of the difference of the readings, but the one that was taken with preservative showed the blood alcohol content as .31 for the deceased. The one without preservative showed a reading of .27 which would mean probably that at the time of his death he had a reading somewhere from, or in the vicinity of .30, which would indicate that he was more intoxicated than the accused at the time.

Now Annawalkaloo and her husband had been at House 606 earlier in the evening, and there were some other people there, and there was a lady there that Annawalkaloo became quite jealous of, and she left the house and went home, and shortly after she left and went to her place which wasn't far away, Ineak, who was quite intoxicated came home in a taxi. The owner of the house where he visited got the taxi, and put him into the taxi, and Mr. Jansen took him home. On his arrival home an altercation took place right away, and they had a tussle over this rifle, and she ended up firing shots at him to scare him, and unfortunately one of the shots, whether it was three, four, or five shots that were fired is not clear, but one of these shots hit this man on the top of the head, and that is briefly and simply the story.

THE COURT: Do you accept those facts Mr. Searle?

MR. SEARLE: Yes My Lord.

MR. TROY: The police My Lord did take a statement, but since

there has been a guilty plea, in that statement she admits that she was jealous of her husband and that they did have a fight and that she did fire at him to scare him and that the end result is what is now before the Court.

THE COURT: Yes Mr. Searle, first, is there any record?

MR. TROY: There is no record of any previous criminal code offences My Lord. The police records do show that this accused and her husband both have severe alcoholic problems.

THE COURT: Yes, Mr. Searle, what do you say?

MR. SEARLE: My Lord, I would like to break down if I might the presentation on behalf of the accused to two parts, the first, a brief history in terms of vital statistics, and the second part, a psychiatric assessment which was obtained on the 17th of January, and further on the 23rd of January, which, as you can see from the date on the information, the 15th of January, very close after the event, and I think that is a very relevant sort of assessment. The first part then My Lord, Annawalkaloo is now aged 24 years. She was born the 16th July, 1950. She is, of course, <sup>now</sup> a widow, and has no children. She has two brothers and one sister. Her mother is dead, and her father is still alive.

Educationally speaking, she completed Grade 6 at about seventeen years of age. She has been employed as a typist for the Department of Indian and Northern Affairs. She has done interpreter-translator work as well, and worked as a typist for the Social Development Department. She was out on bail between the date of the charge and this appearance, and had about eighteen days in jail before granting bail,

that is, from the 14th of January.

THE COURT: How many were the total days in jail?

MR. SEARLE: WELL, there's eighteen there, and then she has been back in custody as a result of a voluntary surrendering of her bail since the 15th of May. Now that is approximately another three weeks.

THE COURT: Almost a full month in jail we will say, a little more, than a full month.

MR. SEARLE: Yes. She has taken a homemaker's course I understand as well, part of her training. I think the thing to emphasize in this particular case is the fact that the injury and the resulting death of the deceased was an accident, however, it falls under the definition of manslaughter, in that she was attempting to scare him. Now I believe that Mr. Troy has said that, but to reinforce it I would like to go to the second part of our presentation in dealing with the report of the psychiatrist.

THE COURT: Are you confirming that Mr. Troy?

MR. TROY: I believe I saw it in January, but I haven't seen it since.

THE COURT: All right.

MR. SEARLE: This is written by Dr. D. J. Atcheson, a senior psychiatrist in charge of Forensic Outpatient Service, the Clarke Institute of Psychiatry, 250 College Street, Toronto, re Annawalkaloo: " I am submitting my psychiatric assessment as per your request on the above named 23 year old Eskimo woman. It is my understanding that she has been charged with non-capital murder. My psychiatric opinion is based on the following data:-



1. Information received concerning the act.
2. Examination of client on January 17th, 1974. Two hours.
3. Examination of January 23rd, 1974.
4. Review of her hospital record at the Frobisher Bay General Hospital.
5. Consultation with Dr. Alex Williams, Chief of Staff, Frobisher Bay General Hospital.
6. Information received from the R.C.M.P. Detachment concerning blood alcohol levels.

It is my understanding that this young woman has been transferred to the Yellowknife Correctional Centre, and her case will be tried by His Lordship Judge Morrow.

Presenting Problem.

This 23 year old woman at the time of my initial examination was extremely depressed and this depression appeared to be related to her immediate concern over the death of her husband and the possible consequences. I would note that preceding this act, there is evidence that she had been depressed and that this was related to marital disharmony, and to the fact that her husband was being unfaithful to her.

She appears to be of average intelligence and quite capable of appreciating the nature of the act and the serious consequences of her conviction. She also appreciates her responsibility to you, as her counsel, and the nature of the trial process. On this basis it was my opinion that she should be considered as being fit to stand trial.

She provides me with a fairly detailed account of the events preceding the alleged act. She states that on this particular day she had been drinking since approximately 4 p.m. and that at about 6 p.m. had gone with her husband to her parents home to help them move. She continued drinking while there. She then interprets to me that she was angry at her husband who had not returned home with her and that this anger was related to feelings of jealousy, as she felt that he was being unfaithful to her, and apparently had sufficient reason to believe this to be true. When he returned home they again commenced drinking, and she recalls them becoming engaged in a violent argument.

It is difficult to be sure how much detail of these events she remembers accurately as it was my impression there was some fragmentation of her memory based on her alcohol intake. There is, however, no clear definition of a total alcoholic amnesia. She did not appear to have the intention of killing her husband, but rather of frightening him by seizing the gun and firing it. She was not sure how many times she fired the gun but was aware that she had hit him. Immediately following the act she sought help from some people near by. After this she claims her mind was a complete blank, and that it was difficult for her to remember the details of what had happened when she was apprehended by the police.

Past History.

The subject states that she was born in Frobisher Bay. She describes her family as being heavy drinkers and that her father still drinks a great deal. She recalls many scenes of violence and aggressive acts

taking place within the family due to alcohol.

Her mother dies in 1968. The subject describes the scene in remarkable detail with marked demonstration of emotion. She describes discovering her mother dead in the home, where she had died from acute alcoholism. At that time the subject was aged 16 or 17. At the time of that occasion the parents had both been drinking excessively.

She has three brothers, aged 19, 14, and 11 and a sister aged 8. The father has been remarried.

School History.

She has always lived in Frobisher Bay and attended school until approximately aged 15. Her English is quite good and therefore I had no need of an interpreter for my examination. She received some upgrading in her education through the adult educational facilities for one year.

She was then employed as a typist and has worked at the Social Development Office as a stenographer and also occasionally as an interpreter.

She was married at the age of 19 to the deceased. She describes this marriage as being an appropriate union for the first two years. She commenced drinking excessively with her husband and for the last several years alcohol had been an extensive problem for them.

She describes periods of alcoholic amnesia and on several occasions has been so intoxicated that she would have a loss of memory, losing up to a day.

Past Health.

This woman has many physical problems, the most serious of which is a heart condition resulting from rheumatic fever. She has been treated in a southern

community on a number of occasions and her present physical health is quite precarious. The type of heart condition she has would, in fact, be considerably harmed by the excessive drinking pattern.

There are other factors in her past health record, as obtained from the hospital, which would appear to be significant. In March of 1970 she was admitted to hospital because of injuries she received in a fight with her husband while both of them had been drinking. On January 3rd, 1970, she was admitted for having been beaten up by her husband. I would note that in 1969, she was assessed for her heart condition in the Montreal General Hospital. I would also note that in December of 1967, at the age of 17, she had been admitted in a stuporous intoxicated state, having been beaten by an unknown assailant.

Psychiatric Assessment.

This 23 year old woman charged with attempted murder, in my opinion was of normal intelligence. The main presenting finding was that of depression plus the serious physical disability of a cardiac nature.

Although she fully appreciated the nature of the offence and its seriousness, it would be my opinion that at the time of the act she was seriously intoxicated and the disinhibiting effects of the alcohol had resulted in an angry battle with her husband, which had a repetitious pattern of behaviour and had occurred many times before.

On the second occasion that I examined her, her depression had increased, but not to the point that hospitalization would have been indicated.

The information that I received from the R.C.M.P.

Detachment stated that the offence occurred at approximately 8 p.m. and that a breathalyzer test had been taken at approximately 10.28 p.m. At that time her blood level would have been .180% or approximately 180 mgms. of alcohol to 100 grammes of blood. This would represent a very high level of blood alcohol, and this would obviously have been somewhat higher at the time of the alleged act. It would be my opinion that a level of this type would so seriously impair her judgment that her capacity to form intention would be seriously impaired.

The other contributing factor is the long history of alcoholism and blackouts, and the very deteriorating marital situation demonstrated by the number of occasions that she had been beaten by her husband while under the influence of alcohol.

She is an extremely pathetic person with a great need for assistance in dealing with not only her drinking patterns but also with constant public health care related to her cardiac condition. The traumatic events of her childhood, in which she observed the death of her mother through alcoholic poisoning, must also be considered in understanding the type of personality disorder that she presents.

I would hope that this assessment would be of value to you in preparing the defence for your client. I would be quite willing to consult with you further if you wish to contact me at the Clarke Institute (416-924-6811).

I would appreciate if you would obtain a signed release from your client for this information, which I feel should be available, to be filed in the Frobisher Bay General Hospital's files, as since I have been

acting as your agent in this consultation, I would not be prepared to leave this data with the hospital without your permission.

Yours sincerely,

(sgd.) J.D. Atcheson, M.D., F.R.C.P. (C),  
Senior Psychiatrist in Charge of  
Forensic Out Patient Service."

As in all these cases My Lord, though classical in some respects, we do have the special and unfortunate circumstances of each of the accused, which surely must make your task in considering an appropriate sentence a most difficult thing that a Judge can do.

I don't know if there is any need to deal at any length with the sentences over the past several years, but at least you will recal to mind the recent sentence of William Blake of a year imprisonment and two years of probation. There has been other recent sentences of two years.

The difficulty in this case is that I think the same in all manslaughter cases in the experience of Defence counsel, you don't really have a criminal, not<sup>as</sup> in so many other cases. You don't have someone who is daily or weekly or yearly engaged in burglarly, theft, act of violence, but you have in effect an unfortunate woman who shot her husband, a situation culminated by very special circumstances. I believe that statistics will bear out that you very seldom, if ever, see such a person come into court again. Unfortunately, however, a life has been taken, and a very high degree of seriousness must therefore be attached, but I think the point I am making is we don't have a criminal here. In the words of the doctor, we have a person with very serious problems, and we have them here, and they are as a result of what occurred in childhood, as well as

a person of course with a very serious physical problem, a very serious heart condition, which can be aggravated very substantially by any alcoholic intake, a person who, I suppose, you would say was lucky to survive in view of the alcoholic intake, the evening herself.

It seems to me Sir that the interest of justice would well be served by an appropriate sentence, and of course I am not going to get into numbers, but I would emphasize the need of the treatment and rehabilitation and I think Sir, probation at the conclusion of any appropriate jail sentence, with conditions which, under the circumstances, could appear to be followed.

THE COURT: Well then, where would she go at the end of that?

MR. SEARLE: Well Sir, at this time she is not anxious to return to Frobisher Bay.

With respect to serving any period of time, I think she would prefer, if possible, and this Court would recommend to serve it here in the Northwest Territories because there are other Eskimo and native girls here with whom she communicates, and with whom she associates.

I think My Lord, those are all the comments I can make.

THE COURT: Mr. Troy, what do you say as to sentence?

MR. TROY: My Lord, the Parliament of Canada have laid down for the offence of manslaughter a discretion in the Court to life imprisonment, depending of course on the circumstances of each offence and the background of each accused, and Your Lordship is quite familiar with the various principles.

There were some cases mentioned by my learned friend, in particular the Blake case, and in the Blake case I believe Mr. Blake was given a year and some probation, but the Blake case My Lord is quite different from this case, in that Blake was on probation, was on recognizance pending his trial, and he was brought at once to the Court shortly after he had been charged for failing to obey the condition of his bail recognizance, to abstain from the excessive use of liquor. He was, that matter was settled before a local Justice of the Peace. It shocked Mr. Blake into the seriousness of the situation. He had several children to look after, and from that time on until he appeared at his trial he was a model citizen in his community, and unfortunately all the sympathy I can offer this accused, My Lord, this accused remained in jail because she was, after the charge was laid, because she, her counsel wanted her seen by the psychiatrist, and because she voluntarily wanted to stay in jail. She was then released on bail, and one of the conditions was because of her alcoholic problem, abstaining from the excessive use of liquor, and she was allowed out on bail here in Yellowknife, and I believe she had a job here, and she voluntarily gave herself up into custody again on May 15th, but I think it is only fair to point out in assessing this situation that on a couple of occasions she was warned by the police about her drinking while on bail, and she was not actually charged with this, and these matters undoubtedly had some effect in voluntarily turning herself in, so her situation was quite different from Blake's in regards to sentencing. I didn't appear on the Blake case, but I submit to the Court that Blake's behaviour



after being allowed out on bail was a very significant factor in the determination of sentence that was imposed there, and it is my understanding that the community and the local authorities all agree that in Blake's case that the short term of imprisonment plus a long term of supervision and parole was not only beneficial to Mr. Blake, but beneficial to his family and the whole community, because of his behaviour since he had been charged.

You have this situation complicated by a very severe physical cardiac condition, and I think it is quite obvious that if she, if this young lady continues to drink that she will only aggravate her physical condition and that she needs some type of alcoholic rehabilitation and therapy, and the only other point I would like to make My Lord is that it is unusual or very seldom that the Court gets an accused person before the Court who is a female, but I would submit that females are equally responsible under the law as men.

THE COURT: And in fact they are claiming the privilege of being created equal.

MR. TROY: That is right My Lord and therefore I would ask the Court to not be over sympathetic because this accused is a lady, and that she has to be treated the same as anyone else.

There was a man in Frobisher Bay by the name of Toopapwa, who was an artist, and he had an alcoholic problem and so did his wife, and that case was heard in Frobisher Bay in June of 1973 and Toopapwa as a result of an argument with his wife, stabbed his wife in the neck and she died almost immediately from

haemorrhaging, and he was an older man in his forties or he may have been in his early fifties, I am not sure, but he did not have a criminal record and he was in a severe state of alcohol intoxication at the time, as well as his wife, and as in very many instances it could be a very similar case to this one before the Court, and in fact, in nearly all man and wife cases it results from severe intoxication.

It is a very difficult problem for the Court, but I would ask the Court to bear in mind the other cases when imposing sentence, and in particular the case I have mentioned, (interruption)

THE COURT:

What was the sentence in that case Mr. Troy?

MR. TROY:

He received three years in the Yellowknife Correctional Institute My Lord, and I don't think he spent very much time in custody prior to his being charged, and he had no previous record except for drinking, that's all.

THE COURT:

All right, Mr. Searle, anything further?

MR. SEARLE:

No My Lord.

THE COURT:

Well, these cases always give a great deal of difficulty to the Judge. Each case must be looked at on its own facts and I must weigh the peculiar circumstances in each case.

I would observe that recently I completed a circuit in the Delta area, and almost every one of those cases involved wife beating, or abuse of the wife by the husband or common-law husband. I don't know that that is indicative of the new trend or not, but it was a rather sorry type of circumstances. We have therefore in this case the same trend. There is evidence or

suggestion that this accused person has suffered abuse from her husband on previous occasions, and that undoubtedly led her in her drunken condition here in January to take the extreme measures that she did. There is almost therefore an element of self-defence that should be taken into consideration. Also I should consider the state of her health and what a long period of incarceration would do to that condition.

At the same time I should consider her ethnic background, and my feelings have been repeated many times from the Bench that people of this accused's ethnic background require, perhaps the word is not special kinds of treatment, but some special consideration so that the impact of the sentence, when imposed, does not in effect treat them unfairly. In other words, we have to compensate for their background and their stage of development in our so-called society as part of the equal treatment before the law.

In my opinion, a long period of incarceration, although appropriate in some cases of this nature, would not be appropriate in the present case. I don't think we can say this is likely to be a recurring offence. There is nothing to indicate here that she is likely to become a hardened criminal in any sense of the word. In my opinion a long period of incarceration would be destructive rather than reflect anything as far as the other aspects of sentence. Stand up.

Accordingly, in the present case, I am sentencing you to one year to be served in the Yellowknife Correctional Institute. That is all.

B E T W E E N :

HER MAJESTY THE QUEEN,

Appellant

-and-

ANNAWALKALOO E7-396,

Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

AND NOTICE OF APPEAL

TAKE NOTICE that, pursuant to the provision of Section 605(1)(b) of the Criminal Code, an application will be made to the Court of Appeal of the Northwest Territories at Yellowknife in the Northwest Territories, by Orval J.T. Troy, Q.C., Crown Attorney and agent of the Attorney General of Canada and the Northwest Territories, representing the Appellant, for an Order granting Leave to Appeal the sentence of one year's imprisonment at the Yellowknife Correctional Center, the said sentence having been imposed on the Respondent by Mr. Justice W.G. Morrow, Judge of the Supreme Court of the Northwest Territories, on Tuesday, the 4th day of June, 1974 at Yellowknife in the Northwest Territories, subsequent to a plea of not guilty by the Respondent to a charge that the said Annawalkaloo E7-396 did, on or about the 15th day of January, 1974, at or near Frobisher Bay in the Northwest Territories, unlawfully cause the death of INEAK E7-183, and did thereby commit non capital murder, contrary to Section 218(2) of the Criminal Code but guilty to the lesser and included charge that the said Annawalkaloo E7-396 did on or

about the 15th day of January, 1974, at or near Frobisher Bay in the Northwest Territories, unlawfully cause the death of INEAK E7-183, and did thereby commit manslaughter, contrary to Section 218(2) of the Criminal Code;

AND FURTHER TAKE NOTICE that, should leave be granted as requested, Counsel instructed by the Appellant intends and does hereby appeal to the Court of Appeal of the Northwest Territories at the next sitting thereof, or at such other time and place as the Honourable Court may designate, the said sentence imposed upon the Respondent.

AND FURTHER TAKE NOTICE that the grounds upon which this appeal is brought are as follows:

1. The sentence imposed by the learned Judge was too lenient, being out of proportion to the severity of the penalty provided by law for the offense for which the Respondent was convicted;
2. The sentence imposed fails to take into proper account the creation of an effective deterrent to the Commission, by the Respondent, and others, of like offenses;
3. Such further and other grounds as this Honourable Court may deem fit.

DATED at the City of Yellowknife in the Northwest Territories, this 28<sup>th</sup> day of June 1974.

William H. Corbett

WILLIAM H. CORBETT,  
Assistant Crown Attorney and  
Agent of the Attorney General  
of Canada and the Northwest  
Territories.

*Sentence varied on appeal Oct. 22, 1974  
by legal probation as usual terms  
being added,*