

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

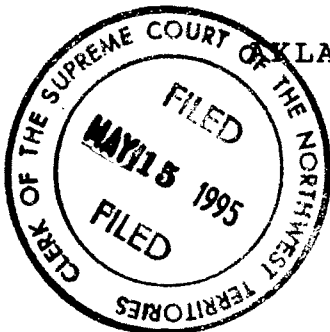
- and -

F G

SENTENCING OF

F G

Judge: J. Vertes
Crown: Ulla Arvanetes
Defence: T. Boyd



MAY 1, A.D. 1995

CHARGED UNDER SECTION 271 OF THE CRIMINAL CODE

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

-and-

F G

INDICTMENT

F G stands charged that he:

**On or about July 9th, 1994, at or near Aklavik
in the Northwest Territories, did commit a sexual
assault on L A K contrary to
Section 271 of the Criminal Code.**

DATED at the City of Yellowknife, in the Northwest Territories, this 25th day
of April, 1995.



Ulla Arvanetes, Crown Counsel and Agent for the
Attorney General of Canada.

CR 02737

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

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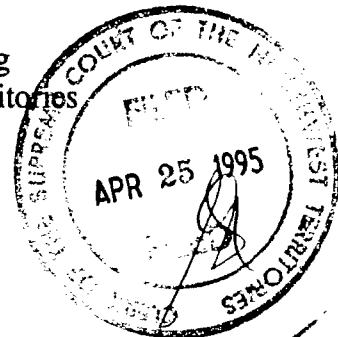
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G

INDICTMENT

Ulla Arvanetes
Crown Counsel
Department of Justice Canada
Yellowknife Regional Office
P.O. Box 8
3rd Floor, Joe Tobie Building
Yellowknife, Northwest Territories
X1A 2N1

YK 72107 /tmp



1 JUSTICE VERTES: F G has entered
2 a plea of guilty to a charge of sexual assault,
3 occurring on July 9th, 1994, at Aklavik. As a
4 formality, I will make an Order prohibiting the
5 publication of the name of the victim, L A
6 K , or publication of anything that may
7 tend to identify her.

8 The facts are fairly straight forward. The
9 complainant is the niece of the accused, and she
10 was 24 years old at the time. He was 37. On the
11 morning in question, the two of them were at a
12 house with some others, drinking home brew. They
13 left together and, while walking, the accused
14 grabbed her from behind, threw her to the ground,
15 started to choke her, and then while continuing
16 to squeeze on her neck with one hand attempted to
17 undo her pants with the other hand. The victim
18 managed to throw him off and ran away.

19 Afterwards, the police noted distinct marks
20 on the victim's throat, and provided to me were a
21 set of photographs which clearly show
22 significant and serious bruising to the victim's
23 neck area.

24 The accused was arrested a few hours later,
25 and he appeared to be very intoxicated at that
26 time.

27 I heard, through Crown counsel, of the

Gabe's

1 effect on the victim in this case. Needless to
2 say that any type of attack like this would cause
3 a serious emotional trauma to the victim, but in
4 my view, that could only be compounded by the
5 fact that the attacker is someone whom the victim
6 should be able to consider as a friend, as
7 someone she can trust, considering the family
8 relationship. I am told that, for reasons which
9 I will explain shortly, the accused's actions
10 not only surprised the victim, but caused a great
11 deal of shock to her. She is now extremely
12 nervous around the accused, she doesn't trust
13 him, and this action on the part of the accused
14 has apparently caused a rift to develop between
15 the family members.

16 The accused is now 38 years old. He was
17 raised in Aklavik, has a Grade 5 education,
18 although I am told that he has trained himself as
19 a mechanic and has worked in that field, and also
20 worked seasonally on seismic and other crews.

21 I had the benefit of reviewing a presentence
22 report that was prepared in 1992 with respect to
23 the accused at that time. This report recounts,
24 not only the accused's personal history, but
25 also the opinions of his family members. It
26 seems truly tragic that the accused, who is
27 described by his family members as someone who is

Gabe's

1 trusted, who is well liked, would act in this
2 way. Although the presentence report does make
3 note of other people's concerns over the
4 accused's inability to control himself when he
5 is drinking, and his inability to control his
6 abuse of alcohol, it seems to be a recurring
7 theme, having regard to the fact that the accused
8 does have a related criminal record. In 1992, he
9 was convicted for a sexual assault, which I am
10 told was very similar to the circumstances of the
11 sexual assault to which he has pleaded guilty
12 now. Back in 1992, his victim was L A
13 K 's sister. He was intoxicated then,
14 too. That incident as well involved a choking on
15 the part of the accused. For that offence he was
16 sentenced to five months imprisonment and
17 ordered to pay a fine.

18 The victim in this case, L A K ,
19 had apparently forgiven the accused for that
20 previous offense and had developed a friendship
21 again with the accused, and that is why it was,
22 as reported to me, even more shocking to her
23 that the accused would act in this way towards
24 her.

25 The material provided to me also outlines
26 the availability of counselling and of alcohol
27 abuse treatment to the accused, should he choose

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1 to take it. He has apparently had some contact
2 with counselling sessions previously, but
3 apparently he has not pursued it. Both counsel
4 recommend to me that whatever my disposition is
5 in this case, I should consider a period of
6 probation, so as to provide some impetus, as it
7 were, some guidelines or framework, so as to
8 facilitate some type of to be hoped for permanent
9 rehabilitation through counselling and other
10 treatment for the accused.

11 As counsel are well aware, the purpose of
12 any sentence is not to punish the offender,
13 simply for the sake of punishment. The purpose
14 of sentencing is the protection of the public,
15 and it is obvious to me that the public in
16 Aklavik needs protection from the accused, at
17 least when he is unable to control his
18 consumption of alcohol. We protect the public
19 through sentencing, which ideally sends a
20 message to the accused that he should control and
21 change his conduct in the future, sends a message
22 to others that this type of behaviour will be
23 treated seriously by the courts, and also,
24 through any sentence, we hope that we can graft
25 on some rehabilitative aspect to it, to
26 encourage and facilitate the rehabilitation of
27 the offender, because I think we all know that it

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1 is really through permanent rehabilitation that
2 the public can be permanently protected.

3 So in this case, I must try to balance the
4 need for protection with what I think counsel
5 have recognized as, at least, an effort at
6 rehabilitation. I take into account the guilty
7 plea that was entered. While this comes
8 relatively late in the proceedings, I think it is
9 significant as a sign of, at least a self-
10 awareness on the part of the accused, a sign of
11 remorse, and a sense of responsibility, taking
12 responsibility for this conduct. I think that
13 should be taken into account to a great measure.
14 Needless to say, it has precluded the necessity
15 of the victim having to relive this episode once
16 again in open court.

17 Stand up, Mr. G .

18 Mr. G , it is obvious to me that
19 there are still a lot of things you can do for
20 your family and for yourself in this community,
21 that you can still perhaps regain the trust and
22 faith of your family, and I hope that you will
23 plan ahead and try to do that. But only you can
24 do it. Do you understand what I am saying?

25 MR. G : Yeah.

26 JUSTICE VERTES: If you want to try and get
27 control of your alcohol problem, whatever it may

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1 be, if you want to try and get control of your
2 behaviour, so that you don't act like this in the
3 future, it is all up to you. There are people
4 here willing to help you, but you have to make an
5 effort first. Do you understand what I am
6 saying?

7 MR. G : Yes.

8 JUSTICE VERTES: The sentence of this court will
9 be that you serve a term of imprisonment of
10 twelve months. In addition to that, you will be
11 on probation for a period of two years from the
12 date of your release. The terms of your
13 probation will be that you are to keep the peace
14 and be of good behaviour, you are to report to
15 and be under the supervision of a probation
16 officer, you are to participate in any
17 counselling or treatment programs, as directed
18 by your probation officer, you are to have no
19 contact with L A K whatsoever, you
20 are not to go within a distance of 50 metres of
21 whatever may be her residence. Do you understand
22 that, sir?

23 MR. G : Hmm hmm.

24 JUSTICE VERTES: In addition, you are to abstain
25 absolutely from the consumption of alcohol or
26 any other intoxicating substance. Do you know
27 what that means?

Gabe's

1 MR. G : Yup.

2 JUSTICE VERTES: You are to not drink whatsoever
3 for the period of your probation. I don't care
4 whether it is booze, I don't care whether it is
5 beer, I don't care whether it is wine, I don't
6 care whether it is home brew. Nothing. And you
7 are to submit, on demand of a peace officer, to
8 the provision of a sample of your breath. Do you
9 understand that, sir? So that during the time
10 you are on probation, at anytime, the police
11 officer may come up to you and demand that you
12 give a breath sample, to see if you have been
13 drinking.

14 Now, if you do not obey these terms, if you
15 violate any of these conditions, then you can be
16 charged for that, you can be sentenced for that,
17 and you can be brought back before me, and I can
18 change the terms. I can extend your probation.
19 Do you understand?

20 MR. G : Yes.

21 JUSTICE VERTES: And I suggest, sir, you don't
22 want to come back before me again, do you?

23 MR. G : No.

24 JUSTICE VERTES: You can have a seat.

25 Under the circumstances, counsel, I am not
26 going to impose a victims of crime fine
27 surcharge. Furthermore, I am not inclined to

Gabe's

1 impose a Section 100 Order but I will give you an
2 opportunity to speak to that if you wish.

3 MS. ARVANETES: Sir, considering that the
4 offense did not involve a firearm, I believe it
5 is mandatory under the code. However --

6 JUSTICE VERTEES: I think I do have some
7 discretion. I can recognize the fact that while
8 he may not, in the recent past, have participated
9 in traditional activities of hunting and other
10 things on the land, he may wish to take that up
11 as part of his rehabilitation.

12 MS. ARVANETES: That's fine, sir.

13 JUSTICE VERTEES: Is there anything else, counsel,
14 that you should address?

15 MR. BOYD: Nothing by defense, my lord.

16 MS. ARVANATES: Not from the crown, sir.

17 JUSTICE VERTEES: All right. Then I thank both of
18 you for your submissions, and we can close court.

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20 (COURT CLOSED)

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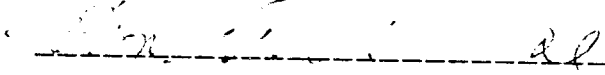
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I, Joan L. Yaehne, C.S.R.(A.), hereby certify that I attended the above Sentencing, and took faithful and accurate shorthand notes and the foregoing is a true and accurate transcript of my shorthand notes to the best of my skill and ability.

DATED at the City of Calgary, in the Province of Alberta, this 4th day of May, A.D. 1995.



Joan L. Yaehne, C.S.R.(A.)

Court Reporter

JY/cg

Gabe's