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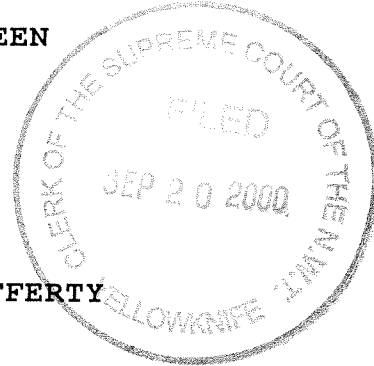
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MICHAEL ALEXANDER LAFFERTY



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Transcript of the Reasons for Judgment and Reasons for Sentence delivered by The Honourable Justice J.Z. Vertes, sitting in Yellowknife, in the Northwest Territories, on the 14th day of September, A.D. 2000.

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APPEARANCES:

Ms. S. Kendall and  
Ms. S. Bond:

Counsel for the Crown

Mr. R. Gorin:

Counsel for the Defence

(Charged under s. 271 of the Criminal Code)

1 THE COURT:

2 Many judges have said that the  
3 law does not clothe a trial judge with a divine  
4 insight into the hearts and minds of witnesses. We  
5 cannot profess to be able to determine absolute truth.  
6 All we can do is apply rational means to determine  
7 whether an allegation has been proven to the standard  
8 accepted by law and society, that being proof beyond a  
9 reasonable doubt.

10 The law sets down only one requirement. I must  
11 examine all of the evidence and then determine whether  
12 the Crown has proven the charge beyond a reasonable  
13 doubt. And where, as in this case, one is confronted  
14 with contradictory versions of what happened, indeed  
15 contradictory versions from the same witness, one does  
16 not have to decide which one of those versions is  
17 true, but rather whether the evidence as a whole  
18 proves the guilt of the accused beyond a reasonable  
19 doubt. If I am left in a quandary, then of course the  
20 charge has not been proven. But I do not have to  
21 accept either version on an all-or-nothing basis.

22 The principle issue in this case is the  
23 credibility and reliability of the complainant. To  
24 put it perhaps more accurately, it is the credibility  
25 and reliability of two contradictory versions of  
26 reality put forth by the complainant. To assess this  
27 issue, however, I must consider all of the evidence  
together and not examine individual items of evidence

1 in isolation. I must also avoid assumptions about  
2 human behaviour since many people may not perceive the  
3 world and their role in it the same way I do. This is  
4 a process of reason and rational analysis, not emotion  
5 and speculation.

6 The accused is charged with sexual assault on his  
7 wife. The uncontradicted evidence is this.

8 In the early morning hours of December 29, 1999,  
9 the complainant showed up at the home of Muriel  
10 Betsina in N'dilo. I accept Mrs. Betsina's evidence  
11 as to her observations and her conversation with the  
12 complainant. The complainant did not deny what she  
13 said at that time. The complainant was upset, crying,  
14 and bleeding. She said that she had been raped and  
15 beaten by her husband. The complainant called the  
16 police. The tape of her call, acknowledged by the  
17 complainant, reveals her to be anxious. She said her  
18 husband beat her up and raped her. When the police  
19 arrived, the complainant was standing outside of her  
20 home, on the porch, distraught and upset, repeatedly  
21 saying that she had been beaten and raped. She  
22 pointed behind her house. The police followed some  
23 footsteps in the snow and located the accused  
24 underneath a boat, wearing only a T-shirt, jeans, and  
25 socks. The police took the complainant to the  
26 hospital. There she was noted to be upset and crying.  
27 The nurse noted that the complainant appeared to have

1           been drinking but was not drunk. She was said to be  
2           cooperative and responsive. A rape kit examination  
3           was conducted and, eventually, male DNA identified as  
4           likely coming from the accused and female DNA  
5           identified as likely coming from the complainant were  
6           found in material in a vaginal swab, a sample of a  
7           vaginal pool, and the accused's underwear.

8           The complainant was observed to have a prominent  
9           injury to her front teeth. Her gumline was swollen  
10          and oozing blood. She had a swollen eye and some  
11          superficial lacerations on her face.

12          At the hospital, the complainant spoke with  
13          Constable Aimoe. I have no doubt as to what the  
14          complainant said was accurately reported by the  
15          constable. The complainant talked about going home  
16          with her husband after being in the bars downtown,  
17          that he took her into a van parked in front of his  
18          mother's home, that he beat and raped her, and that  
19          she managed to leave and eventually went to the  
20          Betsina home. She also said she was afraid of her  
21          husband and would not testify if he was out of jail.

22          The accused, having been arrested, was placed  
23          into custody.

24          On January 11, 2000, the complainant attended at  
25          the office of James Brydon, a local solicitor, and  
26          swore an affidavit retracting her accusations. She  
27          said that she became upset and crying for no reason at

1 the time when she was at the Betsina house. She  
2 claimed that she told Mrs. Betsina, and subsequently  
3 the police, that she had been beaten and raped because  
4 she wanted to get away from her husband so that she  
5 could go back to the bars to drink. She denied that  
6 he beat or raped her. She also said that the last  
7 sexual intercourse between them was at 9 p.m. the day  
8 before while having a shower.

9 The complainant testified in Court that it was  
10 her idea to go see Mr. Brydon and that she retained  
11 him and paid his fee. Mr. Brydon testified that he  
12 recalls someone calling him asking him to meet with  
13 the complainant, but he could not recall if that  
14 someone was male or female. He does recall  
15 specifically cautioning the complainant about the  
16 consequences of swearing a false affidavit.

17 On February 16, 2000, the accused appeared at the  
18 preliminary inquiry into this charge. The complainant  
19 did not testify. According to Constable Bellamy, the  
20 complainant said she was too scared to testify but she  
21 would be willing to give a formal statement to the  
22 police. Subsequently that same day a statement was  
23 taken under oath after appropriate cautions and  
24 warnings, videotaped and audiotaped. In the statement  
25 the complainant repeated her original accusations.  
26 She gave a detailed description of the events  
27 consistent with what she had said on the night of the

1           alleged assault. She also stated that the accused had  
2           told her to see a lawyer and told her what to say.

3           Then, on March 2, 2000, the complainant wrote a  
4           letter to the accused, in jail, once again retracting  
5           her accusations. She made reference to an "Edward"  
6           forcing her to lie about what happened.

7           At this trial, the complainant testified. She  
8           adopted the statements in her January affidavit and  
9           the March letter. She acknowledged making the  
10          statement of February 16th and her utterances on the  
11          night of the alleged offence. But she swore on the  
12          stand that she lied to the police, that Edward Bourke  
13          (a man with whom she lived briefly after the accused's  
14          arrest) forced her through assaults and threats to lie  
15          about her husband. She reiterated that the accused  
16          did nothing.

17          Edward Bourke testified as well. He denied that  
18          he ever threatened or assaulted the complainant. He  
19          said that he had nothing to do with what the  
20          complainant did in relation to these charges because  
21          it was none of his business. I recognize, of course,  
22          that this witness, particularly in light of his  
23          extensive criminal record and the fact that he is now  
24          in jail, would not readily admit to assaulting or  
25          threatening the complainant even if he did do those  
26          things. His evidence may not be worth much, but at  
27          least the complainant's evidence on this point is not

1 left unchallenged or uncontradicted.

2 Similarly, the complainant's evidence that  
3 Constable Bellamy had spoken with Bourke about her  
4 giving a statement was refuted by Constable Bellamy  
5 (whose evidence I accept).

6 So we are confronted in this trial with a serious  
7 accusation which has been vehemently retracted by the  
8 complainant under oath. So some may ask, What is the  
9 point of these proceedings? What interests are we  
10 serving by this prosecution? If the complainant wants  
11 the accused back (no matter what he may have done),  
12 why should society at large and the criminal justice  
13 system concern itself about it? Well, in my opinion,  
14 these questions go to the very nature of criminal law  
15 in our society.

16 Criminal law is part of public law. Public law  
17 consists of those fields of law which are concerned  
18 with the relationship of the state to individuals, as  
19 opposed to private law which deals with relationships  
20 between individuals. The general aim of the criminal  
21 law is to discourage and prevent conduct that society  
22 has deemed to be harmful and to punish those who  
23 commit harm. Harmful acts, even if they directly  
24 affect only one individual, are viewed as harmful to  
25 the peace and security of the community as a whole.  
26 Thus, crimes are the concern of the state. It is not  
27 a matter of the individual victim seeking retribution

1 but that of the state seeking to reinforce society's  
2 values. When and how that is to be done is determined  
3 by the community and not the individual victim. The  
4 victim is necessarily kept somewhat at arm's length in  
5 the justice system. The criminal law is not about  
6 seeking simply revenge; it is about restoring peace  
7 and security to the community. Deterrence and  
8 rehabilitation of the offender are just as important  
9 concepts as are retribution and denunciation. So if,  
10 for example, we say that a victim's outrage is not the  
11 predominant factor in a prosecution, is it not also  
12 fair to say that a victim's change of heart (or mind)  
13 should not be the guiding factor? The focus is on  
14 what was done, not simply on how the victim feels  
15 about it. If what was done was a crime, and if that  
16 crime is proven, does it really matter to society at  
17 large if the perpetrator is prosecuted even though the  
18 victim, for whatever reason, does not want that? I  
19 think it does. A person who commits a crime but is  
20 not prosecuted for it is more likely to repeat that  
21 behaviour. Thus, the community is further endangered.  
22 At least if we are to maintain the philosophic  
23 underpinnings of our criminal justice system, we have  
24 to believe that.

25 During the trial I ruled that the February 16th  
26 statement to the police was admissible for substantive  
27 purposes. I also ruled that the various statements



1 and utterances by the complainant on the night of the  
2 alleged assault were admissible, not for the truth of  
3 their contents, but for the fact that they had been  
4 made. They are necessary to have the complete context  
5 before us and to assist in the assessment of what, if  
6 anything, should be believed.

7 The issue is the reliability of the complainant's  
8 February 16th statement. Put another way, the  
9 complainant has put forth two versions of the truth,  
10 both under oath and both after having been warned as  
11 to the consequences of making false statements. There  
12 is no evidence of any mental incapacity or  
13 psychological disability on the part of the  
14 complainant. She did not appear to be operating under  
15 any delusions or compulsions. Indeed, she appeared to  
16 be very strong-willed and assertive and determined.  
17 So it is really a question of whether I am satisfied  
18 as to the reliability of the February 16th statement  
19 in the face of the adamant and repeated retractions by  
20 the complainant.

21 To assess that question I must consider all of  
22 the circumstances, what confirms or contradicts the  
23 statement, and what evidence there may be as to motive  
24 for the complainant to say what she has said on  
25 different occasions.

26 Defence counsel submitted that the complainant's  
27 general credibility is so damaged and unreliable that

1 the credibility of both versions of the truth is  
2 irredeemably undermined. He has a point. The  
3 complainant, besides stating straight out that she  
4 lied to the police, stated that she has made false  
5 accusations against the accused in the past. She also  
6 has an extensive criminal record which affects her  
7 credibility. She admitted to being an alcoholic and  
8 addicted to cocaine.

9 But when I consider all of the evidence, and in  
10 particular, as Crown counsel noted, the confirmatory  
11 extrinsic evidence, I have no doubt that the accused  
12 beat and raped his wife on the night of December 29th.  
13 There is the direct evidence provided by the  
14 observations of Muriel Betsina, Norman Betsina, the  
15 nurse, and the police officers as to the complainant's  
16 physical and emotional condition. There is the direct  
17 evidence of the phone call to the police. There is  
18 the evidence of the accused's attempt to evade the  
19 police. Now, I recognize that there may be all sorts  
20 of reasons why the accused felt compelled to hide  
21 beneath a boat, in the middle of winter, in  
22 Yellowknife, without a coat or shoes. But in the  
23 circumstances of this case, the only rational  
24 inference is that he was trying to evade arrest.  
25 There is the evidence of Corporal Brandford's  
26 observations of the complainant earlier in the  
27 evening. There is the evidence of the contents and

1 condition of the van.

2 In my opinion the complainant has a motive to  
3 retract her accusations. She, for whatever reason,  
4 wants the accused back with her. Or, perhaps, she is  
5 frightened and intimidated (but I saw no evidence of  
6 that). It is not for me to judge the complainant's  
7 motivations. But it does seem to me that the only  
8 motive for the complainant to accuse her husband of  
9 beating and raping her is that he actually did it.  
10 Her story about just wanting to go back to the bars to  
11 drink defies reality, common sense, and my  
12 intelligence.

13 There are of course many other items confirming  
14 and contradicting aspects of both versions of the  
15 truth put forward by the complainant. But, when I  
16 consider all of the evidence, I am satisfied beyond a  
17 reasonable doubt as to the truth of the contents of  
18 the February 16th statement. I therefore find the  
19 accused guilty as charged.

20 **(SUBMISSIONS ON SENTENCE)**

21 THE COURT: The accused, Michael Lafferty,  
22 has been convicted of the offence of sexual assault.  
23 I do not need to go over the details of the evidence  
24 again. Suffice it to say that the assault was a  
25 violent one, it was a highly intrusive one involving  
26 sexual intercourse, and the victim was his wife.

27 I have no doubt that the accused was intoxicated

1 at the time. There was evidence as to observations  
2 made by police officers earlier in the evening as to  
3 his intoxication and belligerence. But I also have no  
4 doubt as to the callous indifference of the accused.

5 The accused is 33 years old. He is a life-long  
6 resident of this region. He has an unenviable record  
7 of criminal convictions; some 29 convictions by my  
8 count between 1983 and 1996, many for crimes of  
9 violence.

10 I have to take into consideration, as his counsel  
11 urged me to, the fact that the accused is an  
12 aboriginal Canadian. In this case, while certainly  
13 the accused's aboriginal background is a factor to  
14 consider, there were no particular submissions  
15 regarding any unique systemic or background factors  
16 which may have played a part in bringing this  
17 particular aboriginal offender before the Court, nor  
18 submissions as to any types of sentencing procedures  
19 or sanctions which may be appropriate in the  
20 circumstances for the offender because of his  
21 particular aboriginal heritage.

22 Unfortunately, in this case, as in many cases of  
23 serious personal violence, the question is not whether  
24 incarceration is the appropriate disposition but  
25 rather how long the accused needs to be incarcerated  
26 to give full effect to all the relevant sentencing  
27 principles.

1           In my opinion this is a case where the accused's  
2           aboriginal background, while certainly it is relevant,  
3           does not justify a sentence other than a substantial  
4           period of incarceration as would any other offender  
5           receive in this country with this offender's  
6           background and the circumstances of the offence.

7           Crown counsel suggests a total sentence of five  
8           years. Of course I have to take into account the nine  
9           months of pre-trial custody that the accused has  
10          already spent. In my view, perhaps Crown counsel's  
11          submission is a little to the high end of what I would  
12          consider appropriate, but it is not much higher.

13          Mr. Lafferty stand up. Do you have anything that  
14          you wish to say?

15          THE ACCUSED:                   No, My Lord.

16          THE COURT:                    Well, Mr. Lafferty, I am not  
17          going to lecture you. You are old enough and, I  
18          suspect, smart enough to know what you have to do if  
19          you want to turn your life around.

20          It is the sentence of this Court that you be  
21          imprisoned for a term of two and a half years. Thirty  
22          months. You may sit down.

23          I will issue a firearm prohibition order for the  
24          mandatory term of ten years. However, considering the  
25          submissions made as to Mr. Lafferty's background and  
26          the fact that he pursues hunting and trapping  
27          activities for sustenance, I will authorize the Chief

1 Firearms Officer or the appropriate authority to issue  
2 authorization to Mr. Lafferty to possess and use  
3 firearms and ammunition for purposes of hunting and  
4 trapping only after his release and for the term of  
5 the prohibition order. Any such authorization does  
6 not include authority for Mr. Lafferty to possess or  
7 use firearms or ammunition within any municipal  
8 boundaries in the Northwest Territories, whether it be  
9 in Yellowknife, N'dilo, Dettah or any other  
10 municipality.

11 Furthermore, there will be an order under Section  
12 487 authorizing a warrant to seize a sample for DNA  
13 purposes.

14 Is there anything else I should consider?

15 MR. GORIN: No, Sir.

16 MS. KENDALL: I would ask for an order  
17 disposing of the exhibits, My Lord.

18 THE COURT: The exhibits that are in the  
19 Court's possession now, I will direct that the tapes,  
20 the videotape and the audiotapes, be returned to the  
21 Crown or to the RCMP to be held pending expiry of the  
22 appeal period. The paper exhibits, the documentary  
23 exhibits, will stay on the court file. Are there any  
24 other exhibits that we have to deal with?

25 MS. KENDALL: No, My Lord.

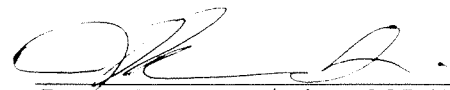
26 THE COURT: In any event, the exhibits  
27 returned to the Crown should be retained until expiry

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of the appeal period. Thank you, Counsel. We're  
adjourned.

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Certified Pursuant to Rule 723  
of the Rules of Court

  
\_\_\_\_\_  
Jane Romanowich, CSR(A)  
Court Reporter

