

R. v. Bourke and Lafferty, 2001 NWTSC 18

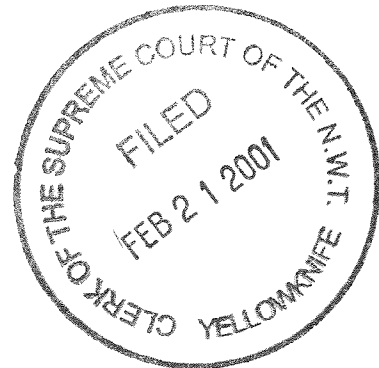
S-1-CR-20000/027

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -



EDWARD BOURKE and DARLENE LAFFERTY

Transcript of the Oral Reasons for Sentence by The Honourable Justice J.E. Richard, at Yellowknife in the Northwest Territories, on February 14th A.D., 2001.

APPEARANCES:

Ms. S. Kendall:	Counsel for the Crown
Mr. H. Latimer:	Counsel for the Accused Bourke
Mr. C. Rehn:	Counsel for the Accused Lafferty

1 THE COURT: I want to first of all thank
2 counsel for their submissions with respect to the
3 difficult issue of sentencing.

4 Two repeat offenders, Edward Bourke and Darlene
5 Lafferty, are before this Court to be sentenced this
6 afternoon. The event which gave rise to today's
7 Court appearance was a man being robbed on his way
8 home from the Gold Range bar in the early morning
9 hours of July 11th, 2000.

10 The victim was first approached by Darlene
11 Lafferty who asked him for a cigarette and who asked
12 for his help from a man who was harassing her. The
13 man she was referring to, Edward Bourke, arrived on
14 the scene.

15 In the discussions which followed, Edward
16 Bourke punched the victim several times in the face
17 and the two men went to the ground and were
18 fighting. The victim's testimony was that Darlene
19 Lafferty joined in the attack on him however it is
20 clear that Edward Bourke was the main assailant.

21 Third parties arrived to break up the fight.
22 The two offenders, Bourke and Lafferty, left the
23 scene together.

24 The victim then noticed his glasses and wallet
25 were missing. He found his glasses in the dirt but
26 not his wallet. He went home to his apartment and
27 phoned the police, telling them, among other things,

1 that his credit card was in the wallet.

2 Within the hour, the two offenders took a cab
3 from the downtown area to Winks convenience store
4 and used the victim's credit card to purchase some
5 items. They kept the cab and then went to a second
6 24-hour convenience store, Circle K, and were in the
7 process of attempting to use the victim's credit
8 card to make some more purchases there when the RCMP
9 arrived and arrested them.

10 From these circumstances, two characterizations
11 spring to mind. One is the speed, efficiency, and
12 professionalism of the RCMP. The other is the
13 stupidity and the amateurism of the criminals.

14 With respect to the assault on the victim, he
15 did not suffer permanent injuries however his face
16 was swollen, he had lacerations on his chin, and he
17 had two black eyes for a couple of weeks.

18 Both Bourke and Lafferty were charged with,
19 one, robbery contrary to Section 344.

20 Two, possession of the stolen credit card
21 contrary to Section 354.

22 Three, unlawful use of the credit card at Winks
23 contrary to Section 342.

24 And four, unlawful use of the credit card at
25 Circle K contrary to Section 342.

26 In addition, Mr. Bourke was charged with breach
27 of probation as he was on July 11th, 2000 on

1 probation following a fraud conviction.

2 Both offenders elected trial by Judge and jury.
3 Following a full preliminary inquiry in Territorial
4 Court, they were committed to stand trial on these
5 charges in this Court before a jury.

6 They went before a jury on the robbery charge
7 (only) earlier this week.

8 When arraigned before the jury panel, Mr.
9 Bourke offered a plea of guilty to the included
10 offence of assault. The Crown did not accept that
11 plea.

12 During the trial, Mr. Bourke testified. In his
13 testimony, he admitted assaulting the victim but he
14 denied that he took the wallet or knowing that the
15 wallet was taken at the time. He told the jury that
16 the first that he knew of the credit card was when
17 he saw it in Ms. Lafferty's possession after the
18 altercation and just before they took the cab and
19 used it, that is the credit card, at the two
20 convenience stores.

21 Ms. Lafferty did not testify at the trial.

22 The jury found Ms. Lafferty guilty of robbery
23 and found Mr. Bourke guilty of the included
24 indictable offence of assault. Today, Mr. Bourke
25 entered a guilty plea to the breach of probation
26 charge. The Crown has directed a stay of proceedings
27 on the remaining charges involving possession and

1 use of the credit card.

2 Dealing first with Edward Bourke, this offender
3 is now 37 years of age. He is an aboriginal person
4 originally from Fort Smith but has lived in
5 Yellowknife in recent years. At the time of
6 committing this offence, he was employed with a
7 construction company here in Yellowknife. He has
8 been in custody awaiting trial on this group of
9 charges since his arrest on July 11th, a period of
10 seven months.

11 He has a substantial record of criminal
12 convictions during the past 20 years. Although the
13 majority of his crimes are property related, he also
14 has convictions for robbery, criminal negligence
15 causing death, drinking and driving, sexual assault,
16 and breach of court orders. He has been sentenced
17 to a jail term on ten separate occasions including
18 terms of nine months, 14 months, two years, and
19 three years.

20 Of significance is the fact that he was
21 sentenced in March 1999 to a total of 14 months
22 imprisonment followed by 12 months of probation for
23 a series of offences - theft, fraud, possession of
24 stolen property, and failing to attend court when
25 required to do so. He was still under the terms of
26 that probation order when he committed this assault
27 on Mr. Linder on July 11th, 2000.

1 With that kind of background, particularly the
2 recent background, it is no surprise that he was
3 unable to obtain his release pending his trial on
4 these new charges. However, in any event, he is
5 entitled to some credit for his seven months of
6 pre-trial detention as one of the reasons he was
7 detained was the two offences that he is being
8 sentenced for today.

9 There is no specific mathematical formula to be
10 used in calculating credit for pre-trial detention.
11 It is a matter of judicial discretion for the
12 sentencing Judge in each individual case.

13 The offence of assault committed by Edward
14 Bourke was a cowardly act of violence, an unprovoked
15 act on a stranger who I find was indeed "minding his
16 own business" before he was approached by
17 Mr. Bourke's girlfriend Darlene Lafferty and by
18 Mr. Bourke.

19 There are aggravating features in the fact that
20 Edward Bourke was on probation at the time and that
21 he has a substantial criminal record.

22 I take into account his offer of plea of guilty
23 albeit at the 11th hour.

24 I take into account the recognized purpose and
25 principles of sentencing without repeating them
26 here.

27 I do repeat here the statement that the Courts

1 have a duty to protect society and the members of
2 the community from unlawful random violence. And I
3 must be mindful of that duty in imposing sentence.

4 Taking into consideration all of the
5 circumstances, I am satisfied that a global sentence
6 of 18 months imprisonment is a fit and proper
7 sentence for the particular assault committed by the
8 offender Edward Bourke. In the circumstances, I am
9 going to give him ten months credit for his period
10 of pre-trial detention.

11 I turn now to the offender Darlene Lafferty.

12 This offender is now 33 years of age. She too
13 is an aboriginal person who grew up here in
14 Yellowknife and has spent most of her life here. She
15 has had a troubled life; in particular, in the
16 environment of her own upbringing, in her
17 involvement with drugs and alcohol, in her
18 relationships with men, in her engaging in criminal
19 activity including acts of violence, and in her
20 difficulty in raising her own four children. As
21 fairly characterized by her counsel today, she has
22 lacked stability in her life.

23 Her criminal record covers a period of 13 years
24 and includes property offences and four assault
25 convictions, three of which are assault causing
26 bodily harm.

27 In her many appearances in court, she has

1 received probationary sentences and other lenient
2 sentences apparently to no avail towards her
3 rehabilitation. I note that just a month before she
4 rolled Mr. Linder in the back alley near the Gold
5 Range bar, that on June 8th, that is June 8, 2000,
6 she was convicted of theft and assessed a \$150 fine.

7 From my observations of Ms. Lafferty, I detect
8 no sign of remorse for the serious crime that she
9 committed. From the immediate use of the credit card
10 following the robbery, it is clear that she knew
11 what she was doing and that she was engaged in
12 deliberate and calculated conduct. From the jury's
13 verdict, it is she who is responsible for the
14 robbery.

15 I say again that the citizens of this community
16 are entitled to expect that they are safe when
17 walking on its streets even at 1 a.m. when leaving a
18 drinking establishment.

19 The Court's sentence must act as a deterrent to
20 those who are tempted to roll vulnerable citizens
21 for some easy money. And equally importantly in this
22 case, the sentence that is imposed must promote a
23 sense of responsibility in this offender Darlene
24 Lafferty. The sentence must hopefully encourage her
25 to wake up, to grow up, and to acknowledge the harm
26 that she does to her victims and to the community.

27 One of my roles in sentencing these two

1 offenders today is to promote respect for the law
2 and a safe community. In this case, that means that
3 both of these offenders will go to jail. The length
4 of jail term to be imposed in each case is
5 proportionate to the gravity of the offence each has
6 committed and the degree of responsibility of the
7 offender for his or her offence upon taking into
8 account individual circumstances.

9 Would you please stand now, Mr. Bourke.

10 Edward Bourke, for the crime that you have
11 committed, the crime of assault contrary to Section
12 266 of the *Criminal Code*, it is the sentence of this
13 Court that you be imprisoned for a period of six
14 months.

15 For the offence of breach of probation contrary
16 to Section 733.1 of the *Criminal Code*, the sentence
17 is two months imprisonment consecutive.

18 I further make an order under the *Criminal Code*
19 authorizing the taking of DNA samples from this
20 offender. And in the circumstances, there will be
21 no Victim Fine surcharge.

22 You may sit down, Mr. Bourke.

23 Ms. Lafferty, for the crime of robbery contrary
24 to Section 344 of the *Criminal Code*, the sentence of
25 the Court is that you serve a term of imprisonment
26 of two years less one day.

27 In addition, there will be a firearms

1 prohibition order pursuant to Section 109 of the
2 *Criminal Code*. Any such item in your possession now
3 will be surrendered forthwith to a police officer.

4 In addition, I order under the *Criminal Code*
5 authorizing the taking of DNA samples from this
6 offender as well. And again, in the circumstances
7 of the term of imprisonment, there will be no Victim
8 Fine surcharge.

9 You may sit down.

10 MS. KENDALL: I am wondering if I could ask
11 Your Honour for an order returning the exhibits to
12 the RCMP pending the appeal period in this matter.

13 THE COURT: The usual order for disposition
14 of exhibits will issue upon expiry of the appeal
15 period.

16 Anything further, counsel?

17 MR. REHN: No, sir.

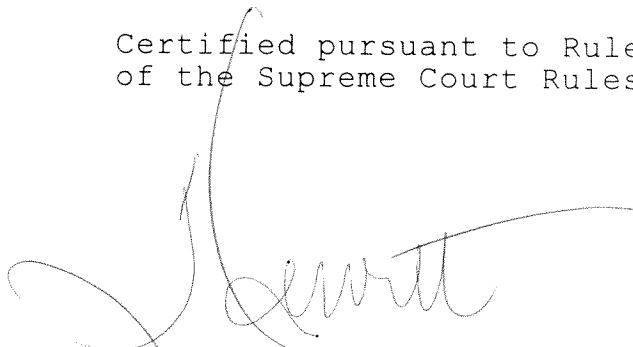
18 MR. LATIMER: No, sir.

19 THE COURT: Thank you, we will close court.

20 **(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

21 Certified pursuant to Rule 723
22 of the Supreme Court Rules.

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Lois Hewitt,
Court Reporter

