

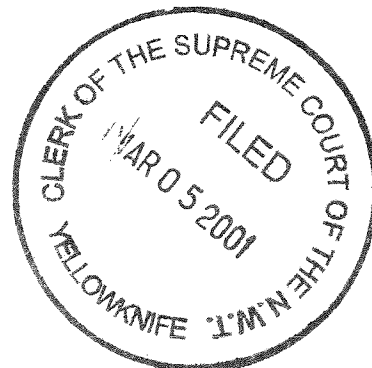
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ROBBY MARK BERREAUULT



Transcript of the Reasons for Sentence (Oral) delivered
by The Honourable Justice V.A. Schuler, in Fort Simpson,
in the Northwest Territories, on the 1st day of March,
A.D. 2001.

APPEARANCES:

Ms. D. Robinson:

Counsel for the Crown

Mr. S. Shabala:

Counsel for the Defence

Mr. T. Boyd:

Charge under s. 236 C.C.



1 THE COURT: Robby Mark Berreault was convicted
2 yesterday by the jury of the offence of manslaughter
3 by causing the death of Madeline Seya by means of an
4 unlawful act, that being assault.

5 The facts as I infer the jury must have found
6 them are that on May 16, 1999, at approximately 2:00
7 a.m., Mr. Berreault went to the campsite near Fort
8 Liard where Madeline Seya was living in a tent. There
9 he assaulted the 87-year-old Miss Seya. The witness
10 Martin Nelson who was nearby in his tent heard her
11 screaming and moaning and later that morning found her
12 lying inside her tent with blood all over her face.
13 Medical examination indicated that the injuries she
14 sustained were mainly to her head and face.

15 Subsequent examination revealed bleeding in the brain.
16 From the injuries, the medical evidence and the
17 photographs submitted at trial, I conclude that she
18 was obviously struck quite hard about the face and
19 head. Her condition gradually deteriorated and she
20 died on April 20, 2000. Her death resulted from a
21 series of complications arising from her injuries.

22 This was not the first time that Mr. Berreault
23 had assaulted Madeline Seya. Two months to the day
24 before the assault at the campsite, he went to her
25 house in town apparently to buy liquor from her
26 daughter. He was later found guilty after a trial of
27 assaulting Madeline Seya in her house on that date.

1 She sustained multiple contusions in that assault.

2 Why Mr. Berreault went out to the campsite on May
3 16 and then attacked Miss Seya is not explained on the
4 evidence presented at the trial. It is virtually
5 impossible to think of a reason why a 23-year-old
6 physically-large man, as I observe Mr. Berreault to
7 be, would attack an elderly woman, a woman Mr. Nelson
8 repeatedly referred to as "the elder".

9 There was evidence at the trial that
10 Mr. Berreault was intoxicated on the date in question,
11 but I do note that Mr. Nelson's evidence was not that
12 Robby Berreault was staggering or stumbling around
13 drunk at the campsite, so the extent of his
14 intoxication at the time of the assault is not clear
15 to me. In any event, intoxication in no way excuses
16 or mitigates what he did to Madeline Seya.

17 I take into account that this was an assault on a
18 very elderly woman alone in her tent late at night.
19 She was at a location where the only person close by
20 was another elderly person, Mr. Nelson. She was in a
21 position of extreme vulnerability, and after the
22 assault she was left there in a situation where help
23 was not readily available. This is the most
24 aggravating aspect of this case in many ways.

25 It is also aggravating in my view that
26 Mr. Berreault knew, because he looked into
27 Mr. Nelson's tent, that Mr. Nelson was close by and,

1 as an elderly person, would obviously be scared and
2 upset by the assault taking place just a few feet away
3 from him.

4 I take into account Robby Berreault's personal
5 circumstances as they have been related to me. He is
6 23 years old, from Fort Liard and has a grade eight or
7 nine education. He has worked seasonally in labour
8 and construction. I am told that his family life has
9 been marked by alcohol and violence, including
10 violence to which he has been subjected by an older
11 brother. Mr. Berreault admits to having an alcohol
12 problem.

13 The circumstances are sad and troubling but they
14 are, unfortunately, in no way unique. People who grow
15 up in violent and alcoholic homes often themselves
16 turn to violence and alcohol. It is a very sad and
17 very vicious cycle.

18 Mr. Berreault also has a criminal record which
19 must be taken into account. He has some convictions
20 in youth court, the most notable of which is for
21 sexual assault in 1992 for which he received 20
22 months' secure custody. As an adult, he was convicted
23 in 1997 of assault for which he received four months
24 in jail; convicted in 1998 of break, enter and commit
25 mischief for which he received six months in jail and
26 one year probation; and then in July 1999 he was
27 convicted of the first assault on Madeline Seya for

1 which he was sentenced to five months in jail and one
2 year probation. The record is of concern because it
3 indicates a series of violent offences now capped by
4 this manslaughter conviction. When he committed the
5 assault that led to Madeline Seya's death,
6 Mr. Berreault had already been charged with and was
7 awaiting trial for the first assault on her. So that
8 is an aggravating factor.

9 Mr. Berreault has been in custody since his
10 arrest on May 20, 1999, therefore just over 21 months
11 of which five months was the sentence imposed for the
12 earlier assault. Therefore, approximately 16 months
13 is referable to this manslaughter conviction. I will
14 take that time into account in determining his
15 sentence and I will give him credit for it, bearing in
16 mind that no doubt one of the reasons, if not the
17 reason, he was kept in custody on this charge which
18 was laid before Ms. Seya's death and which was
19 originally an assault charge, is because he was
20 already awaiting trial for the first assault on the
21 same victim when he was charged with the second
22 incident.

23 The offence of manslaughter is a very serious one
24 as is evident from the fact that the *Criminal Code*
25 provides for a maximum punishment of life
26 imprisonment. The maximum sentence is of course
27 generally reserved for the worst example of the

1 offence and offender. Manslaughter can involve a wide
2 range of unlawful actions which result in death and
3 the sentence in each case will depend very much on the
4 specific facts.

5 I take into account the principles of sentencing,
6 the fundamental one being that a sentence must be
7 proportionate to the gravity of the offence and the
8 degree of responsibility of the offender. The gravity
9 of the offence in this case is pronounced mainly
10 because of the vulnerability of the elderly victim,
11 and the degree of Mr. Berreault's responsibility is
12 high.

13 The seriousness of manslaughter and the
14 particular circumstances of this case require that any
15 sentence imposed serves to denounce the accused's
16 conduct and that it deter him and others from
17 committing such offences. At the same time I have to
18 take into account that Mr. Berreault is still a young
19 man. He will at some point return to live if not in
20 Fort Liard then in another community, and his
21 rehabilitation has to be a concern so that when he
22 does finish his term of imprisonment he will hopefully
23 be able to leave peacefully in society and not as a
24 danger to other people.

25 I take into account the impact of a penitentiary
26 term on a young man such as Mr. Berreault. He has
27 expressed through his counsel concern about the bad

1 influence of others in the penitentiary. That is
2 always a concern, but, Mr. Berreault, you should keep
3 in mind that whether you let others influence you is
4 largely up to you. If you are serious about pursuing
5 counselling and pursuing your education, then you will
6 have to focus on those things and you will have to
7 take steps to not let yourself submit to bad
8 influences from other people.

9 Counsel are almost identical in terms of the
10 range of imprisonment they have suggested;
11 Ms. Robinson suggesting a term of six to eight years
12 before credit for the remand time and Mr. Shabala
13 similarly suggesting seven years. I think that range
14 is reasonable in the circumstances of this case. It
15 is not suggested that any sanction other than
16 imprisonment would be reasonable or that there are any
17 unique or systemic background factors to be taken into
18 account as set out in the Supreme Court of Canada
19 decision in *Gladue*. Counsel have not referred to any
20 precedents; however, I am satisfied that the general
21 range of five to eight years for manslaughter as
22 suggested by Ms. Robinson based on previous cases in
23 the Northwest Territories is reasonable.

24 I do note that the high end of that range tends
25 to involve cases where weapons are used. We had just
26 a couple of years ago the case of Mr. Hainnu in Clyde
27 River on which Ms. Robinson was counsel. Mr. Hainnu,

1 who had shot through a window and killed another
2 person, received a sentence of five years with the
3 remand time that he had accumulated and was given
4 credit for. The sentence, as I recall, effectively
5 was approximately seven or eight years.

6 I note obviously that there is no proof that
7 there was a weapon used in this case.

8 I have referred to the issue of taking into
9 account the remand time. Counsel referred to the *Wust*
10 case from the Supreme Court of Canada in which the
11 court indicated that a credit of two months for one is
12 not unreasonable to reflect the harshness of pre-trial
13 detention. The court also indicated that there is no
14 mechanical formula and that it is very much within the
15 discretion of the judge to determine how best to take
16 into account remand time.

17 I have already noted the fact that Mr. Berreault
18 was awaiting trial for the earlier assault. I have
19 considered that, according to what Mr. Shabala has
20 said, at least some of the pre-trial detention appears
21 to have been in circumstances where Mr. Berreault was
22 given some access to programs. Having considered all
23 of that and spending some time thinking about how I
24 should best deal with the remand time, I have decided
25 to look mainly at the remand time that came after the
26 five month sentence imposed for the earlier assault
27 and I am going to credit in all the circumstances the

1 remand time as two years.

2 Would you stand up please, Mr. Berreault.

3 Mr. Berreault, it gives me no pleasure to send a
4 young man to the penitentiary, but I have no doubt
5 that in the circumstances of this case it is required.
6 The sentence I impose on you is four years'
7 imprisonment. I am going to direct the Clerk of the
8 Court to endorse the warrant with my recommendation
9 that you be given alcohol and lifeskills counselling
10 and that you be given the opportunity to continue your
11 education.

12 You may sit down.

13 As required by the *Criminal Code*, I make an order
14 pursuant to section 109 of that legislation
15 prohibiting you from possessing any firearm or other
16 item referred to in section 109 for a period which
17 commences today and expires ten years from the date of
18 your release from imprisonment. You are to surrender
19 any such items in your possession to the RCMP
20 forthwith unless I hear from counsel that there is a
21 need for a longer period.

22 MR. SHABALA: I don't believe so.

23 THE COURT: Thank you.

24 Also having considered your criminal record,
25 Mr. Berreault, which contains offences of violence
26 against other people and considering this offence
27 which is of the same nature, and having considered the

1 impact on your privacy and security of the person, I
2 am of the view that it is appropriate and it is in the
3 best interests of the administration of justice that
4 an order be made under section 487.052 of the *Criminal*
5 *Code* authorizing the taking of samples of your blood
6 for forensic DNA analysis, and an order in form 5.04
7 will issue. Counsel, I will just take another look at
8 the order when we adjourn and then the clerk will
9 provide it to you.

10 Do you need an order with respect to the
11 exhibits?

12 MS. ROBINSON: Yes, please, Your Honour. Of course
13 the exhibits must be maintained for a period and then
14 may be destroyed after that 60 days.

15 THE COURT: It would be the expiry of the appeal
16 period.

17 All of the exhibits, other than the paper
18 exhibits, will be retained in the possession of the
19 RCMP until the expiry of the appeal period or the
20 determination of any appeal that may be taken.

21 MS. ROBINSON: Thank you.

22 THE COURT: Is there anything further, counsel?

23 MR. SHABALA: I understand it's the usual practice
24 to wait 60 days after the appeal period, Your Honour,
25 before the exhibits can be destroyed or disposed of.
26 I can indicate I've had some discussion with my friend
27 here today. Is it possible that we can possibly

1 insist on a 120-day order? I do not like to get
2 into -- the exhibits not be destroyed until 120 days
3 until after the expiration of the appeal period?

4 THE COURT: I'm not sure why, or --

5 MR. SHABALA: Just that --

6 THE COURT: The usual period is 60 days.

7 MR. SHABALA: Yes.

8 THE COURT: In other words, to preserve the
9 exhibits pending the expiry of the appeal period or
10 the resolution of any appeal.

11 MR. SHABALA: Defence would make a request that
12 basically the exhibits be held for 120-day period
13 until after the appeal period. Your Honour, there is
14 a reason for that. I've had some discussions with my
15 friend. I understand that DNA sample can be provided
16 by the accused here today and perhaps there might be
17 some follow-up on that. It takes time for further DNA
18 testing to progress. This is a matter which is
19 outside of the hands of the court. You've of course
20 given your sentence; the jury has decided. I can
21 advise the court that perhaps there will be further
22 DNA comparison in this case and that's why I'm asking
23 for 120 days.

24 THE COURT: Ms. Robinson, do you have any
25 submissions on that?

26 MS. ROBINSON: I wouldn't oppose if the court
27 wanted to extend the preservation period. We

1 certainly wouldn't destroy something if there's going
2 to be a request made in a timely fashion to do
3 something further. Of course that doesn't set aside
4 the normal requirements of appeals, so I leave that to
5 my friend. It wouldn't be fair to destroy something
6 if somebody is going to be asking to make use of it
7 down the road. From that point of view, I have no
8 objection.

9 THE COURT: All right. Well what I will do then
10 is change the order so that the -- all of the exhibits
11 will be retained for a minimum period of 120 days from
12 today or until the determination of any appeal that
13 may be taken, whichever period is the greater.

14 Does that satisfy your concern?

15 MR. SHABALA: Yes, Your Honour.

16 THE COURT: Is there anything -- the victim of
17 crime surcharge will be waived in the circumstances.

18 Is there anything further, counsel?

19 MS. ROBINSON: No, thank you, Your Honour.

20 MR. SHABALA: Nothing further.

21 THE COURT: All right. Well thank you very much
22 for your submissions and your work in this case and my
23 thanks to everyone involved with the proceedings.

24 We'll close court.

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Certified pursuant to Practice
Direction #20 dated December 18,
1987.

Annette Wright

Annette Wright, RPR, CSR(A)
Court Reporter