

R. v. Bilodeau, 2002 NWTSC 31

S-1-CR2002/006

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

ADRIAN BILODEAU



Transcript of the Oral Reasons for Sentence by The Honourable Justice J.Z. Vertes, at Yellowknife in the Northwest Territories, on March 28th A.D., 2002.

APPEARANCES:

Mr. A. Fox: Counsel for the Crown
Mr. G. Watt: Counsel for the Accused

Charge under s. 344(b), s. 267(b) Criminal Code of Canada

1 THE COURT: In this case, Adrian Bilodeau has
2 entered a plea of guilty to a charge of assault
3 causing bodily harm. The facts are set out in
4 Exhibit 1, the Agreed Statement of Facts.

5 Briefly, they outline an incident on October
6 28th, 2001, here in Yellowknife, whereby
7 Mr. Bilodeau and a friend of his, Mr. Patry, were
8 drinking and had called a taxi. When the taxi
9 arrived, Mr. Patry entered the taxi with an open
10 bottle of beer. The taxi driver told him to get rid
11 of it, Mr. Patry refused, and there was an argument.
12 When Mr. Bilodeau entered the cab, he entered into
13 the argument with the taxi driver and that argument
14 escalated into violence whereby Mr. Bilodeau struck
15 the taxi driver, then both he and the taxi driver
16 got out of the cab, Mr. Bilodeau invited the taxi
17 driver to fight and they did. Mr. Bilodeau landed a
18 number of punches that resulted in the taxi driver
19 being knocked down to the ground and also resulted
20 in some fairly serious looking bruising and other
21 injuries to the taxi driver's face.

22 To Mr. Bilodeau's credit, once he knocked down
23 the taxi driver he stopped further violence. He went
24 to the aid of the taxi driver and tried to assist
25 him. Granted, he tried to convince the taxi driver
26 not to call the police but when the police did
27 arrive, he apparently was cooperative with them.

1 He has been in pre-trial custody since then.

2 While the altercation was going on, however,
3 Mr. Patry took the opportunity to steal the taxi
4 driver's wallet and took off with a significant
5 amount of money.

6 Both Mr. Patry and Mr. Bilodeau were charged
7 with robbery and assault. If I am recalling
8 correctly with respect to Mr. Patry, he faced two
9 similar charges as well.

10 MR. FOX: That's correct, sir.

11 THE COURT: And a few weeks ago, Mr. Patry
12 pleaded guilty to the charge of theft and was
13 sentenced to the equivalent of 12 months in custody
14 taking into account pre-trial custody. Of course
15 the actual sentence was somewhat less than 12
16 months. Mr. Patry was also put on probation
17 primarily with a view to enforcing a compensation
18 order in favour of the victim.

19 In this case, Crown counsel, I think quite
20 accurately, noted the vulnerability of taxi drivers
21 such as the victim in this case to acts of violence
22 and theft and suggests that an appropriate sentence
23 would be in the high territorial range considering
24 all of the factors in this case. I think certainly
25 part and parcel of that submission, and I do not
26 disagree with it, is the need to send a message of
27 deterrence because of the vulnerability of victims

1 such as the taxi driver in this case.

2 Defence counsel, however, did note a number of
3 factors in arguing that a sentence should be
4 somewhat shorter and somewhat similar to that
5 imposed on Mr. Patry.

6 I think by their submissions, both counsel have
7 recognized that this would not be an appropriate
8 case for the consideration of any type of sentence
9 other than actual incarceration. I did not hear any
10 arguments to support the imposition of a conditional
11 sentence or some other type of alternative and
12 indeed, in my view, I do not think that the
13 principles of sentencing would justify anything
14 other than actual incarceration in this case
15 considering the nature of the crime and considering
16 the nature of the victim and the overall
17 circumstances, not to mention the circumstances of
18 the offenders and this particular offender as I will
19 get to momentarily.

20 The point that concerned me after hearing the
21 submissions, of course, is how to relate
22 Mr. Bilodeau's situation to that of Mr. Patry's, how
23 to relate his situation to the overall circumstances
24 of this offence.

25 While I think it can be fairly said that the
26 Crown has acknowledged, by accepting a plea to theft
27 on the part of Mr. Patry and a plea to assault

1 causing bodily harm on the part of Mr. Bilodeau and
2 by dropping the robbery charges in both cases, the
3 Crown has acknowledged that these two were not
4 acting in concert in terms of what, from the
5 victim's perspective, must have been a robbery. From
6 the victim's perspective, the entire set of
7 circumstances is a robbery. He was robbed of a
8 significant amount of money and he was beaten up in
9 the process. But I think that the Crown has
10 acknowledged that these two, while they were there
11 together, they were obviously friends, acted
12 independently without knowledge of what the other
13 one was going to do or had done at the instant.

14 I think Mr. Fox described the roles of the two
15 individuals quite accurately when he said that what
16 Mr. Bilodeau did was an impulsive drunken act of
17 violence and I think it was Mr. Fox, but perhaps it
18 was Mr. Watt, who described what Mr. Patry did as an
19 opportunistic theft, taking advantage of the
20 violence going on between Mr. Bilodeau and the taxi
21 driver to then steal the taxi driver's money. So it
22 is clear, and I think that the Crown accepts, that
23 Mr. Bilodeau had no part of the theft and Mr. Patry
24 had no part of the actual assault. But as I said,
25 from the perspective of the victim it is still a
26 robbery. It is one set of circumstances; it is just
27 that two different people took two different roles

1 in it.

2 As counsel know, the fundamental principle of
3 sentencing is that of proportionality.

4 Section 718.1 of the *Criminal Code* provides
5 that a sentence must be proportionate to the gravity
6 of the offence and the degree of responsibility of
7 the offender. So it is very much an individualized
8 assessment in each case. But to determine the degree
9 of responsibility of the individual offender, the
10 Court must take account the relationship of the
11 offender to the circumstances as a whole and to the
12 other participating offenders. This does not mean
13 that sentences must necessarily be the same for each
14 co-perpetrator, if I may use that term, but one
15 cannot approach sentencing without regard to the
16 overall circumstances and to the situation of the
17 other individuals involved in those circumstances.

18 As I said, in this case the Crown has
19 acknowledged that this offender had no role in the
20 theft but of course this offender was the instigator
21 of violence - he struck the first blow, he invited
22 the taxi driver to fight, and that created the
23 opportunity for the other offender to steal the taxi
24 driver's money. So in that sense, the overall
25 circumstances were indeed serious.

26 There are a number of aggravating factors, some
27 of which I have already touched on - the fact that

1 the victim in this case, the taxi driver, is in a
2 vulnerable class of individuals providing a service
3 to the public.

4 Another factor is Mr. Bilodeau's record. By my
5 count, he has been convicted of 23 offences between
6 1987 and 2001. It is a lengthy record, most of it
7 however unrelated being a record of thefts, property
8 offences, that sort of thing, but I note that the
9 last two convictions on his record are for assault,
10 one in 1999 and one in 2001 for which he did serve
11 jail time.

12 The other aggravating factor, of course, is
13 that he was on probation at the time of this
14 offence.

15 But I think, as I said before, Mr. Fox
16 accurately described what Mr. Bilodeau did here as
17 an impulsive drunken act of violence. There does
18 not appear to have been any planning; or certainly I
19 won't dignify what happened here as showing any
20 signs of premeditation. It does seem to me to be, on
21 the part of both of these individuals, quite an
22 impulsive act.

23 In terms of mitigating factors, there is the
24 guilty plea which I always consider to be a
25 mitigating factor. I recognize that it does not come
26 at the first opportunity, at an early opportunity,
27 but I also take into account what Mr. Watt said,

1 that Mr. Bilodeau was facing the robbery charge as
2 well and I am sure, while it is no business of mine
3 as to what plea negotiations went on, experience
4 tells me that undoubtedly there were long and
5 extensive negotiations with respect to trying to
6 resolve this case. I do take the guilty plea into
7 account as a mitigating factor.

8 I take into account the fact that Mr. Bilodeau
9 ceased the violence after knocking down the taxi
10 driver, that he seems to have tried to assist him,
11 and apparently was cooperative with the police.

12 This man is 33 years old. I am told that he
13 has a fairly steady work history.

14 It is significant to me to hear the words from
15 Mr. Bilodeau as to what appears to be a sense of
16 self-recognition now as to what he needs to do so as
17 to avoid, I think as he put it, spending the rest of
18 his life behind bars.

19 Mr. Bilodeau is obviously mature enough, and I
20 expect intelligent enough, to recognize that with
21 his background, with his record, any offence will
22 land him in jail and will keep landing him in jail.
23 And I take his word seriously, that perhaps now he
24 has come to the realization that he is going to have
25 to take some very significant and positive steps to
26 overcome whatever problems he had in the past,
27 whether it was his drug abuse or alcohol abuse

1 problem, and plan for the future, plan for himself
2 and his family; how to avoid repetition of this type
3 of behaviour, impulsive as it may have been. But I
4 do take those words very seriously and I take them
5 into account.

6 In my opinion, there are a number of
7 similarities between Mr. Bilodeau and Mr. Patry. If
8 I recall correctly, they were somewhat similarly
9 situated in that Mr. Patry too had a criminal
10 record. He too had spent time in jail before. I
11 don't think that he was much different in age or
12 much different in background really. So when I look
13 at the overall circumstances, in my opinion an
14 appropriate sentence in this case would be similar
15 to that imposed to Mr. Patry, that is, the
16 equivalent of 12 months custody if I were sentencing
17 him today without any consideration for pre-trial
18 custody.

19 Having regard to the fact that he has been in
20 custody already for five months now, I will credit
21 him two-to-one as is usual so I will credit him with
22 the equivalent of ten months of that 12 months so
23 therefore my sentence is a further two months
24 incarceration.

25 I am going to also, however, place Mr. Bilodeau
26 on a further probation order for one year. Having
27 regard to his comments about his self-recognition

1 about the fact that maybe it is time for him to take
2 steps to turn his life around, I think that maybe he
3 should have a little impetus and assistance if he is
4 serious about it.

5 I will place him on probation for a period of
6 one year from the date of his release. The
7 conditions of that probation are, of course, that he
8 is to keep the peace and be of good behaviour. He
9 is to report to the Court if and when required to do
10 so. He is to report forthwith upon his release to
11 the probation officer and he is to continue to
12 report to the probation officer as and when
13 directed. He is to attend and participate in any
14 counselling or treatment programs that are
15 recommended by the probation officer. He is to
16 perform 100 hours of community service within that
17 year of probation under the direction of the
18 probation officer.

19 Do you understand those terms, Mr. Bilodeau?

20 THE ACCUSED: Yes, sir.

21 THE COURT: Now, Mr. Bilodeau, I am doing
22 this because I am taking your comments seriously,
23 sort of a carrot and stick. The stick is, if you
24 don't abide by the terms of your probation or if you
25 get into trouble again, you can be charged for that,
26 you can be charged with breaching the terms of your
27 probation; do you understand that?

1 THE ACCUSED: Yes, sir.

2 THE COURT: The carrot, however, is that
3 there are, I am sure, a number of programs and a
4 number of mechanisms by which the probation officer
5 may be able to assist you in terms of your own
6 rehabilitation. It is really up to you but if you
7 work with the probation officer, you might get
8 further ahead than on your own.

9 In addition, as requested by Crown counsel I
10 make the DNA order for the provision of a sample for
11 DNA analysis. You will prepare the formal order, Mr.
12 Fox?

13 MR. FOX: I have a draft order here, sir,
14 if I can submit it now.

15 THE COURT: Have you seen this, Mr. Watt? I
16 am sure it is in the usual terms.

17 MR. WATT: I have not scrutinized that
18 particular one but Mr. Fox advised me that it is the
19 standard order.

20 THE COURT: Then, Madam Clerk, you can bring
21 this to me after we are finished and I will have a
22 closer look at it and sign it if it's appropriate.

23 In addition, there will be a firearm
24 prohibition order. I think that the mandatory
25 minimum is ten years, Mr. Fox?

26 MR. FOX: It is, sir.

27 THE COURT: There will be an order

1 prohibiting Mr. Bilodeau from having in his
2 possession any firearms, ammunition, or explosives
3 for a period of no less than ten years from the date
4 of his release. And again Mr. Fox, I assume that
5 you will prepare the usual order?

6 MR. FOX: I will, sir.

7 THE COURT: Under the circumstances, there
8 will be no victim of crime fine surcharge.

9 Have I neglected anything, counsel? Mr. Watt?

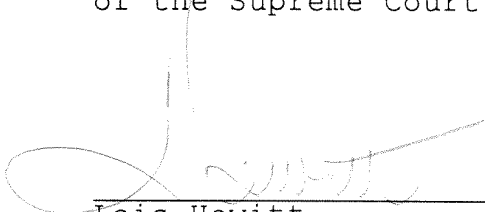
10 MR. WATT: Not that I can think of, Your
11 Honour.

12 MR. FOX: No, sir.

13 THE COURT: Then thank you for your
14 submissions, gentlemen.

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

16 Certified pursuant to Rule 723
17 of the Supreme Court Rules.

18
19
20 
21 _____
22 Lois Hewitt,
23 Court Reporter
24
25
26
27