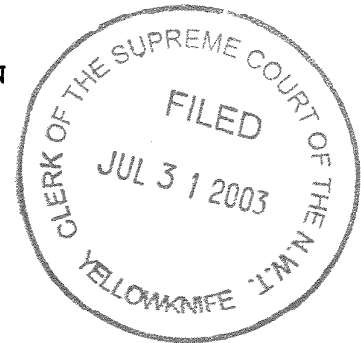


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

PAVEL BRUHA

Transcript of the Oral Reasons for Sentence by The Honourable Justice J. Z. Vertes, sitting in Hay River, in the Northwest Territories, on the 3rd day of July, A.D., 2003.

APPEARANCES:

Ms. L. Colton:	Counsel for the Crown
Mr. H. Latimer:	Counsel for the Defence/
Mr. S. Shabala:	Counsel for the Defence

1 THE COURT: Pavel Paul Bruha has been
2 convicted of manslaughter following a two-week jury
3 trial. Specifically he was convicted of the unlawful
4 killing of Yves Lebel, in Hay River, on January 16,
5 2002.

6 I am satisfied that the facts upon which the jury
7 based its verdict were the following.

8 The offender Bruha, along with a fellow by the
9 name of Craig Stromberg, were drinking. They were
10 talking about rumours that Bruha's wife was having an
11 affair with Lebel. The two of them decided to go to
12 Lebel's residence to "teach him a lesson". Stromberg
13 kicked the door of Lebel's apartment open and the two
14 of them went inside. Bruha struck Lebel by slapping
15 him on the side of the face. Stromberg struck Lebel
16 on the side of his head. Stromberg then tossed Lebel
17 on to his bed from where Lebel rolled over on to the
18 floor. Stromberg and Bruha picked up Lebel and put
19 him back on the bed. Lebel appeared to Stromberg to
20 be knocked out. Before they left, Bruha kicked at
21 Lebel's foot as he lay on the bed. They then returned
22 to Stromberg's home to continue their drinking.

23 It should be noted that Stromberg at least
24 demonstrated some concern over Lebel's condition.
25 Approximately 30 minutes after the assault he
26 telephoned the RCMP, identifying himself by Lebel's
27 nickname, gave Lebel's phone number, and asked that a

1 police officer call that number back. An officer did
2 call that number back and spoke to someone, quite
3 likely Lebel, who said they did not need help.

4 The fact that Lebel was still alive and in fact
5 was awake and doing things after the assault is not
6 surprising. The medical examiner testified that the
7 cause of death was a subdural hematoma that was likely
8 caused several hours prior to the actual time of
9 death. Lebel's body was not discovered until the day
10 after the assault. The expert opinion was that an
11 unprotected fall to the floor could convey sufficient
12 force to Lebel's head so as to cause the subdural
13 bleeding. There was some evidence that Lebel may have
14 been more susceptible to this type of injury than the
15 average person because he was an alcoholic and because
16 he had suffered a similar injury sometime in the past.
17 This, of course, makes no legal difference since the
18 offender must take his victim the way he finds him.

19 The offender testified at his trial and denied
20 any involvement in the assault on Lebel. Obviously
21 this denial did not raise a doubt with the jury.

22 Stromberg testified at this trial. He pleaded
23 guilty to manslaughter on July 4, 2002, and was
24 sentenced to four years imprisonment.

25 The Crown's theory was that this was a joint
26 endeavour and that Stromberg and Bruha were joint
27 principal offenders and were jointly responsible for

1 the assault on Lebel, which was the cause of Lebel's
2 death. There is also the possibility, based on a
3 question posed by the jury during its deliberations,
4 that they regarded Bruha as aiding and abetting
5 Stromberg. Either way, the offender is, in law,
6 equally guilty of this crime.

7 The determination of an appropriate sentence in a
8 manslaughter case is highly case-specific. The
9 *Criminal Code* sets out a potential maximum penalty of
10 life imprisonment but there is no prescribed minimum
11 penalty. Thus there is a broad discretion to
12 exercise. That is because the circumstances of the
13 offence and the offender may vary so greatly. A wide
14 spectrum of morally blameworthy behavior can fall
15 under the category of unlawful act manslaughter. This
16 was a point made by the Alberta Court of Appeal in
17 R. v. Laberge (1995), 165 A.R. 375, at para. 6:

18 All unlawful act manslaughter
19 cases have two common
20 requirements: Conduct which has
21 caused the death of another; and
22 fault short of intention to kill.
23 However, despite these common
24 elements, the offence of unlawful
25 act manslaughter covers a wide
26 range of cases extending from
27 those which may be classified as
near accident at the one extreme
and near murder at the other...
Different degrees of moral
culpability attach to each along
a continuum within that spectrum.
It is precisely because a
sentence for manslaughter can
range from a suspended sentence
up to life imprisonment that the
court must determine for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

sentencing purposes what rung on the moral culpability ladder the offender reached when he committed the prohibited act. The purpose of this exercise is to ensure that the sentence imposed fits the degree of moral fault of the offender for the harm done.

This extract from Laberge was approved by a majority of the Supreme Court of Canada, in R. v. Stone (1999), 134 C.C.C. (3d) 353, who noted that the broad sentencing range for manslaughter accords with the principle that punishment must be proportionate to the moral culpability or blameworthiness of the offender.

In this case there are a number of notable features that elevate the gravity of the offence.

First, as I noted when I sentenced Stromberg last year, the offenders acted in concert to beat up the victim. No doubt that they did things, because they were together, that each of them may not have done if they were alone.

Second, it was a somewhat premeditated plan (no matter that it was conceived hastily and under the influence of alcohol).

Third, the fact that they forced their way into Lebel's apartment is an aggravating feature.

Now, having said that, I have to recognize that there are also various factors, peculiar to this offender, that act to mitigate the punishment.

1 The offender is 52 years of age. He was born in
2 Czechoslovakia but came to Hay River over 20 years
3 ago. He is a Canadian citizen. He is married and has
4 two grown daughters, one young adopted son, and two
5 grand-children. I heard, at this sentencing hearing,
6 from his eldest daughter and his brother-in-law. They
7 described the offender as a loving and supportive
8 parent, a conscientious and hard worker who overcame
9 all sorts of difficulties in part due to a physical
10 disability, and a person for whom violence is out of
11 character.

12 The offender has a minor, and in my opinion an
13 irrelevant, criminal record. He served approximately
14 one month in pre-trial custody right after his arrest
15 and has been on strict bail conditions for the past 17
16 months. I was not told of any psychological
17 impairment affecting the offender and, while I have no
18 doubt that his willingness to participate in the
19 assault on Lebel was fuelled by alcohol, I was not
20 told of any significant problem this offender may have
21 concerning alcohol abuse.

22 Defence counsel has urged me to take an
23 individualized approach to sentencing. This, of
24 course, I must do. All sentencing decisions are a
25 highly individualized exercise. But defence counsel
26 also urged me to consider the separate level of
27 responsibility for each offender in this case. I

1 should look at the respective role played by Stromberg
2 and by Bruha. According to defence counsel, it was
3 Stromberg who "delivered the death blow by dropping
4 the deceased on his head". This, in my respectful
5 opinion, is an overstatement and somewhat of a
6 mis-statement. Stromberg said that he tossed Lebel on
7 to the bed from where Lebel rolled on to the floor.
8 It was a part of the overall assault, the overall
9 assault jointly committed by these two people.
10 Defence counsel also said that it was Stromberg who
11 took the lead role and he played on Bruha's
12 "vulnerability" by egging him on with stories about
13 his wife's affair. Yet, the only evidence on this was
14 that it was Bruha who pressed Stromberg for
15 information and that it was Bruha who said "let's go",
16 meaning "let's go to Lebel's place".

17 I have no doubt that Stromberg is a violent drunk
18 but here, it seems to me, the two were clearly acting
19 in unison. Furthermore, there was no evidence of any
20 motive on the part of Stromberg to assault Lebel prior
21 to his drunken discussion with Bruha. Indeed there
22 was evidence that earlier the same day Stromberg,
23 along with another person, was drinking with Lebel in
24 Lebel's apartment. So it is extremely difficult to
25 differentiate as between the moral culpability of the
26 two of them in this crime.

27 Defence counsel suggested a sentence that

1 combines some custody with a period of supervision on
2 probation. This would of course limit any custodial
3 sentence to less than two years. Such a disposition
4 is not unheard of in manslaughter cases. Not even
5 conditional sentences (as in R. v. Turcotte (2000),
6 144 C.C.C. (3d) 139) or suspended sentences (as in
7 R. v. Sansregret (1983), 23 Man. R. (2d) 151) are
8 precluded in manslaughter cases. They are extremely
9 rare, of course, but they are not precluded. But, in
10 this case, this offender, acting with another, set out
11 to cause harm to Lebel. They set out to cause harm so
12 as to "teach him a lesson". This offender, at least
13 on the evidence, did not particularly concern himself
14 about the harm they did cause, notwithstanding the
15 fact that they left Lebel unconscious. And the harm
16 caused by their joint action in assaulting Lebel led
17 to his death. So this is not one of those cases that
18 is on the "near-accident" side of the manslaughter
19 continuum. And, it is not one of those cases where
20 anything but a significant period of incarceration is
21 justified.

22 The real question in this case is, considering
23 the fact that Stromberg received a sentence of four
24 years, whether this offender should receive the same
25 sentence. One of the principles of sentencing is that
26 a sentence should be similar to sentences imposed on
27 similar offenders for similar offences committed in

1 similar circumstances.

2 Here the Crown is seeking a sentence of six
3 years. So, is there justification for any disparity
4 in sentencing? In my opinion there is and it comes
5 down to one fact: Stromberg pleaded guilty.

6 In my opinion, a guilty plea must be worth
7 something. Clayton Ruby, in his text Sentencing
8 (5th ed.), says (at pg. 223) that it is a principle of
9 sentencing that whenever possible a court should take
10 into account, as a mitigating factor, the fact that
11 the accused pleaded guilty. The extent to which it is
12 a mitigating factor depends of course upon the facts
13 of each case.

14 The rationale for the mitigating effect of a
15 guilty plea is that it is an indicator of remorse (or
16 at least of a willingness to be accountable for one's
17 actions). In sentencing Stromberg I noted the fact
18 that the guilty plea was entered at an early stage of
19 the proceedings, without even having had a preliminary
20 inquiry, and that I was convinced that Stromberg was
21 truly remorseful for his part in this offence.

22 Now, in this case, there have been no expressions
23 of remorse from this offender. That is not
24 particularly surprising considering the position taken
25 by him at the trial. And that lack of remorse is not
26 to be used against him. It is not an aggravating
27 factor. He had a right to a trial and to have his

1 guilt or innocence determined by a jury. I do not
2 hold that against him and I must not impose a harsher
3 sentence because of that. But the reality is that he
4 does not receive the mitigating effect of a plea of
5 guilty as a sign of remorse.

6 Also, in my opinion, there are other good reasons
7 to recognize a guilty plea as a mitigating factor. It
8 saves the administration, and therefore the public,
9 much time and expense. It alleviates the need for
10 witnesses to disrupt their lives by attending court.
11 So, I think that offenders who are guilty should be
12 encouraged to plead guilty, and the most direct way to
13 provide that encouragement is by showing that there is
14 something to gain by it.

15 As I said previously, I cannot meaningfully
16 differentiate between the moral culpability of the two
17 offenders in this case. For these reasons, if I
18 consider their roles to be equal and if I consider the
19 mitigating effect that I extended to Stromberg because
20 of his guilty plea, I am satisfied that there is
21 justification here in imposing a sentence different
22 from that imposed on Stromberg.

23 Considering all of the circumstances, I impose a
24 sentence of imprisonment of five years. Considering
25 as well the family circumstances of the offender, I
26 will have the Warrant of Committal endorsed with my
27 recommendation that he serve his term of imprisonment

1 at the Yellowknife Correctional Centre or some other
2 Northern facility.

3 In addition, since this is a primary designated
4 offence, an order will issue authorizing the taking of
5 a sample of bodily substance from the offender for the
6 purpose of DNA analysis.

7 Also, an order will issue prohibiting the
8 offender from having in his possession any firearm or
9 other weapon or ammunition, as described in Section
10 109 of the *Criminal Code*, for a period beginning today
11 and ending no earlier than 10 years from the date of
12 his release from custody. If he has any firearms or
13 ammunition in his possession now, they are to be
14 turned over forthwith to the RCMP.

15 Finally, there will be no victim of crime fine
16 surcharge in this case.

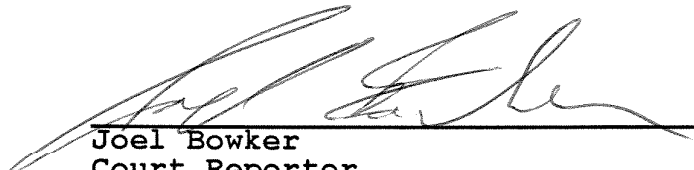
17 Mr. Bruha, the jury found you guilty based on all
18 of the evidence. I have imposed a sentence of five
19 years imprisonment. The reality is that you will
20 likely be released, it could be as early as a year, or
21 even less, from that sentence, released on some type
22 of parole conditions. That is up to you and the
23 correctional authorities. I have no control over
24 that.

25 I have heard all of the good things said about
26 you, and I have no doubt that they are true. I have
27 no doubt that you are a loving and caring parent and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

that your family cares for you very much. It is now
up to you as to what you do with the rest of your
life. You may have a seat.

Certified to be a true and accurate
transcript, pursuant to Rules 723 and 724
of the Supreme Court Rules



Joel Bowker
Court Reporter