

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

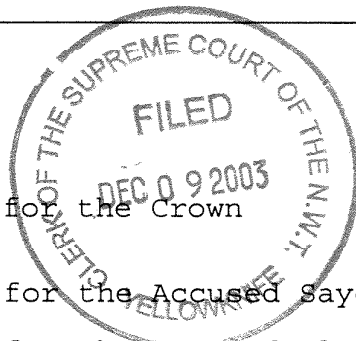
- vs. -

RONALD FRANK SAYERS and SHELLY MARIE ELANIK

Transcript of The Oral Reasons for Sentence by The Honourable Justice V.A. Schuler, at Inuvik, in the Northwest Territories, on November 28th, A.D. 2003.

APPEARANCES:

Ms. B. Schmaltz:	Counsel for the Crown
Ms. C. Carrasco:	
Mr. T. Boyd:	Counsel for the Accused Sayers
Mr. J.U. Bayly, Q.C.:	Counsel for the Accused Elanik



Charge under s. 235(1) Criminal Code of Canada

1 THE COURT: Good morning.

2 ALL COUNSEL: Good morning.

3 THE COURT: I am prepared at this time to
4 sentence both Mr. Sayers and Ms. Elanik. Just before I
5 do that, I want to thank all counsel for their
6 excellent work in this very difficult and troubling
7 case. The Court always appreciates this level of
8 cooperation and professionalism as has been evident
9 from this case.

10 I do want to ask you whether there is any order
11 that should be made with respect to exhibits.

12 MS. CARRASCO: Yes, Your Honour. The Crown is
13 requesting an order that the documentary exhibits
14 remain on the court file and that the other exhibits be
15 returned -- or are to be held by the RCMP, and that's
16 where they were held for safekeeping after the
17 Preliminary Inquiry. As well, that they shall be
18 disposed of or returned to the lawful owner after the
19 expiry of the appeal period.

20 THE COURT: After the expiry of the appeal
21 period or the conclusion of any appeal, if one is
22 taken.

23 MS. CARRASCO: That's correct.

24 THE COURT: All right. That's fine. That
25 order will be made, then. I am going to deal first
26 with Mr. Sayers.

27 Ronald Frank Sayers has been found guilty by a

1 jury of second degree murder in the killing of Keith
2 Blair and stands convicted of that offence. It is now
3 my duty to sentence him. Murder is one of the most
4 serious offences under the law of Canada which provides
5 that the minimum punishment is imprisonment for life
6 without eligibility for parole until the offender has
7 served 10 years of his sentence.

8 Section 745.4 of the Criminal Code provides that
9 as the trial Judge I may, having regard to the
10 character of the offender, the nature of the offence
11 and the circumstances surrounding its commission and
12 any recommendation made by the jury, substitute for 10
13 years a number of years of imprisonment being more than
14 10 but not more than 25 without eligibility for parole
15 as I deem fit in the circumstances. The jury in this
16 case chose, as it was entitled, not to make a
17 recommendation.

18 Mr. Sayers was jointly tried in this matter with
19 Shelly Marie Elanik, his girlfriend at the time of the
20 offence. The jury found her guilty of manslaughter.
21 Although I heard submissions on sentencing for both Mr.
22 Sayers and Ms. Elanik at one hearing, I will deal in
23 this judgment only with Mr. Sayers and will deal
24 separately with Ms. Elanik.

25 Referring, then, to the factors that section 745.4
26 says I must take into account; first, the nature of the
27 offence and the circumstances surrounding its

1 commission: Mr. Blair was the night auditor at the
2 MacKenzie Hotel here in Inuvik. On October 17, 2001
3 Mr. Sayers and Ms. Elanik went to the hotel in the
4 early morning hours. Somehow they got into the hotel
5 lobby where Mr. Blair was at the front desk despite the
6 fact that the front doors were locked. From the
7 evidence at trial, it appears that either they went in
8 through an open back door or they persuaded Mr. Blair,
9 who knew them, to open the front door to them, as Ms.
10 Elanik testified. One of them had carried a knife from
11 their apartment to the hotel. Each testified it was
12 the other. Mr. Sayers' recollection of events was so
13 spotty, or so he claimed, as to be completely
14 unreliable, and I place no reliance on it.

15 In my view, Mr. Sayers was not telling the truth
16 about what he recalled of that evening, nor am I sure
17 that Ms. Elanik was completely truthful in all things.
18 However, I am satisfied on all the evidence that it was
19 Mr. Sayers who carried the knife to the MacKenzie
20 Hotel, and I do accept some of the evidence of Ms.
21 Elanik about the events.

22 I will note here that at the trial the two accused
23 advanced what are commonly known as cutthroat defences,
24 each blaming the other for most of the events of that
25 night and, in particular, for the killing of Mr.
26 Blair.

27 I find that Mr. Sayers decided to rob the hotel

1 and in the course of that held a knife to Mr. Blair's
2 cheek while holding him down. This resulted in Mr.
3 Sayers drawing some blood from Mr. Blair's cheek.
4 There was a struggle behind the lobby counter and Mr.
5 Blair was held captive by Mr. Sayers with the knife
6 while Ms. Elanik helped by looking for money.

7 At some point, Mr. Sayers directed Ms. Elanik to
8 get a rock, which she did. The rock, which was an
9 exhibit on this trial, weighed 19 pounds. Mr. Blair,
10 likely in an attempt to escape from the two, went into
11 the Brass Rail Bar and was brutally attacked with the
12 rock by Mr. Sayers.

13 I will not go into details about the autopsy
14 report, but it will suffice to say that as set out in
15 the Admission of Fact filed at trial there were massive
16 blunt injuries to Mr. Blair's head with multiple
17 lacerations, bruises and skull fractures. The injuries
18 were massive and the photographs of Mr. Blair as he was
19 found by hotel staff graphically illustrate their
20 extent. The cause of death was determined to be
21 massive blunt cranial trauma consistent with multiple
22 blows to the head.

23 The jury's verdict of murder clearly indicates
24 that it found that Mr. Sayers beat or hit Mr. Blair
25 with the rock with the intent required for murder,
26 despite any degree of intoxication on his part.

27 After Mr. Blair had been hit multiple times with

1 the rock and left for dead, Mr. Sayers and Ms. Elanik
2 left the hotel with the rock, the knife, bags of money
3 and keys from the hotel. On arrival at their
4 apartment, Mr. Sayers asked his younger brother,
5 Marshall, to get rid of the bags, keys and rock.
6 Marshall Sayers did not want to, but was eventually
7 persuaded to do so and eventually cooperated with the
8 police in locating those items.

9 It was clear from his testimony at trial that
10 Marshall Sayers is extremely troubled about his role in
11 the aftermath of the offence and what his brother had
12 done, and it was very difficult for him to testify
13 here. Involving his younger brother in this matter is,
14 I should add, an aggravating factor to be taken into
15 account on Mr. Sayers' sentencing.

16 Later on October 17, Mr. Sayers and Ms. Elanik
17 left for Tuktoyaktuk where Mr. Sayers' sister lived at
18 the time. It is clear from the evidence that Mr.
19 Sayers' purpose in going there was to get out of Inuvik
20 to avoid detection by the police. He eventually made a
21 number of statements to the police and others, example,
22 Arlene Carmichael, that blamed others for Mr. Blair's
23 death. However, he told some family members that he
24 hit Mr. Blair with the rock.

25 There were, in some of his admissions, snippets of
26 what could be considered remorse; for example, his
27 comment to his sister Debbie that he hoped God would

1 forgive him and in the statement that I am satisfied he
2 made to Corporal Buhler, which included the words, "I
3 have a conscience." However, these snippets are
4 overwhelmed by his other efforts to evade
5 responsibility, such as the lies he told the police on
6 December 21, 2001 when he pointed the finger at
7 others. This is also an aggravating factor.

8 The beating inflicted on Mr. Blair was a savage
9 one. It must also be noted that Mr. Blair, who was 46
10 years old at the time of his death, suffered from a
11 condition that made physical movement difficult for
12 him. Mr. Sayers is a young and apparently healthy man,
13 and it can be inferred that he could easily have
14 restrained Mr. Blair without using much violence.

15 In her testimony at this trial, Ms. Elanik said
16 that Mr. Sayers had asked Mr. Blair if he would go to
17 the police if they let him go and that Mr. Blair
18 responded, "I didn't tell you guys to do this." I am
19 satisfied that evidence is true, and, in my view, the
20 only logical inference is that Mr. Sayers, likely also
21 angry at that response and the fact that not much money
22 was located, killed Mr. Blair so he would be unable to
23 identify him and Ms. Elanik.

24 As I have said, at the time of his death Mr. Blair
25 was 46 years old. He had been married to his now widow
26 for only a year prior to his death. The evidence at
27 trial from his co-workers was to the effect that he was

1 well-liked, friendly and generous. According to the
2 evidence of Brenda Scharr, the assistant manager of the
3 hotel, she had observed him speaking with Mr. Sayers on
4 occasion when Mr. Sayers and Ms. Elanik would spend
5 time sitting in the hotel lobby waiting for friends or
6 using the telephone. Mr. Sayers must have been aware
7 of Mr. Blair's physical limitations.

8 I go on to character of the offender, the second
9 factor: Mr. Sayers is now 23 years old. I believe his
10 counsel said 24, but, as I understand it, he was 21 at
11 the time of the offence. So I'm assuming he is now
12 23. He grew up in Aklavik. His mother died when he
13 was 13 years old, and he was apparently then regarded
14 by his father as old enough to look after himself,
15 although there was at least one older sister in the
16 home from the evidence heard at trial.

17 The resume that was submitted on sentencing
18 indicates that he has a grade nine education and that
19 after leaving school in 1994, from 1996 to September,
20 2001 he had sporadic employment, mostly as a labourer.
21 He was employed at a camp at the time of his arrest in
22 January, 2002.

23 He and Ms. Elanik have a son, who is now
24 approximately two years old. Although some of the
25 witnesses who know Mr. Sayers gave evidence that he is
26 a caring father, Ms. Elanik gave evidence that he had
27 on occasion made threats to her that he would harm the

1 baby. She also, however, testified that she would
2 bring the child to see him and that she felt he had a
3 right to see him. It may well be, of course, that
4 outwardly he gave the impression of a loving father,
5 but behind closed doors used threats about the baby as
6 a way to upset or scare or get to Ms. Elanik. In any
7 event, I find that I am unable to draw any firm
8 conclusion about Mr. Sayers' abilities as a parent.

9 Mr. Sayers has a criminal record of non-violent
10 offences as a young offender in 1996. He has a
11 conviction for assault on Ms. Elanik from September,
12 2001 and a breach of undertaking. He received a
13 suspended sentence of one year for the assault and so
14 was on probation at the time of the murder. He
15 received a \$200 fine for the breach of undertaking.
16 There was other evidence that he was abusive to Ms.
17 Elanik during their relationship, and he conceded in
18 his own testimony that sometimes he gets mean and angry
19 when he drinks.

20 I take into account the victim impact statements
21 filed on sentencing in their description of the
22 devastating impact Mr. Blair's death has had on his
23 widow and family. I have considered the victim impact
24 statements on the issue of impact, which is the purpose
25 for which such statements are provided under the
26 Criminal Code. So I use them only for that purpose,
27 and I have disregarded any comments made about what the

1 sentence should be. I know that no sentence that is
2 imposed can ever give Mr. Blair's family relief from
3 this terrible crime.

4 Counsel for Mr. Sayers asks that in setting the
5 parole ineligibility period I give credit for the
6 pre-trial custody Mr. Sayers has been in since his
7 arrest in January, 2002.

8 In R. v. Roberts (2001) A.J. No. 772 Mr. Justice
9 Martin of the Alberta Court of Queen's Bench
10 acknowledged the practice of the giving of credit for
11 double the time an accused has served in pre-trial
12 custody, but pointed out that the parole ineligibility
13 of a person convicted of murder who has awaited his
14 trial in custody is calculated from the date of arrest
15 and not the date of sentence, as would be the case with
16 other offences. So Mr. Sayers will, in any event, be
17 credited with the time he has spent in custody; and
18 even if more credit than the actual amount could be
19 given in these circumstances, I would decline to do so
20 in this case.

21 In the Roberts case, Mr. Justice Martin also
22 refers to a statement made by Justice Iacobucci in
23 R. v. Shropshire (1995) 43 C.R. (4th) 269 (S.C.C.) at
24 page 280, and I quote:

25 "... as a general rule, the
26 period of parole ineligibility
27 shall be for 10 years, but this
can be ousted by a determination
of the trial judge that, according
to the criteria enumerated in

1 section (what is now) 745.4, the
2 offender should wait a longer
3 period before having his
4 suitability (for release)
5 assessed."

6 Mr. Justice Martin then went on to list
7 circumstances which he felt would alone or in
8 combination justify an increase in the period of parole
9 ineligibility, and I agree that these are circumstances
10 that should be taken into consideration. They are:

11 (i) a finding that the killing
12 took place in the course of
13 another serious crime; or to cover
14 up another crime.

15 The murder in this case took place in the course
16 of a robbery, and there is evidence that Mr. Sayers did
17 not want to be identified to the police.

18 (ii) where the killing followed a
19 history of assaultive or abusive
20 conduct:

21 I understand from the context and his later
22 comments that Mr. Justice Martin meant by this a
23 history of similar conduct or violent conduct towards
24 the deceased or others. There is evidence, as I have
25 said, that I accept that Mr. Sayers held a knife to Mr.
26 Blair that night. There is also evidence that he was
27 abusive on a number of occasions to Ms. Elanik. There
28 was also evidence from Mr. Nogasak of an assault with a
29 knife on him, evidence which I accept.

30 (iii) where the killing occurred
31 in the course of a prolonged
32 attack, such as torture:

1 This is not applicable as stated, but the killing
2 in this case was another step in an attack on Mr. Blair
3 which commenced sometime before Mr. Sayers hit him with
4 the rock, likely when the struggle took place behind
5 the lobby counter.

6 (iv) where the killing was
7 intended to obstruct justice:

8 That factor is, as I have already noted,
9 applicable in this case, as there is evidence that Mr.
10 Sayers was concerned that Mr. Blair would identify him
11 to the police.

12 (v) where the killing involved the
13 death of a particularly vulnerable
 member of society:

14 This factor is very much applicable in this case.
15 Mr. Blair was physically challenged, as I have noted,
16 and from the description given by witnesses of his
17 stiffness and difficulty moving would have been a very
18 vulnerable target. In addition, as an employee working
19 alone at night, he was in a vulnerable position. He
20 was, therefore, doubly vulnerable.

21 (vi) where the killing was
22 committed by a person who, by his
23 criminal history and/or
24 antecedents, clearly represents an
 ongoing danger to members of the
 community:

25 I find from the evidence of Mr. Sayers' prior
26 assaults on others that, with this conviction, he must
27 be regarded as danger to the community.

1 (vii) where the killing was
2 particularly brutal or shocking:

3 The words "brutal" and "shocking" aptly describe
4 the killing of Mr. Blair. This type of crime is
5 unusual in the Northwest Territories.

6 I want to go on to refer, again, to the Shropshire
7 case from the Supreme Court of Canada. In that case,
8 the Court said that what is now section 745.4 of the
9 Criminal Code does not require unusual circumstances on
10 its plain wording in order that the parole
11 ineligibility period be increased and that it is
12 preferable to view the 10-year period as a minimum
13 contingent on what the Judge deems fit in the
14 circumstances. The applicable passage is quoted at
15 paragraph 12 of the Hanley case from the Alberta Court
16 of Appeal 1998 A.J. No. 1490.

17 It is true that Mr. Sayers is only 23 years old,
18 and I do that take that into account. However, based
19 on the factors I have referred to, in my view, an
20 increase to the minimum parole ineligibility period is
21 warranted.

22 I want to note that counsel for Mr. Sayers has
23 urged me to consider parity of the sentence I impose on
24 him and the sentence I impose on Ms. Elanik. However,
25 Mr. Sayers' sentence by law must be life imprisonment,
26 and even on setting the parole ineligibility period it
27 is not I, but, rather, Corrections Canada who will

1 decide whether he is, in fact, released or must serve
2 more time beyond the set period before being released
3 on parole.

4 Due to the different offences of which they have
5 been convicted and their different roles in the events,
6 I do not feel the principle of parity should be given
7 much weight.

8 Mr. Sayers exercised his right to a trial, and by
9 law that cannot be held against him. It simply means
10 that he does not receive the mitigating benefit of a
11 guilty plea.

12 I also take into account the principles of
13 sentencing under section 718.2 and also under section
14 718.1 that a sentence must be proportionate to the
15 gravity of the offence and the degree of responsibility
16 of the offender. Those considerations are very
17 pertinent in this case.

18 It is clear that the sentence must reflect
19 society's condemnation of the crime as well as
20 deterrence of others from committing similar crimes and
21 it must also serve the protection of the public. The
22 circumstances of this case, in particular its
23 brutality, lead me to conclude that it is in the public
24 interest that Mr. Sayers be jailed for an extended
25 period of time.

26 Stand, please, Mr. Sayers. Mr. Sayers, you are
27 hereby prohibited from possessing firearms, ammunition

1 or explosives for a period of time which commences
2 today and will expire 10 years after your release from
3 imprisonment. Any such materials are to be surrendered
4 to the RCMP forthwith.

5 I hereby order you to provide a sample of bodily
6 substance sufficient for DNA analysis pursuant to
7 section 487.051 of the Criminal Code, such sample to be
8 taken today or as soon as practicable. There will be
9 no victim fine surcharge in the circumstances.

10 Having considered the applicable case law, the
11 nature and circumstances of the offence, your character
12 and the principles of sentencing, Mr. Sayers, I
13 sentence you to imprisonment for life, and I set the
14 parole ineligibility period at 14 years. That is all.
15 You may sit down.

16 Now I am going to go on to Ms. Elanik. Shelly
17 Marie Elanik has been found guilty by the jury of
18 manslaughter and a conviction has been entered for that
19 offence. Ms. Elanik was jointly tried with Ronald
20 Frank Sayers in the killing of Keith Blair at the
21 MacKenzie Hotel here in Inuvik in October, 2001.

22 In Canada, it is not permissible to ask a jury to
23 give reasons for its verdict or to specify the facts
24 which it has found. This often leaves the trial Judge
25 in the position of having to decide what facts the jury
26 must or must not have found as proven or having to make
27 findings of fact.

1 First, I find that the verdict of manslaughter
2 must mean that the jury was satisfied beyond a
3 reasonable doubt that Ms. Elanik did not act under
4 duress. I also take the view that the jury's verdict
5 of manslaughter in the context of the issues in the
6 case and the instructions I gave them gives rise to the
7 conclusion that the jury was satisfied that Ms. Elanik
8 did some thing or things that aided or abetted Mr.
9 Sayers and in doing that thing or things she intended
10 to aid or abet him in assaulting Mr. Blair and that a
11 reasonable person in the circumstances would have
12 foreseen that bodily harm that was more than
13 insignificant or trifling and transient would result
14 from that assault.

15 Put another way, since the jury did not convict
16 her of murder, it must not have been satisfied beyond a
17 reasonable doubt that she knew that Mr. Sayers intended
18 to cause Mr. Blair's death or to cause him bodily harm
19 which was likely to cause death. I do not view the
20 jury's verdict as necessarily meaning that the only act
21 Ms. Elanik did was to get the rock that was used to
22 kill Mr. Blair.

23 Due to Mr. Sayers' claimed lack of memory of
24 events and the general unreliability and, in my view,
25 lack of credibility of his evidence, the only eye
26 witness evidence of what happened came from Ms.
27 Elanik. Be that as it may, I am not entirely sure that

1 she was telling the truth either about the events of
2 that night. The other evidence was physical from the
3 scene of the crime, and, of course, in the case of Ms.
4 Elanik, statements allegedly made by her to others.

5 Although the Crown urged a finding that Ms. Elanik
6 also hit Mr. Blair with the rock or held him down while
7 Mr. Sayers hit him, the jury's verdict indicates that
8 that was not proven. Whether Ms. Elanik did more than
9 what she admitted to in her evidence is something that
10 one could speculate on, but I cannot act on
11 speculation. I have to be careful not to sentence Ms.
12 Elanik based on suspicion, and I will summarize the
13 evidence as to what occurred on the night of October
14 17, 2001, and it will be apparent from this that I am
15 prepared to accept largely that events occurred as she
16 said.

17 Ms. Elanik, who was sober, and Mr. Sayers, who had
18 been drinking and was her boyfriend at the time and
19 father of her child, went to the MacKenzie Hotel.
20 According to Ms. Elanik, she got Mr. Blair, the night
21 auditor, to open the locked doors to let them get some
22 snacks from the vending machine. Whether that occurred
23 or whether they went into the hotel through an open
24 back door, which was not entirely clear on the
25 evidence, once in the lobby, Mr. Sayers, according to
26 Ms. Elanik, told her to take the knife he had brought
27 with him and tell Mr. Blair they were going to rob the

1 hotel.

2 On all the evidence, I am satisfied to accept that
3 it was Mr. Sayers who brought the knife to the hotel.
4 Ms. Elanik refused to do what he said. She testified
5 that he said that if she didn't do it, he would take
6 her outside and beat her until she was almost dead.
7 However, she still refused. She said he then said,
8 "Fine. I'll do it myself," and that she then either
9 went herself or was called by Mr. Sayers to the lobby
10 counter where he was holding Mr. Blair down and had the
11 knife pressed to his cheek.

12 She said that at Mr. Sayers' direction she looked
13 through drawers for money behind the lobby counter.
14 Mr. Blair tried to grab her sleeve at some point, but
15 she pulled away. At some point she said Mr. Sayers
16 asked Mr. Blair if they let him go, would he tell the
17 police, and Mr. Blair said, "I didn't tell you guys to
18 do this."

19 Mr. Sayers, according to her evidence, was getting
20 angrier and told her to go and get a rock. She did
21 that. The rock she got from outside the hotel was a
22 very large one, weighing 19 pounds. Whether she picked
23 the rock in the sense of carefully selecting it or
24 simply grabbed it, in my view, the size of the rock
25 alone means that she must have put some thought into
26 bringing it back into the hotel.

27 She did bring it back into the lobby and then, on

1 Mr. Sayers' direction, into the bar after Mr. Blair had
2 gone in there in what was likely an attempt to escape
3 and Mr. Sayers had gone in after him. Ms. Elanik
4 testified that she refused to hit Mr. Blair when told
5 to do so by Mr. Sayers and threatened by him with a
6 beating. She then described Mr. Sayers hitting Mr.
7 Blair several times on the head with the rock and
8 throwing it down on him.

9 The results of the autopsy, as set out in the
10 Admission of Fact, were that death was caused by
11 massive blunt cranial trauma consistent with multiple
12 blows to the head. I will not go into the details of
13 the autopsy that are set out in the Admission of Fact,
14 but it is clear that the blows inflicted to Mr. Blair
15 caused extensive and massive damage.

16 Ms. Elanik and Mr. Sayers subsequently returned to
17 their apartment with the rock, the money that was
18 stolen and keys that were taken, as well. At the
19 apartment, Mr. Sayers persuaded his younger brother to
20 dispose of the money bags, the keys and the rock. Ms.
21 Elanik and Mr. Sayers left for Tuktoyaktuk later that
22 day in what I find was an attempt to get away from
23 Inuvik and, therefore, possible detection by the
24 police.

25 What I have set out is basically Ms. Elanik's
26 version of the events inside the hotel, and I am
27 satisfied that these are facts that substantiate the

1 verdict.

2 Now, Ms. Elanik had also testified that earlier in
3 the evening Mr. Sayers had sexually assaulted her with
4 a bat, brought a knife with what looked like blood on
5 it into their bathroom and told her that he had killed
6 their baby, who was in the bedroom outside, and spoke
7 of killing her, the baby and himself. This evidence
8 was presented along with extensive evidence of the
9 history of the relationship between Ms. Elanik and Mr.
10 Sayers in support of Ms. Elanik's defence of duress
11 which sought to explain that she acted at all times
12 under fear of Mr. Sayers and in what I will call a
13 traumatized state. Her expert witness, Dr. Pugh,
14 referred to it as a state of psychological exhaustion
15 and connected it, as well, to the battered women's
16 syndrome.

17 The jury, as I have noted, must have been
18 satisfied that Ms. Elanik did not act under duress.
19 However, counsel for Ms. Elanik submits that I should
20 take into account on her sentencing the evidence that I
21 have just referred to and Dr. Pugh's opinion that she
22 was at all relevant times a battered woman exhibiting
23 the characteristics of the battered women's syndrome.

24 I have given this a great deal of thought and,
25 with all due respect to Dr. Pugh, I did not find his
26 opinion particularly compelling. I did not find him to
27 be unbiased, but, rather, I found that he had decided

1 that Ms. Elanik fit the characteristics of the battered
2 women's syndrome and then tried to explain away all her
3 actions in a way that would fit into that syndrome.

4 He did acknowledge that Ms. Elanik on the night in
5 question appeared to be able to pick and choose which
6 demands of Mr. Sayers she would comply with. He
7 explained this by saying that she exercised choices in
8 accordance with her principles, which, to my mind, on a
9 common sense approach, indicates that she was able to
10 exercise some choices as to what she would or would not
11 do.

12 I do not accept that the battered women's syndrome
13 explains Ms. Elanik's actions that night or provides
14 any mitigation in this case. I find the proposition
15 that it would particularly hard to accept when the
16 violence was directed to an innocent third party.

17 I have no doubt that Mr. Sayers has assaulted Ms.
18 Elanik on more than one occasion. He was convicted for
19 one such assault in 2001. I heard the eye witness
20 evidence of Clovis Savoie and Darlene Joe about an
21 assault where he banged Ms. Elanik's head against a
22 wall several times. I am satisfied that that
23 occurred.

24 I am not going to go through all of the assaults
25 that were alleged and make a finding on each one. I am
26 satisfied, as I said, that there was more than one
27 assault by Mr. Sayers on her.

1 The more difficult issue, in my mind, is whether
2 she was assaulted in the manner she claimed on October
3 17, 2001. I do note that Mr. Sayers was not clear at
4 all in his testimony as to whether he was maintaining
5 that he did not do those things or he did not remember
6 doing the things she alleged. Still, I found that Ms.
7 Elanik's description of the events she said occurred a
8 room away from Mr. Sayers' brother, Marshall, to be
9 rather bizarre, and, in my view, at the very least,
10 likely exaggerated, especially in light of her
11 subsequent decision, according to her own evidence, to
12 go for a walk with Mr. Sayers to calm him down in the
13 early morning cold. I am simply left not knowing
14 whether the events she described occurred or occurred
15 the way she described them.

16 Even if I were to accept that what Ms. Elanik says
17 did happen in their bedroom on October 17, she was
18 still able to stand up to Mr. Sayers' threats at the
19 MacKenzie when she chose to do so, and considering
20 especially that she had to go outside the hotel to get
21 the rock and could have left the scene or got help, as
22 she had on so many other occasions when she felt
23 threatened by Mr. Sayers, I do not accept that she
24 acted throughout from fear of Mr. Sayers or that she
25 was so traumatized as to make that a mitigating
26 factor.

27 It may well be that Ms. Elanik was scared in the

1 circumstances, but especially in light of her evidence
2 that Mr. Sayers had gone off to the lobby counter to do
3 it, in other words, the robbery himself, she must have
4 made the choice, at that point at least, to participate
5 in the robbery and, when Mr. Sayers directed her to get
6 a rock, to get a rock.

7 At the time she went to get the rock, she knew
8 that Mr. Sayers was assaulting Mr. Blair, that he had
9 put the knife to his cheek and drawn blood with it.
10 She knew that Mr. Sayers was angry and was concerned
11 about Mr. Blair identifying them to the police. She
12 would also have been aware of Mr. Blair's physical
13 limitations, having seen him that night and on earlier
14 occasions when she and Mr. Sayers would frequent the
15 hotel lobby to meet friends and make telephone calls.
16 The witness, Brenda Scharr, testified that they would
17 sometimes be there for three to four hours at a time.
18 Despite that, Ms. Elanik brought the 19-pound rock into
19 the lobby without, according to her evidence, any
20 question as to what Mr. Sayers was going to do with it,
21 and, it is apparent from the manslaughter verdict,
22 intending to aid Mr. Sayers in assaulting Mr. Blair.

23 When she returned to the lobby with the rock,
24 again, on her own evidence, Mr. Sayers was pursuing Mr.
25 Blair with the knife into the Brass Rail and yet again,
26 at his direction, she took the rock in there. The
27 probable results of an assault with that rock would

1 have been bodily harm that was much more than
2 insignificant. So there is a serious degree of moral
3 fault on the part of Ms. Elanik.

4 Ms. Elanik was sober at the time of the events,
5 and while she may be a generally timid and not
6 sophisticated nor intelligent person, as testified by
7 Dr. Pugh, she has to take responsibility for the
8 choices she made and the things she did.

9 Ms. Elanik also lied to the police when she was
10 interviewed on December 21, 2001 in what I find was an
11 attempt to throw the police off the trail of herself
12 and Mr. Sayers. Again, despite the fact that she may
13 well have been scared of Mr. Sayers, it is clear to me
14 that she made the choice in Aklavik, where he was not
15 and where she was and had her family there to help her,
16 to lie to the police. That is an aggravating factor.

17 A furthering aggravating factor in this case is
18 the vulnerability of Mr. Blair, a physically challenged
19 46-year-old man for whom movement was difficult due to
20 his condition working alone in a hotel lobby at night.
21 Because of these factors, he was in a position of
22 double vulnerability.

23 During her trial testimony, Ms. Elanik showed no
24 remorse nor, I think, even any real acknowledgement or
25 appreciation for the situation Mr. Blair was in. She
26 testified only that she was concerned for herself, her
27 baby and Mr. Sayers while the events were occurring.

1 Yesterday at the sentencing hearing she did testify
2 that she was sorry for what happened to Mr. Blair and
3 she apologized to his family. Although late in coming,
4 I am satisfied that she does feel some remorse.

5 She exercised her right to a trial, and that is
6 not an aggravating factor. She simply does not receive
7 the mitigating benefit of a guilty plea. I cannot, as
8 I understood her counsel to suggest, take into account
9 any plea negotiations, since counsel do not even agree
10 that they took place.

11 I hope that Ms. Elanik will spend time thinking
12 about the devastation that she and Mr. Sayers have
13 caused to Mr. Blair's family. The victim impact
14 statements, which I take into account only as to the
15 impact this brutal slaying has had on his widow, mother
16 and other family, as is provided for under the Criminal
17 Code and not as to what the sentence should be in terms
18 of their opinions on that, make it clear how this crime
19 has far reaching effects on their lives and their
20 well-being.

21 One of the realities, some would say shortcomings,
22 of the justice system is that no sentence the Court
23 imposes can compensate his family for their loss and
24 their suffering or is likely to be seen by them as
25 adequate.

26 It is often said that sentencing is one of the
27 most difficult tasks a Judge has. An appropriate

1 sentence has to take into account so many different
2 factors; the impact of the crime, its circumstances,
3 the offender and her circumstances, society's
4 interests. And considering all of that and legal
5 principles, the Court has to arrive at a sentence that
6 serves the principles of sentencing in a way that is
7 just and fair and objective.

8 I take into account Ms. Elanik's youth. She was
9 18 at the time of the offence and is 20 now. She has a
10 two-year-old son, her child with Mr. Sayers. She has
11 been, for the most part, out on bail awaiting trial,
12 but did spend 11 weeks in custody. Giving that the
13 usual double credit would amount to five and a half
14 months. So I take that into account.

15 Ms. Elanik, who has no prior criminal record, grew
16 up in Aklavik and has a grade nine education and very
17 little work history, which is probably not surprising,
18 considering that she was a mother at the age of 18.
19 Her family has been supportive of her, attending this
20 trial daily. She has kept her bail conditions and has
21 looked after her child. She has aspirations to
22 complete her secondary education and perhaps become a
23 nurse.

24 I take into account the principles of sentencing,
25 including that she is an Aboriginal person. However,
26 no unique or systemic factors, as referred to in the
27 Gladue case from the Supreme Court of Canada, have been

1 identified as having any effect on her being where she
2 is today, convicted of manslaughter. In addition, the
3 offence is one involving violence, and I see no basis
4 to treat Ms. Elanik any differently because of her
5 Aboriginal status than I would any other offender in
6 this situation.

7 One thing that makes it more difficult on
8 sentencing is that counsel are very far apart in their
9 submissions on sentence. Crown counsel seeks a
10 sentence of 10 to 12 years. Counsel for Ms. Elanik
11 urges me to consider a conditional sentence.

12 In my view, a conditional sentence is simply not
13 available. A conditional sentence can only be granted
14 if the sentence imposed is less than two years, and, in
15 my view, a sentence of that length would not be
16 proportionate to the gravity of the offence or the
17 responsibility of Ms. Elanik in this case.

18 On the other hand, the sentence range suggested by
19 the Crown is substantially in excess of most
20 manslaughter sentencing in this jurisdiction, although
21 it is true that the facts of this case are unlike most
22 cases of manslaughter that come before this Court.

23 I have reviewed the cases referred to by counsel.
24 Sentences for manslaughter are wide ranging, reflecting
25 the fact that the Criminal Code provides for no minimum
26 sentence and a maximum sentence of life imprisonment.
27 One of the cases submitted by the Crown, R. v. Ettagiak

1 (1986) NWTJ No. 8 Court of Appeal, reflects the high
2 end of the scale in this jurisdiction. It was an
3 effective sentence of 10 years, being eight and a half
4 years imposed after considering the remand time. In
5 that case, seven shots were fired at the victim, and
6 the Court noted that it was as serious a homicide as
7 could be imagined which would still be within the
8 definition of manslaughter and not be second degree
9 murder because of provocation.

10 I do not find the cases of abused or battered
11 women who kill their abusive spouses to be applicable
12 in this case. There is, in my view, an element of
13 self-defence or provocation in those cases making them
14 entirely different from this case where the victim was
15 an innocent person and there is no evidence whatsoever
16 of provocation. As well, as I have noted, the victim
17 was a very vulnerable person. And, as I have said,
18 since I am satisfied on the evidence that Ms. Elanik
19 was able to and did make choices as to her own conduct
20 on October 17, 2001, the battered women's syndrome does
21 not affect the sentence that I am going to give her.

22 Each offence and each offender must be dealt with
23 according to its own facts. Ms. Elanik is young enough
24 that her rehabilitation has to be a consideration.
25 Nevertheless, this was, in all the circumstances, a
26 particularly serious offence, and the sentence imposed
27 must reflect society's condemnation of it and attempt

1 to deter others who would commit like crimes.

2 I must say that I have found the question of the
3 appropriate sentence for Ms. Elanik most troublesome,
4 but giving it all the consideration I can and coming to
5 what I believe is the appropriate sentence, I will now
6 sentence her. Stand, please, Ms. Elanik.

7 Ms. Elanik, first, you are prohibited hereby from
8 possessing firearms, ammunition or explosives for a
9 period of time which commences today and will expire 10
10 years after your release from imprisonment. Any such
11 materials are to be surrendered to the RCMP forthwith.
12 I order you to provide a sample of bodily substance
13 sufficient for DNA analysis pursuant to section 487.051
14 of the Criminal Code, such samples to be taken today or
15 as soon as practicable. There will be no victim fine
16 surcharge.

17 In all the circumstances, taking into account the
18 remand time, taking into account your age at the time
19 of the offence, in my view a penitentiary term is still
20 required, and I sentence you to serve a term of
21 imprisonment of five years. The warrant will be
22 endorsed with the Court's recommendation that you serve
23 your time in the Northwest Territories. You may sit
24 down.

25 Is there anything further, counsel, before we
26 close court?

27 MS. CARRASCO: No. Thank you, Your Honour.

1 THE COURT: All right. Thank you. Mr. Bayly?

2 MR. BAYLY: Your Honour, the order with respect
3 to substances which has been drafted by the Crown I'm
4 prepared to consent to, but, in my submission, the
5 report should not only be filed with the court, but a
6 copy should be served on either the Defendant or her
7 counsel in this case.

8 THE COURT: I don't have the order.

9 MR. BAYLY: I realize that, but we have these
10 orders drafted by the Crown, and I'm consenting to such
11 an order as you have made. There are terms that have
12 been attached to the draft order.

13 THE COURT: All right. So, I am sorry, you
14 want the order, once it is filed, served on you or Ms.
15 Elanik?

16 MR. BAYLY: Yes, please. That just isn't
17 contained in the conditions attached to the draft.

18 THE COURT: Oh, I see. Well, I would assume
19 the Crown would normally take that step, in any event.

20 MS. CARRASCO: That's correct, Your Honour.

21 THE COURT: All right. Well, to the extent
22 that it is necessary, then, I will make that
23 direction. Is there anything further, counsel?

24 MS. CARRASCO: No, Your Honour.

25 MR. BOYD: No, Your Honour.

26 THE COURT: All right. Thank you very much.

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

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



Jill MacDonald, CSR(A), RPR
Court Reporter