

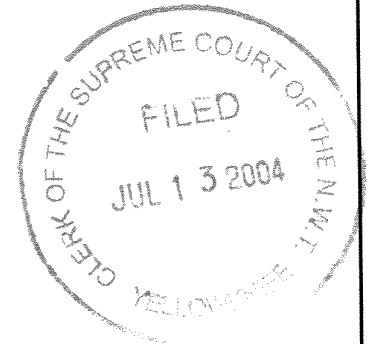
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ANNETTE NADINE WHITFORD



Transcript of the Reasons for Judgment and Sentence by The Honourable Justice J. Z. Vertes, sitting in Hay River, in the Northwest Territories, delivered orally on the 30th day of June, A.D., 2004.

APPEARANCES:

Ms. S. Tkatch: Counsel for the Crown

Mr. H. Latimer: Counsel for the Defence

1 THE COURT: In this case the accused is
2 charged with possession of cocaine for the purpose of
3 trafficking. Possession is the only issue. I am
4 satisfied, having regard to the quantity of crack
5 cocaine seized, and the nature of the trafficking
6 business in crack cocaine, that if the accused had
7 this in her possession then it was for the purpose of
8 trafficking. There is no other reasonable conclusion
9 to draw.

10 But, as I said, the issue is possession.
11 Possession means knowledge and control. And it is the
12 element of knowledge that is critical in this case.

13 The police, acting on a tip, intercepted a
14 vehicle. Inside the vehicle were the accused, a male
15 driver, and another female passenger. The accused was
16 in the rear passenger seat. All individuals were
17 arrested and removed from the vehicle. The vehicle
18 was secured and then towed away to a police compound.
19 There it was searched. In the rear seat the police
20 located a purse, admitted to be the accused's purse.
21 Inside the purse they found 48 grams of crack cocaine,
22 packaged in two baggies, and \$3,070 in cash.

23 The accused said she did not know where the crack
24 cocaine came from or how it got into her purse. She
25 did not even know how her purse got into the back seat
26 because she had left it in the front seat.

27 Now, proof of knowledge is no more or less

1 difficult than proof of intent in any criminal
2 prosecution, or indeed proof of purpose in this one.
3 Knowledge, like intent or purpose, is a state of mind.
4 It cannot, generally speaking, be proved as a fact by
5 direct evidence. Accused persons rarely say what
6 their state of knowledge, intent or purpose is. It
7 must be inferred from facts that are proven. And it
8 must be the only reasonable inference to draw in order
9 to support a conviction.

10 With respect to the money, the accused had an
11 explanation. Her ex-spouse gave her \$3,000 in cash
12 just a day before to settle some old debts. The
13 ex-spouse testified and corroborated her evidence.
14 The ex-spouse was not challenged on the reliability of
15 his evidence.

16 But this is really, in my opinion, a tangential
17 issue. The ex-spouse may have given the accused
18 \$3,000, and I have no reason to not accept
19 Mr. Salahub's evidence, but that does not help to
20 decide whether the crack cocaine belonged to the
21 accused. These are separate questions.

22 The accused said she and the other two were going
23 to Edmonton. But, at High Level, they decided to turn
24 back because of car trouble. She said there were no
25 drugs in her purse at that time. On the way back, she
26 sat in the front seat and slept. At one point they
27 stopped and she and the other female passenger

1 switched seats. She said she left her purse in the
2 front.

3 I ask myself, why would she do that? Especially
4 when it contained \$3,000, an unusual amount of money
5 for her, as she said.

6 The accused testified that, as they continued to
7 drive along, she noticed the police car and noticed it
8 following them for some time.

9 So, I ask myself, how is it possible, if someone
10 placed the drugs in her purse and then put her purse
11 in the back seat beside her, that she did not notice
12 that? She said she was awake at that time.

13 Yet, when the police stopped the car, the officer
14 said she appeared to be sleeping. But, more
15 significantly, the occupants were removed from the car
16 and arrested. The car was secured. I am satisfied
17 that no one could have moved the purse or placed the
18 drugs in it between the time of the arrest and the
19 search.

20 As I noted during argument, if I accept the
21 accused's statement that she does not know where the
22 cocaine came from, then there are only two logical
23 explanations for the physical evidence revealed by the
24 search.

25 One is that the police planted the drugs. This
26 is too preposterous to consider any further, and there
27 was no evidence to even suggest this.

1 The other is that the other two occupants of the
2 vehicle, both of who are friends of the accused, the
3 female being a childhood friend, planted the cocaine.
4 But how could they do that without the accused knowing
5 about it?

6 It is true that she said that she fell asleep for
7 awhile but that was before any sight of the police.
8 And it still would not explain how the purse got in
9 the back seat.

10 The accused's evidence simply defies common
11 sense.

12 Neither of the other two occupants of the car
13 testified at this trial. So I cannot speculate as to
14 what they would say in response to the accused's
15 evidence.

16 It is true, as Mr. Latimer said, that there was
17 no evidence that the accused received anything from
18 anyone in High Level. It is also worthwhile noting,
19 as Mr. Latimer did, that it would have been preferable
20 if the police had at least took photos of the state of
21 the vehicle at the time it was first stopped. But I
22 am satisfied that it was adequately secured and the
23 state of the vehicle when it was searched was the same
24 state as when the occupants were arrested.

25 There is the uncontested fact that the crack
26 cocaine was in the accused's purse and the purse was
27 located beside the spot where she was sitting in the

1 vehicle. The only reasonable inference is that she
2 had possession of the crack cocaine and she had
3 control of it. Her protestations that she did not
4 know are simply unbelievable and fail to raise a
5 reasonable doubt.

6 I am convinced by the totality of the evidence
7 that the accused is guilty as charged and I convict
8 the accused.

9 (AT THIS TIME SUBMISSIONS MADE ON SENTENCE)

10 THE COURT: I must say, counsel, I find
11 sentencing in this case to be difficult, not because
12 of the nature of the crime but because of the personal
13 circumstances of the accused.

14 The nature of the crime would ordinarily warrant
15 a penitentiary sentence. But, the circumstances of
16 the accused, notwithstanding the nature of the crime,
17 compel me to exercise some restraint.

18 The accused was convicted of possession of
19 cocaine for the purpose of trafficking. The cocaine
20 was crack cocaine. She was found in possession of 48
21 grams of crack cocaine, which the expert witness in
22 this case estimated to have a value of between \$3,400
23 and \$4,000. Of course, if that crack cocaine is sold
24 by the gram or as "chips", its value is more than
25 double that amount.

26 The evidence in this case and evidence from other
27 cases has clearly demonstrated that crack cocaine is a

1 highly powerful and dangerously-addictive drug. Its
2 proliferation in the Northern communities is
3 notorious. Indeed, the expert witness in this case,
4 whose police experience comes from Yellowknife,
5 described it as a scourge in that city, affecting both
6 young and old.

7 For that reason, in dealing with hard drugs such
8 as this, Courts all across the country take a very
9 heavy approach. The primary emphasis on sentencing
10 must be deterrence, deterrence not only for the
11 individual offender but deterrence to others.

12 There are three broad categories of traffickers
13 that we see in the Courts. There are those who sell
14 in order to support their own personal habit. These
15 are usually small-time street corner dealers. In many
16 situations they are more to be pitied than censured.
17 In those situations Courts have taken a more
18 rehabilitative approach because they are selling due
19 to their own addiction.

20 There is no evidence in this case that this
21 accused was addicted to cocaine. There was evidence
22 that this accused, particularly in the past three and
23 a half years, had significant emotional difficulties
24 and has a serious problem with alcohol abuse.

25 Another broad category of trafficker is the
26 individual who sees it as an opportunity to make some
27 money. These people are often driven due to economic

1 circumstances or shortsightedness.

2 The accused in this case fits more, in my
3 opinion, to this category. I have heard about how she
4 had financial difficulties, she had no money. So even
5 this relatively small amount of profit would no doubt
6 be significant.

7 The third broad category, of course, are the
8 criminal operations behind this whole trade in
9 narcotics, the major distributors and dealers who are
10 in it for big profit. There is no evidence that the
11 accused is anywhere close to this category.

12 But with respect to both of these latter
13 categories, the significant point is that there is
14 this commercial aspect to trafficking. It is a highly
15 profitable business, unfortunately, and it is usually
16 this profit motive that compels people to take part in
17 this, even if it is only once or twice.

18 For that reason, again, sentencing judges have
19 been instructed by higher Courts to take a serious
20 approach and to emphasize deterrence and denunciation.

21 But, as I said earlier, the sentence that would
22 normally be called for in this case must be moderated
23 due to the personal circumstances of the accused. I
24 cannot ignore that completely, even in a trafficking
25 case.

26 The accused is 30 years old, she has two
27 children. She, by all accounts, had no difficulties

1 prior to three and a half years ago. And then in
2 2001, after the breakup of her relationship, and from
3 what I was told a miscarriage, there seemed to be a
4 downward spiral.

5 The criminal record of the accused shows 11
6 convictions in the past three years. In addition to
7 those 11 there were two other convictions imposed
8 after she was arrested on this offence.

9 Several of the convictions are impaired driving
10 offences, which simply point to the fact that she had
11 a problem with alcohol abuse. There is a conviction
12 for assault with a weapon. But she has served a
13 relatively significant period of time in jail in the
14 past three and a half years.

15 She has also some significant medical problems.
16 I was told that in the past year she had developed
17 gallstones. She has been kept in remand since her
18 arrest on August 16th, 2003, for this offence. I am
19 told that at the remand facility she is confined to
20 her room because of her illness. She has difficulty
21 eating. She is on medication.

22 She is a lifelong resident of this community; she
23 has family here, supportive family. I have heard from
24 her mother about the accused's difficulty and about
25 the support that she is prepared to provide her. I
26 can see she has children who are extremely concerned
27 about her. She is a status First Nation person, and I

1 have to take that into consideration as well.

2 In my opinion, the absolute minimum sentence for
3 this offence that I can impose is 24 months
4 imprisonment. The Crown suggested two to three years.
5 I think that is the minimum range for this type of
6 offence, considering the type of drug and the quantity
7 of it.

8 I do, however, take into account the amount of
9 time that the accused has spent on remand. She has
10 been in remand for ten and a half months. Of those
11 ten and a half months, two months were credited toward
12 a three-month sentence that was imposed for the two
13 other offences that I mentioned that do not appear
14 among the convictions as yet on her formal record.

15 So eight and a half months out of those ten and a
16 half months were remand time. The general rule of
17 thumb is that remand time is credited at two for one.
18 In this particular case, Crown Counsel has submitted
19 that the remand time should not be double credited,
20 particularly because during the period of remand, even
21 though she is confined in many of her activities
22 because of her illness, she still has had access to
23 counselling programs, to AA programs, and also in
24 particular because of the type of facility that the
25 women's correctional centre is in this jurisdiction.

26 One would be, as Crown Counsel put it, hard
27 pressed to describe the facility as hard time. It is

1 more in the nature of a residential centre than a
2 jail. The inmates reside in bedrooms as opposed to
3 cells, there are dining facilities and kitchen
4 facilities. Certainly one would be hard pressed to
5 describe as a normal jail any facility, as I heard
6 this one is, where the doors are locked to prevent
7 people from getting in from outside but that anybody
8 inside can open the doors. So I think in the ordinary
9 case Crown Counsel might have a very good point.

10 In this case, though, defence counsel submitted
11 that the remand time is still hard time. She gets no
12 credit for it. Her illness restricts her ability to
13 participate in all of the activities. So, under these
14 circumstances, I see no cause for differentiating from
15 the general rule of thumb.

16 I will, therefore, credit the time spent in
17 pretrial custody as the equivalent of 17 months, and
18 deduct that from the 24-month sentence I would
19 normally impose.

20 Stand up, Ms. Whitford. Ms. Whitford, it seems
21 obvious to me that you have people who love you and
22 care about you and are waiting for you to come back
23 home. I wish you luck and encourage you to take
24 advantage of that and whatever programs are available
25 so that you can put your life back together again.

26 You are still a young woman, your children are
27 still young, and they will need you in the future, and

1 they will need you to be straight and sober. I am
2 sure you know that.

3 The sentence is seven months imprisonment. In
4 addition, I will direct that the accused be on
5 probation for a period of one year starting from the
6 date of her release. The conditions of that probation
7 will be that she is to be under the supervision of the
8 probation officer and report to the probation officer
9 as directed, she is to attend any and all counselling
10 and treatment programs that may be recommended by the
11 probation officer, she is to abstain absolutely from
12 the possession or consumption of alcohol or
13 nonprescription drugs, and she is restricted from
14 entering any premises where alcohol is served. By
15 that I mean any bar or other such place.

16 You may have a seat. Under the circumstances
17 there will be no victim of crime fine surcharge. Have
18 I neglected anything, Ms. Tkatch?

19 MS. TKATCH: Yes, Your Honour. Actually I
20 would be asking for an order of forfeiture of the
21 exhibits seized, in particular the drugs.

22 THE COURT: What about the money?

23 MS. TKATCH: And the money. Thank you.

24 THE COURT: The exhibits seized by the police
25 will be forfeited to the Crown and disposed of at the
26 expiry of the appeal period. Anything else,
27 Mr. Latimer?

1 MR. LATIMER: No. I believe that's it, Your
2 Honour.

3 THE COURT: Very well. Thank you, counsel.

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5
6 Certified to be a true and accurate
7 transcript, pursuant to Rules 723 and 724
8 of the Supreme Court Rules

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11 Joel Bowker
12 Court Reporter
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