

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

FLOYD PAUL KAKFWI AND
ALDEN JOSEPH LENNIE

TRANSCRIPT OF THE REASONS FOR SENTENCE DELIVERED BY THE
HONOURABLE JUSTICE J.E. RICHARD, SITTING IN YELLOWKNIFE, IN
THE NORTHWEST TERRITORIES, ON THE 20TH DAY OF JANUARY,
A.D. 2006.

APPEARANCES:

MS. S. SMALLWOOD:	COUNSEL FOR THE CROWN
MS. M. ENGLEBY:	COUNSEL FOR THE ACCUSED, FLOYD PAUL KAKFWI
MS. M. NIGHTINGALE:	COUNSEL FOR THE ACCUSED, ALDEN JOSEPH LENNIE

(CHARGE UNDER S. 348(1)(B) OF THE CRIMINAL CODE OF CANADA)

THE COURT:

IT IS NOW MY SERIOUS

RESPONSIBILITY TO IMPOSE AN APPROPRIATE SENTENCE ON EACH OF FLOYD PAUL KAKFWI AND ALDEN JOSEPH LENNIE FOR THE SERIOUS CRIME THAT THEY COMMITTED TOGETHER LAST OCTOBER IN THEIR HOME COMMUNITY OF FORT GOOD HOPE.

BEFORE PROCEEDING FURTHER, I WANT TO THANK ALL THREE COUNSEL FOR THE EXCELLENT JOB THAT EACH OF YOU DID IN MAKING SUBMISSIONS ON THIS SENTENCING HEARING. IT IS PARTICULARLY HELPFUL TO THE COURT WHEN COUNSEL COME TO COURT WELL PREPARED AND WITH WELL-THOUGHT-OUT SUBMISSIONS.

THE CRIME IS BREAK AND ENTER INTO A DWELLING-HOUSE AND COMMITTING ROBBERY CONTRARY TO SECTION 348(1)(B) OF THE CRIMINAL CODE. IT CARRIES A MAXIMUM SENTENCE OF LIFE IMPRISONMENT. SO OUR SOCIETY CONSIDERS IT TO BE A VERY SERIOUS MATTER.

THE CRIME OCCURRED ABOUT MIDNIGHT ON THE EVENING IN QUESTION. THESE TWO YOUNG MEN APPEARED AT THE HOME OF NEIL PASCAL AND SUSIE KEEVIK IN FORT GOOD HOPE. THEY KNOCKED ON THE DOOR, AND WHEN MR. PASCAL WENT TO THE DOOR, THESE TWO OFFENDERS, WEARING HOODIES OVER THEIR HEADS, FORCED THEIR WAY INTO THE RESIDENCE. THE OFFENDER KAKFWI PUSHED MR. PASCAL TO THE FLOOR AND HELD A KNIFE TO MR. PASCAL'S THROAT WHILE

MR. LENNIE RUMMAGED THROUGH THE HOUSE.

THE TWO OFFENDERS WERE ONLY THERE FOR A BRIEF TIME, AND AFTER THEY LEFT, IT WAS DISCOVERED THAT THEY HAD TAKEN A SMALL AMOUNT OF MONEY AND TWO PACKAGES OF CIGARETTES.

WHEN THE TWO OFFENDERS WERE ARRESTED, THEY ADMITTED TO THEIR INVOLVEMENT IN THIS CRIME. THEY WERE BOTH INTOXICATED AT THE TIME OF THE COMMISSION OF THE OFFENCE. THEY HAD APPARENTLY BEEN DRINKING AT ANOTHER RESIDENCE AND THEY WANTED ANOTHER BOTTLE OF BOOZE, AND APPARENTLY THAT IS WHY THEY WENT TO THE PASCAL RESIDENCE, THINKING THAT THEY COULD STEAL A BOTTLE THERE.

THERE WAS ALSO EVIDENCE THAT MR. KAKFWI TOOK A KNIFE FROM THE OTHER RESIDENCE WHEN HE LEFT TO GO TO THE PASCAL RESIDENCE; AND, ALSO, MR. LENNIE ASSERTS THAT HE DID NOT KNOW THAT HIS COHORT, KAKFWI, HAD BROUGHT ALONG A KNIFE WHEN THEY WENT TO THE PASCAL RESIDENCE TO STEAL BOOZE.

THIS CRIME COMMITTED BY MR. KAKFWI AND MR. LENNIE CAN FAIRLY BE DESCRIBED AS A "HOME INVASION ROBBERY" AS THAT TERM HAS COME TO BE KNOWN COMMONLY, AND AS SPECIFICALLY DEFINED BY THE ALBERTA COURT OF APPEAL IN THE MATWIY DECISION AND AS CONTEMPLATED BY PARLIAMENT IN ENACTING SECTION 348.1 JUST A FEW YEARS AGO. THAT SECTION OF THE CRIMINAL CODE ESSENTIALLY

READS AS FOLLOWS: IF A PERSON IS CONVICTED OF AN OFFENCE UNDER SECTION 348 "IN RELATION TO A DWELLING-HOUSE, THE COURT IMPOSING THE SENTENCE ON THE PERSON SHALL CONSIDER AS AN AGGRAVATING CIRCUMSTANCE THE FACT THAT THE DWELLING-HOUSE WAS OCCUPIED AT THE TIME OF THE COMMISSION OF THE OFFENCE AND THAT THE PERSON, IN COMMITTING THE OFFENCE, (A) KNEW THAT OR WAS RECKLESS AS TO WHETHER THE DWELLING-HOUSE WAS OCCUPIED; AND (B) USED VIOLENCE OR THREATS OF VIOLENCE TO A PERSON OR PROPERTY."

IN THE MATWIY DECISION, THE ALBERTA COURT OF APPEAL ESTABLISHED A STARTING POINT FOR SENTENCES FOR A HOME INVASION ROBBERY. THEY SET THAT STARTING POINT FOR ALBERTA CASES AT EIGHT YEARS' IMPRISONMENT.

IN EMPHASIZING THE SERIOUSNESS WITH WHICH THE ALBERTA COURTS TREAT OFFENCES INVOLVING THE VIOLATION OF THE SANCTITY OF AN INDIVIDUAL IN HIS OR HER OWN HOME, THE ALBERTA COURT OF APPEAL STATED AS FOLLOWS:

"WE ARE OF THE VIEW THAT THE HOME INVASION ROBBERY MERITS A HIGHER STARTING-POINT SENTENCE THAN THE ARMED ROBBERY OF A BANK OR COMMERCIAL INSTITUTION. WHILE OFFENCES OF VIOLENCE ARE

ABHORRENT WHEREVER THEY OCCUR,
OFFENCES WHICH STRIKE AT THE
RIGHTS OF MEMBERS OF THE PUBLIC
TO THE SECURITY OF THEIR OWN
HOMES AND TO FREEDOM FROM
INTRUSION THEREIN, MUST BE
TREATED WITH THE UTMOST
SERIOUSNESS. INDIVIDUALS IN
THEIR OWN HOMES HAVE FEW OF THE
SECURITY DEVICES AVAILABLE TO
COMMERCIAL INSTITUTIONS. THEY
ARE OFTEN ALONE, WITH LITTLE HOPE
THAT HELP WILL ARRIVE. SUCH
OFFENCES, WHETHER THEY RESULT IN
INJURIES OR NOT, ARE ALMOST
ALWAYS TERRIFYING, TRAUMATIC
EXPERIENCES FOR THE OCCUPANTS OF
THE RESIDENCE OFTEN LEAVING THEM
WITH A TOTAL LOSS OF ANY SENSE OF
SECURITY."

IN THE PAYNE DECISION LAST YEAR, THIS COURT
STATED THE VIEW THAT THE RANGE OF SENTENCE FOR
THE TYPE OF HOME INVASION ROBBERY INVOLVED IN
THAT CASE IS FIVE TO SEVEN YEARS' IMPRISONMENT.

I AM MENTIONING THESE OTHER CASES TO
INDICATE TO FLOYD KAKFWI AND ALDEN LENNIE THAT
BUT FOR THEIR EARLY GUILTY PLEAS, THEY EACH WOULD

BE LOOKING AT A SENTENCE IN THAT RANGE.

TO THE MITIGATING FACTOR OF AN EARLY GUILTY PLEA, I WOULD ADD, IN EACH OFFENDER'S FAVOUR, THE ACCEPTANCE OF PERSONAL RESPONSIBILITY AND AN ACKNOWLEDGMENT OF A WRONG DONE.

DENUNCIATION, DETERRENCE, AND THE PROTECTION OF THE PUBLIC ARE THE PRIMARY CONSIDERATIONS IN THE SENTENCING OF OFFENDERS WHO HAVE INVADDED THE SANCTITY OF THE HOME OF ANOTHER PERSON.

I TURN NOW TO THE PERSONAL CIRCUMSTANCES OF EACH OFFENDER. FIRSTLY, MR. KAKFWI.

MR. KAKFWI IS 34 YEARS OF AGE. HIS HOME COMMUNITY IS FORT GOOD HOPE; HOWEVER, HE HAS LIVED IN FORT MCPHERSON FOR THE LAST YEAR OR MORE. APPARENTLY HE GREW UP IN AN ENVIRONMENT WHERE EXCESSIVE DRINKING AND VIOLENCE WAS THE NORM. HE HAS A GRADE 8 FORMAL EDUCATION PLUS ADDITIONAL UPGRADING. DURING HIS ADULT LIFE, WHEN NOT SERVING JAIL SENTENCES, HE HAS HAD SPORADIC EMPLOYMENT IN LABOUR AND CONSTRUCTION.

MR. KAKFWI'S CRIMINAL RECORD IS HORRIFIC. HIS EXTENSIVE RECORD INCLUDES EIGHT CRIMES OF VIOLENCE, EIGHT WEAPONS OFFENCES, AND AT LEAST NINE PROPERTY OFFENCES, THREE OF WHICH ARE BREAK AND ENTERS OR BEING UNLAWFULLY IN A DWELLING-HOUSE. HIS PRESENT CRIME BEARS A DISTURBING SIMILARITY TO THE OFFENCES FOR WHICH

HE WAS CONVICTED AND SENTENCED IN OCTOBER 2002, WHICH IS THE MOST RECENT ENTRY ON HIS CRIMINAL RECORD. IN THE LAST 15 YEARS, HE HAS RECEIVED 12 SEPARATE CUSTODIAL SENTENCES, AND A NUMBER OF THOSE HAVE BEEN FOR 12 MONTHS OR MORE.

MR. KAKFWI SPOKE TO THE COURT YESTERDAY ABOUT THE INTROSPECTION, OR INTERNAL REFLECTION, WHICH HE HAS BEEN ENGAGED IN SINCE BEING ARRESTED, AND I CAN ONLY ENCOURAGE HIM TO CONTINUE IN THAT EXERCISE. HE IS AT AN AGE WHEN MOST REPEAT OFFENDERS, IN MY EXPERIENCE, STOP COMMITTING CRIMES BECAUSE THEY SIMPLY DO NOT WANT TO WASTE THEIR LIFE IN JAIL ANY MORE. SURELY - SURELY THIS IS A FINAL WAKE-UP CALL FOR HIM; THE EVENT THAT WILL MAKE HIM DECIDE TO CHANGE HIS LIFE.

I TURN TO MR. ALDEN LENNIE. HE TURNED 22 YEARS OF AGE IN DECEMBER 2005. HE ALSO GREW UP IN FORT GOOD HOPE AND HAS, AS AN ADULT, LIVED ON AND OFF EITHER WITH HIS MOTHER OR HIS GRANDMOTHER. HE ALSO HAS HAD SPORADIC EMPLOYMENT IN CONSTRUCTION AND IN A SAWMILL.

HE HAS A CRIMINAL RECORD QUITE LIMITED BY COMPARISON TO THAT OF MR. KAKFWI. HIS CRIMINAL RECORD INCLUDES PROPERTY OFFENCES BOTH AS A YOUTH AND AS AN ADULT. HIS RECORD ALSO INCLUDES A CONVICTION FOR SEXUAL ASSAULT IN MARCH 2004, FOR

WHICH HE RECEIVED A SENTENCE OF 21 MONTHS' IMPRISONMENT FOLLOWED BY 12 MONTHS' PROBATION. I AM TOLD THAT HE WAS RELEASED FROM JAIL IN MAY 2005. SO AT THE TIME OF COMMITTING THIS HOME INVASION ROBBERY WITH MR. KAKFWI IN OCTOBER 2005, MR. LENNIE WAS TECHNICALLY STILL SERVING HIS SENTENCE AND WAS ON PROBATION. THAT IS AN AGGRAVATING FEATURE WITH RESPECT TO THE SENTENCING OF MR. LENNIE.

MR. LENNIE HAS GOOD FAMILY SUPPORT AS EVIDENCED IN THE LETTERS FROM HIS MOTHER AND GRANDMOTHER AND BY HIS MOTHER'S ATTENDANCE IN COURT TO SHOW SUPPORT FOR HER SON. HE IS APPARENTLY DESCRIBED BY FAMILY MEMBERS AS QUIET, SHY, IMMATURE FOR HIS AGE, EASILY INFLUENCED BY OTHERS, AND LACKING IN SELF-CONFIDENCE AND SELF-ESTEEM.

IN THE DETERMINATION OF SENTENCE, I TAKE INTO CONSIDERATION NOT ONLY THAT DIRECTION IN SECTION 348.1 OF THE CRIMINAL CODE, BUT IN ADDITION, THE FACT THAT, WHILE UNSOPHISTICATED, THERE WAS INDEED SOME PLANNING INVOLVED IN THIS CRIME, INCLUDING THE DELIBERATE TAKING ALONG OF THE KNIFE IN THIS ENTERPRISE AND THE EXPLICIT PURPOSE OR INTENTION OF THESE TWO OFFENDERS OF GOING TO THE PASCAL RESIDENCE. THESE TWO ACTED IN CONCERT IN THE OVERALL COMMISSION OF THE

CRIME. THERE WAS ALSO A CONFINEMENT ASPECT,
BRIEF THOUGH IT WAS.

IN MITIGATION, I NOTE THAT BOTH OFFENDERS
WERE COOPERATIVE WITH THE POLICE. ALSO, THEY
WAIVED THE NEED FOR ANY PRELIMINARY INQUIRY AND,
AS I HAVE MENTIONED, HAVE ENTERED EARLY GUILTY
PLEAS. I ALSO NOTE THAT EACH OFFENDER HAS BEEN
IN CUSTODY FOR THREE MONTHS AWAITING DISPOSITION
OF THIS CHARGE.

WHILE MINDFUL OF THE PARITY PRINCIPLE WITH
RESPECT TO SENTENCING, I FIND THAT I AM COMPELLED
IN ALL OF THE CIRCUMSTANCES TO IMPOSE DIFFERENT
JAIL TERMS FOR THESE TWO OFFENDERS.

MR. KAKFWI HAS AN EGREGIOUS HISTORY OF
COMMITTING CRIMES OF VIOLENCE AND CRIMES IN
GENERAL. OF THE TWO CO-OFFENDERS, HE IS CLEARLY
THE MORE MATURE, MORE EXPERIENCED OF THE TWO, AND
HAD THE MORE MAJOR ROLE IN THE COMMISSION OF THIS
CRIME.

MR. LENNIE IS MUCH YOUNGER IN RELATIVE TERMS
AND HIS PERSONAL CHARACTERISTICS AND ANTECEDENTS
MAKE HIM AN OFFENDER WHO IS DISSIMILAR TO
MR. KAKFWI.

PLEASE STAND, MR. KAKFWI. FLOYD PAUL
KAKFWI, FOR THE CRIME YOU HAVE COMMITTED, BREAK,
ENTER AND COMMIT ROBBERY CONTRARY SECTION
348(1)(B) OF THE CRIMINAL CODE, IT IS THE

SENTENCE OF THIS COURT THAT YOU BE IMPRISONED FOR
A TERM OF THREE YEARS. I RECOMMEND TO THE
FEDERAL AUTHORITIES THAT YOU BE ALLOWED TO SERVE
YOUR TERM OF IMPRISONMENT AT AN INSTITUTION IN
THE NORTHWEST TERRITORIES. IN ADDITION, THERE
WILL BE THE MANDATORY SECTION 109 FIREARMS
PROHIBITION ORDER FOR A PERIOD OF TEN YEARS.
TAKE A SEAT.

MR. LENNIE. ALDEN JOSEPH LENNIE, FOR THE
CRIME YOU HAVE COMMITTED, BREAK, ENTER AND COMMIT
ROBBERY CONTRARY TO SECTION 348(1)(B), IT IS THE
SENTENCE OF THIS COURT THAT YOU SERVE A TERM OF
IMPRISONMENT OF TWO YEARS. AGAIN I WILL
RECOMMEND TO THE FEDERAL AUTHORITIES THAT YOU
SERVE YOUR TERM OF IMPRISONMENT IN THE NORTHWEST
TERRITORIES. AND, ALSO, IN ADDITION, THERE WILL
BE THE MANDATORY SECTION 109 FIREARMS PROHIBITION
ORDER FOR A PERIOD OF TEN YEARS. YOU MAY BE
SEATED.

ANYTHING ELSE WITH RESPECT TO THIS CASE,
COUNSEL?

MS. SMALLWOOD: NOTHING, SIR.

MS. ENGLE: NO, SIR.

MS. NIGHTINGALE: NO.

THE COURT: THANK YOU. GOOD LUCK TO YOU,
YOUNG MEN.

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CERTIFIED PURSUANT TO RULE 723
OF THE RULES OF COURT

JANE ROMANOWICH, CSR(A), RPR
COURT REPORTER