

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

COREY STEPHEN STOVIN

Transcript of the Reasons for Sentence by The Honourable
Justice D. M. Cooper, at Yellowknife in the Northwest
Territories, on February 19th A.D., 2010.

APPEARANCES:

Ms. J. Walsh: Counsel for the Crown
Mr. J. Bran: Counsel for the Accused

Charge under s. 348(1)(b) Criminal Code of Canada
Charge under s. 5(2) Controlled Drugs and Substances Act

1 THE COURT: The accused in this case has
2 pleaded guilty, after preliminary hearings but
3 prior to trial, to having committed the offence
4 of possession of cocaine for the purpose of
5 trafficking on November 19th, 2008, in
6 Yellowknife, contrary to Section 5(2) of the
7 Controlled Drugs and Substances Act. For this,
8 the sentence could be life imprisonment.

9 He has also pleaded guilty, after
10 preliminary inquiry, to the offence of breaking
11 and entering a dwelling house in Yellowknife and
12 committing the indictable offence of assault
13 causing bodily harm contrary to Section 348(1) (b)
14 of the Criminal Code; the offence date having
15 occurred on the 7th day of February 2008, and
16 again, for this offence an offender is liable to
17 imprisonment for life.

18 The Crown has submitted a number of
19 authorities in support of its submission that a
20 fit and proper sentence in the circumstances
21 would be two years less a day for possession for
22 the purpose of trafficking, and three to three
23 and a half years on the break and enter charge.
24 The defence argues that a more appropriate
25 disposition would be a global sentence of
26 approximately 30 months in jail.

27 The facts with respect to the charge under

1 Section 5(2) of the Controlled Drugs and
2 Substances Act are that on November 19th, 2008,
3 Mr. Stovin was noted to be traveling by bus from
4 Edmonton to Yellowknife and during a stopover in
5 Enterprise, an officer of the RCMP from the Hay
6 River traffic division saw Mr. Stovin, in the
7 company of another person, and Mr. Stovin
8 appeared to be behaving suspiciously. Mr. Stovin
9 had a black bag with him. This officer engaged
10 Mr. Stovin in some conversation and then let him
11 go however he called forward to the Yellowknife
12 detachment and spoke to another officer who
13 subsequently advised that he had a confidential
14 human source providing him information to the
15 effect that Mr. Stovin had travelled south to
16 "reload" with drugs to come back to Yellowknife
17 to sell those drugs.

18 A plan was put in place by the drug
19 detachment here in Yellowknife, or the drug
20 detachment division, and Mr. Stovin was detained
21 as he got off the bus in Yellowknife. A sniffer
22 dog was called to the scene and deployed and the
23 dog registered an alert on Mr. Stovin's bag. He
24 was then placed under arrest and, after being
25 cautioned, was brought back to the detachment.

26 During a search incidental to his arrest,
27 approximately 160 grams of crack cocaine, in a

1 bag, were found taped to the front of Mr. Stovin,
2 in the crotch area, and an additional 10 grams of
3 cocaine were found as well. The estimated street
4 value of the drugs, if sold in quantities of half
5 a gram, would have been \$34,000.

6 On the charge of breaking and entering and
7 committing the offence of assault causing bodily
8 harm, Crown and defence have filed an agreed
9 statement of facts in this matter with respect to
10 this offence. I will note at the outset the
11 statement does not explain why Mr. Stovin and
12 three other men were watching the accused in the
13 Ravens Pub and why he was attacked when he left.

14 The facts are that on February 6th, 2008,
15 Mr. Julian Walsh was drinking beer with two
16 friends at the Ravens Pub. During the course of
17 the evening a male came over to Mr. Walsh and
18 asked him his name and where he lived. Mr. Walsh
19 confirmed who he was and where he lived, then
20 observed the person walk over to four men sitting
21 at the bar whom he had never met before.

22 During the course of the evening, Mr. Walsh
23 noticed the four men looking at him. At one
24 point, Mr. Walsh did leave the pub with a friend
25 and planned to walk to the Corner Mart restaurant
26 to get something to eat. When he left, he placed
27 an unfinished bottle of beer in his sleeve of his

1 coat.

2 Upon leaving the pub, Mr. Walsh was attacked
3 by one of the men that he saw watching him
4 earlier in the evening. The man punched Mr.
5 Walsh in the head and kept swinging although no
6 other hits landed. Mr. Walsh was able to get
7 away and he ran across the street. Once across
8 the street, Mr. Walsh was approached by Mr.
9 Stovin, who had been one of the four men watching
10 him in the pub. Mr. Stovin moved towards him in
11 an aggressive manner. Mr. Walsh pulled the beer
12 bottle out of his coat and threw it at
13 Mr. Stovin, hitting him in the head. He then ran
14 home to his apartment, approximately four blocks
15 away.

16 Upon arrival at his apartment, Mr. Walsh saw
17 a vehicle coming up the street towards him and
18 recognized the four men from the pub in the
19 vehicle. He then opened the front door of his
20 apartment and ran up the stairs where his unit
21 was located on the second storey of the building.
22 Momentarily thereafter, Mr. Walsh heard the men
23 coming up the stairwell. He ran into his room,
24 locked the door, and turned out the lights.
25 Mr. Stovin was the among those coming up the
26 stairwell.

27 Another resident, who had been asleep on the

1 couch inside the apartment, opened the door and
2 the men entered uninvited. Once in the
3 apartment, Mr. Stovin and the three others
4 conducted a search and quickly located Mr.
5 Walsh's bedroom. During this time, Mr. Walsh
6 called the RCMP and told dispatch he was afraid
7 that he was going to be killed.

8 Once Mr. Walsh's bedroom was located,
9 Mr. Stovin and the other men proceeded to break
10 the door of the bedroom down. Mr. Walsh had
11 tried to prevent their entry by putting his back
12 against his bed and his feet upon the door.
13 Mr. Stovin and the others were able to break into
14 the room, turn down the lights, and began
15 assaulting Mr. Walsh. He held his head down and
16 Mr. Stovin got on top of him stating "remember
17 me, you want to hit me in the head with a
18 bottle", and then repeatedly punched Mr. Walsh in
19 the face as well as punching and kicking him in
20 the torso area. Mr. Stovin then took a drawer
21 from the chest of drawers and hit Mr. Walsh in
22 the head with it, destroying the drawer. Mr.
23 Walsh recalls a 100 pound bench press weight was
24 dropped on him during the assault and he was
25 kicked numerous times in the head and body. At
26 various times some of the other men who were
27 present took turns assaulting him. He was also

1 hit in the head with a DVD player and cut with a
2 knife although not apparently seriously. He lost
3 consciousness briefly. When he regained
4 consciousness, he heard the men walking down the
5 hallway laughing about what had just happened and
6 heard one of them say "if you say anything we
7 will kill you".

8 Shortly thereafter the police arrived on the
9 scene and Mr. Walsh was taken by ambulance to the
10 Stanton Territorial Hospital.

11 As a result of the attack, Mr. Walsh's face
12 was bloodied. He suffered swelling to the face
13 and ears, multiple abrasions to the scalp,
14 bruising and abrasions to his shoulders and back,
15 as well as a broken nose.

16 With respect to the background of the
17 accused, I have read the pre-sentence report
18 filed in these proceedings. I will note at the
19 outset that it was prepared at the request of
20 counsel for the accused upon his entering of a
21 guilty plea to the possession for the purpose of
22 trafficking offence on November 9th, 2009.

23 On December 14th a different lawyer,
24 representing the accused on the Section 348
25 charge, advised the Court of Mr. Stovin's
26 intention to plead guilty to this charge and he
27 has done that today. As a result of that,

1 however, all of the focus of the accused's
2 behaviour and attitude regarding his criminal
3 conduct, as related in the report, refers only to
4 the first offence and presumes him to be a
5 first-time offender. Technically that is the
6 case. However, I cannot ignore the fact that
7 Mr. Stovin was at liberty on an undertaking or
8 promise to appear after his arrest on the break
9 and enter charge when he committed the second
10 offence.

11 In any event, Mr. Stovin is 25 years of age,
12 and he spent most of his formative years in
13 Langley or the Langley area of British Columbia.
14 He achieved a Grade 11 level of education and
15 after working in various jobs, he worked for a
16 year as a bouncer in a bar or nightclub prior to
17 coming to Yellowknife in 2006 ostensibly to find
18 work in one of the diamond mines. I say
19 ostensibly since although he lived in Yellowknife
20 in an apartment and then a hotel for some months,
21 he never did obtain gainful employment and
22 advised the pre-sentence reporter, or the
23 probation officer, that he never collected
24 Employment Insurance. It is unclear as to
25 exactly when Mr. Stovin arrived in Yellowknife
26 but he would have lived here for over a year in
27 the community before being remanded into custody

1 on December 31st, 2008.

2 He claims to have had a close relationship
3 with his family and particularly his mother, who
4 was shocked to hear that he was in trouble with
5 the law and indicated almost unconditional
6 support for him.

7 Mr. Stovin rationalized his conduct by
8 saying that he never sold drugs and that he does
9 not support people's habits; that there are drugs
10 in every town and they aren't that big a problem
11 here, the biggest being alcohol.

12 Reports of his attitude from his case
13 manager at the North Slave Correctional Centre
14 are not encouraging. It is described as poor.

15 The pre-sentence reporter was of the view
16 that Mr. Stovin appeared to minimize the impact
17 of his actions on the community and made light of
18 the drug scene and that he was not a good
19 candidate for a community-type sentence.

20 The overall impression I was left with,
21 after reviewing the report, is that Mr. Stovin
22 was sorry not for having committed these offences
23 but for having been caught. Again, this report
24 did not take into account Mr. Stovin's conduct on
25 the night of February 7th, 2008.

26 No victim's impact statement has been filed
27 but I have no doubt that this assault would have

1 had a traumatizing effect on Julian Walsh. The
2 agreed statement of facts does not describe his
3 injuries as permanent or having been life
4 threatening. From the photographs I examined,
5 however, it is clear that the harm visited upon
6 him was not transitory and that he had been badly
7 beaten.

8 The relevant provisions of the Criminal Code
9 include Section 718 which says that the
10 fundamental purpose of sentencing is to
11 contribute, along with crime prevention
12 initiatives, to respect for the law and the
13 maintenance of a just, peaceful and safe society
14 by imposing just sanctions that have one or more
15 of the following objectives:

16 (a) to denounce unlawful conduct;

17 (b) to deter the offender and other persons
18 from committing offences;

19 (c) to separate offenders from society,
20 where necessary;

21 (d) to assist in rehabilitating offenders;

22 (e) to provide reparations for harm done to
23 victims or to the community; and

24 (f) to promote a sense of responsibility in
25 offenders, and acknowledgement of the harm done
26 to victims and to the community.

27 Another provision of the Code says that a

1 sentence must be proportionate to the gravity
2 offence and the degree of responsibility of the
3 offender.

4 Other principles in Section 718.2 say that a
5 sentence should be increased or reduced to
6 account for any relevant aggravating or
7 mitigating circumstances relating to the offence
8 or the offender, and, without limiting the
9 generality of the foregoing, evidence that the
10 offence was committed for the benefit of, at the
11 direction of or in association with a criminal
12 organization.

13 There is no evidence that Mr. Stovin was
14 part of a criminal organization but I mention
15 this because the circumstances certainly raise
16 some serious questions.

17 As well, this section provides that a
18 sentence should be similar to sentences imposed
19 on similar offenders for similar offences
20 committed in similar circumstances and where
21 consecutive sentences are imposed, the combined
22 sentence should not be unduly long or harsh.

23 And finally, as the Crown has pointed out,
24 the Court is required to consider Section 348.1
25 which states that a person convicted of an
26 offence such as this, in imposing sentence the
27 Court shall consider as an aggravating

1 circumstance the fact that the dwelling house was
2 occupied at the time of the commission of the
3 offence and that the person in committing the
4 offence knew that, or was reckless as to whether
5 the dwelling house was occupied, and used
6 violence or threats of violence to a person or
7 property.

8 So in terms of aggravating factors, this was
9 a home invasion gang-style offence. As counsel
10 for the defence has pointed out, this was not a
11 planned and premeditated robbery with violence or
12 threats of violence of the kind that calls for a
13 much stiffer sentence but nevertheless a home
14 invasion. After the initial assault outside of
15 the Raven, the facts disclose that Mr. Stovin was
16 the main perpetrator on this offence. It is
17 aggravating as well that he committed the very
18 serious offence of possession for the purpose of
19 trafficking in cocaine of a significant amount,
20 crack cocaine, while at large on his undertaking.

21 There really are only two mitigating factors
22 that the Court can discern here. The first is
23 that Mr. Stovin appears today without a previous
24 criminal record; second, that he has pleaded
25 guilty to these charges. This has not been done
26 at the earliest opportunity but nor has it been
27 done at the very very last minute. The accused

1 is therefore entitled to some consideration for
2 his guilty pleas in mitigation of sentence.

3 The Crown has submitted a number of
4 authorities, decisions of NWT Courts and others,
5 for my consideration applicable to both offences.

6 With respect to the offence of possession
7 for the purpose of trafficking, Courts in the
8 Northwest Territories have consistently said that
9 the principles of sentencing requiring emphasis
10 in these kinds of offences are deterrence and
11 denunciation and that is particularly so when the
12 trafficking involves a so-called "hard drug" such
13 as crack cocaine. In other words, it would be
14 the rare case where a term of imprisonment would
15 not be called for.

16 Sentences vary depending on the kind of
17 drug, the amount; the apparent position of the
18 accused in the hierarchy of the drug trade;
19 whether the accused was a first-time offender or
20 had a criminal record, including previous similar
21 offences; the age of the accused; whether there
22 is a favourable pre-sentence report which
23 discloses that the accused may have been a dupe
24 or one-time offender whose actions are
25 characterized as a momentary lapse of judgment;
26 whether he was cooperative with the police;
27 whether he has a salutary background; whether he

1 was motivated by the need to service his own drug
2 habit, or by greed; whether he is truly
3 remorseful and a good candidate for
4 rehabilitation. This list is not exhaustive but
5 will encompass many, if not most, of the
6 considerations that a Court will weigh in these
7 kinds of cases.

8 The cases submitted range in sentencing from
9 10 months imprisonment to 42 months. At the
10 lower end are cases of street-level dealing in
11 small amounts such as R. v. Chamberlain [2000]
12 N.W.T.J. No. 25 (S.C.); R. v. Turner [2006]
13 N.W.T.J. No. 76 (S.C.); R. v. Hajcik [2007]
14 N.W.T.J. No. 85 (T.C.). Cases involving higher
15 level dealers with bad criminal records are at
16 the upper end such R. v. Toth [2005] N.W.T.J. No.
17 101 (T.C.) and R. v. Gellenbeck [2009] N.W.T.J.
18 No. 76 (S.C.).

19 In the case of R. v. Gosselin [2009]
20 N.W.T.J. No. 25 (S.C.), a case decided in this
21 Court last year, the accused, who was 23 years of
22 age, had a package delivered to him at his home
23 by Fed-Ex and he was on his way to deliver it to
24 a friend when he was apprehended by police. The
25 accused maintained that he did not know what was
26 in the package. In fact, it contained 146.5
27 grams of cocaine. He had agreed that the package

1 could be mailed to him as a favour to his friend.
2 He was a first-time offender who was willfully
3 blind to what was in the package which had
4 probably been sent to him since he was thought to
5 have been above the suspicion of law enforcement
6 authorities. In all of those circumstances, the
7 Court felt it appropriate to impose a term of
8 imprisonment of two years less one day.

9 Having regard to the offence under
10 Section 348(1) (a), the break and enter and
11 causing bodily harm, I have reviewed the cases
12 filed by the Crown, including R. v. Matwiy [1996]
13 A.J. No. 134 (Alta. C.A.); R. v. Bernier [2003]
14 B.C.J. No. 466 (BC. C.A.); R. v. Angohiatok
15 [2004] N.W.T.J. No. 56 (NWT Terr. Ct.);
16 R. v. Kakfwi [2006] N.W.T.J. No. 9 (NWT SC); and
17 R. v. Brace [2008] Y.J. No. 30 (Y.T. Terr. Ct.)
18 As well, I have reviewed cases filed by the
19 defence - R. v. McClelland 2001 ABCA 182; and
20 R. v. Laidley 2001 ABQB 781. The outcomes in
21 every case depend upon the extent of violence and
22 harm done and the circumstances of the offender.

23 The Crown, quite appropriately, has not
24 attempted to characterize this case as a typical
25 home invasion offence which would attract a
26 sentence in the range of from 6 to 12 years. And
27 I accept the defence submission to the effect

1 that this offence was not planned and
2 premeditated with the intention of robbery. The
3 victim was not elderly and the beating, while
4 very serious, did not result in lasting injury.
5 Accordingly, I need not examine Matwiy, Bernier,
6 Laidley and McClelland.

7 The Angohiatok case is distinguishable. The
8 accused there had what then Chief Judge Bourassa
9 termed "a long depressing criminal record" and
10 was doing a "life sentence on the installment
11 plan". Small children witnessed the violent
12 break-in and the accused was waving a knife
13 threatening death. That attracted a three-year
14 sentence.

15 In Kakfwi, the accused had an extremely bad
16 record of violence. The accused and accomplice
17 used hoods to disguise themselves and Kakfwi held
18 a knife to the throat of one occupant while he
19 was positioned on the floor.

20 In the Brace case, the Court characterized
21 the offence as a home invasion, albeit one where
22 the facts put the gravity of the offence on the
23 less serious side. The accused was sentenced to
24 three years in jail there as, I might mention,
25 was Kakfwi. It is not, however, apparent from
26 the judgment what the record of the accused was
27 so the case is not as useful as it might

1 otherwise be. Clearly, however, an offence of
2 this nature calls for a deterrent and
3 denunciatory sentence.

4 In passing sentence in these offences, I
5 take into account many factors, as I have alluded
6 to previously, including the nature and
7 seriousness of the offences, Mr. Stovin's
8 personal circumstances, including the fact that
9 he is being sentenced today as someone who,
10 perhaps fortuitously, does not have a prior
11 criminal record and who has pleaded guilty.

12 I am troubled that it would appear from
13 reading the pre-sentence report that Mr. Stovin
14 seems to have little appreciation for the
15 seriousness of his involvement in the drug trade
16 or the impact that it has on society. It has
17 been called pervasive and insidious, a scourge,
18 and it is an activity that has a devastating
19 effect on elements of this community. It
20 destroys lives and many of those involved are in
21 it for profit. They are unscrupulous and
22 predatory. It is an ugly, ugly crime. The
23 accused should be under no illusions that in the
24 Northwest Territories serious drug offences will
25 meet with little sympathy from this or any Court.
26 He was not a street-level small-time dealer. He
27 may not have been a kingpin either but, rather,

1 was what some might refer to as a very
2 significant player in the hierarchy.

3 On the charge of break enter and committing
4 the indictable offence of assault causing bodily
5 harm, although we do not know the precise reasons
6 why this offence was committed, the injuries
7 inflicted were serious and they could have been
8 life threatening. The accused has not suggested
9 that he was intoxicated or otherwise in the
10 diminished state which would account for a loss
11 of self-control.

12 Counsel for the defence suggests that this
13 offence would not have occurred if Mr. Walsh not
14 thrown a beer bottle at Mr. Stovin. Perhaps.
15 Perhaps this offence would not have occurred if
16 Mr. Stovin and his colleagues had not decided to
17 assault the victim when he left the bar and if
18 Mr. Stovin had not crossed the street to menace
19 the victim after he had already been beaten.

20 Defence counsel has suggested that
21 Mr. Stovin's intention in crossing the street
22 cannot be discerned from the facts as admitted.
23 Mr. Stovin pursued the victim after he ran away
24 from the assault in front of the Raven and
25 crossed the street. From his demeanour, the
26 victim obviously thought that the accused was
27 going to continue the assault. The victim had a

1 right to defend himself in those circumstances.

2 Stand up please, Mr. Stovin.

3 Balancing all of the factors, and again
4 being mindful of the totality principle as your
5 counsel has urged me to be, on the charge under
6 Section 348(1)(b) I sentence you to a term of
7 imprisonment of 20 months in jail. For the
8 offence of possession for the purpose of
9 trafficking in cocaine, I sentence you to two
10 years in jail consecutive.

11 I am going to take into account time served
12 on remand, approximately 13.5 months, and also
13 the fact that you were remanded into custody by
14 virtue of you having breached your undertaking to
15 keep the peace and be of good behavior.

16 You can sit down.

17 Over the past year, there has been a growing
18 awareness of conditions for remanded inmates at
19 the North Slave Correctional Centre through
20 submissions of counsel and as a result of
21 evidence given by Paul Pearce, a case manager in
22 the institution, in the case of Gerald Paul
23 Stuart on August 14th, 2009 before
24 Judge B.E. Schmaltz of the Territorial Court.
25 That evidence reveals that living conditions for
26 those on remand are virtually identical to those
27 accorded serving inmates and are as agreeable and

1 as benign as one could expect. The programming
2 available to remanded inmates is also close to
3 the same as that for serving inmates except for
4 those programs which would require the prisoner
5 to speak of events surrounding his offence or
6 those which would involve the accused being
7 outside of the institution. Accordingly, I am
8 not convinced that there is evidence to support
9 any claim that remand in the Northwest
10 Territories is "hard time" and which should
11 attract a highly significant credit. I do,
12 however, recognize there is no statutory
13 remission for remanded inmates and I have heard
14 the Crown's representation that, in this case at
15 least, a credit of 1.5 would be appropriate. In
16 the result, I am going to allow a credit slightly
17 in excess of 1.5, for time served of 21 months.

18 So it is the decision of this Court,
19 Mr. Stovin, that you will be sentenced to a term
20 of imprisonment, for both offences, of a total of
21 44 months in jail, and that is the sentence of
22 the Court. With credit for remand time, you will
23 serve an additional 23 months in jail.

24 The Crown has asked for, and I grant, a DNA
25 order under Section 487 of the Criminal Code, and
26 an order for a firearms prohibition under
27 Section 109 of the Criminal Code which I believe

1 will be in effect for ten years from the date
2 upon which Mr. Stovin is released from jail.

3 In the circumstances, I am waiving the
4 victims surcharge.

5 With respect to any exhibits in the
6 possession of the Crown or the police, subject to
7 anything counsel might say, I will order that the
8 drugs seized be destroyed within 30 days or upon
9 the expiration of the appeal period.

10 Is there anything else that has been seized
11 here, Ms. Walsh, that should be dealt with by
12 court order at this time?

13 MS. WALSH: No, Your Honour. I would
14 perhaps just state that everything that was
15 seized in the investigation should be forfeit to
16 the Crown.

17 THE COURT: All right. Mr. Bran, are
18 there any personal effects that should be
19 returned to the accused?

20 MR. BRAN: I would ask that everything,
21 other than the drugs that have been seized,
22 should be returned. I understand there wasn't a
23 lot. I understand there may have been a
24 telephone and there may have been some other
25 personal items that have been listed. Other than
26 the drugs, that should be destroyed, I think
27 everything should be returned.

1 THE COURT: Everything that is
2 Mr. Stovin's.

3 MR. BRAN: Everything that is his, yes.

4 THE COURT: Ms. Walsh?

5 MS. WALSH: Your Honour, I would state
6 that it is simply stuff that was taken during the
7 investigation, phones are often used obviously in
8 drug-type situations, however he was arrested on
9 December 31st so I couldn't possibly link that
10 telephone to the drug charge, so that's perfectly
11 fine.

12 THE COURT: Well, I am going to order that
13 the drugs be destroyed upon the expiring of the
14 appeal period and that any other exhibits be
15 returned to their rightful owner subject to any
16 application that the Crown may make to have that
17 order varied if appropriate.

18 MS. WALSH: Thank you, Your Honour.

19 THE COURT: Mr. Stovin, you have come here
20 today as a first offender, and that isn't going
21 to happen again. You are a first offender once.
22 And your counsel advised the Court that you do
23 understand -- despite what you candidly told the
24 probation officer who prepared the report, that
25 you do understand the seriousness of what you
26 have been involved in. I hope for your sake that
27 you will renounce that activity and avoid any

1 further involvement in the drug trade and in the
2 years to come that you earn the support of your
3 family who so earnestly appears to support you,
4 and that you will stay out of trouble. So good
5 luck to you.

6 I would like to thank both counsel for your
7 assistance in this matter. As well as the
8 probation officer for the report; it was most
9 helpful. And, as usual, the court staff. Court
10 will be closed.

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

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20 _____
21 Lois Hewitt, CSR(A), RPR, CRR
22 Court Reporter
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