

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

JOSEPH EMILE

Transcript of the Oral Reasons for Sentence delivered
by the Honourable Justice L.A.M. Charbonneau, sitting
at Fort Smith, in the Northwest Territories, on
July 4th, A.D. 2008.

APPEARANCES:

Mr. J. MacFarlane: Counsel for the Crown

Mr. H. Latimer: Counsel for the Accused

(Charge under s. 236(b) Criminal Code)

1 THE COURT: Good afternoon, everyone.

2 MR. LATIMER: Good afternoon.

3 MR. MacFARLANE: Good afternoon, Your Honour.

4 Just for the record, I have Constable King seated

5 with me at the counsel table.

6 THE COURT: Thank you.

7 MR. LATIMER: Yes. Hugh Latimer here for

8 the Defence, Your Honour.

9 THE COURT: I am ready to give my reasons

10 for sentence on this matter following the

11 evidence that was called yesterday and following

12 the very thorough submissions that were made by

13 both lawyers in this case, for which I thank

14 them, because they were very helpful in arriving

15 at a decision in this difficult case.

16 On June 24th, 2007 Joseph Emile got into an

17 argument with his brother, Jackson Benwell. They

18 both had been drinking. There is no evidence of

19 what caused the argument, but, whatever it was,

20 it led to a physical fight that went on for some

21 time in the house that they were in and then

22 continued for some time outside the house on the

23 road and in the ditch. People intervened to stop

24 that fight and Mr. Emile went home. There - and,

25 again, there is no evidence of why - he started

26 assaulting his sister, Evelyn. Another sister,

27 Trinity, tried to intervene, but had a hard time

1 stopping Mr. Emile, but eventually he did stop.
2 Evelyn went to the house where Mr. Benwell was,
3 told him that she had been assaulted by Mr.
4 Emile, and that prompted Mr. Benwell to go to Mr.
5 Emile's house. Mr. Benwell, it appears, said to
6 some people that were there that he would teach
7 Mr. Emile a lesson. Meanwhile, Mr. Emile had
8 called the police, and that call was still
9 happening when Mr. Benwell arrived at the house.

10 There were some different interpretations or
11 arguments made by counsel yesterday about what
12 the purpose of the call that Mr. Emile made was,
13 so I am going to quote directly from the Agreed
14 Statement of Facts at paragraph 7, which deals
15 with the question of that phone call. Paragraph
16 7 reads:

17 "While Jackson Benwell was on his
18 way to 77 St. Ann's Street, the
19 accused called the RCMP OCC operator
20 and identified himself. That call
21 was recorded. The accused asked the
22 operator if the RCMP were going to
23 send an officer before 'I fuck with
24 my brother'. He also told the
25 operator that 'I'm gonna fuck up my
26 brother outside right now, he's
27 coming to see me'. He further said

1 'He's gonna come inside and I don't
2 want him in here ... I'll have to
3 use illegal force ... I'm gonna have
4 to use illegal force, to keep him
5 out'.

6 That is the end of the quote from the Agreed
7 Statement of Facts.

8 I do not think it is necessary to put a
9 specific characterization on that call. I would
10 not characterize it as a call for assistance in
11 the way that we often see calls made to the RCMP.
12 It may have been part asking for help, part
13 warning that something may happen, but, as I said
14 already, I do not think in this case it makes a
15 big difference.

16 Mr. Benwell arrived during that call and,
17 again, an argument started between him and Mr.
18 Emile that, again, escalated to a physical fight.
19 Their sister, for the second time that evening,
20 unfortunately, had to try to break up a fight in
21 that house and did everything that she could to
22 stop it, but was not able to, although eventually
23 the fight did end. Mr. Benwell left the house
24 and less than a minute after he did that Mr.
25 Emile ran out of the house with a steak knife in
26 his hand. Mr. Benwell looked back, saw him and
27 started to run. Mr. Emile chased him two houses

1 down, caught up with him and started to hit him
2 with the knife. Mr. Emile then ran back to his
3 house.

4 Mr. Benwell died very soon afterwards. That
5 is because one of the stab wounds penetrated his
6 heart and that caused his death from losing too
7 much blood. He had three other stab wounds; one
8 in the shoulder area and one more superficial cut
9 on the palm of one of his hands and on the back
10 of the other hand.

11 Mr. Emile was arrested shortly thereafter
12 and he has been in custody ever since. Very soon
13 after this happened he wrote an apology letter to
14 his family which was filed yesterday as an
15 exhibit. Again, in court yesterday Mr. Emile
16 said that he was sorry, and I have no hesitation
17 in believing him.

18 There is no doubt in my mind that, quite
19 apart from any sentence the Court imposes for
20 this crime, Mr. Emile started serving another
21 kind of sentence the minute he learned that Mr.
22 Benwell had died. One witness said yesterday
23 that this will haunt Mr. Emile for the rest of
24 his life, and I am sure that that is true. It is
25 something that he will have to learn to live with
26 every day from now on and has been for over a
27 year.

1 But today, it is my responsibility to decide
2 what sentence should be imposed on Mr. Emile for
3 this crime in the context and within the
4 parameters of the criminal justice system.
5 Because this sad, tragic case is not just about
6 these two young men and their families or even
7 their community. There is also at stake the
8 broader public interest at large, because, sadly,
9 this is not the first time that someone dies at
10 the hands of a close relative or a close friend
11 in the context of a drunken fight fuelled by
12 alcohol. These types of incidents are all too
13 common, unfortunately. Each time they bring
14 shock, grief, disbelief that such things can
15 happen and terrible lingering pain for those
16 involved.

17 I could not agree more with what Chief
18 Daniels has said yesterday when he testified.
19 The community has to be involved, has to take
20 concrete steps to try to address the root causes
21 of this type of event. Alcohol abuse, anger and
22 violence cause ravages in communities all across
23 the Northwest Territories and elsewhere. The
24 solutions to the underlying problems will not
25 come from the outside, from the police or from
26 the courts, because the criminal justice system
27 responds after the fact. It can do very little

1 to get at the root causes.

2 Other Judges have said this before. Some
3 have said it very well; so well, in fact, that I
4 will simply quote from two of the cases that were
5 filed yesterday, because although they are cases
6 from other communities, the words spoken in those
7 cases ring equally true in this case.

8 The Sangris case was a case from Yellowknife
9 dating back to 2003. At paragraphs 4 and 5 of
10 that decision the Court said:

11 "I note the large number of people
12 in the courtroom yesterday and today
13 from N'Dilo and from Yellowknife.
14 Everybody has now heard of the
15 circumstances that led to Eddie Paul
16 Beyonnie's death and to Derek
17 Sangris being sent away to jail.

18 I hope that each person when
19 they leave the courtroom today,
20 young and old, will reflect on this
21 underlying cause, the abuse of
22 alcohol by young people in the
23 community, and ask themselves if
24 anything is going to change in the
25 community because of this tragedy;
26 will ask themselves if there is
27 anything that he or she should be

1 doing to deal with this serious
2 social problem. Or is it the case
3 that nothing will change? Will it
4 only be a matter of time before
5 another tragedy like this happens
6 again; next month, next year or the
7 year after that? How many bright,
8 talented, healthy young men like
9 Eddie Paul Beyonnie will die before
10 any changes are made in the
11 community to deal with the excessive
12 drinking by young people?"

13 That is the end of the quote from the Sangris
14 case.

15 Then in R. v. D.N.K., which is a decision
16 from 2004, this time the events happened in Fort
17 Good Hope, and I am quoting now what the Court
18 said in paragraphs 8 to 14. It is a long quote,
19 but I think it is worth repeating what was said
20 then.

21 "This type of drunken altercation
22 with tragic circumstances and tragic
23 consequences is not something new to
24 this Court. Sadly - sadly - it has
25 happened all too often in this small
26 jurisdiction, as indicated by
27 counsels' references to some other

1 cases from other communities.

2 Violent crime invariably
3 associated with excessive alcohol
4 consumption has continued and
5 continued for many years in our
6 communities. In each of the last
7 three or four years, the rate of
8 violent crime in this jurisdiction
9 has been five or six times the
10 national average. It is clear,
11 then, that a meaningful deterrent
12 sentence is required in a case such
13 as this one.

14 The Court can do little else
15 but to impose a significant sentence
16 of imprisonment upon Mr. D.N.K.; a
17 sentence that reflects the gravity
18 of the crime he has committed and
19 the degree of his moral culpability
20 for this crime.

21 But is there anything else that
22 the community can do? Is there
23 anything else that can be done here
24 in the community of Fort Good Hope
25 in an effort to ensure that such a
26 tragedy does not occur again here?

27 Or is it the case that in a few

1 months the tragic circumstances
2 which led to Jeffery Kelly's death
3 and D.N.K.'s lengthy incarceration
4 will be forgotten? And by
5 circumstances, I am referring to the
6 excessive consumption of alcohol by
7 young men in this community.

8 Will any lessons be learned by
9 this tragedy? Will anything change?

10 I leave those questions with
11 the community, and particularly with
12 the community leaders. The primary
13 purpose of the sentence to be
14 imposed by the Court today is the
15 protection of the members of the
16 community, but in my respectful
17 view, the Court alone cannot achieve
18 this goal. In my respectful view,
19 there is a large role for the
20 community itself and the community
21 leaders."

22 That is the end of the quote from D.N.K.

23 These words, I would say every one of these
24 words, applies here. I ask myself those exact
25 same questions: Will this tragedy change
26 anything? And I, too, leave this question with
27 this community and with its leaders.

1 All that being said, every sentencing that
2 the Court does has to take into account general
3 principles of sentencing, the circumstances of
4 the offence and the circumstances of the
5 offender.

6 The principles of sentencing were referred
7 to by both lawyers yesterday in some detail.
8 They are written in the Criminal Code, and I,
9 too, want to refer to some of them, because they
10 are important. They provide the framework that
11 the Court by law has to work with in trying to
12 arrive at a fit sentence for a crime.

13 So the first section I want to refer to is
14 section 718. That is the section that explains
15 what the fundamental purpose of sentencing is,
16 and it says that that purpose,

17 "... is to contribute, along with
18 crime prevention initiatives, to
19 respect for the law and the
20 maintenance of a just, peaceful and
21 safe society by imposing just
22 sanctions that have one or more of
23 the following objectives."

24 And those objectives are:

- 25 (a) to denounce unlawful conduct;
26 (b) to deter the offender and other
27 persons from committing offences;

1 (c) to separate offenders from
2 society, where necessary;
3 (d) to assist in rehabilitating
4 offenders;
5 (e) to provide reparations for harm
6 done to victims or to the community; and
7 (f) to promote a sense of
8 responsibility in offenders, and
9 acknowledgement of the harm done to
10 victims and to the community."

11 Section 718.1 talks about the fundamental
12 principle of sentencing, which is that,
13 "A sentence must be proportionate to
14 the gravity of the offence and the
15 degree of responsibility of the
16 offender."

17 Then section 718.2 sets out other
18 principles, which I will not all read, because
19 some of them are not applicable in this case,
20 though the two that I think are the most relevant
21 in that section are:

22 "(b) a sentence should be similar to
23 sentences imposed on similar
24 offenders for similar offences
25 committed in similar circumstances;
26 (e) all available sanctions other
27 than imprisonment that are

1 reasonable in the circumstances
2 should be considered for all
3 offenders, with particular attention
4 to the circumstances of aboriginal
5 offenders."

6 Those are the principles that I must apply today.

7 Next, I have to consider the circumstances
8 of the offence. The offence that Mr. Emile has
9 committed is a very serious one. It is so
10 serious that it can be punishable by life
11 imprisonment. As counsel have said, manslaughter
12 is a crime that can involve a wide range of
13 conduct and a wide range of culpability or
14 blameworthiness, because it can arise from
15 conduct coming very close to what would otherwise
16 be an accident and it can also include conduct
17 that is very, very close to murder, which is the
18 intentional killing of another person.

19 In my view, stabbing someone in the chest
20 with a knife, even if it happens in a context
21 where there has been arguing and fighting leading
22 up to it, is conduct that falls at the high end
23 of moral culpability and moral blameworthiness.
24 It is not at all like the situation, for example,
25 where someone shoves or pushes someone unlawfully
26 and that person trips and falls and hits their
27 head and dies as a result. There are cases where

1 that actually happens. But stabbing someone
2 through the chest is almost certain to cause
3 serious harm or death to the person. When it
4 does not, when it is an inch to the right or an
5 inch to the left or the knife hits a bone and the
6 victim ends up with a few stitches, that is the
7 result of pure luck. It has nothing to do with
8 the seriousness of the act.

9 One of the issues in this case that I heard
10 submissions about yesterday was whether there was
11 or not a gap in the altercation involving these
12 two young men. I accept that the events of that
13 evening unfolded in a relatively continuous way
14 with the common denominator of senseless, useless
15 and wasteful drunken violence. But, Mr. Emile
16 made a choice not only to arm himself with a
17 knife during these events, but he made a decision
18 to go after his brother and to chase him when his
19 brother tried to run away. So with or without a
20 gap, I find that those actions involve a high
21 level of moral blameworthiness.

22 It is also an aggravating factor that Mr.
23 Emile was on process. That is, he was bound by
24 separate court orders at the time and he was on
25 the condition not to drink alcohol. That is an
26 aggravating factor that I have taken into
27 account.

1 I must also take into account, as I have
2 already said, Mr. Emile's personal circumstances.
3 He is a very young man. He has a criminal
4 record, which was filed as an exhibit, but I
5 attach very little weight to that record. It is
6 unrelated and it is relatively minor. Having a
7 criminal record is always a factor on sentencing,
8 but in this case I do not find that it is a
9 significant one.

10 I heard testimony from his former employer
11 that he was a good worker, a good employee, that
12 he always got along well with his co-workers and
13 customers. I think it says a lot that this
14 former employer continues to say that when Mr.
15 Emile is released from custody, whenever that is,
16 he will have a job with that company if he wants
17 one.

18 Mr. Emile has been on remand for one year,
19 and he has started to attend AA meetings. He has
20 said that he will go to AA meetings for the rest
21 of his life, which suggests he recognizes now
22 that alcohol is something he needs to stay away
23 from. I hope that with some help he can also
24 eventually understand where this violence that
25 was displayed on that night comes from, because
26 alcohol may be a trigger or something that
27 contributes to loss of control, but alcohol is

1 not the source of the violence.

2 I heard evidence from Mr. Emile's father.
3 He talked about some of his own struggles with
4 alcohol and violence. He talked about how he
5 wanted to try to make up for some of the lost
6 time, in particular with his sons; something now
7 he will not have an opportunity to do with
8 Mr. Benwell, but that he still wants to do with
9 Mr. Emile. He talked about how he forgives his
10 son for what has happened and how he will be
11 there for him when he is released.

12 I did not hear a lot of details about the
13 circumstances of Mr. Emile growing up, but enough
14 to understand that there was alcohol abuse and
15 violence in the home. On a more positive note,
16 he did have an opportunity to go trapping with
17 his father from time to time, and his father
18 wants a chance to teach him more hunting and
19 trapping skills. Mr. Emile's family is part of
20 the Smith Landing Band. English was the language
21 mostly spoken in the home, although there was
22 also some Chipewyan spoken.

23 Mr. Emile's Aboriginal heritage is a factor
24 that has to be considered in sentencing him. His
25 lawyer has argued it is a significant factor and
26 has asked me to give it much weight.

27 The cases that the lawyers have referred to,

1 R. v. Gladue and R. v. Wells, were cases from the
2 Supreme Court of Canada, which is the highest
3 court in the country, and those cases gave
4 guidance to sentencing Judges about how they
5 should approach sentencing of Aboriginal
6 offenders. I am not going to read from the cases
7 themselves, but I have reviewed them both in my
8 deliberations, and I want to talk in a general
9 way about some of the principles that they stand
10 for.

11 The cases talk about the importance of
12 approaching the sentencing of Aboriginal
13 offenders in a manner that is different and that
14 takes into account their situation. That is
15 because the law recognizes that there are
16 systemic and historical factors that have greatly
17 disadvantaged Aboriginal people, subjected many
18 of them to difficult conditions, and that those
19 conditions have contributed to some of them
20 coming into conflict with the law, and it has
21 contributed to the overrepresentation of
22 Aboriginal people in jails in Canada. So the
23 Court has to be sensitive to those factors and
24 see whether in a specific case how that reality
25 should impact on the sentence to be imposed.

26 The Court also has to consider whether,
27 because of those factors, an approach to

1 sentencing that is more restorative and more in
2 line with the offender's culture and heritage and
3 traditional approaches to resolving conflict
4 might be appropriate. For example, there might
5 be cases where, instead of sending someone to
6 jail, a community based sentence is better to
7 achieve the goals of sentencing, the offender's
8 rehabilitation, the denunciation of the crime and
9 the reparation of harm done to the victims and
10 the community.

11 This different approach does not necessarily
12 mean that there will be a different result,
13 although, in appropriate cases, it might. There
14 is no automatic reduction of the length of
15 sentence because of this approach, but a shorter
16 sentence or a different type of sentence may
17 sometimes be the result of factoring in these
18 various things. But the Supreme Court has also
19 said that there are cases where this different
20 approach and these factors will not lead to a
21 different result, and the Court has said that the
22 more serious the offence, the less likely it is
23 to lead to a different result. This is simply
24 because all the other sentencing principles also
25 have to be taken into account.

26 So going back to what the section in the
27 Criminal Code says, it says that:

1 "All sanctions other than
2 imprisonment that are reasonable in
3 the circumstances must be considered
4 with particular attention to the
5 circumstances of Aboriginal
6 offenders."

7 In the circumstances of this offence, there
8 are no reasonable alternatives to a significant
9 jail term being imposed. As I have already said,
10 these types of incidents where knives are
11 introduced into fights are all too common. There
12 are probably cases of assault with a weapon on
13 virtually every docket of the Territorial Court
14 in the various communities where it sits.
15 Surprisingly enough, amazingly enough, there are
16 many times where the victim is not injured or is
17 not injured seriously, and often in those cases
18 Judges will say to the accused, it could have
19 easily been far worse. As I have already said,
20 often times it is a matter of centimetres or
21 inches and pure luck. And maybe it is because
22 people use knives and other weapons to assault
23 others so often and, relatively speaking, it is
24 so rare that a death occurs that people begin to
25 think it maybe is not that bad to use weapons,
26 not that dangerous. So the Court has to denounce
27 that conduct firmly, even when after the fact the

1 remorse and the sorrow are very real.

2 So although I have taken into account Mr.
3 Emile's Aboriginal heritage, in the circumstances
4 of this case it cannot lead me to reduce
5 significantly the sentence that must be imposed.

6 There is another sentencing principle that I
7 have mentioned, the one that says that similar
8 offences committed in similar ways by similar
9 offenders should lead to similar sentences.

10 The cases that were filed were very helpful
11 in establishing the range of sentences that are
12 imposed in this jurisdiction for crimes of this
13 type. Of course, no two cases are ever the same.
14 The lawyers have done very well in pointing out
15 the similarities and differences between the
16 cases that were filed and this case. I have read
17 those cases carefully, the ones that were filed,
18 and I think that the Sangris case, which I have
19 already quoted from, is the one that is the most
20 similar to this one, although I do find the
21 circumstances in that case are more aggravating
22 than the ones in this case, and Mr. Sangris, it
23 must be remembered, got the equivalent of a
24 seven-year sentence.

25 The Emikotailuk case also has some
26 similarities, but, because the decision does not
27 provide a lot of details about the facts, it is a

1 little bit harder to compare, but he, too, got a
2 sentence the equivalent of seven years.

3 In the final analysis in this case, the
4 Crown says a sentence between six and seven years
5 is appropriate and is arguing for the high end of
6 that range. Taking into account the time that
7 Mr. Emile has already spent on remand, for which
8 the Crown acknowledges he should receive credit,
9 that means I should impose a sentence between
10 four and five years, and the Crown is asking for
11 the higher end of that range. So, for all
12 intents and purposes, the Crown is asking me to
13 impose a further jail term of five years.

14 Defence counsel agrees - and this is fair
15 and in Defence counsel's usual way - he agrees
16 that what the Crown is asking for is reasonable
17 and within the range of sentences that can be
18 imposed for this type of offence. He asks me to
19 depart from that range to take into account Mr.
20 Emile's Aboriginal heritage, the main reason
21 being to enable him to serve his sentence in the
22 Northwest Territories as opposed to a southern
23 penitentiary. This is so that Mr. Emile can
24 access programs that are geared towards the
25 people of this jurisdiction and also so he can
26 remain closer to where his family and other
27 members of the community can be in contact with

1 him and visit him to make his reinsertion and
2 return to the community easier when he is
3 released.

4 A sentence of two years or more normally is
5 served in a federal institution, and we do not
6 have a federal institution in the Northwest
7 Territories. So the only way for me to be sure
8 that Mr. Emile would serve his sentence in the
9 North would be to impose a sentence of no more
10 than two years less one day. That is also the
11 maximum sentence I would have to impose if I
12 wanted to have the period of jail followed by
13 probation, and I accept that it probably would be
14 useful for Mr. Emile to be supervised for a time
15 after his release and that probation might be
16 good for him. But I simply cannot, on the facts
17 of this case, impose a sentence in that range.

18 But I want to make sure that Mr. Emile and
19 others understand that I have listened carefully
20 to what has been said about this issue yesterday.
21 I listened carefully and I understand what the
22 witnesses said about why it would be better for
23 Mr. Emile not to go to a federal penitentiary far
24 away from his home. I have taken into account
25 also what I heard about the programs available in
26 the northern facilities, and I agree that Mr.
27 Emile's ability to come back to his community and

1 be reintegrated is going to be better if he can
2 stay in touch with his family and community
3 members. Mr. Emile himself recognized the need
4 for support from his family soon after these
5 events, because he referred to it in the letter
6 of apology that he wrote.

7 But I cannot impose a sentence of two years
8 less a day for this offence, because such a
9 sentence would not take into account some of the
10 important sentencing principles that I have
11 talked about. It would not send the kind of
12 message that needs to be sent generally,
13 especially considering how often these types of
14 incidents occur in this jurisdiction. So
15 although defence counsel has said absolutely
16 everything that could be said to support this
17 request, I am not able to agree to it.

18 I have taken into account Mr. Emile's guilty
19 plea, for which I accept he should receive full
20 credit. I have also taken into consideration his
21 young age, the fact that his criminal record is
22 minor, and I have reminded myself, as the Judge
23 did in the Aquiatasuk case filed by the Crown,
24 that no sentence or punishment should be more
25 harsh or severe than necessary in order to
26 achieve its purpose.

27 So factoring all of this, exercising as much

1 restraint as I feel I can under the
2 circumstances, and although I find this
3 particular case very close to the Sangris and
4 Emikotailuk cases as far as seriousness, I will
5 impose a sentence at the lowest end of the range
6 suggested by the Crown.

7 I have absolutely no hesitation in
8 recommending that correctional authorities
9 consider allowing Mr. Emile to serve his sentence
10 in the Northwest Territories, and I make that
11 recommendation in the strongest possible terms in
12 the circumstances of this case, for all the
13 reasons that his lawyer talked about, for the
14 reasons that some of the witnesses talked about
15 and for some of the reasons that I, myself, have
16 talked about.

17 If I could order that Mr. Emile serve his
18 sentence in the North, I would. Hopefully, the
19 correctional authorities will take into
20 consideration what I have said and take my
21 recommendation into account when the time comes
22 to make the decision.

23 In the hopes that this happens, I am going
24 to make a direction in this case that is a little
25 bit out of the ordinary. Usually correctional
26 authorities get a copy of the reasons for
27 sentence, but they do not necessarily get a copy

1 of the entire transcript of the sentencing
2 hearing, or at least I don't think they do. So
3 in this case I am directing that a transcript of
4 the full sentencing hearing, including the
5 evidence that was called yesterday, will be filed
6 by the Court Reporter and provided to the
7 correctional authorities so that they, too, have
8 all the details of what people have said and the
9 full context of the situation, and I hope that
10 that will help them make a decision about where
11 Mr. Emile should serve his sentence.

12 Mr. Emile, please stand. Mr. Emile, for the
13 crime of manslaughter you have committed and, as
14 I say, exercising as much restraint as I feel I
15 can, I have concluded that the appropriate
16 sentence should be six years. Because you have
17 already been in jail for one year, I am
18 sentencing you to four years in jail. So now you
19 can sit down.

20 Madam Clerk, the Warrant of Committal, as I
21 said, should be endorsed with the Court's
22 strongest recommendation that Mr. Emile be
23 allowed to serve his sentence in the Northwest
24 Territories and a transcript of the full hearing
25 is to be filed with the Court and provided to
26 those authorities.

27 There will also be a firearms prohibition

1 order for a period of ten years. Any firearms in
2 the possession of Mr. Emile are to be surrendered
3 forthwith. This order is made under section 109
4 of the Criminal Code.

5 There will also be a DNA order in the usual
6 form, because this is a primary designated
7 offence for which the Court has no discretion not
8 to make the order.

9 I have considered the provisions of section
10 737 of the Code that deal with the victim of
11 crime surcharge. Because of the length of the
12 jail term that I am imposing, I am not going to
13 make an order for a surcharge, because it is in
14 my discretion to waive it.

15 Do counsel need any specific order having
16 regard to exhibits?

17 MR. MacFARLANE: Yes, Your Honour. Madam Clerk
18 brought to my attention there was one exhibit in
19 particular that was filed at the Preliminary
20 Inquiry, and, as Your Honour is aware, those
21 exhibits were passed on to the Supreme Court.
22 The exhibit in question is the OCC call that we
23 have made reference to and the CD or a copy of
24 it, and if that could be returned to the Crown.
25 I leave it in Your Honour and my friend's hands
26 whether that be done immediately, if he consents,
27 or at the --

1 MR. LATIMER: I will consent. I consent.

2 MR. MacFARLANE: Of if we need to wait till the
3 expiration of the appeal period.

4 THE COURT: What about exhibits that
5 remain in the custody of the RCMP? Do you want
6 an order for their destruction or return,
7 anything returned to their lawful owners?

8 MR. MacFARLANE: I hadn't turned my mind to
9 that, Your Honour.

10 THE COURT: Well, I think what I will do,
11 then, I will make the order, subject to the
12 expiration of the appeal period, just to be on
13 the safe side. The exhibit that is in the
14 Court's custody will be returned forthwith to the
15 RCMP, and then all exhibits at the expiration of
16 the appeal period will be either destroyed or
17 returned to their lawful owners, if appropriate.

18 So there will be some time for the RCMP to
19 canvass with those concerned if there is anything
20 that people want returned, because I don't know
21 what the exhibits were, it is hard to tell, and
22 often times people do not want things back, but
23 that option will be there if anybody does.

24 MR. MacFARLANE: Thank you, Your Honour.

25 THE COURT: Is there any further order
26 that the Crown needs?

27 MR. MacFARLANE: Not as far as I'm aware, no,

1 Your Honour.

2 THE COURT: Anything the Defence needs?

3 MR. LATIMER: No. No, Your Honour.

4 THE COURT: Mr. Emile, I know this is a
5 long sentence and it does not make me happy to
6 send a young man like you to jail for as long,
7 but you are young now and you will be young when
8 you get released. You have family support, you
9 have community support, and in that sense you
10 have something that a lot of people who come
11 before the Court to be sentenced do not have,
12 because you probably know this, but many people
13 stand alone or with their lawyer, but with no one
14 else that believes in them and wants to help
15 them. So you have that on your side.

16 It is the Court's sincere hope that you will
17 get on the right track and stay on the right
18 track. You have reason to have hope in the
19 future, and you might actually be able to help
20 others, because you know firsthand the kind of
21 damage that alcohol and violence can do, and
22 there are people who may listen to you a lot more
23 than they listen to outsiders like the police or
24 the Court. So if you make the right choices,
25 there is reason for you to have hope and to
26 contribute to your community, and sincerely that
27 is my wish for you.

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

THE ACCUSED:

Thanks.

.....

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

Jill MacDonald, RMR
Court Reporter