

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

WAYLON STORR

Transcript of the Reasons for Judgment and Reasons for Sentence delivered by The Honourable Justice J.Z. Vertes, sitting in Inuvik, in the Northwest Territories, on the 13th day of May, A.D. 2008.

APPEARANCES:

Mr. B. Lepage: Counsel for the Crown

Mr. W. Storr: For himself

(Charges under s. 266, 348(1)(b) and 88(1) Criminal Code)

1 THE COURT: Waylon Storr is charged with
2 three offences: (1) an assault on Jolene Lennie,
3 contrary to Section 266 of the Criminal Code; (2)
4 break, enter and commit mischief in the residence
5 of Jolene Lennie, contrary to Section 348(1)(b);
6 and (3) carrying a knife for the purpose of
7 committing an offence, contrary to Section 88(2)
8 of the Criminal Code. All of the alleged
9 offences arise out of the same sequence of events
10 occurring in the early morning hours of November
11 4, 2006, in Inuvik.

12 Here are the facts as I find them to be
13 based on the evidence I accept.

14 The accused and his then girlfriend, Sarah
15 MacNabb, were drinking at a party. They argued.
16 Sarah left and went to the home of Jolene Lennie.

17 Shortly thereafter the accused arrived. He
18 came in the front door of the residence. The
19 evidence is not clear as to whether the door was
20 closed or open, but it is agreed that it was not
21 locked. Jolene told him not to come in. He
22 forced himself in. Jolene's evidence on these
23 points was corroborated by Debbie Bernhardt and
24 Sarah. In the process of forcing himself in, the
25 accused struck Jolene in the face. This evidence
26 from Jolene is corroborated by Debbie.

27 Once inside the living room, the accused

1 tried to get Sarah to leave with him. She did
2 not want to. At one point, there was a
3 tug-of-war over Sarah with the accused on one end
4 and Jolene and Debbie on the other.

5 The accused then went into the kitchen and
6 took a kitchen knife. Jolene followed him, but
7 he pushed her out of the way and he punched her
8 again. He then went toward Sarah with the knife
9 in his hand. He was telling her he loved her and
10 wanted her to go with him. Debbie heard him say
11 he would cut his wrists, and at one point the
12 accused inflicted some superficial cuts on his
13 wrist.

14 The others in the house managed to calm him
15 down and the police were called.

16 This summary is taken from the evidence
17 given by Jolene and Debra. I accept it. I found
18 both witnesses to be straightforward. They did
19 not demonstrate any hostility or animosity toward
20 the accused, and I did not detect any tendency to
21 embellish what they had to say.

22 In some respects the evidence of Sarah
23 supports this narrative, but she did not see or
24 hear much because Debra was shielding her
25 throughout much of this.

26 The accused testified. He denied striking
27 Jolene at any time. He said he took the knife

1 because he thought Jolene was going for it. All
2 he did, he said, was to break the knife in two
3 and throw it away. He kept asking Sarah to go
4 with him, but she would not answer.

5 I do not believe the accused's version of
6 events, nor does his evidence leave me with a
7 reasonable doubt as to the facts recited above.

8 The main reason I say that is because of the
9 accused's own admission that he had been drinking
10 quite a bit that night. As he put it: "I just
11 remember flashes of that evening because I was
12 drinking." He says he was blacking in and out
13 and his memory of events is shaky. Asked why he
14 cut himself, he said he does not know, he cannot
15 remember, but obviously he did because, the next
16 morning, he had the cuts.

17 His intoxication was confirmed by the
18 observations of the arresting officers. Indeed,
19 the arresting officers were so concerned about
20 his condition that they wanted to take him for a
21 mental health assessment the following morning.
22 Debra described him, as well, as acting "freaky".

23 On Count 1, the charge of assault, I am
24 satisfied beyond a reasonable doubt that the
25 accused struck Jolene Lennie, as she said. I
26 therefore find him guilty of that charge.

27 On Count 2, the charge is breaking and

1 entering and committing the offence of mischief.
2 There is no question that the accused entered
3 Jolene Lennie's residence. However, I am not
4 convinced that the evidence establishes the
5 requisite "breaking" part of the offence.
6 Section 321 defines "break" as, among other
7 things, to open any thing that is used or
8 intended to be used to close or to cover an
9 opening. As I noted earlier, the evidence is not
10 clear as to whether the door to the Lennie
11 residence was open or closed. If it was open, I
12 fail to see how the full "break and enter"
13 offence can be said to have been committed.

14 There is no question that the accused came
15 into the residence over Jolene's objections. He
16 forced his way in. For that reason, I had
17 thought that it could be said he had committed
18 the offence of forcible entry, contrary to
19 Section 72 of the Criminal Code. Whether that
20 offence, however, is an included offence of the
21 offence under Section 348(1)(b) is unclear. A
22 2001 decision from the British Columbia Court of
23 Appeal, R. v. Schizgal, reported at 153 C.C.C.
24 (3d) 245, says it is not.

25 The Indictment, however, is worded so as to
26 incorporate the offence of mischief. That is a
27 lesser and included offence. One of the

1 definitions of mischief is the obstruction,
2 interruption or interference with the lawful use
3 or enjoyment of property. There is no question
4 that the actions of the accused interrupted the
5 lawful use of the Lennie residence by Jolene and
6 her invited guests. Furthermore, since mischief
7 is a general intent offence, the accused's
8 intoxication is not a defence.

9 Therefore, on Count 2, I find the accused
10 not guilty of the offence charged but guilty of
11 the lesser and included offence of mischief,
12 contrary to Section 430(1)(c) of the Criminal
13 Code.

14 Finally, on Count 3, the charge of carrying
15 a knife for the purpose of committing an offence,
16 Crown counsel concedes that this is a specific
17 intent offence. Intoxication, therefore, may
18 negate that intent.

19 In this case, there is ample evidence of the
20 accused's erratic behaviour. As Debra said, he
21 was acting "freaky". His actions were not those
22 of someone capable of forming a specific intent,
23 or, at least, the evidence raises a reasonable
24 doubt about his intent.

25 When asked about what offence the Crown is
26 alleging the accused had the knife for, Crown
27 counsel said it was to threaten Sarah or others

1 and, in that way, to get Sarah to go with him.
2 Debra at one point said that she heard the
3 accused say he will kill Sarah. But this was at
4 the same time, as she testified, that the accused
5 said he was going to kill himself. If that
6 statement was made, and I am not convinced that
7 it was, this seems more indicative of an
8 individual who is not thinking clearly and who
9 does not have the capacity to form the specific
10 intent necessary to support this charge.

11 Therefore, I find the accused not guilty on
12 Count 3.

13 (SUBMISSIONS ON SENTENCE BY COUNSEL)

14 (ADJOURNMENT)

15 THE COURT: The accused, Waylon Storr, was
16 convicted by me after a short trial on two
17 charges: One of assault, contrary to Section 266
18 of the Criminal Code, and the other of mischief,
19 contrary to Section 430(1)(c) of the Criminal
20 Code.

21 The case has a long history. The
22 circumstances of the offences are set out in my
23 reasons for judgment that I just delivered. The
24 facts as I found them to be in the support of the
25 two convictions are set out therein.

26 The offences occurred on November 4, 2006.
27 The accused had a preliminary inquiry. He was

1 committed to stand trial on May 16th, 2007. His
2 counsel withdrew on October 29th, 2007. There
3 were appearances in this court in October and
4 March of this year, and the accused appeared for
5 his trial and for his sentencing representing
6 himself.

7 He had been told at his last court
8 appearance in March that the case was proceeding
9 this week with or without a lawyer. Having said
10 that, I have to acknowledge that the accused
11 represented himself appropriately and put forth
12 submissions on his own behalf with respect to the
13 matters that I had to consider.

14 From examining the file, it appears that the
15 accused has been free on judicial interim release
16 since he was charged in December of 2006. It
17 does not appear that there were any conditions on
18 that release, and nothing has been said to me
19 that the accused has caused any difficulty since
20 he was charged and during that period of release
21 awaiting trial.

22 Crown counsel has provided me with a
23 criminal record. It is very brief. The accused
24 was convicted in June of 2006 of a charge of
25 assaulting a police officer. He was fined \$750.

26 The accused is 22 years old. He lives with
27 his parents here in Inuvik. He has a Grade 11

1 education but has training in welding and
2 mechanics. He had been working in the family
3 construction and trucking business up until last
4 year when it ceased operations. He tells me he
5 is trying to get into an apprenticeship program
6 and there is a good prospect of his doing so.

7 Crown counsel has submitted that the
8 circumstances of the offences call for a short
9 jail term plus a period of probation. That
10 probation period, Crown counsel suggests, should
11 at least include a requirement that the accused
12 attend any counselling or treatment programs as
13 may be directed by his probation officer to deal
14 with anger management and probably alcohol abuse
15 issues. The accused tells me that he is willing
16 to engage in such programs and that he thinks it
17 would be a good idea.

18 I must say that I gave serious consideration
19 to a short jail term when I first thought about
20 the circumstances of this offence, but learning
21 more about Mr. Storr's background, and
22 particularly considering the fact that he has
23 been out on release since being charged awaiting
24 trial for such a long period of time without any
25 apparent incident, satisfies me that the goals of
26 sentencing can be met without sending Mr. Storr
27 to jail.

1 Mr. Storr, stand up, sir. I thought you
2 handled yourself very well during the trial and
3 in making your comments on sentencing. And as I
4 said, ordinarily, if your personal circumstances
5 were not the way they are, I think anybody would
6 give serious consideration to a jail term. I am
7 not going to do that. Instead, I am going to
8 suspend the passing of sentence and I am going to
9 put you on probation for a period of two years.
10 The conditions of probation are this. You are to
11 keep the peace and be of good behaviour.

12 MR. STORR: Yeah.

13 THE COURT: Two, you are to report to the
14 Court if and when required to do so.

15 MR. STORR: Yes.

16 THE COURT: You are to seek and maintain
17 steady employment or attendance at an education
18 or trades training course. You are to report to
19 and be under the supervision of a probation
20 officer, and you are to report to the probation
21 officer here in Inuvik within 48 hours.

22 MR. STORR: Yeah.

23 THE COURT: You are to attend any
24 counselling or treatment programs as directed by
25 the probation officer. Do you agree to that?

26 MR. STORR: Yes.

27 THE COURT: You are not to contact Jolene

1 Lennie or to approach her residence. You are to
2 perform 120 hours of community service work
3 during the first 12 months of your probation
4 period under the direction of your probation
5 officer.

6 MR. STORR: Yeah.

7 THE COURT: And during the first 12 months
8 of your probation, you are not to be in any bar
9 unless you are working there; and if you are
10 working in a bar as a bouncer, as you told me,
11 then you are to be sober.

12 MR. STORR: Yeah.

13 THE COURT: You understand those
14 conditions?

15 MR. STORR: Yes.

16 THE COURT: Now, I have suspended the
17 passing of sentence, and what that means, and you
18 should be clear about this, Mr. Storr, if you
19 break any of these conditions, if you commit an
20 offence, then you can be brought before me and I
21 can sentence you, re-sentence you, for these
22 charges. Do you understand?

23 MR. STORR: Yes.

24 THE COURT: All right. A suspended
25 sentence will apply on both charges, Madam Clerk.

26 THE COURT CLERK: Thank you, sir.

27 THE COURT: You can have a seat.

1 Under the circumstances, I will waive the
2 requirement for a victim of crime surcharge. Is
3 there anything I have neglected, Mr. Lepage?

4 MR. LEPAGE: No, Your Honour. Thank you.

5 THE COURT: Mr. Storr, you are going to
6 have to stick around while the clerk prepares the
7 probation order. You are going to have a chance
8 to review it. You will have to sign it. And
9 then, Mr. Lepage, perhaps you can give
10 information to Mr. Storr how he can get in touch
11 with the probation officer.

12 MR. LEPAGE: Certainly, Your Honour.

13 THE COURT: Do you have any questions,
14 Mr. Storr?

15 MR. STORR: No.

16 THE COURT: Then thank you. Thank you,
17 Mr. Lepage.

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21 Certified Pursuant to Rule 723
22 of the Rules of Court

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25 Jane Romanowich, CSR(A), RPR
26 Court Reporter

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