

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MYLES LENNIE

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. Charbonneau, in Inuvik, in the Northwest Territories, on the 9th day of February, 2012.

APPEARANCES:

Ms. D. Vaillancourt: Counsel on behalf of the Crown

Mr. T. Bock: Counsel on behalf of the Accused

Charge under s. 268 C.C.

1 THE COURT: Myles Lennie was found guilty
2 by a jury yesterday on a charge of aggravated
3 assault against Billy McNeely. Today, it is my
4 responsibility to decide what his sentence should
5 be for that very serious crime.

6 The charge arises from unfortunate events
7 that took place in Fort Good Hope almost two
8 years ago, on April 30th, 2010. That evening
9 should have been a happy one, as Mr. Lennie and
10 others were gathered to celebrate his brother's
11 birthday, Laurent. Mr. McNeely was one of
12 several people who were at Laurent Lennie's house
13 for that occasion.

14 People were drinking beer and shots of vodka
15 mixed with water, and were watching a hockey
16 game. But unfortunately, in relatively short
17 order something developed between Mr. Lennie and
18 Mr. McNeely, which resulted in a physical
19 altercation and, ultimately, in Mr. Lennie
20 stabbing Mr. McNeely both inside the residence
21 and then again a short time later, outside the
22 residence.

23 There were many admissions that were made at
24 the trial and those admissions narrowed down the
25 issues considerably. The only issue at trial was
26 whether Mr. Lennie stabbed Mr. McNeely in
27 self-defence.

1 The first issue that I must address in this
2 decision is on what factual basis Mr. Lennie is
3 to be sentenced. In our criminal justice system,
4 juries do not provide reasons for their
5 decisions. Their deliberations and reasons for
6 arriving at their decision, are protected by
7 strict confidentiality. Where a verdict leaves
8 ambiguity or uncertainty about what findings of
9 facts were made to lead to that verdict, the
10 trial judge must make the factual findings in
11 those areas. This is a case where I must do so
12 because of the manner in which the evidence
13 unfolded.

14 The evidence was clear that there was a
15 physical confrontation between the two men inside
16 the residence, and that during that altercation
17 Mr. Lennie stabbed Mr. McNeely in the arm. The
18 evidence was also clear that a short time after
19 that, after Mr. Lennie had gone outside the house
20 and Mr. McNeely went outside also to confront
21 him, Mr. Lennie stabbed Mr. McNeely again.

22 I explained to the jury that in order to
23 find Mr. Lennie not guilty of aggravated assault,
24 they needed to be satisfied that he was acting in
25 self-defence both times he stabbed Mr. McNeely,
26 that is, both inside the residence and outside
27 the residence. Because of that, the verdict

1 leaves open more than one possibility as to what
2 facts the jury found. The jury may have
3 concluded that Mr. Lennie was acting in
4 self-defence at one point but not at the other.
5 This is what the Defence is asking me to
6 conclude. The Defence is asking me to conclude
7 that Mr. Lennie was acting in self-defence inside
8 the residence but not outside the residence.

9 The other possibility is that the jury
10 concluded that Mr. Lennie was not acting in
11 self-defence at either point, and that is the
12 position that is being advanced by the Crown.

13 In addition to resolving that issue, I must
14 make findings of fact because of how the evidence
15 came out and because of the nature of the law of
16 self-defence. This is not one of those cases
17 where the verdict provides a clear-cut black and
18 white answer as to what evidence was accepted and
19 what evidence was rejected. The jury may have
20 found self-defence was not available for any
21 number of reasons. For example, in considering
22 the Defence set out in paragraph 1 of section 34
23 of the Criminal Code, the jury could have decided
24 that it was not available because Mr. Lennie was
25 the one who provoked the assault. Or they could
26 have found it was not available because they
27 decided he used more force than was necessary

1 under the circumstances. There might have been
2 other reasons or combination of reasons why they
3 rejected the self-defence defence advanced in
4 this case.

5 Under the circumstances, I must make
6 findings of facts in the context of the
7 sentencing hearing, and that is why I invited
8 submissions from counsel about this issue.

9 The Crown's position is that I should
10 conclude that Mr. Lennie was the aggressor
11 throughout this continuous incident, that he
12 initiated the physical confrontation inside the
13 house, and later escalated that confrontation by
14 introducing a knife into it; and that once
15 matters were taken outside the residence, he
16 continued to be the aggressor.

17 The Defence position is that I should
18 conclude that it was Mr. McNeely who was the
19 aggressor when the physical confrontation
20 happened inside the house, and that the stabbing
21 of Mr. McNeely's arm was done in self-defence. I
22 also understand Defence to be suggesting that I
23 should conclude that Mr. McNeely was also the
24 aggressor outside the residence. In essence,
25 Defence asks me to interpret the jury's verdict
26 as not having necessarily rejected Mr. Lennie's
27 version of events completely, but as meaning that

1 the jury concluded that he may have simply gone
2 too far as the events unfolded outside the
3 residence. The parties' proposed interpretations
4 of the verdict are quite different, and it is my
5 task to decide which one should prevail.

6 Three witnesses were called at this trial:
7 Mr. McNeely, Angela Love, and Mr. Lennie himself.
8 There were some overlaps in the evidence of these
9 witnesses, but also, in some respects,
10 significant differences. In my view, the most
11 reliable evidence by far is the evidence of
12 Angela Love, and I say this for a number of
13 reasons. She had only had half a beer before any
14 of this happened. She was new to Fort Good Hope
15 and was at this gathering because she worked with
16 Laurent Lennie's girlfriend. That person, the
17 girlfriend, now lives in Ontario, and there's no
18 evidence of any continuing relationship or
19 connection that could potentially taint
20 Ms. Love's evidence or give her a bias either way
21 in this case. Ms. Love came across as a very
22 neutral witness who did not seem to want to
23 favour one side or the other, and this was in
24 fact properly conceded by Defence Counsel in his
25 closing address to the jury.

26 She said this event was memorable for her,
27 and that is understandable. She observed the

1 events inside the house from a short distance,
2 although admittedly she was not initially paying
3 close attention to what was going on in the
4 kitchen. And as for the events that happened
5 outside the residence, she was standing on a
6 small veranda which sits five feet off the
7 ground, and from a relatively short distance,
8 when it was light out. So she had a good
9 opportunity to observe what was going on. She
10 was precise and careful in her evidence. Where
11 her evidence differs from anyone else's evidence,
12 I accept Ms. Love's evidence.

13 As far as what happened outside the
14 residence, Ms. Love's evidence was much more
15 consistent with Mr. McNeely's version than with
16 Mr. Lennie's version. It was, in fact, largely
17 at odds with Mr. Lennie's accounts of events.

18 There is less controversy as far as what
19 happened inside the residence, in the sense that
20 all the witnesses called agreed that Mr. McNeely
21 and Mr. Lennie were arm wrestling, that at first
22 things were friendly, that Mr. Lennie lost, and
23 then things turned unfriendly. Mr. Lennie
24 testified that he was not upset about losing, and
25 that it was Mr. McNeely who started getting
26 abusive towards him. Mr. McNeely denied calling
27 Mr. Lennie any names and said it was Mr. Lennie

1 that got mad when he lost and became
2 confrontational. Ms. Love said she heard someone
3 say something to Mr. Lennie that made him angry
4 and caused him to get up and say "don't call me
5 that, you fag." This led to a scuffle, and she
6 confirmed that at some point during the scuffle
7 she saw that Mr. McNeely had Mr. Lennie in a
8 choke hold.

9 I had trouble with both Mr. McNeely's
10 evidence and Mr. Lennie's evidence about how this
11 scuffle started. I think both of them minimized
12 their role and contribution in escalating things.
13 Mr. Lennie's description of backing away, trying
14 to get away from Mr. McNeely, his claim that he
15 was not angry, are all contradicted by Ms. Love's
16 testimony. Mr. McNeely's denial of having said
17 anything to provoke Mr. Lennie is also
18 contradicted by Ms. Love's evidence about
19 something having been said, causing Mr. Lennie to
20 get mad and get up.

21 Based on my assessment of the credibility
22 and reliability of these witnesses' evidence, and
23 bearing in mind that on sentencing any fact that
24 is potentially aggravating must be established by
25 the Crown beyond a reasonable doubt, my findings
26 of facts are as follows:

- 27 1. On April 30th, 2010, a group of people

1 gathered at Laurent Lennie's residence to
2 celebrate his birthday. Mr. McNeely and the
3 accused, Mr. Lennie, were part of this group.
4 They had consumed some alcohol before arriving at
5 Laurent Lennie's residence, but were not highly
6 intoxicated. After they arrived at Laurent
7 Lennie's house, the group started watching the
8 hockey game on television, and the drinking
9 continued.

10 2. Within a relatively short time after
11 people started watching the hockey game, Mr.
12 McNeely and Mr. Lennie engaged in an arm
13 wrestling match at the kitchen table in the
14 house, and Mr. McNeely won.

15 3. Mr. Lennie was upset about losing the
16 match. I accept Mr. McNeely's evidence in that
17 regard. But I also find that Mr. McNeely did say
18 something to taunt Mr. Lennie and that made Mr.
19 Lennie more mad. Ms. Love heard someone say
20 something to Mr. Lennie and was not sure who said
21 it, but I infer, and I find as a fact, that Mr.
22 McNeely was the one who said something that
23 provoked Mr. Lennie.

24 4. Mr. Lennie got up and said something
25 back, or some things back to Mr. McNeely, and the
26 two men began wrestling. I find that they were
27 both aggressive with one another at that point.

1 Mr. McNeely, who is bigger and stronger than Mr.
2 Lennie, got the best of him and got him in a
3 choke hold. Others in the house tried to
4 intervene.

5 5. While he was in the choke hold, Mr.
6 Lennie stabbed Mr. McNeely on the arm with a
7 knife. I found his explanation about how he got
8 his hands on this knife very improbable and
9 difficult to accept. However, there is not
10 sufficient evidence about the knife to conclude
11 beyond a reasonable doubt that Mr. Lennie had
12 been carrying this knife on his person, so I make
13 no finding either way as to how Mr. Lennie came
14 to have a knife.

15 6. Mr. McNeely realized that he was
16 bleeding, as did some of the other people who saw
17 what was going on. That put an end to the
18 altercation. Mr. McNeely went to the bathroom.
19 I accept Ms. Love's evidence that Mr. Lennie at
20 that point was still very upset and wanted to
21 continue to fight. Mr. Lennie was told to go
22 outside the residence and was escorted out by his
23 brother.

24 7. Mr. McNeely was very angry about having
25 been stabbed. Again, I accept Ms. Love's
26 testimony to that effect. Mr. McNeely himself
27 admitted he was angry and wanted to go find Mr.

1 Lennie to confront him and beat him up for having
2 pulled a knife on him. Mr. McNeely went outside
3 to confront Mr. Lennie.

4 8. Mr. McNeely approached Mr. Lennie and
5 saw he was still holding the knife. I find as a
6 fact that at that point he did not engage in any
7 further fighting with Mr. Lennie. That makes
8 sense. Bigger and stronger as Mr. McNeely might
9 be, it makes sense that he would not choose to go
10 after someone who was holding a weapon. I accept
11 that he ran away, that he was chased by Mr.
12 Lennie, and that he was stabbed in the back and
13 on the neck as he was trying to get away. I
14 accept Mr. McNeely's evidence because it is
15 clearly supported by Ms. Love's evidence, that
16 there was no further altercation outside the
17 residence, near the vehicles. I reject Mr.
18 Lennie's account of what happened outside the
19 residence.

20 Based on those findings of facts, I conclude
21 that Mr. Lennie was clearly not acting in
22 self-defence when he stabbed Mr. McNeely outside
23 the residence.

24 As for what happened inside the residence,
25 again based on my findings of facts, it happened
26 after Mr. Lennie engaged in a consensual fight
27 with Mr. McNeely. I do not accept that he was

1 trying to avoid the fight and back away from it.
2 He was mad, and this scuffle was a consensual
3 fight that he was at the losing end of.

4 Because of my findings about how the
5 physical altercation started, I conclude that Mr.
6 Lennie cannot rely on self-defence as it is
7 defined in section 34(1) of the Code. I do so in
8 part because of the Supreme Court of Canada
9 decision in *R. v. Paice*, [2005] 1 S.C.R. 339,
10 which stands for the proposition that if a person
11 engages in a consensual fight, they cannot later
12 rely on self-defence as set out in that
13 provision. The second possibility for
14 self-defence applying to what happened inside the
15 residence that was explained to the jury, was
16 self-defence as it is described in paragraph 2 of
17 section 34 of the Criminal Code.

18 On my view of the evidence, even considering
19 that Mr. Lennie was being choked, the evidence
20 does establish beyond a reasonable doubt that he
21 could not meet either the second or the third
22 requirements for that defence to apply, as I
23 explained them to the jury. I do accept that Mr.
24 McNeely was holding him with considerable force,
25 and that Mr. McNeely may have minimized just how
26 much pressure he was applying as he was holding
27 him. But at the same time, I also conclude that

1 Mr. Lennie's description of what was going on was
2 exaggerated. There were several other people
3 around who were intervening moments before the
4 stabbing, including Mr. Lennie's own older
5 brother. So under all the circumstances, I find
6 that Mr. Lennie's reaction to the situation and
7 the introduction of a potentially lethal weapon
8 in this situation went far beyond what the law of
9 self-defence permits.

10 It is on that factual basis that I must now
11 decide what a fit sentence is for this offence.

12 The offence of aggravated assault is
13 punishable by a maximum of 14 years in jail, and
14 that shows how serious Parliament considers this
15 offence to be.

16 In any sentencing decision, the court has to
17 take into account the sentencing principles that
18 are set out in the Criminal Code, and I have done
19 so. I agree with the Crown that when it comes to
20 crimes of violence, especially those involving
21 the use of a potentially lethal weapon,
22 deterrence and denunciation are important
23 sentencing principles. But I also agree with Mr.
24 Lennie's counsel, that considering Mr. Lennie's
25 young age and the fact that he does not have a
26 significant criminal record, his rehabilitation
27 should not be overlooked. I agree with what his

1 counsel said: he has his whole life ahead of
2 him, and the court cannot, and should not, lose
3 sight of that.

4 I also cannot overlook the fact that he is
5 an aboriginal offender. This requires me to
6 consider any systemic or background factors that
7 he has faced, as an aboriginal person, that have
8 contributed to his coming into conflict with the
9 law. I have to consider what alternative
10 sentencing approaches might be better suited to
11 him because of his aboriginal heritage.

12 Mr. Lennie's counsel's sentencing
13 submissions this morning were very thorough and
14 extremely helpful in understanding Mr. Lennie's
15 background. He grew up in Fort Good Hope, a
16 small aboriginal community in the Sahtu region of
17 the Northwest Territories. He has a number of
18 siblings and is the youngest of the family. I
19 heard that he grew up in a difficult environment
20 in that his parents, both residential school
21 survivors, fought a lot and drank a lot as he was
22 growing up. There was violence in the home. The
23 physical surroundings of the home were also
24 challenging: The home was run down, the
25 conditions were described as rough, and the
26 family did not have a lot of financial means.

27 Mr. Lennie started consuming alcohol when he

1 was 14 years old. It appears that, as is the
2 case with many young people, he did so, to an
3 extent, to get some escape from some of the
4 situations he was facing at home and at school,
5 and get relief from some of the stresses that he
6 was under. But, of course, as is often the case
7 when alcohol is used in this way, it does not
8 solve anything. Usually, on the contrary, it
9 makes matters worse.

10 I do accept, without hesitation, that Mr.
11 Lennie has faced systemic factors unfortunately
12 common to many aboriginal people in this
13 jurisdiction as he was growing up, and that those
14 things did contribute to his use of alcohol and
15 eventually contributed to his coming into
16 conflict with the law. The Criminal Code
17 mandates that I approach his sentencing with
18 those systemic factors in mind, and with some
19 consideration, as I have already mentioned, of
20 what sentencing approach is best suited for him
21 given his situation and his aboriginal heritage.
22 But the law is also clear that when it comes to
23 serious crimes of violence, there are limits to
24 how taking those factors into account can impact
25 the ultimate sentencing decision. The importance
26 of having communities that are free from violence
27 exists in aboriginal communities as much as it

1 does in non-aboriginal communities. The need to
2 discourage people from escalating fights by
3 introducing weapons into them is as important in
4 aboriginal communities as it is in non-aboriginal
5 communities.

6 Mr. Lennie's counsel realistically conceded
7 that a significant jail term has to be imposed
8 for this offence. He is not asking me to
9 consider an alternative to incarceration at this
10 sentencing, and rightfully so, given the
11 circumstances of this offence.

12 In his counsel's submissions, I also heard a
13 lot of positive things about Mr. Lennie this
14 morning. I heard that he has a lot of skills and
15 qualities that he can build on if he wants to
16 steer his life in a different direction. It
17 seems clear from many different sources, that he
18 enjoys sports and is good at it. He has won
19 awards and recognitions for this. It also
20 appears from different sources that he has
21 artistic abilities and some personal qualities as
22 well. He is respectful of elders, he likes to
23 help them out and does things to help them out.
24 He enjoys spending time with younger people and
25 enjoys teaching them things. All this suggests
26 that Mr. Lennie has a lot to offer and contribute
27 to his community.

1 His community, like all other communities in
2 the north, need young people who have skills and
3 talents, to stay healthy and make those kinds of
4 positive contributions. These young people are
5 the future of these communities, and Mr. Lennie
6 is very much a part of that future. He has to
7 make a choice whether he will be a good part of
8 that future or a negative element in that future.
9 Based on what his counsel has said, Mr. Lennie
10 has accessed some of the programs available to
11 him while he was on remand. Over the past few
12 years, he appears to have gained some insight
13 into his behaviour and he has developed some
14 plans for his future. If those things continue,
15 they all bode well for the future as long, of
16 course, as he is able and willing to stick with
17 those plans.

18 Of course this sentencing is not only about
19 Mr. Lennie. His personal circumstances are
20 important and they cannot be overlooked. But, in
21 balancing everything that I have to balance, the
22 seriousness of the offence he has committed
23 cannot be overlooked either, and I need to spend
24 some time explaining why.

25 Crimes of violence harm the victims, they
26 harm families of all the people involved, they
27 harm the community as a whole. Often in smaller

1 communities the harm is even greater because of
2 all the connections that exists between people.
3 Violence is never a good thing, and it would be
4 nice if people did not engage in physical fights
5 and physical confrontations to settle disputes.
6 But there is no doubt that introducing a weapon
7 like a knife in a fight escalates matters
8 significantly and puts it on another level. It
9 increases the level of blameworthiness of the
10 person who does it, and the seriousness of doing
11 something like that cannot be overstated.

12 Unfortunately, incidents like the one that
13 happened in this case, happen all too often in
14 our communities. Unfortunately, there are many
15 stupid, senseless fights, over stupid, senseless
16 things, where someone at some point decides to
17 introduce a knife in the mix. This happens all
18 too frequently. It is reflected in the cases
19 that were filed by the Crown, which are only a
20 small sample of these types of cases. It is
21 interesting to note that in some of those cases
22 there is reference made to the prevalence of this
23 type of offence in this jurisdiction. Our Court
24 of Appeal, for example, made reference to it at
25 paragraph 7 of the Morgan decision. Sadly, these
26 incidents often happen basically over nothing of
27 any real significance. In this case, the fight

1 started over a lost arm wrestling match and some
2 name calling. In R. v. Morgan, 2007 NWTSC 30,
3 aff'd [2008] NWTCA 12, the evidence was that what
4 led to the fight where the stabbing occurred was
5 an argument over which city, of Edmonton or
6 Yellowknife, was the better one. In R. v.
7 Gonzales, [1999] N.W.T.J. No. 69, an obscene
8 gesture made in passing, led to a fight between
9 young people and ultimately to the victim having
10 a knife imbedded completely in his back. And in
11 R. v. Itsi, 2004 NWTSC 10, aff'd [2005] N.W.T.J.
12 No. 114 (NWTCA), and R. v. Green, 2007 NWTSC 22,
13 the exact reason that caused the fight was never
14 really clear on the evidence. In those cases, as
15 in this one, the victims were very lucky. They
16 were injured, some of them seriously, and
17 suffered some consequences, but they fully
18 recovered.

19 There are other cases where persons who
20 introduced knives into their fights and their
21 victims were not so lucky. What needs to be
22 remembered is that sometimes the story ends with
23 someone being dead. This court has had the
24 unfortunate task of imposing long jail terms to
25 people who, in very similar types of
26 circumstances, ended up killing their friend or
27 close relative. I could refer to many cases to

1 illustrate this point, but I will just name a
2 few. These are all cases from the last seven or
3 eight years.

4 In R. v. Emile, [2008] N.W.T.J. No. 51, the
5 accused got into a fight with his brother for an
6 unknown reason, grabbed a knife, and stabbed him.
7 His brother died. This court sentenced Mr. Emile
8 to a lengthy jail term, but obviously nothing the
9 court could do in that case could be worse than
10 what Mr. Emile has to live with for the rest of
11 his life.

12 In R. v. Andre-Blake, [2010] N.W.T.J. No.
13 78, the offender stabbed his cousin during a
14 fight, and the cousin died.

15 In R. v. Sangris, [2003] N.W.T.J. No. 68,
16 again, following an argument between drunken
17 friends, the offender stabbed and killed his
18 friend.

19 And in Fort Good Hope itself, not so many
20 years ago, in R. v. D.N.K., [2004] N.W.T.J. No.
21 86, a young man stabbed his friend during the
22 course of a fight and the victim died.

23 All of these incidents started off in ways
24 very similar to this one - alcohol, flared up
25 emotions, uncontrolled anger, physical
26 confrontation, and the introduction of a knife -
27 except in the end, in those cases, someone died.

1 And if I take some time to talk about this
2 today, it is because the simple reality is that
3 very easily, Mr. McNeely could have been killed
4 on April 30th, 2010, over arm wrestling and name
5 calling. Over arm wrestling and name calling,
6 Mr. McNeely could be dead, and Mr. Lennie could
7 be facing a sentence of life imprisonment. It is
8 only a matter of pure luck that we are not in
9 that position today. Mr. Lennie needs to know
10 this, and he needs to think long and hard about
11 the fact that he could have easily been in that
12 position. Anyone who walks around with a knife
13 just in case, or anyone who is inclined to grab
14 onto a knife or another weapon during an argument
15 or a fight, needs to think very long and hard
16 about that.

17 It is because of the serious inherent risk
18 involved with the use of weapons that the courts
19 impose significant sentences to people who
20 introduce weapons and to fights, even when no one
21 dies. Of course Mr. Lennie must be sentenced for
22 what he did and for what actually happened, not
23 for what could have happened, and I am mindful of
24 that. He is being sentenced for aggravated
25 assault. He is not being sentenced for
26 manslaughter. The comments I am making about all
27 of this are intended to make the point of just

1 how easily things could have been much worse for
2 everyone involved, and to highlight how much the
3 level of danger in a situation is elevated by the
4 introduction of a knife.

5 The authorities filed by the Crown
6 demonstrate that the range of sentences imposed
7 for this type of offence is quite broad. The
8 aggravating factors that are specific to this
9 case as I see it are: First of all, that a
10 weapon was introduced. This is aggravating for
11 the reasons I have just spent quite a bit of time
12 talking about. The second aggravating element,
13 in my view, is that Mr. Lennie stabbed Mr.
14 McNeely more than once. I do accept that Mr.
15 McNeely contributed to the continuation of this
16 incident by deciding to go outside and confront
17 Mr. Lennie. But on the facts as I have found
18 them, he then tried to get away from the
19 situation and he was chased. Mr. Lennie did show
20 some persistence in his attack.

21 The criminal record has been filed. Beyond
22 showing that Mr. Lennie is not a first offender
23 and confirming in a way that he has had his
24 struggles with alcohol, I do not consider that
25 the criminal record is a significant factor for
26 the purposes of sentencing him today.

27 There are no factors that mitigate this

1 offence really. On the facts as I found them,
2 there was an element of provocation by Mr.
3 McNeely at the very start of all of this, but it
4 does not have a significant mitigating impact, in
5 my view, especially not in relation to what
6 happened outside the residence.

7 Mr. Lennie is clearly entitled to some
8 credit for the time he has spent on remand. I am
9 told that after he was charged with this offence
10 he was released on an undertaking, but was taken
11 back into custody on other matters in November
12 2010 and remained in custody until February 9th,
13 2011. On that date he was released with the
14 consent of the Crown. He was taken into custody
15 again, however, in November 2011 and has been in
16 custody since then. But in the intervening
17 period, in October 2011, he was sentenced on a
18 breach charge and some of the time that he had
19 spent on remand was considered used as a sentence
20 for that charge. All in all, counsel advise that
21 there is a total of six months of remand time
22 that he could receive credit for at this
23 sentencing. The Crown is asking that this remand
24 time be credited on a ratio of one-for-one, and
25 under the circumstances I think that is
26 appropriate.

27 Both Crown and Defence agree that a jail

1 term of some significance must be imposed, and
2 the ranges that are being suggested to me are not
3 really that far apart. The Crown is saying that
4 the sentence should be in the range of
5 two-and-a-half years, and the Defence is saying
6 that this sentence should be in the range of 20
7 months to two years. From those ranges, Crown
8 and Defence agree that I should deduct the credit
9 I will give Mr. Lennie for the time he has spent
10 on remand.

11 Given the findings of fact I have made and
12 because of there being really no mitigating
13 factors of any significance, I consider that the
14 range suggested by the Crown is very reasonable.
15 On the facts of this case, given the fact there
16 were numerous stabbings and that the injuries
17 were serious, and that the last stabbing occurred
18 as the victim was running away, as well as the
19 location of these injuries, I think Mr. Lennie
20 could be facing an even longer jail term than
21 what the Crown is seeking today. But keeping in
22 mind his young age, the efforts that he has made
23 so far to access programs, the insights that he
24 appears to be starting to get about his
25 behaviour, I am inclined to think that it would
26 probably be very beneficial for him and his
27 rehabilitation, and so hopefully for the

1 protection of the public, to allow him to be
2 under some ongoing supervision once he finishes
3 serving his jail term. I think there is good
4 reason to show some restraint and ensure that
5 probation can be a part of his sentence to assist
6 him in his efforts to rehabilitate.

7 This trial was about an event where Mr.
8 Lennie made some very bad choices, choices that
9 could have destroyed Mr. McNeely's life and Mr.
10 Lennie's own life. But as I have already
11 mentioned, I know there is a lot more to Mr.
12 Lennie than what he did that night. He has
13 skills and talents. It strikes me that a person
14 who wins an award for most sportsmanlike conduct
15 in a sport, as I heard he did this morning, is
16 obviously able to behave appropriately and keep
17 his emotions in check. A person who helps and
18 respects elders, and who likes to spend time with
19 children and teach them things, obviously has a
20 lot to offer. Mr. Lennie has to be held
21 accountable for what he did on April 30th, 2010,
22 but it is the Court's hope that this whole
23 process will contribute to promoting his sense of
24 responsibility for his behaviour, that he will
25 use these events to move in another direction. I
26 have heard that he has plans to upgrade his
27 education, to get training, to do positive things

1 for himself and his community, and he appears to
2 have some support in his community to do so.
3 Hopefully, this will truly be the start of
4 another chapter for him, a more healthy and
5 productive one than the events that this trial
6 was about.

7 This morning in court when he had an
8 opportunity to speak, he expressed an apology to
9 Mr. McNeely, and he has said that he accepts the
10 jury's verdict and he accepts whatever sentence
11 is to be imposed on him as a result of what
12 happened. If those comments are sincere, then
13 they are an important step in taking
14 responsibility. It is my hope that Mr. Lennie
15 will continue on this path and will continue to
16 take responsibility for his actions, and that he
17 will put his energies into the many good things
18 and useful things that he can do if he uses his
19 skills and his talents and the supports that he
20 has in his community. Because he is just really
21 at the start of his life and he has a lot of time
22 ahead of him, if he chooses to, to make a
23 positive contribution to his community.

24 The Crown has sought a number of orders and
25 I will deal with those first.

26 There will be a DNA order pursuant to
27 section 487.04 of the Criminal Code. Aggravated

1 assault being a primary designated offence, that
2 order is mandatory.

3 It is also mandatory that I make a firearms
4 prohibition order pursuant to section 109 of the
5 Criminal Code.

6 Defence Counsel has asked that I make today
7 an order authorizing the lifting of this
8 prohibition to enable Mr. Lennie to carry out
9 hunting and trapping activities on the land
10 because this is something that he has done in the
11 past. There is no question it is a productive
12 activity, one that is well in line with his
13 rehabilitation when he is released. I have given
14 this some thought, considering the factors I have
15 to examine when deciding whether or not to grant
16 this type of exemption pursuant to section 113 of
17 the Code. I am to consider the criminal record
18 of the person, the nature and circumstances of
19 the offence, and the safety of Mr. Lennie himself
20 and the safety of others. I have given this a
21 lot of thought, as I have said, and I am not at
22 this point prepared to grant the request for a
23 section 113 authorization at this time. This was
24 a serious crime of violence, where Mr. Lennie
25 took the step to arm himself with a weapon, not a
26 firearm, but a dangerous weapon nonetheless.
27 What the evidence revealed was a complete loss of

1 control by Mr. Lennie of his emotions and his
2 anger. Hopefully, with some assistance he will
3 learn to deal with these issues, whatever the
4 issues may be with alcohol, as well as his issues
5 dealing with anger, which he has attempted to
6 deal with in the past I am told. But at this
7 stage, I am not satisfied that it is advisable to
8 include an exemption authorization as part of my
9 order. But that does not end matters, because
10 section 113 of the Code contemplates this type of
11 authorization being made at the time the firearm
12 prohibition order is issued, but it also allows
13 for the application to be made to the competent
14 authority at some later time. I am sure counsel
15 can assist Mr. Lennie in understanding the
16 difference, and possibly down the road, in due
17 course, assist him in presenting that type of
18 application when the time comes. The fact that I
19 am not prepared to grant this exemption today on
20 the basis of what is before me today, does not
21 mean that the application could not successfully
22 be made at some later time.

23 Given the fact that I will impose a jail
24 term of some significance to Mr. Lennie, I am not
25 going to make an order for the payment of a
26 victim of crime surcharge, and I am satisfied it
27 would result in hardship.

1 As I have already said, I have considered
2 the range of two-and-a-half years proposed by the
3 Crown to be reasonable, but I see no benefit in
4 imposing a sentence today that would prevent Mr.
5 Lennie from having the benefit of the support
6 that he could get by being on probation after his
7 release.

8 Stand up, please, Mr. Lennie.

9 Mr. Lennie, you have heard what I said. It
10 is my sincere hope that you will turn your life
11 around. The offence you committed was very
12 serious and I do have to impose what I know is a
13 long jail term, but you will get out and you will
14 then have choices to make about what you do. My
15 sentence today is that you be imprisoned for two
16 years less one day, which means you will not go
17 to a penitentiary. That is the jail term that I
18 am imposing on you today.

19 You can sit down because I want to tell you
20 about the probation order.

21 When you are released, you will be on
22 probation for a period of 18 months, one year and
23 a half. The conditions of that order will be
24 that you keep the peace and be of good behaviour.
25 You know what that means.

26 THE ACCUSED: Yes.

27 THE COURT: Stay out of trouble. You will

1 report to the court as required, which probably
2 will not be required very much, but if you are
3 directed to appear in court you have to appear.

4 I am going to put a condition that you take
5 any alcohol counselling, anger management
6 counselling, or any kind of counselling that your
7 probation officer recommends. You have already
8 accessed some counselling in the past. You have
9 accessed counselling on your own without being
10 told to. I am sure that the probation officer
11 will try to find things that will be helpful to
12 you. I encourage you to follow those
13 recommendations and take whatever counselling is
14 suggested. This is after you are released. You
15 can also access programs while you are in jail.

16 The next condition is that for that whole 18
17 months you are to abstain completely from the
18 possession and consumption of alcohol. I want
19 you to understand, Mr. Lennie, this is not a
20 condition that I usually put in a probation
21 order, because I know that for some people,
22 stopping to drink is very difficult. I do not
23 like to set people up for failure and for
24 breaches. But in this case your lawyer has said
25 this is what you want, you want to not drink. If
26 a court order helps you not to drink, then I am
27 willing to help you today, in part, through this

1 sentence. So that is why I am putting that
2 condition in there. The downside is if you do
3 drink, that is a separate offence and you will be
4 dragged back into court to deal with it. It is
5 an onerous thing, it is a year and a half where
6 you cannot drink at all, but it sounds like that
7 is better for you.

8 THE ACCUSED: Yeah.

9 THE COURT: So at the end of that year and
10 a half when you are not on probation, it will be
11 your choice to stay away from alcohol or not.
12 But while you are on probation it is not your
13 choice. Do you understand that? Yes?

14 THE ACCUSED: Yes.

15 THE COURT: You are prepared to follow
16 that condition?

17 THE ACCUSED: Yes.

18 THE COURT: All right. Then I will
19 include that condition in the probation order.

20 The last condition will be that you have no
21 contact with Billy McNeely, and this is just
22 obviously to avoid problems.

23 I am not going to impose a curfew though.
24 Your lawyer suggested maybe that could be part of
25 restricting your freedom, but I am imposing a
26 jail term that is pretty long. The reason I am
27 not going to impose a curfew is that I think it

1 could become difficult to manage, depending on
2 what work you do, especially in the summer months
3 when there is a lot of light, depending on where
4 you are working and how many days a week you are
5 working. Saying you have to be in your residence
6 by a certain time may be difficult to manage. So
7 this part is up to you to choose what you do with
8 your evenings, where you go, who you hang out
9 with, and it will be up to you to make good
10 choices and not be in situations where you could
11 be in trouble. That part I am leaving up to you.

12 Do you understand all of those conditions?

13 THE ACCUSED: Yes.

14 THE COURT: All right. When we are
15 finished, it will take a few moments but the
16 clerk will prepare the probation order and he
17 will go over these conditions with you again, and
18 you will be getting a copy of that as well.

19 Counsel, is there anything that I
20 overlooked?

21 MR. BOCK: Your Honour, I just want to
22 make clear on the record that two years less a
23 day already has included the remand time?

24 THE COURT: Yes. The law requires me to
25 say what the sentence would have been but for the
26 credit given for the remand time. The Crown
27 suggested a range of two-and-a-half years, so I

1 guess what I am saying is that the sentence that
2 I would normally impose is two-and-a-half years
3 and I am giving him six months and a day credit
4 for the remand time.

5 MR. BOCK: That's what I understood.

6 THE COURT: Yes. Is there anything else
7 that is not clear that I have overlooked?

8 MR. BOCK: No, Your Honour. Thank you.

9 THE COURT: Anything from the Crown?

10 MS. VAILLANCOURT: Your Honour, I don't know if
11 you mentioned the length of the firearms
12 prohibition.

13 THE COURT: I'm sorry, I probably did not.
14 It will be, I think the minimum is ten years from
15 the day of release. And as I assume there are no
16 firearms in Mr. Lennie's possession right now,
17 the condition for surrender will be forthwith.
18 The order starts today and expires ten years from
19 his release.

20 Thank you for pointing that out.

21 There will also be an order that any
22 exhibits seized in this matter will be, at the
23 expiration of the appeal period, destroyed or, if
24 appropriate, returned to their lawful owner.
25 There may not be any, but it is better to make
26 the order now than try to get it made after the
27 fact. So if there was anything seized in the

1 investigation that should go back to someone,
2 that can be done at the expiration of the appeal
3 period. Otherwise, those exhibits can be
4 destroyed.

5 MS. VAILLANCOURT: Thank you, Your Honour.

6 THE COURT: This concludes these sittings
7 of the court. Before we close court, I just want
8 to express my thanks to the members of the court
9 staff for their assistance throughout this week;
10 and counsel, I want to thank you both and commend
11 you both for your very professional conduct of
12 this case, and for the efforts you obviously put
13 in working out non-contentious issues and
14 focussing the issues in this trial. I commend
15 you both for that.

16

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

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Annette Wright, RPR
Court Reporter

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