

R. v. Courouble, 2012 NWTSC 10 S-1-CR-2010-000155

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

TYLER COUROUBLE

Transcript of the Reasons for Sentence delivered by The
Honourable Justice L. Charbonneau, in Yellowknife, in the
Northwest Territories, on the 13th day of January, 2012.

APPEARANCES:

Mr. A. Godfrey: Counsel on behalf of the Crown

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

Convicted under s. 266 C.C.

Ban on Publication of Complainant/Witness
pursuant to Section 486.4 of the Criminal Code

1 THE COURT: Tyler Courouble was found
2 guilty yesterday by a jury on a charge of
3 assault, contrary to section 266 of the Criminal
4 Code, and today it is my responsibility to decide
5 what a fit sentence is for this offence.

6 The first matter I have to address is the
7 factual underpinnings of this sentencing.

8 Mr. Courouble faced two charges on this
9 trial. The first count was for sexual assault,
10 and the second count was for assault. The jury
11 found him not guilty on the sexual assault
12 charge, but guilty on the assault charge. To the
13 extent that a jury's verdict leaves any ambiguity
14 about the facts that it found were proven beyond
15 a reasonable doubt, it is the responsibility of
16 the trial judge to make findings about the facts
17 that should form the basis for the sentence.

18 There are aspects of the verdict that leave
19 no ambiguity. For example, the jury was
20 instructed that the basis for the assault charge
21 was the application of force that resulted in the
22 bruises seen in Exhibit number 1, the injury to
23 Ms. Lander's eye, to the area of her eye. I
24 mentioned this, I believe, in my charge to the
25 jury and their first question was precisely on
26 that topic. They sought clarification on it, and
27 they were told very clearly that the question

1 they had to answer on Count number 2 was whether
2 the Crown had proven that Mr. Courouble had
3 applied force that caused the bruising visible on
4 the photographs. So it is not possible that
5 their verdict was based on Mr. Courouble's own
6 evidence, that he slapped Ms. Lander near her
7 mouth. In his trial evidence he testified that
8 while he and Ms. Lander were engaged in
9 consensual sexual activity, all of a sudden she
10 bit his lip, causing it to bleed, at which point
11 he pulled away from her and slapped her with an
12 open hand on the chin. He specifically denied
13 having hit her in any other way. The force that
14 he described using could not have resulted in the
15 bruising to her eye area that is visible on
16 Exhibit 1. The jury's verdict makes it very
17 clear that they rejected Mr. Courouble's evidence
18 about having only slapped Ms. Lander. They had
19 to have concluded that it was proven beyond a
20 reasonable doubt that he struck her with
21 considerable force near her left eye, and did not
22 merely slap her.

23 The jury were instructed that they could

24 accept part of a person's evidence, or all of a
25 person's evidence, or reject all of a person's
26 evidence; that it was not an all or nothing. So
27 the fact that they rejected his testimony about

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1 having only slapped her does not necessarily mean
2 that they rejected his evidence about her having
3 bit his lip before he decided to strike her.
4 That is an issue of fact that is for me to
5 decide. Why this is relevant is simply because
6 if it is found that the force that he applied was
7 in response to having been provoked, it would not
8 constitute a defence, but it could be provocation
9 that might mitigate sentence. So that is why a
10 finding has to be made on that.

11 Ms. Lander's son, Mr. Hickling, testified
12 that after he woke up in the middle of the night,
13 he went to the living room and he saw Mr.
14 Courouble. He sat on a couch for a short period
15 of time. Mr. Hickling, whose evidence I would be
16 inclined to accept, said that he noted at that
17 point some redness and the beginnings of swelling
18 to his mother's face, and he noted that her eyes
19 were closed, that she appeared unconscious. Mr.

20 Hickling did not see any blood on Mr. Courouble,
21 and did not see Mr. Courouble bleeding. I recall
22 that he was asked in cross-examination if it was
23 possible that there was bleeding and that he did
24 not notice, and Mr. Hickling acknowledged that it
25 was possible. But the fact is he did not see any
26 blood. He testified that he walked with Mr.
27 Courouble to the door, that he was about an arm's

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1 length from him and that he was able to observe
2 other things about him, including certain things
3 on his neck. I conclude that if Mr. Courouble
4 had been bleeding from the lip when he left the
5 apartment, this is something Mr. Hickling would
6 have noticed. So I find as a fact that there was
7 no such bleeding. Whatever happened that caused
8 Mr. Courouble to punch Ms. Lander, I am not
9 prepared to conclude that the evidence gives rise
10 to an element of provocation on her part.

11 In any sentencing I have to consider the
12 principles and purposes of sentencing. They are
13 set out in the Criminal Code and they are worth
14 setting out in any sentencing decision. The
15 purpose of sentencing is set out at section 718

16 of the Code which reads:

17

18 The fundamental purpose of
19 sentencing is to contribute, along
20 with crime prevention initiatives,
21 to respect for the law and the
22 maintenance of a just, peaceful and
23 safe society by imposing just
24 sanctions that have one or more of
25 the following objectives:

26 (a) to denounce unlawful conduct;

27 (b) to deter the offender and other

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

12 the victims and to the community.

13

14 The Criminal Code goes on to provide
15 sentencing principles. The most fundamental
16 sentencing principle is proportionality, that is,
17 a sentence must be proportionate to the gravity
18 of the offence and the degree of the
19 responsibility of the offenders.

20 There are other sentencing principles which
21 are set out in the Criminal Code. I will not
22 refer to them specifically, but I have considered
23 them.

24 The crime of assault, when proceeded by
25 indictment, is punishable by a maximum jail term
26 of five years. As I explained to the jury, there
27 is a very broad range of behaviour that can make

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1 out an offence of assault. It is defined as the
2 application of force on another person without
3 their consent. The force has to be deliberate.
4 Basically, an assault can be anything from a
5 relatively minor shove to the application of much
6 more considerable force. All this would fall
7 within what constitutes an assault. And so when

8 looking at what is a fit sentence for a specific
9 assault, one must consider where it fits in the
10 range of seriousness for that offence. In my
11 opinion, this particular assault is at the high
12 end of seriousness for a common assault.

13 There are other crimes of violence in the
14 Criminal Code that are more serious than assault:
15 for example, the crime of assault causing bodily
16 harm, where causing an injury is actually an
17 element of the offence; or aggravated assault,
18 which is when you endanger a person's life or
19 maim, wound or disfigure them. The crime of
20 assault does not require that any injuries be
21 caused and that is why a simple push could
22 constitute an assault. But where someone is
23 convicted of an assault and that that assault did
24 result in injuries, it makes it a more serious
25 assault.

26 In this case, the photographs, Exhibit 1,
27 Ms. Lander's own evidence, and the victim impact

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1 statement that she prepared and that Mr. Godfrey
2 read in court earlier this morning, all those
3 make it very clear that this was not an

4 insignificant injury that she sustained. It had
5 consequences for her - physical consequences,
6 emotional consequences. It is not difficult to
7 imagine what the emotional effect would be for
8 her. With relatively young children at home, to
9 look the way she did when the photographs were
10 taken, with her eyes swollen shut and significant
11 bruising all around the higher part of her face,
12 and having to answer questions from her children
13 and others about that. It was a very visible,
14 obvious injury, and she said that she suffered
15 various effects from it for a period of time.
16 This is why I say this was a serious assault.

17 There is nothing by way of mitigation in
18 this case. Mr. Courouble had the right to have a
19 trial and he certainly should not be punished for
20 having done so. But in his evidence at that
21 trial, he minimized the force that he applied to
22 Ms. Lander and he has shown no remorse for having
23 applied that force to her.

24 Mr. Courouble has a criminal record. There
25 is somewhat of a gap in that criminal record,
26 even when considering that these offences
27 occurred in late 2010, because the last

1 conviction was in December 2007. It is also true
2 that the sentence that he received on that last
3 conviction was not a significant sentence, but
4 two of his earlier convictions are for serious
5 crimes of violence. He has a conviction from
6 2002 for break and enter and commit sexual
7 assault. This was a sentence that he received in
8 the Youth Court. He did receive 16 months secure
9 custody which, under the Youth Offenders Act, is
10 a very significant sentence. And he also has a
11 conviction for assault with a weapon from June
12 2002, for which he received 16 months'
13 imprisonment, and he also at that time received
14 two additional months for failure to comply with
15 conditions of his release. And as I have just
16 alluded to, the record also includes convictions
17 for breaching court orders.

18 Now weighing against that is the fact that
19 ever since he has been on the recognizance that
20 he signed on June 1st, 2010, in relation to this
21 matter, he has complied with his conditions and
22 he has demonstrated his ability to comply with
23 conditions. That is to his credit. At the same
24 time, when someone is facing charges as serious
25 as the ones Mr. Courouble was facing going into
26 this trial, that provides a very significant
27 incentive to stay out of trouble. But I do not

1 take away from him the fact that he has managed
2 to comply with fairly strict conditions since his
3 release in June 2010.

4 Mr. Courouble is of Metis descent. Because
5 he is an aboriginal offender, I am required to
6 approach his sentencing taking into account any
7 specific systemic or background factors that he
8 faced as an aboriginal person that have
9 contributed to his coming into conflict with the
10 law, as well as whether there are specific
11 sentencing approaches that would be better suited
12 for him because he is an aboriginal offender. I
13 have not heard any submissions about any specific
14 factors that he faced as an aboriginal person.

15 And as far as trying to adopt a restorative
16 approach to sentencing in this case, it is not
17 necessarily feasible because the parties were
18 unknown to each other before this night. It is
19 apparent from the submissions I heard, and fairly
20 easy to understand, that Ms. Lander does not wish
21 to have any contact with Mr. Courouble, and I
22 suspect the reverse is also true. So I have not
23 heard anything suggested in the specific approach

24 to this sentencing that would be better suited
25 because of Mr. Courouble's aboriginal descent.
26 Mr. Courouble has a good work history. The
27 information that was provided by his counsel

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1 suggests that he is a valued employee. This is a
2 positive thing for him. It bodes well for his
3 ability to function in his society and for his
4 rehabilitation.

5 He does appear to have issues with alcohol.
6 As I have said, he has now been bound for a long
7 period of time by conditions not to consume
8 alcohol. This may be a good place for him to
9 start. After today's proceedings, he will no
10 longer be bound by such a condition. No one has
11 asked me to make that a part of probation and I
12 do not propose to do so. But his description of
13 his drinking habits at the time of these events,
14 of essentially drinking up to 15 beer as a matter
15 of course when going out, the fact that he had
16 experienced a significant black-out that night,
17 all these things suggest there might be some
18 issues there for him to think about, whether
19 consumption of alcohol is something that is a

20 good thing for him. The fact that he can be
21 violent when he is under the influence of alcohol
22 is also an issue that he may wish to think about
23 and try to address. I do not know if alcohol was
24 a factor in the other crimes that he has been
25 convicted for, but I would not be surprised to
26 hear that it was, because it is often something
27 we hear in court. And if the reality is that for

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1 Mr. Courouble the consumption of alcohol is
2 something that can trigger violent behaviour,
3 then it would be in his own interest to address
4 that. For that reason I think it makes sense as
5 part of the probation period to have a general
6 condition that he take counselling as required,
7 leaving it open for someone to assist him in
8 getting assistance in dealing with whatever the
9 underlying issues are.

10 The Crown is asking that a jail term be
11 imposed for this offence in the range of eight to
12 ten months. Defence is asking that if a jail
13 term is imposed, Mr. Courouble be permitted to
14 serve that jail term in the community under the
15 auspices of what is called a conditional

16 sentence. A conditional sentence is a jail term
17 that the person serves by complying with strict
18 conditions rather than being incarcerated. The
19 advantage of a conditional sentence, for the
20 offender, is that he or she is not sent to an
21 actual jail. In Mr. Courouble's case, it would
22 allow him to maintain his employment and be held
23 to strict conditions.

24 The section of the Criminal Code that deals
25 with conditional sentences is section 742.1 and
26 it sets out certain conditions that determine
27 whether a conditional sentence is available or

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1 not. The first condition is that the offence
2 must not be a "serious personal injury offence"
3 as it is defined in the Code. An assault is not,
4 so that means a conditional sentence is
5 available. The second condition is that the jail
6 term to be imposed be less than two years. Here,
7 the Crown is not asking for a sentence in excess
8 of two years, and I certainly agree that a
9 sentence over two years would not be appropriate
10 for this particular offence. The last
11 consideration is that the judge has to be

12 satisfied that having the offender serve the
13 sentence in the community would not endanger the
14 safety of the community and would be consistent
15 with the fundamental purpose and principles of
16 sentencing. So the safety of the community is
17 one consideration, and whether the conditional
18 sentence is consistent with the fundamental
19 purpose and principles of sentencing is the other
20 consideration.

21 The safety of the community is a criterion
22 that gives me some concern because of the
23 criminal record. It would be different if Mr.
24 Courouble was a first-time offender. But the
25 fact that he has been convicted for crimes of
26 violence before, and the fact that he has been
27 convicted for not complying with court orders

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1 before, raises a concern as to whether simply
2 placing him on conditions and relying on his
3 compliance with those conditions to protect the
4 community is sufficient. Weighing against that
5 and those concerns is the fact that he did comply
6 with his recognizance from June 2010 until now,
7 which is admittedly a significant period of time.

8 But the second part of the test is that a
9 conditional sentence be consistent with the
10 fundamental purpose and principles of sentencing.
11 On that issue, I get back to the need for
12 denunciation and deterrence. Denunciation means
13 denouncing the conduct, making it clear that it
14 is not acceptable in our society; and deterrence
15 means discouraging people from committing
16 offences, the offender and others. The message,
17 in other words, that the court sends is what
18 denunciation and deterrence are about. Because
19 of the seriousness of this assault and the
20 consequences it had, and because it was committed
21 by someone who has been before the court on
22 earlier occasions for serious crimes of violence,
23 I am not satisfied that a conditional sentence in
24 this case would be consistent with the principles
25 and purposes of sentencing, even if I were able
26 to get over the hurdle of the protection of the
27 public and the safety of the community based on

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1 Mr. Courouble's recent compliance with his court
2 orders. On the whole, I am not persuaded that a
3 conditional sentence is appropriate in all of the

4 circumstances of this case.

5 Mr. Courouble, stand up, please.

6 For the crime of assault that you have been
7 convicted of, Mr. Courouble, the sentence of this
8 court is that you be imprisoned for a period of
9 nine months.

10 You can sit down.

11 There will also be a term of probation for a
12 period of one year. There will only be, other
13 than the statutory conditions, a condition that
14 Mr. Courouble take counselling as directed and
15 that he have no contact direct or indirect with
16 Karen Lander.

17 I have also decided that it would be
18 appropriate that a DNA order be made pursuant to
19 section 487.051(3) of the Criminal Code. In
20 arriving at this conclusion, I have taken into
21 account the criminal record and, in particular,
22 the prior convictions for crimes of violence.
23 There were a lot of gaps in the evidence as to
24 the circumstances of the offence so it is
25 difficult to say much about them because of the
26 uncertainty that remains, but what is clear is
27 this was a significant assault, it occurred in

1 the complainant's home, and it had significant
2 consequences for her. The procedures whereby DNA
3 samples are collected under these provisions is
4 not a particularly intrusive procedure, and so I
5 am satisfied that the impact on Mr. Courouble's
6 privacy is not so significant as to make it
7 inappropriate to make the order, having
8 considered the criteria set out in the provision.

9 There will be an order for the destruction
10 of exhibits or their return to their rightful
11 owner at the expiration of the appeal period. In
12 particular, unless I hear submissions otherwise,
13 it would seem to be appropriate to have Exhibit
14 number 4, the wallet, returned to Mr. Courouble
15 once the appeal period has expired.

16 Mr. Courouble has been steadily employed so
17 there will be an order for him to pay a victims
18 of crime surcharge pursuant to the provisions of
19 737 of the Criminal Code. For an indictable
20 matter, the surcharge is \$100. This is money
21 that goes into a fund that is administered by the
22 government and provides assistance to victims of
23 crime.

24 Mr. Boyd, how much time does Mr. Courouble
25 need to pay this surcharge?

26 MR. BOYD: Mr. Courouble indicates he'd
27 be waiting for a tax refund. The request

1 therefore, Your Honour, for three months, please.

2 THE COURT: All right. I'll make that

3 four, to be on the safe side.

4 Is there anything that I have overlooked?

5 MR. GODFREY: I don't believe so, Your

6 Honour.

7 MR. BOYD: No, Your Honour. Thank you.

8 THE COURT: Before we close court, I want

9 to thank counsel for their work on this case and

10 I want to thank the court staff for their work on

11 this case, although I see that Madam Reporter is

12 not the one who did the trial, but I am sure she

13 can pass on my thanks to her colleague. With

14 that, we will close court.

15

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17 Certified to be a true and
18 accurate transcript pursuant
19 to Rule 7 23 and 7 24 of the
20 Supreme Court Rules of Court.

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21 -----
22 Annette Wright, RPR
23 Court Reporter

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