

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MARK INUKTALIK

Transcript of the Reasons for Sentence delivered by The Honourable Justice S. H. Smallwood, in Yellowknife, in the Northwest Territories, on the 16th day of August, 2013.

APPEARANCES:

Ms. A. Paquin: Counsel on behalf of the Crown

Mr. G. Wool: Counsel on behalf of the Accused

Charges under ss. 268 C.C. and 254(5) C.C.

1 THE COURT: Mark Inuktalik pleaded guilty
2 on Monday to two counts on an Indictment, the
3 first being that on or about the 18th day of
4 March he committed an aggravated assault on
5 Janine Olifie, his former common-law spouse; and,
6 secondly, that he, on the same date, without
7 reasonable excuse refused to comply with a breath
8 demand made to him by a peace officer. I must
9 now decide what an appropriate sentence should be
10 for these offences.

11 The Crown is seeking a sentence of five to
12 six years' imprisonment less credit for remand
13 time. Mr. Inuktalik's remand time is significant
14 as he has been in custody since March 18th, 2012,
15 some 513 days as of Monday.

16 Mr. Inuktalik's counsel says that an
17 appropriate sentence is three to five years less
18 credit for his remand time.

19 Facts

20 The offender committed a vicious assault on
21 his ex-common-law spouse which resulted in
22 gruesome injuries. Details of the assault and
23 the injuries sustained by the victim are
24 contained in the Agreed Statement of Facts,
25 Exhibit 1.

26 I have heard that Mr. Inuktalik and Janine
27 Olifie became involved in 1998 or 1999. They

1 were in a relationship for approximately 12
2 years. It was an on-and-off relationship, and
3 during the 12 years they were together they were
4 separated for about two years. They have three
5 children together, twelve, ten and six.
6 Ms. Olifie has another child from an earlier
7 relationship. From what I have heard, Mr.
8 Inuktalik has been involved in raising this child
9 since she was an infant and considers her as his
10 own child.

11 At the time of this incident, Ms. Olifie had
12 been trying to leave Mr. Inuktalik for about six
13 months and they had been on a "break" for two
14 weeks. The relationship was a volatile one and
15 Mr. Inuktalik has repeatedly been convicted for
16 assaulting Ms. Olifie, which I will discuss later
17 in these reasons.

18 This incident occurred on March 18th, 2012,
19 at approximately 5 a.m. when Janine Olifie was
20 walking out of an apartment in Yellowknife with a
21 man. Mr. Inuktalik pulled up in the victim's
22 vehicle, got out and began to assault the man.
23 Mr. Inuktalik then yelled at the victim to "get
24 the fuck" in the vehicle. Ms. Olifie got in the
25 back seat of the vehicle and Mr. Inuktalik got
26 into the driver's seat. He began driving fast
27 towards the Ingraham Trail.

1 Mr. Inuktalik was angry and repeatedly swore
2 at the victim for having sex with the man and was
3 stating that "no one fucks with Inuktalik."

4 Ms. Olifie was terrified and praying for her
5 life. She was unable to escape the vehicle.

6 Mr. Inuktalik drove past the Yellowknife
7 River on the Ingraham Trail. He stopped and got
8 in the back seat with Ms. Olifie and began
9 hitting her on the head repeatedly and again
10 swearing at her and stating that "no one fucks
11 with Inuktalik." Ms. Olifie tried to block the
12 punches with her arms. Mr. Inuktalik then began
13 biting her and stating that he was "going to make
14 her so ugly that no one will want her," and that
15 he was going to "fuck her up".

16 Mark Inuktalik bit Janine Olifie's arm, her
17 upper lip and her nose, causing the tip of her
18 nose and part of her lip to hang off her face.
19 She was bleeding and had to hold her nose and lip
20 in place. Mr. Inuktalik got out of the vehicle
21 and began yelling and screaming. After
22 approximately five minutes, he returned to the
23 vehicle and Ms. Olifie begged him to take her to
24 the hospital. He drove her to the hospital at
25 approximately 5:45 a.m. and then left in
26 Ms. Olifie's vehicle.

27 An RCMP officer located Mr. Inuktalik at

1 6:48 a.m. passed out in the driver's seat of the
2 vehicle, in a snowbank on a street in Yellowknife
3 with the vehicle running. He was intoxicated and
4 placed under arrest. Mr. Inuktalik was given the
5 breath demand and refused to provide a sample.

6 Ms. Olifie was treated for her injuries at
7 Stanton Hospital. She was given medication for
8 pain, to prevent infection, and to deal with
9 anxiety due to her feelings of anger,
10 embarrassment and shame. She was concerned about
11 her children seeing her injuries and was not able
12 to look at herself in the mirror while she was in
13 the hospital.

14 On March 21st, 2012, Ms. Olifie was
15 transported to Edmonton to consult a plastic
16 surgeon at the University of Alberta hospital.
17 She has visible scarring on her nose and upper
18 lip along the suture lines. She has had to go to
19 Edmonton three times for medical appointments
20 with the plastic surgeon. Her last appointment
21 was approximately two months ago when she was
22 advised that the injuries were healing nicely and
23 that the tip of her nose was still swollen. Once
24 the swelling went down, a final surgery would be
25 required on her nose. Ms. Olifie has not decided
26 whether she will have this surgery or not.

27

1 Impact on the Victim

2 Janine Olifie did not provide a victim
3 impact statement. Crown counsel advised the
4 court that she had met with Ms. Olifie and she
5 was advised of her right to do so. Crown counsel
6 advised that she spoke with Ms. Olifie and she
7 was advised that Mr. Inuktalik and Ms. Olifie are
8 no longer together. Ms. Olifie has been in a new
9 relationship for six to eight months. Ms. Olifie
10 also spoke to her about her physical injury,
11 emotional injuries, and how difficult it has been
12 financially for her. She still suffers the
13 effect of the trauma that was inflicted upon her.
14 She indicated that for some months after this
15 incident that she was terrified to leave home,
16 she did not feel safe, she was afraid of Mr.
17 Inuktalik and had to testify at the preliminary
18 inquiry with a screen and support person because
19 she was not able to look at him.

20 In terms of her physical injuries, she was
21 disfigured for months, which left her angry, not
22 wanting to be in public and feeling isolated from
23 her friends and family. The emotional trauma was
24 significant and left her unable to work for a
25 time. She has also been the sole provider of her
26 four children since Mr. Inuktalik's arrest, which
27 has added to her burden. Her children have been

1 affected, too, as they miss their father. She
2 has plans to attend school in the future and is
3 working hard to get better and to forgive Mr.
4 Inuktalik. She advised the Crown that in March
5 she was able to forgive him. All of this was
6 related by counsel for the Crown. Mr.
7 Inuktalik's counsel in his submissions did not
8 take any issue with any of this information and
9 provided a letter written by Ms. Olifie, Exhibit
10 3, which confirmed some of what the Crown related
11 in court. I have no doubt, based on the facts
12 and the photographs of Ms. Olifie's injuries,
13 that all of this is true. The physical injuries
14 that she suffered were significant. The tip of
15 her nose and lip were bitten to the point that
16 they were hanging off her face. It appears that
17 she has had to have multiple plastic surgeries to
18 repair the injuries and restore her physical
19 appearance.

20 The emotional trauma also must have been
21 significant. Your face is very personal to you,
22 to who you are and how you perceive yourself.
23 People look in the mirror, see their reflection
24 in windows. This occurs many times a day,
25 probably often without conscious thought.
26 People, family, friends, your children, will also
27 look at you multiple times a day. And where do

1 you look when you talk to someone? You look at
2 their face. And to have those reminders of the
3 trauma inflicted on you to be visible for
4 everyone including your children to see. Those
5 scars must have been a daily reminder to her and
6 to everyone around her of the violence that was
7 done to Ms. Olifie, done by someone who has
8 claimed to care for you and the father of your
9 children. So I have no doubt that it was
10 devastating upon Ms. Olifie. The feelings of
11 anger, isolation and not wanting to be seen are
12 understandable.

13 The letter that Ms. Olifie wrote is
14 significant for many reasons, not the least of
15 which is that it confirms that she has forgiven
16 Mr. Inuktalik. I think that it is a testament to
17 Ms. Olifie's strength that she has been able to
18 forgive Mr. Inuktalik. She has suffered
19 significant physical and emotional trauma. She
20 has been left the sole provider of her four
21 children. She has come through this challenge
22 and she has also been able to forgive Mr.
23 Inuktalik.

24 Mr. Inuktalik, I think that you are lucky
25 because forgiveness ultimately is not about you;
26 it is about Ms. Olifie being able to let go of
27 her anger and bitterness and forgive you. This

1 is not about you deserving it. And it also does
2 not mean that she forgets or that her pain and
3 emotional trauma are gone or that she wants to
4 resume a relationship with you. But you are
5 lucky because it opens the door, allows you the
6 opportunity to try and build a new, respectful
7 relationship with the mother of your children.
8 And how that proceeds, the success of that is up
9 to you and whether you can deal with your
10 problems.

11 Criminal Record

12 Mr. Inuktalik's criminal record has been
13 filed as an exhibit, and it is a significant one.
14 By my count, there are 31 convictions on the
15 criminal record and there are a number of
16 convictions which raise some concerns for the
17 court. The criminal record begins in 1992 in
18 Youth Court when Mr. Inuktalik was convicted of
19 five property offences and failing to comply with
20 disposition under the Young Offenders Act. As
21 the first entry includes failing to comply with
22 disposition, that tells me that Mr. Inuktalik's
23 record is likely incomplete. In any event, those
24 really do not raise any concerns with the Court.
25 Mr. Inuktalik received a custodial sentence and
26 probation.

27 Following that, he has convictions in Youth

1 Court again in 1994 for property offences.

2 His adult record begins in 1997. He has
3 convictions for property, drug, and firearms
4 offences in 1997 and 1998.

5 Over the years, he has been convicted and
6 sentenced for a number of offences, including
7 possession of a weapon in 2000, and there are
8 several convictions for offences against the
9 administration of justice, including escape
10 lawful custody, failing to comply with probation
11 orders, failing to comply with release conditions
12 imposed by peace officers and the courts, and
13 resisting or obstructing a peace officer.

14 His last convictions are from 2011, which
15 include three convictions for failing to comply
16 with release conditions and resisting or
17 obstructing a peace officer. Those convictions
18 all raise some concerns.

19 But what raises serious concerns are the
20 entries on Mr. Inuktalik's criminal record that
21 are convictions which involve crimes of violence
22 against Ms. Olifie. They include the following:
23 A conviction on March 4th, 1999, for an assault
24 for which he received five months in jail and a
25 three year firearms prohibition order. At the
26 same time Mr. Inuktalik was sentenced for another
27 assault for which he received three months jail

1 consecutive. There is no information about who
2 the victim was in that case so it is significant
3 only in that it is a prior offence of violence on
4 his record.

5 The next conviction for an offence involving
6 Ms. Olifie is on May 9th, 2001, where he received
7 a jail sentence of 45 days and a three year
8 firearms prohibition order.

9 Mr. Inuktalik was convicted again of a
10 spousal assault on Ms. Olifie on January 21st,
11 2003, and received a sentence of five months in
12 jail.

13 On March 11th, 2004, Mr. Inuktalik was
14 convicted of assault causing bodily harm on
15 Ms. Olifie and received seven months in jail,
16 followed by one year of probation and a ten year
17 firearms prohibition order.

18 While there are no further entries on Mr.
19 Inuktalik's criminal record for offences of
20 violence against Ms. Olifie, there is a
21 conviction from November 30th, 2011, where Mr.
22 Inuktalik was convicted of failing to comply with
23 a condition of his undertaking or recognizance,
24 and I am advised that Mr. Inuktalik had failed to
25 comply with a condition which prohibited him from
26 attending Ms. Olifie's residence.

27 Unfortunately, other than knowing that

1 Ms. Olifie was the victim in these previous
2 offences, I do not have any details about the
3 circumstances of those offences or injuries which
4 may have been inflicted upon Ms. Olifie. Despite
5 that, there are a number of conclusions that I
6 think are obvious or inescapable when considering
7 Mr. Inuktalik's criminal record.

8 I am told that Mr. Inuktalik and Janine
9 Olifie began their relationship in 1998 or 1999.
10 His first conviction for assaulting her was in
11 1999, so the violence in the relationship would
12 have begun early on in the relationship.

13 Also, there have been repeated instances of
14 violence in the relationship that have increased
15 in severity. The first three convictions for
16 violence against Ms. Olifie are for assault,
17 sometimes referred to as "simple assault". The
18 fourth conviction is for assault causing bodily
19 harm. Today we are dealing with a fifth
20 conviction for aggravated assault. This
21 conviction for aggravated assault is more serious
22 than any of the previous assaults on Mr.
23 Inuktalik's record, indeed it is the most serious
24 offence of any on his record. These past related
25 convictions are obviously of great concern to the
26 Court.

27 Mr. Inuktalik would have entered into the

1 relationship with Ms. Olifie when he was 21 or
2 22. He is now 36. And what I dare say has been
3 the most significant relationship of his adult
4 life has been characterized by violence. Mr.
5 Inuktalik has demonstrated a pattern of abusing
6 his spouse, of abusing Ms. Olifie during the
7 course of his relationship with her.

8 Section 718.2(e)

9 Mr. Inuktalik is of Inuvialuit descent and
10 this requires me to consider section 718.2(e) of
11 the Criminal Code where it states:

12
13 All available sanctions other than
14 imprisonment that are reasonable in
15 the circumstances should be
16 considered for all offenders, with
17 particular attention to the
18 circumstances of aboriginal
19 offenders.

20 The Supreme Court of Canada has given
21 direction to trial courts in the interpretation
22 of this section in R. v. Gladue [1999]1 S.C.R.
23 688, and more recently in R. v. Ipeelee [2012]
24 S.C.C. 13. I have considered the principles set
25 out in those cases and the requirement to
26 consider the unique systemic or background
27 factors which may have played a part in bringing
an aboriginal offender before the courts and the
types of sentencing procedures and sanctions

1 which may be appropriate in the circumstances
2 because of an offender's aboriginal background.

3 I have heard that Mr. Inuktalik is
4 originally from the community now known as
5 Ulukhaktok. His childhood was marked by
6 alcoholism in those around him. His relatives,
7 older people, abused alcohol. His father left
8 the family due to his abuse of alcohol, and later
9 his alcohol abuse led to his death. As a child
10 this had an impact on Mr. Inuktalik. He could
11 not understand why his father left. It
12 contributed to a sense of abandonment. This has
13 had a long-lasting impact upon Mr. Inuktalik, and
14 today he himself struggles with alcohol and he is
15 concerned about the impact on his children.

16 Mr. Inuktalik's situation is not unusual in
17 this jurisdiction. I say that not to diminish
18 Mr. Inuktalik's experience, but the sad reality
19 is that many offenders who come before this court
20 and the Territorial Court have lives that have
21 been devastated by the abuse of alcohol. They
22 have witnessed their parents and family members
23 abuse alcohol. They begin abusing alcohol at a
24 relatively young age and continue to do so as
25 they grow up and have children, and their abuse
26 of alcohol begins to affect their children. It
27 is a cycle that Mr. Inuktalik seems stuck in.

1 I accept that there are factors in Mr.
2 Inuktalik's background which are relevant to his
3 aboriginal heritage and which contribute to him
4 being before the court today. At the same time,
5 the paramount sentencing principles have to be
6 deterrence and denunciation, which I will discuss
7 further. Overall, I do not think that the
8 factors referred to in Gladue and Ipeelee that
9 are applicable here are such that they can
10 significantly reduce Mr. Inuktalik's sentence.
11 As acknowledged in Gladue, the more violent and
12 serious the offence, the more likely that a
13 sentence of imprisonment for aboriginal and
14 non-aboriginal offenders will be the same or
15 close to the same.

16 Sentencing Principles

17 There are a number of sentencing principles
18 that are engaged in this case. The purpose and
19 principles of sentencing are set out in the
20 Criminal Code. I do not intend to refer to all
21 of them, but I have considered the principles
22 enunciated in section 718 to 718.2. The
23 fundamental principle of sentencing is that a
24 sentence must be proportionate to the gravity of
25 the offence and the degree of responsibility of
26 the offender.

27 In cases involving domestic violence, there

1 are a number of considerations that arise from
2 the nature of domestic violence and the
3 relationships that underpin these offences that
4 the court must take into account. The prevalence
5 of domestic violence in our society has been
6 recognized for many years by the courts. One
7 case, actually a trilogy of cases, which has
8 recently been quoted in courts in the Northwest
9 Territories is the case of Brown, Highway and
10 Umpherville, 1992 AJ No. 432 where the Alberta
11 Court of Appeal discussed the problem at page 6.

12

13 ...the phenomenon of repeated
14 beatings of a wife by a husband is a
15 serious problem in our society. It
16 is not one which may be solved
17 solely by the nature of the
18 sentencing policy applied by the
19 courts where there are convictions
20 for such assaults. It is a broad
21 social problem which should be
22 addressed by society outside the
23 courts in ways which it is not
24 within our power to create, to
25 encourage, or to finance. But when
26 such cases do result in prosecution
27 and conviction, then the courts do
28 have an opportunity, by their
29 sentencing policy, to denounce
30 wife-beating in clear terms and to
31 attempt to deter its recurrence on
32 the part of the accused man and its
33 occurrence on the part of other men.

24

25 The case of Brown established that the
26 paramount sentencing principles in cases of
27 domestic violence are general deterrence and

1 denunciation. At page 7, the Court of Appeal
2 stated:

3 ...the more important principles are
4 that the sentence should be such as
5 to deter other men from similarly
6 conducting themselves toward women
7 who are their wives or partners
8 (what is called the principle of
9 "general deterrence"), and that the
10 sentence should express the
11 community's wish to repudiate such
12 conduct in a society that values the
13 dignity of the individual (the
14 "denunciation principle").

15 While the Brown case is over 20 years old
16 now, the comments by the Court of Appeal remain
17 apt and domestic violence is unfortunately alive
18 and well in the Northwest Territories. Cases
19 like R. v. Football filed by the Crown, and
20 others like R. v. Vital, demonstrate that
21 domestic violence continues to be a serious
22 problem in the Northwest Territories, sometimes
23 with tragic and permanent consequences.

24 Despite the passage of time, courts remain
25 limited in our ability to solve the problem of
26 domestic violence. It continues to be a broad
27 social problem which needs to be addressed by
28 society, by the government, by communities, and
29 by individual citizens. When the courts get
30 involved, the assault, the domestic violence has
31 already occurred. We are dealing with the often
32 messy aftermath. As such, our role remains as it

1 has been, to use sentencing policy to denounce
2 domestic violence in clear terms and to deter the
3 offender and other persons from committing acts
4 of domestic violence.

5 Since Brown, section 718.2(a)(ii) of the
6 Criminal Code has been enacted to make it
7 statutorily aggravating that the offender, in
8 committing the offence, abused their spouse or
9 common-law partner. This simply codified what
10 the courts already viewed as being an aggravating
11 factor - the abuse of a spouse.

12 Despite this very clear language, sentencing
13 in cases of domestic violence can be challenging.
14 As a judge, you are not just sentencing an
15 offender for a particularly aggravating type of
16 an assault, but your sentence will also impact
17 others. This is the case for sentencing any
18 offender, but because of the nature of the
19 offence and the relationship that underpins it,
20 there are other challenges that a court must
21 address.

22 Frequently, the views and wishes of the
23 victim of the assault are prominently before the
24 court in a manner that is different from other
25 offences. It is not unusual in prosecutions for
26 victims to recant, to change their versions of
27 what occurred; and in sentencings, to advise of

1 their desire to continue the relationship, to
2 urge the court for leniency often ignoring the
3 risk to their own safety. And this is
4 understandable. Spousal relationships can be
5 complicated and domestic violence is just one
6 aspect of that relationship. Often there are
7 other factors at play: continued feelings of
8 love and affection; feelings that the offender
9 simply needs to stop drinking and take
10 counselling; there are children who miss their
11 parent; the offender is the main financial
12 contributor to the maintenance of the family.
13 There is the passage of time and rationalizing -
14 the assault was not so bad or the victim feels
15 that perhaps they instigated it. The realities
16 that victims are dealing with often take
17 precedence in their mind over the sentencing of
18 the offender for domestic violence. All of this
19 to say that spousal relationships have many
20 vulnerabilities - emotional and financial - which
21 often arise in sentencing for offences of
22 domestic violence. The challenge for the court
23 is how to properly address them.

24 In *Brown*, the Court of Appeal quoted at page
25 7 from *R. v. Coston*, (1990) 108 A.R. 209 where
26 Justice Hetherington, in dissent, stated:

27

1 Domestic violence is not in any way
2 different from violence in the
3 street except that frequently the
4 victim, because of his or her
5 emotional involvement with the
6 offender, does not want to see the
7 offender punished. If courts give
8 effect to the wishes of victims in
9 this regard, persons inclined to
10 assault family members will feel
11 that they can do so with impunity.

12 I agree completely with this comment. While
13 the views of the victim are something that courts
14 should take into consideration, they cannot usurp
15 the obligation of the court in cases of domestic
16 violence to send very clearly the message of
17 deterrence, both specific and general, and
18 denunciation. This idea was also endorsed in the
19 case of Brown at page 8.

20 ...the plea of the wife that her
21 husband be returned to her and that
22 she not be further victimized by
23 being deprived of his income should
24 not readily be permitted to prevail
25 over the general sentencing policy
26 that envisages the imprisonment of
27 the man as not only an instrument of
28 the deterrence of other men, but
29 also as an instrument of breaking
30 the cycle of violence in that man's
31 family even at the risk of the
32 relationship coming to an end during
33 the enforced separation.

34 Brown has recently been cited in the recent
35 case in this court of R. v. Weninger, 2013 NWTSC
36 50. In that case Justice Charbonneau added at

1 page 24:

2
3
4
5
6
7
8
9
10
11

The sentencing principles of general deterrence and denunciation require looking beyond the one case that the court is dealing with. The court has to be concerned about the message that this sentence sends to the public. It is not about making examples of people, it is not about succumbing to political or other pressures, it is not about being unduly harsh, but it is about ensuring that the sentences imposed for crimes reflect the seriousness of the crime, the importance of discouraging others from behaving in a similar way and that sentences reflect society's condemnation of the conduct.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

The Crown has filed two cases which it submits establish an appropriate range from which to craft a sentence for Mr. Inuktalik. The first is R. v. Football, 2006 NWTSC 69, where Mr. Football pleaded guilty to a charge of aggravated assault for a prolonged beating which occurred over two days of his common-law spouse. The victim suffered a fractured jaw, a brain injury, and multiple bruises over her face and body. She was beaten to the point that she was unrecognizable to her own sister, and this assault occurred in the presence of the couple's two young children. Mr. Football was 28, and he and the victim had been in a common-law relationship for approximately ten years. He had

1 previously been convicted of assaulting the same
2 victim. He had four prior convictions for
3 assaulting the victim, for which he had received
4 a suspended sentence and one year probation and
5 on the last occasion six months' imprisonment.

6 Mr. Football's guilty plea occurred after a
7 preliminary inquiry where the victim was required
8 to testify. His guilty plea was not a last
9 minute plea but was also not one made at the
10 first opportunity and was not considered an early
11 guilty plea.

12 Mr. Football was in custody for
13 approximately 16 months prior to sentencing, for
14 which he received credit of two-and-a-half years
15 or 30 months for his remand time. The sentence
16 imposed was six years. With the reduction for
17 remand time, his remaining sentence was three and
18 a half years. In passing sentence, Justice
19 Richard, at page 3 to 4, noted:

20
21 The courts have attempted in its
22 sentencing decisions in this
23 jurisdiction, in the last two
24 decades in particular, to send a
25 message that domestic violence, or
26 violence against women generally,
27 will not be tolerated and that
meaningful, severe penalties, i.e.,
significant jail time, will be
imposed on offenders who assault
their spouse.

There are some similarities and some

1 differences when you consider the case of
2 Football.

3 The second case provided by the Crown is R.
4 v. Gonzales-Hernandez, 2011 BCSC 1039, which is a
5 case from British Columbia which is similar
6 mainly because of the type of injuries inflicted
7 upon the victim. In this case there was no
8 spousal relationship, but the offender and victim
9 had recently begun a sexual relationship. The
10 offender in that case was convicted after trial
11 of aggravated sexual assault for biting off the
12 victim's nose when she refused to have sex with
13 him. The offender maintained that it was an
14 accident which occurred in the course of
15 consensual rough sex.

16 The offender had a criminal record with two
17 dated entries from the United States for
18 assaulting a spouse.

19 In that case there was no explanation for
20 why the offender had acted as he did. The court
21 stated at paragraph 46:

22
23 It is clear that the intentional
24 application of sufficient force to
25 bite the nose off was applied,
26 although, aside from the common
27 sense inference that a person
intends the natural consequences of
his acts, it is not possible to say
whether Mr. Gonzales-Hernandez
actually wanted the complainant to
have to exist and cope without a
nose. To that extent, the event

1 remains, to use Dr. Lohrasbe's word,
2 unresolved.

3 In that case the offender was sentenced to
4 eight years' incarceration. He had 21 months of
5 pre-trial custody and was credited with 42 months
6 or three and a half years credit for remand time,
7 leaving a sentence of four and a half years.

8 In both cases the option with respect to
9 remand time was available to those judges to
10 offer credit at the two-for-one basis, which is
11 now not open to this court.

12 In Gonzalez-Hernandez there are few
13 similarities but it does help in establishing a
14 range of appropriate sentences for this type of
15 offence. Of course this case has similarities
16 and differences when viewed in comparison to both
17 cases. Even if a case was exactly the same in
18 terms of facts and the offender's background,
19 each sentencing has to be approached
20 individually, taking into account the facts of
21 the offence and the circumstances of the
22 offender.

23 Factors Applicable in this case

24 Turning to the factors that are applicable
25 in this case.

26 Mr. Inuktalik has entered a guilty plea.

27 This guilty plea occurred after a preliminary

1 inquiry in which the victim was required to
2 testify. Mr. Inuktalik was charged on an
3 Information with five counts. In addition to the
4 charges which are on the Indictment, he was also
5 charged with aggravated sexual assault of
6 Ms. Olifie.

7 He had a preliminary inquiry on October
8 19th, 2012, after which he consented to his
9 committal on all five counts. Subsequently, the
10 Crown filed the Indictment which contained only
11 four of the charges that he had been committed
12 on. The aggravated sexual assault was not
13 pursued. Counsel for Mr. Inuktalik advises that
14 Mr. Inuktalik pursued the preliminary inquiry on
15 the advice of counsel and that there were issues
16 to be explored. The Crown concedes that the
17 other charge was not pursued by the Crown after
18 the preliminary inquiry and that Mr. Inuktalik's
19 jeopardy changed as a result of having held the
20 preliminary inquiry. Once in Supreme Court, Mr.
21 Inuktalik indicated his willingness to plead to
22 the charges. No trial date was ever set in
23 Supreme Court.

24 In the circumstances, I am not prepared to
25 conclude that Mr. Inuktalik's guilty plea is a
26 late one. It is apparent that the issue of
27 whether an aggravated sexual assault occurred

1 during the course of these events was one that
2 needed to be explored at the preliminary inquiry
3 so Mr. Inuktalik should be given credit for his
4 guilty plea.

5 Mr. Inuktalik has expressed his remorse
6 through submissions from counsel and by his
7 apology to Ms. Olifie on Wednesday. Mr.
8 Inuktalik's counsel advises that Mr. Inuktalik
9 has no memory of the incident due to alcohol
10 consumption but has nevertheless been affected by
11 thoughts of what he did to the victim.

12 Remorse is displayed in many ways and in my
13 view can have varying degrees of significance. A
14 guilty plea is commonly viewed as an expression
15 of remorse although an offender who pleads guilty
16 may not seem very remorseful when they appear
17 before the court. There are offenders who write
18 letters of apology and make restitution in cases
19 of damaged property. There can be no doubt that
20 those are strong expressions of remorse.

21 Submissions from counsel and apologies in court
22 by an offender are also expressions of remorse
23 and I accept, based on what I heard the other
24 day, that Mr. Inuktalik is remorseful for what he
25 did to Ms. Olifie.

26 I expect that Mr. Inuktalik is remorseful
27 for each of the assaults that he committed on

1 Ms. Olifie. The court must also view cautiously
2 the expression of remorse particularly in a case
3 of repeated assaults on a spousal partner. The
4 expression of remorse should not be too quickly
5 equated with the conclusion that the offender
6 will never assault his partner again.

7 Rehabilitation and remorse are factors that in
8 domestic violence cases are subordinate to the
9 paramount sentencing principles of deterrence and
10 denunciation.

11 I have already referred to Mr. Inuktalik's
12 criminal record, but I also want to emphasize
13 that the criminal record of an offender should
14 not be given too much weight in crafting an
15 appropriate sentence. Mr. Inuktalik is much more
16 than his criminal record and his prior
17 convictions should not be overemphasized.

18 I have heard from his counsel that Mr.
19 Inuktalik is a hard worker who has been a good
20 provider for his children. I have heard that his
21 children miss him terribly.

22 He has worked in construction here in
23 Yellowknife and is proud of the buildings that he
24 has worked on, including the Greenstone Building.
25 Mr. Inuktalik quite rightly views them as
26 positive contributions to society and he should
27 be proud of what he has done.

1 But his pattern of domestic violence against
2 Janine Olifie cannot be ignored. He has
3 persistently and repeatedly assaulted her over
4 the course of the relationship and even after she
5 tried to end the relationship with him.

6 The increasing severity of the violence also
7 raises concerns for the safety of Ms. Olifie and
8 any future partner that Mr. Inuktalik might begin
9 a relationship with. Unless Mr. Inuktalik takes
10 steps to address his underlying problems - and
11 when I say "steps" I mean attends programs and
12 makes a real commitment to being a better person,
13 being a better partner - then I fear that he is
14 at risk of being before this court again in the
15 future perhaps on charges just as serious as
16 those before the court today. I hope that the
17 sentence that I am going to impose will assist
18 you with that, Mr. Inuktalik, because the court
19 cannot jail you forever and rehabilitation has to
20 be a factor in order to ease your transition back
21 into society.

22 This is an offence which was committed while
23 Mr. Inuktalik was under the influence of alcohol.
24 Mr. Inuktalik's counsel tells me that Mr.
25 Inuktalik has no memory of the events as a result
26 of his consumption of alcohol. He is not using
27 that as an excuse, but what it does tell me is

1 that Mr. Inuktalik was highly intoxicated.

2 I have not yet referred to the other charge
3 on the Indictment, that of refusing a breath
4 demand, but I do also think it is important to
5 say that obviously Mr. Inuktalik made many bad
6 choices that morning, one of which was to drive
7 Ms. Olifie's vehicle while intoxicated and
8 subsequently refused to comply with the breath
9 demand of the officer. Aside from what you did
10 to Ms. Olifie, you placed the citizens of
11 Yellowknife at risk with your reckless actions.
12 While the time of day was one where there would
13 not be many vehicles on the road, I would expect
14 there would still be some vehicles, and you
15 placed lives at risk - yours, Ms. Olifie, and
16 possibly other citizens.

17 The consumption of alcohol also deserves
18 comment because while you may have no memory of
19 the events, and I have heard from counsel that
20 you are not using the consumption of alcohol as
21 an excuse for your actions, but I think it is
22 worth noting that you, Mr. Inuktalik, are still
23 responsible for your actions, not that drunk Mark
24 Inuktalik with no memory of what he did, but you
25 who sits here today, you who took that first
26 drink and then another and another. And I am not
27 saying that this is your view, but the lack of

1 memory cannot be viewed by you as somehow
2 diminishing your responsibility for what
3 occurred.

4 Turning to the circumstances of the offence,
5 there are a number of aggravating factors.

6 First, this was an assault on a spouse or
7 common-law partner. While Ms. Olifie had been
8 trying to end the relationship with Mr. Inuktalik
9 for approximately six months prior to this
10 incident and they had been on a break for two
11 weeks when this occurred, that does not in my
12 view change the aggravating aspect of the spousal
13 nature of the assault. The parties were in a
14 long term relationship which at the time of the
15 incident may have been in flux but was still in
16 place. Clearly, based on Mr. Inuktalik's words
17 and actions, he was acting in a jealous rage as a
18 result of seeing Ms. Olifie with another man. He
19 said that "no one fucks with Inuktalik" and that
20 he was going to make Ms. Olifie so ugly no one
21 would want to be with her.

22 Ms. Olifie's letter presented by Mr.
23 Inuktalik's counsel demonstrates some of the
24 emotional and financial vulnerabilities that
25 characterize a spousal relationship. She
26 expresses concern about her financial situation,
27 that the children miss their father, that she

1 wants him released so that he can work and have
2 contact with the children, that she is not afraid
3 of him, and she expresses her forgiveness.
4 Ms. Olifie has not expressed a willingness to
5 resume the relationship with Mr. Inuktalik and is
6 apparently now in a new relationship. No one can
7 predict whether Mr. Inuktalik and Ms. Olifie will
8 ever resume their relationship, but it is
9 apparent that because of their children they will
10 have a lifelong connection.

11 The assault committed by Mr. Inuktalik was
12 vicious and horrific. He took Ms. Olifie in a
13 vehicle to a remote location where, because of
14 the time of day and location, the possibility of
15 her being rescued was unlikely. He told her that
16 he was going to make her so ugly that no one
17 would want her and then proceeded to bite the tip
18 of her nose and lip to the point that they were
19 hanging off her face. While I would not say that
20 this was a planned event as Mr. Inuktalik likely
21 could not have foreseen that he would come across
22 Ms. Olifie leaving an apartment with a man at 5
23 a.m., but it was deliberate. Mr. Inuktalik said
24 to Ms. Olifie that "no one fucks with Inuktalik"
25 and that he was going to "fuck her up" and he was
26 going to make her so ugly that no one will want
27 her. Mr. Inuktalik implied that he was going to

1 disfigure her, and he did.

2 This is not a situation like in the
3 Gonzales-Hernandez case where there really is no
4 explanation for what occurred. In this case Mr.
5 Inuktalik clearly expressed his intent and acted
6 upon it in a brutal fashion, and he did so in a
7 way that was clearly intended to achieve his
8 objective. Biting Ms. Olifie's nose and lip to
9 the point that they were hanging off her face
10 ensured that the injuries would be visible to
11 anyone who looked at her face. Perhaps in his
12 mind that meant that he'd achieved his objective.

13 The injuries that Ms. Olifie suffered are
14 gruesome. The pictures clearly depict what Mr.
15 Inuktalik did to her. And as I referred to
16 earlier, they are visible reminders of the trauma
17 inflicted upon her and I am sure they will be
18 lasting. No plastic surgery, however perfect,
19 will likely remove the memory or pain of what
20 happened to Ms. Olifie, and I would not be
21 surprised if she will always look at her face and
22 be reminded of what occurred.

23 Taking into account the circumstances of the
24 offence and the offender, any sentence imposed
25 must meet the sentencing principles that I have
26 referred to. In sentencing an individual who has
27 demonstrated a pattern of repeatedly assaulting

1 his spouse or common-law partner, ensuring that
2 the paramount sentencing principles are met
3 becomes even more important. Offenders who
4 repeatedly commit offences of domestic violence
5 particularly against the same victim, have
6 demonstrated that the previous sentences intended
7 to denounce their conduct and to specifically
8 deter the offender and generally deter other
9 persons who might contemplate assaulting their
10 spouse have not worked. In these situations the
11 court should not give up or defer dealing with
12 the problem to others in society, but it should
13 instead ensure that the paramount sentencing
14 principles continue to be emphasized in
15 sentencing an offender convicted of offences of
16 domestic violence.

17 Mr. Inuktalik, the sentence I am about to
18 impose I hope sends several messages: First,
19 that it expresses society's condemnation of your
20 conduct. What that means is that society, the
21 people of the Northwest Territories, the people
22 of Yellowknife, do not think it is okay to
23 assault your spouse. They are revolted by this
24 type of behaviour. Secondly, it must deter other
25 people in a spousal relationship from
26 contemplating assaulting their spouse. It has to
27 tell other people that this type of sentence is

1 possibly what they face when they choose to act
2 the way that you did. Hopefully this sentence
3 will make them think twice and will deter others.
4 And lastly, it must specifically deter you. And
5 when I say that, I mean that you will never
6 assault your spouse again, whether it is
7 Ms. Olifie or another partner.

8 I also think it is necessary to separate you
9 from society. I think that as it stands, you are
10 a risk to Ms. Olifie and any partner that you
11 enter into a relationship with. Separation from
12 society will also permit you to take programs and
13 attempt to deal with your issues so hopefully you
14 will be rehabilitated.

15 Returning briefly to Mr. Inuktalik's
16 criminal record. I did not refer to earlier that
17 there is a gap in Mr. Olifie's criminal record
18 from 2004 to 2011. I have taken that into
19 account. I think that the gap is significant,
20 but at the same time, because the relationship
21 with Ms. Olifie continued and there are
22 convictions that continue that involve
23 Ms. Olifie, that the gap has less of a
24 significance than it might ordinarily have.

25 Pre-trial custody pursuant to section 719(3.1)

26 As I previously mentioned, Mr. Inuktalik has
27 been in custody since his arrest on March 18th,

1 2012. The warrant of committal indicates that he
2 consented to his detention reserving his right to
3 a show cause. A review of the file indicates
4 that Mr. Inuktalik has not sought his release on
5 bail and has waived mandatory 90 day bail
6 reviews.

7 Pursuant to section 719(3.1) of the Criminal
8 Code, the maximum credit available for his remand
9 time is one and a half days for each day spent in
10 custody, which can be granted if the
11 circumstances justify it.

12 The issue of what circumstances will justify
13 an increase up to one and a half days of credit
14 for each day has been the subject of litigation.
15 However it has been accepted in this court.

16
17 ...that the proper interpretation of
18 this provision is that the
19 circumstances that can justify
20 enhanced credit do not have to be
21 exceptional or occur only in rare
 situations. They do, however, have
 to be applicable to the specific
 accused who is before the court.

22 That is from R. v. Green, 2013 NWTSC 20 at
23 paragraph 77.

24 As Justice Charbonneau also stated in Green
25 at paragraph 78:

26
27 There is nothing automatic about
 enhanced credit. The onus is on the

1 person being sentenced to show on a
2 balance of probabilities that the
3 circumstances do justify enhanced
4 credit being granted.

4 This can be done in a variety of ways:
5 through viva voce evidence, for example; or, as
6 was done in this case, through counsel for the
7 offender who is an officer of the court and
8 having spoken with a reliable source who is
9 familiar with the circumstances of the offender's
10 pre-trial custody. In this case counsel spoke
11 with Mr. Pin, the case manager for the offender
12 at the correctional centre who is familiar with
13 the offender and also reviewed his file. The
14 information that I have been provided is that
15 there have been a few minor incidents involving
16 Mr. Inuktalik during his time in custody. None
17 of those incidents have been serious or involve
18 violence and would not in the end have resulted
19 in him losing remission for his conduct.

20 In terms of programming, Mr. Inuktalik would
21 have been able to access Alcoholic's Anonymous
22 meetings, he would have been able to work in some
23 capacities at the correctional centre and to take
24 schooling or upgrading.

25 Any programs offered by the Canadian
26 Correctional Service would not have been
27 accessible to Mr. Inuktalik. These programs

1 include the family violence program and the
2 national substance abuse program. There is no
3 indication that Mr. Inuktalik did access those
4 programs or work at any of the things that were
5 available to him.

6 Counsel for Mr. Inuktalik encourages me to
7 exercise my discretion to grant Mr. Inuktalik the
8 full one and a half days of credit for his remand
9 time. His basis for doing so is the lack of
10 availability of programming relevant to Mr.
11 Inuktalik's personal situation, and that he would
12 have earned remission had he been a serving
13 prisoner.

14 With respect to remission, as stated by this
15 court in R. v. Mannilaq, 2012 NWTSC 48 at page
16 25.

17 ...where there is evidence or
18 credible information presented to
19 the Court that a prisoner on remand
20 has displayed behaviour that is such
21 that they would have earned
22 remission if they had been a serving
23 prisoner, that is a relevant
24 consideration in deciding whether
25 credit for remand time should be
26 calculated on an enhanced basis.

27 There are undoubtedly a variety of
other circumstances that could
justify enhanced credit being given
for remand time and it could well be
also, conversely, that even when a
person have behaved well while on
remand the Court may decide not to
grant credit on an enhanced basis.
In my view, the exercise of
discretion in this area has to be

1 driven by the specific circumstances
2 of each case and not by applying any
3 kind of automatic or mechanical
4 approach.

5 So looking at Mr. Inuktalik's situation, he
6 has he now spent 516 days in custody on these
7 charges, which is just a couple days shy of 17
8 months. That is a significant amount of time.
9 And while there is no indication that he has
10 attempted to access programming, the programs
11 that might have been of most benefit to him, like
12 family violence programs or substance abuse
13 programs, were not available to him. Despite his
14 conduct, Mr. Inuktalik would have earned
15 remission had he been a serving prisoner.

16 I am satisfied that in the circumstances
17 that Mr. Inuktalik should receive enhanced
18 credit. I am concerned that there were some
19 incidents during his time in custody that he has
20 not been a model prisoner, but his conduct has
21 not been such that he would not earn remission.
22 For that reason I do not think that it would be
23 appropriate to allow the maximum available one
24 and a half days to one credit. Taking all of the
25 circumstances into account, for his 17 months in
26 custody on these charges I am giving Mr.
27 Inuktalik credit for 22 months of remand time.

 Please stand, Mr. Inuktalik.

1 Taking into account the circumstances and
2 the applicable sentencing principles, I am
3 satisfied that an appropriate sentence for the
4 aggravated assault is five years' incarceration.
5 You will be given credit for 22 months of
6 pre-trial custody, leaving a sentence of three
7 years and two months to be served.

8 For the charge of refusing to comply with a
9 breath demand, as counsel for Mr. Inuktalik
10 stated, this is an offence where there is a
11 mandatory minimum sentence of \$1,000 fine.
12 However, simply because there is a minimum
13 sentence does not mean that is the only sentence
14 available. Given the sentence that I have
15 imposed on the aggravated assault charge, I do
16 not view the imposition of \$1,000 fine as being
17 appropriate in the circumstances and may create
18 hardship for you when you are released from jail.
19 The offence itself is aggravating because it
20 occurred shortly after the aggravated assault.
21 While they are not completely separate, there was
22 a pattern of driving that was as well involved in
23 the aggravated assault. Overall, I am satisfied
24 that a period of incarceration should be imposed,
25 it will be served concurrently to the five-year
26 sentence, and I am imposing 14 days on the
27 refusing to comply with the breath demand.

1 You may sit down.

2 With respect to ancillary orders, there will
3 be a firearms prohibition order pursuant to
4 section 109 of the Criminal Code. It will begin
5 today and end ten years after your release from
6 prison.

7 The aggravated assault is a primary
8 designated offence and there will be a DNA order
9 as well.

10 There will also be a driving prohibition of
11 one year on the section 254 charge which will
12 commence on your release from prison.

13 Given the sentence that I have imposed, I am
14 waiving the victims of crime surcharge as I am
15 satisfied that it would impose undue hardship on
16 you.

17 Mr. Inuktalik, I hope that you will take the
18 opportunity offered by this sentence to try and
19 address some of your problems, because your
20 problems go beyond simply an alcohol problem.
21 Right now you are a danger to Ms. Olifie or any
22 other partner you begin a relationship with. If
23 you continue along this path, the next offence
24 you commit may be even more serious and you can
25 expect that sentences will continue to get longer
26 and longer.

27 Your lawyer spoke about your concern for

1 your children and the message that you are
2 sending to your children and that you are
3 concerned about that. You need to think about
4 that. It is not too late to change and become a
5 positive role model for your children.

6 Counsel, is there anything else we need to
7 deal with in this matter?

8 MS. PAQUIN: No, Your Honour.

9 MR. WOOL: No.

10 THE COURT: We will close court.

11

12
13 Certified to be a true and
14 accurate transcript pursuant
15 to Rule 723 and 724 of the
16 Supreme Court Rules of Court.

17 _____
18 Annette Wright, RPR, CSR(A)
19 Court Reporter