

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

K.M.

(A YOUNG PERSON)

Transcript of the Reasons for Sentence delivered by
The Honourable Judge L.A. Charbonneau, sitting in
Yellowknife, in the Northwest Territories, on the
20th day of April, 2017.

APPEARANCES:

Ms. A. Piche:	Counsel for the Crown
Ms. J. Scott:	Counsel for the Crown
Mr. C.B. Davison:	Counsel for the Accused

NOTICE: SECTION 110 PUBLICATION BAN NO LONGER IN EFFECT By operation of Paragraph 110(2)(a) of the *Youth Criminal Justice Act*, effective May 1, 2017, at 4:00 PM, the publication ban regarding the young person who is subject to these proceedings is no longer in effect.

1 THE COURT: On March 22nd, 2014, K.M. beat
2 Charlotte Lafferty to death in Fort Good Hope.
3 He was found guilty of this crime following a
4 jury trial that was held in Yellowknife in
5 January and February 2016.

6 The Crown has applied to have him sentenced
7 as an adult. The hearing into that application
8 took place a few months ago. There was a lot of
9 evidence and a lot of factors for me to consider
10 in arriving at a decision. I have prepared a
11 written decision that is much more detailed than
12 what I will say today.

13 Today, I will summarize the main reasons why
14 I have reached the decision that I have.

15 It has taken some time to get to this point
16 in these proceedings, because, as I have just
17 said, the trial took place a long time ago.

18 There were a few reasons why it took so long
19 and I want to explain that. First of all, the
20 evidence that needed to be gathered for this
21 application was much more extensive than would be
22 the case in an ordinary sentencing hearing. The
23 second reason is that we had the first stage of
24 the sentencing hearing, the Victim Impact
25 Statement hearing in Fort Good Hope and not in
26 Yellowknife.

27 I decided that the Court should go to Fort

1 Good Hope for that part of the hearing, because I
2 know the impact that this crime had on that
3 community. I decided it was important for as
4 many people as possible to have a chance to read
5 their Victim Impact Statements to the Court
6 themselves, if they wished. And even if they did
7 not wish to read them themselves, that they could
8 be present and hear them read by someone else. I
9 also thought it was important that as many people
10 as possible, even those who did not want to
11 prepare a Victim Impact Statement, could be there
12 and hear those that were being read so those
13 people could be there for at least part of these
14 proceedings.

15 I think everyone understands it would not
16 have been possible to have this jury trial in
17 Fort Good Hope, and I suspect everyone
18 understands that it would have been very
19 difficult to have the whole sentencing hearing in
20 Fort Good Hope. But by having the Victim Impact
21 Statement hearing there, I felt the community
22 could be involved, to some degree, in these
23 proceedings.

24 From that hearing in Fort Good Hope, from
25 having listened to the trial evidence over three
26 weeks, from reading everything I have read that I
27 have been provided, I know that Ms. Lafferty's

1 death has had a profound impact on a lot of
2 people; on her children, on her parents, on her
3 whole family and on the community.

4 There is nothing that I can do to take away
5 that pain and that loss, and I really, really
6 wish there was. I can only hope that as the
7 trial and sentencing proceedings come to an end,
8 it can be one more, perhaps small step towards
9 healing. We must never lose hope for healing.
10 But I also understand that in this case that will
11 be a very long road for people.

12 The circumstances of Ms. Lafferty's death
13 were the subject of evidence at trial. That
14 evidence was referred to during the hearing of
15 the Crown's application. The Crown's case was a
16 circumstantial case. It was a very strong
17 circumstantial case. The evidence showed that on
18 the night of her death, Ms. Lafferty had been
19 socializing with a number of other people in Fort
20 Good Hope, and K.M. was part of that group.
21 People were drinking, but there is no evidence
22 that either K.M. or Ms. Lafferty were grossly
23 intoxicated. At one point, while they were at
24 Leanna McNeely's house, Ms. Lafferty and Miranda
25 McNeely went back to Miranda's house to get
26 another mickey of vodka. K.M. went with them.
27 Cora Rabisca, who had been babysitting at

1 Miranda's house, talked her out of going back
2 out. Miranda gave the mickey to Ms. Lafferty,
3 and then Ms. Lafferty and K.M. left.

4 It seemed clear that Ms. Lafferty was killed
5 not very long after that. Miranda's house is
6 very close to the elder's complex, and it was
7 behind that building that K.M. killed
8 Ms. Lafferty.

9 The evidence about the attack itself came
10 from Mr. Kotchile, who saw part of it, and also
11 from observations that were made at the scene by
12 police officers and observations made during the
13 autopsy of Ms. Lafferty's body. It is difficult
14 for anyone to read about these circumstances or
15 to think about them, and I realize it is
16 especially painful for Ms. Lafferty's loved ones.

17 I have referred to those details in my
18 written decision, reported at *R. v. K.M., 2017*
19 *NWTSC 26*, and I do not think it is necessary to
20 repeat all of that now. I will say only that the
21 evidence shows that this was a particularly
22 violent and brutal beating and it was prolonged.
23 It involved the use of a weapon. It included a
24 very high level of violence. And it included
25 extremely contemptuous and degrading behaviour
26 towards Ms. Lafferty.

27 The officer who was first at the scene said

1 that it was "almost undescrivable, like the scene
2 from a horror movie". The evidence adduced at
3 trial showed that this was not an exaggeration on
4 his part. The circumstances of this crime are
5 shocking.

6 In deciding this application, I have to take
7 those circumstances into account, but the
8 seriousness, even shocking nature of the offence,
9 cannot overshadow or overwhelm all the other
10 things that I am required to consider. And I
11 have been very careful, very conscious of this in
12 reaching my decision.

13 The difference between an adult sentence and
14 a youth sentence is enormous. An adult sentence,
15 which is what the Crown is asking me to impose,
16 is automatically life imprisonment with parole
17 ineligibility for ten years. The maximum youth
18 sentence, which is what K.M.'s counsel says I
19 should impose, is a global sentence of ten years,
20 the first six being imprisonment, and the last
21 four being under the scope of a community
22 supervision order in the community.

23 K.M. was 17 when he killed Ms. Lafferty, and
24 that is why these proceedings are governed by the
25 *Youth Criminal Justice Act*. Under our law,
26 youths who commit crimes are dealt with in a
27 system separate from the adult system. That is

1 because our law recognizes that youths do not
2 have the same level of maturity as adults. They
3 are more vulnerable. Their moral judgment is
4 less developed. So even charged with the most
5 serious of offences, they are dealt with
6 differently than adults. They are presumed to be
7 less blameworthy, less culpable for crimes they
8 commit. K.M. benefits from that presumption.

9 To have K.M. sentenced as an adult, the
10 Crown has the onus of showing two things: The
11 first is that this presumption of diminished
12 blameworthiness has been rebutted, and the second
13 is that a youth sentence would not be long enough
14 to hold K.M. accountable for his actions.

15 The first issue, the issue of diminished
16 responsibility, has to do with the level of
17 maturity, vulnerability, and capacity for moral
18 judgment that K.M. had at the time that he
19 committed this offence. In examining that issue,
20 I have the benefit of two presentence reports,
21 the psychiatric and psychological assessments
22 that were prepared, and, to a lesser extent,
23 other information I have about K.M. through the
24 support letters that were filed. There were also
25 aspects of the circumstances of the offence, as
26 revealed by the trial evidence, that I found
27 relevant in examining K.M.'s level of maturity in

1 March 2014.

2 In terms of what I have considered more
3 specifically, I have, of course, considered the
4 evidence of Dr. Sultana. She is a youth forensic
5 psychiatrist. She was part of the team who
6 assessed K.M. in 2016. He was only in her unit
7 for about three weeks, but she works with youths
8 all the time. The turnover rate in that unit is
9 very high, so she sees many youths as part of her
10 work.

11 Her opinion was that K.M.'s level of
12 maturity, compared to other youths in the unit,
13 was striking. She said he showed logical
14 thinking processes, he was able to weigh pros and
15 cons, understand right from wrong, and plan
16 logically. She did not see him display any
17 emotional immaturity during the time of the
18 assessment. And she also said that from her
19 review of the materials that she had access to,
20 she did not think there had been any changes in
21 his maturity level over the course of the time he
22 was in custody.

23 I am not required, of course, to accept the
24 evidence of any witness, including an expert
25 witness. But Dr. Sultana's opinion was part of
26 what I considered in arriving at my assessment.

27 The presentence reports support

1 Dr. Sultana's conclusions in some ways. They say
2 that during his time at the youth facility and at
3 the adult facility, K.M. was never a difficult
4 inmate to manage. He was cooperative with staff,
5 he was polite, he was engaged in the programs
6 available to him. He made efforts to upgrade his
7 schooling and succeeded in doing that. He
8 involved himself with a lot of other things. And
9 that behaviour continued when he was transferred
10 to the adult facility. In other words, it is not
11 as if the correctional staff noted a great
12 evolution or change in K.M.'s behaviour from when
13 he was first taken into custody and as time was
14 passing. His behaviour and presentation seemed
15 to be consistent throughout and consistent with
16 what Dr. Sultana observed.

17 Another factor I have considered is age.
18 K.M. was less than a month away from turning 18
19 when this happened. Age, of course, is not
20 determinative of maturity, but it is not an
21 irrelevant factor either.

22 I also considered K.M.'s personal
23 circumstances and background.

24 At the time this happened, he had been in a
25 long-term relationship. His girlfriend stayed
26 with him almost every night, and that
27 relationship had been going on for about a year.

1 That is more in the nature of an adult
2 relationship than teenage dating or romance.
3 K.M. had had some work experience, even if it was
4 only with summer jobs. He had been given
5 vehicles by family members, which suggests they
6 thought he was responsible and mature enough to
7 own a vehicle.

8 There are things about the events the night
9 that Ms. Lafferty died that also are helpful, in
10 my opinion, in assessing K.M.'s level of maturity
11 at the time. That night, he was hanging out with
12 young adults. He is the one who initiated
13 contact with Mr. Boniface, who was almost 30
14 years old at the time. He was spending time with
15 people who were in their early 20s. The trial
16 evidence does not suggest that he was simply
17 tagging along. In fact, other young people who
18 were trying to tag along were not allowed in
19 Mr. Boniface's house.

20 The evidence also showed that K.M. was quite
21 capable of being assertive with these adults. He
22 followed Ms. Lafferty and Miranda McNeely to
23 Miranda's house, even though they had told him to
24 wait. He made it known when he was getting
25 impatient and wanted Ms. Lafferty to hurry up
26 when they were at Miranda's house, and he wanted
27 to go.

1 His conduct after the offence also suggests
2 a level of calm and maturity. He did run away
3 from Constable Pudsey, but his actions afterwards
4 were not those of a panicked person. They were
5 logical and well-thought out things. He went out
6 looking for his girlfriend, not frantically all
7 over the place, but at the last place he had seen
8 her.

9 Then, when he did not find her, he went home
10 and went to his room. However he was feeling at
11 that point, he was able to keep his emotions in
12 check. The same is true, and even more
13 remarkable, in relation to the next day, when
14 news of what happened started to spread and
15 people started asking him questions.

16 K.M. was poised and calm enough to make up a
17 story when confronted by his mother about why he
18 had blood on him when he came home that morning.
19 He was able to keep his composure, talking with
20 Charlotte Lafferty's own mother as she was
21 standing in front of him asking where he had last
22 seen her daughter. He had the presence of mind
23 to lie to her about that to deflect attention
24 away from himself for any involvement with her
25 death. And he did the same when he was
26 questioned by his girlfriend.

27 K.M.'s counsel has asked me to consider

1 other aspects of the evidence that he argued
2 suggest lack of maturity and lack of adult
3 thinking on K.M.'s part that night. For example,
4 that fact that the crime was impulsive; the
5 indications in the materials that K.M. lacks
6 empathy that he has a tendency to minimize; the
7 fact that he made no attempt to hide
8 Ms. Lafferty's body or the murder weapon or cover
9 up what he had done.

10 I have considered these arguments carefully.
11 As far as lack of empathy and acting impulsively,
12 I accept that these can be features of
13 immaturity, but they can be features of many
14 other things; such as, antisocial behaviour.
15 These things are not determinative of anything.

16 As for things that K.M. did or did not do
17 after he killed Ms. Lafferty, on balance, I find
18 that they point more towards maturity than lack
19 thereof, particularly, things he did the
20 following morning when he was questioned by
21 people.

22 In the absence of any evidence about what
23 K.M. was thinking at various points during these
24 events, the fact is that much, much remains
25 unknown. And I am not permitted to speculate
26 about any of that.

27 In that regard, I do not want to be

1 misunderstood. K.M. had the right not to testify
2 at trial. He had the right not to testify on the
3 application. And he had the right not to discuss
4 the offence with any of the people who spoke to
5 him in preparation for this hearing. He
6 absolutely had that right and I am not suggesting
7 otherwise. I simply mean that there is no
8 evidence of his side of things, of what prompted
9 this violence, what his motivations or thinking
10 processes were before, during, and after
11 Ms. Lafferty was killed.

12 That being the case, the simple fact that
13 impulsive action can sometimes be a sign of
14 immaturity is not something that I find outweighs
15 the rest of the evidence that points to K.M.
16 having had the moral compass of an adult back in
17 2014. Nor do the other things that his counsel
18 raised during submissions.

19 So on the first branch of the test, I find
20 that the Crown has met its onus.

21 The second thing that the Crown has to
22 establish is that a youth sentence would not be
23 sufficient in length to hold K.M. accountable for
24 his crime.

25 The examination of accountability requires
26 that I ask two questions. The first is: Would a
27 youth sentence be long enough to reflect the

1 seriousness of this crime? And the second is:
2 Would a youth sentence be long enough to provide
3 reasonable assurances, not guarantees, but
4 reasonable assurances, of his rehabilitation to
5 the point that he could be safely reintegrated
6 into society? And, again, to assess that, K.M.'s
7 circumstances and the circumstances of the
8 offence are what I must turn to.

9 I will look first at the second question:
10 Would a youth sentence be long enough to provide
11 reasonable assurances of his rehabilitation?
12 Would a global sentence of ten years be long
13 enough to provide reasonable assurances that he
14 can be rehabilitated and safely reintegrated into
15 society?

16 Predicting how long treatment will take and
17 what long-term risk is, are very difficult
18 things.

19 Dr. Sultana could not put a timeline on what
20 would be required for K.M. He has not displayed
21 any violence while in custody, and he seems to
22 have functioned very well within a structured
23 environment. And he has not had access to
24 alcohol or drugs, so his substance abuse problem
25 is under control at this point.

26 What would happen if he were free of
27 controls is unknown, however, at this point. Any

1 treatment would have to factor in K.M.'s
2 intellectual challenges that were identified
3 through the testing that he underwent. This is
4 not an insurmountable problem, but it could mean
5 that the treatment might take longer.

6 Dr. Sultana's opinion was that without
7 significant intervention, K.M. would continue to
8 present a risk for further violence. She is, of
9 course, a psychiatrist. But even leaving aside
10 her opinion and looking at the evidence from a
11 lay person standpoints, I find that conclusion is
12 inescapable.

13 K.M.'s actions on March 22nd, 2014 speak for
14 themselves. This is extreme violence and
15 extremely disturbing behaviour for which, as of
16 now, there is absolutely no explanation. It is
17 conduct that is in stark contrast with how his
18 family members describe him and with how he has
19 behaved while in custody.

20 K.M. displayed disturbing violence in
21 November of 2013 as well, although obviously not
22 at all to the same degree. That was the incident
23 that led to his conviction for assault causing
24 bodily harm. There were submissions at the
25 hearing about what to make and not to make of
26 certain comments he made to the author of the
27 presentence report that was prepared before that

1 sentencing, and whether those comments showed
2 lack of empathy.

3 Defence counsel pointed out that there were
4 earlier altercations between K.M. and the victim
5 of that offence, the details of which were not
6 presented to me. Defence counsel argued that
7 without knowing more about those details, no
8 conclusions, really, should be drawn from what
9 K.M. said to the author of the presentence
10 report.

11 Regardless, though, of the earlier
12 altercations, according to the facts that K.M.
13 admitted to at the sentencing for that offence,
14 there came a point where the victim was down,
15 trying to protect himself, not fighting back, and
16 K.M. continued to punch him and kick him while he
17 was down. People told him to stop and he did
18 not. He threw a bench at the victim. And he
19 admitted to having caused fairly significant
20 injuries to him. This conduct, continuing to
21 repeatedly kick and punch someone who is down and
22 not fighting back, is disturbing conduct.

23 As of now, there is no evidence about what
24 the root causes of K.M.'s violence are. It is
25 very possible that some of the difficulties from
26 his childhood, the alcohol abuse and domestic
27 violence in the home, abuse that he may have

1 suffered at a young age, and, most certainly, the
2 tragic death of his younger sister in 2012, are
3 part of the answer. But we do not know. Until
4 the causes are identified, no treatment plan can
5 be developed.

6 Dr. Sultana said K.M. was not ready for
7 treatment when she saw him in 2016, and the
8 evidence supports that conclusion. It is
9 difficult to know whether K.M. has any insight
10 into what he has done and into the enormous
11 amount of harm it has caused. Perhaps, even more
12 importantly, not knowing what caused him to act
13 this way, not knowing what issues need to be
14 addressed, also means not knowing what might
15 trigger him to act in this extremely violent way
16 again.

17 On the evidence before me, there are no
18 reasonable assurances that a youth sentence would
19 be long enough to rehabilitate him and allow his
20 safe reintegration into the community. But even
21 if I did think that a youth sentence would be
22 sufficient to achieve those objectives, that is
23 not the only thing I have to consider in deciding
24 whether a youth sentence would be sufficient to
25 hold him accountable for his conduct.

26 I also have to consider whether a youth
27 sentence would be long enough to reflect the

1 seriousness of this offence. And having given
2 this a lot of thought, bearing in mind the
3 principles that I am required to follow under the
4 *Youth Criminal Justice Act*, I am profoundly
5 convinced that a youth sentence would not be
6 sufficient to reflect the seriousness of this
7 offence.

8 As I said at the beginning, and for the
9 reasons I already mentioned, I am not going to
10 repeat here the details of the circumstances of
11 Ms. Lafferty's death or the details of the
12 injuries that were inflicted on her, but it is
13 difficult to imagine a more brutal attack.

14 I accept that it was impulsive and
15 unplanned. Still, at one point, K.M. decided to
16 kill her. He was not merely reckless about the
17 consequences of what he did. The only reasonable
18 conclusion that can be drawn from what he did to
19 her was that he intended to kill her.

20 The evidence also establishes that he
21 intended to degrade her. K.M. did this to
22 someone he knew, a relative from his own
23 community, and someone who, just shortly before,
24 he had been socializing with and getting along
25 with. This is a senseless gratuitous act and it
26 defies any comprehension.

27 I have not overlooked the positive things

1 about.

2 K.M.'s background, the efforts that he has
3 made while in custody, and the support that he
4 has from his family. But given the circumstances
5 of this offence, I am convinced that a youth
6 sentence would not reflect the seriousness of the
7 offence. It would simply not be a just sentence.

8 As I have said, the evidence does include
9 positive things about K.M. He has a lot of
10 skills and he has a lot of support from quite a
11 few people. He is going to need that support for
12 a long time. And I can only hope that in time he
13 will come to terms with what he has done.

14 I feel compelled to add this: In my
15 respectful view, those who want to support K.M.
16 and help him through the long process ahead, must
17 also come to terms with what he has done. They
18 must support him, when the time comes, in trying
19 to understand where the terrible violence that he
20 is capable of comes from, and help him find ways
21 to address those issues with the assistance of
22 professionals.

23 Wanting to protect a loved one is
24 understandable, but the starting point for truly
25 helpful support has to be an acknowledgement of
26 the truth. Support based on anything other than
27 the truth is not going to help K.M. in the long

1 run.

2 Because I have concluded that the Crown's
3 application to have K.M. sentenced as an adult
4 should be granted, the sentence that I must
5 impose today is mandatory.

6 K.M., please stand up. K.M., for the murder
7 of Charlotte Lafferty, I sentence you to life
8 imprisonment with no eligibility for parole until
9 you have served ten years.

10

11 **CERTIFICATE OF TRANSCRIPT**

12

13 I, the undersigned, hereby certify that the
14 foregoing pages are a complete and accurate
15 transcript of the proceedings taken down by me in
16 shorthand and transcribed from my shorthand notes
17 to the best of my skill and ability.

18 Dated at the City of Edmonton, Province of
19 Alberta, this 7th day of May, 2017.

20

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

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Leanne Harcourt, CSR(A)
Court Reporter