

R. v. Eeyeevadluk, 2017 NWTSC 66

S-1-CR2016000007

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

KARMA EYEEVADLUK

Transcript of the Reasons for Sentence by The Honourable
Justice S. H. Smallwood, at Yellowknife in the Northwest
Territories, on June 15th A.D., 2017.

APPEARANCES:

Ms. J. Andrews: Counsel for the Crown

Mr. R. Clements, agent
for Mr. S. Fix: Counsel for the Accused

Charge under s. 344(1)(b) Criminal Code

Official Court Reporters

1 THE COURT: Karma Eeyeevadluk was
2 convicted on February 9th, 2017, following a
3 jury trial, of the offence of robbery,
4 contrary to section 344(1) (b) of the Criminal
5 Code. The offence arose from an incident
6 where Ms. Eeyeevadluk and two other
7 individuals were involved in an assault and
8 robbery of a taxi driver here in Yellowknife.

9 Counsel are far apart in their sentencing
10 submissions: The Crown is seeking a sentence
11 of four years imprisonment less credit for
12 remand time. Ms. Eeyeevadluk's counsel says
13 an appropriate sentence is six to nine months
14 incarceration less credit for remand time. My
15 task is to impose an appropriate sentence for
16 this crime.

17 The facts of the offence arise from the
18 evidence led by the Crown at the trial as no
19 defence evidence was presented.

20 On February 25th, 2015, Ms. Eeyeevadluk,
21 Bradley King and Denecho King, who are
22 brothers, were passengers in an Aurora taxicab
23 being driven by Matar Mahamud. Bradley King
24 was in the front passenger seat, Denecho King
25 and Ms. Eeyeevadluk were in the backseat of
26 the taxi.

27 Mr. Mahamud picked up the passengers in

1 N'dilo between 10 and 11 p.m. that night. Mr.
2 Mahamud recognized Ms. Eeyeevadluk from having
3 picked her up on previous occasions. When he
4 picked them up, one of them showed him \$10 and
5 he asked them where they were going. They
6 first said Sissons Court, then Fort Gary
7 Apartments. He took the \$10 and put it in his
8 front left pocket of his shirt and began
9 driving downtown.

10 After they reached the area around Weaver
11 and Devore, they asked the taxi driver to stop
12 and go back to N'dilo. Mr. Mahamud asked them
13 why and they said they were looking for
14 friends. He told them at that point that they
15 would not have enough money and he said they
16 said to drop them off when the fare reached
17 \$10.

18 So Mr. Mahamud drove back through Old Town
19 and when the fare reached \$10, which was just
20 near Otto Drive, he told them that the money
21 was spent. They said "okay, then stop and we
22 will get out". Mr. Mahamud stopped and parked
23 the vehicle.

24 When Mr. Mahamud stopped the vehicle on
25 Otto Drive, Denecho King grabbed him around
26 the neck and held his right arm around his
27 neck. Bradley King began punching Mr. Mahamud

1 saying "put the money down", "put the money
2 down". Mr. Mahamud tried to push the
3 emergency button by the steering wheel which
4 would alert his dispatcher to a problem.

5 Karma Eeyeevadluk got out of the vehicle
6 and opened the driver's door and grabbed his
7 left hand and stopped him from pressing the
8 button. He was unable to defend himself. Ms.
9 Eeyeevadluk then took money from his front
10 left pocket of his shirt. Mr. Mahamud thought
11 he had around \$50 in cash in the pocket, which
12 had been the fares that he had earned that
13 night. He was able to use his knees to press
14 the horn and Ms. Eeyeevadluk said to the males
15 "guys, just run away". They all then fled on
16 foot.

17 Mr. Mahamud related that he had lost
18 consciousness when he was being choked and
19 punched, that he was unable to breathe and
20 that he was bleeding, that when he regained
21 consciousness was when Ms. Eeyeevadluk had
22 come to the door, opened it, and grabbed his
23 hand. He said that he was still feeling dizzy
24 but that he knew that she had taken the money.

25 Bradley King pled guilty to assault
26 causing bodily harm on Matar Mahamud arising
27 from this incident. Denecho King pled guilty

1 to assault causing bodily harm also. I am
2 advised by defence counsel that they received
3 sentences of one year and four months
4 imprisonment.

5 Mr. Mahamud completed a Victim Impact
6 Statement. It was completed for the
7 sentencing of Bradley and Denecho King but it
8 describes his feelings during this incident.

9 It is clear that the offence had a
10 significant impact upon him and that is clear
11 not only from the Victim Impact Statement but
12 also from his testimony during the trial where
13 he described the injuries that he suffered as
14 well as the effects of the offence on him.

15 He suffered physical injuries. He lost a
16 tooth, and he has had trouble sleeping. He
17 was off work for a period of time and when he
18 returned to driving a taxi, he can no longer
19 drive at night as he does not feel safe
20 anymore. The result is that he is not able to
21 work the same amount of hours which means that
22 he makes less money and, as he sends money to
23 his family, that means that he has less money
24 to send to them. In his Victim Impact
25 Statement, he says that he is considering to
26 move somewhere else so that he can start over
27 and feel safe again.

1 Ms. Eeyeevadluk has a criminal record,
2 which starts in 2014 and in Youth Court and
3 continues to earlier this year, in March of
4 2017. She has 12 convictions. Most of the
5 convictions were entered after this offence
6 occurred.

7 So on February 15th, 2015, the date of
8 this offence that I am sentencing her for
9 today, at that point Ms. Eeyeevadluk had three
10 convictions on her record. All of them had
11 been entered in Youth Court and they were two
12 assaults and one failing to attend court.

13 Since this offence has occurred, she has
14 had convictions for break and enter, two
15 convictions for theft under \$5000, five
16 convictions for failing to comply with an
17 undertaking or a recognizance, and one offence
18 of failing to comply with probation.

19 The fundamental purpose of sentencing,
20 according to section 718 of the Criminal Code,
21 is to protect society and to contribute to
22 respect for the law and the maintenance of a
23 just, peaceful and safe society by imposing
24 just sanctions.

25 The objectives of the sanctions include to
26 denounce unlawful conduct, to deter the
27 offender from committing other offences, to

1 separate offenders from society where
2 necessary, to assist in rehabilitating
3 offenders, and to provide reparations for harm
4 done to victims and to promote a sense of
5 responsibility in offenders.

6 It is also important that the sentence is
7 proportionate to the gravity of the offence
8 and the degree of responsibility of the
9 offender.

10 I am also required to consider the
11 sentencing principles in section 718.2. There
12 are a number of them and I will not refer to
13 them all, but in particular section 718.2(e)
14 is relevant to Ms. Eeyeevadluk as she is an
15 Aboriginal offender.

16 I have heard from her counsel regarding
17 the background circumstances of Ms.
18 Eeyeevadluk's life.

19 She is 20 years old and was 18 years old
20 at the time of this offence. She has a son
21 who is four years old, and she is anxious for
22 when she can be out of custody and to be with
23 him.

24 Ms. Eeyeevadluk's mother is a residential
25 school survivor. Ms. Eeyeevadluk was born in
26 Iqaluit and lived with her mother until she
27 was apprehended and put in foster care. She

1 was in foster care until she was discharged at
2 19 while she was in custody at the North Slave
3 Correctional Centre.

4 While living with her mother, her mother
5 abused alcohol and Ms. Eeyeevadluk had to see
6 her mother abuse alcohol and to be beaten up.
7 Her years with her mother were chaotic. They
8 were marked by her mother's alcohol abuse and
9 abandonment, once leaving her in a room alone
10 with the door tied closed while her mother
11 went out drinking. While she was in foster
12 care, she was the victim of sexual abuse. She
13 was homeless at the age of 13 and began to
14 drink and do drugs. She began a relationship
15 with a man at 14 and had her son when she was
16 15. The relationship with this man was
17 abusive, physically and emotionally, and
18 ultimately she was able to end it when she was
19 abused by him in public.

20 When she was pregnant, Ms. Eeyeevadluk
21 returned to school and completed her Grade 11.

22 In my view, when you look at Ms.
23 Eeyeevadluk's background, there are
24 significant Gladue factors that need to be
25 considered.

26 I have reviewed the cases that have been
27 provided by counsel. I do not intend to refer

1 to them in detail but I have reviewed them and
2 they were helpful in coming to the sentence.

3 Robbery is a serious offence. The maximum
4 punishment is life. So it is one of the few
5 offences that Parliament has decided that life
6 imprisonment is available. There is no
7 minimum sentence for this offence, which means
8 that the range of sentences available for
9 robbery are broad.

10 Deterrence also has to be a significant
11 sentencing objective and that is reflected in
12 the case law that has been provided.

13 The case law in this jurisdiction has
14 established that robbery of vulnerable
15 persons, like taxi drivers, attracts a severe
16 penalty. The sentences are often considered
17 in the number of years.

18 The sentence in R. v. Rolfe, 2007 NWTSC
19 05, was one of four years imprisonment less
20 credit for the remand time. In R. v.
21 Qitsualik & Michael 2012 NWTSC 73, the
22 sentences imposed were 30 months and a week
23 and 26 months and a week.

24 Of course there are degrees of robbery.
25 Some are very serious and violent, others are
26 less so. Some involve the use of a weapon,
27 others don't, and the circumstances of each

1 robbery will vary and the role of each person
2 involved also must be considered.

3 I have to consider the principle of parity
4 as well. Bradley and Denecho King each pled
5 guilty to an assault causing bodily harm, so a
6 different offence, and also received sentences
7 of 12 months and four months imprisonment.

8 Looking at the aggravating factors, this
9 was a robbery on a taxi driver at night. Taxi
10 drivers, along with other occupations like
11 convenience store clerks, are vulnerable.
12 They work alone, often at night, and are
13 vulnerable to the clientele who they serve.
14 They do not choose who enters their taxicab
15 and each customer, they hope, simply wants a
16 ride somewhere and is going to pay without a
17 fuss.

18 They also have to be always concerned that
19 there are those who are more problematic.
20 They deal with people who drunk, intoxicated,
21 and those who don't have enough money, who are
22 looking to get a ride for free, or more
23 serious situations - people who might be
24 violent or who want to take advantage of a
25 vulnerable taxi driver by robbing them.

26 Mr. Mahamud was vulnerable that night. He
27 was driving a taxicab alone. There were three

1 passengers and the situation involved him
2 being attacked by the two males. He was in a
3 position that he could not defend himself or
4 call for assistance.

5 Looking at Ms. Eeyeevadluk's role, she did
6 not instigate this incident and she did not
7 join in the assault of Mr. Mahamud. There is
8 no indication that this was a planned event;
9 rather, it seems that one of the King brothers
10 started this incident and the other brother
11 joined in. So there was no planning and there
12 was no weapon which was used in this incident.

13 But Ms. Eeyeevadluk did not tell the King
14 brothers to stop when they began this assault.
15 She did not render assistance to Mr. Mahamud
16 but instead she joined in the incident by
17 opening the taxi driver's door, by preventing
18 him from pressing the help button, and taking
19 money from Mr. Mahamud's left front pocket.
20 The incident, as I indicated, resulted in Mr.
21 Mahamud suffering injuries and the effect on
22 him has been long-lasting.

23 Turning to the mitigating factors,
24 Ms. Eeyeevadluk is a young person. At the
25 time of offence, she had a minor youth
26 criminal record. She is still only 20 years
27 old and rehabilitation has to be a focus of

1 this sentence.

2 Ms. Eeyeevadluk has expressed remorse for
3 this offence. In her words to the Court last
4 week, she spoke eloquently about her remorse
5 and her regret for not calling the police and
6 not doing more to help Mr. Mahamud, and I
7 accept that she is sincerely remorseful for
8 her actions.

9 She also spoke of her desire to make
10 changes, that she has had an opportunity to
11 reflect on her life while she has been in
12 custody. Ms. Eeyeevadluk has an opportunity
13 to deal with the issues in her life, to be a
14 mother to her child. And having been
15 abandoned by her own mother and observed her
16 own mother make bad decisions and abuse
17 alcohol, I am sure that is not something you
18 want for your own child, to have to see and
19 experience the same things that your own
20 mother put you through. So Ms. Eeyeevadluk,
21 you have an opportunity to stop all of that,
22 to return to school, to be a mother to your
23 child, and that involves you making better
24 choices and not hanging out with the wrong
25 people.

26 The Crown has sought a number of ancillary
27 orders which I will deal with first.

1 This is a primary designated offence so
2 there will be a DNA order so that
3 Ms. Eeyeevadluk's DNA will be collected and
4 stored in the DNA databank.

5 There will be a firearms prohibition order
6 pursuant to section 109. It will begin today
7 and end ten years following Ms. Eeyeevadluk's
8 release from imprisonment.

9 There will be the victim of crime
10 surcharge as prescribed.

11 Ms. Eeyeevadluk has been in and out of
12 custody since her arrest on February 26th,
13 2015 for this offence. She has served other
14 periods of imprisonment and some of the remand
15 credit has been applied to other offences that
16 she has been convicted of since February of
17 2015. I am advised that the unused credit
18 amounts to 166 days.

19 So giving Ms. Eeyeevadluk credit at the
20 rate of one and a half to one, that equates to
21 248 days of remand credit for 8.25 months of
22 pre-sentence custody.

23 So please stand, Ms. Eeyeevadluk.

24 Ms. Eeyeevadluk, taking into account your
25 circumstances, including the Gladue factors,
26 the circumstances of the offence and the
27 applicable sentencing principles, I am

1 imposing a sentence of 20.25 months in
2 imprisonment and giving you credit of 8.25
3 months for pre-sentence custody, leaving a
4 sentence of 12 months.

5 You may be seated.

6 Thank you, counsel. Is there anything
7 else that we need to address?

8 MS. ANDREWS: Not from the Crown, thank
9 you.

10 MR. CLEMENTS: No, thank you.

11 THE COURT: All right, thank you, we
12 will adjourn.

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Certified to be a true and
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Supreme Court Rules,

Lois Hewitt,
Court Reporter

