

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MARY ANNE LAFFERTY and VITALINE LAFFERTY

Transcript of the Decision on Sentencing held before The Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 15th day of November, 2018.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown
Mr. T. Boyd: Counsel for the Accused

(Charges under s.5(1) and s.5(2) of the *Controlled Drugs and Substances Act*)

1 THE COURT: Mary Anne Lafferty and
2 Vitaline Lafferty were jointly charged with eight
3 counts on an Indictment: possession of cocaine
4 for the purpose of trafficking, possession of
5 benzodiazepine for the purpose of trafficking,
6 possession of amphetamine for the purpose of
7 trafficking, possession of marijuana for the
8 purpose of trafficking, trafficking in cocaine,
9 trafficking in benzodiazepine, trafficking in
10 amphetamine, and trafficking in marijuana.

11 They chose to be tried by a
12 court composed of a judge and jury. Their trial
13 proceeded in September 2018. On September 21,
14 2018, the jury returned verdicts of guilty on all
15 counts on the Indictment as against Mary Anne
16 Lafferty, and acquitted Vitaline Lafferty of all
17 counts. The sentencing hearing for Mary Anne
18 Lafferty was adjourned and the defense requested
19 a pre-sentence report be prepared. I heard
20 submissions from the Crown and defense on
21 November 9th, 2018. And today is for the reasons
22 for sentence.

23 One of the issues that arose
24 from the submissions is the factual basis for the
25 convictions. Ms. Lafferty and her mother,
26 Vitaline Lafferty, were stopped outside of Fort
27 Providence by the RCMP who had information that

1 they were transporting drugs in Vitaline
2 Lafferty's vehicle. A search of the vehicle
3 revealed that cocaine, benzodiazepine,
4 amphetamine, and marijuana were located in the
5 back hatch area of the SUV.

6 One of the issues during the
7 trial was Ms. Lafferty's knowledge of the
8 presence of the drugs. There were questions
9 during the trial, such as whether Ms. Lafferty
10 was aware of the purpose of the trip, whether she
11 knew that drugs were in the packages that she
12 picked up, if she knew that there were drugs in
13 the vehicle, when did she know that? Actual
14 knowledge and wilful blindness, two modes of
15 knowledge, were explained and left with the jury.

16 The jury convicted
17 Ms. Lafferty of all eight counts on the
18 Indictment. So they were satisfied beyond a
19 reasonable doubt that she had knowledge of the
20 drugs that were located in the vehicle that she
21 was in. However, the extent of her knowledge,
22 whether it was actual knowledge or wilful
23 blindness and when she had knowledge remains in
24 question.

25 The Crown's position is that
26 Ms. Lafferty knew before leaving on the trip that
27 she was going to pick up packages for her

1 daughter, Katrina Stiopu, and that those packages
2 would contain drugs.

3 The defense position is that
4 Ms. Lafferty testified and denied knowing that
5 the trip was to pick up drugs and that it was
6 only when she made the pick up that she started
7 to feel that something was not right and that she
8 knew that it was something illegal being placed
9 in the vehicle.

10 In a jury trial the jury is
11 responsible for deciding verdicts, but they do
12 not provide reasons. Sometimes it is clear what
13 facts underlie a verdict. For example, in a
14 sexual assault case where a complainant testifies
15 that an accused touched her sexually and the
16 accused testifies and denies that there was any
17 touching at all, in that case if a jury convicted
18 it would be clear what facts they had accepted.
19 However, that is not always the case. Sometimes
20 the facts can be ambiguous.

21 The Supreme Court of Canada in
22 *R v Ferguson*, 2008 SCC 6, at paragraph 16-18 set
23 out the framework which guides a sentencing judge
24 with respect to the facts following a jury's
25 verdict:

26 The sentencing judge... must do his
27 or her best to determine the facts

1 necessary for sentencing from the
2 issues before the jury and from the
3 jury's verdict. This may not require
4 the sentencing judge to arrive at a
5 complete theory of the facts; the
6 sentencing judge is required to make
7 only those factual determinations
8 necessary for deciding the
9 appropriate sentence in the case at
10 hand.

11 Two principles govern
12 the sentencing judge in this
13 endeavor. First, the sentencing
14 judge "is bound by the express and
15 implied factual implications of the
16 jury's verdict." The sentencing
17 judge "shall accept as proven all
18 facts expressed or implied that are
19 essential to the jury's verdict of
20 guilty" and must not accept as fact
21 any evidence consistent only with a
22 verdict rejected by the jury.

23 Second, when the
24 factual implications of the jury's
25 verdict are ambiguous, the sentencing
26 judge should not attempt to follow
27 the logical process of the jury, but

1 should come to his or her own
2 independent determination of the
3 relevant facts. In so doing, the
4 sentencing judge "may find any other
5 relevant fact that was disclosed by
6 the evidence at the trial to be
7 proven." To rely upon an aggravating
8 fact or previous conviction, the
9 sentencing judge must be convinced of
10 the existence of that fact or
11 conviction beyond a reasonable doubt;
12 to rely upon any other relevant fact,
13 the sentencing judge must be
14 persuaded on a balance of
15 probabilities. [citations omitted]

16
17 In the trial, there were a
18 number of witnesses who testified. The Crown
19 called Constable Phil Unger, Constable Joe
20 Miller, Constable Kyle MacDonald, Constable
21 Nathan Smith, Juaning Capulso, and Corporal Len
22 Larsen. Mary Anne Lafferty and Vitaline Lafferty
23 each testified in their own defense.

24 The trial evidence established
25 that Mary Anne Lafferty was a passenger in
26 Vitaline Lafferty's vehicle when it was stopped
27 by the police outside of Fort Providence. As

1 part of Project Green Manalishi, which was an
2 investigation into drug trafficking networks in
3 Yellowknife and the Northwest Territories, the
4 RCMP had obtained an authorization to intercept
5 private communications and they monitored
6 telephone conversations. Those monitored
7 conversations revealed that a courier was coming
8 up from the south with drugs and that a blue Ford
9 Escape SUV with two women in it was driving from
10 Yellowknife to meet the courier somewhere near
11 the Alberta/NWT border.

12 The RCMP set up a traffic stop
13 to try and intercept this vehicle. Constable
14 Unger was the officer at the traffic stop and he
15 stopped the blue Ford Escape outside of Fort
16 Providence. Mary Anne Lafferty was a passenger
17 in the vehicle and Vitaline Lafferty was driving.
18 Constable Unger arrested Mary Anne and Vitaline
19 Lafferty and then proceeded to search the
20 vehicle. In the back hatch area of the vehicle,
21 in suitcases and in bags, he located 5.84
22 kilograms of marijuana, 1.7 kilograms of cocaine,
23 5.5 liters of a syrup containing benzodiazepine,
24 and 84.5 grams of an amphetamine, MDMA.

25 The statement of Mary Anne
26 Lafferty was entered into evidence during the
27 trial. Mary Anne Lafferty gave a statement to

1 Constable Miller following her arrest on March
2 18th, 2016. Ms. Lafferty told Constable Miller
3 that she had made a bad decision. She said that
4 she did not know what she was picking up or that
5 it was drugs that she was picking up. But she
6 also admitted when she was asked about going on
7 this trip, she agreed that she knew something was
8 up and she didn't ask any questions.

9 Mary Anne Lafferty testified
10 at the trial and denied that she knew that she
11 was going to pick up drugs. She testified that
12 her daughter, Katrina Stiopu, worked for Jerrie's
13 Delivery Service and she thought she was picking
14 up a package for Jerrie's Delivery.

15 Mary Anne Lafferty testified
16 that Katrina Stiopu asked her to go on the trip
17 and that she did not want to go but ultimately
18 she agreed because Katrina Stiopu had a medical
19 appointment that she would miss if Katrina had to
20 go on the trip. She testified that she was told
21 that she was meeting a white car and that she was
22 not given any other information and did not ask
23 any other questions about who she was meeting or
24 what she was picking up. When she was asked in
25 cross-examination about whether the information
26 she had was enough to alert her to the fact that
27 something wasn't right, she responded that she

1 didn't know how people run their business. When
2 she was pressed further about whether she should
3 have been alerted to whether things were right
4 with the situation, Ms. Lafferty said that she
5 wasn't thinking. And she also said in her
6 testimony that she had been in a fog for much of
7 the previous few years.

8 Mary Anne Lafferty testified
9 that she had been driving the vehicle at the time
10 of the pick up of the drugs. When they had met
11 the white car, she had gotten out of the vehicle,
12 she had opened the back hatch, and was present
13 when the packages were put inside the vehicle and
14 then she closed the back hatch. She testified
15 that she knew something was wrong when the pick
16 up occurred, that the hairs on the back of her
17 neck stood up.

18 The jury's verdict means that
19 they expressly found that Mary Anne Lafferty had
20 knowledge of the drugs in the vehicle, knowledge
21 being an element of possession. Whether that
22 knowledge was actual knowledge or imputed
23 knowledge on the basis of wilful blindness and
24 when that knowledge arose is not clear on the
25 jury's verdict.

26 Mary Anne Lafferty, in her
27 statement to Constable Miller, acknowledged that

1 she knew something was up when she was asked to
2 do the drive. She testified she was given scant
3 information about the delivery and the proposed
4 meeting, yet asked no questions and could not
5 adequately explain why she wasn't alerted to the
6 fact that something wasn't right and why she
7 didn't ask questions.

8 I'm satisfied that Mary Anne
9 Lafferty can be imputed to have knowledge that
10 she was being sent to pick up controlled
11 substances before she left Yellowknife. She knew
12 this and did not ask any questions because she
13 did not want to know. She did this pick up for
14 her daughter because she was asked to by Katrina
15 Stiopu, and she did not want to know any more
16 about what was going on. And I'm satisfied that
17 she knew the illegal nature of what she was being
18 sent to pick up, but not necessarily the specific
19 substances or the amounts involved.

20 Added to this is what occurred
21 prior to the pick up. Mary Anne Lafferty and
22 Vitaline Lafferty waited hours at Indian Cabins,
23 which consists basically of a gas station and
24 some outbuildings. And according to Mary Anne
25 Lafferty all she knew is that they were going to
26 meet a white car to pick up a package for
27 Jerrie's Delivery Service. If that situation

1 doesn't arouse suspicion to the point that
2 someone should be asking questions, then I don't
3 know what situation would.

4 Mary Anne Lafferty also had a
5 company BlackBerry which she used to communicate
6 with the person she knew as Andy, who was
7 subsequently revealed to be Todd Dube, who was
8 the head of the drug trafficking network that
9 Katrina Stiopu was involved with. So she had the
10 ability to ask questions if she had wanted to
11 know more about this delivery or about what the
12 situation was. So either she chose not to ask
13 those questions because she didn't want to know,
14 or she didn't have to ask those questions because
15 she already knew.

16 In any event, I'm satisfied
17 that Mary Anne Lafferty had knowledge that she
18 and Vitaline Lafferty were being sent to pick up
19 a package of illegal drugs prior to leaving
20 Yellowknife, but that it is not clear whether she
21 was aware of the exact nature of the drugs or the
22 amounts involved.

23 In terms of the positions of
24 the parties, the Crown is seeking a sentence of
25 three and a half years imprisonment. And the
26 defense is urging the court to consider a
27 sentence of 30 months imprisonment.

1 The Crown has filed a number
2 of cases and the defense has referred to other
3 cases which deal with sentencing and sentencing
4 ranges, particularly sentences which have been
5 imposed on other offenders involved with Project
6 Green Manalishi.

7 There have been many cases in
8 this jurisdiction in which offenders have been
9 sentenced for trafficking in cocaine and or
10 marijuana or for possession of those substances
11 for the purpose of trafficking. Less common are
12 cases of trafficking or possession for the
13 purpose of trafficking amphetamines or
14 benzodiazepine. There are a range of sentences
15 that can be imposed and they are generally
16 sentences of imprisonment based on the guiding
17 case law in this jurisdiction. Conditional
18 sentences are no longer available for offenses of
19 this nature.

20 Courts in this jurisdiction
21 have consistently imposed sentences meant to
22 denounce and deter offenders who would traffic in
23 controlled substances. This is because the drug
24 trade, trafficking in cocaine specifically, has
25 had a devastating effect on people in Yellowknife
26 and other communities in the Northwest
27 Territories. Cocaine destroys lives and

1 families, and people who traffic in cocaine prey
2 on the weakness of others in the community.
3 People who are addicted to this drug and other
4 drugs commit other offenses to get money to
5 purchase drugs. Some traffic to pay for their
6 own addictions.

7 Trafficking in drugs requires
8 people, and people play different roles within a
9 drug trafficking organization. There are those
10 who are in charge, there are street dealers,
11 there are mid level suppliers, couriers, and
12 others. All are necessary to keep the drug
13 trafficking organization going and all play an
14 integral role. And couriers like Ms. Lafferty
15 are necessary to maintain the dealers in product.

16 Ms. Lafferty is an aboriginal
17 offender and Section 718.2(e) of the *Criminal*
18 *Code* requires me to consider all available
19 sanctions other than imprisonment that are
20 reasonable in the circumstances, paying
21 particular attention to the circumstances of
22 aboriginal offenders. The Supreme Court of
23 Canada provided guidance in the cases of *Gladue*
24 and *Ipeelee*, to sentencing judges in the
25 application of Section 718.2(e).

26 What I am required to do is to
27 give attention to the unique background and

1 systemic factors which may have played a part in
2 bringing a particular offender before the courts.
3 In cases where such factors have played a
4 significant role, it is incumbent on the
5 sentencing judge to consider these factors in
6 evaluating whether imprisonment would actually
7 serve to deter or to denounce crime in a sense
8 that would be meaningful to the community of
9 which the offender is a member. *R v Gladue*,
10 paragraph 69.

11 In this case I have the
12 benefit of a pre-sentence report which provides
13 information about Ms. Lafferty's background and
14 circumstances. And I have also heard from
15 defense counsel about Ms. Lafferty. And I have
16 heard from Ms. Lafferty herself this morning
17 about her circumstances.

18 Ms. Lafferty is a 58-year-old
19 woman who is from N'Dilo. She's had a difficult
20 background. She was raised participating in
21 cultural traditions and learned traditional
22 skills going out on the land. The abuse of
23 alcohol and family violence was present in her
24 home as she was growing up. There was a cycle of
25 abuse as her mother would reconcile with her
26 father and later blamed the children because
27 she'd returned to the relationship for the

1 children.

2 Ms. Lafferty attended
3 residential school for five years. She
4 experienced emotional, physical, and sexual
5 abuse. She attempted to report abuse in the
6 residential school, but was not believed and that
7 just made the situation worse. This had the
8 unfortunate effect of causing Ms. Lafferty to
9 learn to deal with the abuse and not to report
10 it, not to seek assistance from anyone. She ran
11 away from home at 15 and lived in Fort
12 Resolution. Throughout her life she has been in
13 abusive relationships. She has abused alcohol.
14 She has experienced mental health issues. She
15 has experienced the loss of children. She is
16 unable to work. She has gone through a lot.
17 Despite this, she has been an active member of
18 her community. She's assisted with the schools
19 and with her community government. She's helped
20 her children by caring for her grandchildren.
21 She is a caregiver. She's made strides
22 personally, she's stopped drinking. While she
23 was a heavy user of marijuana, she has not used
24 it since her arrest in March 2016 and does not
25 use any other drugs. She is now in a supportive
26 relationship that is free from alcohol or drug
27 use. And she also has the support of her

1 ex-husband, son, daughter, and other members of
2 the community who all supplied letters on her
3 behalf.

4 Crown counsel has provided
5 cases which deal with sentencing offenders for
6 offenses involving cocaine, benzodiazepine, and
7 ecstasy. I don't intend to review them, but I
8 have read them, and I have read the other
9 sentencing decisions of this court that deal with
10 trafficking in cocaine, as I mentioned,
11 particularly with respect to the other offenders
12 who were convicted as part of Project Green
13 Manalishi, which was the project that was ongoing
14 when Ms. Lafferty was arrested. And there have
15 been several individuals who were sentenced, all
16 of whom played different roles in the
17 organization, all of whom had different levels of
18 involvement and activity, and the sentences that
19 were imposed reflect that. As well as some
20 individuals entered guilty pleas and some
21 individuals were sentenced on the basis of a
22 joint submission.

23 So I've taken all of that into
24 account in terms of trying to determine
25 Ms. Lafferty's place in that organization and
26 what sentence would be appropriate taking into
27 account the other individuals, the other

1 offenders who were sentenced.

2 And there can be a
3 considerable range in sentence depending on, for
4 example, the offender, their personal
5 circumstances, their criminal record, whether
6 there was a guilty plea, the amount of cocaine or
7 other controlled substances involved, the role of
8 the offender in a criminal organization, and
9 their motivation for trafficking in drugs.

10 Ms. Lafferty does have a
11 criminal record, she has one conviction from
12 1989, some 29 years ago. So it is very dated and
13 unrelated. I've given virtually no weight to the
14 criminal record. Essentially Ms. Lafferty can be
15 considered a first time offender.

16 Ms. Lafferty was convicted
17 after trial. Having a trial was her right and it
18 is neither aggravating or mitigating that she did
19 so. It can be mitigating on sentence for an
20 individual who enters a guilty plea. Having
21 exercised her right to a trial simply means that
22 Ms. Lafferty does not have that mitigating effect
23 of a guilty plea.

24 In terms of the circumstances
25 of the offense, Ms. Lafferty, her role in this
26 offense was that she filled in for Ms. Stiopu
27 when Ms. Stiopu couldn't go on this trip because

1 of a medical appointment. She received no money
2 or benefit for this trip. She is in this
3 situation because of her daughter, and Katrina
4 Stiopu's actions in involving her mother and
5 grandmother in her criminal activities and
6 exposing them to this jeopardy are reprehensible.

7 Mary Anne Lafferty was a
8 courier, and as I've stated, I'm satisfied that
9 she was aware of the illegal nature of the drugs
10 she was going to pick up. It is a high price
11 that she is going to have to pay for doing a
12 favour for anyone, particularly her daughter.

13 The amount of drugs that were
14 seized were a significant amount: 1.7 kilograms
15 of cocaine, 5.8 kilograms of marijuana. Those
16 are wholesale amounts of drugs. They're
17 significant amounts of drugs which would keep the
18 drug trafficking network supplied, keep them in
19 business. And those are drugs that would have
20 been on the streets of Yellowknife or another
21 community in the Northwest Territories.

22 First, I will deal with the
23 ancillary orders requested by the Crown. These
24 are secondary designated offenses pursuant to
25 Section 487.04, and so there will be an order
26 pursuant to section 487.051 for the taking of
27 Ms. Lafferty's DNA for the databank. Pursuant to

1 Section 109, this is also a mandatory order, a
2 firearms prohibition order is mandatory and
3 Ms. Lafferty will be prohibited from possessing
4 firearms for a period of 10 years following her
5 release from imprisonment. There will also be
6 the victim of crime surcharge which will be
7 imposed.

8 I have considered what an
9 appropriate sentence might be given the
10 circumstances of the offense, the applicable
11 sentencing principles, and Ms. Lafferty's
12 personal circumstances. I've considered her
13 personal circumstances as required under Section
14 718.2(e) and I'm satisfied that her circumstances
15 warrant a reduction in sentence from what I would
16 otherwise impose on her.

17 As well I have considered that
18 Ms. Lafferty has been convicted of eight
19 offenses, four of which are for trafficking, and
20 four of which are for possession for the purpose
21 of trafficking which all arise from the same
22 facts and bring issues of *Kienapple* into play.

23 Considering the facts and
24 Ms. Lafferty's role in the drug trafficking
25 organization, I'm going to enter convictions and
26 sentences on the four offenses of possession for
27 the purpose of trafficking, and stays will be

1 entered for the offenses of trafficking.

2 Ms. Lafferty, please stand up.
3 For the offense of possession for the purpose of
4 trafficking, I sentence you to a period of
5 imprisonment of three years. For the offense of
6 possession for the purpose of trafficking in
7 marijuana, I sentence you to a period of
8 imprisonment of 18 months to be served
9 concurrently. For the offense of possession for
10 the purpose of trafficking in amphetamine, I
11 sentence you to a period of imprisonment of 21
12 months to be served concurrently. For the
13 offense of possession for the purpose of
14 trafficking in benzodiazepine, I sentence you to
15 a period of imprisonment of four months to be
16 served concurrently. Thank you, you may sit
17 down.

18 Counsel, is there anything
19 else to be addressed?

20 MR. PRAUGHT: Only the forfeiture, Your
21 Honour. I do have a draft order.

22 THE COURT: Okay. I will have a look at
23 that.

24 Mr. Boyd, do you have any
25 comments on the draft forfeiture order?

26 MR. BOYD: No, Ma'am. It's been
27 reviewed.

1 THE COURT: Okay. So there will also be
2 the forfeiture order as submitted by the Crown.
3 THE COURT CLERK: Thank you, Your Honour.
4 THE COURT: Thank you.
5 Is there anything else?
6 MR. PRAUGHT: No, Your Honour.
7 MR. BOYD: No, Ma'am.
8 THE COURT: All right. Thank you,
9 counsel, for your work on this trial and your
10 submissions. Thank you.

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CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings produced and transcribed from audio recording to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 20th day of November, 2018.

Certified Pursuant to Rule 723
Of the Rules of Court



Allison Willard
Court Reporter