***R v Lafferty*, 2018 NWTSC 80 S-1-CR-2017-000034**

# 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.

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**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

1. for sentence.
2. One of the issues that arose
3. from the submissions is the factual basis for the
4. convictions. Ms. Lafferty and her mother,
5. Vitaline Lafferty, were stopped outside of Fort
6. Providence by the RCMP who had information that
7. they were transporting drugs in Vitaline
8. Lafferty's vehicle. A search of the vehicle
9. revealed that cocaine, benzodiazepine,
10. amphetamine, and marijuana were located in the
11. back hatch area of the SUV.
12. One of the issues during the
13. trial was Ms. Lafferty's knowledge of the
14. presence of the drugs. There were questions
15. during the trial, such as whether Ms. Lafferty
16. was aware of the purpose of the trip, whether she
17. knew that drugs were in the packages that she
18. picked up, if she knew that there were drugs in
19. the vehicle, when did she know that? Actual
20. knowledge and wilful blindness, two modes of
21. knowledge, were explained and left with the jury.
22. The jury convicted
23. Ms. Lafferty of all eight counts on the
24. Indictment. So they were satisfied beyond a
25. reasonable doubt that she had knowledge of the
26. drugs that were located in the vehicle that she
27. was in. However, the extent of her knowledge,
28. whether it was actual knowledge or wilful
29. blindness and when she had knowledge remains in
30. question.
31. The Crown's position is that
32. Ms. Lafferty knew before leaving on the trip that
33. she was going to pick up packages for her
34. daughter, Katrina Stiopu, and that those packages
35. would contain drugs.
36. The defense position is that
37. Ms. Lafferty testified and denied knowing that
38. the trip was to pick up drugs and that it was
39. only when she made the pick up that she started
40. to feel that something was not right and that she
41. knew that it was something illegal being placed
42. in the vehicle.
43. In a jury trial the jury is
44. responsible for deciding verdicts, but they do
45. not provide reasons. Sometimes it is clear what
46. facts underlie a verdict. For example, in a
47. sexual assault case where a complainant testifies
48. that an accused touched her sexually and the
49. accused testifies and denies that there was any
50. touching at all, in that case if a jury convicted
51. it would be clear what facts they had accepted.
52. However, that is not always the case. Sometimes
53. the facts can be ambiguous.
54. The Supreme Court of Canada in
55. *R v Ferguson,* 2008 SCC 6, at paragraph 16-18 set
56. out the framework which guides a sentencing judge
57. with respect to the facts following a jury's
58. verdict:
59. The sentencing judge... must do his
60. or her best to determine the facts
61. necessary for sentencing from the
62. issues before the jury and from the
63. jury's verdict. This may not require
64. the sentencing judge to arrive at a
65. complete theory of the facts; the
66. sentencing judge is required to make
67. only those factual determinations
68. necessary for deciding the
69. appropriate sentence in the case at
70. hand.
71. Two principles govern
72. the sentencing judge in this
73. endeavor. First, the sentencing
74. judge "is bound by the express and
75. implied factual implications of the
76. jury's verdict." The sentencing
77. judge "shall accept as proven all
78. facts expressed or implied that are
79. essential to the jury's verdict of
80. guilty" and must not accept as fact
81. any evidence consistent only with a
82. verdict rejected by the jury.
83. Second, when the
84. factual implications of the jury's
85. verdict are ambiguous, the sentencing
86. judge should not attempt to follow
87. the logical process of the jury, but
88. should come to his or her own
89. independent determination of the
90. relevant facts. In so doing, the
91. sentencing judge "may find any other
92. relevant fact that was disclosed by
93. the evidence at the trial to be
94. proven." To rely upon an aggravating
95. fact or previous conviction, the
96. sentencing judge must be convinced of
97. the existence of that fact or
98. conviction beyond a reasonable doubt;
99. to rely upon any other relevant fact,
100. the sentencing judge must be
101. persuaded on a balance of
102. probabilities. [citations omitted]

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1. In the trial, there were a
2. number of witnesses who testified. The Crown
3. called Constable Phil Unger, Constable Joe
4. Miller, Constable Kyle MacDonald, Constable
5. Nathan Smith, Juaning Capulso, and Corporal Len
6. Larsen. Mary Anne Lafferty and Vitaline Lafferty
7. each testified in their own defense.
8. The trial evidence established
9. that Mary Anne Lafferty was a passenger in
10. Vitaline Lafferty's vehicle when it was stopped
11. by the police outside of Fort Providence. As
12. part of Project Green Manalishi, which was an
13. investigation into drug trafficking networks in
14. Yellowknife and the Northwest Territories, the
15. RCMP had obtained an authorization to intercept
16. private communications and they monitored
17. telephone conversations. Those monitored
18. conversations revealed that a courier was coming
19. up from the south with drugs and that a blue Ford
20. Escape SUV with two women in it was driving from
21. Yellowknife to meet the courier somewhere near
22. the Alberta/NWT border.
23. The RCMP set up a traffic stop
24. to try and intercept this vehicle. Constable
25. Unger was the officer at the traffic stop and he
26. stopped the blue Ford Escape outside of Fort
27. Providence. Mary Anne Lafferty was a passenger
28. in the vehicle and Vitaline Lafferty was driving.
29. Constable Unger arrested Mary Anne and Vitaline
30. Lafferty and then proceeded to search the
31. vehicle. In the back hatch area of the vehicle,
32. in suitcases and in bags, he located 5.84
33. kilograms of marijuana, 1.7 kilograms of cocaine,
34. 5.5 liters of a syrup containing benzodiazepine,
35. and 84.5 grams of an amphetamine, MDMA.
36. The statement of Mary Anne
37. Lafferty was entered into evidence during the
38. trial. Mary Anne Lafferty gave a statement to
39. Constable Miller following her arrest on March
40. 18th, 2016. Ms. Lafferty told Constable Miller
41. that she had made a bad decision. She said that
42. she did not know what she was picking up or that
43. it was drugs that she was picking up. But she
44. also admitted when she was asked about going on
45. this trip, she agreed that she knew something was
46. up and she didn't ask any questions.
47. Mary Anne Lafferty testified
48. at the trial and denied that she knew that she
49. was going to pick up drugs. She testified that
50. her daughter, Katrina Stiopu, worked for Jerrie's
51. Delivery Service and she thought she was picking
52. up a package for Jerrie's Delivery.
53. Mary Anne Lafferty testified
54. that Katrina Stiopu asked her to go on the trip
55. and that she did not want to go but ultimately
56. she agreed because Katrina Stiopu had a medical
57. appointment that she would miss if Katrina had to
58. go on the trip. She testified that she was told
59. that she was meeting a white car and that she was
60. not given any other information and did not ask
61. any other questions about who she was meeting or
62. what she was picking up. When she was asked in
63. cross-examination about whether the information
64. she had was enough to alert her to the fact that
65. something wasn't right, she responded that she
66. didn't know how people run their business. When
67. she was pressed further about whether she should
68. have been alerted to whether things were right
69. with the situation, Ms. Lafferty said that she
70. wasn't thinking. And she also said in her
71. testimony that she had been in a fog for much of
72. the previous few years.
73. Mary Anne Lafferty testified
74. that she had been driving the vehicle at the time
75. of the pick up of the drugs. When they had met
76. the white car, she had gotten out of the vehicle,
77. she had opened the back hatch, and was present
78. when the packages were put inside the vehicle and
79. then she closed the back hatch. She testified
80. that she knew something was wrong when the pick
81. up occurred, that the hairs on the back of her
82. neck stood up.
83. The jury's verdict means that
84. they expressly found that Mary Anne Lafferty had
85. knowledge of the drugs in the vehicle, knowledge
86. being an element of possession. Whether that
87. knowledge was actual knowledge or imputed
88. knowledge on the basis of wilful blindness and
89. when that knowledge arose is not clear on the
90. jury's verdict.
91. Mary Anne Lafferty, in her
92. statement to Constable Miller, acknowledged that
93. she knew something was up when she was asked to
94. do the drive. She testified she was given scant
95. information about the delivery and the proposed
96. meeting, yet asked no questions and could not
97. adequately explain why she wasn't alerted to the
98. fact that something wasn't right and why she
99. didn't ask questions.
100. I'm satisfied that Mary Anne
101. Lafferty can be imputed to have knowledge that
102. she was being sent to pick up controlled
103. substances before she left Yellowknife. She knew
104. this and did not ask any questions because she
105. did not want to know. She did this pick up for
106. her daughter because she was asked to by Katrina
107. Stiopu, and she did not want to know any more
108. about what was going on. And I'm satisfied that
109. she knew the illegal nature of what she was being
110. sent to pick up, but not necessarily the specific
111. substances or the amounts involved.
112. Added to this is what occurred
113. prior to the pick up. Mary Anne Lafferty and
114. Vitaline Lafferty waited hours at Indian Cabins,
115. which consists basically of a gas station and
116. some outbuildings. And according to Mary Anne
117. Lafferty all she knew is that they were going to
118. meet a white car to pick up a package for
119. Jerrie's Delivery Service. If that situation
120. doesn't arouse suspicion to the point that
121. someone should be asking questions, then I don't
122. know what situation would.
123. Mary Anne Lafferty also had a
124. company BlackBerry which she used to communicate
125. with the person she knew as Andy, who was
126. subsequently revealed to be Todd Dube, who was
127. the head of the drug trafficking network that
128. Katrina Stiopu was involved with. So she had the
129. ability to ask questions if she had wanted to
130. know more about this delivery or about what the
131. situation was. So either she chose not to ask
132. those questions because she didn't want to know,
133. or she didn't have to ask those questions because
134. she already knew.
135. In any event, I'm satisfied
136. that Mary Anne Lafferty had knowledge that she
137. and Vitaline Lafferty were being sent to pick up
138. a package of illegal drugs prior to leaving
139. Yellowknife, but that it is not clear whether she
140. was aware of the exact nature of the drugs or the
141. amounts involved.
142. In terms of the positions of
143. the parties, the Crown is seeking a sentence of
144. three and a half years imprisonment. And the
145. defense is urging the court to consider a
146. 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
147. families, and people who traffic in cocaine prey
148. on the weakness of others in the community.
149. People who are addicted to this drug and other
150. drugs commit other offenses to get money to
151. purchase drugs. Some traffic to pay for their
152. own addictions.
153. Trafficking in drugs requires
154. people, and people play different roles within a
155. drug trafficking organization. There are those
156. who are in charge, there are street dealers,
157. there are mid level suppliers, couriers, and
158. others. All are necessary to keep the drug
159. trafficking organization going and all play an
160. integral role. And couriers like Ms. Lafferty
161. are necessary to maintain the dealers in product.
162. Ms. Lafferty is an aboriginal
163. offender and Section 718.2(e) of the *Criminal*
164. *Code* requires me to consider all available
165. sanctions other than imprisonment that are
166. reasonable in the circumstances, paying
167. particular attention to the circumstances of
168. aboriginal offenders. The Supreme Court of
169. Canada provided guidance in the cases of *Gladue*
170. and *Ipeelee*, to sentencing judges in the
171. application of Section 718.2(e).
172. What I am required to do is to
173. give attention to the unique background and
174. systemic factors which may have played a part in
175. bringing a particular offender before the courts.
176. In cases where such factors have played a
177. significant role, it is incumbent on the
178. sentencing judge to consider these factors in
179. evaluating whether imprisonment would actually
180. serve to deter or to denounce crime in a sense
181. that would be meaningful to the community of
182. which the offender is a member. *R v Gladue,*
183. paragraph 69.
184. In this case I have the
185. benefit of a pre-sentence report which provides
186. information about Ms. Lafferty's background and
187. circumstances. And I have also heard from
188. defense counsel about Ms. Lafferty. And I have
189. heard from Ms. Lafferty herself this morning
190. about her circumstances.
191. Ms. Lafferty is a 58-year-old
192. woman who is from N'Dilo. She's had a difficult
193. background. She was raised participating in
194. cultural traditions and learned traditional
195. skills going out on the land. The abuse of
196. alcohol and family violence was present in her
197. home as she was growing up. There was a cycle of
198. abuse as her mother would reconcile with her
199. father and later blamed the children because
200. she'd returned to the relationship for the

1 children.

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Ms. Lafferty attended

1. residential school for five years. She
2. experienced emotional, physical, and sexual
3. abuse. She attempted to report abuse in the
4. residential school, but was not believed and that
5. just made the situation worse. This had the
6. unfortunate effect of causing Ms. Lafferty to
7. learn to deal with the abuse and not to report
8. it, not to seek assistance from anyone. She ran
9. away from home at 15 and lived in Fort
10. Resolution. Throughout her life she has been in
11. abusive relationships. She has abused alcohol.
12. She has experienced mental health issues. She
13. has experienced the loss of children. She is
14. unable to work. She has gone through a lot.
15. Despite this, she has been an active member of
16. her community. She's assisted with the schools
17. and with her community government. She's helped
18. her children by caring for her grandchildren.
19. She is a caregiver. She's made strides
20. personally, she's stopped drinking. While she
21. was a heavy user of marijuana, she has not used
22. it since her arrest in March 2016 and does not
23. use any other drugs. She is now in a supportive
24. relationship that is free from alcohol or drug
25. use. And she also has the support of her
26. ex-husband, son, daughter, and other members of
27. the community who all supplied letters on her
28. behalf.
29. Crown counsel has provided
30. cases which deal with sentencing offenders for
31. offenses involving cocaine, benzodiazepine, and
32. ecstasy. I don't intend to review them, but I
33. have read them, and I have read the other
34. sentencing decisions of this court that deal with
35. trafficking in cocaine, as I mentioned,
36. particularly with respect to the other offenders
37. who were convicted as part of Project Green
38. Manalishi, which was the project that was ongoing
39. when Ms. Lafferty was arrested. And there have
40. been several individuals who were sentenced, all
41. of whom played different roles in the
42. organization, all of whom had different levels of
43. involvement and activity, and the sentences that
44. were imposed reflect that. As well as some
45. individuals entered guilty pleas and some
46. individuals were sentenced on the basis of a
47. joint submission.
48. So I've taken all of that into
49. account in terms of trying to determine
50. Ms. Lafferty's place in that organization and
51. what sentence would be appropriate taking into
52. account the other individuals, the other
53. offenders who were sentenced.
54. And there can be a
55. considerable range in sentence depending on, for
56. example, the offender, their personal
57. circumstances, their criminal record, whether
58. there was a guilty plea, the amount of cocaine or
59. other controlled substances involved, the role of
60. the offender in a criminal organization, and
61. their motivation for trafficking in drugs.
62. Ms. Lafferty does have a
63. criminal record, she has one conviction from
64. 1989, some 29 years ago. So it is very dated and
65. unrelated. I've given virtually no weight to the
66. criminal record. Essentially Ms. Lafferty can be
67. considered a first time offender.
68. Ms. Lafferty was convicted
69. after trial. Having a trial was her right and it
70. is neither aggravating or mitigating that she did
71. so. It can be mitigating on sentence for an
72. individual who enters a guilty plea. Having
73. exercised her right to a trial simply means that
74. Ms. Lafferty does not have that mitigating effect
75. of a guilty plea.
76. In terms of the circumstances
77. of the offense, Ms. Lafferty, her role in this
78. offense was that she filled in for Ms. Stiopu
79. when Ms. Stiopu couldn't go on this trip because
80. of a medical appointment. She received no money
81. or benefit for this trip. She is in this
82. situation because of her daughter, and Katrina
83. Stiopu's actions in involving her mother and
84. grandmother in her criminal activities and
85. exposing them to this jeopardy are reprehensible.
86. Mary Anne Lafferty was a
87. courier, and as I've stated, I'm satisfied that
88. she was aware of the illegal nature of the drugs
89. she was going to pick up. It is a high price
90. that she is going to have to pay for doing a
91. favour for anyone, particularly her daughter.
92. The amount of drugs that were
93. seized were a significant amount: 1.7 kilograms
94. of cocaine, 5.8 kilograms of marijuana. Those
95. are wholesale amounts of drugs. They're
96. significant amounts of drugs which would keep the
97. drug trafficking network supplied, keep them in
98. business. And those are drugs that would have
99. been on the streets of Yellowknife or another
100. community in the Northwest Territories.
101. First, I will deal with the
102. ancillary orders requested by the Crown. These
103. are secondary designated offenses pursuant to
104. Section 487.04, and so there will be an order
105. pursuant to section 487.051 for the taking of
106. Ms. Lafferty's DNA for the databank. Pursuant to
107. Section 109, this is also a mandatory order, a
108. firearms prohibition order is mandatory and
109. Ms. Lafferty will be prohibited from possessing
110. firearms for a period of 10 years following her
111. release from imprisonment. There will also be
112. the victim of crime surcharge which will be
113. imposed.
114. I have considered what an
115. appropriate sentence might be given the
116. circumstances of the offense, the applicable
117. sentencing principles, and Ms. Lafferty's
118. personal circumstances. I've considered her
119. personal circumstances as required under Section
120. 718.2(e) and I'm satisfied that her circumstances
121. warrant a reduction in sentence from what I would
122. otherwise impose on her.
123. As well I have considered that
124. Ms. Lafferty has been convicted of eight
125. offenses, four of which are for trafficking, and
126. four of which are for possession for the purpose
127. of trafficking which all arise from the same
128. facts and bring issues of *Kienapple* into play.
129. Considering the facts and
130. Ms. Lafferty's role in the drug trafficking
131. organization, I'm going to enter convictions and
132. sentences on the four offenses of possession for
133. the purpose of trafficking, and stays will be
134. entered for the offenses of trafficking.
135. Ms. Lafferty, please stand up.
136. For the offense of possession for the purpose of
137. trafficking, I sentence you to a period of
138. imprisonment of three years. For the offense of
139. possession for the purpose of trafficking in
140. marijuana, I sentence you to a period of
141. imprisonment of 18 months to be served
142. concurrently. For the offense of possession for
143. the purpose of trafficking in amphetamine, I
144. sentence you to a period of imprisonment of 21
145. months to be served concurrently. For the
146. offense of possession for the purpose of
147. trafficking in benzodiazepine, I sentence you to
148. a period of imprisonment of four months to be
149. served concurrently. Thank you, you may sit
150. down.
151. Counsel, is there anything
152. else to be addressed?
153. 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 |

1. comments on the draft forfeiture order?
2. MR. BOYD: No, Ma'am. It's been
3. 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. |
| 11 | **-----------------------------------------------------** |
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# 1 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings produced and
4. transcribed from audio recording to
5. the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 20th day of November, 2018.

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1. Certified Pursuant to Rule 723
2. Of the Rules of Court

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1. Allison Willard
2. Court Reporter

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