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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

00358

HER MAJESTY THE QUEEN

- and -

PETER JOHN ZOE and  
GILBERT TATZIA a.k.a.  
CHARLIE TATZIA

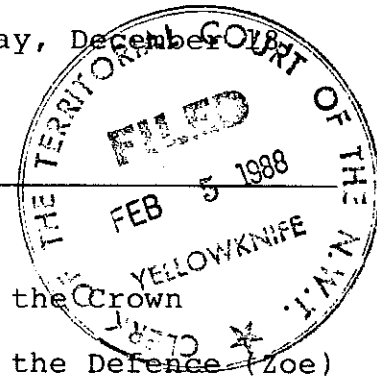
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AND IN THE MATTER OF:

HER MAJESTY THE QUEEN

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GILBERT TATZIA a.k.a.  
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Transcript of the Oral Reasons for Sentence delivered  
by His Honour Judge R. M. Bourassa, sitting at Rae-Edzo,  
in the Northwest Territories, on Friday, December 11, 1987.  
A.D. 1987.



APPEARANCES:

MS. L. J. WALL	On behalf of the Crown
MR. D. SPAULDING	On behalf of the Defence (Zoe)
MR. V. FOLDATS	On behalf of the Defence (Tatzia)

(Charges under Section 246.1 (Zoe and Tatzia) and 84(2) and 133(3) (Tatzia) of the Criminal Code of Canada.)



1 THE COURT: I thank both Defence counsel and, of course, Crown  
2 counsel for their thorough submissions.

3 In highlighting the particular concerns that the  
4 Court has to address and the particular principles that  
5 ought to be brought into play here, as has been pointed out,  
6 dealing with the sexual assault, it is punishable by a max-  
7 imum of ten years imprisonment to the equivalent of a  
8 suspended sentence; and the Court has to apply principles  
9 and accept guidance from the Court of Appeal in determin-  
10 ing what is appropriate for these offenders and for this  
11 offence; and notwithstanding the movements in a tarriff dir-  
12 ection by some communities and some states in the United  
13 States, we still have today a highly individualized sentenc-  
14 ing approach.

15 The whole process today is a sad one. I don't  
16 think anyone can leave here with a smile on their face or  
17 patting themselves on the back, one way or another. Both  
18 individuals before the Court--and I say that with respect to  
19 Zoe as well, notwithstanding his record--I don't think could  
20 be categorized (if we exclude this offence of sexual assault)  
21 as classic criminals. One can't help but sadly look upon  
22 the effects that alcohol has on two ordinary individuals and  
23 on an ordinary community. I find it just astounding the  
24 level of violence and destruction that a community can  
25 absorb, all attributable to alcohol, without rebelling or  
26 without reacting both on a community level and on a personal  
27 level.

1           The individuals involved in the sexual assault  
2 both have problems with alcohol, self admitted, and were  
3 both on what can only be described as a binge drunk, going  
4 from place to place, partying until the bottles were empty,  
5 and then going somewhere else and looking for more bottles,  
6 'party will you pass out.'

7           This community has seen people killed, shot, raped,  
8 frozen to death, babies taken from families because the  
9 parents abuse liquor, and that is only what the Court sees;  
10 goodness knows what else goes on because of liquor. The des-  
11 tructive effects of liquor on individuals in a community are  
12 just astounding. Here are two individuals--and I accept the  
13 submissions of both Defence counsel in that regard--intoxi-  
14 cated, commit what is classified in law and by virtually  
15 every society in the world as a disgusting, heinous offence.  
16 I've never heard it described otherwise in aboriginal cul-  
17 tures, in European cultures, Asian cultures, anywhere. And  
18 it's no good to say that they wouldn't have done this if  
19 they were sober; I recognize that they wouldn't have done it  
20 if they were sober, and I recognize very well there would be  
21 people walking around in this community alive today if they  
22 hadn't been to a particular party. But the fact is, and  
23 the fact remains, that these two men both have a problem  
24 with alcohol. We can't separate the drinking John Zoe and  
25 the drinking Gilbert Tatzia from the sober Tatzia and sober  
26 Zoe. No one forces them to drink. There is none of what a  
27 lot of sources claim to be the group causes of drink here;

1 Tatzia has skills on the land and presumably could derive  
2 some self-respect from that. Zoe has skills, he is a jour-  
3 neyman plumber, earning up to \$36,000 at one point. He can  
4 derive self-worth and satisfaction from that.

5 It's really unfortunate, and I don't know how much  
6 longer that this culture of the bottle will endure. It's  
7 really unfortunate because it destroyed individuals, it de-  
8 stroyes children, it destroys communities. I have the  
9 evidence of the victim before me that her young child, an  
10 infant, knows what 'hotknifing' is as a result of watching  
11 what adults do. I note this community and its leaders have  
12 struggled with varying degrees of success with the problem  
13 of alcohol in becoming a dry community, and going wet again,  
14 becoming dry again. The Court has no answers, but the Court  
15 is saddened to see two more individuals who have basically a  
16 lot going for them embroiled as a result of their love of  
17 alcohol and their inability to control themselves. As a  
18 result of that, their families are hurt, they themselves are  
19 hurt, an individual is incredibly victimized. It's really  
20 sad.

21 Mr. Zoe is quite correct, I believe personally, if  
22 I can make that observation, that no one can force-feed him  
23 alcoholic rehabilitation, and no one can stop him drinking.  
24 All the detox programs and probation services in the world  
25 can't stop him and Mr. Tatzia from drinking. As he indicates,  
26 he realizes it has to come from him and his heart. There is  
27 the centre of alcohol control and education, unfortunately

1 there are a lot of people in this community and other commun-  
2 ities--I don't wish to singularize Rae, alcohol abuse occurs  
3 everywhere in Canada, south, north, east, and west--but un-  
4 fortunately, it has to be made very clear that conduct like  
5 this is unacceptable. People are responsible for what they  
6 do, drunk or sober; and the terrible price that has to be  
7 paid by families, individuals, and the community as a result  
8 of this alcohol abuse goes along with the alcohol abuse.  
9 There is no escaping it. There is trouble at the bottom of  
10 every bottle. And not only is it bad for the adults involved,  
11 but the Court and counsel and the police, everyone involved.  
12 The community knows as well that little children, the in-  
13 fants that are harmed as a result of watching this kind of  
14 conduct and behaviour. They grow up believing that this is  
15 right, and we all know it isn't.

16 In any event, trying to balance both the positive  
17 and negative factors involved here, counsel are quite right,  
18 the Court of Appeal has indicated that the starting point  
19 for consideration of a sexual assault or rape is three years  
20 imprisonment; and the trial court--this court--is entitled,  
21 after balancing and weighing the various factors involved,  
22 to move upwards or downwards from that starting point.

23 Factors which would persuade this court to impose  
24 more than three years imprisonment--and I think the primary  
25 factor, the greatest factor involved--is that the two men  
26 here are raping a woman. I find the sexual assault a pred-  
27 atory one. The circumstances of the offence, in my view,

1 express clearly the absolute contempt for that woman and for  
2 women; an absolute humiliation for the victim. These two  
3 men ended up with her in the car, and Tatzia began to demon-  
4 strate hostility towards her. Zoe went right along with it.  
5 I agree with what the Crown said, and that it ought to be  
6 taken into account, that this woman was virtually imprisoned  
7 or a prisoner, that being raped twice is more than two rapes,  
8 being raped by two different men on one occasion it is more  
9 than just two rapes, the violation is potentially increased.  
10 The treatment of the victim, the contempt shown by the  
11 statement, I believe it was Tatzia, "She won't remember any-  
12 thing in the morning, she's drunk." The attempted fellatio  
13 by Zoe, the manipulation of this woman like some play thing,  
14 cannot be seen to be condoned. It is disgusting, it's ter-  
15 rible to treat anyone like that. The victim  
16 in this case, continues to this date to be victimized as a  
17 result of this offence; and as she stated in her evidence a  
18 few weeks ago, she continues to be blamed for this offence.  
19 The Court wants to make it very clear and make it very loud  
20 and clear that she bears no responsibility for this, and she  
21 bears no blame for this. She was preyed upon by two drunken  
22 men. There is absolutely nothing before me that would indi-  
23 cate an encouragement, a desire, a willingness, a wish, or a  
24 sufferance of what was visited upon her. These men are not  
25 before the Court as a result of her, in a sense, these men  
26 are before this Court because society cannot accept or toler-  
27 ate people treating each other like this. As I said earlier,

1 no society tolerates this that I've ever read about, heard  
2 about, or can conceive of.

3 Tatzia has no criminal record, and at the time was  
4 18 years of age, which has to be taken into account. It is  
5 said that he was not particularly sophisticated. I don't  
6 know that, and I am unaware of any authority that, somehow  
7 ties the length of sentence for a rape to 'sophistication.' I  
8 think sophistication in many instances is referred to the  
9 effect that imprisonment will have. Taking someone who has  
10 lived his life in the bush and pulling him out of that en-  
11 vironment and putting him in a federal penitentiary in the  
12 south I think rightfully is taken into account. Tatzia has  
13 lived his life in and around Rae-Edzo, traps to varying de-  
14 grees or traps to a certain degree of success. He doesn't  
15 have the education that Zoe does. He doesn't have, perhaps,  
16 the life experience that Zoe has because of Zoe's education  
17 and because of Zoe's age. But he is an individual who  
18 admittedly, as set out in the pre-sentence report, has a  
19 problem with alcohol consumption, and knows it. He knows  
20 what drugs are about. He participated voluntarily and wil-  
21 lingly in this party, this on-going party, on the night in  
22 question; and he's the one that originally expressed the  
23 hostility against the woman involved. It appears it was his  
24 idea. So, the question of sophistication or the issue of  
25 sophistication I don't think in this particular case war-  
26 rants that great a weight. He doesn't have a record, and he  
27 is young; and I agree that that is an important factor. I

1 don't want to impose a sentence that is going to crush him.  
2 We all make mistakes in youth, some bigger mistakes than  
3 others. This certainly was a very large 'mistake.' And I  
4 think there is a valid argument made that these matters have  
5 to be given a lot of consideration and weight in imposing  
6 sentence.

7 Zoe, on the other hand, has been around a lot  
8 longer, almost twice as long, in fact, in years. Zoe has a  
9 record going back to 1977; however, most of the record is  
10 liquor related, which just confirms what I was saying  
11 earlier that both of these men have a problem with alcohol.  
12 Neither of them have done anything about it. It's not as  
13 though they have to be taught the lesson that there is  
14 trouble involved with alcohol. There is enough trouble in  
15 this community surrounding the use of alcohol, in my view,  
16 that both of them should be well aware of that fact. In any  
17 event, Zoe's record, I don't attribute a lot of weight to it,  
18 because it is simply the record of someone with trouble with  
19 alcohol. It doesn't manifest itself in previous convictions  
20 for serious assault offences or sexual offences. I accept  
21 the evidence and refer to the evidence I've already received  
22 with respect to Zoe, that he is an ordinary man, fits into  
23 the community and has a lot going for him in many ways. He  
24 has a family, he is reasonably stable and hardworking; and  
25 obviously, to a degree, that he is ambitious, that he's  
26 obtained his plumber's licence. Those are to his credit.

27 The difficult issue to decide in this particular



1 case, is the question of disparity, whether or not the Court  
2 ought to impose different sentences; and that is obviously  
3 what the court is being asked to do. I have difficulty with  
4 that, because for as many factors that would persuade me to  
5 impose different sentences, there are factors which seem to  
6 indicate identical sentences. The assault was Tatzia's idea,  
7 not Zoe's; Zoe went along with it. Presumably, therefore,  
8 Tatzia should receive a sterner glare from the Court. Zoe  
9 has a previous criminal record, Tatzia doesn't. Tatzia is  
10 younger than Zoe, but Tatzia displayed, even after the  
11 offence, a significant degree of contempt for this victim.  
12 Zoe went along with the rape. I believe he was the first  
13 one to attempt or have intercourse with the victim; and then,  
14 while the other was fondling her, attempted to force fel-  
15 latio. Those are aggravating factors.

16 Both men have pleaded guilty. That is important.  
17 I accept what Defence counsel have said with respect to  
18 Tatzia, that the man had no recollection as a result of the  
19 consumption of alcohol. I can't fault him for having a  
20 preliminary inquiry or not pleading guilty; that is to say,  
21 at the first instance. At least at the preliminary inquiry  
22 he found out what went on. I won't comment on Zoe with re-  
23 spect to his version about what he recalls transpired other  
24 than to note he was highly intoxicated; and obviously, his  
25 recollection was wrong.

26 It seems to me that there are as many factors  
27 which would auger against treating these men differently as

1 there are that would indicate that they should be treated  
2 differently. What I am left with is that this was a joint  
3 rape by two men in terrible circumstances with a small ele-  
4 ment of additional violence, certainly an overwhelming  
5 element of restraint, total abuse, humiliation and degrada-  
6 tion of the woman. I think that that event overshadows the  
7 others and requires that the court treat both men the same.  
8 With respect to the differentials, there is only one that  
9 troubles me, and that is Tatzia's age and the lack of a  
10 record. I think I have to take that into account, and I do.

11 I am not persuaded that both men ought to be  
12 treated differently. It seems to me that there are some  
13 elements in Zoe's position and background that warrants some  
14 credit that would as well serve to distinguish him from  
15 Tatzia; in other words, I think that there are mitigating  
16 factors available for both and can be applied to both, but  
17 in different ways, resulting that in my view they both ought  
18 to be treated the same way. There are mitigating factors,  
19 different factors, in each case that don't displace the one  
20 principle that they ought to be treated the same way. Their  
21 roles were too intertwined.

22 With respect to Tatzia on the other two offences:  
23 with respect to the 133 matter, to me the penalty is that  
24 Tatzia was released originally on the charge of sexual  
25 assault, he could have remained at liberty, he was unable to  
26 control himself in his drinking, and he was put in custody  
27 as a result of breaking his undertaking; and in my view

1 that is the appropriate penalty. He has spent the time in  
2 custody from the time he was apprehended. He put himself  
3 back in jail. I don't take it into account in sentencing on  
4 the sexual assault; however, I will impose a sentence with  
5 respect to that.

6 With respect to the firearms offence, I accept  
7 again what Defence counsel has argued. I can well imagine  
8 that this sexual assault charge has been preying on his mind  
9 for a period of time, it may very well be a pressure that  
10 would contribute to further offences or a loss of control,  
11 and I have to look at it and sentence in that context, and I  
12 do. I accept as well that on the firearms offence there  
13 must be a firearms prohibition, and I am loath to impose it.  
14 I can't see its logic, but my hands are tied. It will have  
15 an effect on Tatzia. I do intend, however, to impose that  
16 firearms prohibition from today's date. When they are re-  
17 leased, part of that time will already have expired. I'm  
18 sure counsel have pointed out to their clients that there  
19 are amendments pending to the Criminal Code which may allow  
20 or provide for relief. I can see no sense for that prohibi-  
21 tion in this case, especially with respect to Tatzia;  
22 however, that is not for me even to comment on any further.

23 Stand up, please, Mr. Tatzia. Is there anything  
24 you wish to say before the Court imposes sentence?

25 MR. TATZIA: No.

26 THE COURT: On the charge of sexual assault, I am going to  
27 impose a term of imprisonment of four years. In addition to

1 that, there will be a prohibition of owning or possessing  
2 any firearms, ammunition, or explosive substances for a  
3 period of five years from today. I'll give you two weeks to  
4 surrender any firearms or dispose of any firearms you may  
5 have.

6 With respect to the charge of failing to comply  
7 with your undertaking, there will be a term of 15 days in  
8 jail concurrent.

9 With respect to the charge of careless use of a  
10 firearm, 15 days in jail concurrent.

11 I will endorse your warrant, Mr. Tatzia, with the  
12 recommendation that you be considered for early release or  
13 work release.

14 Stand up, Mr. Zoe. Is there anything you wish to  
15 say before the Court imposes sentence?

16 MR. ZOE: No.

17 THE COURT: On the charge of sexual assault, there will be a  
18 term of imprisonment of four years.

19 I hope both you men seriously reconsider your  
20 relationship to alcohol when you are released.

21 MS. WALL: Yes, your Honour, I must point out that the way  
22 Section 98(1) of the Criminal Code reads, it appears the  
23 firearms order takes effect when it is imposed, and it ex-  
24 pires no later than five years after release from imprison-  
25 ment; and that is the way it must be expressed. I don't see  
26 any other way of expressing it under 98(1).

27 THE COURT: You are quite right. I stand corrected.

1 MS. WALL: And will there be an order for Mr. Zoe as well?

2 THE COURT: Yes.

3 MS. WALL: The same terms as for Tatzia?

4 THE COURT: Yes.

5 MS. WALL: One final point, your Honour, I am not sure  
6 whether Ms. Boillat addressed this matter, but I would ask  
7 an order issue under Section--

8 THE COURT: Banning publication of the victim's name?

9 MS. WALL: Authority for such an order is in Section 442 of  
10 the Criminal Code.

11 THE COURT: Yes, I'll make that order. There will be no refer-  
12 ence to her name in any publication or broadcast.

13 MS. WALL: Thank you.

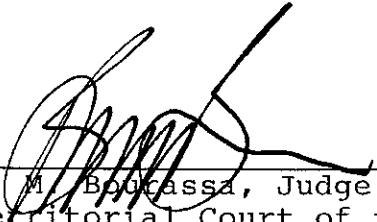
14 THE COURT: Is that everything, counsel?

15 MR. FOLDATS: Yes, your Honour.

16 MR. SPAULDING: Yes, your Honour.

17 THE COURT: Thank you, counsel.

18 (AT WHICH TIME THIS MATTER WAS CONCLUDED.)  
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R. M. Buccassa, Judge  
Territorial Court of the  
Northwest Territories