

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

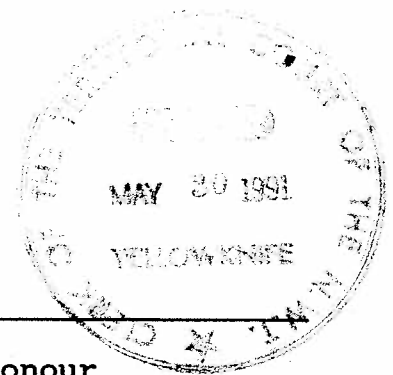
IN THE MATTER OF:

HER MAJESTY THE QUEEN



- and -

DOREEN KALLUK



Transcript of Sentencing delivered by His Honour
Judge R.M. Bourassa sitting at Yellowknife in the Northwest
Territories on Thursday, April 25th, A.D., 1991.

APPEARANCES:

MR. D. AVISON

Counsel for Crown

MR. J. BRYDON

Counsel for the Defence

(CHARGE UNDER SECTION 348 (1) (b) AND SECTION 239 OF THE CANADIAN
CRIMINAL CODE)

1 THE COURT: The Court has to sentence the accused,
2 Doreen Kalluk, on two offences: break and enter and
3 assault and aggravated assault. I won't go over the
4 facts again, they're on the record, and with respect
5 to the break and enter. An agreed statement is filed
6 with respect to the aggravated assault.

7 Perhaps some initial observations. I certainly
8 concur with the fundamental proposition put forward by
9 both counsel speaking from their respective
10 positions. From the defence, this is a personal
11 tragedy; from Crown, it's a societal tragedy. There
12 is violence everywhere in this jurisdiction.

13 Unfortunately, I believe current statistics will
14 bear me out that in the Northwest Territories we have
15 a higher rate of convictions for violent offences than
16 anywhere else in Canada, and when I say a higher rate,
17 I mean multiples of tens. We're not dealing with a
18 differential of a few percentage points. Of the
19 thousand or so cases I deal with every year, at least
20 40 percent involve crimes of violence.

21 One of the really disturbing features about the
22 violence is the apparent public acceptance or elevated
23 threshold of public acceptance of violence. It was
24 not long ago where I had to preside over a case
25 involving three elderly people, one of whom set fire
26 on the other two by pouring gas on them. This was an
27 ongoing problematic relationship. No one in the

1 community was particularly upset or remained upset for
2 a very long period of time.

3 Judge Slaven, in the Oscar decision, refers to
4 the shootings that took place in Fort McPherson which
5 were quickly obliterated from anyone's
6 mind. Everywhere we go there are acts of
7 violence. There is indeed a culture of violence in
8 this overall community of ours which is very difficult
9 to understand and very difficult to deal with.

10 There is so much expected by the Courts. There
11 may be too much expected from the Courts. We are
12 expected to solve these problems when, in fact, we
13 cannot solve them. The Courts come along at the end
14 of the line and respond after the fact, a burden that
15 I would personally like to be relieved of, as this
16 Court and no Court gets any satisfaction or pleasure
17 out of sentencing individuals to long terms of
18 imprisonment.

19 Mr. Avison, speaking for the Crown attorney, is
20 accurate when he states that these problems of
21 violence must be addressed in other ways. They cannot
22 be resolved -- not that I think we can realistically
23 hope to resolve them all forever -- but the level of
24 violence must be resolved in other agencies. The only
25 thing the Courts can do is respond after the fact. I
26 cannot change the past personal circumstances of this
27 offender any more than I can change the past personal

1 circumstances of other offenders before this Court; no
2 judge can.

3 This Court, as in any criminal court, is
4 responding to a breach of a law between the State and
5 an individual member of this country. The laws set
6 out in the Criminal Code are laws designed to ensure
7 that, with a minimum of intervention, we all get along
8 within certain parameters. Those parameters are not
9 particularly broad. There's only a narrow base of
10 unacceptable conduct and behaviour. Violence is one
11 of them.

12 The offences before me are not an internal matter
13 between Mr. Cushley, the victim, and Miss Kalluk. The
14 violence between them, the violence exhibited by this
15 accused, is a criminal act against society at large
16 and it must be responded to appropriately in that
17 context.

18 The victim is apparently forgiving. Everyone
19 involved wants to forgive each other and get on with
20 their lives. Just a few short days ago in presiding
21 over a preliminary inquiry where a woman was sliced
22 almost from ear to ear requiring 40 stitches in her
23 throat - a most reluctant witness - the victim forgave
24 the accused. He forgave her. (I don't know what he
25 had to forgive her for.) They both wanted to get back
26 together; two pieces of atomic material combining to
27 create an incredible explosion. And these explosions

1 of violence which are so common are destructive of the
2 whole society.

3 I have had the unfortunate experience all too
4 often lately of presiding over cases dealing with
5 individuals that I had to deal with ten years ago,
6 small children that were apprehended by the Department
7 of Social Services because they lived in an abusive
8 home have grown up and start abusing their spouses and
9 abusing their own families in a similar fashion. The
10 defence is correct: violence begets violence. Little
11 girls grow up seeing their mothers being thumped and
12 their parents drunk on the floor and believe that's
13 the way you raise kids and that's what you expect in
14 life. Little boys grow up seeing their fathers
15 beating their mothers; small wonder they end up doing
16 the same thing. It's a terrible situation, but that
17 does not relieve me of the burden of enforcing our
18 laws, the laws against violence.

19 It must be understood that a line has to be
20 drawn, that at some point the society as a whole
21 becomes totally dysfunctional, and as great a personal
22 tragedy as it may be for this particular accused to be
23 imprisoned for a lengthy period of time, I don't
24 believe I have any alternative. My duty is to respond
25 to the offence and the offender, to balance the
26 factors, both aggravating and mitigating with respect
27 to both, and impose a sentence all in the context of

1 the criminal law, a law which is designed - without
2 too great an intervention -- to keep us all living
3 reasonably peaceably. We are, after all, a society
4 premised in the constitution on "peace and
5 order." While there will be many personal tragedies
6 enacted in this Court, it must not be forgotten that
7 while the personal tragedies come and go, it is
8 society at large who bears the scars far longer.

9 In terms of a sentencing goal, which is what
10 we're really speaking of, in my view, the goal must be
11 deterrence. Once again, society at large, including
12 all of the individuals involved, are suffering the
13 effects of rampant drinking and violence. It's a
14 deteriorating circumstance and it's one that bodes no
15 good for the children that are on the street today and
16 the generations to come, but I reiterate: the Courts
17 can only respond after the fact. Too much is expected
18 of the Courts in terms of correction or healing. The
19 only thing I believe the Courts can really do in terms
20 of deterrence and denunciation is to point out the
21 tragedies that are involved and to make it clear that
22 violence is not acceptable.

23 Hopefully in the process, over years individuals
24 within our society will do something. Activists will
25 do something to address not only the general causes,
26 but the specific individual causes involved. The
27 Crown, defence and this Court are experiencing the

1 same thing day in and day out: that something has to
2 be done both on an individual basis and in society at
3 large to reduce the frequency of these events, to
4 eliminate the causative factors. It's too late when
5 we come to court. The only thing the Court can do is
6 reinforce the values set out in the Criminal Code,
7 which I firmly believe reflect, by and large, the
8 values of society at large. We are not, we don't want
9 to be a violent society. We don't want Detroit and
10 Chicagos in Canada.

11 In terms of dealing with the offences, first of
12 all in terms of the break and enter: I have to agree
13 with the Crown attorney that there is very little by
14 way of mitigation there. The police intervened, they
15 did everything they could to diffuse a bad situation,
16 to protect a woman who was peacefully asleep in her own
17 house with no expectation, no reason, no dream of
18 anything occurring when this accused and another
19 smashed their way in and this accused commences an
20 assault for her own reasons or upon the urging and
21 goading of the male that was present, clearly
22 intimidating, terrifying, threatening and hurting the
23 woman she attacked, someone totally unknown to
24 her. That, in my view, is highly aggravating,
25 notwithstanding the other factors having to deal with
26 that particular offence. It's something that we would
27 not accept from anyone. It's a situation that would

1 cause any reasonable person to scream out in
2 outrage.

3 The accused, after being confronted by the police
4 trying to diffuse the matter, then returns some hours
5 later and breaks her way in and commits the
6 assault. I find those factors very aggravating.

7 With respect to the charge of aggravated assault,
8 there are many aggravating features. The accused and
9 her sister, in my view, premeditated the
10 attack. Cushley, as good, bad or indifferent or as
11 sympathetic or unsympathetic a victim as he may be,
12 was asleep or passed out in his bed, and by mutual
13 agreement the accused went in there armed with either
14 a knife or a screwdriver and by agreement, attacked
15 him. I agree with Crown that it is pure luck that the
16 victim is walking today. It's pure luck and nothing
17 more that he's not dead. 34 wounds, some of them
18 pointed out in the agreed statement of fact, life
19 threatening. Aggravating was the fact that the
20 accused left and hid out and once they saw the victim
21 stagger out, took off and tried to cover up in an
22 ammaturistic way their attack and involvement in this
23 offence. It's a wonder he wasn't killed. I recognize
24 that the Court does not deal with "if's"; we only deal
25 with the facts that are before us. I only refer to
26 this to reflect upon and emphasize the seriousness of
27 the attack. This was not a one-stab situation, which

1 is unfortunately so common. The accused went after
2 this man with a vengeance.

3 I would refer to the cases filed by defence, and
4 I'm sure familiar to the Crown, where violence has
5 been condemned time and time and time again by the
6 Courts. The particular cases I'm familiar with or
7 I've just read during the break to refamiliarize
8 myself with them confirms that every Court in this
9 jurisdiction has condemned violence.

10 The offences before me are both punishable by a
11 maximum of 14 years imprisonment. I have to take that
12 into account. The Courts are directed by the
13 appellate levels and the law generally to scale the
14 particular offence on the maximum penalty provided for
15 by Parliament and Parliament speaking as the will of
16 the people, and in my view, the aggravated assault to
17 which the accused has pleaded guilty rates quite high
18 on the scale of the offence. I'm not prepared to say
19 it's the worst example of aggravated assault, but it
20 is certainly well and above the medium or even -- the
21 medium, I'll leave it at that.

22 In terms of arriving at a sentence that in my
23 view must emphasize deterrence and denunciation, the
24 Court has to look at the particular circumstances of
25 the accused. Our sentencing is an individualized
26 process. It is not as it is in Wisconsin or
27 Minnesota, a question of following a table. This

1 leads to some disparity from time to time which I
2 think serious students of the law would not
3 particularly disagree with. Its fairness requires
4 that the Court look at the particular situation of
5 every accused, and every accused is different.

6 This accused presents as a particularly
7 sympathetic accused. She was apparently, from her
8 earliest childhood, the victim of abuse within the
9 family. All her relationships with men apparently
10 have been abusive ones. She in turn has acted out
11 that upbringing of abuse, physical abuse, as
12 manifested in her actions against Doctor. It is
13 indeed unfortunate and a tragedy or personal tragedy,
14 but as I pointed out at the outset, the Court can't
15 undo the past. It is not an uncommon situation which
16 is even more, even greater a tragedy in this
17 jurisdiction, but that she was raised in a culture of
18 violence and presents a sympathetic figure can only go
19 so far in terms of mitigation of sentence. A
20 scoundrel who does not present the same way as this
21 accused ought not to be treated that much
22 differently.

23 I take into account particularly her age and I
24 accept what defence suggests, that receiving a long
25 term of imprisonment is going to be difficult for her,
26 but I really can't say that it's much different than
27 anyone else. I don't envy anyone going to the federal

1 pennitentiaries, but the line has to be drawn on acts
2 of violence. Society, people generally, have to
3 understand that we can only go so far in
4 individualization before the Courts and the law too
5 fall into the trap of accepting a certain level of
6 violence and responding minimally to it. I can say
7 that this accused's antecedents are not uncommon, but
8 then to take it from there and say therefore she
9 should receive a very modest term of imprisonment is
10 simply to fall into that trap. The more violence
11 there is, the more we get used to it. I believe every
12 time the Courts are faced with facts like this it
13 becomes increasingly more difficult, but we must
14 remain resolute. The act itself is terrible and I
15 recognize that imposing a meaningful sentence
16 reflecting the act may, in a way, be compounding the
17 tragedy for this particular victim, and while, on a
18 personal basis, which I really should not be using or
19 referring to, it may be too bad for Doreen Kalluk, my
20 responsibility is to apply the law.

21 The accused has pleaded guilty, which the Court
22 is entitled to take into mitigation, and I take that
23 into mitigation without reservation and perhaps to be
24 more specific, there is juris prudence from Ontario
25 where the Courts have stated that up to one-third of
26 what would otherwise be an appropriate sentence may be
27 taken off to reflect a plea of guilty. She has saved

1 the State the cost of a lengthy trial. It is also
2 indicative of remorse. It's also indicative, as
3 defence suggests, that a specific deterrence may have
4 greater application here. The offence was committed a
5 few short months ago; she's going to receive her
6 penalty today. Justice is operating in a swift
7 fashion and that may carry its greatest deterrent
8 effect.

9 Further in mitigation, she is apparently taking
10 some steps to turn her life around. I'm quite certain
11 that given her situation that there will be agencies
12 available for her regardless of where she serves her
13 term of imprisonment that will assist her in these
14 steps and assist her in removing herself from the
15 culture and the environment that she has found herself
16 in, the environment or culture of violence and alcohol
17 abuse, but I would point out to the accused that all
18 of the well-meaning people in the world can only
19 assist her. She has to do it. Only Miss Kalluk can
20 stop drinking. Only Miss Kalluk can take herself away
21 from those kinds of situations, no one else. There
22 are support mechanisms within institutions, there are
23 support mechanisms outside the institutions - they can
24 all help - but she has to be the prime mover. She has
25 to pull herself up by her own boot straps. Other
26 people will help her, and I would encourage them to do
27 so, she's not a lost soul by any means.

1 In trying to balance these factors then, both the
2 aggravating and mitigating factors, the factors
3 specific to the offence and the factors specific to
4 this accused, keeping in mind what I believe the
5 proper goals are here, which are general deterrence
6 and denunciation, together with some rehabilitation, I
7 have to impose a sentence. In my view, in imposing
8 such a sentence I have to keep into account
9 totality. I take into account the accused's
10 record. She has committed an act of violence before,
11 although it is not of great import to me. I have to
12 take into account the two offences, while they
13 occurred within a month of each other, are really
14 distinct and separate and in my view consecutive
15 sentences would be appropriate; however, having said
16 that, I still have to sit back according to law and
17 after determining what sentences would be appropriate,
18 look at the total impact on the accused and make an
19 adjustment accordingly so that the overall sentence is
20 not untoward. I have done that, which leads me to
21 reduce what I think would otherwise be appropriate on
22 the two individual offences.

23 I also, in passing, should comment on the Crown
24 submitting Exhibit number 3, which I have read and
25 taken into account, and can only say that it reflects
26 positively upon the Crown as a minister of justice
27 more concerned with presenting the cases and the law

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to the Court and the problems to the Court rather than to seek the public denunciation or pillaring of a particular member. We all agree there is no two ways around it: this is a tragedy.

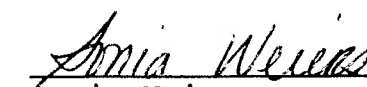
Stand up, please, Miss Kalluk. Is there anything you wish to say before I impose sentence?

THE ACCUSED: No.

THE COURT: On the charge of break, enter and assault, there'll be a term of imprisonment of one year. On the charge of aggravated assault, a term of imprisonment of two and a half years. The one year will be consecutive. In addition, as required by law, you will be prohibited from owning or possessing any firearms, ammunition or explosive substances for a period of five years from the date of your release. I'll allow you one month to dispose of or surrender any such items that you may have. I hope you can get these circumstances behind you and get on with your life in a positive fashion as quickly as possible, Miss Kalluk.

(PROCEEDINGS CONCLUDED)

Certified a correct transcript,



Sonia Weiers
Court Reporter