

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

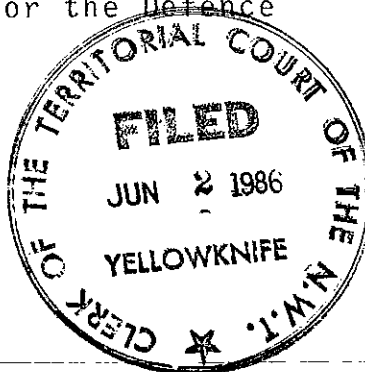
- and -

BERNIE KRETCHMAR

script of Proceedings and Sentencing delivered by His Honour,  
e R. M. Bourassa sitting at Yellowknife in the Northwest Terr  
es on Thursday, May 22nd, A.D., 1986.

APPEARANCES:

MS. N. BOILLAT: Counsel for the Crown  
MS. L. ERICKSON: Counsel for the Defence



1 this this one terrible mistake. He's now here in criminal Court  
2 on a very serious charge. He's facing a civil suit. He's  
3 essentially had to pay for a criminal lawyer, has to pay for a  
4 civil lawyer, essentially hitting the pocket book to a very  
5 high extent, I see as essentially being just as bad as jail.

6 It can effect someone just as much and we are talking about  
7 an individual who is trying to save up money to go back to school.  
8 He clears \$1,900 a month, not a huge sum, and essentially is  
9 facing all of these awful legal consequences and it's certainly  
10 is not letting somebody off lightly, someone in his circumstances.

11 The other fact, of course, is that it ensures that he is  
12 still working because he is still facing a civil suit and there  
13 eventually will be an award, of course, to Mr. Lizee. Essen-  
14 tially, sir, we've heard that the offence is completely out of  
15 character for Mr. Kretchmar and it's my submission that really  
16 nothing would be served by sending a person like this to jail  
17 and that a high fine essentially would hit him and others in  
18 his situation just as well and would satisfy the principle of  
19 general deterrence.

20 THE COURT:

21 The accused, Bernie  
22 Kretchmar, has pleaded guilty before me to a charge of assault  
23 with a weapon contrary to Section 245.1 (1)(a) of the Criminal  
24 Code which is punishable by a maximum of 10 years imprisonment.  
25 Mr. Kretchmar has a criminal record although it's quite old.  
26 The convictions in 1977 and 1979, the three of them are related  
27 to drinking and driving offences and one a mischief offence, with  
nothing since 1979.

1           The only thing that I note from the criminal record that  
2 perhaps is at all relevant, and only marginally so in the case  
3 before me, is it seems to me Mr. Kretchmar has had his problems  
4 with alcohol in the past. Now, the facts before me are clear  
5 and I won't go through them all again. The Crown has recited  
6 them and they have been agreed to by the Defence.

7           I have to concur with the characterization by the Crown  
8 Attorney that Mr. Kretchmar was extremely intoxicated. He was  
9 belligerent and he was out of control. It's suggested to me  
10 that he never intended to assault an innocent person -- I don't  
11 think that assists him very much. To launch oneself at an open-  
12 ing door with a broken beer bottle with the intent to assault  
13 or strike out at whoever and whatever was there is totally and  
14 absolutely unacceptable.

15           It doesn't help me very much that it wasn't one of the  
16 bouncers that was assaulted and in fact it was an innocent  
17 person and if anything, I think it has to aggravate. In either  
18 case, for a person to be enjoying a social occasion and simply  
19 open a door and be assaulted by someone in a blind rage wielding  
20 a weapon like this is grossly unacceptable and that's the only  
21 word I can think of. It's just unacceptable.

22           I can accept the characterization by all of the Defence  
23 witnesses that this was out of character for Mr. Kretchmar but  
24 it was Mr. Kretchmar and it's a part of Mr. Kretchmar that I  
25 want to make very clear is absolutely unacceptable and what-  
26 ever it was or whatever it is that motivated Mr. Kretchmar to  
27 put himself into such a state of intoxication and anger and

1 rage to the extent that I have heard about, must never occur  
2 again.

3 This Court is so weary of hearing the Crown Attorney stand-  
4 ing up time after time virtually 99 cases out of 100 starting  
5 off its litany of woe of abused children, beaten spouses, stabbed  
6 friends, shot hunting buddies with the same preface, 'the offen-  
7 der was drunk at the time'. It's no excuse, it doesn't even  
8 explain, it's just a factor, I suppose. It's so distressingly  
9 common that it's almost enough to drive one to take up the  
10 banner of temperance union eras of years ago.

11 Mr. Kretchmar has a problem with alcohol as far as I'm  
12 concerned when it can lead into a rage like this, so totally  
13 out of control. Apparently he's still drinking to this day.  
14 This assault may have been out of character but as long as Mr.  
15 Kretchmar is going to drink, that aspect of his character so  
16 submerged, which burst out on this particular night, is still  
17 there and perhaps a remote danger but a danger in any event.

18 I would hope that this event has brought a change in Mr.  
19 Kretchmar's life and whatever it was that caused this from with-  
20 in is excised by him quickly.

21 The Court, I point out that this is a criminal Court and  
22 as a criminal Court, its primary responsibility and duty is  
23 to address criminal wrongs; that is to say wrongs that have  
24 reached the level where the State must intervene and obviously  
25 the State has an interest in peace and quiet on the streets and  
26 the State has an interest when innocent by-standers are for no  
27 reason assaulted by weapons such as I heard today.

1           This is not and I am not constituted today to delve into  
2 and examine and assess the extent of the injuries and how they  
3 might be compensated. That will be done by another Court at  
4 another time. The testimony of Mr. Lizee is of interest to me  
5 only in that it diarises and sets out in more detail than the  
6 Court usually received, the extent of the injuries and the re-  
7 percussions of the injuries, that the face is still numb and  
8 that further surgery is required for example.  
9

10           The Court is not convened to exact a pound of flesh from  
11 Mr. Kretchmar. The Court is here to impose a sanction for a  
12 criminal offence. I would like to think that the penalty im-  
13 posed on Mr. Kretchmar wouldn't be any different than if Mr.  
14 Lizee took the stand and said he was a good friend of Mr. Kretch-  
15 mar and all was forgiven. The criminal offence remains the  
16 same and the response to that criminal offence must be similar.

17           The issue, I suppose, really before me is whether there  
18 ought to be a term of imprisonment or not. Mr. Kretchmar has  
19 never served time in prison and he is by all accounts unknown to  
20 criminal activity. He has never been involved with the crim-  
21 inal Courts such as we are normally seeing and I say that with  
22 qualification however that unfortunately there are a lot of  
23 offences such as this where first time offenders are before the  
24 Court.

25           The goals of the Court in imposing a sentence are usually  
26 and traditionally stated to be punishment, deterrence general  
27 or specific, rehabilitation and reformation as well as protection

1 of society. In my view, my role today in terms of a goal to  
2 achieve by this sentence is the protection of society and gen-  
3 eral deterrence.

4 I don't think Mr. Kretchmar has to go to jail for his own  
5 deterrence. I accept the submissions of Defence Counsel and  
6 the witnesses on his behalf that this has had an adverse effect  
7 on him and with the qualifications I mentioned earlier about  
8 his continued drinking, I have reason to believe that he may  
9 not be before the Courts again.

10 However, people are just going to have to understand that they can't  
11 go around and do this kind of thing, pick someone off the street  
12 and assault them. Mr. Kretchmar was an unguided missile going  
13 through that door and it didn't matter who was there, what-  
14 ever was there was going to be cut down by that beer bottle  
15 and unfortunately it was Mr. Lizee.

16 Mr. Lizee is extraordinarily lucky and by the same token,  
17 so is Mr. Kretchmar, that he didn't lose his eyes, that he wasn't  
18 more grossly and severely wounded than he was. Truly Mr. Kretch-  
19 mar was out of control.

20 I note that in the Northwest Territories the most common  
21 cause of death is acts of violence, termed by the Government  
22 'misadventures' in statistics, poisonings, beatings,  
23 stabbings, woundings and they are all alcohol related. I can't  
24 put Mr. Kretchmar in any other category.

25 People are going to have to understand when they drink,  
26 they have got to keep their heads about them. It's one thing  
27 to leave your keys with your friend and take a cab home but to

1 get yourself in a state of intoxication like this, the Court  
2 is not going to accept it, it's not going to tolerate it. People  
3 are going to have to understand that.

4 I think a term of imprisonment must be imposed. This is far  
5 removed from a minor assault. I think a term of imprisonment  
6 must be imposed to reinforce the concept that society and the public  
7 generally will be protected by the Courts. Any others in  
8 Mr. Kretchmar's position, it doesn't matter to the Courts whether  
9 they are men of the cloth or scoundrels, behaviour such as I've  
10 heard today will result in jail sentences.

11 I take into account that Mr. Kretchmar has pleaded guilty.  
12 That is probably one of the most significant elements before me  
13 in terms of mitigation. He's accepted the consequences, the  
14 criminal consequences for his conduct and is here today prepared  
15 to pay them. I accept as well the evidence of the witnesses  
16 that were called on his behalf that this was out of character,  
17 again with the caution that the drinking that I've heard about  
18 that Mr. Kretchmar enjoys, the potential is always there so  
19 long as he drinks.

20 I'm urged to impose a high fine to indicate general deterrence  
21 but I'm of the view that to reflect the Courts goals in  
22 this sentencing that a term of imprisonment is appropriate given  
23 all the facts. I have already said it on a number of occasions  
24 now, to attack someone in this nature.

25 Taking into account, Mr. Kretchmar, what your Counsel has  
26 said, would you stand, please. On this matter, I'm going to  
27 impose a term of imprisonment of two months. I consider I'm

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being fairly lenient with you, Mr. Kretchmar. I have contemplated putting you on probation with a provision that you report and attend some counselling with respect to alcohol abuse and alcohol but I'm not going to do that, Mr. Kretchmar. I've already told you how I feel about your drinking habits. If you conclude the same, then that's something you will have to do for yourself. No one can force-feed that to you.

Taking into account as well what your Counsel has said, I'm going to direct that the two months imprisonment be served intermittently commencing the 23rd of May at 7:00 p.m. until 26th of May at 7:00 a.m. and thereafter each Friday to Monday until your sentence is served in full. In addition to that, Mr. Kretchmar, while you are at liberty from Monday to Friday during the term of your sentence, you will be subject to a probation order. You are to keep the peace and be of good behaviour, which simply means you are to stay out of trouble and obey the laws. You are to report to the Yellowknife Correctional Center on each Friday in a sober condition.

Is that everything?

MS. BOILLAT: Yes, sir.

MS. ERICKSON: Yes, Your Honour.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

Certified a correct transcript,

*Brenda MacDougall*

Brenda MacDougall

Court Reporter