

1 IN THE TERRITORIAL COURT
2 OF THE
3 NORTHWEST TERRITORIES

6 R E G I N A

8 V S

10 A S H E V A K Q A V A V A U

14 Evidence taken at the Summary Trial, held before
15 His Honour Judge R.M. Bourassa, at the Court House,
16 Frobisher Bay, Northwest Territories, on the 19th day of
17 August, A.D. 1986.

21 L. Wall, Ms.,	Appeared for the Crown.
22 N. Sharkey, Esq.,	Appeared for the Defence.
23 M.D. Pedersen,	Court Reporter.



ADJUDICATION & DISPOSITION

INFORMATION (ON BEHALF OF HER MAJESTY THE QUEEN)

COURT NUMBER

CHARGE READ:

3 APR 86
DATE

JUDGE OR JUSTICE

CROWN ELECTION:

Summary Conviction:

Indictment:

ACCUSED ELECTION:

Magistrate:

Judge & Jury:

Judge:

18 1986
DATE

JUDGE OR JUSTICE

PLEA:

Guilty:

Not Guilty:

18 1986
DATE

JUDGE OR JUSTICE

FAILURE TO APPEAR: VACATED

Bench Warrant Issued:

18 May 86
DATE

JUDGE OR JUSTICE

EVERY TIME THIS INFORMATION IS DEALT WITH APPROPRIATE ENTRIES SHALL BE MADE ON THE REVERSE

DISPOSITION

Convicted:

Dismissed:

Withdrawn:

FINE:

J.P. COSTS:

POLICE COSTS:

RESTITUTION:

TOTAL:

DEFAULT:

TIME TO PAY:

SUSPENDED SENTENCE:

CONDITIONAL DISCH:

ABSOLUTE DISCH:

PROBATION FOR:

IMPRISONMENT FOR: 1 month

19 1986
DATE

JUDGE OR JUSTICE

STATISTICS

DATE OF BIRTH: 6/11/24

DRIVER'S LICENCE:

MARITAL STATUS: single

Sworn before me this 3rd day of April

A.D. 19 86

at Frobisher Bay, N.W.T.

A Judge or Justice of the Peace in and for the Northwest Territories

Appearance Notice:

Promise to Appear:

Recognizance:

Signature of Informant

confirmed

Justice of the Peace

DISTRIBUTION: 1. Clerk of the Judge's Court 2. Registrar of Motor Vehicles 3. Police Copy 4. Crown Attorney 5. Defence

CRIMINAL CODE FORM 2 (Sections 455, 455-1 and 723) NWT 1961 - 80/1180

1000/61D 8721dB

THIS IS THE INFORMATION OF KENNETH WILLIAM DALEY
(insert full name, residence and occupation of informant)

a member of the Royal Canadian Mounted Police

OF Town of Frobisher Bay in the Northwest Territories

a peace officer

HEREINAFTER CALLED THE INFORMANT

THE INFORMANT SAYS THAT he has reasonable and probable grounds to believe and does believe and state the offence) grounds to believe and does believe that

Ashevak QAVAVAD

On or about the 3rd day of April, 1986, at or near the Town of Frobisher Bay in the Northwest Territories did commit a sexual assault upon Isa KILABUK by forcibly unbuttoning her pants and fondling her buttocks, contrary to section 246.1(1) of the Criminal Code.

INFORMATION
JUDGE OR JUSTICE
M.A. COURASSA, Judge

Signature of Informant: K. Daley

19 confirmed

Justice of the Peace

CHARGE	PLAINT	ACCUSED	PLEA	REPORTER	APPEAR	DISPOSITION	DEFENSE	WITNESSES & INTERPRETERS	EXHIBITS	PRELIMINARY	STATE	DRIVE	FRAM	A.D.	JUDGE'S SIGNATURE
1st	AD. 1st	AD. 1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st	1st
2nd	AD. 2nd	AD. 2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd	2nd
3rd	AD. 3rd	AD. 3rd	3rd	3rd	3rd	3rd	3rd	3rd	3rd	3rd	3rd	3rd	3rd	3rd	3rd
4th	AD. 4th	AD. 4th	4th	4th	4th	4th	4th	4th	4th	4th	4th	4th	4th	4th	4th
5th	AD. 5th	AD. 5th	5th	5th	5th	5th	5th	5th	5th	5th	5th	5th	5th	5th	5th
6th	AD. 6th	AD. 6th	6th	6th	6th	6th	6th	6th	6th	6th	6th	6th	6th	6th	6th
7th	AD. 7th	AD. 7th	7th	7th	7th	7th	7th	7th	7th	7th	7th	7th	7th	7th	7th
8th	AD. 8th	AD. 8th	8th	8th	8th	8th	8th	8th	8th	8th	8th	8th	8th	8th	8th
9th	AD. 9th	AD. 9th	9th	9th	9th	9th	9th	9th	9th	9th	9th	9th	9th	9th	9th
10th	AD. 10th	AD. 10th	10th	10th	10th	10th	10th	10th	10th	10th	10th	10th	10th	10th	10th

CRIMINAL CONVICTIONS ONLY

DO NOT SHOW REFERENCE TO:

1. Withdrawals
2. Stay of Proceedings
3. Absolute Discharges

PAGE ONE

NAME: Ashewak QAVAVOW (DOB: 64-JAN-24)

DATE COMPILED: 86-APR-23

DATE (CHRONOLOGICAL)	PLACE	SECTION NO.	OFFENCE (BRIEF DESCRIPTION)	INCLUDING JAIL - CONCURRENT/ CONSECUTIVE FINE/PROB.
83-MAY-02	Cape Dorset, NWT	Sec. 294(b) G.C.	Theft under	\$50.00, 1/d 4 days, Prob. 6 mons.
83-SEPT-26	" "	Sec. 666(1) C.C.	Breach of Probation	\$200.00, 1/d 1 week, Prob. 6 mons.
84-FEB-07	Frobisher Bay, NWT	Sec. 666(1) C.C.	Breach of Probation	\$200.00, 1/d 15 days
84-FEB-07	" "	Sec. 421 C.C.	Theft under (attempted)	\$75.00, 1/d 5 days

1 THE COURT: Did you want to give the facts on
2 this matter, Ms. Wall?

3 MS. WALL: Yes, Your Honour.

4 The offence occurred April 3rd, 1986, in Frobisher Bay,
5 in the Northwest Territories. The victim of the assault,
6 Isa Kilabuk, is a woman in her late twenties. She had gone
7 to a house to visit a girlfriend. When she found her friend
8 was not at home, although there were other people in the
9 house, she went to the friend's bedroom and laid down on the
10 bed, fully clothed, wearing jeans, and went to sleep. This
11 was around midnight. About two hours later, the accused
12 arrived at the house, drunk. He entered the bedroom and
13 barricaded the bedroom door with a bureau. He then lay on
14 top of Miss Kilabuk, and began saying her name and undoing
15 her pants. She woke up and resisted him, but he pinned her,
16 her arms, and he continued to unfasten her jeans, and he
17 stuck his hand down the back part of her jeans and fondled
18 her buttocks. She continued to resist violently and yelled
19 for help, knowing that there was someone else in another
20 room. She also yelled at the accused, telling him to stop.
21 At this point, someone else from the house ran to the
22 R.C.M.P. detachment to report the assault, and the police
23 responded immediately and entered the house. They heard
24 Miss Kilabuk crying, and they heard the accused saying,
25 "Please forgive me." They had to force open the door, as it
26 was still barricaded, and they found the accused and the
27 victim inside the bedroom, seated on the bed. They then

1 arrested the accused.

2 Those are the circumstances, Your Honour.

3 THE COURT: Are those facts admitted as true?

4 MR. SHARKEY: Yes, sir. We would allege, as part
5 of those facts, that when the victim yelled at the accused
6 to stop a couple of times, he then did, before anybody came.

7 THE COURT: I don't see any incompatibility
8 with that and the Crown's statements.

9 MR. SHARKEY: Those facts, then, are admitted.

10 MS. WALL: As I say, Your Honour, once the
11 police entered the room, the assault had stopped.

12 THE COURT: On sentence?

13 MS. WALL: I would like to enter his record.

14 MR. SHARKEY: The record is admitted.

15 THE COURT: That will be Exhibit 1.

16 MS. WALL: , You'll see it is not a record
17 related to the offence before the Court, but it does show
18 that the accused has been through the court system before
19 and he is not entitled to be treated as a first offender.

20 This offence, of course, is quite a bit more serious
21 than the ones he's been convicted of so far. It's an
22 offence of violence against the person and I would submit
23 that it's a considerable aggravating factor that, first, it
24 took place in a private home. Although it wasn't her home,
25 it was her friend's home and she was entitled to feel
26 protected there and safe from molestation, I would submit.
27 The accused had come in from the outside. The second

1 aggravating factor, in my submission, is the barricading of
2 the bedroom door, showing premeditation, and also having in
3 it an element of confinement of the victim. Forcible
4 confinement, of course, is in itself an offence.

5 Fortunately, she wasn't hurt, Your Honour, but it's
6 clear from the facts that she was extremely distressed by
7 what was going on. Even if she hadn't been, the Court of
8 Appeal has made it clear that the Courts can take into
9 account the effect on a victim. They can take judicial
10 notice of the impact on a victim of a sexual assault.

11 In my submission, incarceration is called for, for both
12 individual deterrence and general deterrence.

13 Your Honour is familiar with the sentencing principles
14 for sexual assault cases, as laid down recently in the
15 Sandercock case.

16 With regard to whether or not this can be characterized
17 as a major sexual assault, Your Honour -- clearly, there
18 wasn't intercourse, but on the other hand, there are the
19 aggravating factors I've pointed out. So, I would submit,
20 that if it's not a major sexual assault, as the Court of
21 Appeal referred to in Sandercock, it's a serious sexual
22 assault, not a minimal one. Therefore, I would ask for more
23 than a minimum term of incarceration. Those are my
24 submissions, Your Honour.

25 THE COURT: Mr. Sharkey?

26 MR. SHARKEY: Thank you, sir.

27 The accused, Ashevak Qavavau, is 22 years old and his

1 home community is Cape Dorset. The victim was, and perhaps
2 still is -- my client doesn't know -- but, was an
3 acquaintance and/or friend of the accused around the time
4 that this happened. He advised the police in his statement
5 that she used to hang around his cousin. He'd been at the
6 Legion where he'd been drinking some beer and also some
7 cognac. It's unfortunate that this is the way he ended his
8 day. He then went to his aunt's place -- Mary Sharkey's
9 place -- where he found the victim.

10 My position, sir, is that this accused, in pleading
11 guilty, not only shows remorse by his plea, but that in his
12 statement to the police and the questions -- the type of
13 questions asked and the type of answers given does show some
14 remorse for what he's done. Part of it, of course, as with
15 all persons before the Court, is being caught. But, for
16 example, he is asked: "What did you do when you went in
17 there?" "I think I tried to talk to her." "Did you lock
18 the door?" "Yeah. With a dresser. Oh, this is
19 embarrassing. I sure wish it never happened." Further on
20 down, "Did she tell you to stop?" "Yeah. When she say
21 that, I say to myself that I should not do this, and I start
22 to apologize to her. When I was apologizing, the cop came
23 in." He acknowledges all of the other allegations of
24 fact. Another question is asked, "How did you try to have
25 sex with her?" "This is my first time. I want to be six
26 feet under. I was trying to pull her pants off. That's all
27 I remember. She stopped to talk" -- whatever that means.



1 But, that's the type of statement he gave to the police,
2 sir, in admitting this offence.

3 I acknowledge the Crown's comments with respect to any
4 impact on the victim, but in a relative scale, we do take
5 issue with the categorization given this offence.

6 As I say, Ashevak is from Cape Dorset, where he, up
7 until last year, lived with his mother. She died last year.
8 He grew up there. He had come down to Frobisher Bay in
9 March to attend some meetings to do with alcohol treatment.
10 Nonetheless, he stayed here, and when he stays here in
11 Frobisher, he stays with a friend, and he was working
12 part-time from March until now, he tells me, with Bill
13 MacKenzie, doing things for Mr. MacKenzie like, when work is
14 available, you know, chopping ice in front of the Brown
15 Building. He also says he worked for a short time, about a
16 week, at the Frobisher Inn Hotel, and another week, in
17 April, at the Komatik Inn, before he was laid off. When
18 he's in Dorset, he advises me, he does do carving. He does
19 drawings, as well, and he tells me that he has sold his
20 drawings. In addition, he indicates that he worked on the
21 sewerage trucks -- was working on the sewerage trucks
22 indoors, before he came down here in March. So, sir, that's
23 who Ashevak Qavavau is, and that's what happened that night,
24 and that's what he says and thinks.

25 THE COURT: Thank you, Mr. Sharkey.

26 Well, once again, someone is before the Court with a
27 problem with alcohol. Mr. Qavavau gets right out of control

1 and commits, what I think the Crown has fairly described as
2 a premeditated sexual assault -- I would add, bordering on
3 attempted intercourse.

4 I want to point out to you, Mr. Qavavau, that the Court
5 of Appeal has stated in no uncertain terms that sexual
6 assaults require jail sentences. More than that, had you
7 had intercourse with this woman, the minimum term -- or at
8 least, where we have to start considering a jail sentence,
9 is three years. You might think of that the next time
10 you've had a few drinks and you see a woman lying around,
11 asleep. First of all, you have no right to force yourself
12 on a woman, asleep or any other way. They're people, too.
13 They're not there just to keep you happy. If you can't
14 control yourself when you're drinking, Mr. Qavavau, you're
15 going to have to pay the price. Unfortunately, that price,
16 when it comes to sexual assault, is a stiff one, indeed.
17 Women are not things to be used, Mr. Qavavau.

18 There was premeditation here. Obviously, Ashevak
19 Qavavau knew that she was asleep in the bedroom. Obviously,
20 he formed the intent of committing the sexual assault, which
21 is evidenced by barricading the door. He was certainly
22 prepared, up until the last moment, to carry through with
23 his intended assault. He succeeded in undoing her pants.
24 He had his hand down the back of her pants. He was on top
25 of her. He had her arms pinned. Luckily both for the
26 victim and for Mr. Qavavau, he responded to her screams and
27 pleas. Luckily, the police responded quickly and arrived at



1 the scene before any further damage was done, and
2 intercourse was not effected. As I've already pointed out
3 to Mr. Qavavau, had there been an unlawful act of
4 intercourse, this Court would have to consider a sentence in
5 the range of three years. That's federal penitentiary, Mr.
6 Qavavau. Notwithstanding that, the lesson has to be brought
7 home to Ashevak Qavavau that a woman is not something to be
8 utilized. A woman is a person. A woman has the right to
9 the integrity of her own body. A woman certainly has the
10 right to say no, and Ashevak Qavavau, nor any other man,
11 can simply go along helping himself to whatever he thinks is
12 available.

13 I think a deterrent sentence is called for. On the
14 other hand, by way of mitigation, I take into account that
15 he desisted in his assault, and when the police finally were
16 able to force the door, he was at the foot of the bed, no
17 longer assaulting the victim. I have to take into account
18 that he has pleaded guilty, virtually at the first instance,
19 and I think his remorse is evidenced in the statement to the
20 police.

21 Mr. Qavavau has had previous flirtations with
22 antisocial conduct. He's been convicted in 1983 and in 1984
23 with breach of probation and theft under. In each case, he
24 received fines. Apparently Mr. Qavavau has a problem with
25 alcohol and was here from Cape Dorset, as I understand the
26 submissions of Defence counsel, on some detoxification
27 program or something having to do with detoxification.



1 I would only point out to Ashevak Qavavau the same as I
 2 pointed out to Della Nashook -- you are responsible for what
 3 you do, drunk, sober, or stoned. Being drunk at the time is
 4 of no assistance to the Court.

5 I agree with the Crown attorney that jail sentences
 6 must be imposed. However, for the reasons I've given in
 7 trying to balance the seriousness of the assault with the
 8 mitigating factors that I've referred to, I don't think it
 9 need be a lengthy term of imprisonment. I hope that Ashevak
 10 Qavavau makes some changes in his life as a result of this,
 11 and particularly with respect to his consumption of alcohol
 12 or drugs, if that's the case. If he doesn't, he'll be back
 13 in court again. I have no doubt of that. Stand up, please,
 14 Ashevak.

15 On this matter, I'm going to sentence you to a term of
 16 imprisonment of one month.

17 (TRIAL CONCLUDED)

18 -----
 19 I, Marilyn D. Pedersen, Court Reporter, hereby certify
 20 that I attended the above Summary Trial and took faithful
 21 and accurate shorthand notes and the foregoing is a true and
 22 accurate transcript of my shorthand notes to the best of my skill
 23 and ability.

24 Dated at the City of Calgary, Province of Alberta, this 28th
 25 day of August, A.D. 1986.

26 M. D. Pedersen
 27 Marilyn D. Pedersen,
 Court Reporter.

MDP/kt