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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

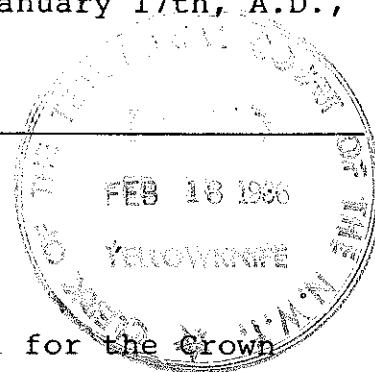
DAVID MALUK SIVURAQ

Transcript of the Oral Sentencing Delivered by His
Honour Judge T. B. Davis, sitting at Baker Lake in the
Northwest Territories, on Friday, January 17th, A.D.,
1986.

APPEARANCES:

MS. L. WALL: Counsel for the Crown

MR. L. GOWER: Counsel for the Defence



ADJUDICATION & DISPOSITION

COURT NUMBER

CHARGE READ:

Assault T.G. Davis
DATE JUDGE OR JUSTICE

119765

CROWN ELECTION:

Summary Conviction: Indictment:

J.P. or Judge's Number

195456

ACCUSED ELECTION:

THIS IS THE INFORMATION OF David James MABEE
(Insert full name, residence and occupation of informant)

Magistrate: Judge & Jury: Judge:

A Member of the Royal Canadian Mounted Police

Nov 14 1985 T.G. Davis
DATE JUDGE OR JUSTICE

OF Baker Lake, Northwest Territories

PLEA: Guilty: Not Guilty:

a Peace Officer HEREINAFTER CALLED THE INFORMANT

Nov 14 1985 T.G. Davis
DATE JUDGE OR JUSTICE

THE INFORMANT SAYS THAT he has reasonable and probable grounds to believe and does believe that:

FAILURE TO APPEAR: T.G. DAVIS, JUDGE

Bench Warrant Issued:

David Maluk SIVURAQ

DATE JUDGE OR JUSTICE

a.k.a. David Maluk SEVOGA

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

on or about the seventh day of November A.D. 1985, at or near the Hamlet of Baker Lake in the Northwest Territories, did without lawful authority forcibly seize and confine Mary Susan SEVOGA, Contrary to Section 247 (2) of the Criminal Code

DISPOSITION

Convicted: Dismissed: Withdrawn:
FINE: 250.00

AND FURTHER THAT

J.P. COSTS:

on or about the seventh day of November A.D. 1985, at or near the Hamlet of Baker Lake in the Northwest Territories, in committing an assault on Mary Susan SEVOGA, caused bodily harm to her, Contrary to Section 245.1 (1) (b) of the Criminal Code

POLICE COSTS:

RESTITUTION:

TOTAL: 250.00

DEFAULT: 15 Day Consec
2 Months

TIME TO PAY:

SUSPENDED SENTENCE:

CARD
O/S add
T.T.P. MAR 17/86
D.B.S.
J.P.
M.V.B.

CONDITIONAL DISCH: ABSOLUTE DISCH:

PROBATION FOR 2 ill sent Sevo

IMPRISONMENT FOR 2 2 Months Int

JAN 17 1986 T.G. Davis
DATE JUDGE OR JUSTICE

T.G. DAVIS, JUDGE

STATISTICS DATE OF BIRTH: 29 NOV 57 M F

DRIVER'S LICENCE:

MARITAL STATUS: Married

Sworn before me this 12th day of November

A.D. 19 85

at Baker Lake, Northwest Territories

David James Mabee
Signature of Informant

Appearance Notice

Promise to Appear

Recognizance

November 12th 19 85
confirmed

David James Mabee
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

1 THE COURT: David Maluk Sivuraq admits that on the 7th
2 of November while intoxicated he went to his wife's sister's
3 residence where his wife was visiting and tried to drag
4 his wife from that location. In doing so he pulled her
5 hair and banged her head before she agreed to leave with
6 him and therefore committed an assault contrary to Section
7 245 of the Criminal Code. He also admits that after he
8 left the residence he directed his wife by pulling her
9 parka hood to accompany him to his place of employment
10 where he kept her from approximately 1 o'clock in the
11 morning until around 4 o'clock in the morning when she
12 was anxious to leave that location, and he therefore without
13 lawful authority forcibly confined his wife on that occasion
14 and violated Section 247(2) of the Code.

15 While he had her in confinement he admits that he
16 banged her head and knocked her to the floor and pinned
17 her to the ground by kneeling upon her, punched her in
18 the face a half a dozen times, kicked her once, and slapped
19 her face on other occasions. These assaults caused her
20 to have a bleeding nose and also caused her to be cut
21 so that she was spitting blood.

22 He then initiated some sexual activity but the assault
23 had resulted in injuries causing her left eye lid to be
24 bruised and swollen. Her nose was also swollen and bruised.
25 She had abrasions on her left face and her leg. She had
26 tenderness in her neck and her foot and bruises on her
27 arm and her hand and knee caps, and inside her mouth as

1 well as the bloody nose.

2 The accused and his wife have become reconciled and
3 are again living together, and it is helpful for the purposes
4 of sentencing to have available the presentence report
5 that has been prepared which has been emphasized by Defence
6 counsel in the most important parts of it.

7 I do, however, also have to consider that this is
8 a somewhat serious situation in that it is a serious assault
9 on another person and that being a wife is no reason to
10 think that a husband has any right to assault his wife
11 any more than he would any other person on the street.
12 Wives must be protected by the courts the same as any
13 other person from assaults, and they must also be protected
14 from being taken and held in captivity against their wishes
15 at any time.

16 Crown counsel has expressed the situation that a
17 wife should find herself in very effectively by saying
18 that the wife should be entitled to look to her husband
19 for protection and love and care, and not abuse.

20 The relationship between the two parties in these
21 matters has been not ideal for a number of years since
22 they were married in 1982, because they have had their
23 ups and downs and some problems in the past. This seems
24 to be the most serious involvement of any offence because
25 the accused comes before the court as a first offender
26 having had no criminal record in the past. Both the accused
27 and his wife had placed themselves voluntarily on the

1 interdict list in the past which indicates that they
2 recognize that they had had some problems resulting from
3 liquor or that liquor was something that they felt they
4 must avoid in order to try and keep their marriage going.
5 For efforts of that type the court must recognize that
6 there should be some benefit given to an accused person
7 who makes efforts of that nature.

8 The accused comes before the court with a rather
9 unfortunate background, as back when he was a young boy
10 his father committed suicide, and he has not had the easiest
11 life in the past. He has a good job and earns a good
12 salary at the present time having started work in 1975.
13 He appears to be a trustworthy employee of the power
14 corporation. He takes pride in the fact that he has
15 employment and has been able to maintain himself and his
16 wife.

17 There seems to be a continuing inability of the husband
18 and wife to develop a mutual trust and the probation officer
19 indicates that, so if the marriage can continue, probably
20 substantial counselling will be necessary so that there
21 is a reduction in the anger and jealousies that seem to
22 have prevailed.

23 Through his counsel the accused indicates that he
24 had recently learned before the offences that his wife
25 had been seeing other men, and that that certainly was
26 one of the reasons that he was substantially upset and
27 was consuming alcohol at the time the offences occurred.

1 The major purpose of sentencing is to protect the
2 public. I think this was properly pointed out by Defence
3 counsel that the Ontario Court of Appeal in 1975 had indicated
4 that when a person is before the courts, and jail is being
5 considered for the first time, that it should be a relatively
6 short sentence, and should stress individual deterrence
7 rather than general deterrence. That would mean that
8 if the court today has to consider jail that the term
9 should be no longer than is necessary to have the accused
10 deterred from any future involvement with breaking the
11 law.

12 Both Crown and Defence counsel have made submissions
13 to me relating to a case also heard in Baker Lake approximately
14 one year ago in which the Appeal Court had increased the
15 term from a two month jail term to a nine month jail term
16 because the court found that the assault that had taken
17 place was a severe beating, a brutal beating which involved
18 the fracturing of the bones. There was a complete loss
19 of control by the husband that resulted in permanent nerve
20 damage to his wife when he beat her with a stick which
21 was classified as a weapon. In that case there was no
22 reconciliation and the wife and the family still remain
23 separate from the husband because of a continuing fear
24 that existed. In that instance the original decision
25 of the court was to have a short term in jail with probation
26 because there was a likelihood of employment by the husband
27 who was a good employee, but the Appeal Court did emphasize

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and I must take into account that jail is an appropriate determination by the courts on assaults of a serious nature even for first offenders.

Crown counsel has suggested that, in this instance before me today, the court should consider in excess of three months, and that even intermittent sentencing would not be appropriate. I must look at the facts and the charges and try to determine what is appropriate and what would be sufficient to protect the public and to deter the accused from committing offences, and also show the public that penalties are to be imposed upon assaults.

In this case there were no broken bones. There has been reconciliation between the husband and the wife, and there doesn't appear to be any fear left between the two persons. There seem to be mutual efforts at reconstructing the marriage as they had made similar efforts in the past.

There are three charges before the court, and I will therefore deal with them individually with regard to the penalties to be imposed. On many assaults that are similar to the original assault that had taken place when the accused pulled his wife's hair and hit her head against the wall in the residence before she voluntarily, or before she then agreed to leave with him, it is not uncommon for the courts to impose a fine as the appropriate penalty. On that first offence on information 1956, I am going to impose a fine in the amount of \$350, or default thereof,

1 twenty days in jail. That was a charge that was elected
2 to be dealt with summarily by the Crown, and the maximum
3 penalty at that time was a \$500 fine, so I hope that I
4 am expressing to the accused how seriously I consider
5 that assault by having the fine at the higher range in
6 that circumstance.

7 On information 1954 there are two charges, the first
8 being that he, the accused, confined his wife, and on
9 that charge I am recognizing that the accused and his
10 wife ordinarily would have been together because they
11 are a married couple and although he kept her
12 in a place that was not their home and where she was not
13 anxious to remain, it is not as serious in my way of thinking
14 as it might have been had it been a person not directly
15 related to the accused, and in her circumstances which
16 she was in more uncomfortable conditions. On the confinement
17 charge, therefore, I feel that a fine also can be imposed,
18 because the accused has good employment. I believe it
19 is possible for him to pay a substantial fine on that
20 charge as well. In this instance I am going to impose
21 a fine in the amount of \$250 or in default thereof, 15
22 days in jail consecutive.

23 The most serious of the charges before the court
24 seems to me under the circumstances to be the assault
25 which caused bodily harm to his wife in that it caused
26 her to have some bruises and a bleeding nose, and small
27 lacerations on the inside of her mouth which caused her

1 to be spitting some blood. The injuries were not ones
2 of a permanent nature, and I must say that in my assessment
3 of the facts and the injuries, it is not the most major
4 of the assaults causing bodily harm. I therefore feel
5 that I can give credit to the accused by keeping the penalty
6 as minimal as possible under the circumstances since he
7 is a person with a good work record and a first offender.
8 Unfortunately even if it means that he might lose his
9 job, and I am hoping, of course, that it won't necessarily
10 result in the loss of his job, because that would be too
11 severe a penalty to be imposed on the accused, I am going
12 to cause him to spend some period of time in jail, and
13 allow him to serve it intermittently on the hope that
14 his employer will understand that the reason for the
15 intermittent serving of time is so that it will not affect
16 his employment. I see no reason that the employer,
17 because of one mistake being made by the accused and appearing
18 in court would as a result of that automatically find
19 it necessary to cancel the employment of a seven year
20 employee. Therefore, I am going to impose on the assault
21 causing bodily harm a jail term of two months. I will
22 allow the accused to serve that time intermittently.

23 Would weekends be convenient to have the accused
24 serve the time?

25 MR. GOWER: Yes, Your Honour, I believe weekends would
26 be satisfactory. I am not aware whether the R.C.M.P.
27 have facilities here for intermittent sentencing.

1 MS. WALL: They have cells here, Your Honour. It is
2 difficult for them to administer intermittent sentences
3 because of the amount of supervision that the guards require.

4 THE COURT: Well, it might be that if the accused had
5 some holidays available he could serve some time on a
6 permanent basis and then the balance of the time intermittent.
7 Do you want to do it that way?

8 MR. GOWER: Your Honour, I am told Mr. Sivuraq has in
9 total over a month's worth of holidays coming to him which
10 he is required to take before March so that presumably
11 arrangements could be made with his employer to take those
12 holidays.

13 THE COURT: Do you want to just adjourn the final setting
14 of the two month jail term then and have him make some
15 inquiries about taking holidays and we can include that
16 in the disposition rather than just guess at something
17 at the moment.

18 MR. GOWER: I believe that would be advisable, Your
19 Honour.

20 THE COURT: Alright, thank you. We will have to call
21 you back then after we take our lunch break and deal with
22 the balance of the sentencing at that time.

23 THE CLERK: Sir, the time to pay on his fines?

24 THE COURT: On the \$350 and the \$250 fines, how long
25 will be required in order to pay those fines?

26 MR. GOWER: Could the accused have two months, Your
27 Honour?

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THE COURT: Yes, he will be allowed two months on each of the fines to pay. We will deal with the balance of the sentencing then after lunch. You will be required to return at that time, Mr. Sivuraq.

----NOON RECESS FOLLOWS.

(UPON RESUMING LATER ON IN THE AFTERNOON.)

THE CLERK: David Sivuraq.

MR. GOWER: Your Honour, if it will assist the court, I am advised that Mr. Sivuraq has contacted his direct supervisor. He has been advised that he has some seven weeks of holidays coming to him, but that he won't receive formal approval from N.C.P.C. for a period of five to six weeks that those holidays could be taken. I realize the difficulties involved in trying to combine an intermittent sentence with a continuous sentence, Your Honour, and I understand my friend's position on this. However, Your Honour, if there is any possibility of perhaps serving an intermittent sentence for the weekend period until Mr. Sivuraq obtains confirmation of his holidays so that at that point he could then be sent to Yellowknife and spend the balance of the time continuously. I will make that suggestion for the court's consideration. I know my friend will have submissions on it.

THE COURT: Do you think it will take him five weeks in order to get approval for holidays?

THE ACCUSED: Maybe even less than that. If I don't go out for holidays down south, it takes quite a while to

1 make the tickets without leaving the town, so should be
2 a lot shorter than that.

3 THE COURT: So if we required that he spend three weekends
4 now on the intermittent term for weekends, and then submit
5 himself to the R.C.M.P. for serving a continuous term
6 for the balance of the period, would that be sufficient?

7 MR. GOWER: That would be certainly a step in the right
8 direction, and I am sure Mr. Sivuraq would make all
9 efforts to try and obtain approval as soon as possible.
10 Your Honour, I make the submission with the knowledge
11 that it is difficult and difficulties are experienced
12 by the R.C.M.P. in trying to administer intermittent
13 sentences, but Your Honour, the weight going against that,
14 I submit, is the possibility that Mr. Sivuraq may lose
15 his employment permanently.

16 THE COURT: The other possibility is that he could serve
17 one day now and then submit himself to serve two months
18 straight in three weeks or in four weeks.

19 MR. GOWER: Certainly I would be willing to accept that
20 obviously, Your Honour.

21 THE COURT: If that would be more convenient. That
22 is the kind of thing that could be done. I will hear
23 from Crown as well, of course.

24 MS. WALL: Yes, Your Honour. My position is that what
25 the court is contemplating cannot be done. It is not
26 provided for in the Criminal Code. The Criminal Code
27 does not provide for annexing a term of intermittent

1 sentence onto a term of straight time or vice versa.
2 The sentence must be one or the other, and I would ask
3 the court to keep in mind what an appropriate sentence
4 is for the offence as the court has heard it.

5 THE COURT: Which way are you saying, that intermittent
6 sentence means that it has to be done each week? Is there
7 something that I don't know about, because I was under
8 the impression that serving intermittently meant nothing
9 more than that a person didn't have to today go to jail
10 and remain in jail until the completion of his sentence,
11 but that it could be served at times directed by the court.

12 MS. WALL: Your Honour, my position is that intermittent
13 sentence would not be appropriate in any event because
14 my submissions is that the term should be longer, but
15 the only section of the Criminal Code which deals with
16 is 663(1)(c), Your Honour, at least as I have been able
17 to find in my research today, and it appears to contemplate
18 a sentence that does not exceed 90 days that is served
19 intermittently. It doesn't appear to contemplate a sentence
20 of intermittent time and a sentence of straight time.
21 I am not sure if I have understood Your Honour correctly.

22 THE COURT: Yes. I am just wondering if there was
23 something that I misunderstood with regard to the terminology
24 that we are using with intermittent time. I know that
25 it is customary when we talk about intermittent time to
26 have it served for two days a week or for three days a
27 week or whatever, but I am not of the impression that

1 that intermittent means anything other than that it is
2 not served by straight time, and that if the straight
3 time serving is interfered with in any way or adjusted
4 by the court then it is then classified as intermittent
5 serving.

6 MS. WALL: I believe that is correct, Your Honour.
7 The essential point is that the sentencing judge must
8 clearly and definitely set out the period when the accused
9 is to be incarcerated, and I am referring now to the
10 Downe, Smith and Dow case referred to in Martin's Criminal
11 Code under Section 663. In other words, the court must
12 specify the dates and times, and not leave them to the
13 discretion of any other party.

14 THE COURT: No, I accept that. There is no question
15 about that. I think I would be bound if we are going
16 to allow him to not serve it starting today on a continuous
17 ordinary term, that I will be bound to specify the dates
18 upon which he must submit himself and be incarcerated,
19 but I think I can accomplish that without interfering
20 with the law by having him serve one day today and then
21 by attending for further incarceration for the balance
22 of the term at another date. That is all I was getting
23 at. If the facilities here are impossible for him to
24 serve it intermittently, it might be more convenient for
25 him to today serve one day in jail and then be released
26 and then again serve the balance of his term commencing
27 at a particular date in the future when he would serve

1 the balance of his term starting at a certain time.

2 MS. WALL: Your Honour, I didn't say the facilities
3 here made it impossible to serve intermittent sentences,
4 simply that it was hard. It is not impossible.

5 THE COURT: Yes, and I wouldn't be concerned about that.
6 It didn't appear to be of any concern to me whether he
7 served it intermittently on weekends until he submits
8 himself for a longer period when his holidays are available,
9 but I would be prepared to take the recommendation of
10 Crown on that point as to whether it would be more sensible
11 for us to just have him serve a day now and then appear
12 in three weeks time to serve it rather than serving on
13 weekends until that time. That's all.

14 MS. WALL: I don't understand that Your Honour is
15 proposing, I'm sorry. Why would he serve one day now
16 and then not reappear for three weeks?

17 THE COURT: Yes, and then--

18 MS. WALL: Why?

19 THE COURT: Well, the reason that I am suggesting that
20 is for the convenience of not having to inconvenience
21 the local detachment on weekends. That's all. If it
22 is difficult for them, you see, I would be prepared to
23 allow him to not be serving time on weekends but to merely
24 attend in three weeks time on a permanent basis. If the
25 detachment can take care of him on weekends, and you feel
26 that that is more appropriate, I would be prepared to
27 have him serve on weekends until he submits himself for

1 the balance of the term. It is just that I don't want
2 to inconvenience the detachment, and I don't think it
3 is necessary in order to accomplish the same length of
4 time being served as a number of days in jail can still
5 be served whether he does it on weekends or whether he
6 merely waits for a few weeks to serve the balance of his
7 time. Do you want to talk that over with the police officer?

8 MS. WALL: No, Your Honour, I don't require that.

9 I am not sure that is a legal sentence. I really can't
10 advise the court, but it sounds very unusual to me what
11 Your Honour is proposing.

12 THE COURT: I do know that Appeal Courts have found
13 it to be not a legal sentence unless the sentence commences
14 immediately upon being a disposition of the court. Therefore,
15 I would have to have him serve a day immediately in order
16 to make it a legal sentence. I can't just adjourn his
17 sentencing to commence at another date, but I can deal
18 with it on an intermittent basis by having him serve time
19 now and then take a break and then serve time, break,
20 and serve time again, and I would be prepared to do whatever
21 is most convenient for the Crown and police in this instance
22 if it would be more convenient to have him serve weekends
23 until about three weeks from when he has to submit himself
24 for the balance of the term.

25 MS. WALL: I hesitate to endorse what Your Honour is
26 proposing because I don't know if it is a legal sentence,
27 so if Your Honour is asking me for a position, I would

1 have to say I could not support that because I don't know
2 if it is right.

3 THE COURT: So am I to take from that that you would
4 think it more appropriate if I am going to insist on
5 intermittent service that he serve it on weekends rather
6 than not serve on a few weekends between now and the time
7 that he is going to be available?

8 MS. WALL: If that is the choice, Your Honour, then
9 I would choose the latter, because I know that that is
10 a legal sentence, and as I say, I am not sure about the
11 other and I can't advise the court any further without
12 any further research.

13 THE COURT: No, I understand that. I wasn't trying
14 to commit you that way. I was merely wondering what might
15 be more appropriate or more convenient.

16 Alright, thank you. On the sentencing then on the
17 second count on the information 1954, when I had indicated
18 that I was intending that the accused would serve two
19 months in jail, I am going to allow that to be served
20 intermittently and the term of the intermittent sentence
21 would be that he serve one day today, and then he will
22 be placed on probation so that he will be required then
23 to submit himself to the R.C.M.P. at Baker Lake. Mr.
24 Gower, when is he going to be available to start serving
25 the two month sentence then and not have his work interfered
26 with?

27 MR. GOWER: In three weeks, Your Honour.

1 THE COURT: What date would that be?

2 MR. GOWER: I don't have a calendar.

3 THE COURT: Alright.

4 MR. GOWER: Might the accused have until February 7th,
5 Your Honour?

6 THE COURT: Alright. He will submit himself to the
7 R.C.M.P. at Baker Lake at 7 p.m. on February the 7th,
8 1986, and to remain in custody until the completion of
9 his term.

10 THE CLERK: So, sir, today when he serves one day today,
11 January the 17th, 1986, when is he to be released?

12 THE COURT: Jail today to be released at 7 a.m. on
13 January 18, 1987, and then to resubmit himself.

14 THE CLERK: So then just to make sure I have it right,
15 sir, serve one day today, January the 17th, 1986, to be
16 released at 7 a.m. on January 18, 1986, and then to serve
17 the balance of the sentence in full beginning on February
18 7, 1986, at 7 p.m.?

19 THE COURT: What did you say now? Read that part again?
20 I was still trying to look at my notes.

21 THE CLERK: And then to serve the balance of the sentence
22 in full beginning on February 7, 1986, at 7 p.m.?

23 THE COURT: Yes, but did you say that he is to submit
24 himself to the R.C.M.P. at Baker Lake on that date as
25 well?

26 THE CLERK: Sir, on the warrants I never put where they
27 are to turn themselves in.

1 THE COURT: On the probation order it will be required.

2 THE CLERK: No, sir.

3 THE COURT: They ordinarily say to report at the Correctional
4 Centre in Yellowknife?

5 THE CLERK: No, sir, because sometimes they are full,
6 sir, and they send them to the R.C.M.P. lock-up.

7 THE COURT: So that that would give authority then to
8 the police to have him in custody on that date anyway,
9 I guess. That will be alright then. Mr. Sivuraq, do
10 you understand that intermittent sentence?

11 THE ACCUSED: Yes, I do.

12 THE COURT: During that period of time you will be on
13 probation which will give you the directions as to when
14 to submit yourself to custody and during the period of
15 time that you are on probation you will be required to
16 keep the peace and be of good behavior and the clerk will
17 be preparing that probation order, and you will have to
18 sign that before you go into custody.

19
20 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

21
22 Certified a correct transcript,

23
24 Laurie Ann Young
25 Laurie Ann Young
26 Court Reporter
27