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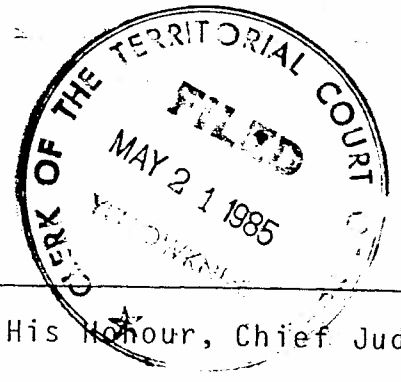
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTERS OF:

HER MAJESTY THE QUEEN

VS

ELLEN MCLEOD, PATRICK HARRISON, MARTINA
CARDINAL, BILLY CLARKE, AND MARTINA
MALAGANA



Transcript of the Oral Sentencings given by His Honour, Chief Judge
J. R. Slaven, sitting at Inuvik in the Northwest Territories, on
Wednesday, April 17th, A.D., 1985.

APPEARANCES:

MR. G. BICKERT:	Counsel for the Crown
MR. R. REID:	Counsel for Martina Cardinal, Billy Clarke, and Martina Malagana
MR. P. FUGLSANG:	Counsel for Ellen McLeod and Patrick Harrison

1 THE COURT: You can come forward if you wish, Mr. Fuglsang
2 and sit with Mr. Reid. Now, did I ask Martina Malagana when
3 she was convicted two years ago for a sale made two and a
4 half years ago, I believe she was in the same house that she's
5 now in?

6 MR. BICKERT: I'm told that is correct, sir.

7 THE COURT: Well, today, I have held six trials for offences
8 against paragraph 77 (c) of the Liquor Ordinance for selling
9 liquor. These six trials involved five different people.
10 Here is some of the history of it. During the past ten years
11 or so, our legislature has seen fit to increase penalties in
12 the Liquor Ordinance, most particularly for bootlegging twice,
13 and in those two steps up, the increase has been very marked
14 so that now with first offenders, we're dealing with a maximum
15 fine of \$5,000 plus 12 months imprisonment, which I assure
16 you is much heavier than it was five years ago and much, much
17 heavier than it was 10 years ago.

18 Since the revised ordincances of 1974 are here, I can
19 refer to what the penalties used to be, a fine not exceeding
20 \$500 and imprisonment to a term not exceeding four months.
21 That was increased I believe in '76 and again in '83, so
22 that the fines have been increased ten-fold in a matter of
23 10 years.

24 This illustrates to me, at least, how seriously the
25 legislature views the problem. In addition, when the fines
26 were first raised that was fine as far as it went, but there
27 were few convictions because there was no protection in the

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ordinance for undercover agents to make buys and apparently it's very difficult to get a purchaser in the North to give evidence against a bootlegger.

Accordingly, several years ago, there was an amendment to the ordinance which gave protection to undercover agents buying liquor from a bootlegger, similar to that given in the Narcotics Control Act. Not long afterwards, an undercover agent or two were brought into the Delta in the fall of 1982, as a result of which 12 or 15 or whatever charges were laid for bootlegging. As I recall, there were convictions in most of them.

Two of the people convicted at that time by me are back before me today. The charges laid two years ago were a cause celebre in the Delta. Surely everyone was aware of it, certainly the ones that are second offenders here today. Because of the history of the legislation, just about all of those that came before the Court two years ago were first offenders at that time and were treated possibly more lightly than they would have been if the undercover buys and resulting convictions had been going on for sometime.

Even though they were a cause celebre, it seems to me they didn't have much effect. Constable Ladouceur comes up here undercover and in a one-week stay in the Delta, she made 21 separate buys of liquor, granted not all in Inuvik, but she stated she was able to make four or five buys successfully just in one night, the 18th.

Mr. Fuglsang suggests that the evidence of Constable

1 Ladouceur was very pat, they were all the same. What struck
2 me was the similarity of the transactions. It almost reminded
3 me of the old joke, Knock, knock, who's there, Ida, Ida who?
4 I want a bottle, and here's one. Who is Ida? They didn't
5 know who Ida was. I want a bottle. Come in, here's a bottle
6 and only once was a price mentioned. Every case was \$50, no
7 talk about price. In every case it was a 26 of rye, and as I
8 say, it's almost like a chain store doing business selling
9 the same product at the same price, cheap rye for \$50 for
10 a 26.

11 It seems to me these six people came in here for trials,
12 showed no remorse, and seemed prepared to take their chances,
13 pay their fines and their legal expenses or even go to jail
14 at the expense of doing business. Mrs. McLeod told Constable
15 Ladouceur, haven't you got a cab, are you walking? Don't
16 get caught, I'm scared of the cops.

17 It's sad to mention the maximum penalties and I have to
18 agree with Mr. Fuglsang there is no minimum, although the
19 legislature tried to provide for a minimum for the second
20 offenders, but one that can be circumvented, as Mr. Bickert
21 tells me, and I suppose someone's talking to the legislative
22 people. They might have their draftsman look at that and as
23 Mr. Bickert points out, it says a minimum of \$5,000 for a
24 second offence. If the Judge wishes to do so, he could sentence
25 a person to one day in jail and forget about any fine, or as I
26 did with one of the gentlemen, to one hour in custody.

27 Any of us that have been in the North for any length of time

1 know what a problem liquor is in the North, the problems it
2 causes, broken homes, neglected children, the woundings, the
3 beatings, the deaths, and surely many deaths that never get
4 to Court or even to a Coroner's Inquest, are because of the
5 accumulation of liquor in the system through the years that
6 kills a person.

7 I have to agree with Mr. Fuglsnag that unlike drugs, liquor
8 is not illegal per se. It's brought in by the Government and
9 sold by the Government, and as he says, we're not here to stamp
10 out liquor as we are to stamp out the supply and use of illegal
11 drugs. I suggest to you, however, that the legislature has
12 made it very clear to the police and to the Courts that they
13 want us to play our part in stamping out bootlegging and certain-
14 ly the legislature has played its part.

15 Now, the similarities, I've mentioned some, and the other
16 general one, it was all so casual. One person asked Ida her
17 last name and she gave a name and said she was from Fort Smith.
18 It's not a surname common in the North. There they were, all
19 of them, selling to a stranger. They're all in the business.
20 It's not like the 98 percent of drug traffickers we get. They're
21 not in the business. It seems to me these people, or at least
22 someone in each of the houses, are in the business of selling
23 liquor. They're in it for profit, making a profit of \$35 or
24 more on every transaction.

25 In each sale they were all similar, so much alike. There
26 were no special circumstances in any sale, except for the one
27 that involved an apparent 11 year old as the seller's agent.

1 The first of the principles of sentencing we've talked about
2 used to be called punishment and you've also heard the euphuism,
3 "vindication for the law". It's not a bad one. I like to say
4 to maintain respect for the law, the law that the legislature
5 of the Northwest Territories has enacted. I have to give some
6 consideration to that, but not too much.

7 To protect the public, I think I have to protect the
8 public. I think I have to protect drunks who don't need any
9 more or wouldn't get any more in a licensed premises or at
10 the liquor store but could get it from the bootlegger. I
11 think I have to protect minors who can't buy it at a licensed
12 premises or in a liquor store, but presumably from time to
13 time, and certainly in my experience, have been able to get
14 it from bootleggers in the North.

15 So often people drink legally in a bar or drink legally
16 acquired liquor and it's fine if they stop there, but they
17 keep drinking and go to a bootlegger and get more and end up
18 injuring themselves and others. Granted that's not the case
19 with any of the six before me today. In each case here, the
20 sale was made to a sober adult, albeit, a stranger who could
21 have been on the interdict list for all the bootlegger knows.

22 Now, reformation and rehabilitation. I think the only
23 way I can give thought to that is to put it in with deterrence
24 to individuals, and I'm certainly looking at deterrence to these
25 individuals and I'm certainly looking at general deterrence.

26 Ellen McLeod, would you stand up, please. I convict you
27 as charged, an adult person and as far as the Courts know,

1 has lead a blameless life, no record of any convictions and
2 you've spent a productive and worthwhile life keeping a steady
3 job for, I'm told, 25 years. I'm told that I must direct
4 the amount of fines to your means, well your means with a job
5 for such a length of time are better than the means of most
6 of the others here.

7 It seems to me in the circumstances of the trial that I
8 heard that you sold from your home seemingly as a matter of
9 course and that you were selling for your own personal profit.
10 I direct that you pay a fine of \$2,000, in default of payment,
11 four months in jail. I'll give you six months within which
12 to pay that fine.

13 Patrick Harrison, you have been before the Courts before
14 but not for bootlegging and nothing related to the Liquor
15 Ordinance. You weren't in your own residence and I'm not
16 convinced that you were doing this for your own profit, solely,
17 in any event. I was going to impose a fine of \$2,000, however,
18 your lawyer points out I inadvertently committed you to custody
19 for an hour or two, so I convict you and fine you \$1,990, in
20 default of payment, four months imprisonment. I'll give you
21 six months to pay.

22 Martina Cardinal. Mrs. Cardinal, I convict you of both
23 offences to which I found you guilty at the trial. I'm inclined
24 to treat those two as one conviction in a way and look at
25 totality. If you had been involved in the first sale of
26 Constable Ladouceur, I suppose they wouldn't have gone back.
27 Mr. Clarke was also caught on that night, but you've got two

1 previous convictions exactly two years ago. You were fined
2 \$1,200 on each of them. You seem to be conducting a bootlegging
3 business from your house. Somebody, Clarke, whatever he was
4 doing there, was able to sell a bottle. A little fellow
5 that looked to Constable Ladouceur to be about 11 years old,
6 I don't know if he's a son or not, was involved in conducting
7 a transaction for your profit.

8 As I say you are conducting a business there, selling
9 as a matter of course for your own profit. The only deterrence
10 from your previous convictions seems to be that you tried to
11 get crafty and had the little fellows selling booze so that
12 you could hide up in the bedroom. It's only by good police
13 work that they were able to bring you to justice.

14 I believe the first matter was the--

15 MR. BICKERT: 20th of October.

16 THE COURT: The 20th and 21st, was it?

17 MR. BICKERT: Yes, sir.

18 THE COURT: So, on the offence of the 20th, I convict you as
19 charged and direct you to pay a fine of \$3,000, in default,
20 3 months imprisonment, consecutive. I'll give you 12 months
21 within which to pay. The offence on the 21st of October, I
22 convict you and direct you pay a fine of \$3,000, in default
23 three months imprisonment, consecutive, and I give you 12 months
24 to pay. Also concurrent and pursuant to Section 104 of the
25 Liquor Ordinance, I declare your residence to be a public place
26 for a period of one year from today.

27 Billy Clarke. Mr. Clarke, you have a record but none of

1 it for bootlegging. You weren't in your own residence. I
2 don't know what your status was there. You visited Inuvik
3 from time to time. I don't know if you've always been there.
4 I have some doubt that the transaction was for your benefit
5 or whether or not it was for your sole benefit.

6 I convict you as charged and direct you to pay a fine
7 of \$2,000, in default of payment, four months imprisonment.
8 I'll give you six months within which to pay the fine.

9 Martina Malagana, I convict you as charged. You were
10 convicted for the same offences two years ago and fined \$500,
11 I believe it was. You committed the offence two and a half
12 years ago and/^{were}convicted two years ago and you were living in
13 the same home. In my opinion, you are benefiting from the
14 bootlegging business being run from that home and it has been
15 run for years, apparently.

16 I'm not saying you are the sole beneficiary, but you are
17 the only beneficiary before me today. I convict you as charged
18 and direct you to pay a fine of \$5,000, in default of payment,
19 five months imprisonment. I give you 12 months time within
20 which to pay that fine. Have I forgotten anything, gentlemen?

21 MR. BICKERT: Just for the clarification--

22 THE COURT: I'm sorry, I did forget something. In view of
23 the situation with Miss Malagana, pursuant to Section 104, I
24 declare the residence in which she resides to be a public
25 place for a period of one year from this date. Is there
26 anything else, Mr. Bickert?

27 MR. BICKERT: No, that was the only matter I wished to draw the


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Court's attention to. Lastly, might there be an order in each case for forfeiture and destruction of the liquor on conviction pursuant to Section 177 (4), I think it is.

THE COURT: So ordered.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

Certified a correct transcript,



Brenda MacDougall

Court Reporter