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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

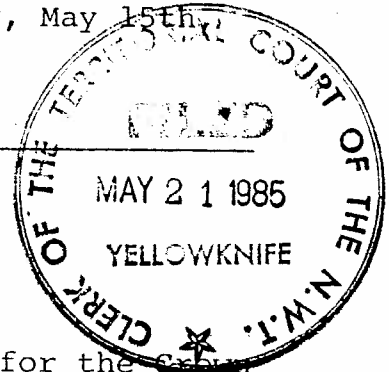
VS

JOHN TAPATAI

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Transcript of the Oral Sentencing Delivered by His Honour Judge T. B. Davis, sitting at Baker Lake in the Northwest Territories, on Wednesday, May 15<sup>th</sup>, A.D., 1985.

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APPEARANCES:

MR. M. ZIGAYER: Counsel for the Crown  
MR. C. ROGERS: Counsel for the Defence

1 THE COURT: Mr. John Tapatai has entered a plea of  
2 guilty to a charge that he did, on or about the 26th of  
3 March, 1985, at Baker Lake in the Northwest Territories, in  
4 committing an assault on his wife, Winnie, cause her  
5 bodily harm and violated Section 245.1 of the Code.

6 On that date the accused, who has a full-time job  
7 with the Native Broadcasting Organization, returned home  
8 in the afternoon and had an argument with his wife and  
9 became angry and started breaking things around the home.  
10 He broke the sink with an ax, and struck his wife several  
11 times in the face with his hand. He had struck her so that the  
12 medical report filed by the doctor on an examination done two  
13 days later shows that the victim, his wife, had received  
14 numerous punches resulting in swelling around the eyes,  
15 bruises on her face and around her eye and chin area, and  
16 a five inch long, or possibly a little longer, bruise  
17 on her left thigh where she had been struck with a hockey  
18 stick. She also had bruising around her chest and a  
19 temporary inability to feel in some spots when tested.  
20 There was a fracture also that showed up on an x-ray  
21 around the orbital ridge which is around the eye, and in  
22 addition thereto a fracture had shown that had already  
23 healed from an injury to the shoulder at an earlier time  
24 when the accused acknowledges that he had struck her or  
25 thrown her around.

26 The accused comes before the court with no record  
27 of convictions, being 37 years of age and having been

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married for 15 years with three children all of whom he has supported regularly with a good income from his present employment.

After the offence occurred the wife and children were removed from the home and were taken to Manitoba where they remain at the present time because they still have some concern and fear about returning to live in the residence of the accused.

The accused himself says that having been charged and having to appear before the court he has learned something, and that he has made some commitments to try and overcome a tendency to cause this kind of a problem to his wife, and that he has stopped drinking, and he has turned to religion for help. He also indicates that he would be prepared to take family counselling and would be agreeable to a direction not to consume alcohol or any other direction by the court because he wishes to have his family return to live with him. He explains that the hockey stick happened to be present and he just grabbed it and struck his wife with it when he was upset on that occasion. It is certainly obvious that the accused had lost control of his temper and was very violent in that situation by doing damage to the house, the sink included, and injuring his wife.

A number of cases have been referred to me for consideration which were decisions of courts in the Northwest Territories on spousal assaults which ranged from

1 six months in jail to approximately a year in jail in  
2 various circumstances of those particular cases. Some  
3 of the factors in each of those cases are before me today  
4 because the victim did suffer a fracture of a bone in her  
5 skull, and she was injured, and she was struck with a  
6 stick. I do, however, recognize as pointed out by Defence  
7 counsel, that in some of those cases, where up to a year  
8 was imposed as a penalty by the Supreme Court on trials  
9 within the last year, that the persons appearing before the  
10 court had previous convictions. The accused does not have  
11 previous convictions, but has acknowledged that in the  
12 past he has been abusive to his wife.

13 In a recent Appeal Court decision of the Court of  
14 Appeal of Alberta, which is the Appeal Court for the  
15 Northwest Territories, there was bodily harm caused with  
16 intent to wound on a charge where the accused was holding  
17 a person while another person repeatedly stabbed the victim  
18 with a jagged piece of glass. In that case the accused  
19 appeared before the court with no previous convictions.  
20 He was a taxi driver and was married and supported his  
21 family, and in the case of The Queen vs. Gill, (1985)  
22 56 Alberta Reports at page 217, the Alberta Court of Appeal  
23 allowed the sentence to be served intermittently for a  
24 period of three months.

25 I therefore feel that to comply with the general  
26 sentences that have been imposed for this serious type of  
27 offence, some period of jail time is necessary so as to

1 notify the accused and others that if they commit offences  
2 by assaulting and injuring other people, and that is any  
3 person whether it is or is not their wife or spouse, there  
4 usually will be some form of incarceration to be imposed  
5 by the court unless there are extremely exceptional  
6 circumstances that would avoid that situation.

7 I would like to be able to have the accused serve  
8 up to three months intermittently because I think the  
9 Alberta case is one that indicates generally the trend  
10 that the court can follow. I understand that intermittent  
11 sentencing would be very difficult to impose in this  
12 community.

13 Therefore, I am going to consider a lesser sentence  
14 to be served without having the advantage of the intermittent  
15 term. I hope that the accused and others will know that in  
16 considering this lesser sentence it is not in any way the  
17 intention of the court to condone assaults.

18 I do feel that I have to take into account the fact  
19 that the accused is liable to lose his employment if he  
20 were to be away from it for a long period of time, and  
21 therefore, the long term advantage of security to his  
22 family who are entitled to support would be interfered  
23 with.

24 Because the accused has no previous convictions and  
25 has expressed remorse and intent to avoid any injury to  
26 anybody in the future, I am today prepared to impose a jail  
27 term on the accused of two months. In addition thereto,

1 I am going to require that the accused be placed on  
2 probation for a period of one year, and I am going to  
3 require that he report to the Probation Services as  
4 directed. In this instance, I am requiring reporting  
5 because it might be through the Probation Services that  
6 consultation and assistance and counselling can be made  
7 available to the accused, and therefore, possibly assist  
8 in his rehabilitation and the re-establishment of his  
9 family if he proves himself worthy of that on efforts  
10 that he makes or by efforts that he makes himself. Do  
11 you understand everything that I have said, Mr. Tapatai?

12 THE ACCUSED: Yes.

13 THE COURT: The clerk will be preparing the  
14 probation order that will take effect upon your release  
15 from jail.

16 MR. ZIGAYER: Sir, I would ask to make two orders.  
17 One under Section 98(1) which you are required to impose  
18 for a firearms, weapons and ammunition prohibition for  
19 a period of five years, and also an order requiring that  
20 the court reporter expedite a transcript of your sentence  
21 and all the proceedings today in the event that the Crown  
22 wishes to appeal.

23 THE COURT: We would ask in the ordinary way that  
24 the court reporter cooperate with the Crown if there is  
25 a request for a transcript, of course. The order that  
26 has been referred to by Crown is an order that must be  
27 imposed by the court if there has been violence associated

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with an assault, and the order therefore will issue from the court that the accused will be restricted from having possession of or using any firearms, ammunition or explosive substance for a period of five years as a result of the offence today.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

Certified a correct transcript,

Laurie Ann Young  
Laurie Ann Young  
Court Reporter