



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

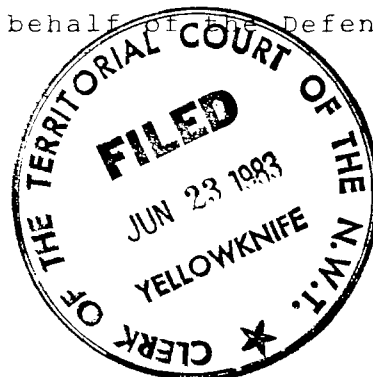
- and -

ALLAN ROSS BINGLEY

Transcript of the Oral Judgment delivered by His Honour
Judge R. M. Bourassa, sitting at Yellowknife in the
Northwest Territories, on Thursday, March 10, A.D.
1983.

APPEARANCES:

MR. J. SHIPLEY On behalf of the Crown
MR. C. REHN On behalf of the Defence





1 THE COURT: Allan Ross Bingley is convicted of an offence con-
2 trary to Section 322 of the Criminal Code, obtaining lodging
3 from the Explorer Hotel fraudulently, the lodging for a period
4 of six days, involving a loss to the hotel of five hundred and
5 twenty-eight dollars and five cents. In addition, Mr. Bingley
6 is convicted of twenty-nine counts of an offence contrary to
7 Section 236(1)(b); and if I can summarize briefly, Mr. Bingley
8 found a Toronto-Dominion Visa card in a wallet that was lost
9 and went on buying spree, buying himself food, gifts, obtaining
10 accommodations, selling some of the gifts and articles to
11 obtain money, buying clothing and selling some of them. The
12 total goods and services that Mr. Bingley obtained by using
13 this credit card totals twenty-two hundred and sixty-five
14 dollars and twenty-seven cents.

15 Mr. Bingley has a criminal record from 1963, in
16 Gravenhurst, Ontario. In 1963, he was convicted twice, on
17 separate occasions for break, enter and theft and given one
18 month and three months in jail respectively. In 1969, he was
19 convicted of possession of stolen property in Vancouver for
20 which passing of sentence was suspended; he was placed on
21 probation. In 1981, he was convicted of offences under
22 Section 236 of the Criminal Code, which really has no bearing
23 on today's deliberations.

24 The criminal activities leading to the convictions
25 today took place over a period of approximately ten days, and
26 it would appear--and is candidly characterized by Defence--that
27 Mr. Bingley, being unemployed, found this wallet with the



1 credit card in it, took the credit card and came to the con-
2 clusion that it was a free gift or bonanza that had landed
3 in his hands and promptly went out and exploited that situation,
4 in terms of his activities any way, in an extremely speedy
5 manner. There was very little delay in Mr. Bingley going out
6 and using the credit card for everything he could. As I
7 say, within ten days he had managed to spend--if I can include
8 the amount of the hotel--in excess of twenty-seven hundred
9 dollars.

10 There is a victim to this particular crime. The
11 individual who lost the wallet containing the credit card is
12 no doubt bound by contractual relations and has certain obli-
13 gations under that credit card; and there may very well be
14 difficulties for that individual in the future. I only point
15 that out so that it's clearly understood by Mr. Bingley that
16 this matter can't be rationalized by saying the bank has lost
17 the money or some large and unidentifiable institution is out
18 the money. It would appear from the facts before me that
19 there is an identifiable victim, certainly, and this victim--
20 a living, breathing human being--is going to be out some
21 twenty-seven hundred dollars because of Mr. Bingley's spree.

22 I suppose in a sense the case can be simply categor-
23 ized as a theft, and while there may not be many precedents--
24 and I appreciate the efforts made by Defence Counsel to obtain
25 precedents in this regard--it, falls into a simple
26 theft category. There was not a high degree of premeditation
27 in terms of planning or forethought or arranging the documents



1 and events to obtain the credit card and perpetrate the fraud.
2 Rather, it was a greedy reaction to what appeared to be a
3 licence to print money, or at least to obtain goods.

4 Taking the factors into account that counsel has
5 brought to my attention, the criminal record of the accused,
6 which I place little emphasis on, the gravity of the particular
7 crime--and I think it's reasonably serious that some twenty-
8 seven hundred dollars has been stolen--I am of the view that
9 some period of incarceration is called for. I am going to
10 temper that period of incarceration by directing that res-
11 titution be made; and I am hopeful that by making restitution
12 the significance of the offence will be in some small measure
13 be brought home to Mr. Bingley. I can appreciate Mr. Bingley
14 is unemployed at this time, but I intend to provide enough
15 time for that restitution; and I want to make it very clear
16 to Mr. Bingley--and I will do so in my disposition of these
17 charges--that if he can make good the harm that he has done,
18 he will be going a long way in this Court's view to avoid
19 the more serious repercussions for this kind of offence.
20 Mr. Bingley may feel that making restitution is going to
21 call for some sacrifice--and I am sure it will--but I think
22 that sacrifice is fully justified under all the circumstances,
23 and it's only proper that there be some small sacrifice for
24 the problems and difficulties he has visited upon an
25 innocent third party, not to mention that simply breaking
26 the law and stealing an amount in excess of twenty-seven
27 hundred dollars through the use of a stolen credit card.



1 I confirm, as well, that I am taking the principle
2 of totality into account on these two informations, as well
3 as the total number of counts. I am of the view that the
4 best way of taking totality into account is looking at the
5 overall sentence vis-a-vis all the offences; while my sentence
6 if looked at individually may appear to be inappropriate, I
7 hope when looked at globally next to all the offences that
8 it will make some sense.

9 I have to make some allocations which may appear
10 to be arbitrary--but as I say, I am trying to look at this
11 globally--Mr. Bingley, will you stand, please?

12 With respect to the offence contrary to Section 322
13 of the Criminal Code, on that charge I sentence you to a
14 period of jail of 1 month. In addition to that, I am going
15 to place you on probation for a period of two years. The
16 only terms of your probation, Mr. Bingley, is that you be of
17 good behaviour and not breach the peace. I point out to you
18 that every citizen has the obligation to obey the law. You
19 are under that obligation, as well as a special obligation to
20 the Court to obey the law and stay out of trouble. In
21 addition to that, I am going to direct that you pay restitution
22 to the Clerk of the Court for payment to the Explorer Hotel
23 in the amount of five hundred and twenty-eight dollars and
24 five cents. That restitution is to be paid within twenty-
25 three months of your release.

26 With respect to the twenty-nine count information,
27 on Count One, I sentence you to four months in jail, consecutive



1 to any other time you are now serving. With respect to Count
2 Two through to Count Twenty-nine, I am going to suspend the
3 passing of sentence and place you on probation for a period
4 of twenty-four months. During that period of probation, you
5 are to be of good behaviour and not breach the peace. In
6 addition to that, you are to make restitution to the Clerk of
7 the Court for payment to the party suffering the loss of the
8 sum of two thousand, two hundred and sixty-five dollars and
9 twenty-seven cents. This restitution is to be made within
10 twenty-three months. I point out to you, Mr. Bingley, you
11 will be going on probation upon your release from the Cor-
12 rectional Centre here in Yellowknife.

13 I also point out to you, Mr. Bingley, the total
14 restitution approximates a hundred dollars a month. I don't
15 propose to order, under the terms of restitution, that you
16 make payments of a hundred dollars a month, but I want to
17 bring this to your attention. It's on the record and being
18 taken down by the Court Reporter. It's my view that if you
19 made those payments of a hundred dollars a month, the total
20 restitution would be paid and disposed of to the aggrieved
21 parties with very little sacrifice to yourself. If you leave
22 the matter to build up, then you may end up facing other
23 problems.

24 I point out to you, Mr. Bingley that under Section
25 666 of the Criminal Code, if you get into any trouble, if
26 you're convicted of any offence while you are on probation,
27 which includes a breach of probation--in other words, if you



1 fail to pay the restitution, and you are charged and convicted
2 for that--you may be brought back to this Court and this Court
3 can sentence you on these, the original charges. Do you under-
4 stand that?

5 THE ACCUSED: Yes.

6 THE COURT: In addition to that, while you are on probation,
7 you are under a special promise, as it were, to the Court to
8 be of good behaviour and not breach the peace. If you fail
9 to comply with the terms of your probation order, you may be
10 charged with an offence called 'breach of probation' and if
11 convicted, sentenced for that. Do you understand that?

12 THE ACCUSED: Yes.

13 THE COURT: The probation order will be prepared, and you will
14 have to sign that--the two probation orders upon your release
15 from Yellowknife Correctional Centre.

16 Does that take care of the matter, Mr. Shipley?

17 MR. SHIPLEY: Yes, just one other matter, the outstanding infor-
18 mation we haven't dealt with, that is a duplicate charge, and
19 I simply offer no evidence on it.

20 THE COURT: Well, I will strike the Defendant's plea of guilty
21 and enter a not guilty plea; and the Crown having called no
22 evidence, I'll mark the information dismissed

23 MR. REHN: Thank you, sir.

24

25

Certified a correct transcript

26

27

Edna Thiessen, Court Reporter.