

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

GLEN ROBERT WILCOX

Transcripts of Reasons for Sentence of His Honour
 Chief Judge J. R. Slaven, sitting at Yellowknife,
 in the Northwest Territories, on Thursday,
 September 24th, A.D., 1987.

APPEARANCES:

MS. A. AITKEN: On behalf of the Crown

R. SPAULDING, ESQ.: On behalf of the Defence

(Charged under Sections 237(a), 387.(1)(a),
387.(3), and 387.(4))



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COURT: I am pleased you bring up these matters regarding Section 653, because there is very little case law or jurisprudence to assist the judge. I will deal with the matter of a compensation order, requested under Section 653 by the Crown, first. First, in the words of the subsection 653.(1) that:

"A Court... may, on the application of a person aggrieved..." Miss Aitken, as Crown, suggests that these aggrieved persons speak through her, the owners of the three vehicles damaged. Mr. Spaulding says that either there should be written applications or that they should appear in person. I think we ask a lot of them, that they appear in person. Quite often we are sentencing a person in Yellowknife for occurrences in outlying communities throughout the Territories. I don't think we could ask someone from Inuvik to come down and make a personal appearance on an application; neither do I think there is any necessity for a written application.

The facts of how the damage was caused to the aggrieved parties has been read into the record and accepted by the accused, through his counsel, and in this case, damage estimates have been provided to the Court and accepted as exhibits. I don't feel that the person should be asked to hire a private solicitor to come in. Certainly, one reason, although I am not accepting or saying that it is the main one, one reason is, if damages are easily ascertainable, why not have the judgment entered, in effect, in this Court during the criminal proceedings? Instead of forcing the aggrieved parties to take the civil route -- which would result, because of the costs involved in the civil routes, the obtained judgment would result in judgment, including costs, being entered against the accused in substantially higher amounts

that in the judgment will be if I make the compensation order under Section 653. So, there is benefit to the accused, as well as to the aggrieved parties. So, I find first that the application of the persons aggrieved, three, in this case, as made by the Crown attorney, is sufficient.

Secondly, it is stated by Mr. Spaulding that I must look at the means of the accused and his age and his future prospects, that he has no present means and the effect of the judgment in this case, these amounts, would be crushing. He is a healthy young man with some abilities. Someone very close to me, one of my children, has just come out of university. All that is available now is a term job as a clerk-typist, but that student is starting off with seventeen thousand dollars in student loans to pay back. I don't see why a judgment of this amount would be crushing to this husky young man. There is plenty of employment in the N.W.T. for people that want it, and he doesn't have anyone to support except himself. If it were a civil action and the judgment could be entered, his means wouldn't come into it, whatsoever. His means would only come into it on enforcing the judgment, so, to me, as a prospective means of paying these amounts.

As to the amounts of the estimates and what the Subaru might be worth, a 1978 vehicle, it does seem a lot, thirty-three hundred dollars, to spend on a 1978 vehicle, but I just spent two thousand on my 1973 vehicle. So, I don't think that is out of line.

The fourth point you raise, Mr. Spaulding, referring to

Mr. Chief Justice Laskin's, as he then was, decision, the reasons in the case of R. v. Zelensky, that the restitution order is part of the sentence, and it's not intended to act as a convenient collection agency for the private purpose of public reprobation. I was struck driving through British Columbia last week -- a very small town, just a wide spot on the road, really, near Lillooet, somewhere -- it may have been Ma Murray's old paper, I don't know, some hand-out there; in the editorial were some things like this, and that the parents should have to pay for the damage that the children had done. I chuckled to myself, because we used to be able to do that under the old Juvenile Delinquent's Act, and we can't under the Young Offender's Act. But I've run into so much of this type of thing in Inuvik during the past year, taking skidoos and three-wheelers and sometimes brand-new vehicles from dealers, and there is so much of it goes on all throughout the Territories. And what I hear in the coffee shops and the bars is, what about the victim? and these people should be made to pay. Sometimes in the case of young offenders, they talk about, their parents should have to be made to pay. And there is a general dissatisfaction with what the Courts do, because so often the offenders are not ordered to pay for the benefit of the innocent victims. And I do feel that by making an order under this section, that whether or not it's ever collected, whether or not he ever pays it, the main thing is to vindicate the law and to indicate public reprobation against actions such as this.

In short, I have considered all those matters and considered his means, and I am going to make orders under Section 653; and, in fact, I do now order that the accused pay to Cindy Morris the amount of three thousand two hundred ninety-six dollars and forty-eight cents; to Ann Verkerk, the amount of three thousand six hundred and three dollars and nine cents; and to Mrs. Verna Devitt, the amount of seven hundred dollars.

I would like to take five or ten minutes before I come to the matter of the rest of the sentencing.

(BRIEF ADJOURNMENT)

PROCEEDINGS RESUMED:

THE COURT: I have before me a young man who, as far as the criminal law is concerned, became an adult in February of this year, and this is his first time for sentencing in adult court.

He has had a difficult upbringing, with adoptive parents who broke up, and then the adoptive mother broke up with what was in effect his adoptive stepfather. I won't bother going into it all. I am told that he had a drug and drinking problem. He feels that he has licked the drug problem, but he still has a drinking problem, so much so that the occurrence of September 12th, he says he doesn't remember any of it, after stepping into the vehicle that he drove and causing a great deal of damage.

He was very drunk, obviously. We don't know how drunk. He refused to blow in the breathalyzer, apparently; at least,

he didn't blow. But he caused a great deal of damage. He must have been going at a great rate of speed to break the wheel off the vehicle, even driving on a kerb, apparently. And he did cause a great deal of damage, and thank heavens he didn't cause any personal injuries or deaths. He was a menace to society when he was out there driving that stolen Subaru.

I have got to comment on the frequency of this type of crime throughout the North and, particularly, this type in Yellowknife: a drunken young man getting in a vehicle and causing all kinds of damage and being a threat to the law-abiding citizens of this city. Somehow or other it has got to be stopped, generally. But most specifically looking at this young man's record, he has got to be deterred. He was found guilty in Youth Court in February of 1985 -- when he would be just sixteen years of age, just short of sixteen, I think -- of theft and a break, enter and theft and was placed on probation for two years. Within six months or so, he committed further offences. He was found guilty in Youth Court in October 1985 of taking auto without consent, theft under two hundred dollars, and driving while impaired, in fact, something very similar to the occurrences on the 12th of September that bring him before me today. In that case, he was put in open custody for a period of six months. Fair enough. He would have just been finished his open custody when again he's back in front of the Courts in April of 1986 for two offences of taking auto without consent. At this

time, he was sentenced to two months of secure custody, followed by eight months in open custody. Now, that sentence would have been just shortly finished when he's out again taking an auto without consent on the 11th of July. He is brought before the Courts on that, he pleads guilty on September 8th; it's set for sentencing in a week or two. And on the 12th of September he gets drunk and takes another vehicle and causes all this damage.

It seems he wants to blame it on booze. Well, when you drink, you take vehicles, so you shouldn't drink. It's that simple. But you seem to be out of control and you've just got to take these vehicles, and I've got to put you somewhere where you can't take them. I'm going to send you to gaol. I would like to send you to gaol for about a year or fifteen months; that is what would be best for you, to try to get through to you that you cannot do this sort of thing. But fortunately for you, it is your first time before this Court and you're still a young man, and I can't sentence you to that long a term. I wish I could. You could have killed people out there on the morning of the 12th of September. And I'm afraid you may do it again. I've got to get through to you, to stop you from doing this sort of thing.

I will be convicting you of five counts, and four of them arise from the same occurrence. I take that into account, particularly looking at totality, because of your youth and the fact that it's your first time before the Court; I also take into account that you've been in adult remand for

fourteen days, and also that I've made the restitution order for about eight thousand dollars earlier in the afternoon.

Would you stand up, please, Mr. Wilcox. I convict you of the charge of take auto without consent of Mr. Fleury's vehicle on the 11th of July, and direct you be imprisoned for a period of forty-five days; I convict you of taking the auto of Cindy Morris and direct you be imprisoned for a period of ninety days, to be served consecutively; I convict you of mischief under Section 387.(4) regarding the Devitt vehicle, that is the boat-trailer, and I direct you be imprisoned for a period of two months to be served concurrently; I convict you of the mischief charge, the damage to the Vankerk vehicle, and direct you be imprisoned for a period of two months, to be served concurrently; I convict you of the charge of impaired driving and direct you be imprisoned for a period of thirty days to be served consecutively, and on that conviction I also direct that you be prohibited from driving for a period of eighteen months from today's date.

Now, for the purposes of typing the warrant and the convictions, the mischief was wilfully damaging property, correct, 387.(1)(a).

MS. AITKEN: That's correct, Your Honour.

THE COURT: So it will read: On the 12th of September, at Yellowknife, did commit mischief by wilfully damaging the property of so and so, which damage to property did not exceed one thousand dollars -- oh, we're over -- this is

why I said, I'd rather have a new information like this, you see. You asked me and the clerk here to now draft in Court what could have been easily drafted in an office when there was no pressure on us.

MS. AITKEN: Yes, Your Honour. The damage to the boat-trailer would be under a thousand, and I believe the damage to the Verkerk vehicle, then, would be over one thousand.

THE COURT: So the Verkerk, then, would be a 387.(3)?

MS. AITKEN: That's correct, Your Honour.

THE COURT: Which count is that on the information? That is the third count, is it?

MS. AITKEN: Yes, Your Honour, count 3.

THE COURT: That's 387.(3), and the other one is 387.(4)?

MS. AITKEN: That's correct.

THE COURT: Is that all, then, of the matters regarding Mr. Wilcox?

MS. AITKEN: Yes, Your Honour.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

Certified a correct transcript,

Debra Chipperfield
Debra Chipperfield,
Court Reporter