

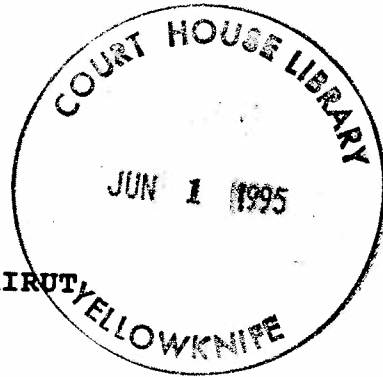
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

CLARA KANAYOK AIRUT

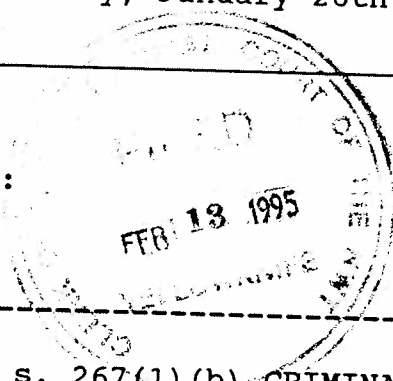


Transcript of the Sentencing Hearing before The Honourable
Judge R. M. Bourassa, at Rankin Inlet in the Northwest
Territories, on Thursday, January 26th A.D., 1995.

APPEARANCES:

MS. M. NIGHTINGALE:

MR. G. WALLBRIDGE:



Counsel for the Crown

Counsel for the Accused

(CHARGE UNDER s. 267(1)(b) CRIMINAL CODE OF CANADA)

1 THE CLERK: Clara Kanayok Airut.
2 THE COURT: Mr. Wallbridge, you are prepared to
3 proceed on the preliminary inquiry?
4 MR. WALLBRIDGE: Sir, my client has advised me that she
5 wishes to change her plea at this time.
6 THE COURT: She wishes to re-elect as well?
7 MR. WALLBRIDGE: Yes, sir, she would re-elect.
8 THE COURT: Ms. Airut, on the 27th of September
9 1994, you elected trial by Judge and jury. Do you now
10 wish to re-elect trial by territorial Court Judge
11 without a jury?
12 THE ACCUSED: Yes.
13 THE COURT: How do you plead to the charge of
14 assault with a knife, guilty or not guilty?
15 THE ACCUSED: Guilty.
16 THE COURT: Ms. Nightingale?
17 MS. NIGHTINGALE: The following events took place at
18 Clara Airut's house in Area 6 in Rankin Inlet,
19 Northwest Territories on September 3, 1994.
20 At about 3:30 or 4 a.m., Ms. Airut and her Joseph
21 Okpatauyak were drinking at their home when they began
22 to argue. Ms. Airut felt her husband had been trying
23 to be with another woman and this is what the argument
24 was about. Ms. Airut was becoming very angry and Mr.
25 Okpatauyak was trying calm her down as they made their
26 way into the outer porch area of the house.
27 At this point, Ms. Airut went back into the house,

1 grabbed a large kitchen knife from the kitchen drawer,
2 went back to the porch, and slashed Mr. Okpatauyak
3 with the knife under his left arm.

4 THE COURT: Under?

5 MS. NIGHTINGALE: He was slashed under his left arm.

6 Mr. Okpatauyak then ran from the house to a
7 neighbour's. He was taken to the Health Center and a
8 medical report prepared characterized the wound as
9 superficial, requiring 33 stitches to close the wound.
10 It was 15 centimeters in length on the left side of
11 his chest.

12 Those are the facts alleged.

13 THE COURT: Those facts admitted as true?

14 MR. WALLBRIDGE: Sir, my client advises that she was
15 too drunk to remember any of this but she's prepared
16 to admit that, as those facts were read to the Court,
17 that that seems something that she can agree with,
18 sir.

19 THE COURT: All right. On sentence?

20 MS. NIGHTINGALE: Ms. Airut does not have a criminal
21 record. This is her first time before the Court. The
22 facts speak for themselves and normally jail would be
23 required in such a circumstance.

24 I understand however that there is case law to
25 support other approaches.

26 I have given Mr. Wallbridge a copy of the case,
27 the Grandjambe case, which was decided by Justice

1 Vertes following the Otokiak Court of Appeal decision
2 in which a suspended sentence was given to woman who
3 was charged with assaulting her husband with a weapon
4 where the injuries were, in fact, life threatening.

5 That being the case, I am sure that Mr. Wallbridge
6 will be able to provide you with other circumstances
7 to consider in sentencing.

8 THE COURT: That is the Crown's position?

9 MS. NIGHTINGALE: It is, Your Honour.

10 THE COURT: Mr. Wallbridge?

11 MR. WALLBRIDGE: Sir, as the Court is aware, I was only
12 retained yesterday on this matter. I had a lengthy
13 interview with my client yesterday afternoon and
14 started to get an appreciation of the circumstances.

15 The relationship is one where at the present time
16 she remains living with the complainant in this
17 particular offence, sir. They have three children.
18 She advises me that she is presently two months'
19 pregnant and indeed the other lady sitting at the
20 defence table is a nurse who is a friend of my client,
21 sir.

22 The -- there is apparently, and I don't have this
23 evidence, sir, but there is apparently a prior
24 conviction as against the complainant here, Mr.
25 Okpatauyak for assault against my client.

26 The situation would appear to be at the present
27 time that -- I'm sorry, sir, I thought that you might

1 have just said something there when I was looking
2 down.

3 THE COURT: No.

4 MR. WALLBRIDGE: There is a decision, as Ms.
5 Nightingale had informed the Court that she provided
6 to me a short while ago, of Justice Vertes that was
7 supposedly after the Otokiak case wherein the Court
8 felt that it appropriate in the circumstances of that
9 case, I am sure on the specific facts before the
10 Court, that a suspended sentence was appropriate.

11 In that case, being Grandejambe, I note, sir, that
12 the wounds as set out in the agreed statement of facts
13 were characterized as being life threatening and
14 although the Court here today must take note of the
15 fact that there was a weapon and that perhaps it was
16 only by chance that the wounds here were superficial,
17 the medical report does show them, the wounds in this
18 particular instance today, the reason why we are here
19 today, to be superficial wounds.

20 My client informs me, sir, that she was raised by
21 her grandmother and that she has somewhat of a
22 relationship with her father, in terms of a
23 father-daughter relationship, and not so with her
24 mother.

25 I specifically, yesterday afternoon when I was
26 interviewing my client, indicated that should a
27 finding of guilt be entered or a finding by this Court

1 that jail was something that the Court would be
2 thinking very strongly about, and I asked what might
3 then happen with her children and specifically, as I
4 understood her mother was in this community, and she
5 thought that there was no possibility that her mother
6 would be prepared, if that would be the right phrase,
7 sir, to take care of the children, and that's
8 something that I would ask the Court to consider this
9 afternoon. That appears to be a major problem that
10 would arise.

11 The history of abuse in the relationship as my
12 client related to me yesterday, sir, goes back to the
13 time when she was pregnant with the first child, some
14 eight years ago, and although I don't believe that it
15 would be appropriate to get into details of that as I --
16 by virtue that it is not my duty here today to give
17 evidence in this Court, there are those considerations
18 in a general sense, if that would be the way to phrase
19 it, sir, that I would ask you to consider.

20 Those are my only submissions at this time,
21 subject to anything arising.

22 THE COURT: Thank you, Mr. Wallbridge.

23 The Court has to sentence Clara Airut for an
24 assault with a weapon. She attacked her common-law
25 husband with a knife during an argument over another
26 woman resulting in what has been described as a
27 "superficial cut" requiring 33 stitches.

1 I am unable to see on what has been presented to
2 me that this is any different than the crushing,
3 depressing tales that come through this courtroom in
4 every community every day. Half or more of the docket
5 in this community consists of assaults against people:
6 domestic violence, violence in the home. And it's
7 pretty well the same just about everywhere we go.

8 The facts in this case as have been presented to
9 me do not indicate any justification. I am not
10 talking about justification in the law but
11 justification on a subjective basis for protection,
12 for safety in any way. There was an argument over
13 sexual fidelity.

14 The level of violence in homes is five or six
15 times what it is in southern Canada. The level of
16 violence in homes is shown in every docket in every
17 community with up to half of the dockets being charges
18 involving violence. Alcohol is almost always
19 involved. And it goes on and on.

20 The Court of Appeal, the federal Parliament, the
21 territorial Parliament, have all indicated in cases,
22 speeches, and laws that violence is not to be
23 tolerated. Violence is not to be accepted.

24 Again, I say what I said at the beginning: I can't
25 see anything in this case that distinguishes it from
26 any of the other multitude of cases involving domestic
27 violence. There is nothing there. There is nothing

1 in my view that entitles me, allows me, or justifies
2 an exception requested by defence and concurred in by
3 Crown.

4 I take into account that the accused has pleaded
5 guilty, and I consider it virtually at the first
6 instance and that is to be taken to her credit.

7 I take into account as well that she has no prior
8 criminal convictions and that is to be taken into
9 credit.

10 I take into account that her alcohol consumption
11 was so high that she apparently doesn't recall what
12 she did although she acknowledges what happens.

13 I also take into account the use of the weapon and
14 the injuries sustained by the victim. Violence has to
15 be condemned in no uncertain terms and no one has a
16 license to go at people with knives and boots and
17 fists the way that we have heard of in the last two
18 days.

19 Stand up, Ms. Airut.

20 Is there anything that you would like to say
21 before I impose sentence?

22 THE ACCUSED: No.

23 THE COURT: Three months in jail.

24 MR. WALLBRIDGE: Sir, as this case unfolded for me
25 rather rapidly, I haven't had the opportunity to
26 confirm with the police here yet if an intermittent
27 sentence is possible.

1 THE COURT: Well, the police don't decide if there
2 is going to be an intermittent sentence, with respect,
3 and perhaps I should have mentioned it earlier, but I
4 considered an intermittent sentence but I rejected it.
5 I am not imposing one.

6 MR. WALLBRIDGE: Thank you, sir, I just wanted to put
7 that point forward if it was a possibility.

8 THE COURT: Thank you. Are there other matters?

9 MS. NIGHTINGALE: No, Your Honour.

10 THE COURT: Thank you, counsel.

11 (AT WHICH TIME THIS SENTENCING HEARING CONCLUDED)

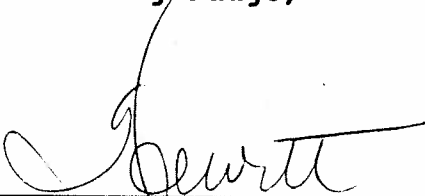
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13 Certified correct to the best of my
14 skill and ability, (Subject to Review
of Presiding Judge)

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Lois Hewitt,
Court Reporter

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