

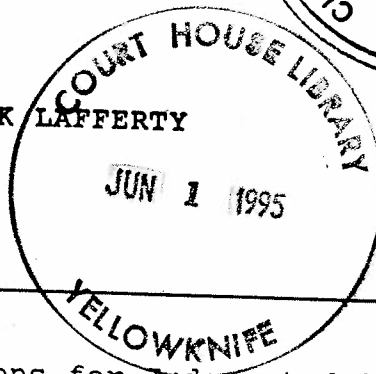
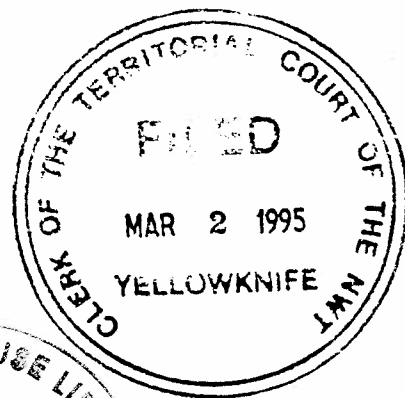
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

HANK MARK LAFFERTY



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Transcript of the Reasons for Judgment delivered by the Honourable Judge R. M Bourassa, sitting at Yellowknife, in the Northwest Territories, on January 30, A.D. 1995.

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APPEARANCES:

MR. L. ROSE

On behalf of the Crown

MR. J. TARLTON

On behalf of the Defence

1 THE COURT: Okay. I will start with my assessment  
2 of the evidence first. The evidence of Ms. Cardinal  
3 and the evidence of Mr. Berg doesn't dovetail, it  
4 doesn't fit, it doesn't even come close to the  
5 evidence of Mr. Lafferty. Mr. Lafferty in his  
6 evidence-in-chief denied that the complainant was even  
7 in the bathroom; that was a flat-out denial.

8 THE COURT: Ms. Cardinal, as drunk as she was,  
9 remembers Ms. Bealieu being in the bathroom and  
10 thumping or banging noises in the bathroom. Mr. Berg  
11 says he was never in the bathroom. At no time did he  
12 ever go near the bathroom. Mr. Lafferty says that  
13 after Ms. Beaulieu took off Mr. Berg came into the  
14 bathroom.

15 The evidence of John Berg is a waste of time and  
16 that is putting it charitably. He's playing word  
17 games, "I didn't see anything, there was nothing to  
18 see." His evidence deserves no credit, no weight.  
19 He is simply playing games with the Crown and games  
20 with the Court. Ostensibly, he was the only sober one  
21 there, and he is very much like the three monkeys -  
22 hear no evil, see no evil, do no evil.

23 The evidence of the second defence witness Lisa  
24 Cardinal is of marginal or minor assistance. She too  
25 remembers very little, saw very little and admits that  
26 she was very drunk. She has refused to cooperate in  
27 any way, not that much turns on that, I just note

1 that. But she was clear, she said all I know is they  
2 were in the washroom together, that is Lafferty and  
3 Beaulieu, and that there was yelling and banging, and  
4 that after the yelling and banging Beaulieu came  
5 running out to call the cops. She said she went down  
6 to the washroom and told Mr. Lafferty that Verna was  
7 calling the cops. There are other conflicts, but all  
8 it points out is that she and Berg are of very little  
9 assistance, Berg even less than little really.

10 That leaves me then with the evidence of  
11 Mr. Lafferty and the evidence of the Crown witness. Of  
12 course the three questions are before me, do I believe  
13 the accused, and if I believe the accused, that is the  
14 end of it and I must acquit. I don't. Does the  
15 evidence or the cross-examination raise a reasonable  
16 doubt, and I think that is where I have to examine the  
17 evidence carefully.

18 What happened for twenty minutes while the police  
19 were knocking on the door, and trying to get a key,  
20 and what was going on in that apartment? The people  
21 in the apartment, some of them, although they all  
22 denied it, knew the police were at the door. One of  
23 the constables, I think MacDonald, I could be  
24 corrected there, testified that someone came to the  
25 door and asked who was there when they started  
26 knocking. They replied, "police" and then nothing.  
27 Then they knocked and they knocked and heard no

1 response until finally someone came back with the key.  
2 Constable Isiah estimated that to be 20 minutes. Why  
3 are these people hiding out for 20 minutes behind a  
4 closed door?

5 When the police finally get in, they have to knock  
6 and knock at the bathroom door where Mr. Lafferty is  
7 and Mr. Latimer, I think the name is. Mr. Lafferty,  
8 twenty minutes after he was splashed with cold water  
9 he says, is still splashing hot water on himself to  
10 warm up so he doesn't catch a cold. About all I can  
11 say, I am not saying it is impossible - peculiar - but  
12 that doesn't condemn it. What are the two men doing  
13 in a locked bathroom for twenty minutes? I don't  
14 know.

15 When the police constables, and no one was  
16 examined or questioned about it and I assume they were  
17 sober, intervened and made some observations, two  
18 constables I think it is, both indicated that  
19 Mr. Lafferty appeared to be spaced out I think one  
20 said. Both constables had dealt with Mr. Lafferty in  
21 the past, and one in detail commented that he was  
22 peculiar, he was unfocused, or staring somewhere else,  
23 that he was subdued and quiet which is contrary to the  
24 normal way they have to deal with him. At the police  
25 station he went through some kind of seizure and ha  
26 to be taken to the hospital. Mr. Lafferty's response  
27 was that while he was in the bathroom splashing hot

1 water on himself he took four pills - some kind of  
2 cocaine substitute - and that this gave him the  
3 seizure. He took them knowing that they were not to  
4 be mixed with alcohol. On his evidence he said he  
5 only consumed two bottles of beer some ten to twelve  
6 hours earlier. He came home at 2, 2:30 and passed  
7 out. He had two beers earlier that evening and this  
8 event, as best as I can tell, occurred somewhere  
9 between, well I am being generous, 11 and 2 o'clock.  
10 So nine, ten, twelve hours after two bottles of beer,  
11 he has this reaction because of taking the so-called  
12 cocaine substitute pills.

13 In addition Mr. Lafferty would have us believe, or  
14 at least the evidence would seem to be, that not only  
15 did Mr. Berg, on his evidence for whatever it's worth,  
16 try to wake him up, that didn't work, and one of the  
17 women tried to wake up him up before a pitcher of  
18 water was poured on him. It seems to be an awful lot  
19 to wake up someone who is not suffering from  
20 intoxication of any kind, but again who is to say,  
21 some people may be very difficult to wake up.

22 There are many frailties in the defence's  
23 evidence, in Mr. Lafferty's evidence. One of the  
24 major problems in contradiction with another defence  
25 witness was that she was in the bathroom with Mr.  
26 Berg. Now, I don't question that Mr. Lafferty  
27 believes what he is saying here today, and I deal with

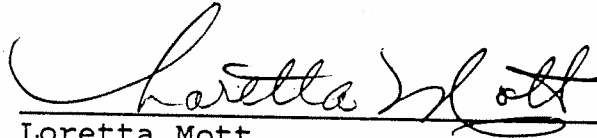
1 a very peculiar kind of truth. It's not an absolute  
2 truth that is proven beyond a reasonable doubt. But  
3 with all of the frailties in Mr. Lafferty's evidence,  
4 and the inconsistencies, and the aspects of it that  
5 just don't make any sense at all, I just don't believe  
6 it. Whether it was from consumption of alcohol or  
7 something else, Mr. Lafferty's belief is not one  
8 founded on facts.

9 It leaves me with the Crown's evidence. Am I  
10 satisfied beyond a reasonable doubt on the Crown's  
11 evidence? I don't really disagree with the  
12 characterization Mr. Rose placed on the Crown witness.  
13 It's a strange world we live in when she goes to the  
14 jail the night before trial to talk with him. She  
15 obviously feels some affection towards him. If  
16 anything she would come to court today, if he were  
17 going to suggest that she was lying, that she would  
18 come to court today and change her story or use the  
19 shield used by so many "I don't remember, I don't  
20 remember". But she came and gave straightforward  
21 evidence, and again I agree with what Mr. Rose said,  
22 without embellishment, without a little extra added to  
23 help the case along. Finally I ask why would she go  
24 to the police any way? Was it an argument over  
25 cocaine? Mr. Lafferty was adamant that the argument  
26 wasn't over cocaine, it was over something else, but  
27 wouldn't tell us what it was over.

1           On what I have before me today in my view an  
2 assault occurred. In my view, and the extent of the  
3 assault that I can determine, or I feel confident to  
4 determine is that she was pushed against the wall in  
5 the hallway, and she was pushed into the bathtub as  
6 she relates in the bathroom. She had, as I understood  
7 it, that she was going to get tossed out of the window  
8 was a fear she had, it wasn't as a result of actions  
9 by Mr. Lafferty other than Mr. Lafferty pursuing her  
10 and following her down the hallway as she left. She  
11 left and called the police, and I convict the accused.

12 (AT WHICH TIME THIS MATTER WAS ADJOURNED FOR SENTENCING)

13  
14  
15           Certified a correct transcript,

16 

17           Loretta Mott  
18           Court Reporter