

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs -

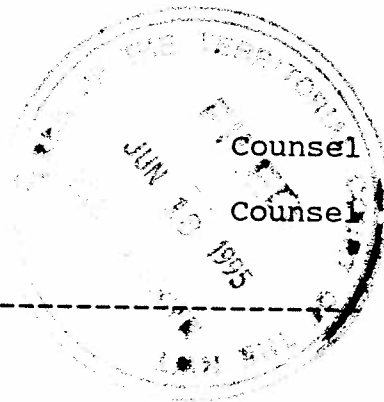
RANDY PAUL KOTYLAK

Transcript of the Reasons for Judgment delivered by The Honourable Judge R.M. Bourassa, sitting at Yellowknife, in the Northwest Territories, on May 31st, A.D., 1995.

APPEARANCES:

MR. J.A. MacDONALD:

MR. R. GORIN:



Counsel for the Crown

Counsel for the Defence

(CHARGE UNDER SECTION 266 OF THE CRIMINAL CODE)

1 THE COURT: I appreciate the effort counsel have
2 made. The case has been vigorously prosecuted and
3 vigorously defended, and that's the way it should be.

4 Counsel know the law well. I am under no
5 obligation to make any findings'. I am under no
6 obligation to choose between this version and that
7 version. I am under no obligation to arrive at a
8 result. The Crown has to prove its case beyond a
9 reasonable doubt. It has to prove the case, virtually
10 put it on a silver platter before me.

11 As pointed out by defence, there are three
12 questions that the Court ought to ask itself:

13 First of all, if the accused is believed, that's
14 the end of the case because his evidence is that he
15 was trying to protect himself.

16 Even if I do not believe the accused, if his
17 evidence raises a reasonable doubt, he is entitled to
18 an acquittal.

19 Even if I don't believe him and reject his
20 evidence, if the Crown has not proven its case beyond
21 a reasonable doubt, he's entitled to an acquittal.

22 I mentioned in discussion with counsel that one
23 can understand conflicts in evidence based on
24 perception, and those kinds of conflicts are not
25 uncommon. I have no difficulty at all in concluding
26 that Ms. Powless, Mr. Voss the cab driver, and Mr.
27 Conroy the passenger in the cab, on reasonable and

1 probable basis came to the conclusion that Mr. Kotylak
2 was drunk and a danger to the public users of the
3 highway. They came to that conclusion after seeing
4 him go through what they perceived to be a red light,
5 squeezing over to the right. They came to that
6 conclusion after perceiving him to be speeding down
7 Franklin and Old Airport Road, swerving at Northland
8 Trailer Park when he had to come to a stop. Seeing
9 this conduct, not knowing, of course, that he had 350
10 gallons of water in the middle of his van -- and it's
11 a special van that drives in a special way -- their
12 perception, in their terms a valid and correct one.
13 Knowing that, watching him going all the way down
14 speeding, they came to the conclusion that he was a
15 danger and it angered them, as it is would anyone, to
16 see a drunk or someone driving dangerously on the
17 highway at nine o'clock in the evening. Mr. Conroy
18 and Ms. Powless determined to confront the accused
19 over his driving when they reached Circle K, by
20 coincidence, all together. I can see nothing wrong
21 with that. It may very well be that they were wrong.
22 It may very well be that Mr. Kotylak's perception that
23 Ms. Powless was going to turn left and he was just
24 running the lights in a synchronized way, and that he
25 wasn't overly speeding, maybe his perception was
26 right. I do not know, but I do not think it matters --
27 not for the events leading up to what happened at

1 Circle K.

2 Now, again with the warning I gave myself at the
3 beginning that I'm under no obligation to come to any
4 conclusion, I have to analyze the evidence and look at
5 it and see where it takes me. '

6 I look at the evidence of Mr. Parry and Mr. Voss,
7 these are both individuals who are not involved in
8 this, other than being subpoenaed as witnesses. They
9 have no axe to grind. They have no grudge with either
10 Mr. Kotylak or Ms. Powless. As far as I can determine
11 from the evidence, they don't know either of them and
12 they haven't spoken to either of them.

13 On the evidence, there is no indication that
14 Voss's perception was handicapped or clouded or
15 distorted by the consumption of drugs or alcohol. He
16 drove his passenger to Circle K to pick up some
17 cigarettes. He was sitting behind the wheel of his
18 cab, facing what they called "the stone wall". Beside
19 him on his left was the van that they had followed. He
20 was able to look through the passenger window through
21 the van, and he was able to look out the front window
22 of his cab and see what was going on in front of him.
23 He said he could see the driver. He could see his
24 passenger, and he could see Ms. Powless all in front
25 of his cab, that the three of them were talking at the
26 driver. He witnessed the driver, Mr. Kotylak, waving
27 his hands and knocking off Mr. Conroy's hat. He heard

1 Kotylak say, "Stay away from me bitch.". He saw his
2 passenger back off and go into the store leaving
3 Powless and Kotylak. He saw her pushing, he saw her
4 gesturing and waving her finger. It looked as though
5 she was shouting. He stated in his evidence on
6 cross-examination that Kotylak pushed her off when she
7 approached him and she was persistent and she came
8 back. That he, Kotylak, "was out in the open and in
9 front of my car, that she was waving an index finger
10 at him and I believe she had touched him once with the
11 finger". He stated that she was persistent, that she
12 appeared to be talking loud, although he couldn't hear
13 them, and that Kotylak didn't back off at all. He
14 stated further that on one push she almost lost her
15 footing and then they went in the store.

16 Now Mr. Parry's evidence: by sheer coincidence,
17 he happened to be in the store and was in the line up.
18 He saw Mr. Kotylak come in swearing and mad. He heard
19 an argument between Kotylak and someone about cutting
20 off people, and I infer that was with Powless. He
21 overheard Kotylak say to his good friend Laurie, the
22 cashier, "Don't give her the phone or I will kick the
23 shit out of you.". What reason does this boy have to
24 lie? I was impressed with his evidence. He admitted
25 to the things he didn't remember. He admitted to the
26 contradiction between who went into the pop stand. I
27 thought he gave his evidence the best he could, being

1 as honest as he could. He recalled Kotylak calling
2 Powless names, making slurs about paying her welfare,
3 getting on a Skidoo and going out to the bush. He
4 observed that someone grabbed Kotylak and said, "Quit
5 hassling the ladies.", and Kotylak said, "I'll kick
6 your ass."

7 Now I look at that evidence and I look at
8 Conroy's evidence. Conroy had a few drinks, he said
9 that he had a "glow on". I don't know if much can be
10 made of the adjective "high", "glow", nevertheless he
11 was in some state of intoxication, but he saw what was
12 going on, and I can only take his evidence as to what
13 it is, subject to the cross-examination.

14 He talked to the cab driver and was mad about
15 what he had seen and what he perceived to be a drunk
16 driver or a problematic driver on the highway. He got
17 out of the car. As soon as he got out of the car, he
18 saw Ms. Henderson. He didn't know her at the time.
19 He asked her if she was driving. She said "no" and he
20 went around the back of the van, up to the door where
21 he found Mr. Kotylak sitting behind the wheel. I have
22 no doubt that Mr. Conroy was somewhat what aggressive,
23 saying that he -- Kotylak -- was going to kill
24 someone. Kotylak got out, and was equally aggressive,
25 demanding to know what his problem was, so Conroy told
26 him about the driving.

27 The evidence seems to be quite clear that Kotylak

1 came up and pushed him on the chest and pushed him
2 away. Conroy stated that he turned, he said he wasn't
3 in for a fight, he didn't want to get involved in a
4 fight. He got pushed again. Even Kotylak admits
5 this. Be that as it may, the accused is not charged
6 with an assault on Mr. Conroy.

7 At this point, Mr. Conroy says as he turned to
8 leave he heard a woman, I infer Powless, yelling at
9 him in an argument. He went in and got cigarettes. He
10 saw the two of them come in and that is the extent of
11 his evidence.

12 The evidence of Ms. Powless and Mr. Kotylak:
13 There are conflicts between the two that can't be
14 resolved by difficulties in perception. Mr. Kotylak
15 was drinking. There is no evidence that Powless was
16 drinking. I think it is clear on the evidence that
17 Kotylak was aggressive, pushy, and ready to take on
18 anyone. Although, and he did not say it on the stand,
19 perhaps he felt wronged because Conroy came up to him
20 and accused him of endangering other people, but he
21 took care of Conroy. He was aggressive.

22 Powless came up, and I have no doubt that she was
23 yelling, and Kotylak was yelling back. It degenerated
24 between the two -- I am afraid to use the word
25 "adults". It may very well be that Powless, I am
26 certain she waved her finger at him. It may very well
27 be an addition that she touched him on the chest with

1 her finger, her index finger that she was waving at
2 him. In my view, if she did, it was inconsequential.
3 If she did, it was unintentional.

4 Now Kotylak pushed her and pushed her out of his
5 way at least six time. He admits that. Kotylak was
6 going into the store and she was in front of him, and
7 he was pushing her out of the way. She was in front
8 of him and wanted to confront him about what she
9 perceived to be bad driving. He was having done of
10 it, and he wanted her out of his way.


11 Assault is the application of force without the
12 consent of another. In my view, he assaulted her. The
13 self-defence argument -- I just cannot see it. I do
14 not believe him in some aspects of his story as he
15 recounts it. In addition, his evidence is too great
16 in conflict with that of the others.

17 While we can observe Powless's evidence and say
18 that it has a bit of a gloss on it in some areas,
19 everything she said is pretty well confirmed by the
20 independent witnesses. The fact that Kotylak
21 threatened to beat up the girl, Laurie, behind the
22 counter, the fact that he used her name, is all
23 confirmed by independent witnesses. The fight inside
24 that he took on with the fellow that grabbed him to
25 try to defuse it, is confirmed. His swearing, racial
26 epithets, are confirmed by indepedent witnesses. All
27 of Powless's evidence is basically confirmed, although

1 with the reservations as I have indicated that I think
2 there is a bit of a fluff to it, a bit of perhaps
3 exaggeration on her part. That concerns me because I
4 have to accept her evidence as proof of certain
5 things. If that exaggeration is too much it
6 compromises the evidence. I just do not see it as such
7 however. She says that she was quiet, clearly she was
8 not. She may very well have been more aggressive than
9 she would have liked to have described. Needless to
10 say, apart from that, my finding on the facts is that
11 she was angry, she wanted to confront him and she did.
12 Kotylak was having none of it. She was in his way and
13 he was going to get her out of the way and that is all
14 there was to it, and that is it. He pushed her out of
15 the way; pushed her once, twice, six times, and that
16 is an assault. It is a minor, little picky assault,
17 but it is an assault and I convict him.

18 (AT WHICH TIME PROCEEDINGS CONCLUDED)

19
20 Certified correct to the best of my
21 skill and ability,
(Pursuant to editing by presiding judge)

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23 

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Karen Steer,
Court Reporter