

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MOHAMMED MOHAMOUD AHMED

Transcript of the Reasons for Judgment and Sentence
delivered by The Honourable Judge B.E. Schmaltz, sitting
in Yellowknife, in the Northwest Territories, on the 15th
day of June, A.D. 2005.

APPEARANCES:

Mr. B. Lepage: Counsel for the Crown

Ms. N. Nightingale: Counsel for the Accused

(Charge under s. 267(a) x2, 91(2) and 264.1(1) of
the Criminal Code of Canada)

THE COURT: Mohammed Ahmed has been charged with assault with a weapon involving a stun gun, assault with a weapon involving a knife, and uttering threats. The complainant on all three charges was Muntasir Elkhidir. All of the charges arose from, if not one incident, a couple of incidents that were very close in time on January the 18th this year.

Muntasir Elkhidir testified that he is a taxi driver here in Yellowknife, as is the accused. They both work for the same taxi company. He knows Mr. Ahmed. They used to live in the same building. This was back in January. They both lived in Ravenscourt and Mr. Ahmed was a co-worker. At that time he had known Mr. Ahmed for about seven months.

Mr. Elkhidir testified that at about 4:30 in the morning on January 18th, he went down to warm up his car. He starts work at 5 a.m. He lets his car run for about half an hour and then goes to work.

He started his car. When he returned to the building, as he said, he found Mr. Ahmed in the lobby. He did testify that it was his perception that Mr. Ahmed had been waiting for him. And he testified that Mr. Ahmed cursed at him in Arabic. That led to a verbal argument between the two of

them, but that incident at 4:30 ended with just the argument between the two of them. Words were exchanged, if I can put it that way.

Mr. Elkhidir admitted that he was upset by that incident. He said no more upset than Mr. Ahmed was, but he was upset. He did admit that he had been insulted, but that he had gone on his way, as I assume Mr. Ahmed had at that time as well.

Mr. Elkhidir left, went to work, and returned to his house at, I take it, just before 7 a.m. to pray. At that time, as he was going towards the entrance to the apartment building, he saw Mr. Ahmed, and Mr. Ahmed came running out and met him in the parking lot. At that time, Mr. Ahmed told him that today there was going to be a murder in the city, that he was going to kill, him - that is, Mr. Ahmed was going to kill Mr. Elkhidir - he was going to kill his wife and his son.

Mr. Elkhidir's thoughts at that time were that he had to fight back, and then he saw that Mr. Ahmed had a device, if I can call it that. He learned later that it was a Taser gun, or it was told to him that is what it was; but at the time, he did not know what it was. He saw electricity come out of it. As he said, he saw

white electric come out of the device. And Mr. Ahmed was waving it at him, or as Mr. Elkhidir testified, he gestured what Mr. Ahmed was doing. Mr. Ahmed was waving his hand, with the gun in it and the electric -- or the electricity coming out of it, towards Mr. Elkhidir. He was not close enough to Mr. Elkhidir that any of the electricity hit him, so he would not say that it was "at him", but it was in his direction that Mr. Ahmed was waving this device.

As the electricity did not hit him and therefore did not affect him, he was not close enough for it to affect him, it was not harming him, and he then realized that he had to fight.

He was going towards the accused and he was swinging. At this point, the accused dropped the device in between the two of them. As Mr. Elkhidir said, he (Mr. Elkhidir) was faster, he got the gun. That is, Mr. Elkhidir picked it up faster. He said initially the two of them stopped, looked at each other, and Mr. Elkhidir went for it. He put it in his parka pocket and then went into his residence and called the police.

While he was in his residence, he saw Mr. Ahmed, through his window, standing near his

cab. He testified that he was renting the car and he thought that Mr. Ahmed was going to vandalize his car, break his car, was going to do something to his car. He went outside, and Mr. Ahmed had a butcher knife. He did testify he did not see that knife from inside. It was not until he got outside and up closer that he saw that Mr. Ahmed had a butcher knife. He described it as "the biggest knife", as a very large knife. He said the blade was about as long as his forearm. That is, from his elbow to his wrist.

Again, the accused was saying there was going to be a murder in the city, that Mr. Elkhidir was going to be killed, the accused was going to kill Mr. Elkhidir. Mr. Ahmed was going to kill his (Mr. Elkhidir's) son, he was going to kill his (Mr. Elkhidir's) wife, and he was continually swinging the knife at Mr. Elkhidir. He was coming towards Mr. Elkhidir. Mr. Elkhidir was backing up. Mr. Ahmed was swinging the knife at about head level. Mr. Elkhidir had his hands up to protect himself. He said it was not his impression that Mr. Ahmed was going to stab him in the stomach or anything like that, but he was swinging the knife and telling Mr. Elkhidir to give him back the gun; that is, the device that Mr. Elkhidir had

taken earlier. This went on for some time. Mr. Elkhidir did feel the knife at some point touch his little finger. It was a small touch. That is what he felt at that time.

He continued to back away from the apartment building. The accused continued coming towards him, swinging the knife, and then a car -- there were some lights from a car seen coming into the parking lot of the apartment building, and the accused then ran back into the building. Mr. Elkhidir was expecting the RCMP at any moment as he had called them earlier from his apartment, and he stayed waiting outside for them.

The RCMP arrived, and Mr. Elkhidir's hand was bleeding badly. As it turned out, where the knife had touched him, the knife had actually cut him. It required six stitches. It was on the little finger of his left hand, and there was still a mark, what I would call a scar, on his hand from the cut. He was attended to by an ambulance, then taken to the hospital.

Essentially, that was the evidence of Mr. Elkhidir.

The two police officers that attended also testified.

I should also say, before I leave Mr. Elkhidir, with respect to the lighting

conditions, Mr. Elkhidir said -- agreed that the lighting was not good but that it was clear to him that it was the accused. He said it was very dark out. He could not tell what the lighting conditions were. He was not able to say where there was lighting around the building or in the building, was lit inside the building. As he said, he could see the accused and he could see what was in his hand. His answer to most of the questions about the lighting was that it was clear to him what he saw.

Constable Newberry also testified. He testified that he arrived at the scene. The RCMP had received a call around 7 a.m. He says that when he was speaking with Mr. Elkhidir at the scene, he had seen the accused -- or he had seen a person up on the second floor window. That person came downstairs when Constable Newberry was in the area of the apartment building between the inside and the outside doors. The complainant pointed him out, pointed the accused out to Constable Newberry and said, "That's him."

With respect to the condition of Mr. Ahmed when he was arrested by Constable Newberry, he said he was cooperative; but, however, when he was in the vehicle, he seemed to be speaking fairly low to himself and continuously.

Constable Newberry could not hear what he was saying. But if I can say, this seemed unusual to Constable Newberry, not with respect to the accused himself but just the behaviour itself. He did say, though, he would not have said alcohol had been a factor here or that there were any signs of alcohol on the accused.

He also gave some testimony about where the cab, the taxi, was parked and where the police car was parked in front of the building, and referred to a photograph as to where the accused's cab would have been parked; and it appears to me that from the windows on the front of the building and where Constable Newberry said the cab was parked, from either of those windows on the main floor of the building, a person should be able to see that car. Of course, that is just looking at photographs.

Constable Hamilton also testified. His testimony was that Mr. Elkhidir was in the main foyer when they arrived. However, Constable Hamilton's testimony -- well, his answer to that question was "if I remember correctly". I found much of his testimony somewhat qualified, would be the word I would use; he did not seem sure of his answers. I am not finding that he was trying to be evasive or anything. He simply seemed

unsure of some things.

He did describe Mr. Elkhidir's attitude as calm and rational. He was upset with what happened, and excited. And he did not mean excited in a happy way but simply both calm and excited at the same time, as he described it.

He testified that Mr. Elkhidir pointed out Mr. Ahmed when he appeared at a window on the second floor.

When asked the condition of Mr. Ahmed when he dealt with him, and he dealt with him for about five minutes, his initial answer was "there was something about him." He felt he may have been high on drugs or alcohol, though he did not see any signs of intoxication or -- I should say of alcohol specifically. He had dealt with Mr. Ahmed a number of times after this incident, and he said he was a completely different person after. He was calm and agreeable in the times he dealt with him after; but at the time, he seemed agitated. He testified his eyes were bloodshot. And again, as best he could say, "there was something about him."

Again, another example of Constable Hamilton qualifying some of his testimony. When he was asked in cross-examination if Mr. Elkhidir might have gotten out of the cab in the front of the

building, his answer was: I thought he came out of the apartment building. He was sure that Mr. Elkhidir met the police at the front of building, and he thought he came out of the apartment building.

He also testified that the cab was parked directly across from the main entrance at a bar where you plug vehicles in. I find that either there was more than one cab parked there that morning or Constable Hamilton was mistaken.

He also testified to a large amount of blood, and initially his testimony was that there was blood everywhere. He said Mr. Elkhidir was bleeding profusely from his finger, or from his hand. Then he described different patches of blood: blood in the parking lot; blood on the inside foyer; blood on the actual entrance to the apartment building; inside the second set of doors; blood going down the hall. However, when he was describing specific areas of blood, he did say it was all drops of blood. There were no patches of blood, which was certainly the impression I initially got from his testimony. But that it was all just drops of blood everywhere.

Also, I found when Constable Hamilton was shown the photograph of the Exhibit 2, the

outside of Ravenscourt, from what I saw and what I understood his testimony to be, he said that the police vehicle would have been parked in the same place as Constable Newberry said the taxi cab was parked. I do not think any of those perhaps inconsistencies with respect to where vehicles are parked are important or that unusual in a criminal trial. I do not think that in most criminal cases, in most criminal investigations, that is what the witnesses are concentrating on - where vehicles may be parked or how they may be parked.

That was the evidence for the Crown.

Mohammed Ahmed also testified in this case. He testified that he was living in Ravenscourt at the time, that he did work for City Cab. He testified that on that morning, at approximately 4 o'clock in the morning, he had called a friend who was driving a taxi to pick him up a pack of cigarettes and bring them over. He was downstairs in the lobby area waiting for the friend to bring the cigarettes over and that this was around 4 o'clock in the morning.

He then testified that Mr. Elkhidir, who he did not know at the time -- well, that was not initially what he said. He did not know him personally. At one point he said he did not know

him well, at one point he said he had seen him maybe on weekends at work, and at another point said that this night was the first time he had ever seen him. In any event, he said Mr. Elkhidir came to the door and wanted Mr. Ahmed to let him in. He would not let him in. Mr. Elkhidir came in with his keys, said something about that they were supposed to be brothers, to which perhaps Mr. Ahmed took offence to but said we are not brothers and made some comment about Mr. Elkhidir slaving his own people. Mr. Elkhidir got mad and there was a scuffle; and that is when Mr. Elkhidir pushed him, Mr. Ahmed pushed him back. After the scuffle between the two of them, he then went back upstairs to his apartment.

He testified that about 25 or 30 minutes later, that the RCMP came. He saw them from the second floor, went down and was arrested.

He further testified that he does not speak Arabic, and he denied doing any of the things that Mr. Elkhidir had testified to, denied ever being out with Mr. Elkhidir. And I take it -- I can only find from his testimony that when this incident occurred, he would have been upstairs in his apartment.

As Mr. Ahmed continued to testify, I had a

lot of difficulties with his testimony. As I mentioned earlier, when he was first asked about knowing the victim in direct, he said he did not know him personally, then said, well, I do not know him that well, and said he had seen him maybe on weekends at work. He testified the reason he would not open the door for Mr. Elkhidir is that he did not open the door for strangers.

He was challenged to some extent on whether or not Mr. Elkhidir was a stranger in cross-examination, and I find that he became quite evasive in answering those questions and tried to back away from his earlier testimony about him being a stranger, and then tried to explain then what he meant by a "stranger" after asking Mr. Lepage what he meant by "stranger".

In cross-examination, he did testify that this was the first time he had ever seen Mr. Elkhidir, which would certainly be consistent with him being a stranger. How he would know then that Mr. Elkhidir was from Sudan is questionable. In direct-examination, he said the people he had seen on TV look like him. Then he said that people at work told him that Mr. Elkhidir was from Sudan. And yet if he had never seen Mr. Elkhidir before, I find it

questionable how he would know who the people at work were talking about.

He did testify that he does not speak Arabic. I do not find it unusual that someone who does not speak a language may know some curses or profanity or swear words, if I can say that, in another language. When Mr. Elkhidir testified that the threats were made in English, I found that somewhat unusual. However, knowing now that Mr. Ahmed does not speak Arabic, I can see that the common language between the two of them would be English.

In cross-examination, Mr. Ahmed also testified that he cannot tell time. I have difficulty with that. There is a huge time discrepancy in his evidence and the time that events likely happened from all the other evidence in this case. From his evidence, he would have been arrested sometime 4:30, even going up to 5 o'clock. The evidence of the RCMP and of Mr. Elkhidir was that the RCMP arrived sometime after seven in the morning, some three hours after Mr. Ahmed says he was downstairs and there was the scuffle.

Mr. Ahmed also would not admit, at all, that he was upset, at all. He was quite adamant in his testimony that he was not upset, and indeed

said that several times throughout his testimony. And indeed it was when he was being questioned about being upset, and testified that one of the reasons he was not upset was that: "How can you be upset at somebody you do not know?" and that this was the first time that he had ever seen him and, therefore, he was not upset. After taking that very strong position and not being upset, he was then asked why he would make the comment about enslaving your own people to somebody he did not know, and his answer was "I don't know." He was then asked what would be the point of making that comment, and his answer was "I don't know." I find that Mr. Ahmed had been backed into -- backed up to the wall, backed into a corner at that point and, really, the only answer a person can finally give when they have too many unbelievable statements piled up is "I don't know", and that is what I find happened to Mr. Ahmed. All of these unbelievable statements were piling up to the point when he could not answer questions any further.

I do not believe Mr. Ahmed's testimony. When I consider it, as I said, as he got further and further, I found him more and more unbelievable. That does not end the matter, though. I also have to consider whether

Mr. Ahmed's testimony raises a reasonable doubt in my mind. It does not. As I said, I have no hesitation in saying I do not believe him, and, again, his testimony does not raise a reasonable doubt.

I then have to consider, on the rest of the evidence, whether I am satisfied beyond a reasonable doubt.

I believe I may have earlier commented on Mr. Elkhidir's testimony with respect to the lighting conditions. But dealing with the contradictions the defence has submitted should raise a reasonable doubt in my mind. On reviewing the evidence, I do not find that Mr. Elkhidir did say the lighting conditions were good, but simply that he -- that it was clear to him. I find that not unusual. When the two of these, both Mr. Elkhidir and Mr. Ahmed, how close they would have been to each other, I do not see how it could be anything but clear to him who it was, and when he was swinging the knife at him, what he was carrying. So I find no difficulty in accepting that it was clear to him.

Again, when I look at the photograph that has been entered as Exhibit Number 2, I do not see any difficulty in seeing a vehicle from the windows that are in that photograph.

Mr. Elkhidir was not asked which window was his, but I accept that he could see his vehicle from his window. He had parked, and he admitted he had parked, in a tow-away zone.

With respect to whether or not Mr. Elkhidir should have known his finger was bleeding, in the circumstances that he was in, I do not find that unreasonable that he may have been bleeding quite badly from his finger, that it may have been dripping. It certainly was on his parka. But he was having a knife swung at him, was in an altercation, was in an altercation with somebody who was talking about there going to be a murder in the city that day. He did not note that his finger was bleeding. I also do not see any difficulty in him only receiving a small cut during this altercation. That was likely more luck than good management. Certainly a person backing away from somebody swinging a knife, which is the reasonable thing to do, one would certainly hope they would not be injured at all in backing away. At some point the knife did touch Mr. Elkhidir and there was a small cut. He was not fighting Mr. Ahmed in a physical fight here where Mr. Ahmed had the knife; he was trying to get away from him. So I see no difficulty with that, with it only being a small cut.

I also do not see any unreasonableness in Mr. Elkhidir going back outside when he thought something was being done to his vehicle or with him backing away from Mr. Ahmed when the knife was being swung at him. He testified that in his culture, it would be -- he would lose face if he went back into the apartment. I did not find any of his explanations were that unreasonable. His story made sense, I found. I found he testified in a clear manner. He answered the questions. I find he did not try to minimize what had happened, nor did he try to exaggerate it. Nor did he try to evade questions. I found he was trying to answer the questions honestly and that he was listening to the questions before he answered them. He certainly made admissions in that he did admit that he was angry. He did admit that he could not see the knife from inside the apartment building. He did not try and exaggerate and say he saw Mr. Ahmed out there with the knife, trying to do something to his car. I found that he was testifying as honestly as he could and was trying to give answers in as fair way as he could. I accept his testimony.

The other issue that I do have to consider is whether or not I am satisfied beyond a reasonable doubt that Mr. Ahmed assaulted

Mr. Elkhidir using a weapon; that is, a stun gun.

There is evidence from Mr. Elkhidir as to the device that was being used. I accept that evidence that there was one, that there was electricity coming out of the end of it, that it was white electricity. From his description, from his actions, I accept that there was some sort of a current coming out of the device that Mr. Ahmed was waving. The Merriam Webster Dictionary, the on-line dictionary, defines "stun gun". It is, as I said earlier today -- it is not a technical term. I do not find it a term of art. I find it simply a term that is now in our vocabulary. It is defined as "a weapon designed to stun or immobilize (as by electric shock) rather than kill or injure the one affected." I find that from Mr. Elkhidir's testimony, what he described would be a stun gun. I looked to the definition of "weapon" in the Criminal Code, which means: any thing used, designed to be used or intended for use. Subsection (b). This is in Section 2 of the definition section. Subsection (b) is: for the purpose of threatening or intimidating any person. Mr. Ahmed's actions that day toward Mr. Elkhidir with the device, which I find was a stun gun in the normal sense of the word, was to intimidate at the very least.

So on all of the evidence, I find I am convinced beyond a reasonable doubt that on the 18th of January this year, Mohammed Ahmed did assault Muntasir Elkhidir with a weapon; that is, a stun gun. There will be a conviction on Count Number 1. Further, I find that on the same date, Mohammed Ahmed did assault Muntasir Elkhidir with a weapon; that is, a knife, and there will be a conviction on Count Number 2. On Count Number 4, I find he did threaten to kill Muntasir Elkhidir, and there will be a conviction on Count Number 4. Count Number 3 was dismissed earlier today.

Counsel, can we proceed to sentencing?

MR. LEPAGE: Crown is ready, Your Honour.

MS. NIGHTINGALE: I would like a short moment with my client, if that's all right.

THE COURT: Do you want to do sentencing today, Ms. Nightingale? Either way, there is nothing else scheduled for today, but I do not know how long you would...

MS. NIGHTINGALE: If I could have ten minutes, Your Honour.

THE COURT: Also, Counsel, there is a Victim Impact Statement on this file. I will ask the clerk to open that now and distribute that, and you can also review that. You can let the clerk know when you are ready.

MS. NIGHTINGALE: Thank you.

(ADJOURNMENT)

THE COURT: Mr. Lepage.

MR. LEPAGE: Yes, Your Honour. I believe first comments would be the Victim Impact Statement. This -- I submit that there is an effect, although it seems to his wife and social standing. Given comments, I would still say it would be an acceptable Victim Impact Statement.

THE COURT: Ms. Nightingale.

MS. NIGHTINGALE: Well, certainly there are points of relevance in here, but I do note that two of the four points he makes do relate specifically to the impact upon his wife, not on him. This statement is supposed to be directed towards the impact on him. Obviously there's some correlation between what his family members are experiencing and himself, but I do just note that it is stated in such a way that it is what's happened to her, not him.

THE COURT: With respect to the effect on others by the crimes, I note that under Section 722(4): "For the purposes of this section..." which is the section dealing with Victim Impact Statements, "'victim', in relation to an offence, means a person to whom harm was done or who suffered physical or emotional loss as a result

of the commission of the offence," and I would certainly find that Mr. Elkhidir's -- or Mr. Elkhidir's wife would fall within that definition. So I will consider the Victim Impact Statement as it has been filed.

MR. LEPAGE: Thank you, Your Honour.

As far as submissions to sentence, the Crown does not have a record to present for Mr. Ahmed. So this is a first conviction situation. However, what we submit is very aggravating in this situation is the protracted aspect of the violence against the same victim. We are dealing with one day, it is over a period of time, and different weapons involved. So in that respect, we submit that is extremely aggravating.

Given the knife situation, I submit we are also -- we are lucky we are not dealing with further or more dangerous injuries. And emotionally, I submit this was an extremely serious situation in that Mr. Elkhidir testified that when he saw the knife, he felt he was a dead man, and in that respect, it is entirely in line with the situation he was facing. So given all of that, I submit that this is a serious conviction, serious offence, and for that reason, even though it is a first conviction, we are asking for jail, a global jail situation for the

charges of four to six months followed by one year of probation: Keep the peace and be of good behaviour, no contact with Muntasir Elkhidir or his wife and family, nor to approach his residence. We are also asking for a firearm prohibition order and a mandatory DNA order should issue on this.

Subject to any questions Your Honour may have, those are Crown's submissions.

THE COURT: Thank you. Ms. Nightingale.

MS. NIGHTINGALE: Your Honour, as you've heard, Mr. Ahmed is 41 and he does drive a cab. He tells me that his regular work schedule is to work seven days a week, generally in the night shift which begins 4 p.m. and then ends at 4 a.m. He does, however, arrangements that are fairly flexible and he can take half days or days and so on.

His family remaining in Ethiopia is only his 80-year-old grandmother. His parents have died. He has a brother and sister who live in England. He tells me that of -- with regards to his grandmother, he sends her money every month and he would be very distressed if he was unable to do so in the future. He is apparently the primary source of financial support for her there. As a result, what ultimately I will ask

the Court is that if jail is to be imposed, that it be such that he can continue to work, whether it be a sentence then that is intermittent or otherwise.

The circumstances themselves as found by Your Honour after this trial are such that while Mr. Muntasir -- or Mr. Elkhidir describes what would clearly have been significant threats to him both verbally and with the weapons, his evidence is such that it's clear, in my submission, that what he described is not in any way active attempts at actually causing that harm. I mean, he does say there was no swinging of the knife at his stomach, there was no jabbing or running towards him with the knife or the stun gun. In my submission, what he described was something that is clearly more associated with prolonged efforts to frighten as opposed to efforts to harm physically.

Now, the fact that there was a cut was described by Your Honour already as perhaps just good luck. But I would submit that it is important to note that the cut was described by the complainant as well as not too deep and that it didn't hurt him much and didn't bother him much.

It's very clear, given what Mr. Elkhidir

says Mr. Ahmed was using, that if Mr. Ahmed had been intent on hurting him, very serious harm could have or perhaps would have occurred.

THE COURT: Well, as long as Mr. Elkhidir was not able to protect himself. I think the fact that serious harm did not occur is not necessarily because of Mr. Ahmed's actions.

MS. NIGHTINGALE: But I do think that there has to be some notice taken of the fact that Mr. Elkhidir does not describe him as actually charging him or in any way, you know, really going that next step to making sure there was physical contact between them. He does always describe there being a distance between the two of them. And, fine, Mr. Elkhidir says that he is continuing to back up, but there are other ways to accommodate for that as well.

THE COURT: But if the cut had not been to his little finger, one wonders where it might have been to. He was close enough to cut him, Ms. Nightingale.

MS. NIGHTINGALE: Well, be that as it may, we are just dealing with the reality of a small cut to the finger and no other allegations of attempts to injury in other ways.

Now, as I have said, Your Honour, I know that the Crown has asked you for some period of

custody. I should indicate that Mr. Ahmed has actually spent approximately a week in remand. Upon his arrest he was kept in custody. He advises me that he was actually kept for two days without clothing or shoes, and that on his very first court appearance, he was actually brought to court without footwear at all. This had a very profound effect upon him. It was a very disturbing experience for him, and something which has had a lasting effect on him. He is very uncomfortable about the prospects of going back into custody.

He's also very concerned about losing his job, as I've indicated to you. He's received some information that any criminal conviction may result in the withdrawal of his chauffeur's licence, but he has not had that confirmed in any written way that I can actually present to the Court. It will obviously be something that his employers will know, but he hopefully is mistaken and will be able to maintain that employment. Assuming that it is the case, he will not lose his employment as I'm asking Your Honour to consider a sentence of custody that would be in the less-than-90-day range that can be served on weekends.

One point that he's aware of, and I would

remind Your Honour, as I'm sure you are aware, is that if such a sentence is given, he will in effect serve more time in custody than if a continuous period of custody were imposed, and I do think that can be taken into account on his behalf as well.

Subject to any questions, those are my submissions.

THE COURT: Thank you.

Mr. Ahmed, is there anything you would like to say before I pass sentence?

THE ACCUSED: Go ahead. No.

THE COURT: There are three different offences before the Court that Mr. Ahmed is to be sentenced on: two assault with a weapon and one uttering threats. However, they all do arise from what I will call a single incident, even though it may have been a somewhat protracted incident as the Crown has referred to it as.

It was persistent. I find, besides the persistence shown, one of the most aggravating factors here is the effect that this has had on the victim and his family.

I note there are a number of people in the courtroom today, and there is a comment in the Victim Impact Statement about "the social atmosphere", using the victim's words, that

surrounds him now in Yellowknife.

I certainly could tell from the victim's testimony at the end when he said if it were up to him, he would withdraw the charges and that he felt a certain amount of tolerance; and whereas I can accept that, I also think that -- I hope people who think that those charges should be withdrawn or should have been withdrawn stop and think about the message that sends; I hope people do not consider the fact that they were not withdrawn the fault of the victim, or that it should impact negatively on the victim here. I think all members of the community want to live in a community that, if it were possible, had no violence. But certainly any kind of violence has to be deterred, and people have to realize that when they do resort to violence, when they do resort to stun guns, when they do resort to lies, whether it be to threaten somebody, even if it may not be their intention to actually disable somebody, to actually stab somebody, that that has to be deterred. That if something is not done about that, if a message is not sent to people that that will not be tolerated, then there is the danger that the message sent is that it will be tolerated, and violence should never be tolerated. I do not think any of us want to

live in that type of a community. Your knives have to be left in the kitchen where they belong. I do not find it of any comfort when somebody is swinging a knife at a person that their intention may not have been to actually stab that person.

I do take into account that there is no prior record, that this is your first time before the Court, and I also do take into account the one week that you have spent in pre-trial custody.

Is it actually one week or just three days if the offence date is the 18th and the recognizance is dated the 21st?

MS. NIGHTINGALE: I apologize. I'm told now it is three days, not one week. My mistake.

THE COURT: That is somewhat less than a week, but I do take that into account that you were in custody for three days.

I think all sentences have to contribute to the respect for the law, and in this case especially, the maintenance of a just, peaceful, and safe community. I also recognize that a sentence has to be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Mr. Ahmed, I want you to know that I do consider this a serious offence. I do not ever

consider waving a knife around as "not that bad".

I also take into account rehabilitation. I have not heard anything during this trial that causes me great concerns in that area. I have not heard that Mr. Ahmed has a problem. But, Mr. Ahmed, if there is one, get some help.

On Count Number 4, that is the charge of uttering threats to cause death, there will be a sentence of 90 days; on Count Number 2, the assault with a weapon (that is the knife), there will be a sentence of 60 days, concurrent; and on the assault with the weapon (that is the stun gun), there will be a sentence of 30 days, concurrent.

Now, Ms. Nightingale, Mr. Ahmed is applying to serve that intermittently, right?

MS. NIGHTINGALE: That is our request, yes.

THE COURT: Mr. Lepage, do you have any submissions on that?

MR. LEPAGE: No, I haven't, Your Honour.

THE COURT: You told me he works twelve hours a day, seven days a week. It will make it difficult to arrange an intermittent sentence. What would work best for him?

MS. NIGHTINGALE: We did discuss his turning himself in on Friday evening and being released Monday morning. He can arrange his work schedule

to allow for that. And it can be Friday at seven and released Monday at seven, or at eight, alternatively. It doesn't really matter.

THE COURT: Friday at six?

MS. NIGHTINGALE: That's fine, Your Honour.

THE COURT: All right, it will be an intermittent sentence, and you will be placed on probation for a period of 15 months. However, the intermittent sentence, dealing first with that, will commence this Friday, June 15th. You are to turn yourself into the custody -- the detachment, Mr. Lepage, or at the North Slave Correctional Centre?

RCMP OFFICER: At the Correctional Centre.

THE COURT: At the Correctional Centre?

So you are to turn yourself in to the North Slave Correctional Centre by Friday, June the 15th, at 6 p.m.

MR. LEPAGE: Your Honour, it's June 18th.

THE COURT: Is it?

MR. LEPAGE: Today's the 15th.

THE COURT: I am sorry.

THE COURT CLERK: Friday is June the 17th.

THE COURT: Friday, June 17th, at 6 p.m., to remain in custody until Monday, June 20th. June 20th at 8 a.m., and to turn yourself in every Friday thereafter at 6 p.m., to remain in

custody until Monday at 8 a.m. until your sentence is served.

Now, you will be on probation while you are on that sentence. The terms of your probation are that you keep the peace and be of good behaviour; report to the Court when you are required to do so; advise the Court or your probation officer of any change in your name, address or employment; and that until you are finished serving your sentence, you are not to consume any alcohol or non-prescription drugs. Once your intermittent sentence is over, that condition will no longer apply. The other condition that will be on your probation order for as long as you are on probation: For the entire 15 months, you are to have no contact with Muntasir Elkhidir or his family and you are not to attend at his residence.

Any other conditions on the probation,

Mr. Lepage?

MR. LEPAGE: No, Your Honour. Thank you.

THE COURT: Ms. Nightingale?

MS. NIGHTINGALE: No thank you.

THE COURT: All right. There will be an order for DNA. It is a primary designated offence, I believe; assault with a weapon.

MR. LEPAGE: That's correct, Your Honour.

THE COURT: All right. I will make that order, that Mr. Ahmed is to give a sample of his DNA for the DNA data bank.

I have considered whether or not it would be appropriate to impose a firearm prohibition in this case, and I have decided not to. Well, it is discretionary. Summarily. Although I will actually make that a term of the probation. I am not going to impose a firearm prohibition, but while you are on probation, you are not to have any firearms or prohibited weapons or ammunition. All right?

THE ACCUSED: Okay.

THE COURT: You understand that? And there will be a victim of crime surcharge. Mr. Ahmed is working. The surcharge will be as set out in the legislation, which I believe is \$50 per count for a total of \$150. Time to pay on the victim of crime surcharge?

Before I get a definite answer on that, and I am sorry, Counsel, I do not mean to jump around, there will also be an order of restitution on the probation order, a condition of restitution, for the \$175 for the ambulance service.

THE COURT CLERK: And that is for the benefit of the victim?

THE COURT: I will address that.

MS. NIGHTINGALE: If we could have six months,
Your Honour?

THE COURT: And that is realizing that he
will have to pay the \$175 first.

MS. NIGHTINGALE: Yes.

THE COURT: Going back to the probation
order, there will be a further condition that you
shall make restitution of \$175, and that shall be
paid to the Clerk of the Court for the benefit of
Mohammed Ahmed (sic). That is to be paid by --

MR. LEPAGE: To the benefit of Muntasir
Elkhidir, Your Honour.

THE COURT: I am sorry. Yes. For the
benefit of Mr. Elkhidir. And that has to be paid
by -- can that be paid by the end of August,
Ms. Nightingale?

MS. NIGHTINGALE: Well, if not, I can explain
the recourse; he can ask for more time.

THE COURT: It is not a fine extension,
though. It will be a term of the probation. So
the whole matter will have to be brought back to
court.

MS. NIGHTINGALE: Yes, I understand.

THE COURT: That is to be paid -- the \$175
restitution is to be paid by August 31st, 2005.
The victim of crime surcharge is to be paid by

December 16th, 2005.

Is that everything on this then.

MR. LEPAGE: Yes, it is. Thank you, Your Honour.

THE COURT: All right. Mr. Ahmed, you will have to sign some papers, but you will have to come back tomorrow to sign those papers. They will not be ready this afternoon to sign. Sign the probation order and the fine order. You can come back after 9:30. What time can you be here by?

THE ACCUSED: Before 4:30. Before you close.

THE COURT: All right. It will have to be before 4 o'clock in the afternoon. Okay?

THE ACCUSED: Before the office close.

THE COURT: Sorry?

THE ACCUSED: Before the office close.

THE COURT: Yes. It closes at four. I believe it is also closed over the lunch hour. So you want to come here between nine-thirty and noon or one and four.

THE ACCUSED: One and four.

THE COURT: And you have to come tomorrow and sign those. You understand?

THE ACCUSED: Yes, ma'am.

THE COURT: And that is on the third

floor. That is everything? We will close court.

.....

Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A), RPR
Court Reporter