T-1-CR-2005000624

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- V -

MICHAEL BRUNO CHINKON

TRANSCRIPT OF THE REASONS FOR SENTENCE DELIVERED BY THE HONOURABLE CHIEF JUDGE B.A. BRUSER, SITTING IN YELLOWKNIFE, IN THE NORTHWEST TERRITORIES, ON THE 3RD DAY OF FEBRUARY, A.D. 2006.

APPEARANCES:

MR. B. GAUNT:	COUNSEL FOR THE CROWN
MR. H. LATIMER:	COUNSEL FOR THE ACCUSED

(CHARGE UNDER S. 271 OF THE CRIMINAL CODE OF CANADA)

BAN ON PUBLICATION OF COMPLAINANT/WITNESS PURSUANT TO SECTION 486 OF THE CRIMINAL CODE

THE COURT: THE CHARGE IS THAT ON OR ABOUT THE 26TH DAY OF JANUARY, 2005, AT WHAT IS REFERRED TO AS THE HAMLET OF RAE-EDZO, NOW BECHOKÖ, IN THIS JURISDICTION, THIS OFFENDER, BORN JANUARY 27TH, 1986, COMMITTED A SEXUAL ASSAULT ON THE COMPLAINANT, WHOSE INITIALS ARE T.M.

THERE IS A COURT-ORDERED BAN PROTECTING THE IDENTITY OF THE COMPLAINANT FROM BEING BROADCAST, PUBLISHED, OR TRANSMITTED. MADAM REPORTER, SHOULD A TRANSCRIPT BE ORDERED, THE TRANSCRIPT IS TO MAKE REFERENCE TO THE BAN ON THE COVER PAGE.

I RETURN TO A THEME THAT MR. LATIMER TOUCHED UPON AND WHICH HAS BEEN MADE ABUNDANTLY CLEAR TO THIS COURT. MICHAEL CHINKON IS AN IMMATURE 20-YEAR-OLD. THERE IS NO QUESTION ABOUT IT. HE HAS NO CRIMINAL RECORD. HE IS ABORIGINAL; A FACTOR THAT I CAN TAKE INTO ACCOUNT UNDER THE CRIMINAL CODE. HE WAS ONE DAY SHORT OF HIS 19TH BIRTHDAY WHEN HE SEXUALLY ASSAULTED THIS VICTIM ON THE DATE I REFERRED TO. THE VICTIM WAS 18 YEARS OF AGE WHEN SHE TESTIFIED.

THE CROWN PROCEEDED BY WAY OF SUMMARY CONVICTION. AT LEAST TWICE IN THE PROCEEDINGS, I FELL INTO THE ERROR OF TREATING THIS AS AN INDICTABLE OFFENCE BECAUSE OF THE SERIOUSNESS OF WHAT OCCURRED, AND I FIND IT REMARKABLE THAT THE

CROWN DID PROCEED IN THIS WAY. BUT THIS IS THE DISCRETION OF THE CROWN TO EXERCISE AND IT IS NOT FOR THE COURT TO QUESTION OR TO TRY TO UNDERSTAND HOW IT IS THAT THIS OCCURRED. I MERELY POINT OUT THAT AS WEIGHED AGAINST THE EVIDENCE, IT APPEARS TO BE A REMARKABLE CHOICE OF THE WAY TO PROCEED. AND BECAUSE THE CROWN PROCEEDED THIS WAY, MR. CHINKON, BY WAY OF SUMMARY CONVICTION, IF THERE IS TO BE IMPRISONMENT, THE CAP ON IT AT THE UPPER LEVEL IS 18 MONTHS. I CANNOT GO FURTHER THAN THAT. HAD THE CROWN GONE BY INDICTMENT, I COULD HAVE CONSIDERED UP TO TEN YEARS.

THE ACCUSED: TEN YEARS.

THE COURT: THE CIRCUMSTANCES OF WHAT OCCURRED ARE NOW IN MORE DETAIL AS FOLLOWS. I WILL NOT GO INTO ALL THE EVIDENCE. I WILL FOCUS ON WHAT OCCURRED IN THE BATHROOM OF THIS HOME WHERE THE VICTIM HAD BEEN VISITING AND WHERE A SMALL PARTY HAD BEEN HAPPENING.

THE ACCUSED HAD BEEN DRINKING. THE VICTIM, DURING THE COURSE OF THE EVENTS, WENT INTO A WASHROOM. THERE HAD BEEN NO RELATIONSHIP BETWEEN HER AND THE ACCUSED BEFORE SHE WENT INTO THE WASHROOM. THEY APPEAR TO HAVE KNOWN EACH OTHER AND APPEAR TO HAVE BEEN FRIENDS AND THAT WAS THE EXTENT OF IT. SHE WAS ABOUT TO CLOSE THE DOOR OF THE WASHROOM. THAT IS WHEN THE ACCUSED ENTERED.

ONLY THE TWO OF THEM WERE INSIDE. THE OFFENDER TURNED THE LIGHTS OFF. HE LOCKED THE DOOR. THE VICTIM ENDED UP AGAINST THE WALL OF THE BATHROOM. HE WENT AGAINST HER. HE PINNED HER AGAINST THE WALL. SOMEHOW SHE ENDED UP ON THE FLOOR. HE WAS ON TOP OF HER. HE PULLED HER PANTS DOWN TO HER ANKLES AND HE PULLED HER UNDERPANTS DOWN. HE PULLED HIS OWN PANTS DOWN. IT SEEMS TO ME FROM THE EVIDENCE THAT HIS OWN PANTS WENT DOWN BEFORE HE WENT TO THE FLOOR, BUT IT IS NOT IMPORTANT FOR THE PURPOSES OF THE SENTENCING WHICH OCCURRED FIRST, THE FLOOR OR THE PANTS COMING DOWN, REGARDING BOTH PERSONS.

IN ANY EVENT, THERE THEY WERE ON THE FLOOR. SHE TOLD HIM TO STOP. SHE TRIED TO PUSH HIM OFF, BUT HE WAS TOO HEAVY. THERE WAS A KNOCK ON THE DOOR. IT WAS THE FRIEND OF THE VICTIM, SAYING WORDS TO THE EFFECT, "TRISHA, OPEN THE DOOR." THE ACCUSED HAD TOLD THE VICTIM NOT TO SAY ANYTHING, SO SHE SAID NOTHING.

WITH HIS HANDS, HE WAS TOUCHING HER VAGINA WHILE THE EVENTS WERE OCCURRING. AND SHE TESTIFIED IN CHIEF THAT HIS PENIS TOUCHED HER VAGINA. IN CROSS-EXAMINATION, WITH RESPECT TO THE ISSUE THAT I REFERRED TO EARLIER IN THE EXCHANGE WITH DEFENCE COUNSEL, THE PENIS, SHE SAID, WENT INTO HER "ALMOST". I FIND ON THE

EVIDENCE THAT HE TOUCHED HER VAGINA AREA WITH HIS HAND AND THAT HIS PENIS DID TOUCH HER VAGINA. I AM NOT PREPARED TO FIND THAT THE PENIS WENT FURTHER INTO IT. THIS STILL TAKES IT INTO A CATEGORY OF A VERY SERIOUS SEXUAL ASSAULT.

AT ONE POINT WHEN SHE HAD CONSIDERED YELLING FOR HELP, HIS HAND COVERED HER MOUTH.

THE IMPACT ON THE VICTIM HAS BEEN SIGNIFICANT. IT IS SUMMARIZED WELL AT PAGE 6 OF THE PRE-SENTENCE REPORT. I WILL REFER NOW TO PARTS OF THE REPORT UNDER THE HEADING "INTERVIEW WITH VICTIM". I HAVE ALSO TAKEN INTO ACCOUNT THE VICTIM IMPACT MATERIAL FILED AS AN EXHIBIT.

IN THE PRE-SENTENCE REPORT, SHE IS QUOTED AS SAYING "I HAVE NIGHTMARES AND TROUBLE SLEEPING SO I MISSED LOTS OF SCHOOL AND IT'S HARD TO CONCENTRATE ON SCHOOL." SHE MAKES OTHER COMMENTS AT THE THIRD PARAGRAPH DOWN, UNDERNEATH THE HEADING "INTERVIEW WITH VICTIM". I AM NOT GOING TO READ IT. I DO NOT THINK THAT THE PUBLIC OUGHT TO BE PRIVY TO WHAT IS IN THAT PARAGRAPH; BUT I HAVE TAKEN IT INTO ACCOUNT.

IN THE LAST PARAGRAPH UNDER THAT HEADING, THE VICTIM REPORTS THAT THE INCIDENT AFFECTED HER RELATIONSHIP NOT ONLY WITH HER FRIENDS BUT ALSO WITH HER FAMILY, ESPECIALLY HER MOTHER. IT HAS AFFECTED HER ABILITY TO GO TO SCHOOL, AND SHE

JUST WANTS TO PUT IT BEHIND HER.

THE BACKGROUND OF THE OFFENDER IS EXPLORED IN DEPTH BY THE AUTHOR OF THE REPORT. I HAVE CONSIDERED ALL OF IT ALONG WITH EVERY OTHER PART OF THE PRE-SENTENCE REPORT. THE ACCUSED HAD SOME ROUGH SPOTS IN HIS BACKGROUND. HIS FATHER LEFT THE FAMILY HOME. THE PARENTS SEPARATED IN 2000. AS A CHILD, A YOUNG ONE, HE WITNESSED HIS FATHER BEATING UP ON HIS MOTHER WHEN THE FATHER DRANK. THE PARENTS FOUGHT. WHEN THEY DID SO, MR. CHINKON WOULD BECOME FRIGHTENED. HE WANTED TO LEAVE. HE REPORTS ON HOW SAD HE FELT. HIS BACKGROUND HAS NOT BEEN WHAT ONE WOULD CALL PRIVILEGED.

WHEN I PUT TOGETHER THE PRE-SENTENCE REPORT, THE MATERIAL FILED TODAY, THE CIRCUMSTANCES OF WHAT OCCURRED AND HOW IT OCCURRED, THE SENTENCING EVIDENCE AND THE SUBMISSIONS, I ARRIVE AT THE CONCLUSION I REFERRED TO EARLIER, THAT BEYOND ANY DOUBT MICHAEL BRUNO CHINKON, COMMONLY REFERRED TO AS JONATHAN, IS IMMATURE. HE IS YOUNG, BUT HE IS IMMATURE FOR HIS AGE. HE IS AN IMMATURE ADULT AND HE IS AN IMMATURE 20-YEAR-OLD. THE MATERIAL I HAVE REFERRED TO BEARS THIS OUT.

WHEN HE COMMITTED THE SEXUAL ASSAULT, WHICH WAS ONE OF OPPORTUNITY AND IMPULSE RATHER THAN A CAREFULLY PLANNED COURSE OF ACTION, HE DID NOT

THEN APPEAR TO APPRECIATE HOW HIS BEHAVIOUR IMPACTED UPON THE VICTIM. THIS REALIZATION SLOWLY SEEPED INTO HIS CONSCIOUSNESS AFTER HE WAS ARRESTED AND RELEASED ON A PROMISE TO APPEAR AT THE BEGINNING OF FEBRUARY LAST YEAR.

THE CROWN IS ASKING THE COURT TO IMPOSE A PERIOD OF INCARCERATION IN THE RANGE OF 12 TO 15 MONTHS. THE CROWN IS OPPOSED TO A CONDITIONAL SENTENCE ORDER.

A CONDITIONAL SENTENCE ORDER, FOR THE BENEFIT OF THE PUBLIC, IS A PERIOD OF IMPRISONMENT, BUT IT IS NOT IMPRISONMENT IN A CORRECTIONAL CENTRE. USUALLY IT IS SERVED IN A HOME IN THE COMMUNITY.

THE CROWN HAS ASKED THE COURT TO MAKE A DNA ORDER, AND I DO NOW MAKE IT. IT IS A PRIMARY DESIGNATED OFFENCE. THERE IS NO REASON NOT TO MAKE IT.

THE CROWN IS NOT ASKING THE COURT TO MAKE A STAND-ALONE FIREARM PROHIBITION ORDER, AND THE CROWN IS NOT ASKING THE COURT TO HAVE THE OFFENDER REGISTER UNDER THE SEX OFFENDER REGISTRATION INFORMATION ACT.

THE DEFENCE ARGUES THAT A CONDITIONAL SENTENCE OF IMPRISONMENT OR PROBATION WOULD BE A MORE FIT AND PROPER SENTENCE. THE PROBATION SENTENCE, IF IT WERE TO BE GRANTED, WOULD HAVE TO

BE IN ADDITION TO IMPRISONMENT. IMPRISONMENT COULD BE ONE DAY, OR IT COULD BE BY WAY OF A SUSPENDED SENTENCE. THE DEFENCE IS NOT ASKING THAT IT BE BY WAY OF A CONDITIONAL DISCHARGE.

THE DEFENCE ARGUES THAT REHABILITATION AND REINTEGRATION, TWO IMPORTANT SENTENCING CONSIDERATIONS, WOULD BE BEST ACHIEVED BY MEANS OF A COMMUNITY-BASED SENTENCE. THE DEFENCE ARGUES THAT THE IMMATURITY OF THE OFFENDER, THE ABSENCE OF A RECORD, THE FACT THAT THIS WAS OUT OF CHARACTER OR AN ISOLATED INCIDENT, ARE MITIGATING. THAT IS, THEY COUNT IN FAVOUR OF THE ACCUSED. THE CROWN, ON THE OTHER HAND, SAYS THAT THERE IS NOTHING MITIGATING. I PREFER THE ARGUMENT OF THE DEFENCE IN THIS RESPECT.

THE DEFENCE SAYS THAT MR. CHINKON IS NOT A DANGER TO THE COMMUNITY. THE CROWN DOES NOT ARGUE THAT HE POSES A DANGER TO THE COMMUNITY. BUT WHETHER OR NOT HE IS A DANGER TO THE COMMUNITY IS NOT BY ITSELF DETERMINATIVE. THE DEFENCE PLEADS FOR ONE LAST CHANCE FOR MR. CHINKON BY WAY OF SOMETHING OTHER THAN INCARCERATION.

IN ARGUING THAT THERE ARE SUFFICIENT AGGRAVATING FACTORS TO MAKE INCARCERATION NECESSARY, AND SUPPORTING THAT ARGUMENT WITH THE GOALS OR OBJECTIVES, PURPOSE AND PRINCIPLES OF

SENTENCING, THE CROWN HAS ADDRESSED THE CIRCUMSTANCES OF WHAT OCCURRED, THE KEY PARTS OF WHICH I HAVE ALREADY REVIEWED, THE EFFECT ON THE VICTIM, WHICH I HAVE ALREADY REVIEWED, AND THE ABSENCE OF AN INDICATION THAT HE FULLY ACCEPTS RESPONSIBILITY FOR WHAT HE DID, PARTICULARLY IN THE PRE-SENTENCE REPORT. ALTHOUGH IN COURT TODAY, HE ACKNOWLEDGED, WHEN I ASKED HIM, THAT WHAT HE DID MADE HIM -- OR MAKES HIM FEEL BADLY, AND HE ACKNOWLEDGES THAT IT WAS AGAINST HER WILL.

THE CROWN SAYS THAT PRIMARY DETERRENCE (THAT IS, A NEED TO DISCOURAGE THIS OFFENDER FROM REOFFENDING), SECONDARY OR GENERAL DETERRENCE, WHICH IS THE NEED TO DISCOURAGE THE PUBLIC GENERALLY (THAT IS, THOSE OUT THERE WHO MIGHT DO THIS SORT OF THING), AND DENUNCIATION, ALONG WITH PARITY (THAT IS, HOW OTHER OFFENDERS IN THESE TYPES OF CIRCUMSTANCES ARE TREATED), MAKE IMPRISONMENT NECESSARY.

CROWN COUNSEL ALSO ARGUES THAT THE OFFENDER IS NOT CREDIBLE. CERTAINLY THERE ARE GAPS IN HIS CREDIBILITY. HE TESTIFIED ON THE LAST DATE THAT HIS MARKS WERE 80 PERCENT OR BETTER. THE EVIDENCE TODAY SHOWS THAT THIS WAS NOT SO. BUT I DO NOT FIND THAT HE WAS LYING. I THINK THIS IS AN ASPECT OF HIS IMMATURITY. HE HAD TWO MARKS 80 PERCENT OR BETTER AND ASSUMED THAT IS HOW HE MUST

HAVE DONE. HE DOES NOT HAVE A GREAT DEAL OF INSIGHT, AND THIS IS THE POINT I AM MAKING AT THIS JUNCTURE.

THE CROWN SAYS, ADDITIONALLY, BECAUSE THERE IS SUCH A HIGH PREVALENCE OF THIS SORT OF OFFENCE IN THIS JURISDICTION, A CONDITIONAL SENTENCE ORDER, ALONG WITH THE OTHER FACTORS, WOULD BE INAPPROPRIATE, AND I INFER FROM THIS THAT THE CROWN IS ALSO ARGUING THAT PROBATION ALONG WITH A SUSPENDED SENTENCE WOULD BE INAPPROPRIATE, BECAUSE THE CROWN IS STRONGLY ARGUING FOR INCARCERATION.

I TURN TO SECTION 742.1 OF THE CRIMINAL CODE. THIS IS THE SECTION COVERING THE IMPOSITION OF A CONDITIONAL SENTENCE. IT READS THAT:

> "WHERE A PERSON IS CONVICTED OF AN OFFENCE, EXCEPT AN OFFENCE THAT IS PUNISHABLE BY A MINIMUM TERM OF IMPRISONMENT, AND THE COURT (A) IMPOSES A SENTENCE OF IMPRISONMENT OF LESS THAN TWO YEARS, AND (B) IS SATISFIED THAT SERVING THE SENTENCE IN THE COMMUNITY WOULD NOT ENDANGER THE SAFETY OF THE COMMUNITY AND WOULD BE CONSISTENT WITH THE

FUNDAMENTAL PURPOSE AND
PRINCIPLES OF SENTENCING ... THE
COURT MAY, FOR THE PURPOSE OF
SUPERVISING THE OFFENDER'S
BEHAVIOUR IN THE COMMUNITY, ORDER
THAT THE OFFENDER SERVE THE
SENTENCE IN THE COMMUNITY,
SUBJECT TO THE OFFENDER'S
COMPLYING WITH THE CONDITIONS OF
A CONDITIONAL SENTENCE ORDER MADE
UNDER SECTION 742.3."

THERE YOU HAVE IT. THAT BRIEF SENTENCE HAS SPAWNED A CONSIDERABLE VOLUME OF LAW, INCLUDING CASES FROM THE SUPREME COURT OF CANADA. I WILL REFER TO SOME OF THE KEY PRINCIPLES THAT HAVE EMERGED FROM THE SUPREME COURT OF CANADA THAT I MUST FOLLOW AND DO FOLLOW. THE EASIEST WAY TO DO THIS IS FROM THE ANNOTATIONS FOLLOWING SECTION 742.1 IN MARTIN'S CRIMINAL CODE, 2006 EDITION. I BELIEVE THE ANNOTATIONS ARE CORRECT. THEY ARE OFTEN REFERRED TO IN THESE COURTS. THE PRINCIPLES ARE EXTENSIVE, AND I WILL NOW REFER TO SOME OF THE MOST IMPORTANT ONES, ALTHOUGH I HAD CONSIDERED A WIDER BODY OF LAW IN ARRIVING AT THE ULTIMATE SENTENCE.

FROM THE SUPREME COURT CASE OF PROULX IN 2000, THE COURT HELD THAT "UNLIKE PROBATION,"

WHICH IS PRIMARILY A REHABILITATIVE SENTENCE, "A CONDITIONAL SENTENCE IS INTENDED TO ADDRESS BOTH PUNITIVE AND REHABILITATIVE OBJECTIVES."

THE PROULX JUDGMENT MAKES IT CLEAR THAT CONDITIONAL SENTENCES SHOULD GENERALLY INCLUDE PUNITIVE CONDITIONS THAT OPERATE TO RESTRICT THE LIBERTY OF THE OFFENDER. "THEREFORE," THE SUPREME COURT SAID, "CONDITIONS SUCH AS HOUSE ARREST OR STRICT CURFEWS SHOULD BE THE NORM." IN DECIDING WHETHER TO IMPOSE A CONDITIONAL SENTENCE, THE COURT, AT THE FIRST STAGE, MERELY CONSIDERS WHETHER TO EXCLUDE THE TWO POSSIBILITIES OF A PENITENTIARY TERM OR A NON-CUSTODIAL TERM.

IN THIS CASE, THE CROWN IS NOT ASKING THAT MR. CHINKON RECEIVE A PENITENTIARY TERM, AND I AM NOT CONSIDERING A PENITENTIARY TERM. THAT POSSIBILITY IS EXCLUDED. IN MY VIEW, A NON-CUSTODIAL SENTENCE IS SIMPLY OUT OF THE QUESTION. THERE ARE TOO MANY FACTORS THAT OPERATE IN THIS CASE TO MAKE IMPRISONMENT NECESSARY BUT NOT TO THE POINT WHERE IT WOULD BE A PENITENTIARY SENTENCE. I HAVE NOW EXCLUDED THOSE TWO TYPES OF SENTENCE.

IN MAKING THESE PRELIMINARY DETERMINATIONS, A PENITENTIARY SENTENCE BEING EXCLUDED AND A NON-CUSTODIAL SENTENCE BEING EXCLUDED, THE PROULX CASE SAID THAT ALL I HAVE TO CONSIDER, AS I HAVE

DONE, IS THE FUNDAMENTAL PURPOSE AND PRINCIPLES OF SENTENCING TO THE EXTENT TO NARROW THE RANGE OF SENTENCES FOR THIS OFFENDER FOR HAVING COMMITTED THIS OFFENCE IN THESE CIRCUMSTANCES UPON THIS VICTIM.

NOW, WHAT I HAVE TO DO IS CONSIDER THE PRINCIPLES OF SENTENCING IN A COMPREHENSIVE WAY IN DETERMINING WHETHER TO IMPOSE A CONDITIONAL SENTENCE.

THE PROULX JUDGMENT HAS ALSO SAID THAT AT THIS STAGE THE COURT "MAY PROPERLY CONCLUDE THAT THE TERM OF A CONDITIONAL SENTENCE," IF MADE, "SHOULD BE LONGER THAN IT WOULD HAVE BEEN IF THE OFFENDER WERE SENTENCED TO IMMEDIATE INCARCERATION."

THE THIRD PRINCIPLE ANNOTATED IN MARTIN'S FROM PROULX IS THAT THE SAFETY OF THE COMMUNITY ISSUE IS MERELY ONE OF THE THREE PREREQUISITES. IN OTHER WORDS, IF THE COURT CONCLUDES THAT THE OFFENDER DOES NOT POSE A DANGER TO THE SAFETY OF THE COMMUNITY, AS I HAVE DONE IN THIS CASE, THIS IS ONLY ONE FACTOR. IT IS NOT THE PRIMARY CONSIDERATION. IT IS NOT ENOUGH FOR THE DEFENCE TO SAY MY CLIENT DOES NOT POSE A THREAT FOR THE COMMUNITY, THEREFORE, THERE MUST BE A CONDITIONAL SENTENCE. INDEED, I DO NOT HEAR MR. LATIMER TO BE MAKING THAT ARGUMENT. IT IS SIMPLY A BRANCH

OF HIS ARGUMENT, AS IS APPROPRIATE FOR HIM TO ARGUE.

THE SAFETY OF THE COMMUNITY, TO BE MORE SPECIFIC, REFERS ONLY TO THE THREAT BY THE OFFENDER BEFORE THE COURT AND NOT IN A GREATER CONTEXT.

WHEN THE COURT CONSIDERS THE DANGER TO THE COMMUNITY, THE COURT WOULD HAVE TO CONSIDER THE RISK OF THE OFFENDER REOFFENDING AND THE GRAVITY OF THE DAMAGE THAT HE COULD DO. A SMALL RISK OF VERY HARMFUL FUTURE CRIME, PARTICULARLY IN THE CASE OF VIOLENT OFFENDERS, MAY WARRANT A FINDING THAT THERE IS A DANGER TO THE COMMUNITY. THE POSITION TAKEN BY THE CROWN AND MY INDEPENDENT ASSESSMENT RESOLVE THIS ISSUE.

THE FOURTH ANNOTATED PRINCIPLE IS THAT A CONDITIONAL SENTENCE IS AVAILABLE FOR ALL OFFENCES IN WHICH THE STATUTORY PREREQUISITES HAVE BEEN MADE OR SATISFIED. THERE IS NO PRESUMPTION THAT CONDITIONAL SENTENCES ARE INAPPROPRIATE FOR SPECIFIC OFFENCES. THIS IS IMPORTANT IN THIS CASE BECAUSE IT IS NOT THE CASE THAT BECAUSE THERE IS A HIGH PREVALENCE OF SEXUAL ASSAULTS IN THIS JURISDICTION, THAT THERE IS A PRESUMPTION AGAINST A CONDITIONAL SENTENCE ORDER. NEVERTHELESS, THE SERIOUSNESS OF WHAT THE OFFENDER HAS DONE AND THE GRAVITY OF THE OFFENCE

ARE CLEARLY RELEVANT TO DETERMINING WHETHER A CONDITIONAL SENTENCE IS APPROPRIATE IN THE CIRCUMSTANCES.

THE FIFTH PRINCIPLE ANNOTATED IS THAT THERE IS NO PRESUMPTION IN FAVOUR OF A CONDITIONAL SENTENCE ONCE THE PREREQUISITES HAVE BEEN SATISFIED. BUT PROULX SAID THAT SERIOUS CONSIDERATION SHOULD BE GIVEN TO A CONDITIONAL SENTENCE IN ALL CASES WHERE THE STATUTORY PREREQUISITES HAVE BEEN SATISFIED.

THE SIXTH PRINCIPLE ANNOTATED IS THAT A CONDITIONAL SENTENCE CAN PROVIDE A SIGNIFICANT AMOUNT OF DENUNCIATION (DENUNCIATION IS A KEY PART OF THE CROWN'S ARGUMENT TODAY) PARTICULARLY WHERE ONEROUS CONDITIONS ARE IMPOSED AND THE TERM OF THE SENTENCE IS LONGER THAN WOULD HAVE BEEN IMPOSED BY A TERM OF INCARCERATION. THE COURT HELD THAT "GENERALLY, THE MORE SERIOUS THE OFFENCE, THE LONGER AND MORE ONEROUS THE CONDITIONAL SENTENCE SHOULD BE."

THE SEVENTH ANNOTATED PRINCIPLE IS THAT A CONDITIONAL SENTENCE CAN PROVIDE SIGNIFICANT DETERRENCE IF SUFFICIENTLY PUNITIVE CONDITIONS ARE IMPOSED AND IF THE COURTS ARE WARY OF PLACING TOO MUCH WEIGHT ON DETERRENCE WHEN CHOOSING BETWEEN A CONDITIONAL SENTENCE AND INCARCERATION. WE HAVE TO BE WARY OF PLACING TOO MUCH WEIGHT ON

THE DETERRENCE ASPECT OF IT. BUT PROULX ALSO SAYS THAT THERE MAY BE CIRCUMSTANCES WHERE THE NEED FOR DETERRENCE WARRANTS INCARCERATION.

THE EIGHTH PRINCIPLE ANNOTATED IS THAT "WHEN THE OBJECTIVES OF REHABILITATION, REPARATION AND PROMOTION OF A SENSE OF RESPONSIBILITY MAY REALISTICALLY BE ACHIEVED, A CONDITIONAL SENTENCE WILL LIKELY BE THE APPROPRIATE SANCTION..." BUT THEN THE COURT WENT ON TO ADD THAT THIS WOULD HAVE TO BE SUBJECT TO CONSIDERATIONS OF DENUNCIATION AND DETERRENCE.

THE NINTH ANNOTATED PRINCIPLE IS THAT WHILE AGGRAVATING FACTORS, POINTED OUT BY THE CROWN TODAY, RELATING TO THE OFFENCE AND/OR TO THE OFFENDER "INCREASE THE NEED FOR DENUNCIATION AND DETERRENCE, A CONDITIONAL SENTENCE MAY BE IMPOSED EVEN IF SUCH FACTORS ARE PRESENT".

THE NEXT ANNOTATED PRINCIPLE IS AN IMPORTANT ONE IN EVERY CASE OF THIS KIND WHERE A CONDITIONAL SENTENCE IS SOUGHT: "NEITHER PARTY HAS THE ONUS OF ESTABLISHING THAT THE OFFENDER SHOULD OR SHOULD NOT RECEIVE A CONDITIONAL SENTENCE." THE OFFENDER IS USUALLY IN THE BEST POSITION TO CONVINCE THE JUDGE THAT THE CONDITIONAL SENTENCE IS APPROPRIATE, AND, AS PROULX SAYS, IT WILL BE IN THE BEST INTERESTS OF THE OFFENDER TO PROVIDE THE NECESSARY

INFORMATION, HELPING THE COURT TO ARRIVE AT THE CONDITIONAL SENTENCE AS OPPOSED TO INCARCERATION.

IN ANOTHER SUPREME COURT OF CANADA JUDGMENT FROM THE SAME YEAR, 2000, THE COURT IN R. V. S(R.N.) HELD THAT "IN CIRCUMSTANCES WHERE EITHER A SENTENCE OF INCARCERATION OR A CONDITIONAL SENTENCE WOULD BE APPROPRIATE, A CONDITIONAL SENTENCE SHOULD GENERALLY BE IMPOSED..." THIS WOULD APPLY EVEN IF IT WOULD BE LONGER THAN AN APPROPRIATE SENTENCE OF INCARCERATION.

IN ANOTHER CASE OUT OF THE SUPREME COURT OF CANADA FROM THE SAME YEAR, THE COURT HELD THAT "WHILE NO OFFENCE IS PRESUMPTIVELY EXCLUDED FROM THE POSSIBILITY OF A CONDITIONAL SENTENCE, AS A PRACTICAL MATTER, AND NOTWITHSTANDING S. 718.2(E), PARTICULARLY VIOLENT AND SERIOUS OFFENCES WILL RESULT IN IMPRISONMENT" -- AND BY "IMPRISONMENT", THE SUPREME COURT MEANT INCARCERATION -- "FOR ABORIGINAL OFFENDERS AS OFTEN AS FOR NON-ABORIGINAL OFFENDERS."

THESE ARE SOME OF THE MANY PRINCIPLES THAT I HAVE HAD TO CONSIDER, INCLUDING ALL THE OTHER PROVISIONS OF THE CRIMINAL CODE OF CANADA RESPECTING THE PURPOSE, PRINCIPLES AND OBJECTIVES OF SENTENCING. IT SHOULD BE APPARENT THIS IS NEVER AN EASY TASK.

THE IMMATURITY OF MR. CHINKON IS A FACTOR

SUGGESTING THAT HE MAY NOT BE SUFFICIENTLY RESPONSIVE, NOR SUFFICIENTLY RELIABLE TO BENEFIT FROM A COMMUNITY-BASED SENTENCE OF IMPRISONMENT (I.E. A CONDITIONAL SENTENCE ORDER). ON THE OTHER HAND, HIS IMMATURITY COULD ACT LIKE A SPONGE IN A PRISON SETTING, SOAKING UP THE CRIMINALITY OF THE CHARACTERS HOUSED WITH HIM. CLOSE SUPERVISION BY A SENTENCE SUPERVISOR COULD BE SUFFICIENT TO ADDRESS THE ISSUE OF IMMATURITY, AND IT OUGHT TO BE.

THIS CASE IS ONE THAT, UPON CAREFUL REFLECTION OVER A CONSIDERABLE PERIOD OF TIME (GIVEN THE ADJOURNMENTS IN THIS MATTER), FALLS WITHIN THE NARROW CATEGORY WHERE EITHER A SENTENCE OF INCARCERATION OR A COMMUNITY-BASED PERIOD OF IMPRISONMENT WOULD BE A FIT SENTENCE FOR THIS OFFENDER FOR HAVING COMMITTED THIS SERIOUS CRIME IN THESE SERIOUS CIRCUMSTANCES UPON THIS VICTIM, TAKING INTO ACCOUNT THE IMPACT UPON THIS VICTIM. THIS CONCLUSION LEADS ME TO AWARD A CONDITIONAL SENTENCE ORDER.

A TIPPING POINT IN MY ANALYSIS IS A PASSAGE AT PARAGRAPH 15.25 OF THE SIXTH EDITION OF RUBY ON SENTENCING. IT READS:

> IN REGARD TO DETERRENCE, A JUDGE SHOULD BE WARY OF PLACING TOO GREAT AN EMPHASIS ON DETERRENCE

IN CHOOSING A CUSTODIAL SENTENCE
OVER A CONDITIONAL ONE, FOR THE
EMPIRICAL EVIDENCE SUGGESTS THAT
THE DETERRENT EFFECT OF
INCARCERATION IS UNCERTAIN.
MOREOVER, A CONDITIONAL SENTENCE
WITH SUFFICIENTLY SERIOUS
CONDITIONS WILL OFTEN SERVE AS A
SUFFICIENT DETERRENT.

THE CITATION IS GIVEN FOR SUPPORT OF THE ABOVE PARAGRAPH.

I SAID EARLIER THAT CERTAIN CONSIDERATIONS LEAD ME TOWARD A CONDITIONAL SENTENCE ORDER. THIS OFFENDER DOES NOT NEED INCARCERATION TO DETER HIM. OTHERS CAN BE DETERRED BY A HARSH CONDITIONAL SENTENCE ORDER INCORPORATING, AS IT DOES, AND AS ANY SENTENCE OUGHT TO INCORPORATE, A MEASURE OF RESTRAINT WITHOUT SACRIFICING PUBLIC SAFETY.

HIS REHABILITATION CAN BE BEST ACHIEVED, AS CAN HIS REINTEGRATION, BY A CONDITIONAL SENTENCE ORDER. DENUNCIATION, WITH SUFFICIENTLY HARSH CONDITIONS AS SUGGESTED BY THE SUPREME COURT OF CANADA, CAN ALSO BE ADEQUATELY ACHIEVED. TO BE CLEAR, HOWEVER, I HAVE PLACED THE FACTORS OF REHABILITATION AND REINTEGRATION SECOND TO PRIMARY DETERRENCE, SECONDARY DETERRENCE AND

DENUNCIATION.

THERE WILL BE A CONDITIONAL SENTENCE OF IMPRISONMENT. THE PERIOD WILL BE FOR 15 MONTHS. HAD THERE BEEN INCARCERATION, I WOULD HAVE MADE IT IN THE RANGE OF 9 TO 12 MONTHS.

MR. CHINKON, IF YOU DISOBEY ANY OF THE TERMS OF THIS ORDER, YOU COULD BE REQUIRED TO SERVE ALL OR A PORTION OF THE REMAINDER OF YOUR SENTENCE BY WAY OF INCARCERATION AT THE CORRECTIONAL CENTRE EITHER HERE IN YELLOWKNIFE OR HAY RIVER. IS THIS CLEAR TO YOU?

THE ACCUSED: YES.

THE COURT: THIS IS VERY SERIOUS BUSINESS. THIS IS NOT LIKE ATTENDING SCHOOL. YOU REGISTER FOR SCHOOL, YOU ARE THERE FOR A MONTH OR TWO OR WHATEVER AND THEN YOU QUIT. THIS IS DIFFERENT. IF YOU DO NOT FOLLOW THIS, YOU WILL BE CAUGHT; THIS I CAN ASSURE YOU. AND IF YOU ARE BROUGHT BEFORE THE COURT AND IF THE COURT IS SATISFIED THAT YOU HAVE BREACHED THIS CONDITIONAL SENTENCE ORDER, EXPECT TO BE LOCKED UP.

THE ACCUSED: ALL RIGHT.

THE COURT: THE STATUTORY CONDITIONS IN SECTION 742.1 WILL ALL OF COURSE HAVE TO APPLY. ACTUALLY, THEY ARE IN 742.3. YOU HAVE TO KEEP THE PEACE AND BE OF GOOD BEHAVIOUR. THIS MEANS, IN EFFECT, YOU WILL HAVE TO BE ON YOUR BEST

BEHAVIOUR. IF YOU CAN DO THAT, EVERYTHING ELSE OUGHT TO FALL INTO PLACE NEATLY FOR YOU. YOU WILL APPEAR BEFORE THE COURT WHEN REQUIRED TO DO SO BY THE COURT. YOU ARE TO REPORT TO A CONDITIONAL SENTENCE SUPERVISOR NO LATER THAN THIS COMING MONDAY, FEBRUARY -- IS IT FEBRUARY 6TH, COUNSEL?

THE COURT CLERK: YES, SIR.

MR. LATIMER: YES.

THE COURT: AT 4 P.M., IN PERSON, AND THEREAFTER, WHEN AND AS REQUIRED BY YOUR SUPERVISOR AND IN THE MANNER DIRECTED BY YOUR SUPERVISOR. YOU ARE TO REMAIN WITHIN THE NORTHWEST TERRITORIES UNLESS YOU HAVE WRITTEN PERMISSION TO GO OUTSIDE THE JURISDICTION FROM THE COURT OR FROM YOUR SUPERVISOR. YOU ARE TO NOTIFY THE COURT OR THE SUPERVISOR IN ADVANCE OF ANY CHANGE OF NAME OR ADDRESS, AND PROMPTLY NOTIFY THE COURT OR THE SUPERVISOR OF ANY CHANGE OF EMPLOYMENT OR OCCUPATION. ARE YOU WITH ME SO FAR?

THE ACCUSED: YEAH.

THE COURT: YOU DO NOT HAVE TO MEMORIZE ALL OF THIS. DO NOT BE FEARFUL. THE CLERK WILL GO OVER IT ALL WITH YOU AND LEAVE A SIGNED COPY FOR YOU TO TAKE HOME.

THERE WILL BE WHAT WE CALL ADDITIONAL

CONDITIONS OR OPTIONAL CONDITIONS, AND THIS IS WHERE IT GETS TOUGH.

YOU ARE TO DO COMMUNITY SERVICE WORK. THE MAXIMUM NUMBER OF HOURS ALLOWED UNDER THE CRIMINAL CODE IS 240. YOU ARE TO DO 200 HOURS OF COMMUNITY SERVICE WORK WHEN AND AS DIRECTED BY YOUR SUPERVISOR, BUT AT A RATE OF AT LEAST 20 HOURS PER MONTH BEGINNING THIS MONTH.

NEXT. THE OFFENCE WAS IN SOME WAY RELATED TO YOUR CONSUMPTION OF ALCOHOL. YOU ARE PROHIBITED FROM CONSUMING OR HAVING IN YOUR POSSESSION ANY ALCOHOLIC BEVERAGES ANYWHERE FOR THE ENTIRE 15-MONTH PERIOD. YOU WILL OBEY A DEMAND FOR BREATH, URINE, OR BLOOD SAMPLES MADE TO YOU BY A PEACE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THAT YOU HAVE VIOLATED TO ANY DEGREE THE ALCOHOL PROHIBITION CONDITION. ARE YOU STILL WITH ME?

THE ACCUSED: YEAH.

THE COURT: YOU APPEAR TO BE FOLLOWING KEENLY.

SUCH DEMAND ON THE COLLECTION OF SAMPLES MUST BE CARRIED OUT IN ACCORDANCE WITH THIS OFFENDER'S RIGHTS UNDER THE CHARTER OF RIGHTS AND FREEDOMS.

NEXT. YOU WILL ACTIVELY PARTICIPATE IN COUNSELLING WHEN AND AS DIRECTED BY YOUR

SUPERVISOR.

NEXT. YOU ARE TO HAVE NO CONTACT OR COMMUNICATION OF ANY SORT WITH THE VICTIM, AND YOU ARE NOT TO ATTEND AT HER PLACE OF RESIDENCE, WHEREVER IT MAY BE FROM TIME TO TIME. YOU ARE TO LIVE WITH YOUR AUNT, JULIA SANGRIS, IN N'DILO, IN THIS JURISDICTION, AT TELEPHONE NUMBER 873-2660, LOCATED AT 146 N'DILO. SHOULD THE LIVING ARRANGEMENT BREAK DOWN, YOU MUST INFORM YOUR SUPERVISOR IMMEDIATELY AND YOU MUST MAKE IMMEDIATE ARRANGEMENTS TO HAVE THIS ORDER REVIEWED BY THE COURT, PREFERABLY BY MYSELF BECAUSE I HAVE THE MOST FAMILIARITY WITH THIS PARTICULAR MATTER.

NEXT. FOR THE FIRST SIX MONTHS OF THIS ORDER, YOU ARE CONFINED TO THE HOME OF YOUR AUNT.

THAT IS GOING TO BE YOUR PRISON. SHE HAS SAID SHE CAN KEEP YOU THERE. AND I ASKED HER, IF THERE WERE HOUSE ARREST, IF SHE COULD ACCOMMODATE THAT AND SHE SAID YES. YOU ARE CONFINED TO HER HOME SEVEN DAYS A WEEK, TWENTY-FOUR HOURS A DAY, EXCEPT TO DO COMMUNITY SERVICE WORK, TO PARTICIPATE IN COUNSELLING AS DIRECTED BY THE SUPERVISOR, FOR MEDICAL OR DENTAL REASONS OR FOR RELIGIOUS OBSERVANCES OR FOR SCHOOL OR SCHOOL-RELATED ACTIVITIES OR OTHER EDUCATIONAL PURPOSES WITHIN A RECOGNIZED EDUCATIONAL

INSTITUTION. AND YOU MAY BE OUTSIDE THE HOME WITH PERMISSION FROM YOUR SUPERVISOR FOR URGENT PURPOSES NOT ADDRESSED BY THIS ORDER. HERE WHAT I HAVE IN MIND IS SOMETIMES THINGS HAPPEN AND YOU MAY NEED PERMISSION.

NEXT. YOU MAY ALSO HAVE UP TO TWO HOURS A WEEK IN THE COMMUNITY FOR LAWFUL PURPOSES, THE TERMS OF WHICH WILL BE IN WRITING FROM YOUR SUPERVISOR.

NEXT. YOU MAY NOT ATTEND THE COMMUNITY OF BECHOKÖ, FORMERLY KNOWN AS RAE-EDZO, UNLESS YOU HAVE WRITTEN PERMISSION FROM YOUR SUPERVISOR BEFOREHAND.

AFTER THE SIX MONTHS OF THE 24-HOUR-A-DAY HOUSE ARREST, THERE WILL BE A CURFEW FOR A FURTHER SIX MONTHS. IT WILL BE FROM 7 P.M. TO 7 A.M. YOU ARE STILL TO BE LIVING AT THE HOME OF YOUR AUNT THROUGHOUT THE ENTIRE PERIOD OF THIS ORDER, FOR 15 MONTHS. BUT FOR THE SECOND BLOCK OF SIX MONTHS, YOU ARE BOUND BY A CURFEW, 7 P.M. TO 7 A.M. THE SAME EXCEPTIONS ARE TO APPLY. HOWEVER, A FURTHER EXCEPTION WILL BE TO ALLOW YOU OUTSIDE THE HOME DURING THE CURFEW HOURS IF YOU ARE WITH YOUR AUNT; AND BY "WITH" HER, I MEAN IN HER IMMEDIATE PRESENCE. IT IS NOT ENOUGH TO BE IN YELLOWKNIFE WITH HER. YOU HAVE TO BE RIGHT WITH HER.

THE ACCUSED: ALL RIGHT.

THE COURT: THAT EXCEPTION DOES NOT, HOWEVER, APPLY TO THE FIRST SIX MONTHS OF HOUSE ARREST. THE FIRST SIX MONTHS, YOU ARE NOT TO BE GOING OUT WITH HER UNLESS THERE IS AN EXCEPTION AS I ALREADY MENTIONED.

ANY REFERENCE -- THIS IS THE NEXT CONDITION. ANY REFERENCE TO WRITTEN PERMISSION IN THIS ORDER WILL REQUIRE YOU TO HAVE THE WRITING IN YOUR PHYSICAL POSSESSION AT ALL TIMES.

NEXT. YOU ARE NOT TO HAVE IN YOUR POSSESSION THROUGHOUT THE ENTIRE 15-MONTH PERIOD ANY FIREARMS AND SO FORTH AS MENTIONED IN SECTION 109 OF THE CRIMINAL CODE OF CANADA. ALTHOUGH THE CROWN HAS NOT SOUGHT A FIREARM PROHIBITION ORDER, THIS KIND OF AN ORDER IN A CASE LIKE THIS, I THINK BENEFITS AND ENHANCES PUBLIC CONFIDENCE IN THE ADMINISTRATION OF JUSTICE IF THE OFFENDER IS NOT TO HAVE IN HIS POSSESSION FIREARMS. IN OTHER WORDS, PRISONERS SHOULD NOT HAVE FIREARMS. HE IS A PRISONER, BUT A DIFFERENT KIND OF PRISONER.

THE CLERK, AND LATER YOUR SUPERVISOR, WILL BE TAKING GREAT CARE IN REVIEWING CONDITIONS WITH YOU, MR. CHINKON. THE SUPERVISOR WILL HAVE TO MONITOR THIS VERY CAREFULLY, GIVEN THE IMMATURITY OF THIS OFFENDER, TO ENSURE THAT HE HAS THE BEST TOOLS AVAILABLE TO HIM TO MAKE THIS SENTENCE

WORK.

IT IS A RECOMMENDATION OF THE COURT THAT IMMEDIATE STEPS BE TAKEN TO BREACH THIS OFFENDER IN THE EVENT OF A VIOLATION OF ANY OF THE CONDITIONS. I AM NOT PREPARED TO SUGGEST OTHERWISE. THERE IS NO TOLERANCE FOR BREACHING THIS ORDER.

THERE WILL NOT BE ANY VICTIM SURCHARGE GIVEN THE APPARENT HARDSHIP THAT WILL FOLLOW. THE DNA I HAVE DEALT WITH, AND THE CROWN IS NOT ASKING THAT THE OFFENDER REGISTER UNDER THE SEX OFFENDER REGISTRATION. IS THERE ANYTHING FURTHER FROM THE CROWN?

MR. GAUNT: NO, YOUR HONOUR.

THE COURT: MR. LATIMER? IS YOUR CLIENT TO -- IS ON THE LINE HERE.

MR. LATIMER: YES.

THE COURT: IS THERE ANYTHING THAT MIGHT BE WORDED DIFFERENTLY? SHOULD BE ADDED?

MR. LATIMER: I'M JUST WONDERING -- THANK YOU, YOUR HONOUR. THIS IS VERY -- IT'S A WELL-THOUGHT-OUT ORDER. I'M JUST WONDERING IF -- SUPPOSING THAT HE'S SEEKING EMPLOYMENT. I THINK THAT WE HAVE -- I KNOW IT IS GEARED TOWARD HIM TRYING TO GET HIS EDUCATION AND EVERYTHING, BUT WHAT IF THINGS TURN OUT IN THE NEXT MONTH OR SO THAT HIS -- THAT HE CAN'T DO ANY OF THESE THINGS

AND HE HAS TO SEEK EMPLOYMENT? COULD WE -- WOULD IT BE BETTER TO COME BACK TO THE COURT THEN TO CHANGE THEM?

THE COURT: THAT IS RIGHT. I WOULD LIKE THE HOUSE ARREST FOR THE FIRST SIX MONTHS TO BE HOUSE ARREST. I AM NOT ANTICIPATING --

MR. LATIMER: RIGHT.

THE COURT: -- EMPLOYMENT DURING THAT PERIOD.

MR. LATIMER: NO. ALL RIGHT.

THE COURT: BUT IF SOMETHING COMES UP AND HE HAS GAINFUL EMPLOYMENT THAT MIGHT BE OF ASSISTANCE TO HIM AND TO THE COMMUNITY, I WOULD ENTERTAIN --

MR. LATIMER: RIGHT.

THE COURT: -- AN APPLICATION. BUT I AM NOT SUGGESTING FOR A MOMENT THAT THE COURT WILL GRANT IT.

MR. LATIMER: NO. NO, THAT'S FINE. I UNDERSTAND. THAT'S MORE CLEAR, YOUR HONOUR.

THE COURT: YOU ARE WELCOME TO MAKE ANY APPLICATION TO CHANGE THE ORDER THAT YOU DEEM APPROPRIATE.

THE CURFEW, HOWEVER, FOR THE SECOND PERIOD OF TIME WILL HAVE ANOTHER EXCEPTION - THAT IS THE SECOND BLOCK OF SIX MONTHS - THAT HE MAY BE OUTSIDE DURING THE CURFEW HOURS IF IT IS FOR THE

PURPOSE OF GOING TO EMPLOYMENT, WORKING AT EMPLOYMENT, AND RETURNING DIRECTLY HOME FROM IT.

MR. CHINKON, THE CLERK WILL BE WORKING ON THE ORDER, I AM SURE, AS WE ARE DOING BUSINESS HERE. I AM NOT SURE WHAT IS HAPPENING WITH THE NEXT MATTER, BUT I WOULD LIKE THIS ORDER COMPLETED TODAY. BUT I WILL GET A BETTER SENSE IN A MOMENT. DO NOT GO AWAY YET.

MS. NGUYEN, WHERE DO YOU THINK YOU ARE HEADING WITH YOUR CASE?

(OTHER MATTER SPOKEN TO)

THE COURT: MR. CHINKON, YOU ARE NOT TO LEAVE THIS FLOOR. YOU MAY HAVE A SEAT IN THE COURTROOM OR IN THE WAITING AREA OUTSIDE THE COURTROOM.

THE ACCUSED: ALL RIGHT.

THE COURT: THERE IS A WASHROOM ON THIS FLOOR. BUT YOU ARE NOT TO LEAVE THIS FLOOR.

THE ACCUSED: ALL RIGHT.

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CERTIFIED PURSUANT TO RULE 723
OF THE RULES OF COURT

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