

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

BRUCE MCARTHUR

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P R O C E E D I N G S   A T   S E N T E N C I N G

BEFORE THE HONOURABLE JUSTICE W.P. BASSEL

On April 11, 2003, at TORONTO, Ontario

Courtroom 125

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APPEARANCES

M. Leshner, Mr.

Counsel for the Crown

J. Herszkopf, Mr.

Counsel for Bruce McArthur

(i)  
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Legend	
[sic]	- Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph)	- Indicates preceding word spelled phonetically.
[Indiscernible]	- Indicates where a word or phrase is impossible to discern, and all avenues to ascertain what was said have been exhausted.

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FRIDAY APRIL 11, 2003

MR. LESHNER: Your Honour, on the McArthur matter, I can advise you, having spoken with my friend...

THE COURT: Where is Mr. McArthur?

MR. HERSZKOPF: Good morning, Your Honour, Mr. McArthur is before the court.

THE COURT: Do you want to come forward please, Mr. McArthur? Good morning, Mr. Herszkopf.

MR. HERSZKOPF: Good morning.

MR. LESHNER: ...that the -- the so-called, if I can call it, the "dangling chad" from last appearance was whether...

THE COURT: Yes.

MR. LESHNER: ...my friend was going to proceed with the allegation that I tried to put on the record, or did, that it was irrelevant, and whether there was a prior sexual relationship. My friend did not file any material and he's not proceeding further with that allegation. And so the -- the evidence that you have is from the last time, and that we aren't going into any issue of a prior sexual relationship, which the complainant categorically denied. So there's no evidence before you of that.

Secondly, Your Honour, I do have the psychiatric report.

THE COURT: Yes.

MR. LESHNER: I'm not sure if you have a copy.

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THE COURT: No, there -- I have nothing.

MR. LESHNER: No. And I have the pre-sentence report, which I've read.

THE COURT: Excuse me one moment, please, Mr. -- Mr.....

...HIS HONOUR IS CONFERRING PRIVATELY WITH THE CLERK OF THE COURT AT THIS TIME

THE COURT: Yes, I -- I have not received the psychiatric report and I will -- I'll read it in a few minutes.

MR. HERSZKOPF: I apologize for not getting it to you earlier, but I receive...

THE COURT: It's okay. It's all right.

MR. HERSZKOPF: ...I received it only yesterday from Dr. Dionne.

THE COURT: No, that's fine, Mr. Herszkopf.

MR. LESHNER: So we have the psychiatric report. There is no victim impact statement, Your Honour.

THE COURT: Okay.

MR. LESHNER: I don't have a reason for that, other than it was clear from the last time, I think, on the record that -- and I don't think my friend is disputing that the complainant was traumatized by the incident. He spent six weeks in physiotherapy for the problem with his hand...

THE COURT: Yes.

MR. LESHNER: ...that he obviously wishes no contact with the complainant. And I can tell

you, Your Honour, that my friend and I will be making a joint submission...

THE COURT: Oh, I see.

MR. LESHNER: ...which may make it somewhat easier for you. I have decided having read the -- the pre-sentence report and the psychiatric report, and bearing in mind we'll never know why or how this incident -- or criminal activity occurred, but my friend will be making a joint -- my friend and I, a joint submission for two years less a day conditional sentence, that I'm satisfied that it wouldn't be in society's interest or Mr. McArthur's interest to have him go into jail at this point in time. But the -- it will be very strict conditions on the conditional sentence, Your Honour.

THE COURT: All right. Well very good. I'm going -- I'm -- I'm going to read the psychiatric report.

MR. LESHNER: Sure.

THE COURT: Mr. Leshner and Mr. Herszkopf, I think it's clear when you read later in the evidence from last time, I have the transcript. I don't know if you got the....

MR. HERSZKOPF: Yes, we have it as well.

THE COURT: And if you look at the bottom of page five -- you see the second last line...

MR. LESHNER: Yes.

THE COURT: ...where it starts: "Purposes of the Sentencing Hearing, we are now alleging...

MR. LESHNER: Yes.

THE COURT: ...a worse case scenario"?

MR. LESHNER: It should be "not".

THE COURT: Okay. Because later on it becomes....

MR. LESHNER: It's probably my fault.

THE COURT: Pardon?

MR. LESHNER: It's probably my fault.

THE COURT: No, that's okay. I -- I -- because later on it would become totally inconsistent with what you're saying.

MR. LESHNER: Right. I noticed that, Your Honour.

THE COURT: Okay. All right. Well why don't I just hear what you have to say, Mr. -- well what -- why don't you tell me -- if somebody can tell me what the joint submission is, let it out.

MR. LESHNER: The joint submission, Your Honour, is for a two-years-less-a-day conditional sentence, a -- a DNA warrant...

THE COURT: Right.

MR. LESHNER: ...the -- a firearms prohibition for ten years.

THE COURT: Right.

MR. LESHNER: And the conditions of the psychiatric report -- or -- or sorry, of the conditional sentence is, one, no contact with the complainant directly or indirectly. And that will be added, Your Honour, so that the complainant has complete peace of mind as part of a probation term of three years, and that will be the only term; and...

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THE COURT: Yes.

MR. LESHNER: ...not to be within 50 metres of....

THE COURT: Five-oh? Five-oh, or 15?

MR. LESHNER: Five-oh.

THE COURT: Okay.

MR. LESHNER: Fifty metres of any address -- business or residence address of the complainant.

THE COURT: I guess, in fairness, was anything known because....

MR. HERSZKOPF: The difficulty is this, is -- is knowing what -- what address we're speaking of, Your Honour. I mean....

MR. LESHNER: Right, known to the accused.

MR. HERSZKOPF: Known, okay.

MR. LESHNER: Right.

THE COURT: All right. Well the -- the....

MR. LESHNER: Known to your -- known to Mr. McArthur.

THE COURT: Okay, let's start -- let's go back a step. Obviously the accused knows the new one -- address because he was there. So why don't we...

MR. LESHNER: Right.

THE COURT: ...why don't we specifically say that one and then say "or any other known"....

MR. LESHNER: Yes.

MR. HERSZKOPF: Yeah, that sounds fine.

MR. LESHNER: Known to Mr. McArthur to be the complainant's business or residence address.

MR. HERSZKOPF: And that in -- and that in --

in metric, 50 metres is how many....

MR. LESHNER: Fifty.

UNKNOWN VOICE: One hundred and fifty.

MR. HERSZKOPF: A hundred and fifty feet? I'm just wondering if he's walking on the street on Church, whether he's considered in breach?

THE COURT: What's the known address, Mr. Leshner?

MR. LESHNER: Well at that time -- I have no idea where he's living now. He was living I believe -- yeah, hold on.

THE COURT: Yeah, Mr. -- Mr. Herszkopf, in fairness that -- that might be a fair comment, like if -- let's just say for instance if -- if the complainant lived for example on the west side of Yonge Street, and even if Mr. McArthur were walking on the east side, he might be breaching the 50 metre thing.

MR. LESHNER: Well I -- I don't -- the police wouldn't lay a charge where someone's just walking to get to a known destination. He was living at 484 Church Street, Your Honour.

THE COURT: Okay.

MR. LESHNER: And I have discussed -- he's going to be under house arrest in any event...

THE COURT: All right.

MR. LESHNER: ...for the first year. And let's go through the other conditions and we'll see if...

THE COURT: All right.

MR. LESHNER: ...Mr. Herszkopf still -- so it's no contact directly or indirectly with



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the complainant...

THE COURT: Right.

MR. LESHNER: ...not to be within 50 metres of 484 Church Street, or any subsequent residence or business address of the complainant known to Mr. McArthur.

THE COURT: Right.

MR. LESHNER: Three, he is going to be -- he will have to reside in his home for 18 -- for one year, except for purposes of employment, medical emergencies -- or medical appointments. And he doesn't have to attend court anymore.

THE COURT: Or the -- or the necessity to comply with the conditions of the conditional sentence order.

MR. LESHNER: Yes.

THE COURT: Yeah. The Clerk and I usually have a pretty good...

MR. LESHNER: Oh good.

THE COURT: ...work....

MR. LESHNER: Okay. And that he will take -- he will not take or possess any illicit drugs, including poppers, P-O-P-P-E-R-S; to continue to take -- sorry, continue seeing a -- his psychiatrist.

MR. HERSZKOPF: I don't know whether Dr. Dionne is going to be treating psychiatrist. I gather she's an assessment psychiatrist.

MR. LESHNER: Okay. Does he intend to....

MR. HERSZKOPF: Pursue psychotherapy? I believe he does with his general practitioner.

MR. LESHNER: Okay. So to -- let's do it this way: to attend within one month at a psychiatrist's office and thereafter as directed by the psychiatrist.

MR. HERSZKOPF: What I'm suggesting is that he attend at a medical practitioner and it'd be -- be the counsellor and/or psychotherapist, and I mean all of it covers psychotherapy from...

MR. LESHNER: Okay.

MR. HERSZKOPF: ...general practitioners.

MR. LESHNER: But then if it's his GP, then he has to attend within a week.

MR. HERSZKOPF: Okay, I don't know if the GP is available. I don't know -- I -- I mean....

MR. LESHNER: Well most GPs are available within a week. I don't want him to procrastinate.

MR. HERSZKOPF: No, I don't want him to procrastinate either. I'm looking also at the issue of the SARS epidemic...

MR. LESHNER: Okay.

MR. HERSZKOPF: ...as well, which has an impact on a doctor's availability. My client advises me that he hasn't been able to go see a physician because of the SARS outbreak.

MR. LESHNER: Does he have a family doctor?

MR. HERSZKOPF: Yes, he does.

MR. LESHNER: And has he tried to make an appointment with the family doctor?

MR. HERSZKOPF: Yes, he has.

MR. MCARTHUR: I am. I was going for that....

MR. HERSZKOPF: Yes, he has.

MR. LESHNER: All right, we'll leave it alone....

THE COURT: Well you know what, no, you raise -- you raise a good point and Mr. Herszkopf raises a good point. What we will do is we'll -- we'll let this gentleman go out -- before I finalize things, I got to hear a lot more...

MR. LESHNER: Okay.

THE COURT: ...he can go and call the doctor's office and come back and tell us when the first appointment...

MR. LESHNER: Okay, great.

THE COURT: ...when he can really see him.

MR. LESHNER: All right.

MR. HERSZKOPF: That -- that doesn't....

THE COURT: But that -- that'll put that to bed, okay.

MR. LESHNER: Right. And he is to sign a medical release to his, I believe -- is it the area director, the person who supervises him on the conditional sentence?

THE COURT: Well we can just take it -- sign the medical release in favour of the supervisor...

MR. LESHNER: Supervisor...

MR. HERSZKOPF: ...or a delegate.

MR. LESHNER: ...or a delegate of this conditional sentence order. And that he is to show proof of attendance to the supervisor or designate re: counselling; that he is not to be in the company of any person known to him

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to be a male hustler, Your Honour. My friend and I are in agreement on that, or we believe that, until he has a much better psychiatric handle on himself, and given the background of this case, that that part of the subculture, he best be kept away from.

THE COURT: Okay. I know -- I know that's sort of a colloquial term, and we'll put -- there'll be....

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MR. LESHNER: Male prostitute.

THE COURT: Okay, in company -- in the company -- known to be a male prostitute, okay.

MR. LESHNER: Right.

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THE COURT: And the same with respect to the word "poppers", it might be better -- be better to put on the record as "amyl nitrate", which is actually the -- the....

THE COURT: What is it?

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MR. HERSZKOPF: It's called amyl nitrate, M -- A-M-Y-L nitrate.

MR. LESHNER: N-I-T-R-A-T-E, or -- or generally known as "poppers".

MR. HERSZKOPF: "Poppers".

THE COURT: A-M-Y-L, nitrate, N-I-T....

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MR. HERSZKOPF: Nitrate, N-I-T-R-A-T-E, it's head cleaner for VCRs basically.

THE COURT: Also known as "poppers", okay.

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MR. LESHNER: Right. And, Your Honour, that -- the reason for that is that while my friend isn't pursuing it, there was some suggestion, that he may have taken poppers that day, in the report. I believe the psychiatric report

suggests that he takes them prior to sex.

MR. HERSZKOPF: The pre-sentence report refers to them -- the psychiatric report refers to "puffers", which I gather should have been "poppers"...

MR. LESHNER: Right.

MR. HERSZKOPF: ...and that Dr. Dionne used the word "puffers" in the report as opposed to "poppers".

MR. LESHNER: But given that he's on dilantin to begin with, I don't -- I think it's fair to say everyone wants to keep him away from poppers, since we have no idea what caused this incident.

THE COURT: Well, okay. Well it doesn't sound like there's any dispute about that.

MR. LESHNER: No.

MR. HERSZKOPF: No.

THE COURT: Okay.

MR. LESHNER: And, Your Honour, not to apply for a Firearms Acquisition Certificate, licence, and not to possess any firearms or weapons.

THE COURT: Right.

MR. LESHNER: And actually, I'd like those two terms in the three year probation, which I don't think is in an issue for my friend. So that would give the state or the province basically five years of protection on that.

MR. HERSZKOPF: I have no problem with that, but I just want to....

MR. LESHNER: Oh, there's a firearms

prohibition anyway.

MR. HERSZKOPF: Anyway, for ten years, so....

MR. LESHNER: Right. So it would just be weapons.

MR. HERSZKOPF: That's correct. Okay.

THE COURT: Well we'll put -- there's no harm in putting it both ways.

MR. LESHNER: Okay, because we don't want -- and you may recall, Your Honour, he had been carrying a steal pipe...

THE COURT: Right.

MR. LESHNER: ...around with him generally...

THE COURT: Right.

MR. LESHNER: ...because of his involvement with the subculture.

THE COURT: Yeah.

MR. LESHNER: And, Your Honour, so the first year is basically house arrest. And then what it is, is that he will be on a curfew for the next six months. And the last six months, he's free to basically come and go. So the curfew, Your Honour, would be from ten o'clock at night to six in the morning. And that....

THE COURT: Seven days a week?

MR. LESHNER: Yes.

THE COURT: Yes.

MR. LESHNER: Except for employment purposes, medical -- medical appointments, and Your Honour's phrase was "the necessities of life".

THE COURT: Well actually....

MR. LESHNER: Or what was it, the phrase?

THE COURT: The -- the....

CLERK OF THE COURT: The necessities -- necessities to comply with conditional sentence order.

THE COURT: Thank you.

MR. LESHNER: Oh. Necessities for....

THE COURT: Complying...

MR. HERSZKOPF: To comply with the...

THE COURT: ...with the conditional....

MR. HERSZKOPF: ...conditional sentence.

MR. LESHNER: Okay.

THE COURT: In other words, if there's some obligation....

MR. LESHNER: Right. All right. And, Your Honour, I guess the only contested term was that my friend did -- and I didn't have an opportunity to resolve it, is whether -- from my perspective it's in his best interest to keep him out of the -- the area where he's more likely than not going to have -- be in -- likely enticed by male hustlers. So that's a question my friend will have to speak with his client about. I would like to....

THE COURT: What area were you thinking of?

MR. LESHNER: Well the area on Grosvenor is a known male hustler area, and the Church Street area.

THE COURT: You mean Grosvenor -- Grosvenor? What's -- does that run over from Yonge to Bay?

MR. LESHNER: Yes.

MR. HERSZKOPF: Parallel to Grenville.

MR. LESHNER: And there's an officer here I

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believe from -- it's 52? It's still very much a male hustler, male prostitute area.

THE COURT: Right.

MR. LESHNER: Curiously near the Solicitor General's building.

THE COURT: So what would....

MR. HERSZKOPF: I -- I don't think we're in disagreement. I -- I think my friend miss -- misunderstood my position.

MR. LESHNER: Oh.

MR. HERSZKOPF: As I understand it, the conditional sentence, for house arrest for one year, curfew for six months, and thereafter restrictions lifted with respect to egress and ingress from the home.

MR. LESHNER: Yes.

MR. HERSZKOPF: Okay, I understand that. What I was concerned about is under the three year probation, following the completion....

MR. LESHNER: No, I'm not asking for that.

MR. HERSZKOPF: Okay, so I -- I -- I had written down you wanted a three year probation with respect to communication directly or indirectly with the victim.

MR. LESHNER: Yes.

MR. HERSZKOPF: And that -- that was a term of probation that you said....

MR. LESHNER: Yes.

MR. HERSZKOPF: Okay, so that's not....

MR. LESHNER: After the....

MR. HERSZKOPF: After the expiration of the...

MR. LESHNER: Yes.



MR. HERSZKOPF: ...of the conditional sentence...

MR. LESHNER: Right.

MR. HERSZKOPF: ...and once it's fulfilled.

MR. LESHNER: Right.

MR. HERSZKOPF: That -- and so that -- my understanding was that you wanted no contact directly or indirectly with the victim, fine, and then you said, in addition, not to be within 50 metres of 48 -- 484 Church Street in that three year period as well.

MR. LESHNER: Yes.

MR. HERSZKOPF: So it would be a five year prohibition, basically, of communication with the victim.

MR. LESHNER: Right.

MR. HERSZKOPF: Okay.

MR. LESHNER: But during the....

MR. HERSZKOPF: The first two years are -- the first year and a half are moot.

THE COURT: You know, do you -- do you want me to just take a recess so you can hammer some of these things out?

MR. LESHNER: Okay, let...

MR. HERSZKOPF: Sure.

MR. LESHNER: ...I don't think...

THE COURT: Because we're just going back and forth on....

MR. LESHNER: ...it's -- hold on, I don't believe it's -- the issue I'm dealing with, Your Honour, is the male hustler issue, not the complainant, is how do we keep him out of

the geographical area. And I'm saying that during the conditional sentence period, which lasts two years less a day, he's -- I can give you the boundaries.

5 THE COURT: Okay. You know, Mr. Leshner, I -- I -- you know I -- I -- I have the greatest respect for you, and of course for Mr. Herszkopf...

MR. LESHNER: Right.

10 THE COURT: ...I would like to take a recess to...

MR. LESHNER: Okay.

THE COURT: ...allow you to sort this out, if you can sort them out...

15 MR. LESHNER: Okay.

THE COURT: ...and not -- if you get your presentation in sort of a succinct thing.

MR. LESHNER: Right.

20 THE COURT: And it would give me a chance to read the psychiatric report.

MR. LESHNER: Yes.

25 THE COURT: And I'm going to -- so I'm going to take a short recess so you two can -- can go into that. Maybe -- how much time -- okay, I'll -- what do you need, about 20 minutes, Mr. Leshner, Mr.....

R E C E S S

30 U P O N R E S U M I N G....

MR. LESHNER: The terms have been worked out. The boundary....

THE COURT: Excuse me -- excuse me for interrupting you, Mr. Leshner, I see the -- the student is back on the....

MR. LESHNER: Oh.

THE COURT: Can we just address that so we don't....

...OTHER MATTER ADDRESSED BEFORE THE COURT

THE COURT: Okay, sorry, Mr. Leshner.

MR. LESHNER: All right, Your Honour, as part of the two-years-less-a-day sentence, during -- as you know, he's under house arrest except for employment and the other reasons, that he will be under a geographical boundary for those -- for the two years less a day, except for work purposes that have already been referred to. And the boundary is University on the west, Bloor on the north, Sherbourne on the east, and College on the south. And I gave the -- the assault with a weapon and assault bodily harm is a primary designated offence for DNA purposes. And I've indicated that his supervisor is to get a medical release, and for the supervisor to show -- be given proof of attendance for any counselling purposes. And, he has to see his general practitioner by Wednesday April 23<sup>rd</sup>, and that is Dr. Wesson, W-E-S-S-O-N, for purposes of referral for any counselling and thereafter as directed by Dr. Wesson or any counsellor or medical practitioner.

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5 THE COURT: Well actually it'd be -- it'll be any counselling directed by Dr. Wesson and the probation officer in conjunction because....

10 MR. LESHNER: Yes, or the supervisor, right. Your Honour, the other term in there was that the supervisor -- you'll notice in the pre-sentence -- the report that they want anger management, and that should be done through the -- I'm content that it be done -- dealt with up through either -- the family physician. He may get it faster than through the government. So a separate term that the matter -- or the issue of anger management is to be addressed by Dr. Wesson on April 23<sup>rd</sup> and Mr. McArthur be referred to a health professional for purposes of anger management. I take it my friend doesn't have an issue with that?

15 MR. HERSZKOPF: I have no objection to that.

20 MR. LESHNER: All right. Your Honour, I believe -- so that the only terms of the probation -- oh, we've agreed to a ten metre restriction -- I should have said, ten metre restriction during the three year probation. Is that correct?

25 THE COURT: What do you mean a ten metre?

MR. LESHNER: Ten metre...

THE COURT: Fifty....

MR. LESHNER: ...of any....

30 THE COURT: From 50 we go down to 10?

MR. LESHNER: Yes, because that way, Your Honour, a), it keeps him away from any

building or residence, and if he sees him on the street, all he has to do is cross over to -- the street.

5 THE COURT: Well you -- you said during the probation. You -- you mean the conditional sentence and the probation.

MR. LESHNER: Well the first year he's under house arrest, except for employment.

10 THE COURT: I know, but he could still be outside in that at his appointment. I'm saying, shouldn't there be consistency on the distance, or is there some reason you're making it...

MR. LESHNER: Well counsel...

15 THE COURT: ...why can't it be in the conditions?

MR. LESHNER: ...raised with me, if he's out for employ -- well it should be the same....

20 MR. HERSZKOPF: I have no problem with making it a -- or the court -- the court making it a five year ten -- ten metre...

MR. LESHNER: Restriction.

MR. HERSZKOPF: ...restriction...

MR. LESHNER: Okay, so it's consistent....

25 MR. HERSZKOPF: ...with the exemption -- exemption for medical, employment and....

THE COURT: Okay, now we'll hear about that.

MR. LESHNER: Okay.

THE COURT: Okay.

30 MR. LESHNER: And I believe those are all of the terms.

THE COURT: Okay. And now I have to hear

whether a conditional sentence is appropriate.

...SUBMISSIONS BY CROWN ON SENTENCE

5 MR. LESHNER: Yes. Well, Your Honour, from the Crown's perspective, you're dealing with someone who has no record.

THE COURT: No, I understand.

10 MR. LESHNER: It was a serious incident. The Crown was very much of the -- of the viewpoint that it warrants a jail sentence. However, I've taken into account that we still don't know what caused the incident. I've taken into account that this -- the terms are going to be very strict for the two years less a day. He has no record. There's no history of any violence being brought to the attention of the police. He himself, the accused, attended at the police station virtually immediately thereafter the incident; that we seem to have been dealing with a person who has not had violent tendencies until now; that when things went seriously amiss, he did show up at the police station; that we did have a plea of guilty; and that we seem to have the accused agreeing to serious and long term psychiatric help for anger management and any underlying issues. He's agreeing significantly to curtail his access to male hustlers, at least male prostitutes who engage in activity on the street, and a very significant geographical boundary for two years, except for the

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5 exceptions that I've mentioned. And so he's very much aware, Your Honour, that any breach of this would be giving him -- or running the risk that he can go into jail, because the -- the Crown would not have been asking for a two-year-less-a-day jail sentence in these circumstances.

10 And so the trade-off between my friend and the accused was to agree to significantly curtail his liberty. Basically he's going to be in a jail for the first year and a very significant curfew thereafter. So he seems to be recognizing that even though he doesn't know why he did what he did, he's staying away from male hustlers who patrol the streets, from illicit drugs, seeking significant psychiatric intervention. And bearing in mind, Your Honour, I think now -- he's what age, counsel?  
20 MR. HERSZKOPF: He's 51 years old.

MR. LESHNER: Fifty-one, that he'll be 53 going on 54 when the conditional sentence is up, and 57 by the time of the probation. And that buys the complainant, Your Honour, five years of freedom of any type of conduct.

25 THE COURT: Thank you. Yes, Mr. Herszkopf?

...SUBMISSIONS BY DEFENCE ON SENTENCE

30 MR. HERSZKOPF: The only thing I can add in addition to my friend's submissions and the report of Dr. Dionne and the pre-sentence

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report is the fact that I'm -- Mr. McArthur truly regrets the situation and truly feels remorse, truly has -- doesn't understand exactly what transpired, again as we know from the reports and from the submissions earlier and last time as well. But he does definitely show regret, remorse, and feels very, very sorry for what transpired in terms of the victim's injuries, psychological and physical. And he's indicated to that -- me -- to that -- that to me on many occasions. He -- and he would like to have the opportunity at least to put on the record that he does apologize to the victim, through counsel or himself, if he'd like to speak to the court. But he does apologize to the victim for whatever he's done, and he feels really bad about it. Apart from that I -- the submissions that my friend set out are basically of the same submissions I would be giving Your Honour as well.

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THE COURT: All right. Well thank you, Mr. Herszkopf. I normally would have asked you to give me much more personal information and the background, but I believe that I have extensive information from both the -- the pre-sentence report, which I have examined carefully, and of course from the report of Dr. Dionne, so....

MR. HERSZKOPF: Yes. And I -- I don't -- I -- I was going to mention that I -- I wasn't going to merely read into the record reports, that all the submissions dealing with



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sentencing are covered basically with respect to employment, age, and background. The only issue is my friend mentioned the boundary of College to the south. You might want to just make sure it says "College" backslash "Carleton" because the...

THE COURT: Yeah.

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MR. HERSZKOPF: ...the street does change at Yonge Street. As you know, it changes at Yonge going...

THE COURT: Yeah, right.

MR. HERSZKOPF: ...east, and Sherbourne...

THE COURT: That beyond it changes.

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MR. HERSZKOPF: ...and -- yeah, and Sherbourne and -- it doesn't meet College, it meets Carlton...

MR. LESHNER: Yeah.

THE COURT: Right.

MR. HERSZKOPF: ...to the east.

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THE COURT: Good. Thank you for pointing that out. Okay.

MR. HERSZKOPF: All right.

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MR. LESHNER: And, Your Honour, my -- we left off -- my friend's in agreement that his client should carry his conditional sentence papers with him at all times.

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THE COURT: Yeah, I -- I always put that -- I try to always put that in too. Okay, thanks, Mr. Herszkopf. Mr. McArthur, you're not obliged to, but if there's anything you want to say before I decide whether to accept this joint submission, now's the time to say it.

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MR. MCARTHUR: Well I just want to apologize to the court for what happened. My life's been a kind of mess in the last year and a half, not knowing what's going to happen and what happened to me. I'd like to apologize to the -- the victim. I don't -- I wouldn't know what to say other than I'm sorry and for all the pain and anguish I've caused him. I'm hoping that, you know, my life will come together now that this has kind of put this behind me and get on with my life.

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THE COURT: Okay, thank you, Mr. McArthur. I think your actions in entering the plea of guilty that you have entered and the steps that you have taken both in cooperating with the police and in your dealings with the psychiatrist and what the pre-sentence report flesh out, that I believe you are sincerely remorseful. So you can sit down while I just finish what I have to say.

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R E A S O N S F O R S E N T E N C E

BASSEL, J. (Orally):

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Well I mean on the one side, of course, the complainant was severely traumatized and he sustained I believe five stitches. He was at the St. Michaels Hospital. He had to undergo six weeks of physiotherapy treatment. As I

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recall from information that was relayed to me by Mr. Leshner last time we were in court, the complainant was so traumatized about even being involved in the court process that he was out in the hall. He just did not even want to come into the courtroom to deal with the situation, and I am sure it was an extremely traumatizing event. And these are serious offences. There was a pipe. I understand Mr. McArthur does not have a particular recall of certain of the events of that night, but the bottom line is that the complainant sustained these physical injuries and he also has sustained, obviously, psychological scars.

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So it is a case that could very well draw a real actual jail sentence, notwithstanding that Mr. McArthur is a first offender and he has an otherwise what I consider good background. But this is a joint submission. Mr. Leshner has obviously carefully considered the presentation and his becoming a party to putting forward a joint submission, so I do not intend to interfere with that. Although, there is an additional term that I will be referring to in the conditional sentence.

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But before I do that, just as a matter of housekeeping, the pre-sentence report will be Exhibit 1, the report of Dr. Marie France Dionne will be Exhibit 2. Mr. Hershkoff, I

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should have asked you earlier, but I didn't, I presume you have -- you and your client have no quarrel with the contents of the pre-sentence report?

EXHIBIT NUMBER 1: Pre-sentence report. -  
Produced and Marked.

EXHIBIT NUMBER 2: Psychiatric report of Dr. Dionne. - Produced and Marked.

MR. HERSHKOFF: That's correct.

THE COURT: All right, thank you. So I am therefore going to proceed with an overview to assist the clerk with the sentence. The sentence will be comprised of two components, namely a conditional sentence for a period of two years less a day, this is concurrent, and then a probation for three years. And I agree with Mr. Leshner's point, that hopefully that will impose a structure to not only assist in the protection and concerns for the complainant, but also a structure to, I hope, assist Mr. McArthur to deal with all of the problems that have brought him here to court. It will a conditional sentence for two years less a day and probation for three years. I will go through the terms of the conditional sentence, and then I will ask both counsel if I have overlooked any of the terms that we have talked about.

Mr. McArthur, you understand that a conditional sentence is a sentence of jail, but it is jail in the community. If you break

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any terms of the conditional sentence, you can be brought back before the court, whether it is me or another judge, and brought back and the judge can sentence you to real jail for the whole or any remaining portion that he or she thinks is appropriate. Do you understand that? So it is like the guillotines, but from the top and the way the rope can be broken is by your breaching the peace or breaking any of the terms. Do you understand that?

MR. MCARTHUR: Yes.

THE COURT: All right. So in addition to the statutory terms, of course,

- you will report to the supervisor and sign all papers necessary;
- remain in the Province of Ontario;
- notify the supervisor of any change of name, address, occupation;
- keep the peace and be of good behaviour, all the statutory terms.

And then getting into the specifics,

- you will have no contact with the complainant directly or indirectly;
- you will stay at least 10 metres away

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from 484 Church Street, and 10 metres away from any known place of residence or employment of the complainant;

- you will not be in possession of any non-medically prescribed drugs, and in addition to that, you are not to be in possession of amyl nitrate, also known as "poppers";
- you will not be in the company of any person known to you to be a male prostitute;
- you will attend no later than April 23<sup>rd</sup> to the offices of your doctor, Dr. Wesson, and make all necessary arrangements through Dr. Wesson to arrange for counselling for psychiatric, psychological, or other counselling as deemed appropriate by Dr. Wesson and/or your supervisor;
- you will sign any releases in favour of the supervisor or his or her delegate to allow the supervisor to have access to information, files, records of Dr. Wesson or any specialist designated by Dr. Wesson or the supervisor to allow access to proof you are attending for that counselling;

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- you will not to be in possession of any firearms, ammunition, explosive substances;
- you are not to apply for or possess a Firearms Acquisition Certificate.

Now, there will be a house arrest clause, and I am going to read into the record the clause, and I will hand it to the clerk after. For the first 12 months of this conditional sentence order the offender is to remain confined at his own residence except for the purposes of employment, medical appointments, and I am adding religious services, Mr. Leshner, and legal obligations regarding compliance with this conditional sentence. The offender shall provide the supervisor with proof of his schedule of work hours, medical appointments, and religious services. The supervisor will incorporate these into a written letter of permission to be out of the residence and that letter shall be carried by the offender on his person at all times while out of the residence, together with a copy of the actual conditional sentence order. I am adding this additional term: the offender may obtain from the supervisor written permission to be absent from the residence for any reason deemed appropriate by the supervisor. Such written permission shall be carried by the offender on his person at all times while out

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of the residence, again, together with the actual conditional sentence order. I will hand that down to the clerk.

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And then for the six month period immediately following the initial 12 month house arrest, Mr. McArthur will be subject to a curfew seven days a week, to remain in his residence from ten p.m. to six a.m., except for absences due to employment, medical emergencies, or necessary compliance with the terms of the conditional sentence order.

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Then, during the entire conditional sentence period, the two years less a day, Mr. McArthur is to stay out of the area geographically delineated as University Avenue to the west, Bloor Street to the north, Sherbourne Street to the east, and College/Carleton Street to the south, except as necessitated for the purposes of employment, medical appointments, or compliance with the terms of the conditional sentence order.

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I had indicated to Mr. McArthur prior to his entering a plea of guilty that I would give serious consideration to any submission, including if there was a joint submission. There is an additional term of the conditional sentence that I believe is necessary in order to also give effect to the principles of the Supreme Court of Canada in *R. v. Proulx*, which



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indicate that there should be some teeth in a conditional sentence order. There are some teeth in this order, which include the curfew and house arrest. But I also believe that Mr. McArthur should perform a hundred hours of community service. That will be something for him to give back to the community, to reflect on this whole situation. I am ordering that the hundred hours of community service will be performed within the first 18 months of the conditional sentence order, and he is to provide written proof to the supervisor that he is doing that and has completed it.

Now, have I overlooked any of the terms of the conditional sentence order?

MR. LESHNER: I thought, Your Honour -- I didn't hear that he's not to possess any weapon. I heard firearms, ammunition, but weapon like the steel bar wouldn't be caught.

THE COURT: Okay. I thought I said it, but if -- I'm glad -- just to make double sure, Madam Clerk, not to possess any weapons as defined in section 2 of the Code. Now, in addition to that, there will a period of probation.

MR. HERSHKOFF: Your Honour, just a comment regarding the first part again.

THE COURT: Okay, thank you, yeah, because we went back and forth quite a bit on that.

MR. HERSHKOFF: Yeah, I understand that. When you mentioned 484 Church Street, can you specify in the conditional sentence order that

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it is in Toronto as opposed to Weston or -- it could be -- it could be....

THE COURT: Okay. Thank you. Yeah, good enough, thank you.

MR. HERSHKOFF: All right. And....

THE COURT: Do either Mr. Leshner or you, Mr. Hershkoff, have I overlooked any of the terms that were finally hammered...

MR. HERSHKOFF: Yeah.

THE COURT: ...out there?

MR. HERSHKOFF: The only other issue -- issue is you put an exemption giving the supervisor the discretion to allow Mr. McArthur to leave the residence for other reasons, subject to his or her discretion.

THE COURT: Right.

MR. HERSHKOFF: Can that apply as well to the restrictions regarding the boundaries as well since -- to make it consistent? She's -- he or she has discretion to -- to -- to allow him to leave for other reasons from the residence. I wonder what -- if that should apply as well to the boundaries restriction as well as the curfew restriction?

MR. LESHNER: Your Honour, the Crown has given you the reasons for the geographical boundaries. We want that in...

THE COURT: Yeah.

MR. LESHNER: ...place, no exception for the first two years.

THE COURT: Yeah. No, let's -- I -- I know what you're saying.

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## Reasons for Sentence

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MR. HERSHKOFF: The -- the -- the curfew -- then the curfew issue, I mean, in terms of -- if the -- if the supervisor has the discretion to allow Mr. McArthur to go to -- for some other reason out of the residence in the first year, should not that discretion apply also to the curfew issue?

THE COURT: Well, no, and I understand, and it could have a potential conflict, but I'm -- I -- I intend that -- that although the supervisor have the discretion, that that discretion is curbed on that geographic issue, Mr. Hershkoff.

MR. HERSHKOFF: And I -- I agree with you on that. And I'm asking whether or not it should be curbed with respect to the issue of the curfew, because in the curfew you -- the curfew has the same exemptions, employment, medical, and necessities under the terms, but there is no discretion left to the supervisor to grant other exemptions as you did with respect to the first year.

THE COURT: That's what I'm intending.

MR. HERSHKOFF: To leave the curfew as is...

THE COURT: Right.

MR. HERSHKOFF: ...with no exemptions?

THE COURT: I -- I think Mr. -- Mr. -- Mr. Leshner has convinced me, as have looking at these reports and things, that we have to help Mr. McArthur to -- to deal -- to -- to deal with this issue that has got him into some problems, and I agree with you on that, Mr.

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Leshner. I think -- I think the intent is to give the discretion to the supervisor, but to curb it on that issue as far as the geographic part. All right, thank you.

And there will be a period of probation for three years:

- to report when directed and sign any necessary papers;
- report thereafter as directed;
- keep the peace and be of good behaviour;
- and the only specific terms will be no contact with the complainant directly or indirectly and to stay ten metres away from any known place of residence or employment of the complainant;
- not to possess any weapons;
- not apply for or possess a Firearms Acquisition Certificate;
- and although I do not think either counsel mentioned it, I think just to continue the restriction not to possess any non-medically prescribed drugs, including amyl nitrate (also known as

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"poppers"). We might as well keep that control.

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But other than that, the statutory terms of the probation will prevail. Are there any other terms on the probation that I have overlooked, Mr. Leshner and Mr. Hershkoof?

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MR. LESHNER: No, is the -- I thought -- did I hear the ten year -- a ten metres prohibition for that as well?

MR. HERSHKOFF: Yes.

MR. LESHNER: Okay, great.

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THE COURT: All right. Then there will be a section 110 -- is it 110, I believe?

MR. LESHNER: S.110. I looked it up, Your Honour.

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THE COURT: Yes. Thank you, Mr. Leshner. There will an order under section 110 of the *Criminal Code* prohibiting Mr. McArthur from possessing any firearms, ammunition, explosive substances, and all the other paraphernalia in that section. This is primary designated offence. I am ordering Mr. McArthur to submit today forthwith to a DNA testing by a  
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qualified technician and I will be signing the Form 5.03 to effect that.

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I have been influenced, obviously, in agreeing to this joint submission by everything that was told to me by Mr. Leshner, by what was told to me by Mr. Hershkoff, by the very positive pre-sentence report, and by the

## Reasons for Sentence

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report of Dr. Dionne that puts Mr. McArthur right at the bottom of the risk factor. The psychiatrist feels that Mr. McArthur is, although he is perhaps minimizing certain aspects there, psychological matters, the psychiatrist makes a risk assessment on a very minimal basis, and that is also something that I have considered when I consider all of the Proulx criteria for the appropriateness of imposing a conditional sentence.

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Now, does the Clerk need any clarification, or do either counsel? Have I overlooked any of the terms that we have discussed? What I am going to ask is that the Clerk will complete those papers, and I want to ask you, Mr. Leshner and Mr. Hershkoff, I am not becoming *functus* yet, the sentence is still open, so I want to make sure -- because we went back and forth so much with these things, I want to make sure we picked up all of the terms and conditions. For the moment, is that everything that....

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MR. LESHNER: Yes.

CLERK OF THE COURT: And there's also reporting on the probation?

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THE COURT: To report on the probation and thereafter. So the clerk will draw up the papers to the best of her ability while I take the recess in order to...

MR. LESHNER: Okay.

THE COURT: ...to speak with these students,

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and then we will -- so my sentence is not completed. And then for administrative purposes, I am also waiving the victim surcharge fee. Mr. McArthur is not working right now...

MR. LESHNER: Right.

THE COURT: ...but -- he is doing a bit of landscape work, but -- and you will be withdrawing the other charge, is that....

MR. LESHNER: Yes.

THE COURT: All right, we'll do....

MR. LESHNER: In fact I thought I had. The weapons dangerous, is that withdrawn yet?

THE COURT: All right, we'll do the -- we'll....

CLERK OF THE COURT: It's already been withdrawn.

THE COURT: All right, so we'll -- we're not finished yet, Mr. Hershkoff.

MR. HERSHKOFF: Um-hmm.

THE COURT: We'll see you in a little while. I'm going to speak to the students here. Thank you.

MR. HERSHKOFF: Okay, thank you.

R E C E S S

U P O N R E S U M I N G....

MR. LESHNER: The McArthur matter, there were two issues that my friend and I -- I'm content with the word "for", F-O-R, being added before

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"six months"...

THE COURT: Right.

MR. LESHNER: ...so that any officer would know that month 16 through 18 are with a curfew...

THE COURT: Oh no.

MR. LESHNER: ...for the conditional sentence.

THE COURT: That's three -- not -- not 16 we're....

MR. LESHNER: No, month 13 to -- 13, 14, 15, 16, 17, and 18 are the...

THE COURT: Right.

MR. LESHNER: ...curfew. And then my friend wishes a sentence added, and I'm content that for the last six months....

MR. HERSHKOFF: Less a day.

MR. LESHNER: Pardon?

MR. HERSHKOFF: Less a day.

MR. LESHNER: Less a day.

THE COURT: Yeah.

MR. HERSHKOFF: The curfew was lifted, so the....

MR. LESHNER: Yes.

THE COURT: Even -- to make it clear you mean?

MR. LESHNER: Absolutely clear.

MR. HERSHKOFF: To make sure any -- any officer on the street who sees the paper, I don't want...

THE COURT: Okay.

MR. HERSHKOFF: ...to have him in a position where he has to argue...

THE COURT: Okay.

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## Reasons for Sentence

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MR. HERSHKOFF: ...about the terms.

THE COURT: That sounds reasonable.

MR. LESHNER: And I'd like the word "anger management"...

THE COURT: Yeah.

MR. LESHNER: ...specifically mentioned.

THE COURT: Actually, I intended to put that in. If I didn't mention it, I intended to because...

MR. LESHNER: Okay.

THE COURT: ...it's -- it's clear that Probation recommends it.

MR. LESHNER: Right. And I mentioned to -- and we are using the words "including anger management" so they know they can send him for any other...

THE COURT: Yeah.

MR. LESHNER: ...reason. And, Your Honour, Madam Clerk and I discussed the matter, you had agreed with the Crown that he is to carry his conditional sentence papers for the two years less a day.

THE COURT: As well as the letter of permission.

MR. LESHNER: Right. Yes...

THE COURT: So that make....

MR. LESHNER: ...he knows that.

THE COURT: Yeah. I am just going to ask the clerk to finish that.

MR. LESHNER: Okay.

THE COURT: We'll just stand by for a minute.

I just want to -- hold on, Mr. McArthur. Just

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this one second please officer.

...OTHER MATTER ADDRESSED BEFORE THE COURT

5 THE COURT: So, Mr. McArthur -- so Mr. Hershkoff and Mr. Leshner, have you looked at the...

MR. LESHNER: Yes.

10 THE COURT: ...and with -- including those changes you -- that were requested and to which I agreed, is there....

MR. LESHNER: Yes.

MR. HERSHKOFF: Yes, they're satisfactory.

15 THE COURT: Okay. Can I just have a look at -- are you finished yet, Madam Clerk, or not?

CLERK OF THE COURT: No, I'll just be -- just one moment please?

THE COURT: Sure, go ahead.

20 MR. LESHNER: So we have the DNA covered. We have the firearms prohibition form covered. The probation separately covered. That's a lot of forms today.

CLERK OF THE COURT: Um-hmm.

25 ...HIS HONOUR AND THE CLERK OF THE COURT ARE CONFERRING PRIVATELY AT THIS TIME

30 THE COURT: To that sentence, I'll just add it in, that hundred hours of community service, the work to commence within 30 days and to be completed at a rate of not less than, what do I say, maybe ten hours a month or something?

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MR. LESHNER: That's fine.

MR. HERSHKOFF: That's fine.

THE COURT: Yes, okay. Not less than ten hours per month.

MR. LESHNER: He can plant petunias at Old City Hall, Your Honour, beautify the building.

...HIS HONOUR IS REVIEWING THE CONDITIONAL SENTENCE ORDER AT THIS TIME

THE COURT: Okay then, and I indicated that the victim surcharge fee was waived.

CLERK OF THE COURT: Yes.

THE COURT: And so the other -- any other charges that should be on the docket, Mr. Leshner, were being withdrawn, is that right?

MR. LESHNER: Yes.

THE COURT: All right.

MR. LESHNER: It had already been withdrawn, but I...

THE COURT: Okay.

MR. LESHNER: ...out of an abundance of caution.

THE COURT: Okay.

MR. LESHNER: And I want to thank, Mr. Hershkoff, Your Honour.

THE COURT: Okay.

MR. LESHNER: It took a lot of persuading for me to join him on a conditional sentence, and I do believe the right thing has been done by his client.

THE COURT: Okay. And, Mr. McArthur, good

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luck to you.

MR. MCARTHUR: Thank you.

THE COURT: You know, I read your pre-sentence report and your whole family situation, and you made a mistake on this particular day.

But it sounds to me like you're a pretty good person and it sounds to me like you're not going to be back here anyway. I hope this is -- I'm sure you will get some help and carry on and enjoy your life and enjoy getting arrangements for your daughter's wedding.

MR. MCARTHUR: Thank you.

THE COURT: That sounds like a nice -- nice family thing to do. So best of luck to you.

MR. HERSHKOFF: Unfortunately -- unfortunately he won't be able to attend, as you can appreciate...

THE COURT: Well...

MR. LESHNER: He may get....

THE COURT: ...you know....

MR. HERSHKOFF: ...subject to the supervisor obviously.

THE COURT: Well when's the wedding?

MR. MCARTHUR: Not until a year this fall.

THE COURT: Oh okay. All right. If -- because if the wedding were in the -- in the prohibited time, I would specifically exempt it to allow you to go.

MR. HERSHKOFF: Yes.

MR. LESHNER: Yes. I just agreed to that.

I'm in the Court of Appeal trying to get married next week, Your Honour, so I'm all in

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favour of marriage.

THE COURT: Good luck to you.

MR. LESHNER: Four days. I can't even go to a supervisor.

THE COURT: Good luck.

MR. LESHNER: Thank you.

MR. HERSHKOFF: Thank you, Your Honour.

THE COURT: Good luck, Mr. McArthur.

MR. HERSHKOFF: Thank you, Mr. Leshner.

THE COURT: Okay.

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46.  
Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

*Evidence Act*

5 I, **JUDITH SMITH**, certify that this document is a true and accurate transcript of the recording of **R. v. Bruce McArthur** in the Ontario Court of Justice, held at 60 Queen Street West, Ontario, taken from recording 121-03 April 11, 2003, #125, which has been certified in Form 1 by MacDonald.

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\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Authorized  
Person)  
ACT ID # 5339834698

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\_\_\_\_\_  
**AUTHORIZED COURT TRANSCRIPTIONIST - MS. JUDITH SMITH**

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\_\_\_\_\_  
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