

Appendix I*

L. Thompson

Wm. Mackeod
a.c. 808

IN THE COURT OF QUEEN'S BENCH
OF MANITOBA
(WESTERN JUDICIAL DISTRICT, BRANDON)

THE QUEEN
v.

GERARD YVON DE TONNANCOURT,
CLAUDE PAQUIN, and
JOSEPH CHARLES EUGENE GUY FERRAGNE.

RECEIVED
NOV 25 1955

To the Honourable Stuart S. Garson, P.C., Q.C.,
Minister of Justice,
Ottawa, Canada.

Report of the Honourable Mr. Justice Samuel Freedman,
upon the proceedings in connection with the trial of
the above three accused for the murder of Alfred
Quirion on the 9th day of January, 1955.

TRIAL:

Took place at Brandon, Manitoba, on the 1st,
3rd, 4th, 5th, 7th, 8th, 9th, 10th, 12th,
14th, 15th, and 16th days of November, 1955.

CHARGE:

That they the said Gerard Yvon De Tonnancourt,
Claude Paquin and Joseph Charles Eugene Guy
Ferragne on or about the ninth day of January
in the year of our Lord one thousand nine
hundred and fifty-five at the Rural Municipality
of Cornwallis in the Western Judicial District
in the Province of Manitoba, unlawfully murdered
Alfred Quirion.

COUNSEL:

For the Crown:
F. O. Meighen, Q.C., and J. C. Kerr.

For the Accused:

Harry Walsh, Q.C., A. M. Monnin, and
T. D. Grafton.

ARRAIGNMENT:

The accused were arraigned on the 1st day of
November, 1955.

PLEA:

Not guilty, by each accused.

JURY:

This was a case in which, pursuant to Sec. 536
of the Criminal Code, the accused demanded a
jury composed of at least half of persons who spoke
the language of the accused, namely, French.
The first six named in the list below, comprising
the jury in this case, spoke the language of the
accused. The list follows:

Bert Cadorath,	Brandon	Clerk
Leon Carbotte	Brandon	Proprietor
Louis Paul	Brandon	Mechanic
Leon Cancaide	Brandon	Manager
Maurice Boulanger	Grande Clairiere	Farmer

* This copy of the letter of clemency was provided by Library and Archives Canada.

Vital Galin	Grande Clairiere	Farmer
Harry Vanbuskirk	Virden	Clerk
Wilfred E. Brown	Hayfield	Farmer
R. A. Fletcher	Lyleton	Farmer
W. G. Smith (Foreman)	Oak Lake	Farmer
James Morrice	Reston	Farmer
John Fisher	Wawanesa	Farmer.

WITNESSES:

For the Crown, Case-in-chief	-	31
For the Defence	-	3
For the Crown in rebuttal	-	2
Called by the Court itself	-	1

ADDRESSES TO JURY:

Mr. Mennin for De Tonnancourt	-	40 minutes
Mr. Grafton, for Paquin	-	40 minutes
Mr. Walsh, for Ferragne	-	32 minutes
Mr. Weighen, for the Crown	-	1 hr. 55 min

CHARGE TO JURY:

One hour and fifty minutes.

JURY OUT:

From 12:00 noon to 3:00 p.m., which includes their luncheon period.

VERDICT:

De Tonnancourt	-	Guilty.
Paquin	-	Guilty.
Ferragne	-	Guilty.

RESPONSE OF
ACCUSED:

De Tonnancourt	-	"I am innocent".
Paquin	-	None.
Ferragne	-	None.

SENTENCE:

De Tonnancourt: The sentence of this Court is that you be taken to the gaol of the Eastern Judicial District at Headingley in Manitoba, and that you be there confined as the law requires until Tuesday, the 28th day of February, 1956, and on that date, between the hours of midnight and six o'clock in the morning, you be taken from your place of confinement to the place of execution, and you be there and then hanged by the neck until you are dead; and may God have mercy on your soul.

Paquin: The same.

Ferragne: The same.

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THE FACTS

THE ACCUSED:

Of the three accused Gerard De Tonnancourt was the only one who could speak English. At the trial he gave his testimony in English, and he had a rather fair command of the language. He stated that his knowledge of English had improved since his stay in jail following his arrest, and that in January it was not nearly as good. Paquin testified in French. The official court interpreter, Leo Verrault, sat next to Paquin and explained in French the evidence that was being given in the course of the trial. Ferragne, for whom a defence of insanity was raised as referred to below, did not testify. By leave of the Court his brother, Rev., Father Ferragne, sat next to him and from time to time explained the proceedings and evidence to him.

At the time of the offence De Tonnancourt and Paquin were both 17 years of age. In fact Paquin's eighteenth birthday occurred during the course of the trial. Ferragne was just 18 when the offence occurred.

An order by the Juvenile Court Judge had been made on January 10th, under Sec. 9 of The Juvenile Delinquents Act, that the two accused, De Tonnancourt and Paquin be proceeded against by indictment in the Court of Queen's Bench. No such order, of course, was necessary in the case of Ferragne.

THE JOINT TRIAL:

An application was made by counsel for the accused, before the arraignment, for separate trials of the three accused. After hearing argument I dismissed the application and directed the joint trial to proceed. My main reasons were the following:

1. The fact that the Crown alleged the existence of a common plan among the three accused to rob Father Quirion.

(Incidentally, the evidence indicated that the boys, all of the Roman Catholic faith, never knew that the driver

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of the car was a priest. Father Quirion wore a sweater with a high turtle neck. He wore no clerical collar at the time.)

2. The fact that if there was any variation in degree of culpability among the three accused, such variation would emerge even more distinctly in a joint trial than in three separate trials; and that, accordingly, a joint trial would not be prejudicial to the accused.

I am satisfied, as a result of the course which the trial took, that the decision for a joint trial was a correct one, and that no prejudice was occasioned to any of the three accused as a result thereof.

THE SCENE OF THE CRIME:

On January 9th, 1955, at about 4:15 p.m., at a point about five or six miles east of Brandon, in Manitoba, on Highway No. 1, Rev., Father Alfred Quirion came to his death as a result of haemorrhage caused by gunshot wounds. At that time he had been driving his car from St. Boniface in Manitoba in a westerly direction, the evidence indicating that he was on his way home to St. Edouard, Alberta.

It appears that a Cadillac car driven by the witness Mr. Robinson appeared on the scene within a minute - more or less - after the shooting. Mr. Robinson, who had as passengers his wife and his mother, stopped at the scene and offered the boys a lift to Brandon so that they could arrange for a tow truck to come out. He had, of course, no knowledge that the car which was then in the ditch was not theirs or that it contained any other person, living or dead. The three boys - identified at the trial by Mrs. Robinson as the accused - got into the car, were taken to Brandon, and were let off at the garage of Canadian Motors. Stains on the back seat of Mr. Robinson's car were proved to be human or monkey blood. (Mr. Robinson testified that no monkeys had ever been in his car to his knowledge).

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Other evidence identified the accused boys as having come by train from Toronto to Winnipeg, and then as having hitch-hiked from just out of Winnipeg to Portage la Prairie. Three different drivers testified to taking the boys over various parts of this route. The evidence of the accused De Tonnancourt and Paquin, and the statement to the police of Ferragne, made it plain that from Portage la Prairie, or just west of it, they received a ride with Father Quirion. It is clear that no real question of identification exists in this case. The three boys who came from in or around Father Quirion's car, as it stood in the ditch, and entered the Robinson car were in fact the three accused.

THE ARREST:

Following their arrival in Brandon about 4:35 p.m., the accused went to one of the bus depots, where they washed. They then put their jackets in a navy kit bag. They went to the C.N.R. station and bought three tickets for Regina on the train which was to leave soon after midnight. They ate in a restaurant, they walked around, and finally they came to the C.P.R. station.

At or about 8:20 p.m. Constable Britten of the Brandon City Police observed the boys in the C.P.R. station. By this time the police were looking for the person or persons responsible for the death of Father Quirion. He approached the boys and on learning that they had hitch-hiked their way that day to Brandon he at once called the R.C.M.P., two of whose officers arrived within a few minutes. As the boys were standing near the lockers one of the constables pointed to the lockers. Thereupon Ferragne reached into his shoe and produced the key to locker 187. Upon the constable opening the locker in question he found therein the navy kit bag. This kit bag was found to contain, among other things, guns, bullets, and knives. The boys were at once placed under arrest and taken to R.C.M.P. headquarters.

THE STATEMENTS OF THE THREE ACCUSED TO THE POLICE:

Statement of Ferragne: In his statement Ferragne indicated very clearly that there had been a preconceived plan on the part of the three boys to rob the first man giving them a lift who happened to be alone in his car. (As a matter of fact, in the case of the lifts which the boys had received prior to that given to them by Father Quirion the driver of the car was accompanied by at least one other person in every case). Ferragne also gave the details surrounding the actual shooting. Father Quirion had evidently stopped the car to relieve himself at the side of the road. It was then that Ferragne stated, in his own words, "We will do it now". He pointed the gun at Father Quirion, after the latter had taken his position behind the driver's wheel, and said to him, "This is as far as we go". Evidently Father Quirion was much surprised by this and thought it to be a joke. Ferragne says that when Quirion realized that it was seriously meant he, Quirion, held up his hand towards the gun as though to push it down, and that Ferragne then, "in his unnervement" (I quote the words of the interpreter's translation of the statement) shot at Father Quirion two or three times. The evidence disclosed that three shots were fired. Almost immediately after, the Robinson car drove up and the boys were given a lift in that car to Brandon.

Statement of De Tonnancourt: De Tonnancourt's statement in general supports and corroborates that of Ferragne. It, too, makes reference to a prior plan "to handle a man in order to have some money". De Tonnancourt also mentions in the statement that he, Ferragne, said: "We are going to do it." He admits in his statement that they took the man's wallet. A further admission in De Tonnancourt's statement, of some importance so far as his culpability on the charge is concerned, was this: "I think I took out my revolver, a .43, when Guy was shooting. My idea was to stun the driver but Guy preceded me."

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Statement of Paquin: Paquin's statement is again along similar lines to those of the other two boys. He too refers to the plan for robbery in these terms: "Ferragne, De Tonnancourt and myself before leaving Montreal, we had decided to stun the first guy who would give us a lift, if he was all alone." Again, with regard to the details of the actual shooting Paquin says as follows: "When we were behind the vehicle Ferragne told me that we would do it right away." So far as Paquin's actual participation in the events resulting in Father Quirion's death, the following sentence in the statement of Paquin to the police is relevant: "During that time I got off to go and take the steering and push the man on the other side."

I may point out that all three of the statements disclosed that the accused had obtained their weapons through a robbery committed in Montreal three days earlier. This portion of the statements was deleted, by my direction, and not disclosed to the jury.

DEFENCES OF THE THREE ACCUSED:

1. Defence of Ferragne:

(a) Accidental death, or death by criminal negligence:

There was a slight amount of evidence introduced during the trial to suggest the possibility that the death occurred either through pure accident or by criminal negligence on the part of Ferragne. Both De Tonnancourt and Paquin, in their evidence in the witness box, testified that Ferragne had his arm caught between the seat of the car and the door of the car. Moreover, during the cross-examination of the expert on ballistics certain theories were suggested to him, and an admission was obtained from him that if a person were holding the Smith & Wesson revolver - the shooting weapon - in his hand, and someone else pulled hard at the barrel thereof, the gun might go off. It was further admitted that if the car at that moment suddenly started to move, the motion of it might cause the holder of the gun to shoot two other shots, more or less involuntarily.

I may state that there was no actual evidence to support the theory which led to the foregoing admissions, and the jury could only make a finding of either death by pure accident or death through criminal negligence, by drawing inferences from the evidence actually on the record. I had already charged the jury as to the care which should be taken in distinguishing between an inference and something that was mere conjecture or speculation. It would appear from the jury's verdict that they did not feel justified in drawing any inference to support the view that the death of Father Quirion arose either from accident or mere negligence.

(b) Insanity: There was considerable evidence concerning the issue of insanity of the accused Guy Ferragne. This evidence brought into sharp conflict the views of four psychiatrists, two of whom found that Ferragne was legally sane and two of whom, on the other hand, found that he was legally insane at the time of the commission of the offence.

There was, however, some common ground among the four psychiatrists. All of them agreed that Guy Ferragne was not normal. The psychiatrists who were called by the Crown, and who were of opinion that Ferragne was not insane, stated as follows: Dr. T. A. Pincock said that Guy Ferragne was a schizoid personality, and Dr. Edward Johnson said that Guy Ferragne was a schizoid personality as well as a psychopathic personality.

It is not possible to review in this report the evidence of the psychiatrists in detail. A summary will have to suffice. Dr. T. A. Pincock stated that he was unable to find any signs of insanity on the part of Guy Ferragne to an extent that would render him incapable of appreciating the nature and quality of his act. In his view Guy Ferragne was legally sane on January 9th, 1955. His opinion was based upon direct examination (admittedly not as complete as the doctor would have liked it to have been), the life history of Ferragne, the statement given by Ferragne to Corporal

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Paquette, the absence of psychotic behaviour as observed by people both before and since January 9th, 1955, and the behaviour of the accused in Brandon jail. Dr. Pincock was of the view that Ferragne's attitude in the prisoner's box, in which he appeared to be either asleep or indifferent, was not genuine but was feigned.

Dr. Johnson, Superintendent of the Selkirk Mental Hospital in Manitoba, corroborated Dr. Pincock's evidence. As a matter of fact he and Dr. Pincock conducted their examinations of Ferragne at the same time. He too expressed the categorical opinion that on January 9th, 1955, Guy Ferragne was not insane within the meaning of the Criminal Code of Canada. As previously stated Dr. Johnson did concede that Guy Ferragne was an abnormal type of personality, schizoid and psychopathic.

On the other hand Dr. Robert Genest, a qualified psychiatrist residing and practising at Montreal, stated that "Guy Ferragne was surely legally insane on January 9th, 1955". He said that Ferragne had developed ideas not connected with reality; that he lived in a world of daydreams; that he had delusions of persecution; that he was indifferent to joy, fear or sorrow; and that on the date of the alleged crime he was suffering from a mental sickness, namely, paranoid schizophrenia of an evolutionary character in which the patient becomes assaultive, acts mechanically, knocking down obstacles with such tools as happen to be available; and that on that date Guy Ferragne was not able to distinguish right from wrong.

Dr. Maurice Demay, who was called as a witness by the Court, stated that he was Superintendent of the Hospital for Mental Diseases at North Battleford, in Saskatchewan. His categorical opinion was that Guy Ferragne, on January 9th, 1955, was suffering from a florid outburst of schizophrenic illness; that he was legally insane and could not differentiate between right or wrong, legally or morally. He stated that the accused's behaviour was marked by defects of interest, emotional flattening, indifference and indolence; that there was a split between his intellectual endowments and his emotional life; and that he was legally insane on the crucial date in question.

2. Defence of De Tonnancourt: De Tonnancourt took the witness stand and stated that there was no plan to rob anyone; there was no plan to harm Father Quirion; that he personally had no intention of robbing or hurting Father Quirion. He stated that he had been asleep in the car and that he was awakened as a result of a noise - presumably the shot or shots; that when he awoke he saw that Guy Ferragne's arms was caught between the door and the seat, and Guy was yelling to him, De Tonnancourt, to stop the car. De Tonnancourt stated that he realized something serious had happened. He panicked, and sensed that he had to get away from there. Thereupon he saw the wallet of Father Quirion sticking out of his pocket. Knowing that all three were broke and that they had to get away from the scene, he took the wallet. He emphasized, however, that there was no prior plan to rob and no prior intention to rob.

Part of the statement (the non-incriminating part) which De Tonnancourt gave to Corporal Paquette was adopted by him, part was repudiated by De Tonnancourt as never having been said, and part was admitted as having been said by him but as being based on information which he obtained later in Brandon from Ferragne and Paquin, particularly Ferragne.

So far as the kit bag was concerned, which contained the guns and the bullets, De Tonnancourt stated that this had been in Ferragne's possession all the time since they left Montreal, and that he personally never had it in his possession at all. He further stated that he never had his gun on his person but that it was in the kit bag at all material times.

3. Defence of Paquin: Paquin stated that there was no plan to rob anyone; there was no plan to rob Father Quirion; there was no plan to harm Father Quirion; and that he personally had no intention to rob or to hurt Father Quirion. He stated that at the crucial time he was outside the car to relieve himself. He was there alone. At that time De Tonnancourt was asleep in the back seat. Suddenly he, Paquin, heard a noise, a shot, and the car

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started to bounce forward. Guy Ferragne was running alongside the car with his arm caught. The car then went into the ditch. Then another car (clearly the Robinson car) pulled up. Thereupon Paquin got into that car, followed by the other boys, and they moved away from the scene.

Regarding the kit bag Paquin corroborated what De Tonnancourt had said, namely, that this kit bag had been in the possession of Ferragne all the time, and that he, Paquin, never had it at all. Moreover, he never had on his person or anywhere else any offensive weapon. He repudiated the greater part of the statement given to the police.

In putting the defences to the jury, I took pains to emphasize that the test was not whether the evidence of De Tonnancourt and Paquin was believed by the jury, but rather whether it raised in their minds a reasonable doubt of the guilt of the accused. Moreover, I invited the jury to consider very carefully all the circumstances surrounding the giving of the statements to the police, and asked them to consider whether the statements were voluntary, warning them that if they considered them involuntary or if they were not satisfied of the truth of such statements, they should reject them, in whole or in part, as the case might be. In the trial within a trial, in the absence of the jury, I had already accredited Corporal Paquette, but I tried to give no hint of this to the jury, leaving it to them to pass upon the statements. Evidently the jury were satisfied that they could accept the statements and act upon them.

GENERAL IMPRESSIONS:

The boys are young lads. In the courtroom I had an opportunity of observing them carefully. First of all, so far as Ferragne is concerned, there is no doubt that for a good part of the trial he appeared to be completely indifferent to his

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surroundings and on many occasions seemed to have gone completely asleep. There were two views on this behaviour, as expressed by the psychiatrists: one view - put forward by Dr. Pincock - was that this was an act. The other view - expressed by Dr. Demay - was that this was a genuine indifference, indicative of mental illness. I am not competent to pass any opinion as to whether the attitude of Ferragne was genuine or feigned; though I did state to the jury that in arriving at a decision on the issue of insanity they themselves could take into account Ferragne's attitude in the prisoner's box as it appeared to them. Certainly, as all psychiatrists agreed, there were indications of some abnormality on the part of Ferragne.

Regarding the other two boys, who were juveniles at the time of the commission of the offence, I can only say that nothing unusual or out of the ordinary was observed by me. De Tonnancourt seemed the more alert and intelligent of the two, but this impression may be partially due to the fact that he gave his evidence in English, while Paquin spoke in French.

X CONCLUSION AND RECOMMENDATION:

I have given anxious consideration to my responsibility in making a recommendation to the Honourable Minister of Justice regarding the exercise of executive clemency.

The enormity of the crime is very much in my mind. But the following other considerations are also present:

1. There is the fact that while the robbery appears to have been planned, the shooting seems to have been unpremeditated.
2. There is the fact of the abnormality of Guy Ferragne, who alone did the shooting.
3. Above all, there is the youth of all three boys and the fact that two of them, De Tonnancourt and Paquin, were under the age of 18 years.

Bearing in mind the foregoing circumstances it is my

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considered view that this is a case in which I should, as I now
do, recommend the exercise of executive clemency. x

All of which is respectfully submitted.

Samuel Freedman J.

Dated this 24th day of November, A.D. 1955.

