

IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

THE COURT:

The Honourable Mr. Justice R.P. Foisy
The Honourable Mr. Justice J.E. Richard
The Honourable Madam Justice V.A. Schuler

BETWEEN:

SANGANI OSUITOK

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

APPEAL FROM THE SENTENCE OF
THE HONOURABLE MR. JUSTICE J.Z. VERTES

UNANIMOUS DECISION
DELIVERED ORALLY FROM THE BENCH

COUNSEL: V. Foldats for the Appellant
L. Colton for the Respondent

FOISY, J.A. (for the Court):

[1] In the circumstances here we are of the view that using the words “firmly convinced” or “convinced” clearly indicate in the context of the definition of reasonable doubt that was given to the jury by this trial judge a standard that is less than absolute certainty and more than probably or unbalanced probabilities.

[2] The failure to use these words on a balance of probabilities is probably not fatal here and certainly while it is preferable that those words be used to eliminate in each case confusion and the possibility of an attack on the jury charge.

[3] Again, in this context and in the light of the direction that was given by the trial judge on the issue of reasonable doubt, the failure to address that specifically was not fatal.

[4] On the issue of recklessness this word was used in the context of honest mistake with respect to consent and we are of the view of using the words “he does not care” in this context sufficiently alerts the jury to the need to consider any subjective element.

[5] Accordingly the appeal is dismissed.

APPEAL HEARD on OCTOBER 14, 1998

MEMORANDUM FILED at
YELLOWKNIFE, Northwest Territories
this _____ day of June 2001.

FOISY, J.A.