

In the Court of Appeal for the Northwest Territories

Citation: *R v Durocher*, 2022 NWTCA 1

Date: 20220510
Docket: A-1-AP-2016-000005
Registry: Yellowknife

Between:

Her Majesty the Queen

Respondent

- and -

Cody Durocher

Appellant

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that could identify the victim, witness or the complainant must not be published, broadcast, or transmitted in any way.

NOTE: Identifying information has been removed from this judgment to comply with the ban so that it may be published.

The Court:

**The Honourable Justice Schutz
The Honourable Justice Strekaf
The Honourable Justice Pentechuk**

Memorandum of Judgment

Appeal from the Conviction of
The Honourable Chief Justice Charbonneau
Dated the 9th day of March, 2016
(Docket: S-1-CR-2014-000062)

Memorandum of Judgment

The Court:

I. Introduction

- [1] The appellant was convicted of sexual interference and sexual assault, following a trial by judge and jury.
- [2] The appellant's grounds of appeal are predominantly rooted in trial fairness concerns.
- [3] We have considered the record, the submissions of counsel, and the reasons of the trial judge and the jury charge. We are not persuaded there is any basis for appellate intervention.
- [4] For the reasons following, the appeal is dismissed.

II. Background

- [5] There is no dispute about the background facts, or in respect of what transpired during the trial which is accurately summarized by the trial judge in her procedural ruling: *R v Durocher*, 2016 NWTSC 17 (the "Decision").
- [6] The appellant stood trial on charges of sexual assault, sexual interference, and unlawful confinement alleged to have been committed in a high-rise apartment in Hay River on January 11, 2014, where the appellant was staying. The complainant, JS, was 13 years old at the time, and was 15 at trial.
- [7] On February 29, 2016, the jury was selected and the Crown started calling its case. Three witnesses testified that day: the police officer who investigated this matter; GM, whose residence JS went to both before and after her interaction with the appellant; and the cabdriver who drove JS to the apartment building.
- [8] An Agreed Statement of Facts and footage from the security cameras at the apartment building were also entered into evidence and specific portions were played for the jury, which showed the appellant waiting in the lobby, JS arriving and being let in by him, and her leaving a few hours later. A photograph of an injury to the complainant's fingers was also admitted into evidence.

[9] On the second day of trial on March 1, 2016, JS was called as a witness; her examination-in-chief was completed that morning. The trial judge noted that on one occasion, JS requested a break, which occurred.

[10] Briefly, JS testified that while at the apartment, the appellant offered her vodka and at one point tipped the bottle into her mouth as she drank. When he tried to kiss her, JS stated she told him not to touch her and pushed him away; when she got up and tried to leave, he closed the door on her thumb. She testified he then pulled down his pants to his knees and pulled down her pants; she punched him and told him to stop. Eventually, she stated that she was on the couch when the appellant forced anal intercourse. She ultimately left the apartment and went back to GM's residence; the RCMP arrived shortly thereafter and arrested her for breach of her curfew.

[11] Cross-examination began in the afternoon, during which two breaks were requested and taken by JS. In the Decision, the trial judge provided that during the second break, JS advised the Crown prosecutor that she was tired and would like to stop for the day. The trial was then adjourned until the following morning, with the trial judge instructing JS to return in the morning for further cross-examination. JS did not return the next day however, which brought about "the premature end to her cross-examination".

[12] The parties entered into discussions about what to do, with the Crown advising it was not asking for a witness warrant and providing the Court with *R v Hart*, [1999] NSJ No 60, 1999 NSCA 45, leave to appeal dismissed [2000] SCCA No 109, which it stated was the leading authority on a witness' cross-examination ending prematurely. The Crown submitted the trial could continue with the complainant's refusal to attend going to the weight of her evidence.

[13] While defence counsel initially stated he would request a stay, the matter was adjourned to consider *Hart*, and to hear and consider the Crown's similar fact application, which was ultimately dismissed by the trial judge. Counsel set out numerous areas he had wished to pursue in cross-examination, but agreed that pursuant to *Hart*, there were alternative remedies available other than a stay, such as the admission of the complainant's preliminary inquiry evidence and her police statement. He later asked the trial judge to instruct the jury that those materials could be used to assess inconsistencies in the complainant's version of the events *and* for the truth of their contents, as he wanted to rely on her statement that she had hit her head on the coffee table as being true.

[14] In the Decision, the trial judge accepted that *Hart* was the "leading case that sets out the applicable principles when a witness' cross-examination comes to an end prematurely", and three factors are to be considered: (1) the reason for the unavailability of cross-examination; (2) impact on the defence, and (3) ameliorative actions that can be taken to mitigate that impact. Citing such cases as *R v WAP*, 2009 NWTCA 7 at para 37, 460 AR 103 [*WAP*], *R v Yu*, 2002 ABCA 305 at para 9, 317 AR 345 [*Yu*], *R v Cameron*, [2006] O.J. No. 1928 [*Cameron*]; and *R v Duong*, 2007 ONCA 68 at para 29, 24 OR (3d) 515 [*Duong*], the trial judge found that an interruption of cross-examination does not automatically result in an unfair trial, nor necessarily render the evidence of the witness inadmissible. She further noted that while a number of inconsistencies had already

been brought out in the complainant's evidence, there were several "legitimate areas for cross-examination" remaining.

[15] In assessing the first factor of the reason for the premature end to cross-examination, the trial judge found that it was the complainant's decision not to return to court despite being directed to do so. She noted that the case law has moved away from the notion of "fault" however and held that the complainant's failure to return must be examined in context which included that she was only "15; she was 13 at the time of the events" and had otherwise given a police statement and testified at the preliminary inquiry. While efforts had been made to make the complainant comfortable while testifying, she found that the complainant had "struggled" through her testimony of the sexual conduct, crying and covering her face. The trial judge also noted the complainant's troubled background including being on probation, her abuse of alcohol and marijuana, and that after she was arrested for the breach of curfew and told the police she had been sexually assaulted, she was not taken to the hospital but, rather, lodged in police cells.

[16] As to the impact on the defence resulting from the premature end to the complainant's cross-examination, the trial judge accepted that the defence would have explored several further areas of cross-examination, and that it is "a fundamental right of an accused to be able to make full answer and defence. . . includ[ing] fully testing the evidence that is adduced by the Crown in support of a charge". She recognized that the appellant faced very serious charges and significant jeopardy and accepted that the complainant's failure to return interfered with defence counsel's ability "to bring out, through cross-examination, inconsistencies and other weaknesses of the evidence of the witness who, obviously is a very important witness for the Crown".

[17] Finally, as to possible ameliorative measures, the trial judge found this was the "fundamental question" before her, in determining whether the impact of the incomplete cross-examination could be remedied to "preserve Mr. Durocher's fair trial rights". She concluded that sufficient remedial measures could be taken; namely, that the relevant excerpts of the complainant's police statement and preliminary inquiry evidence identified by the defence as establishing inconsistencies, could be put before the jury. She further noted some cross-examination had occurred and that the "jury heard her acknowledge before them her lack of truthfulness with the police on the earlier occasion and her lack of truthfulness on some matters at the time of the preliminary hearing, and at trial. To me that is significant. . . ". The trial judge determined that a caution would be given to the jury about the lack of full cross-examination, and that "they should be extremely careful in the weight that they attribute to the evidence of this complainant given that there was not full cross-examination". As a result, she found that the appellant's fair trial rights could be preserved.

[18] The relevant excerpts were ultimately placed before the jury and the Crown closed its case. The appellant called no evidence and the parties made closing submissions. Defence counsel extensively reviewed the inconsistencies in the complainant's testimony at the preliminary inquiry, at trial and in her police statement, inviting the jury to acquit the appellant. The trial judge also pointed to inconsistencies in the complainant's statement and her testimony in her jury charge,

cautioning that the complainant had lied under oath and had “fail[ed] to return for cross-examination”. She further told the jury they could rely on any “Agreed Statement of Facts” as proven, and that the excerpts of the complainant’s testimony and statements could be used to establish inconsistencies and for the truth of its contents.

[19] Ultimately, the jury found the appellant guilty of sexual interference and sexual assault but found him not guilty of unlawful confinement.

III. Grounds of Appeal

[20] The appellant raises three grounds of appeal:

1. Did the trial judge err in dealing with the complainant’s failure to return to complete cross-examination?
2. Did the trial judge err in answering the jury’s question: “does the fact of J.S.’s pants being pulled down, constitute sexual assault or sexual interference?”
3. Did the trial judge err in allowing two Agreed Statements of Facts to go before the jury?

IV. Standard of Review

[21] As *Hart* provided at para 94, “there is no short, dispositive ‘test’” for whether a trial has become unfair or an accused had been denied full answer and defence when cross-examination of a child witness is halted. “These are matters for the discretion of the trial judge taking account of all the relevant considerations”; *Hart* proposed three main factors in this inquiry, as outlined above at para 14.

[22] As stated in *Duong* at paras 36-37, the trial judge “is clearly in the best position to assess and weigh these factors and an appellate court must accord a substantial degree of deference to the trial judge’s assessment”. However, this discretion is not absolute, and will be subject to review if there are errors in principle or palpable and overriding errors of fact which thwart the ultimate goal of trial fairness. See also *Cameron* at para 22.

[23] Review of a trial judge’s answer to a question by the jury invokes a functional assessment; more particularly, what did the words used likely convey to the jury considered in the context of the trial and the charge as a whole? It must be remembered that while an accused is entitled to a properly instructed jury, a trial judge’s instructions are not to be held to a standard of perfection: *R v Daley*, 2007 SCC 53 at paras 28-31, [2007] 3 SCR 523.

[24] The final issue concerning admissibility of evidence, raises the “gatekeeper” function of the trial judge. While correctness will be applied to any extricable question of law, deference is owed to findings of fact related to the admission of evidence or on the exercise of discretion, absent

a manifest error: *R v Goodstoney*, 2007 ABCA 88 at para 63, 218 CCC (3d) 270 [*Goodstoney*]; *R v deKock*, 2009 ABCA 225 at para 18, 454 AR 102.

V. Analysis

1. The trial judge did not err in determining that the trial should continue even without the complainant's attendance to complete cross-examination

[25] As this Court found in *WAP* at para 37: "Premature termination of cross examination is not always fatal." While it is recognized that the "opportunity to cross-examine witnesses is fundamental to providing a fair trial to an accused", it is not absolute: *R v Lyttle*, 2004 SCC 5 at paras 42-45, [2004] 1 SCR 193 [*Lyttle*].

[26] In situations where some direct evidence by the complainant is before the jury, the approach to be taken involves a necessary balancing in weighing the reason and impact of the premature end to cross-examination which affects the accused's fair trial rights, and whether that impact can be ameliorated: *Goodstoney* at para 93 citing *Hart*. More specifically, as stated in *Yu* at para 9:

It is settled law that no breach of fundamental fairness is deemed to have occurred where cross-examination of a material Crown witness has been truncated or has indeed been lost. Where the effect of the cross-examination has been limited but not entirely negated, any inconsistencies between the evidence in chief and prior statements that could have been led from other sources and put before the jury may be sufficient.

[27] As was the case in *Yu*, the jury had seen the complainant testify in examination-in-chief, and some cross-examination had occurred with the jury hearing firsthand from the complainant that she had lied to police and at the preliminary inquiry. That testimony could be evaluated, as well as her failure to return to complete cross-examination in assessing her credibility and reliability. Further, the availability of "other sources" of evidence was considered by the parties in this matter, particularly by defence counsel who selected relevant excerpts of the complainant's police statement and preliminary inquiry to be put before the jury, as it related to both establishing inconsistencies and pointing to the complainant's statement that she hit her head on the coffee table after falling, which he sought to rely on for its truth.

[28] Not only did the Crown advise it was not asking for a witness warrant, neither did defence counsel who otherwise did not apply for a mistrial, stay of proceedings, or to strike the complainant's testimony. Rather, counsel conceded on the record that per *Hart*, the matter could proceed with steps taken to ameliorate the lack of full cross-examination, including by putting other relevant sources of evidence from the complainant before the jury, and giving strict warnings in the charge about the weight of the complainant's evidence given her decision not to reattend court. While counsel's position is not determinative and it remains the responsibility of the trial

judge to carefully weigh the circumstances in a given matter, the lack of objection to this trial's continuation was significant and, in our view, correct.

[29] Regardless, rather than merely accepting the submissions of both counsel as a basis for concluding the trial could continue without a witness warrant, the trial judge nevertheless extensively assessed “whether the trial ha[d] been rendered unfair by the premature end of [the complainant’s] cross-examination”, recognizing that it is a “fundamental right of an accused to be able to make full answer and defence”. She also specifically found that there were several legitimate areas of the complainant’s narrative that the appellant had not been given the opportunity to probe in cross-examination, that she was the Crown’s primary witness and that he faced “serious charges [and]... significant jeopardy”.

[30] While the appellant seems to argue that the burden of proof was misplaced in this case, and that the trial judge did not deal with “the reason for the unavailability of the witness”, we see no proof of any such errors. The trial judge gave detailed reasons under each of the *Hart* factors, including her consideration that the premature end of the complainant’s cross-examination was because “J.S. did not come back to court... contrary to the expressed direction” to do so. There was no error in the trial judge’s finding that the complainant’s failure to reattend must be viewed in the context of a child witness who she reasonably found had a “troubled life” and had “struggled through her evidence, in particular when she had to describe the details of the sexual contact she said the accused had with her”. As the trial judge correctly found, the case law has moved away from the notion of “fault” when looking at the evidence of a young witness. As stated in *Hart* at paras 59, 62:

Over the last 10 years, there has been growing recognition that some rules of evidence and trial procedure do not adequately address the special needs of young witnesses, particularly in sexual abuse cases. . .

. . . [F]lexibility and common sense must be applied when considering the consequences of a child witness becoming unresponsive during cross-examination. It seems to me to be wrong to base the analysis on whether the unresponsiveness is the "fault" of the witness, as some of the older authorities do. While it may be appropriate to consider whether the party calling the witness and the party cross-examining have done what is reasonably possible to mitigate the difficulties of testifying, the primary focus of the analysis should be the impact of the limitation on cross-examination on the ability of the jury to assess the evidence. This analysis should have due regard to the particular circumstances of the case, viewed realistically and with common sense by standards appropriate to a witness of the age and sophistication of the child in question. In short, the assessment must be made with the flexibility and common sense appropriate to child evidence generally, not according to stereotypes or rigid rules.

See also *R v TH*, 2017 ONCA 485 at paras 43-44, 352 CCC (3d) 47 [*TH*].

[31] As in *TH*, the trial judge sought to properly balance the fair trial interests of the appellant and the difficult situation of this young complainant. In so doing, she did not unduly focus on the trauma of the sexual allegations or defence counsel's cross-examination, but rather considered the complainant's undeniably difficult background, and the entire context of how these charges came to be laid, which included that the police did not seek out medical attention or other support after her disclosure. The trial judge's decision to proceed with the admission of excerpts of the complainant's police statement and preliminary inquiry testimony rather than a witness warrant, struck an appropriate "balance between the accused's right to make full answer and defence and the societal need to protect the most vulnerable of complainants, children", and is owed significant deference.

[32] With this, the trial judge recognized that the issue of whether sufficient ameliorative measures were available to preserve the appellant's fair trial rights, was the "fundamental question" to be decided. She determined those rights could be preserved, through the admission of "various forms of inconsistencies in the different accounts that J.S. gave at different times", and particularly the extensive cross-examination at the preliminary inquiry which shed light on those inconsistencies, as well as the complainant's trial evidence in direct and cross-examination heard by the jury. This was also the solution proposed by both counsel, and those additional materials were specifically vetted to fulfill this purpose.

[33] In the result, defence counsel made extensive closing submissions about his cross-examination of the complainant, and the inconsistencies in her testimony and at the preliminary inquiry, and in her statement to police (entered into evidence). The trial judge also returned to these inconsistencies in the jury charge, and further cautioned about the complainant's admitted lies under oath and her decision not to return to court as directed; she told the jury to be very careful in the weight given to the complainant's evidence given that there had been no full cross-examination. Recognizing the right of cross-examination set out in *Lyttle*, the trial judge's finding that the appellant's fair trial rights could be preserved by allowing the trial to continue was proper in all the circumstances and warrants no intervention.

[34] As to any remaining argument related to the trial judge's instructions to the jury as to how the prior statements of the complainant could be used, both for inconsistencies *and* for the truth of their contents, again defence counsel had requested this instruction at trial, and raised no concerns following the charge. While again, counsel's trial position is not determinative, it was a request made for a specific tactical purpose related to the complainant's statement about hitting her head. Beyond this however, and as *Hart* deals with extensively, there are many exceptions to the hearsay rule, many of which exist to admit evidence as truth even though cross-examination of the statement maker is not possible. One unifying element in most of these exceptions is one of "necessity" due to the unavailability of the witness, including the ability to cross-examine. As *Hart* states at paras 46-48, under the principled approach to the hearsay rule, necessity is to be given a flexible definition, and references the case of *R v KGB*, [1993] 1 SCR 740, 73 CCC (3d) 257,

where the “admission of a witness’ prior inconsistent statement as truth of its contents was found to be ‘necessary’ even though the witness was available and testifying.” Here, all parties agreed the admission of the complainant’s previous evidence was necessary to preserve the appellant’s fair trial rights.

[35] The trial judge otherwise appropriately interwove various cautions about the complainant’s evidence into her instructions to the jury about how to assess credibility and reliability. She was clear that as the complainant had admitted to not telling the truth, her evidence was to be approached “with caution”. Any argument that the jury charge did not assist in ameliorating the loss of full cross-examination or amplified the prejudice to the appellant, is without merit.

2. The trial judge did not err in her response to the jury’s question related to the pulling down of JS’ pants

[36] The jury asked the trial judge four questions, the first two relating to the particulars of the sexual offences as follows:

In general, what is the definition of sexual assault & provide examples? & Section 271 of the *Code*.

In this case particular, does the fact of [JS’s] pants being pulled down, constitute sexual assault or sexual interference?

A third question also related to both sexual charges as follows:

Does a guilty verdict on Count 1 [the sexual assault] necessarily lead to a guilty verdict on Count 2 [sexual interference]?

[37] While the appellant only takes issue with the answer provided to question two, that answer must be considered in the context of the trial judge’s answer to all three questions, which followed discussions with both counsel. During these discussions, the trial judge was concerned the jury’s questions related to how these two sexual offences overlapped; namely that the kiss described by the complainant and which was particularized in the sexual interference charge (“touch... with a part of his body, to wit his mouth”) could also be a sexual assault. She determined that she would review the elements of sexual assault again, giving examples, and that the “second part of the question is yes, that pulling someone’s pants down - - *it is not a yes, it is a sexual assault or a sexual interference...* I would have to tell them that it constitutes sexual assault, and while it may also constitute sexual interference, here the sexual interference charge is worded as contact with the mouth” (emphasis added). The Crown was content with these clarifications, as was defence save for one issue.

[38] Defence counsel was concerned that the jury may be asking about snow pants, about which he stated there was “evidence. . . the snow pants appeared to have come off” which would not be sexual assault, as opposed to “talking about the pants that are pulled down”. The trial judge stated that “pants being pulled down” was the question that was asked and had to be answered, but that

she would make it clear the answer was in relation to “her testimony that her three layers of pants were pulled down, that would constitute a sexual assault. . . I will just tie it in with her evidence because that is how it came out.” Defence counsel replied: “That’s perfect”.

[39] The trial judge then proceeded to answer the jury’s questions accordingly, spending much time defining a sexual assault which includes the “intentional application of force to the complainant, and that force has to be of a sexual nature”, and providing examples. The trial judge then moved on to the second question, telling the jury she would answer it in two ways. “First of all, the answer is yes. [JS’s] description of her three layers of pants being pulled down falls within what I have just talked about, the application of a force of a sexual nature.” She then went on to discuss the overlap between the two sexual offences, explaining that the charge of sexual interference was confined to the kissing, as particularized in the indictment to have been committed by “his mouth”, and therefore would not be proven by way of the pulling down of pants. Rather, “... the conduct described in her testimony about the three layers of pants being pulled down would constitute an application of force of a sexual nature, and therefore, would be included in the definition I have explained to you of sexual assault.”

[40] Importantly, in the context of answering the jury’s third question, does a guilty verdict on the sexual assault necessarily lead to a guilty verdict on the sexual interference, she reminded the jury as follows:

... The short answer to that question is no, because for each of those counts you must consider whether you are satisfied beyond a reasonable doubt on the evidence of all of the elements in support of that count.

I have also explained to you that when you are assessing evidence it is not an all-or-nothing. It is open to you to accept everything a witness told you, nothing of what a witness told you or parts of what a witness told you. So as the trier of facts you could accept that some of the things that [JS] alleged that occurred are proven and others are not...

So the key is to remember the elements I told you about for these three counts and decide on the evidence whether the Crown has proven these elements beyond a reasonable doubt or not. For any of these counts, if you have a reasonable doubt about any of the elements, then you cannot find the accused guilty on that count...

Now, of course you will understand in the circumstances of this case, in support of all three counts, the evidence that the Crown is asking you to accept is the evidence of [JS], and from the defence’s point of view the evidence that the defence is saying is not reliable enough to base a conviction is also the evidence of [JS], but it is up to you to decide how to sift through her evidence... .

[41] Read in its entirety, the trial judge was both careful and fulsome in answering the jury’s questions. In the context of the charges laid, the evidence, the submissions of counsel, and the

entirety of the trial judge's charge to the jury, the answers were also not only fully responsive and contextually accurate, but legally correct. She explained that the sexual interference count related to the appellant's touching of his mouth to JS' body, as particularized in the charge, and not the pulling down of her pants. She also reiterated the elements of sexual assault, and accurately instructed the jury that *JS' evidence* that the appellant pulled down her pants, could legally amount to "the intentional application of force to the complainant... of a sexual nature", thus a sexual assault. However, the jury was reminded that they could only do so if they *believed* JS's evidence about that conduct, otherwise they were required to acquit.

[42] This ground of appeal is dismissed.

3. The Agreed Statements of Facts were properly admitted

[43] The appellant argues that the admitted facts in the Agreed Statements of Facts were expert opinion evidence requiring a *Mohan* voir dire, and otherwise did not meet the necessity requirement and acted as oath-helping related to the investigating officer's evidence, and thereby "may have distorted the fact-finding process". There is no merit to these arguments.

[44] Section 655 of the *Criminal Code* provides that an accused through counsel "may admit any fact. . . for the purpose of dispensing with proof thereof." Both impugned Agreed Statements of Facts in this matter made reference to s 655, were signed by both counsel and were read in open court to the jury, without objection. Neither were the admissions later contradicted by the appellant or his counsel's submissions, and no application was made to withdraw any of these facts. It must also be noted that none of the admissions related to the elements of the charged offences.

[45] The evidence presented in the Agreed Statements of Facts did not refer to an expert, or an expert's opinion, but presented the information as it was intended and required to be presented, as fact. Even if the genesis of the agreed to and admitted facts was expert opinion, there is nothing untoward about counsel agreeing that certain aspects of the opinion are non-contentious and can thereby be admitted as facts. Courts have long encouraged these types of agreements to facilitate trial efficiency: *R v Jordan*, 2016 SCC 27, [2016] 1 SCR 631. This circumstance does not trigger an automatic need for the trial judge to conduct a *Mohan* voir dire, and no such need existed in this case; nor was there any reason for her to weigh necessity, reliability, or prejudice versus probative value. There was no reason for the trial judge to do anything more than accept these documents as admissions to be put before the jury.

[46] It is worth noting, per *R v Eliasson*, 2020 ABCA 446 at para 28, that permission to withdraw a formal admission will not be granted without credible evidence the admission is inaccurate or untrue. Further, an admission may not be withdrawn for "tactical" reasons or a change in strategy. While this is not an application for permission to withdraw an admission, nor could one be made at this point, raising this issue on appeal appears to be akin to the appellant changing his mind post-trial about having made these admissions in the first place. Again, such a change of position is not allowed without proof of inaccuracy of which there is none. The position of the appellant in appealing these Agreed Statements of Facts is directly contrary to the defence

position taken at trial, and, while not determinative, we note there is no argument of ineffective assistance of counsel or any such evidence to support such a claim.

[47] The fundamentals of the argument presented on this ground are untenable. Accordingly, this ground of appeal is dismissed.

VI. Disposition

[48] The appeal is dismissed.

Appeal heard on April 26, 2022

Memorandum filed at Yellowknife, NWT
this 10th day of May, 2022

Schutz, J.A.

Authorized to sign for: Strekaf, J.A.

Pentelechuk, J.A.

Appearances:

B. MacPherson
For the Respondent

D.J. Royer
For the Appellant

IN THE COURT OF APPEAL
FOR THE NORTHWEST TERRITORIES

Between:

Her Majesty the Queen

- and -

Cody Durocher

MEMORANDUM OF JUDGMENT

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