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RE: Queen vs Arey

Trial at Inuvik, N.W.T. June 1-3 inclusive, 1977, before  
Mr. Justice C. F. Tallis.

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THE COURT: Well, in this particular voir dire I have heard the  
evidence and I have directed myself with respect to the law  
as set forth in a number of authorities, some of which I  
have already referred to.

I have in mind particularly the article or annotation  
entitled "Complaints in Sexual Cases", 33 Criminal Reports,  
page 65, and particularly the following cases:

Regina vs Lillyman, 1896, 2 Queen's Bench, 167 -  
at page 171 particularly.

Thomas vs the Queen, 1962, Volume 2, Supreme Court  
Reports, 344 - particularly at 354 and 355.

and Queen vs Lebrun, 1951, 100 Canadian Criminal  
Cases at page 16, and particularly at page 26.

As I stated a Trial Court should not admit evidence  
of a complaint until satisfied that it was made at the first  
opportunity which reasonably presented itself and was not  
one subsequent to and separate and distinct from the first  
complaint; and secondly that it was not elicited by  
questions of a leading, inducing or intimidating character



1                   Complaints made after the first reasonable opport-  
2                   unity are therefore inadmissible because they would be  
3                   no more than narrations in the absence of the accused.

4                   However, in this case, as in other cases, I have  
5                   to look at all the circumstances that have been elicited  
6                   before me on the voire dire, and while there are dis-  
7                   crepancies and variations in the evidence this essentially  
8                   goes to a matter of weight by the jury if I decided that  
9                   the alleged complaint was made at the first reasonable  
10                  opportunity which presented itself.

11                  In determining the legal admissibility I have to  
12                  look at all the circumstances that have been presented to  
13                  me, and I have to also bear in mind the background and  
14                  ability of the plaintiff as I see it from observing her  
15                  manner and demeanour in the witness box. Similarly I  
16                  think that I am entitled to take into account the fact  
17                  that, where a complainant has made a recent complaint,  
18                  that complaint may be admissible in evidence even though  
19                  the person to whom she allegedly made the complaint is not  
20                  required as a witness - and I am thinking particularly  
21                  of the Kribs case, which was decided in the Supreme Court  
22                  of Canada.

23                  Looking at all of the circumstances in this case  
24                  and bearing in mind the limited period of time over which  
25                  the activities of the complainant apparently took place  
26



1 leading up to her alleged recent complaint to Barbara  
2 Kasook, I am satisfied that there is evidence to go before  
3 a jury.

4 In other words, I am prepared to admit the evidence  
5 of this complaint because I am satisfied in the circum-  
6 stances of this case that it was made at the first opport-  
7 unity which reasonably presented itself.

8 I therefore rule the evidence admissible and I will,  
9 of course, be directing the jury to the limited use that  
10 can be made of the complaint, and of course, in the course  
11 of my charge to the jury I will be pointing out to them  
12 that the weight to be given to the evidence is a matter  
13 for them to decide and this, of course, will fall within  
14 that general direction. I also have no doubt that  
15 Counsel will be directing comments on that as well.

16 Now, is my ruling on that clear, gentlemen?

17 MR. DALTON: May I ask one question?

18 THE COURT: Yes.

19 MR. DALTON: My Lord, there was in addition to the recent complaint  
20 other evidence of what I might term as hearsay nature  
21 adduced as well. That isn't included in the complaint,  
22 I trust?

23 THE COURT: What evidence are you referring to?

24 MR. DALTON: "Come along with me" I believe was the evidence -  
25 something of that nature. It was in the evidence of  
26 Barbara Kasook.  
27



1 MR. PONTAINE: That's not hearsay. That's res gestae which says  
2 who was invited.

3 THE COURT: It wasn't Barbara Kasook that said that.

4 MR. DALTON: That's right.

5 THE COURT: It was the complainant who asked her to come.

6 MR. DALTON: No, but in Barbara Kasook's evidence she said Joanne  
7 Kendi said to her "Come with me".

8 THE COURT: Yes.

9 MR. DALTON: In my view that's hearsay evidence.

10 THE COURT: No, I view that as part of the overall complaint.  
11 It's leading up to the complaint.

12 MR. DALTON: Well, I want a ruling on it.

13 THE COURT: Well, my ruling covers that - that it's admissible,  
14 or otherwise the complaint would be isolated to just three  
15 or four words. I don't think it's proper to have it  
16 taken out of context.

17 THE COURT: All right, we will adjourn until 1:30.  
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24 Excerpt from Trial  
25 by R. Hobbs.  
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