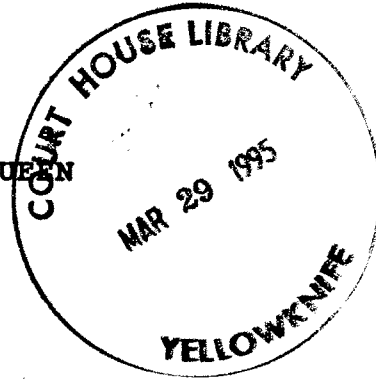


CR 02518

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

ROGER WALLACE WARREN

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Transcript of the Ruling of The Honourable Mr. Justice  
M.M. de Weerd on the Objection raised by Crown  
Counsel in Cross-examination of the witness Nancy Defer,  
in Yellowknife, in the Northwest Territories, on the 4th  
day of November, A.D., 1994.

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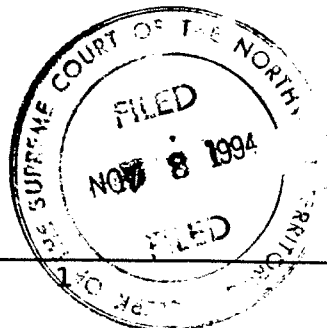
APPEARANCES:

Mr. P. Martin, Q.C./  
Mr. D. Guenter

For the Crown

Mr. G. Orris, Q.C./  
Ms. G. Boothroyd

For the Defense



1 THE COURT: Crown counsel has taken objection to  
2 questions posed in the cross-examination of a Crown  
3 witness as to that witness's knowledge of police  
4 interviews with the accused other than those  
5 respecting which the Crown has led evidence in chief.  
6 The questions include an inquiry as to whether one of  
7 these additional police interviews was recorded by the  
8 police.

9 I am, of course, aware that there was a number of  
10 such additional police interviews of the accused, from  
11 the evidence adduced before me during the voir dire. And  
12 while that evidence does not show that the witness now  
13 on the stand actually participated in any of those  
14 additional police interviews, it may well be that she  
15 took part in monitoring at least some of them as they  
16 were audio-recorded, whether that was done covertly or  
17 not in so far as the accused is concerned. To that  
18 extent, then, the witness may have direct knowledge of  
19 the additional police interviews or at least some one  
20 or more of them.

21 Crown counsel has indicated that it is, at this  
22 point at least, not the Crown's intention to adduce  
23 evidence of any of these additional police interviews  
24 prior to an interview held on October 15, 1993. He  
25 takes objection to defence counsel questioning the  
26 witness as to interviews which are no part of the  
27 Crown's case, as presently formulated, and which refer

1 only to what can be described as self-serving, or  
2 exculpatory, statements made to the police by the  
3 accused in the period between October 16, 1992 and  
4 October 15, 1993.

5 For the accused, it is submitted that the  
6 existence of these additional interviews is a material  
7 fact which should be before the jury in evidence when  
8 they come to consider the October 15, 1993 interview  
9 and what flowed from it. A false impression could  
10 otherwise be given to the jury that nothing took place  
11 in relation to the police investigation and the  
12 accused between the last interview of which the jury  
13 have now heard, and that interview on October 15, 1993  
14 of which we understand they are about to hear.

15 As to whether the additional interviews were  
16 recorded and, if so, how that was done, the argument  
17 is that the jury should also be made aware that there  
18 is a record of those interviews which the Crown, for  
19 its own reasons, has chosen not to produce in evidence  
20 at the trial.

21 Some of those interviews were with polygraph  
22 operators. And presumably there was, among the  
23 records of those interviews, a record of whatever was  
24 produced by the polygraph equipment. The Crown, in my  
25 view understandably and correctly, has decided not to  
26 introduce any polygraph evidence at the trial. There  
27 is therefore a question of how far the

1 cross-examination now proposed should be allowed to  
2 go, more especially in relation to the records, be  
3 they polygraphic records or other records, of these  
4 additional police interviews.

5 Counsel have not cited or relied upon any judicial  
6 authority for their respective submissions. Overnight  
7 I have conducted some research but without finding any  
8 authority on the point which arises on a factual basis  
9 such as that revealed during the voir dire. There is  
10 authority for the treatment of a series of statements  
11 made by an accused to someone in authority as but one  
12 single statement, so that if the Crown chooses to  
13 adduce a part only of that statement, as inculpatory  
14 of the accused, it is open to the defence to adduce  
15 the remainder, though it is exculpatory, in order that  
16 the whole may be in evidence before the jury. See R.  
17 v. Blondin (1971) 2 C.C.C. (2d) 118, (1971) 2 W.W.R. 1  
18 (B.C.C.A.), affirmed (1971) 4 C.C.C. 566 (2d), (1972)  
19 1 W.W.R. 479 (S.C.C.).

20 On the other hand, there is authority for the  
21 exclusion of self-serving hearsay sought to be adduced  
22 by the accused even as part of a series of inculpatory  
23 statements. R v. Rosik, (1971) 2 C.C.C. (2d) 351  
24 (Ont. C.A.) affirmed at page 393 (S.C.C.). In the  
25 present case the series of interviews are spaced at  
26 least some days apart, and in several instances the  
27 intervals are considerably longer. It is not in

1 dispute that, the polygraph interviews aside, the  
2 statements made and the other evidence produced during  
3 those additional police interviews is entirely  
4 exculpatory and can be described as purely  
5 self-serving on the part of the accused.

6 Be that as it may, I consider that it is open to  
7 the accused to lead evidence, whether through  
8 cross-examination of Crown witnesses or otherwise, to  
9 the effect that the additional police interviews took  
10 place, with details of the dates, times, durations and  
11 places of those interviews together with the name and  
12 rank, if any, of the interviewer (or interviewers if  
13 more than one), but nothing as to the content of those  
14 interviews or the manner of their recording, whether  
15 by polygraph or other equipment. It is not open to  
16 the accused to lead evidence, through  
17 cross-examination or otherwise, as to the content or  
18 manner of recording of those interviews, except in so  
19 far as the evidence to be adduced requires this  
20 information to be given in explanation of the manner  
21 in which the witness became aware of the interview and  
22 the details of it which I have mentioned.

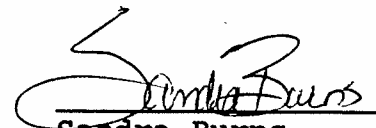
23 It may be added that the evidence here under  
24 consideration has all been ruled admissible at the  
25 instance of the Crown pursuant to the common law  
26 confession rules. That ruling was one, as counsel  
27 will recall, which the Court was invited to make by

1 both counsel for the Crown and counsel for the  
2 accused.

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Certified Pursuant to Practice Direction #20  
dated December 28, 1987.

  
Sandra Burns  
Court Reporter