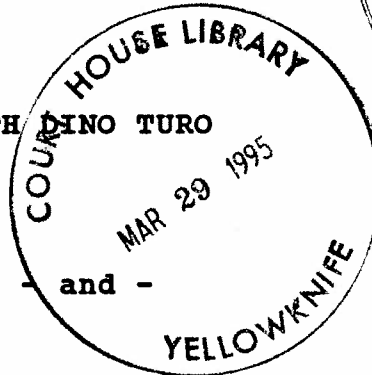
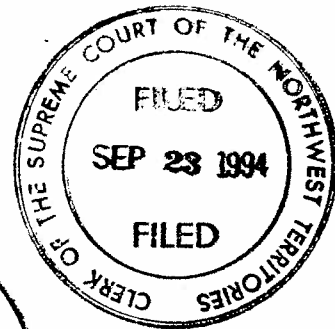


CR 02560

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:



JOSEPH DINO TURO

Applicant

- and -

HER MAJESTY THE QUEEN

Respondent

---

Transcript of the Proceedings held before the Honourable  
Mr. Justice J. E. Richard, sitting in Yellowknife in the  
Northwest Territories, on Friday, September 16th, A.D.,  
1994.

---

APPEARANCES:

MR. S. SABINE:	On Behalf of the Applicant
MR. A. REGEL:	On Behalf of the Respondent
MR. J. MACDONALD:	

1 THE COURT: This is an application by the accused  
2 for an order compelling the Crown to make disclosure  
3 of certain requested information. The accused is  
4 charged with using a knife while committing a sexual  
5 assault on the complainant contrary to Section 272 of  
6 the Criminal Code.

7 This jury trial is scheduled to commence in Fort  
8 Good Hope on September 26th. His counsel seeks  
9 disclosure of any prior allegations of sexual assault  
10 made by the complainant to the police or to the Crown.

11 The Crown's position, as I understand it, is that  
12 the Crown Attorneys' Office is not itself aware of any  
13 such prior allegations. Further, the Crown exercises  
14 its discretion not to request this information, if it  
15 indeed exists, from the police on the grounds of  
16 non-relevance.

17 On the hearing of this application this morning,  
18 Defence counsel indicated that what he is looking for  
19 specifically is any prior incidents where the  
20 complainant made false allegations of sexual assault.  
21 He submits that this information may well be essential  
22 to the defence, as the credibility of the complainant  
23 will be in issue at trial.

24 Having heard the submissions of counsel, I am not  
25 satisfied that there has been a sufficient foundation  
26 established by the applicant accused to order  
27 disclosure of any prior allegations of sexual assault

1           made by the complainant.

2           Defence counsel says that he is really only  
3           interested in prior false allegations of sexual  
4           assault, so that if such exists, that could be put to  
5           the jury on the issue of whether she is making a false  
6           allegation on this occasion. The problem with that,  
7           of course, is how are the Crown or the police or  
8           anyone else for that matter to know if a prior  
9           allegation was a false allegation.

10           Hypothetically, let's say 12 months earlier the  
11           complainant made a complaint of sexual assault against  
12           X and no charge was laid by the police. With no other  
13           information it would be an improper inference to say  
14           that this was a false allegation. Another example,  
15           let's say the complainant made a complaint of sexual  
16           assault against Y, and that he was charged and he was  
17           acquitted at trial. Again with that information  
18           alone, it would be an improper inference to say that  
19           she had made a false allegation which bears on her  
20           present credibility as a witness.

21           I should state at this point that I understand  
22           that the Defence has already been provided with a copy  
23           of the complainant's criminal record so that any  
24           convictions for such things as mischief or perjury  
25           would already be disclosed to Defence counsel.

26           In my respectful view, there is an onus on the  
27           applicant in a situation like this to show that the

1 information that is sought is likely to be relevant to  
2 an issue at trial, or at a minimum, it has to be shown  
3 that there is a reasonable possibility that the  
4 information sought could assist the accused in making  
5 full answer and defence. Whichever one of these tests  
6 is used, the onus has not been met on this  
7 application.

8 I am also of the view that a bare assertion that  
9 the sought after information may be relevant to the  
10 credibility of the complainant is insufficient.  
11 Invoking credibility at large is simply not enough.

12 In taking this view, I find that I am on common  
13 ground with the recent decision of the British  
14 Columbia Court of Appeal, that is, their second  
15 decision in the **O'Conner** case issued on May 16th of  
16 1994, which decision was admittedly on the subject  
17 matter of the disclosure of medical records.

18 A court should not compel production of documents  
19 simply because the Defence hopes that those documents  
20 might disclose something that will impact on the  
21 credibility of the complainant, without any basis for  
22 suggesting that such evidence might be found there.

23 Defence counsel submits that he is not simply on a  
24 fishing expedition. I must respectfully disagree.  
25 This particular request as it is presented today is no  
26 more than a request to go fishing in police files in  
27 the hope that something useful might turn up or be

1           discovered.

2           For these reasons, the application is denied at  
3           this time. I should state that I am not presently  
4           scheduled to be the presiding trial judge in Fort Good  
5           Hope on September 26th. I heard this application  
6           today, as a pre-trial matter, simply due to the  
7           unavailability of the assigned trial judge. My ruling  
8           on this application does not, of course, bind the  
9           trial judge. It will be open to the trial judge to  
10          consider any renewed application in the context of the  
11          evidence as it unfolds during the jury trial. For the  
12          time being, however, there is simply no basis for  
13          ordering the disclosure that is sought.

14          On the 90 day review under Section 525 of the  
15          Criminal Code, I do not find that there has been any  
16          material change in circumstances since the court's  
17          decision at the time of the last review. The  
18          accused's trial is only nine days from now, and I am  
19          satisfied that his continued detention in custody is  
20          justified on the secondary ground set out in  
21          subsection 515(10) of the Criminal Code, as amended by  
22          the Supreme Court of Canada.

23          So unless there is any clarification required,  
24          Counsel, we will now adjourn and Mr. Turo's trial will  
25          proceed on the 26th.

26          MR. SABINE:           Nothing further.

27

1 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

2

3

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

6

7 *Laurie Ann Young*  
8 Laurie Ann Young  
9 Court Reporter

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27