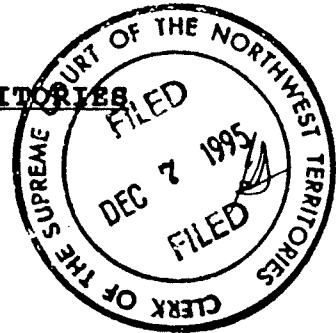
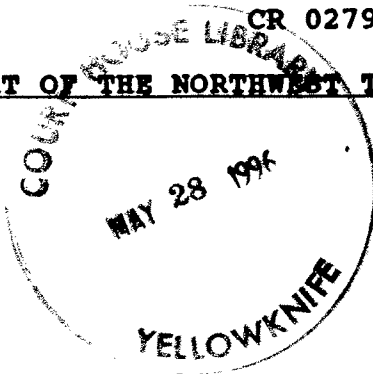
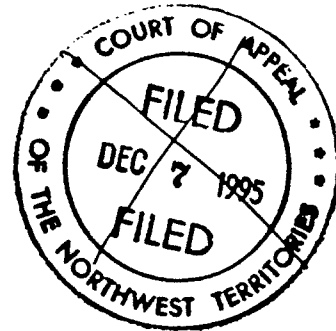


CR 02795
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN



- vs. -

J M

Transcript of the Voir Dire Rulings delivered by The Honourable Mr. Justice J. E. Richard, at Fort Smith in the Northwest Territories, on Tuesday, November 28th, 1995.

APPEARANCES:

MR. D. CLAXTON: Counsel for the Crown
MR. D. CROSSIN: Counsel for the Accused
MR. D. MCKAY:

(CHARGED UNDER s. 231(2) CRIMINAL CODE OF CANADA)
(CHARGED UNDER s. 233(2) CRIMINAL CODE OF CANADA)
(CHARGED UNDER s. 135 CRIMINAL CODE OF CANADA)
(CHARGED UNDER s. 148 CRIMINAL CODE OF CANADA)
(CHARGED UNDER s. 156 CRIMINAL CODE OF CANADA)

AN ORDER HAS BEEN MADE IN THIS CASE PROHIBITING PUBLICATION OF ANY INFORMATION THAT COULD DISCLOSE THE IDENTITY OF CERTAIN COMPLAINANTS PURSUANT TO s. 486(3) OF THE CRIMINAL CODE

1 THE COURT: At this time, I wish to give counsel
2 my ruling on the second of the four issues which were
3 raised by Crown counsel yesterday.

4 Crown counsel, Mr. Claxton, sought a ruling on
5 whether any of the four complainants can testify of
6 acts which were perpetrated by the accused other than
7 the specific unlawful acts that are alleged in the
8 indictment document.

9 I find, upon reviewing my notes of the submissions
10 made by counsel and upon reviewing the portions of the
11 transcript referred to by counsel, that counsel are in
12 the end result not that far apart on this issue.

13 With respect to the proposed testimony of R
14 M , Mr. Claxton made reference to six specific
15 excerpts from Ms. M 's testimony at the
16 preliminary inquiry.

17 Mr. Crossin, in his response, only has difficulty
18 with respect to three of those excerpts; that is, two
19 excerpts at pages 29 and 30 concerning participation
20 in masturbation, and one excerpt at page 16 regarding
21 the first incident in Fort Smith which amounted to
22 sexual touching only.

23 In the context of the proposed evidence, as it has
24 been outlined to me, I rule that the initial sexual
25 touching incident and the masturbation references are
26 admissible evidence at the option of the Crown.

27 As I understand it, this complainant R

1 M 's evidence, in support of the criminal charge
2 in Count No. 3 in the indictment, is a story of sexual
3 abuse at the hands of her father over a considerable
4 period of time.

5 In my view, that story of sexual abuse includes
6 the initial sexual touching incident and the
7 masturbation references and it also of course includes
8 the incidents of rape that form the formal part of
9 Count No. 3.

10 In my view, the triers of fact should be given the
11 complete story and not a portion of it. I see no
12 prejudice to the accused in allowing the witness to
13 tell the jury the complete story of sexual abuse
14 rather than only a portion of it.

15 Flowing from that, as the witness L K
16 was apparently an eyewitness to the initial sexual
17 touching incident, there is no question but that her
18 testimony on that point would be admissible.

19 I do not hear defence counsel object to any of the
20 other aspects of L K 's proposed testimony
21 nor any of the proposed testimony of the complainants
22 M M and R M .

23 According to my notes then, that disposes of the
24 second issue raised by Mr. Claxton yesterday.

25 I turn now to the issue of the admissibility of
26 the photographs marked as Exhibits A, B, and C for
27 identification. These are photographs of the three

1 complainants R M , M M , and R
2 M as children; photographs of them at an age as
3 they were in the allegations in Counts 3, 4, and 5 in
4 the indictment.

5 Crown counsel wishes to put the photographs to
6 each of these complainants and have each confirm that
7 it is a photo of himself or herself at that particular
8 time.

9 Crown counsel submits that these photographs will
10 enable the jury to see that the complainant was indeed
11 a child and had all of the appearances of a child at
12 the time in question.

13 Defence counsel objects to these photographs being
14 introduced into evidence.

15 Upon reflection, I find that the Crown have not
16 established the relevance of this proposed evidence.
17 These photos are not probative of any fact in issue in
18 this case, as I understand the position of the parties.
19 The age of the complainants at any point in time is
20 not in issue. Nor are these photographs proof of any
21 fact which is relevant to anything else which is in
22 issue in this case.

23 There is some risk, albeit minimal, that these
24 photographs will arouse sympathy in the minds of the
25 jurors and will thus distract the jury from the task
26 at hand.

27 I therefore rule that the photographs as tendered

1 are inadmissible.

2 Now, gentlemen, is there any clarification
3 required?

4 MR. CLAXTON: Not from the Crown, My Lord.

5 MR. CROSSIN: No, My Lord, thank you.

6 THE COURT: Now, we have got some dead time until
7 1:30 but that can't be helped.

8 MR. CLAXTON: There is a matter that I would like
9 discussed with Your Lordship in chambers perhaps first
10 and you may want to return to the court to put it on
11 the record, I am not sure. But I have discussed it
12 with my friends and we are prepared to meet with you.

13 THE COURT: Fine, then we will formally adjourn
14 until 1:30, Madam Clerk, but we will reconvene at the
15 request of counsel if necessary.

16
17 (AT WHICH TIME THE VOIR DIRE CONCLUDED)

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

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Lois Hewitt,
Court Reporter

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