

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

WILLIAM NASKEN



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Transcript of the Reasons for Judgment Delivered by The Honourable Mr. Justice J. Z. Vertes, sitting in Yellowknife in the Northwest Territories, on the 9th day of February, A.D. 1996.

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APPEARANCES:

MS. M. NIGHTINGALE:	Counsel for the Crown
MR. G. WATT:	Counsel for the Defence

1 THE COURT: The accused, William Nasken, is charged  
2 with three counts of sexual assault and one count of  
3 common assault. The complainant in all counts is the  
4 accused's daughter who is now 14 years old. All of the  
5 offences allegedly occurred approximately six years  
6 ago. The only witness at the trial was the  
7 complainant.

8 Count 1 is a charge of sexual assault. The  
9 complainant said that one time when she was on the  
10 couch with her father his foot touched her bum. She  
11 thought it was accidental and that her father may have  
12 been asleep at the time. Was this contact committed  
13 intentionally in circumstances of a sexual nature?  
14 Clearly anyone would have a reasonable doubt on that  
15 point. Hence I find the accused not guilty of count  
16 1.

17 Count 3 is also a charge of sexual assault.  
18 The complainant said that one night while her father  
19 was drinking, he wanted to show her how to do CPR first  
20 aid. She laid down and he blew air into her mouth. He  
21 then, according to her, kissed her on the lips. She  
22 felt uncomfortable about this because he had never  
23 kissed her on the lips before. While I may have my  
24 suspicions about the accused's motivations, I cannot  
25 say beyond a reasonable doubt that this kiss  
26 constitutes a violation of the child's sexual  
27 integrity. Hence I find the accused not guilty of

1 count 3.

2 Count 2 has caused me much more concern. It  
3 too is a charge of sexual assault. The complainant  
4 testified that one night when her father had been  
5 drinking and her mother was not at home, her father  
6 told her and her younger brother and sister to sleep  
7 with him in his bed. The complainant was lying beside  
8 her father. She was fully clothed wearing jeans. She  
9 said she could hear her father snoring. As she was  
10 falling asleep, she felt her father's hand touching her  
11 private parts. His hand was between her jeans and her  
12 underwear. She said after he removed his hands she  
13 again heard him snoring. She said he was sleeping when  
14 he touched her.

15 The complainant's evidence, while marked by  
16 reticence and a certain degree of discomfort as may be  
17 obvious considering her age and the circumstances of  
18 this case, was nevertheless consistent throughout. It  
19 was essentially uncontradicted on cross-examination. I  
20 am satisfied therefore that this incident occurred.  
21 The question is whether I am satisfied that it occurred  
22 intentionally, that is with a requisite criminal intent  
23 on the part of the accused. Often intention cannot be  
24 proven directly, but only by drawing inferences from  
25 other facts.


26 Based on the Crown's own evidence, a question  
27 has been raised as to whether this was a conscious act

1 or one that occurred accidentally. I may again have my  
2 suspicions, and if there was clearer evidence as to the  
3 accused being awake, that may have convinced me. But  
4 as it is, I have a doubt as to proof of the accused's  
5 intentional commission of this act. Hence I find the  
6 accused not guilty of count 2.

7 Count 4 is a charge of common assault. The  
8 complainant testified as to the essential elements of  
9 the offence. Her father showed her a picture from a  
10 Playboy magazine. He said something to her which was  
11 the subject of some inconsistent testimony.  
12 Nevertheless, I am satisfied that as the complainant  
13 was leaving the room, he grabbed her and held her in  
14 such a way as to feel to her as if he was choking her.  
15 I have no hesitation in concluding that this force was  
16 excessive under any circumstances, unjustifiable as  
17 discipline or correction, and amounts to an assault.  
18 Hence I find the accused guilty on count 4 as charged.

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21 **Certified Pursuant to Practice Direction**  
22 **#20 dated December 28, 1987**

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25 **Laurie Ann Young**  
26 **Court Reporter**  
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