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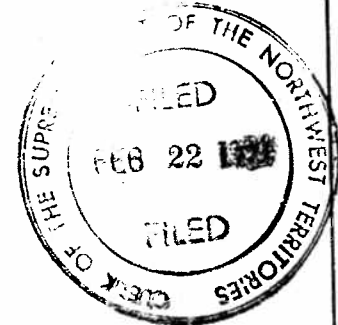
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

CLIFFORD LEONARD ANTOINE



Transcript of the Reasons for Judgment, delivered by
the Honourable Mr. Justice J. Z. Vertes, sitting at
Fort Simpson, in the Northwest Territories, on
February 10, A. D. 1994.

APPEARANCES:

MR. D. MILLER	On behalf of the Crown
MR. S. SHABALA	On behalf of the Defence

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

1 THE COURT: Counsel, I will begin by stating the
2 obvious.

3 Sometime in the early morning hours of April 3,
4 1993, the complainant, a widow of approximately 80
5 years of age, was callously raped in her residence at
6 the senior citizens home in Fort Simpson. I have no
7 doubt of that fact. All of the evidence, including
8 the medical evidence of her examination shortly
9 thereafter, points to that conclusion. It was a
10 shameful and degrading act. It has left her hurt and
11 psychologically fearful. Therefore, I will refer to
12 her in these reasons as the "victim" since that is
13 clearly what she was forced to become.

14 The question at this trial is whether the Crown
15 has proved beyond a reasonable doubt that the accused
16 was the perpetrator of this terrible crime. For the
17 reasons that follow I have concluded that the Crown
18 has failed to do that.

19 The victim gave a fairly straightforward account
20 of what happened to her.

21 She said she was at home alone when one Darcy
22 Lafferty came to her house asking for food. She
23 cooked for him. He then fell asleep on her couch.
24 She said she asked some friends to get him out. She
25 said the police took him out.

26 Afterward, according to the victim, she was
27 watching TV when two young men came in. She had

1 forgotten to lock her door. She said that one of the
2 men grabbed her, took her to her bed, pulled down her
3 pants, and raped her. She said he had something -
4 describing it as "plastic" - on his penis. She said
5 that she tried to fight but she was too weak. After
6 he got off of her, she went to the bathroom and
7 noticed blood from her vagina. She then cleaned
8 herself in the bath and put on clean clothes.

9 While the one man was raping her, the other man
10 stood by the doorway and watched. She said that she
11 could see her attacker clearly but the other man was
12 farther away and a little in the dark.

13 After bathing herself the victim called a friend -
14 Mrs. Robertson. We know this from Mrs. Robertson's
15 evidence when she said she received a call from the
16 victim at 2:55 a.m..

17 The victim was taken to hospital where the
18 standard sexual assault examination was conducted. At
19 approximately 11 a.m. she gave a statement to the
20 police. She identified her attacker as a man wearing
21 a black jacket with red on the arms, wearing glasses,
22 and as she thought, "was one of William Antoine's
23 grandsons". She also identified the second man by
24 saying she thought it was "one of Frank Denethon's
25 boys".

26 As a result of this statement, the accused, who is
27 a grandson of William Antoine, and Robert Denethon,

1 were arrested. Robert Denethon was subsequently
2 released since he had an alibi - an alibi that was
3 accepted by the police.

4 Later in the evening of the same day, the victim
5 was shown a photo line-up. This line-up consisted of
6 eight photographs, all of them young native males, of
7 which one was the accused and another was Robert
8 Denethon. I have no cause to criticize the manner in
9 which the line-up was done. The victim readily picked
10 out the accused as the attacker. She also picked out
11 Robert Denethon as the second man but she was not as
12 sure.

13 Here, in court, the victim again picked out of the
14 photo line-up the accused as her attacker and Robert
15 Denethon as the second man. But Denethon had already
16 been eliminated by the police of any involvement.

17 The accused testified. He said that he was inside
18 the victim's home along with Darcy Lafferty. The two
19 of them were drinking and giving some drink to the
20 victim as well. He does not remember anything more
21 than that. His next memory is waking up at his
22 grandfather's unit (which is also located in the same
23 senior citizen's home).

24 Darcy Lafferty did not remember how he got to the
25 victim's home or meeting up with the accused. He was
26 too drunk. What he does remember is being awakened by
27 the police at the victim's home.

1 And this brings up a major inconsistency in the
2 victim's evidence.

3 The victim said that Lafferty had been removed
4 from her home before the two other men came in. But
5 we have evidence that that is clearly wrong. Mrs.
6 Robertson, who was the first to arrive on the scene,
7 said that when she got there Lafferty was asleep on
8 the couch. Constable Brookson, the first police
9 officer on the scene, also noted Lafferty asleep on
10 the couch. He awakened Lafferty and arrested him. He
11 noted that Lafferty was intoxicated. The victim
12 testified that Lafferty was sober and that he fell
13 asleep because he was tired.

14 When Mrs. Robertson attended the scene, the victim
15 was upset. She pointed at Lafferty and said she
16 wanted him out. Constable Brookson said that when he
17 first arrived he asked if the man on the couch "had
18 anything to do with it" and the victim pointed at
19 Lafferty and nodded. She was, however, in his words,
20 visibly shaken and hard to communicate with.

21 Lafferty was subsequently released. There was no
22 evidence before me as to any investigations being
23 carried out so as to establish or dismiss his
24 involvement in the attack.

25 The major issue is the sufficiency of the victim's
26 identification of the accused.

27 With respect to this issue, there was much

1 evidence which would ordinarily be regarded as
2 hearsay. This evidence was admitted since, as noted
3 in McWilliams on Criminal Evidence, the defence is
4 entitled to elicit from the police witnesses or others
5 the descriptions of the assailant given to them by the
6 victim. The defence is entitled to wide latitude.

7 Where the case against an accused depends wholly
8 or substantially on the correctness of an eyewitness
9 identification, the law says that there is a special
10 need for caution before convicting the accused in
11 reliance on such identification. The reason for the
12 need for caution is that all identification evidence
13 suffers from an inherent frailty - human observation
14 and recollections are notoriously unreliable in this
15 area. Even the most convincing witness, though
16 perfectly honest, may also be mistaken.

17 I also remind myself, however, that if after
18 careful examination of the identification evidence,
19 with due regard to all the other evidence in the case,
20 I feel satisfied beyond a reasonable doubt as to the
21 accuracy of the identification, then I should act on
22 it.

23 Here, as I said in argument, if we took the
24 identification evidence in isolation, then it is, as
25 Mr. Miller said, "very compelling". The victim was
26 clear in the description she gave to Constable Canvin
27 at the hospital. She was certain when she picked out

1 her assailant from the photo line-up. She was certain
2 here in court.

3 But I must examine this evidence in the context of
4 all of the other evidence.

5 I have already spoken about the identification of
6 Robert Denethon as the second man. But he was
7 eliminated by the police as a suspect. He also
8 testified here and gave an unchallenged alibi.

9 I have also spoken about the inconsistency in the
10 victim's evidence about the presence of Darcy
11 Lafferty. There are other inconsistencies.

12 The victim testified that after the attack she
13 slept at home until 10 a.m. and then went to the
14 hospital. But we have other definitive evidence that
15 she was taken to the hospital at approximately 3:30
16 a.m. and stayed there at least until past 11 a.m. when
17 she gave her statement to Constable Canvin.

18 The victim said here at trial that she had not
19 been drinking that evening. She told Mrs. Robertson,
20 however, that the two men forced her to drink
21 something. At the preliminary hearing she said she
22 had a beer after the two men left. All I can be sure
23 of on this point is the evidence of the nurse, which I
24 accept, to the effect that she noted the smell of
25 alcohol on the victim's breath.

26 There were some other inconsistencies, in
27 particular, conflicting statements by the victim as to

1 whether she saw the attacker put a plastic on his
2 penis or if he already had it on.

3 If there is a need for caution when dealing with
4 any eyewitness identification, then surely that
5 caution must be heightened in the face of inconsistent
6 evidence from that witness.

7 I am prepared to grant certain allowances for the
8 victim's age and the possible confusion caused by the
9 obviously traumatic effect of this attack on her. But
10 there are other problems with the Crown's evidence.

11 Two forensic laboratory reports were entered by
12 consent. One report details the results of biological
13 testing, specifically DNA analysis, and the other
14 dealt with hair analysis.

15 The biological tests were carried out on the
16 bedding from the victim's room as well as clothing
17 from both the victim and the accused. There were
18 known samples from both.

19 The biological tests revealed that:

20 - no samples found at the scene of the crime
21 matched the known sample from the accused;

22 - DNA extracted from blood found on the accused's
23 clothing did not match the known sample from the
24 victim;

25 - DNA extracted from seminal fluid found on the
26 bedsheet and the accused's underwear was, in the words
27 of the report, distinct but different from the known

1 samples of both the victim and the accused.

2 Now the absence of bodily fluids from the scene
3 matching the accused may not be unusual considering
4 the evidence that the attacker was wearing a condom.
5 What is unusual is the finding that the blood found on
6 the accused's clothing can reasonably be ruled out as
7 the victim's blood and that the seminal stain on the
8 bedsheet can reasonably be held to be that of another
9 man. No evidence was presented as to the age or
10 circumstances as to how that stain might have got on
11 to the sheet.

12 The hair testing revealed that the known hairs
13 taken from the victim were inconsistent with hairs
14 found on the accused's clothing and that the known
15 hairs of the accused were inconsistent with hairs
16 found on the victim's clothing or bedding.

17 While this scientific evidence does not positively
18 rule out the accused as the perpetrator, it also does
19 not incriminate him. What the findings do, however,
20 is raise a doubt.

21 The law lays down one rule: examine all of the
22 evidence to determine if guilt has been proved beyond
23 a reasonable doubt. It is not a matter of the accused
24 being probably or maybe guilty; I must be satisfied of
25 his guilt to that degree of certainty that the law
26 says is proof beyond a reasonable doubt. I am not so
27 satisfied.

1 Now as a final comment, it seems to me somewhat
2 incredible that more effort was not taken to present
3 evidence that would try to explain some of the obvious
4 inconsistencies and gaps in the evidence. I do not
5 mean this as criticism of Mr. Miller because I note he
6 was not Crown counsel involved in this case at earlier
7 stages.

8 But it seems to me that in light of the findings
9 of the forensic reports, in light of the
10 inconsistencies of some of the evidence, especially
11 the statements given, that perhaps more effort should
12 have been put into further investigation to try and
13 explain some of these apparent discrepancies. I do
14 not know if such further investigation was undertaken.
15 All I do know is that the evidence that was given left
16 significant gaps in the evidence.

17 I would hope that the investigation file into this
18 terrible crime is not simply going to be closed and
19 put away on the shelf now that this trial is over. I
20 think further work needs to be done, and perhaps a
21 little harder analysis of the evidence needs to be
22 done.

23 For these reasons the charge is dismissed.

24 (AT WHICH TIME THIS MATTER WAS CONCLUDED)

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



Loretta Mott
Court Reporter