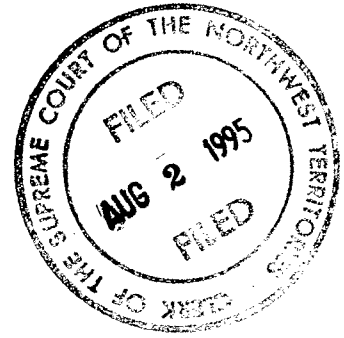


Jr

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES
C A N A D A)
NORTHWEST TERRITORIES)



BETWEEN:

HER MAJESTY THE QUEEN

- and -

CHRISTOPHER GILBERT THRASHER

Reasons for Decision (Voir Dire) held
before the Honourable Mr. Justice J.E. Richard,
sitting in Inuvik, in the Northwest Territories,
on Tuesday, June 27, 1995.

APPEARANCES:

R.G. Kilpatrick, Esq., Counsel for the Crown.
J. Lillegran, Ms., Counsel for the Defense.
S.J. Lea Dormer, Ms., Court Reporter.

(Charged under section 271 of the
Criminal Code of Canada)

1 THE COURT: On this voir dire, I am asked
2 by the Crown to make a ruling on the admissibility
3 of a written statement obtained by the police from
4 the accused, Christopher Thrasher, at the RCMP
5 detachment office here in Inuvik at approximately
6 2 p.m. on the day he was arrested and while he was
7 being detained in custody.

8 The issue on the voir dire is whether the
9 accused gave this written statement freely and
10 voluntarily to the police. That is, whether the
11 Crown has shown that it was not extracted from him
12 by any improper threat or inducement.

13 The accused's testimony on the voir dire is
14 that there was indeed an inducement held out to
15 him, and that is the basis on which he objects to
16 this written statement being ruled as admissible
17 evidence to be heard by the jury. The law is
18 clear that an involuntary statement made by an
19 accused person outside the courtroom should not be
20 repeated to the jury because an involuntary
21 statement is not likely to be reliable.

22 The factual circumstances surrounding the
23 giving of this written statement, Exhibit A,
24 commence with the arrest of the accused at 7 a.m.
25 on September 28th, 1994. He was advised that he
26 was being charged with sexually assaulting a male
27 person, Albert Brodhurst, earlier that morning.

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1 He was taken to the RCMP detachment and placed in
2 cells. During the morning Constable McCarthy of
3 the RCMP was doing other investigative work in
4 connection with this charge.

5 At 1:40 p.m., Constable McCarthy took the
6 accused from his cell to an interview room in the
7 detachment office and said he wanted to speak to
8 him about the charge. The accused agreed to
9 this. The accused was advised of his right to
10 counsel, and he indicated he did not want to
11 contact a lawyer.

12 The officer testified that he told the
13 accused he could remain silent if he wished. The
14 accused told him that he had no problem discussing
15 the matter for which he had been arrested. No
16 record was kept of this initial 20-minute segment
17 of the interview between police officer and
18 accused person either by handwritten notes or tape
19 recording. The officer took a formal written
20 statement, Exhibit A, commencing at 1:59 p.m.

21 By the officer's version of the conversation
22 between the two in this 20 minutes, the accused
23 initially denied any sexual involvement with the
24 male complainant, and then the officer
25 cross-examined the accused, in a sense, including
26 a reference to the accused's prior criminal
27 conviction for a sexual offense. In due course,

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1 the officer testified the accused conceded that
2 there was some truth to the allegation being made
3 by the male complainant.

4 The officer then proceeded to take the formal
5 warned statement from the accused, Exhibit A,
6 after again advising the accused of his right to
7 counsel and right to remain silent. The officer
8 testified under oath that he did not hold out any
9 promises or inducements to the accused or make any
10 threats to the accused in order to get him to give
11 his written statement.

12 Specifically on cross-examination he denied
13 that there was any discussion about the accused
14 being released from custody a lot sooner if he
15 gave a statement. The accused testified on the
16 voir dire, under oath, and confirmed that he
17 agreed to go to the interview room from the cells
18 for the purpose of speaking to Constable
19 McCarthy. He also confirmed that he was advised
20 of his right to counsel and that he waived that
21 right.

22 The accused's version of what transpired in
23 the initial part of the first 20-minute segment of
24 the interview follows the testimony of Constable
25 McCarthy almost to the letter. However, there is
26 then a serious divergence on an essential matter.

27 The accused says that prior to agreeing to

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1 giving a written statement, he asked Constable
2 McCarthy how long he was going to be detained at
3 the detachment and when he was going to be
4 released, and he said Constable McCarthy told him,
5 "If you give a statement, you will be released
6 sooner. If you don't give a statement, you will
7 be here longer than you expect."

8 The accused says he then gave a written
9 statement and answered the officer's questions
10 because he wanted to get out of there, to get out
11 of that detachment.

12 There is, thus, an allegation of an improper
13 inducement and a denial of any such inducement by
14 the only two persons who were present in that
15 interview room. The officer is testifying from
16 memory, as is the accused. There is nothing in
17 the evidence on the voir dire to corroborate the
18 evidence of either one of them on the essential
19 point in issue.

20 No recording was made of that initial 20
21 minutes and no explanation is offered as to why a
22 tape recording was not made. The accused's
23 statement to the police was not made
24 spontaneously. On the contrary, it was made at a
25 time and place very much controlled by the
26 police.

27 It is curious that today in 1995, 30 or 40

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1 years after the technology is available, that the
2 police take an accused person into an interview
3 room for the express purpose of obtaining evidence
4 against him to be used at his trial and do not
5 make an audio or video recording of it.

6 The court is asked to make a factual finding
7 on the voluntariness of a statement made by the
8 accused to the police in a controlled environment
9 yet the court is not provided with the best
10 evidence that it is readily available.

11 There is indeed a credibility issue here on
12 the evidence presented on this voir dire. I do
13 have some real doubts about the truthfulness of
14 the accused on the key point of his allegation of
15 an inducement being held out to him, especially in
16 view of clear inconsistencies and discrepancies
17 throughout his testimony.

18 His blunt assertion that the timing of his
19 release by the police was made conditional on his
20 giving of a statement is probably pure hogwash,
21 but I can not be certain of that. It is for the
22 Crown to prove voluntariness beyond a reasonable
23 doubt if it wishes to adduce evidence of an
24 accused's out-of-court statement to police.

25 If this was a serious criminal charge, as
26 indicated by the police officer to the accused at
27 the time of the interview, and also as indicated

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1 by the Crown's decision to proceed by indictment
2 rather than by summary conviction, then the court
3 is entitled to receive the best evidence that is
4 readily available with the use of commonplace
5 technology to assist the court in its
6 determination of the issue of proof of
7 voluntariness beyond a reasonable doubt.

8 For this reason, as presiding judge, I
9 exercise my residual discretion to exclude this
10 evidence of the accused's out-of-court statement.
11 I am not satisfied that the state has met the onus
12 on it, and I rule that Mr. Thrasher's statements
13 to the police officer in the interview room are
14 not admissible evidence at his trial before the
15 jury.

16 (PROCEEDINGS ADJOURNED)

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I, S. J. Lea Dormer, C.S.R.(A), Court Reporter, hereby certify that I attended the above Proceedings and took faithful and accurate shorthand notes and the foregoing is a true and accurate transcript of my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 14th day of June, A.D. 1995.

Sandy Lea Dormer per SJD

S. J. Lea Dormer, Ms.,

Certified Shorthand Reporter.