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CR 03017

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MICHAEL BELL

Transcript of a Ruling on a Voir Dire by The Honourable
Mr. Justice J. E. Richard, at Yellowknife in the
Northwest Territories, on May 22nd, A.D., 1996.

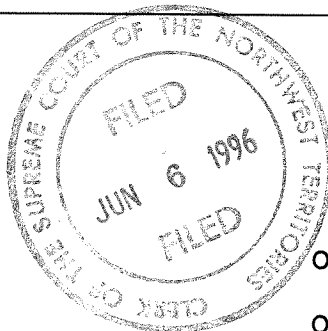
APPEARANCES:

MR. A. REGEL:

On Behalf of the Crown

MR. R. GORIN:

On Behalf of the Defence



1 THE COURT: On this particular voir dire
2 the issue is the relevance of certain questions which
3 Defence counsel wishes to put to the complainant in
4 cross-examination.

5 To put the matter in context, it is
6 anticipated that in her direct evidence, the
7 complainant will relate the circumstances surrounding
8 the incident which gives rise to the charge of sexual
9 assault against the accused. It is expected that she
10 will tell the jury that on a date in the spring of
11 1992, the accused, a former boyfriend who she had not
12 seen or been with for some five years, arrived at her
13 apartment here in Yellowknife late at night. She is
14 expected to say that after they had socialized for a
15 couple of hours, the accused became sexually aggressive
16 with her, and even though she indicated she did not
17 want to have sex with him, he then had non-consensual
18 intercourse with her.

19 The complainant says that she did not tell
20 anyone of this incident for approximately two years.
21 She says that during that two year period, she did not
22 have a memory of the event, but it came back to her one
23 day in July, 1994, just after she had an argument with
24 her new husband.

25 On the voir dire, there was evidence to
26 indicate that the complainant had been sexually
27 assaulted a few weeks prior to the incident by another

1 individual in similar circumstances. The complainant
2 said in this first incident her assailant's name was
3 Sven, and he was socializing with her on the couch at
4 her apartment when he made sexual advances which she
5 resisted. She says he then had forceful intercourse
6 with her. The complainant also has no memory of this
7 assault, or had no memory of this assault during the
8 two year period prior to July '94. On the date in July
9 of '94 she had recall of both sexual assaults at the
10 same time.

11 On the present trial, it is the position of
12 the accused, as I understand it, that there was
13 consensual sexual activity between he and the
14 complainant on the occasion that she refers to. It is
15 his position that she is confusing the two sexual
16 encounters at her apartment in the spring of 1992, and
17 that in experiencing recall of the two events two years
18 after the fact and today, she is transposing the
19 details from one event to the other.

20 His counsel wishes to cross-examine her about
21 this possible confusion, and in order to do so, wishes
22 to ask her questions about the first sexual activity
23 involving Sven. The Crown objects to any questions
24 being put to the complainant regarding this other
25 incident, submitting it is not relevant to the issues
26 before the jury in this case, and also that there is a
27 danger that the jury's attention will be diverted from

1 the real issues in this case. And further that there
2 is risk that the jury will misuse the evidence of the
3 prior incident for improper purposes.

4 Taking into consideration the evidence adduced
5 and the submissions made, I am satisfied that there is
6 relevance in this proposed evidence, and I rule that
7 Defence counsel should be permitted to cross-examine
8 the complainant about the earlier assault. In my view,
9 this evidence is necessary to allow the accused to put
10 his theory of the complainant's confusion to the jury,
11 and therefore to put in his full answer and defence to
12 this charge.

13 I cannot see that there is additional
14 prejudice or embarrassment for the complainant or an
15 extra undue interference with her personal dignity or
16 right to privacy. Unfortunately for her, she is
17 necessarily engaged in a process as the main Crown
18 witness at this trial which must be very embarrassing
19 and very difficult for her already. However, in the
20 circumstances of this case, it is necessary in the
21 interests of justice that the parameters of her
22 testimony be widened to include both instances of
23 sexual assault which she spoke of on the voir dire.

24 I also take the view that the jury can be
25 properly instructed as to the use of this evidence, and
26 they can act in accordance with those instructions.

27 So that is the court's ruling that reference

1 may be made to the Sven incident.

2 Now, are we ready to proceed with your
3 statement, Mr. Regel?

4 MR. REGEL: Yes, we are, and I have
5 checked and the complainant, Jill Munk, is present as
6 well, so as soon as I am done my opening address which
7 is probably going to be five minutes or less, I can go
8 right into the evidence.

9 THE COURT: Is the jury present?

10 THE SHERIFF: One juror is not back, My
11 Lord.

12 THE COURT: Fine, we will have to
13 recess. We are just waiting on one juror. We will
14 recess for five minutes.

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

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Laurie Ann Young
Court Reporter

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