

COPY

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

PAUL LEROUX

AUG 25 1998

Transcript of Voir Dire Ruling (on autrefois convict plea) delivered by the Honourable Justice J. Vertes, sitting at Inuvik, in the Northwest Territories, on the 10th day of August, A.D. 1998.

APPEARANCES:

Ms. D. Sylvain
Mr. S. Couper

For the Crown

Mr. J. Brydon

For the Defence

1 THE COURT: The accused has entered special
2 pleas of autrefois convict with respect to Count
3 1 (a charge of gross indecency) and Count 4 (a
4 charge of indecent assault) of the Indictment.
5 Both charges relate to a series of incidents
6 testified to by the witness Phillip Ross.

7 Mr. Ross testified that there was an ongoing
8 sexual relationship between himself, when he was
9 14 and 15 years old, and the accused. The
10 accused was his supervisor at Grollier Hall at
11 the time. The accused would fondle the
12 complainant in a sexual manner and they also
13 engaged in acts of fellatio.

14 In 1979, the accused was charged and
15 convicted on an Information that read as follows:

16
17 "That he, on or about the 6th
18 day of April, 1979, did knowingly
19 and wilfully contribute to a
20 child, a male person, becoming
21 a juvenile delinquent by having
22 a sexual relationship with the
23 said child, contrary to
24 Section 33(1)(b) of the Juvenile
25 Delinquents Act."

26 The accused was sentenced on June 29, 1979, to
27 four months imprisonment.

In sentencing the accused, the Territorial
Court Judge did not, unfortunately, canvass the
particular facts on which the accused was

1 convicted. He did, however, refer to "acts of
2 gross indecency." He also made reference in
3 other parts of his judgment to "acts" (in the
4 plural).

5 Unfortunately as well, we do not have a
6 transcript of the Territorial Court proceedings,
7 only the judgment. Part of the court record,
8 however, includes a statement given by Mr. Ross
9 to the police prior to the charge being laid in
10 1979. In that statement, he talks of the
11 relationship having gone on for the past two
12 years. He talked of being in bed and says that
13 the accused "felt him up" and kissing going on.
14 He talked as well of the accused engaging in
15 fellatio. The sentencing judge makes no
16 reference to this statement, but I can only
17 conclude that it was before the court since I can
18 see no other way it would have become part of the
19 court record. I think this can also explain the
20 sentencing judge's references to "acts" in the
21 plural.

22 Also part of the Territorial Court record is
23 a presentence report prepared by a probation
24 officer. The report does not relate the Crown
25 facts; it merely sets out the accused's version
26 of events. In it the accused relates only one
27 incident of sexual contact. On the voir dire in

1 these proceedings, the accused said he had no
2 present recollection of making that statement but
3 acknowledged that it was false.

4 The plea of autrefois convict embodies the
5 venerable legal principle that no person shall be
6 placed in jeopardy twice for the same matter. In
7 short, when a criminal charge has been once
8 adjudicated by a court having jurisdiction, the
9 adjudication is final and will be an answer to a
10 later charge founded on the same matter. This
11 principle is also embodied, to some extent, in
12 Section 11(h) of the Charter of Rights and
13 Freedoms which holds that every person has the
14 right, if found guilty of an offence and punished
15 for it, not to be tried or punished for it again.

16 That relates specifically to the same offences
17 but the principle is the same.

18 On a successful plea of autrefois convict,
19 the Criminal Code requires an identity as between
20 the charges. Was the earlier charge the same, in
21 whole or in part, as the present charge? The
22 accused must show that the subject-matter is the
23 same, in whole or in part, and that the new
24 charge is the same as the earlier charge or is
25 implicitly included in the earlier charge either
26 in law or on account of the evidence. And, as
27 Crown counsel took pains to remind me, any

1 ambiguity must be resolved in favour of the
2 Crown.

3 It is crucial to note, however, that the
4 charges need not be absolutely identical. If the
5 differences between the charges at the first and
6 second trials are such that it must be concluded
7 that the charges are different in nature, the
8 special plea is not appropriate. On the other
9 hand, the plea will apply if, despite differences
10 between the earlier and the present charges, the
11 offences are the same. They must arise from the
12 same transaction.

13 Count 1 of the present Indictment charges
14 "an act of gross indecency, to wit: fellatio."
15 Mr. Ross's 1979 statement makes reference to acts
16 of fellatio. The accused's version of events
17 refers to "kissing" the complainant on the
18 genital area. The sentencing judge referred to
19 "acts of gross indecency." There is no doubt
20 that the accused could have been charged in 1979
21 with the offence of gross indecency instead of
22 the contributing charge under the Juvenile
23 Delinquents Act. Why he was not is immaterial.
24 The underlying facts are the same and the victim
25 is the same. I therefore conclude that the plea
26 of autrefois convict is justified with respect to
27 Count 1 of the Indictment. That count is

1 therefore dismissed.

2 I cannot come to the same conclusion with
3 respect to Count 4, the charge of indecent
4 assault. The record is unclear as to what other,
5 if any, acts were alleged as against the accused
6 at the 1979 trial. The evidence given by the
7 accused on the voir dire leaves me uncertain as
8 to what acts, other than the ones covered by the
9 gross indecency count, would come under the
10 category of indecent assault. Hence I reject the
11 accused's plea of autrefois convict on Count 4 of
12 the Indictment.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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



Eva Robinson
Court Reporter