

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

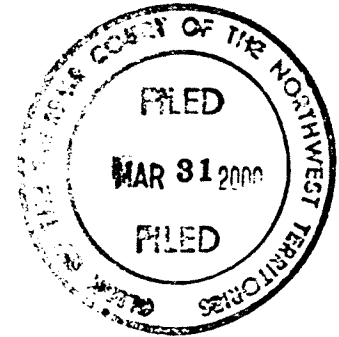
IN THE MATTER OF:

[2000] N.W.T.J. No. 18 (Q.L.)

HER MAJESTY THE QUEEN

- and -

WILLIAM PAUL NITSIZA



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Transcript of a Ruling on a Voir Dire delivered by The Honourable Justice J.Z. Vertes, in Yellowknife, in the Northwest Territories, on the 28th day of March, A.D. 2000.

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APPEARANCES:

MS. S. KENDALL: On behalf of the Crown

MR. T. BOYD: On behalf of the Defence

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Charges under ss. 246.1 and 246.2 (b) C.C.

1 THE COURT: With respect to the voir dire heard  
2 yesterday, the Crown seeks a ruling as to the  
3 admissibility of a statement given by the accused (and  
4 transcribed as Exhibit V-1 in these proceedings). The  
5 only real issue concerns the accused's attempts to  
6 exercise his right to silence during the course of the  
7 police interrogation.

8 The police have three duties upon arresting an  
9 accused. First, they must inform the accused of his  
10 right to retain and instruct counsel without delay.  
11 Second, if the accused indicates a desire to exercise  
12 this right, they must provide him with a reasonable  
13 opportunity to do so. And, third, they must refrain  
14 from eliciting evidence from the accused until he has  
15 had that reasonable opportunity. Once all that has  
16 been done (as was done in this case), however, the  
17 police may question the accused. An informed accused  
18 has the right to choose between exercising his right  
19 to silence or speaking with the police.

20 The transcript reveals that four times (as  
21 revealed on pages 3,6,7 and 9 of the transcript) the  
22 accused said he did not want to talk anymore or make  
23 any further statements without talking to his lawyer.  
24 This questioning was going on after the accused had  
25 already spoken to a legal aid lawyer.

26 Crown counsel argued that the transcript reveals  
27 that, notwithstanding the accused's statements to the

1 contrary, he willingly continued to answer the  
2 officer's questions. I respectfully disagree. What  
3 the transcript shows is that these statements were  
4 ignored as the officer kept questioning the accused.  
5 I do not fault the officer for his desire to question  
6 the accused. I do fault him, however, for giving no  
7 indication that he, for a moment, took the accused's  
8 protestations seriously.

9 This situation is exactly the same as those  
10 discussed in several other cases from this  
11 jurisdiction, notably *R. v. Keyookta*, [1993] N.W.T.R.  
12 380, *R. v. Rogers*, [1995] N.W.T.R. 234, and *R. v.*  
13 *Itsi*, (N.W.T.S.C. No. CR03730, 1999). In all three  
14 cases, the accused, while being questioned by the  
15 police, indicated that he did not want to answer any  
16 more questions. The police continued their  
17 questioning. In all three cases the statements were  
18 ruled inadmissible.

19 I will paraphrase what was said by Justice  
20 Richard in the *Keyookta* case. These comments are  
21 equally appropriate here. Although the accused stated  
22 clearly that he did not want to answer any further  
23 questions, the officer continued with his  
24 interrogation. In doing so, the officer failed to  
25 respect the accused's right to remain silent and his  
26 freedom whether to choose to speak or not. In effect,  
27 the officer simply ignored the accused's wish to

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remain silent. This was a breach of the accused's constitutional rights under s.7 of the Charter. An accused, even though in the midst of questioning, still has a right to change his mind and not answer any further questions. The police can try to convince him nevertheless to speak but they cannot simply ignore an expressed request to remain silent. In these circumstance, the criminal justice system would be brought into disrepute if the state authorities are then permitted to use any subsequent answers. It makes no difference if the statement was meant to be used by the Crown as part of its case or merely for cross-examination purposes.

For these reasons the statement marked Exhibit V-1 is inadmissible.

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Certified pursuant to Practice Direction #20 dated December 18, 1987.

*Annette Wright*  
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Annette Wright, RPR, CSR(A)  
Court Reporter