

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JOE NASOGALUAK



Transcript of a Ruling on an Appeal from Conviction delivered by The Honourable Justice J.Z. Vertes, in Yellowknife, in the Northwest Territories, on the 26th day of October, A.D. 2000.

APPEARANCES:

MS. B. SCHMALTZ:	On behalf of the Crown
MR. H. LATIMER:	On behalf of the Defence

Charge under s. 267(a) C.C.



1 THE COURT: With respect to Mr. Nasogaluak's
2 appeal from conviction, I will deal with the major
3 grounds raised by appellant's counsel in order.

4 First, with respect to the appellant's complaint
5 about the trial judge's rejection of the police
6 officer's evidence as to the complainant's level of
7 intoxication. I have reviewed the transcript of
8 evidence and, as with so many other findings of fact,
9 this is something that was open for the trial judge to
10 do. How much weight to put on that evidence, whether
11 to accept or reject the officer's evidence in whole or
12 in part is for the trier of fact and I find no
13 reversible error there. Nor do I find it to have had
14 a material impact nor could it have had a material
15 impact on the judge's assessment of the totality of
16 the evidence.

17 With respect to the trial judge's interjection
18 during the accused's cross-examination. It is
19 certainly unfortunate but it appears, upon my review
20 of the evidence, that it was an isolated event coming,
21 as it were, during the course of the questioning of
22 the accused, and there is nothing in the evidence or
23 in the trial record to suggest that it in any way
24 affected the trial judge's analysis of the evidence.

25 I have considered Mr. Latimer's submissions with
26 respect to the later comment made by the trial judge
27 on sentencing but, in my opinion, as submitted by

1 Crown counsel, this comment relates very much and must
2 be considered very much in the context of being a
3 reference to the assessment of the complainant's
4 character for sentencing purposes, specifically with
5 reference to a comment contained in an earlier
6 presentence report.

7 The test on this type of complaint (that is, a
8 trial judge's interjection and the argument that there
9 was the indication perhaps of some type of animosity)
10 is whether a reasonable and informed observer would
11 have a reasonable apprehension of bias on the part of
12 the trial judge and conclude that there had not been a
13 fair and impartial trial. In my review of the trial
14 record and in my opinion the test is not met in this
15 case.

16 I come, finally, to the main submission and that
17 is the question as to whether the verdict was
18 unreasonable or one that cannot be supported by the
19 evidence. As counsel know, the proper test is whether
20 the verdict is one that a properly instructed jury
21 acting judicially could reasonably have rendered.
22 This test applies equally to the judgment of a judge
23 sitting without a jury. While I as the appellate
24 judge must re-examine and reconsider the evidence to
25 some effect, I cannot merely substitute my opinion for
26 that of the trial judge. Also, since this case turned
27 on the trial judge's assessment of credibility and

1 findings of fact, I must exercise deference to those
2 findings. Appellate courts are not justified in
3 overturning such findings unless there's some palpable
4 or overriding error. In this case the trial judge
5 gave extensive reasons for his finding of guilt.
6 Those reasons clearly demonstrate that the trial judge
7 applied the relevant principles. The trial judge
8 carefully assessed the credibility of the witnesses
9 and applied the correct burden of proof.

10 I have considered appellant counsel's review of
11 what he says are various inconsistencies in the
12 evidence and items of unreliability. Many of these,
13 of course, in a case such as this deal with items of
14 evidence taken in isolation. However, when I review
15 the trial judge's reasons for conviction, the trial
16 judge found and articulated those items of evidence
17 that were consistent. He expressed the need for
18 caution in assessing the evidence of the complainant
19 and the other witnesses who may have had a connection
20 to the complainant. My review of the trial record
21 satisfies me that there was ample evidence to
22 reasonably support the conviction of the appellant.

23 For these reasons, the appeal is dismissed.

24 Thank you, counsel.

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Certified correct to the best of
my skill and ability.

Annette Wright

Annette Wright RPR, CSR(A)
Court Reporter