

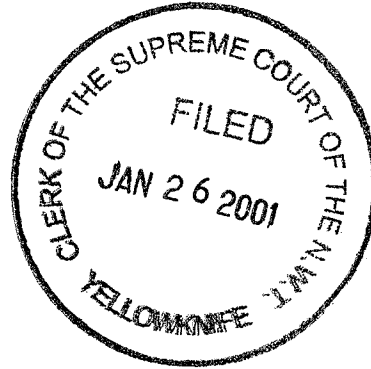
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MICHAEL ALEXANDER LAFFERTY



Transcript of a Ruling on a Voir Dire, delivered by The Honourable Justice J.Z. Vertes, sitting in Yellowknife, in the Northwest Territories, on the 12th day of September, A.D. 2000.

APPEARANCES:

Ms. S. Kendall and

Ms. S. Bond:

Counsel for the Crown

Mr. R. Gorin:

Counsel for the Defendant

(Charge under s. 271 of the Criminal Code)

1 THE COURT:

2 I think I can deal with these
3 issues now, and that way you can prepare for the next
4 phase of the trial instead of leaving it until
5 tomorrow morning. I want to thank both of you for
6 your submissions, and especially for the authorities
7 that you submitted earlier, at the beginning of the
8 trial. They were quite helpful to me.

9 I think it is worthwhile just to put this into
10 perspective. It seems to me that if this case had
11 come along ten, fifteen years ago, it wouldn't have
12 come anywhere close to a courtroom, primarily because,
13 of course, there are limited uses to which prior
14 inconsistent statements could be used. I think one of
15 the rationales for the reformation of the hearsay
16 rules was to address situations very similar to this,
17 where the Court is confronted with recanting witnesses
18 or with witnesses who are perhaps vulnerable in some
19 way or other. Having said that, I'll deal first with
20 the February 16th statement; the one that the Crown
21 seeks to have admitted for the truth of its contents
22 for use substantively.

23 That February 16th statement, in my view, fits
24 within the paradigm set out by the *K.G.B.* case. It
25 was a statement made under oath; it was a statement
26 made by the complainant after being cautioned as to
27 the requirement to tell the truth and the consequences
of not telling the truth; it was videotaped; it was

1 audiotaped; and I note that the actual form where the
2 complainant acknowledges both her understanding of the
3 warnings and the oath or affirmation were signed by
4 the complainant.

5 I have considered the surrounding circumstances
6 under which that statement was made; that is, the
7 evidence of the complainant's refusal to testify at
8 the preliminary hearing, the evidence of the
9 complainant's apparent fear of testifying for one
10 reason or another, and of the contacts prior to
11 February 16th with Constable Bellamy. I have not, for
12 purposes of this ruling, considered anything that
13 might be called either corroboratory or confirmatory
14 evidence, so I need not go into the question of how
15 far one can go in the assessment of threshold
16 reliability.

17 As I indicated, it seems to me that the February
18 16th statement fits within the principles delineated
19 by the *K.G.B.* case. Furthermore, the complainant is
20 present and available to be cross-examined by defence
21 and by Crown, considering the fact that I have ruled
22 that she may be cross-examined under Section 9(2).
23 So, at least, the threshold indicia of reliability are
24 there and, therefore, the February 16th statement will
25 be admissible for substantive purposes.

26 With respect to the three statements that the
27 Crown seeks to have admitted under the rubric of

1 res gestae; that is, the statement testified to by
2 Muriel Betsina, the utterances on the porch of the
3 residence testified to by Constables Aimoe and
4 Lagimodiere, and the statement made by the complainant
5 to Constable Aimoe at the hospital. I note, first,
6 that I did not hear any evidence from the complainant
7 denying that she made those statements. Indeed, I
8 think the evidence was clear that she did make those
9 statements. In any event, I am satisfied as to the
10 accuracy of the witnesses' testimony as to what the
11 complainant said. That is not the question. The
12 question is whether those statements should be
13 admitted for substantive purposes; that is, for the
14 truth of their contents. In my opinion, they do not
15 meet the requirements for res gestae, and I say that
16 for essentially two reasons. As I understand the
17 principle of res gestae, it is that statements are
18 admissible for their truth if made under the immediate
19 and uncontrolled domination of the senses showing
20 thereby that they are a spontaneous and sincere
21 response to the actual sensations and perceptions
22 already produced by the extreme shock of the event
23 alleged to have happened. The fact that, under any
24 version of the complainant's testimony, the
25 complainant said that she took a case of beer and
26 stashed it behind someone else's house and then went
27 to the Betsina household with the intention of having

1 a beer with Norman Betsina suggests to me a lack of
2 that immediate and uncontrolled domination of the
3 senses. But more significantly, I think any issue
4 about res gestae, since the rationale behind the rule
5 is to allow statements where there is no, or at least
6 a minimal, possibility of concoction or fabrication,
7 the very rationale of res gestae evidence is
8 undermined by the complainant's own testimony under
9 oath that she has made false allegations against the
10 accused in the past. I cannot rule out the
11 possibility of concoction, and, therefore, those
12 statements are not admissible on the basis of
13 res gestae. They are, however, in my opinion,
14 admissible not for the truth of their contents but as
15 being relevant to assist in the determination of the
16 ultimate reliability of which version of events
17 related by the complainant, if either one, should be
18 accepted. This is essentially a credibility contest
19 as between two versions of events related by the same
20 individual. She said certain things on the night of
21 the alleged offence, December 29th; she said different
22 things in an affidavit in January; she then recanted
23 her recantation in the K.G.B. statement of February
24 16th; she then recanted the recantation of the
25 recantation by her letter to her husband in jail, all
26 of which she confirmed by her testimony under oath
27 that nothing happened, she lied to the police, and her

1 previous statements alleging that she had been beaten
2 up and raped by the accused were false. So we have
3 two variations of the truth; two versions of the truth
4 from the same witness. We have what she said under
5 oath in the witness box, and the other items of
6 evidence, denying that the accused did anything; we
7 have a statement that she gave to Constable Bellamy on
8 February 16th saying that the accused beat and raped
9 her; and the ultimate test will be to assess whether
10 either of those versions is believable, of course
11 recognizing that it is for the Crown to prove the
12 guilt of the accused, that the accused committed this
13 offence. If there is any doubt or if the trier of
14 fact cannot determine what is reliable, then that must
15 go in favour of the accused in an acquittal. But in
16 my view, the statements are admissible as being
17 relevant to the assessment of the ultimate credibility
18 or reliability of one or the other of those versions
19 of events.

20 Whether one puts it on the basis that they are
21 admissible not as statements for the truth of their
22 contents but simply statements verifying that they
23 were made in order to rebut allegations of concoction
24 or fabrication, or whether one regards them as prior
25 statements inconsistent with the complainant's
26 in-court testimony and, therefore, relevant to an
27 assessment of her credibility as to what to she says

1 here in court, or whether one can consider them as
2 narrative to show how the prosecution came about, or
3 whether one considers them as simply relevant to the
4 whole question of the complainant's consistency or
5 inconsistency, I think one can put any sort of label
6 on it one wishes, but in my view they are clearly
7 admissible in order to assist in the determination of
8 the credibility of either the complainant's in-court
9 testimony or the credibility of the February 16th
10 statement, or perhaps to undermine the credibility of
11 either one. They are not admissible for the truth of
12 their contents. They're admissible to assist the
13 trier of fact in assessing what, if either of the two
14 versions of events, they should accept. That's what I
15 would tell a jury, that's what I tell myself.

16 Any questions, Counsel?

17 MS. KENDALL: No.

18 MR. GORIN: None, Sir.

19

20
21 Certified Pursuant to Rule 723
22 of the Rules of Court

23 

24 _____
25 Jane Romanowich, CSR(A)
26 Court Reporter
27