

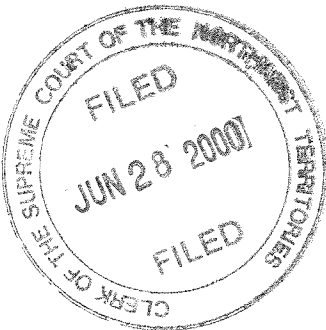
R.v. Kelly, 2000 NWTSC 41

CR 03783

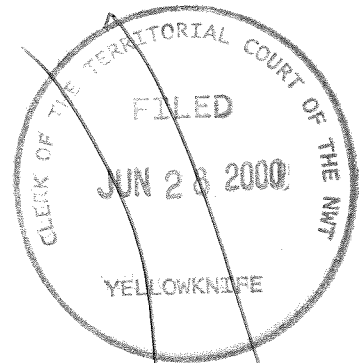
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- vs. -



STEVEN JONES KELLY

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Transcript of the Oral Reasons for Sentence by The Honourable Justice J.E. Richard, at Yellowknife in the Northwest Territories, on Friday, June 9th A.D., 2000.

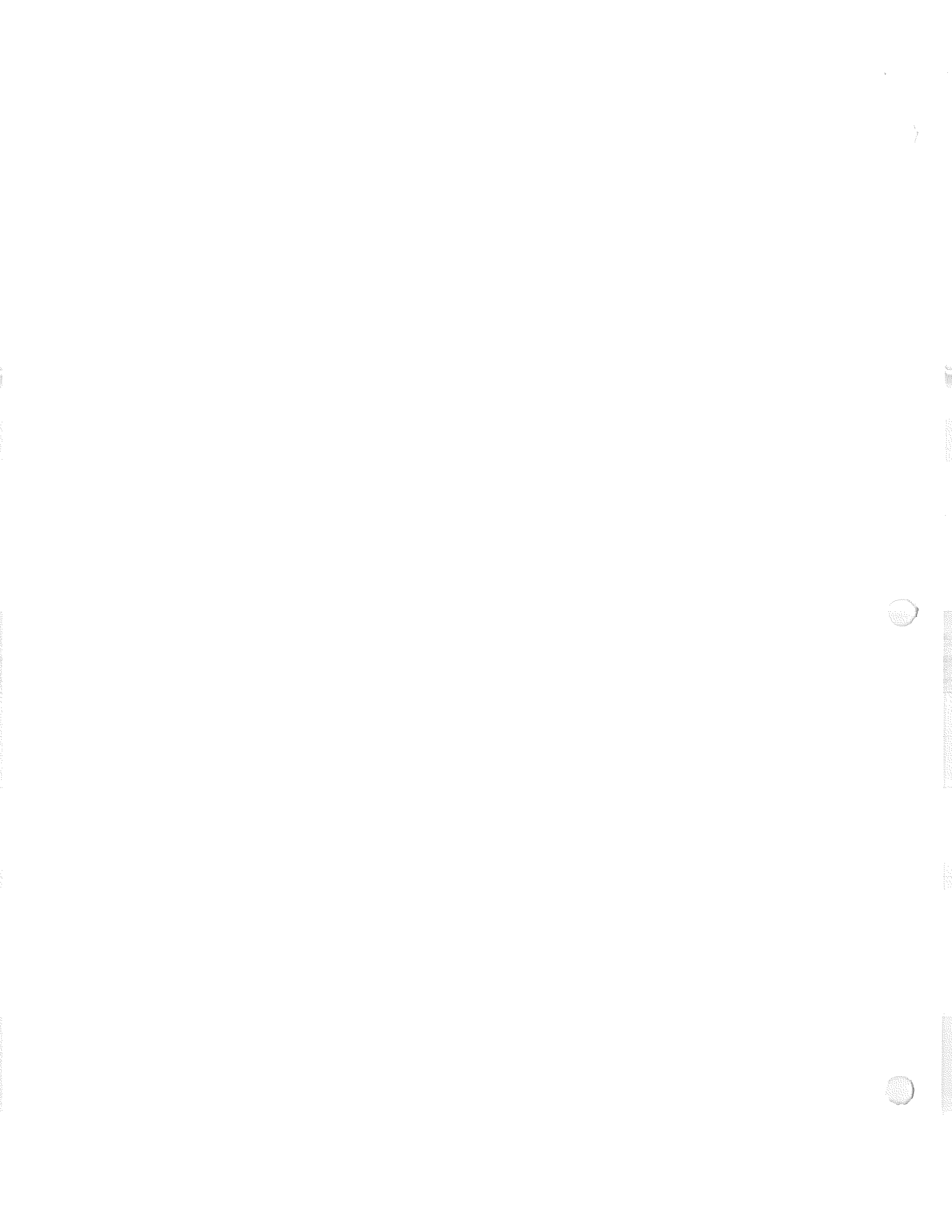
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APPEARANCES:

Ms. S. Kendall: Counsel for the Crown  
Mr. A. Mahar: Counsel for the Accused

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Charge under s. 271 Criminal Code of Canada

*Ar. B. Kelly had conviction  
quashed on appeal.*



1 THE COURT: Steven Jones Kelly has been  
2 convicted by a jury of the crime of sexual assault  
3 contrary to Section 271 of the *Criminal Code*. This  
4 crime carries a maximum penalty of ten years'  
5 imprisonment in a federal penitentiary in southern  
6 Canada.

7 The offender is 28 years of age and is a  
8 resident of Fort Good Hope. In May 1999, he was in  
9 Yellowknife temporarily visiting friends and  
10 relatives here in the city. While here, he was  
11 staying with the Tobac family. John and Cecile  
12 Tobac are also from Fort Good Hope. The Tobacs and  
13 their children were also living temporarily in  
14 Yellowknife so that Cecile Tobac could attend some  
15 educational courses at Aurora College. Cecile Tobac  
16 is the first cousin of the offender Steven Kelly and  
17 has known him all of her life. It is she who is the  
18 victim of the sexual assault for which the offender  
19 Steven Kelly is being sentenced today.

20 Mr. Kelly was staying with the Tobac family at  
21 their temporary residence on Sissons Court for a few  
22 months in early 1999 and during that time, there was  
23 a great deal of drinking occurring in that residence  
24 and particularly on the weekends.

25 On the weekend of May 5th, 1999, a drinking  
26 party was in progress and Mr. and Mrs. Tobac, and  
27 Mr. Kelly, and others were intoxicated.

1           Sometime around midnight, Mr. and Mrs. Tobac  
2 went upstairs to their bedroom and went to sleep.  
3 Mr. Kelly was in the downstairs livingroom with one  
4 or two other persons continuing to drink. He went  
5 upstairs to use the washroom. While upstairs, he  
6 entered the bedroom of Mr. and Mrs. Tobac.

7           He told the jury that he went in there looking  
8 for a bottle of booze that he knew Mr. Tobac hid  
9 under his pillow, and he told the jury that that's  
10 all he did.

11           Cecile Tobac told the jury that she awoke to  
12 find Steven Kelly, her first cousin, on top of her  
13 engaging in sexual intercourse with her. She swore  
14 at him, pushed him off, and he fled. He went  
15 downstairs and left the residence.

16           By their verdict, the jury accepted her  
17 evidence as truthful and reliable and rejected Mr.  
18 Kelly's denial of wrongdoing.

19           The victim Ms. Tobac has presented a Victim  
20 Impact Statement to the Court. In that statement,  
21 she describes in her own words the impact that this  
22 appalling crime has had on her.

23           She says that because of her anger, depression,  
24 self-blame, and thoughts of self-harm, she has had  
25 to discontinue her educational courses and has also  
26 lost interest in her work and has resigned from her  
27 employment. She has nightmares and has trouble

1 sleeping. She says there is not a day that goes by  
2 that she does not think of this incident. She says  
3 it has affected her relationship with her husband,  
4 particularly their intimacy.

5 In committing this crime, Mr. Kelly, whether  
6 intoxicated or not, displayed an appalling disregard  
7 for the personal feelings and bodily integrity of  
8 another human being and that human being was his own  
9 cousin Cecile Tobac.

10 During the course of the trial and these legal  
11 proceedings, I did not detect any remorse by Mr.  
12 Kelly for the harm and the continuing harm that he  
13 has caused to his cousin.

14 It is an aggravating circumstance here that Mr.  
15 Kelly committed this horrible crime within the  
16 sanctity of the victim's own home, of her own  
17 bedroom. And it is a further aggravating factor  
18 that at the time, he was a guest in the Tobac home.  
19 It is yet another aggravating feature that he took  
20 advantage of a defenseless, vulnerable, sleeping or  
21 passed out woman to satisfy his own selfish sexual  
22 purposes.

23 Mr. Kelly's criminal record shows that he has  
24 in the past shown a repeated lack of respect for  
25 society's rules and, in particular, a lack of  
26 respect for the rights of other people. He has three  
27 separate convictions for forcible entry or break and

1 enter into the private property of other people.

2 As both counsel have mentioned, this particular  
3 serious crime, the invasion or physical violation of  
4 the bodily integrity of a sleeping or passed out  
5 woman for sexual purposes, is tragically all too  
6 common in this jurisdiction in the past decade. It  
7 is a serious offence, and there must be serious  
8 consequences for the offender.

9 Denunciation of the crime and deterrence are  
10 paramount considerations in the imposition of an  
11 appropriate sentence.

12 Proportionality is also of importance here as  
13 Parliament has stated in Section 718.1,

14 A sentence must be proportionate  
15 to the gravity of the offence  
16 and the degree of responsibility  
17 of the offender.

18 Parliament also compels the Court, in Section  
19 718.2, to pay particular attention to the  
20 circumstances of any aboriginal offender who is  
21 before the Court for sentencing, and I certainly do  
22 this for this offender Steven Kelly as the Courts in  
23 this jurisdiction have always done with aboriginal  
24 persons who are sentenced for the commission of  
25 criminal offences.

26 Parity is another important sentencing  
27 principle here. In other words, the Court should

1 not, without good reason, depart in any major way  
2 from sentences imposed on similar offenders for  
3 similar offences. And it has long been the case in  
4 this jurisdiction, at all levels of court, that a  
5 meaningful period of incarceration, usually a  
6 penitentiary term, will be imposed for a major  
7 sexual assault such as that committed by Mr. Kelly  
8 absent special circumstances. There are no  
9 particular, special, or mitigating circumstances  
10 here that would cause the Court to depart from the  
11 conventional sentence for this crime.

12 Mr. Kelly's counsel, in urging the Court to  
13 consider a sentence of two years less a day,  
14 questions whether there is really anything to be  
15 gained by imposing a longer term of imprisonment  
16 than that. My answer is yes - real denunciation of  
17 the appalling nature of this all too common crime  
18 and effective deterrence.

19 I personally hold the firm belief that a  
20 penitentiary term for a major sexual assault is  
21 genuinely an individual deterrent for the offender,  
22 and certainly in this jurisdiction. I am not  
23 convinced that a term of two years less a day has  
24 the same effect or impact.

25 In any event, in this case, for the reasons  
26 that I have mentioned, a meaningful period of  
27 incarceration is required. The law compels it, and

1 my conscience compels it.

2 Would you please stand now, Mr. Kelly.

3 Steven Jones Kelly, for the crime that you have  
4 committed, the sexual assault of Cecile Tobac  
5 contrary to Section 271 of the *Criminal Code*, it is  
6 the sentence of this Court that you be imprisoned  
7 for a period of three years.

8 I am going to direct the Clerk of the Court to  
9 endorse the warrant of committal with this Court's  
10 strong recommendation that you be given every  
11 opportunity to serve your term of imprisonment in a  
12 facility in the Northwest Territories; and secondly,  
13 that you be given every opportunity to receive  
14 counselling for alcohol abuse.

15 In addition, there will be the usual mandatory  
16 ten year firearm prohibition order under Section 109  
17 of the *Criminal Code*. Any such item will be  
18 surrendered to a police officer within 30 days of  
19 today's date and in the circumstances, there will be  
20 no Victim Fine surcharge.

21 You may be seated.

22 MS. KENDALL: I would only ask for an order  
23 disposing of the exhibits in this trial.

24 THE COURT: The usual order with respect to  
25 the disposition of exhibits will issue.

26 MR. MAHAR: Sir, with respect to the firearms  
27 prohibition order, I understand that under the Code,



1 the changes to the Code, that he can now apply to a  
2 regional firearms officer for an amendment to that  
3 for the purposes of sustenance hunting should he  
4 wish to do so upon his release, is that correct? I  
5 am sorry if I neglected to --

6 THE COURT: -- I believe that he can, I am  
7 not sure if it has to be with the Court's blessing.  
8 We don't see as many as these -- I haven't seen many  
9 under the new provisions.

10 MR. MAHAR: I apologize, sir, if this wasn't  
11 something that I got into earlier, but he is very  
12 actively involved in the traditional lifestyle and  
13 does hunt to help support his family so if there is  
14 any invitation that the Court can make -- I believe  
15 it is Section 113 if I am not mistaken, but if there  
16 could be a recommendation that at least he be  
17 considered for that possibility.

18 THE COURT: The application can be made to "a  
19 competent authority", I am not sure who that is.  
20 "Made or has jurisdiction to make the prohibition  
21 order", okay, that's the Court.

22 Any difficulty with that order issuing under  
23 113(1), Ms. Kendall?

24 MS. KENDALL: None, Your Lordship.

25 THE COURT: The Section 109 order will  
26 include an order under 113(1) authorizing a chief  
27 firearms officer to issue a limited authorization

1           pursuant to that Section 113.

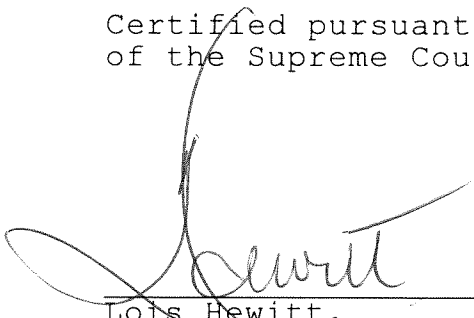
2           MR. MAHAR:                    Thank you, sir, I thank my  
3           friend.

4           THE COURT:                    Thank you, counsel, we will close  
5           court.

6           **(ADJOURNMENT)**

7           **(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

8                                        Certified pursuant to Rule 723  
9                                        of the Supreme Court Rules.



10                                        \_\_\_\_\_  
11                                        Lois Hewitt,  
12                                        Court Reporter

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