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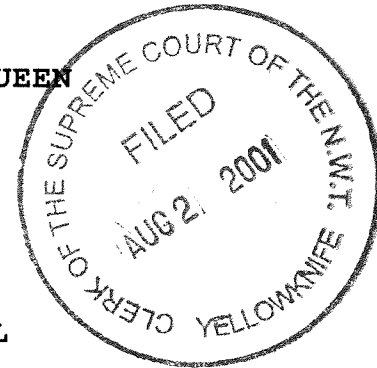
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

LEE BRUNO ABEL



Transcript of the Decision on a Voir Dire delivered by The Honourable Justice J.E. Richard, sitting in Yellowknife, in the Northwest Territories, on the 30th day of May, A.D. 2000.

APPEARANCES:

Ms. S. Kendall: Counsel for the Crown
Mr. J. Posynick: Counsel for the Defendant

(Charges under s.267(a), 271 and 264.1(1) of the Criminal Code of Canada)

1 THE COURT: I will now give the Court's
2 ruling on the voir dire issues.

3 This case is about an allegation of domestic
4 violence.

5 At the heart of the voir dire we have been
6 engaged in is the common phenomena that a victim of
7 domestic violence, usually the wife, recants her
8 earlier statement to the police about the violence
9 visited upon her by her spouse. The recantation can
10 be motivated by fear of retribution or a desire to
11 have the perpetrator escape punishment, particularly
12 incarceration.

13 It is the Crown's position on this voir dire that
14 the instant case is a case of recantation by the
15 complainant here, May Rose Koyina.

16 The Crown seeks, firstly, under Section 9(2) of
17 the Evidence Act, leave to cross-examine its witness
18 May Rose Koyina on the contents of the videotaped
19 statements she gave to the police on October 1st,
20 1999, three days after the alleged violent acts; and,
21 secondly, the Crown seeks to use the contents of
22 Miss Koyina's videotaped statement as substantive
23 evidence of what occurred three days earlier on the
24 authority of *K.G.B.*

25 Regarding the Section 9(2) application, I turn,
26 first, to whether there is an inconsistency.

27 In part of her October 1st statement to the

1 police, she says that during the course of a domestic
2 dispute her intoxicated spouse at one point took a
3 knife and was waving it in her face, threatening to
4 disfigure her. She says when she tried to protect
5 herself, she got cut on the wrist, and she showed the
6 officer the cut or scar on her wrist. She also said
7 in her statement her spouse put on his boots and
8 kicked her on the leg and the knee. She also said he
9 hit her on the face and that she could still feel the
10 lumps.

11 In her evidence in court, she says that the knife
12 cut on her wrist occurred in entirely different
13 circumstances. She says she was sitting beside her
14 spouse and he was using a knife to sharpen pencils and
15 "I accidentally got in the way." She also says that
16 at one point he picked up his boot and threw it at her
17 and hit her on the side of the leg. At another point
18 in her evidence in court she says they were struggling
19 over a thermos full of booze, and when she tried
20 pulling it away from him, he let go and she hit
21 herself on the face with it, causing a bruise to her
22 right cheek.

23 With those examples, I have little difficulty in
24 finding that there is an inconsistency between her
25 October 1st statement and her evidence in court.

26 I next deal with the defence submission that the
27 Court should not allow the Crown to cross-examine

1 Miss Koyina because of the circumstances in which the
2 October 1st statement was taken, circumstances which,
3 counsel submits, include investigatorial misconduct.

4 Having heard and considered all of the evidence
5 including the video, Exhibit "A", I find that there is
6 simply no merit to this submission. I am satisfied
7 that Exhibit "A" contains Miss Koyina's voluntary
8 statement of what occurred three days earlier. The
9 evidence is abundantly clear that Miss Koyina knew she
10 did not have to give a statement to the police.

11 Although the visual quality of the video is poor,
12 I am satisfied that Miss Koyina was of clear mind and
13 was lucid throughout the interview. I am satisfied
14 she fully understood that she did not have to make a
15 statement, and although she was initially reluctant,
16 she proceeded in due course to give a voluntary
17 statement.

18 I find there was nothing improper in Constable
19 Ing pointing out to her the importance of the police
20 doing their job to put an end to domestic violence,
21 and nothing improper about his goal of obtaining a
22 voluntary statement from her during the interview.

23 From my view of Exhibit "A", I do not see any
24 evidence of intoxication or impairment of
25 Miss Koyina's faculties because of alcohol consumption
26 or otherwise.

27 Where Miss Koyina's evidence in court differs

1 from that of the police witnesses - for example, when
2 she says that she tried to leave the detachment and
3 when she says that she was intoxicated - I prefer the
4 evidence of the police witnesses.

5 With the greatest of respect to Miss Koyina, I
6 find her evidence in court simply not credible. I
7 repeat: simply not credible. Let me put it bluntly
8 this way: A school child could concoct a more
9 believable story than has Miss Koyina with respect to
10 the cause of her injuries. Her testimony in court is
11 simply untrustworthy, and in that I include her
12 answers to leading questions from defence counsel
13 about filling in the gaps when she was talking to
14 Constable Ing.

15 For these reasons, I grant Crown leave to
16 cross-examine Miss Koyina on her October 1st statement
17 when the jury returns to the courtroom.

18 I am also satisfied on the authority of *K.G.B.*
19 that the October 1st statement, Exhibit "A", is
20 substantive evidence for the Crown to adduce in
21 support of the allegations of violence on September
22 28th.

23 The necessity criterion is met because this woman
24 has recanted. It is patently obvious that that is
25 what she is doing.

26 As to reliability, I am satisfied on a balance of
27 probabilities that the circumstances here are such as

1 to provide a sufficient guarantee of the
2 trustworthiness of the contents of the October 1st
3 statement. The statement was videotaped in its
4 entirety. The fact that the audio portion is missing
5 for a short period at page 16 of the transcript in my
6 view is insignificant in the big picture. Although
7 the administration of the solemn affirmation by
8 Constable Grant after the fact was imperfect, I am
9 satisfied that because of the warnings explained to
10 Miss Koyina at the outset, and which she understood,
11 that she was fully aware of the significance of giving
12 the statement and the importance of telling the truth.

13 With the one possible exception of a leading
14 question by Constable Ing about forced sexual
15 intercourse, the statement contains Miss Koyina's own
16 narrative about what happened on the date in question.
17 The contents of the statement would be admissible as
18 her sole testimony. And, of course, Mr. Abel, through
19 his counsel, will have ample opportunity to
20 cross-examine Miss Koyina about the contents of the
21 statement at his trial by his jury.

22 The internal inconsistencies in the October 1st
23 statement which counsel has pointed to can be
24 canvassed with Miss Koyina in cross-examination in the
25 presence of the jury, and they can go to the weight
26 which the jury might accord this statement.

27 Allowing the Crown to introduce this evidence to

1 the jury does not impact upon the fairness of
2 Mr. Abel's trial, in my respectful view.

3 For these reasons, I rule that the Crown can
4 introduce the video, Exhibit "A", in its entirety
5 before the triers of fact.

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8 Certified Pursuant to Rule 723
9 of the Rules of Court

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11 _____
12 Jane Romanowich, CSR (A),
13 Court Reporter
14 for: Sandra Burns, CSR(A)
15 Court Reporter
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