

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HARVEY WERNER

Appellant

- v -

HER MAJESTY THE QUEEN

Respondent

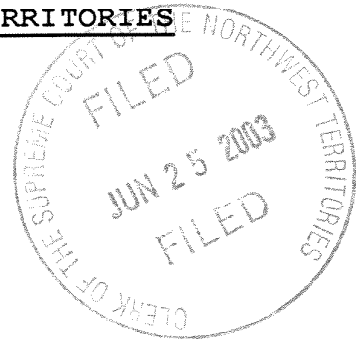
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Transcript of the Oral Judgment on Appeal by The Honourable  
Justice J. Z. Vertes, sitting in Hay River, in the  
Northwest Territories, on the 16th day of June, A.D., 2003.

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APPEARANCES:

Mr. J. Burke:	Counsel for the Crown
Mr. H. Werner:	Representing Himself



1 THE COURT: This is an appeal by Harvey  
2 Werner from his conviction on three offences after  
3 trial in Territorial Court. Mr. Werner had been  
4 charged with four offences, one of which was a failure  
5 to wear a seat belt contrary to the Motor Vehicle Act;  
6 another one was failure to produce proof of insurance,  
7 also contrary to the Motor Vehicle Act; and then there  
8 were two offences of failing to appear in court  
9 contrary to the Summary Conviction Procedures Act.

10 All of these charges were summary conviction matters,  
11 and each one was contained in a separate Information.

12 Mr. Werner has argued a number of grounds of  
13 appeal, but I need to deal with only one. That one  
14 was what Mr. Werner referred to as a failure to be  
15 given a fair trial, but which essentially boiled down  
16 to an issue of criminal procedure, that being whether  
17 he was properly tried in one trial for all four  
18 offences.

19 The issue arose early on in the trial. At the  
20 commencement of the trial the learned trial judge  
21 asked if he was going to hear all of the charges at  
22 the same time; that is, all of the evidence at the  
23 same time on all charges. The Crown Attorney at the  
24 trial stated, and I quote:

25 My application was going to be  
26 that we deal with the two Motor  
27 Vehicle Act Informations on one  
trial, and then call the evidence  
on the two fail to appears, but I  
could also do it all at once,

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Sir.

The trial judge responded:

Well, I would prefer that you do it all at once, subject to what Mr. Werner says, simply because if I make rulings on one set I do not want that to be the basis of some application.

The trial judge then turned to Mr. Werner and asked him if he had any objections if he heard all of the matters at the same time. Mr. Werner then responded "No, I don't want them all set at the same time, Your Honour." The trial judge replied "Okay." Mr. Werner then said "I get a little confused with what's going on," and the trial judge then said "Go ahead." Crown counsel then called the first witness.

Later on, partway into the direct-examination of the first witness, Mr. Werner raised an objection about the witness referring to one charge when he thought he was talking about another charge, and the trial judge informed him, "We are hearing everything. Everything occurred at the same time, Mr. Werner." The appellant replied "Sir, I'm working on I believe that we were doing one charge at a time." The trial judge replied "Well, I am hearing all of the evidence, Mr. Werner. Everything occurred at the same time, so I am going to hear this evidence. Go ahead."

Leaving aside for the moment whether the trial judge was correct or not as to whether everything did

1 occur, as he put it, at the same time, what happened  
2 here raises the technical question of whether a  
3 summary conviction court judge has jurisdiction to  
4 proceed in one trial on separate Informations. This  
5 is not a question of proceeding on multiple counts in  
6 one Information. These are all separate Informations,  
7 and indeed the *Criminal Code* is silent on that point.  
8 The common law did not allow for such a procedure.

9 In 1992 the Supreme Court of Canada addressed  
10 this question in the case of *Clunas*, [1992] 70 C.C.C.  
11 (3d) 115. The very question it had to address was  
12 whether a Court has jurisdiction to try two separate  
13 Informations in a single trial. The Supreme Court of  
14 Canada in effect modified the common law on this  
15 point, and held as follows.

16 First, an accused may not, generally, be  
17 concurrently tried on separate Informations in a  
18 nonjury trial unless the accused expressly consents to  
19 such procedure. However, and this is the second  
20 point, a Court has power to order a joint trial of two  
21 or more Informations if the offences could have been  
22 joined in a single Information and provided, of  
23 course, that they are to be tried by the same mode of  
24 trial.

25 Chief Justice Lamer, writing for the Court in  
26 *Clunas*, said this:

27 I would say that when joinder of  
offences, or of accuseds for that

1 matter, is being considered, the  
2 court should seek the consent of  
3 both the accused and the  
4 prosecution. If consent is  
5 withheld, the reasons should be  
6 explored. Whether the accused  
7 consents or not, joinder should  
8 only occur when, in the opinion  
9 of the court, it is in the  
10 interests of justice and the  
11 offences or accuseds could  
12 initially have been jointly  
13 charged.

14 In my respectful opinion, in this particular  
15 case, consent was expressly not forthcoming. The  
16 reasons were not explored, nor was there any  
17 consideration given as to whether the interests of  
18 justice were best served by a joint trial of these  
19 separate charges, and no consideration was given as to  
20 whether the offences could initially have been jointly  
21 charged.

22 It is not for me to speculate as to what would  
23 have been the decision if such an investigation or  
24 inquiry had been conducted, but the record reveals  
25 that there was no exploration of these issues, that  
26 consent was explicitly not forthcoming, and, in my  
27 respectful opinion, this comes directly up against the  
issue identified in *Clunas*, that being that in the  
absence of consent, or in the absence of a considered  
conclusion that the interests of justice so require  
it, there is no general jurisdiction to try separate  
offences in separate Informations in one trial.

This, in my respectful opinion, is an error of

1 law and, while I may not favour the outcome, this is  
2 not something that merely goes to a question of  
3 whether it is an innocuous error, it is a  
4 jurisdictional question, and therefore I have no  
5 alternative but to allow the appeal.

6 The convictions are therefore set aside, all  
7 charges are remanded, the three charges; that is the  
8 failure to wear a seat belt and the two fail to appear  
9 charges, the ones on which the accused was convicted,  
10 those convictions are set aside and all three charges  
11 are sent back to the Territorial Court for new trials.  
12 It is up to the presiding judge at the new trials to  
13 determine whether the interests of justice warrant  
14 having one joint trial on all three charges or not.

15 Thank you, Mr. Werner. Mr. Burke, may I impose  
16 on you to take out a formal order?

17 MR. BURKE: Yes, Sir, that's no problem. I  
18 will do that.

19 THE COURT: Thank you. You need not obtain  
20 Mr. Werner's consent to the form, but I ask, once it  
21 is filed, that a copy of it be mailed to  
22 Mr. Werner.

23 MR. WERNER: So I'm having a new trial?

24 THE COURT: Mr. Werner, I have set aside the  
25 convictions on the highly technical ground that dealt  
26 with this question of whether you can have all charges  
27 proceed in one trial, and I have sent it back for new

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trials. You are not acquitted, I have just sent them back to the Territorial Court for new trials. So you will have to pay attention, and at some point you will be notified of the new date, and you will have to appear in court once again.

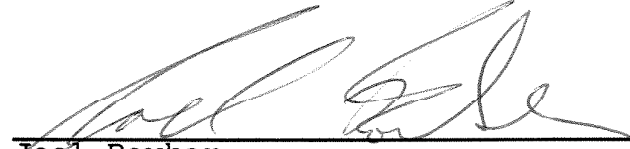
MR. WERNER: So now I can subpoena the people for the new trial?

THE COURT: Yes.

MR. WERNER: Thank you, Your Honour.

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Certified to be a true and accurate transcript, pursuant to Rules 723 and 724 of the Supreme Court Rules

  
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Joel Bowker  
Court Reporter