

R. v. Betsidea, 2001 NWTSC 53

S-1-CR-2001000016

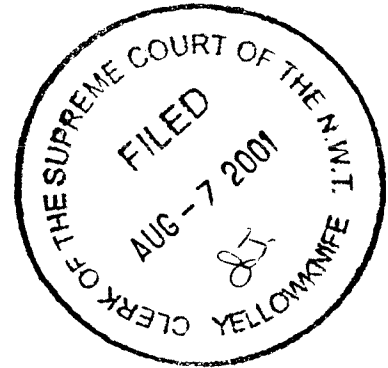
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

JACK MORRIS BETSIDEA




---

Transcript of Ruling on Voir Dire by The Honourable Justice J.E. Richard, with a jury, at Deline, in the Northwest Territories, on June 26th, A.D. 2001.

---

APPEARANCES:

A. Slatkoff, Esq.,	Counsel for the Crown
R. Gorin, Esq.,	Counsel for the Accused

-----

Charge under s. 271 of the Criminal Code of Canada

1 THE COURT: On this application the Crown seeks  
2 some special procedures for the Complainant's trial  
3 testimony. The Crown asks that the public be excluded  
4 from the courtroom during the Complainant's testimony  
5 and also that the Complainant be allowed to testify  
6 behind a screen so that she does not see the accused.

7 This request goes against the general rule that  
8 trials are to be held in open court. The law, however,  
9 does provide for exceptions when necessary. The burden  
10 is on the Crown to satisfy the Court of the necessity  
11 of these procedures for one of the reasons mentioned in  
12 section 486.

13 In this case, the Complainant, now 15 years of  
14 age, alleges that the 21-year-old accused had forcible  
15 intercourse with her in August, 2000 here in their home  
16 community of Deline, a small isolated community of 800  
17 people. On the voir dire the Complainant testified  
18 that she left the community shortly after the incident  
19 because she did not want to be anywhere near the  
20 accused or this small community after what had happened  
21 to her.

22 She has been living in Edmonton the last nine  
23 months and there has received professional counselling  
24 about this incident on a weekly basis. Her counselling  
25 sessions have also dealt with her ongoing depression  
26 and suicidal thoughts. In the last nine months the  
27 Complainant has only returned to Deline for the

1 Preliminary and for this trial.

2 On the one hand, this young Complainant says she  
3 doesn't want people in the community to know about the  
4 very personal thing that happened to her, yet she also  
5 acknowledges that everyone in this small community  
6 probably knows about it. In listening to such  
7 emotional concerns, particularly from a young witness,  
8 it is not surprising to note some irrationality.

9 The Complainant says that in recent days and weeks  
10 as the trial date approached she became nervous and  
11 scared and depressed and at times reluctant to return  
12 to this community to testify in court. This, of  
13 course, is not unusual in cases of this nature. She  
14 says that it will be difficult for her if the public is  
15 present, that she will be unable to say anything about  
16 what happened to her with the public present because of  
17 the personal, intimate nature of what happened to her.

18 The Complainant's mother testified on the voir  
19 dire, stating that her daughter's normal demeanour and  
20 comportment changed as a result of this incident last  
21 August. She says before the incident her daughter was  
22 an outgoing, happy young girl and since the incident  
23 has been a different person, moody, depressed and a  
24 stay at home type.

25 Both Complainant and mother appear to have been  
26 under the genuine impression that the Complainant would  
27 be able to testify with the section 486 screen and with

1 the public excluded, as that is what happened at the  
2 Preliminary Inquiry in January. Although the procedure  
3 at Preliminary is certainly not binding here at trial,  
4 the Complainant's state of mind in preparation for her  
5 trial testimony is a factor for consideration, given  
6 her stated reluctance and the usual stresses and  
7 strains on young witnesses in this kind of case.

8 Taking into consideration this girl's age, the  
9 circumstances and nature of her allegations against the  
10 accused and the testimony on the voir dire, I am  
11 satisfied that it is necessary to make accommodations  
12 to alleviate the stress and nervousness and reluctance  
13 of this Complainant to testify before the general  
14 public, and with a view of the accused person, and to  
15 provide her some reassurance so as to enable her to  
16 give her full and candid testimony to the jury.

17 In my view, these steps are necessary for the  
18 proper administration of justice, in particular for the  
19 trier of fact to hear this girl's full account of what  
20 happened between she and the accused last August. I am  
21 satisfied that her ability to give that full account  
22 will be thwarted if the public is not excluded and the  
23 screen not utilized.

24 In granting this application, I do so fully  
25 satisfied that there will be minimal consequences for  
26 the accused himself or for the general public. Use of  
27 the section 486 screen will not inhibit defence

1 counsel's right of cross-examination in the usual  
2 fashion, nor will it inhibit the accused's view of the  
3 Complainant during her testimony.

4 As for the general public, it is my experience in  
5 presiding at dozens of similar jury trials in Deline  
6 and other small communities that there are usually  
7 either no members of the general public in attendance  
8 or only a few people at most. There is no reason to  
9 anticipate that this case will be any different.

10 Of course, the Court's exclusion order will only  
11 apply during the Complainant's testimony. The  
12 courtroom will be open to the general public during the  
13 rest of the trial.

14 So I hereby make an order pursuant to section  
15 486(1) that the public be excluded during the  
16 Complainant's testimony, and I will ask the Sheriff to  
17 ensure that that order is complied with. I further  
18 order that the Complainant testify behind a screen  
19 pursuant to section 486(2.1) to allow the Complainant  
20 not to see the accused while she is testifying.

21 Now, counsel, I intend to advise the jury during  
22 my opening instructions of these special accommodations  
23 that I am allowing in this case. The jury will also be  
24 specifically instructed that since these procedures  
25 have nothing to do with the guilt or innocence of the  
26 accused that they should not draw any inference from  
27 the use of these procedures, and, in particular, no

1 adverse inference should be drawn against the accused  
2 man because of these procedures.

3 So unless there is anything further, I propose to  
4 bring the jury in, give them their opening  
5 instructions. We will then take a brief adjournment  
6 before the Crown opens to set up the screen. So could  
7 we have the jury in, Mr. Sheriff.

8 -----

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

12   
13 \_\_\_\_\_  
14 Jill MacDonald  
15 Court Reporter  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27