

R. v. Kotchea, 2003 NWTSC 29

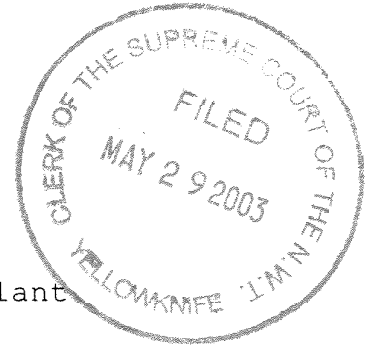
S-1-CR2003000002

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

Appellant



- vs. -

GORDON GEORGE KOTCHEA

Respondent

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Transcript of the Decision on an Appeal by The Honourable Justice J.E. Richard, at Yellowknife in the Northwest Territories, on May 15th A.D., 2003.

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APPEARANCES:

Mr. N. Sinclair: Counsel for the Appellant

Mr. J. Brydon: Counsel for the Respondent

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Charge under s. 267(a) x 2 *Criminal Code of Canada*

1 THE COURT:

2 At the trial below, the defence  
3 counsel made a legitimate or proper application before  
4 the trial Judge after the Crown had closed its case.  
5 That application was for a nonsuit or directed verdict  
6 of acquittal on the grounds that the Crown, in its  
7 case, had failed to prove the essential element of  
8 identity.

9 While that application was before the trial Judge  
10 and before the trial Judge ruled on that nonsuit  
11 application, the Crown made its own application, that  
12 is, an application to reopen its case in order to have  
13 an opportunity to present further evidence on the  
14 essential element of identity. In making that Crown  
15 application, the trial prosecutor acknowledged that he  
16 had mistakenly assumed that identity had been admitted  
17 during the Crown case.

18 The case law, as cited by counsel on this appeal,  
19 is clear that the trial Judge has discretion to permit  
20 the Crown to reopen its case or not.

21 Here, the trial Judge obviously was of the view  
22 that to allow the Crown to reopen its case, in these  
23 circumstances, would be prejudicial or unfair to the  
24 accused as it would render nugatory the defence  
25 application which was then properly before the Court.  
26 This prejudice or unfairness to the accused person is  
27 a proper consideration when exercising judicial  
discretion.

1           Whether or not to permit the Crown to reopen its  
2 case was entirely within the discretion of the  
3 presiding trial Judge. It has not been shown on this  
4 appeal that the learned trial Judge failed to exercise  
5 that discretion in a judicial manner. For these  
6 reasons, the appeal fails and is dismissed.

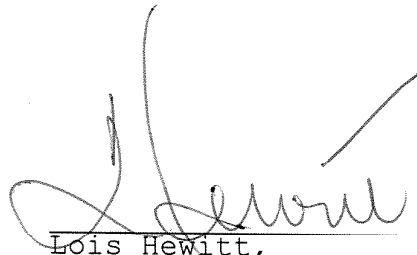
7           If there is nothing further then, we will close  
8 court. Actually we are adjourned until three.

9 MR. SINCLAIR:           Thank you, sir.

10 MR. BRYDON:            Thank you, sir.

11           **(AT WHICH TIME THE DECISION ON THE APPEAL CONCLUDED)**

12                           Certified to be a true and accurate  
13 transcript pursuant to Rules 723 and 724  
14 of the Supreme Court Rules.

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19           Lois Hewitt,  
20           Court Reporter