

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NORMAN YAKELEYA

Transcript of the Reasons for Judgment delivered by The
Honourable Justice A. Germain, sitting in Norman Wells, in
the Northwest Territories, on the 20th day of January,
A.D. 2010.

APPEARANCES:

Ms. J. Walsh: Counsel for the Crown

Mr. A. Pringle: Counsel for the Accused

(Charge under s. 271 of the Criminal Code of Canada)

BAN ON PUBLICATION OF COMPLAINANT/WITNESS PURSUANT TO
SECTION 486.4 OF THE CRIMINAL CODE

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1 THE COURT: Thank you, ladies and
2 gentlemen. Welcome. Please be seated.
3 Good morning, Counsel. Are there any
4 preliminary applications or motions before we go
5 further today?

6 MS. WALSH: Not from the Crown.

7 MR. PRINGLE: No, sir.

8 THE COURT: Thank you very much.

9 In this particular judgment, ladies and
10 gentlemen, I am going to read off of my computer
11 screen. It was difficult to get anything printed
12 out. So, because of that, if my comments appear
13 somewhat disjointed or fractured as my technology
14 tries to keep up with my voice, I do apologize in
15 advance.

16 Mr. Yakeleya stands charged with a single
17 count under Section 271 of the Criminal Code. He
18 is charged that between March 15th, 2007 and
19 March 31st, 2007, he committed a sexual assault
20 on the complainant. Although a range of dates is
21 set out in the Indictment, it should be made
22 clear that the complainant alleges a single act
23 of sexual assault. The range is required because

24 the complainant is not able to pinpoint with
25 certainty when the specific incident is said to
26 have taken place.

27 The incident is said to have happened during

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1 a period of time when the complainant was living
2 in the community of Tulita with relatives of the
3 accused. At the time of the trial, the
4 complainant still remains under 18 years of age,
5 and was 13 years old when the offence is said to
6 have been committed.

7 As a result, the trial commenced with a
8 mandatory publication ban on any information that
9 would tend to reveal the name of the complainant.

10 That ban remains in effect, and continues in
11 effect, even after the conclusion of this trial.

12 There were seven witnesses called in this
13 case. Four by the Crown: the complainant, her
14 mother, and two close friends of the complainant.
15 Three witnesses were called by the defence,
16 including the accused, who, although not obliged
17 to, elected to take the witness stand and give
18 evidence on his own behalf, plus one of his
19 brothers and one of his sisters.

20 It is useful in any case involving an
21 individual charged with a criminal offence that
22 some of the first principles be reviewed as a
23 starting point.

24 The accused is presumed to be innocent. He
25 entered this courtroom presumed to be innocent,
26 and that presumption of innocence was to his
27 benefit through the entire course of the trial,

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1 all of the evidence led, and continues to exist
2 unless he is today convicted by me. Further,
3 this presumption must not be lightly set aside as
4 the Crown must prove the guilt of the accused
5 beyond a reasonable doubt. The accused does not
6 need to prove his innocence.

7 I have considered all of the evidence that I
8 heard through this two-day trial, although I will
9 only mention some of the evidence in the reasons
10 that follow.

11 I have also listened carefully to the
12 argument of both the Crown attorney and the
13 defence which were so ably presented and so
14 fairly presented by competent, highly qualified

15 legal counsel.
16 A brief summary of each theory is
17 appropriate, and because the Crown has the burden
18 in this case, I will start with the Crown
19 summary.

20 The Crown says that the accused sexually
21 assaulted the complainant by coming into her
22 bedroom at night when she and the accused were
23 alone in the home of Danny Yakeleya, the brother
24 of the accused. There, he placed his hand on her
25 vagina. Self-evident in the Crown's argument is
26 that touching a 13-year-old female's vagina with
27 a hand in the circumstances of this case is a

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1 sexual assault. Thus the Crown asserts that if I
2 satisfy myself beyond a reasonable doubt that the
3 accused is guilty of the conduct complained of by
4 the complainant, he should be convicted.

5 The Crown says that the complainant's
6 evidence was not discredited, that
7 inconsistencies on collateral or peripheral
8 issues and items should be carefully considered
9 and possibly ignored in the case of a young
10 complainant and, overall, I should find the

11 complainant credible, although obviously
12 embarrassed, confused, and apprehensive going
13 through this trial process.

14 The Crown's view of the evidence of the
15 accused is that it is suspect and suggests that I
16 should reject his evidence as self-serving and
17 motivated by personal interest. The Crown
18 further observes that although corroboration is
19 not required, the observable emotional state of
20 the complainant in the days following the
21 incident add credibility to the complainant's
22 version. The Crown also, correctly, in my view,
23 reminds the Court that it would be an error of
24 law for me to conclude that any delay by the
25 young complainant in taking this matter further
26 beyond venting with her closest friends weakens
27 her credibility.

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1 The defence, on the other hand, says that
2 the under oath denial by his client coupled with
3 the complainant's inaccuracies, inconsistencies,
4 memory gaps, and potential exaggeration on other
5 evidence necessitate a ruling that the Crown has

6 not proven the case to the required standard.

7 The background facts of how the accused and
8 the complainant came to be alone together in the
9 home of the accused's brother are not greatly in
10 dispute. I therefore propose to go back in time
11 to the fall of 2006. At that time, the
12 complainant, ready to start Grade 8, left her
13 home in Fort McPherson and went to Tulita where
14 she began living with the elderly mother of the
15 accused and the common-law husband of that woman.

16 Evidentiary conflict begins almost
17 immediately because the complainant and her
18 mother say that it was because the accused's
19 mother asked her to come and live with her in
20 Tulita. The accused and his sister have a
21 different take on this. Their view is that there
22 was perhaps some structural issue in the home of
23 the complainant in Fort McPherson and it was the
24 complainant herself that begged to come to the
25 community of Tulita.

26 This issue alone is not particularly
27 important but may take on significance as it may

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1 go to credibility; but, more importantly, it may

2 raise a suggested inference about how strongly
3 the complainant wanted to stay in Tulita and what
4 she might do to achieve that goal.

5 On this point, the explanation of the
6 accused and his sister seemed to ring truer to me
7 than the explanation of the complainant and her
8 mother. It is clear that the complainant wanted
9 badly to get out of Fort McPherson. Therefore,
10 the likelihood that it was she who was asking to
11 go rather than the mother of the accused asking
12 her to come seems more plausible. Despite the
13 closeness of the aboriginal community and the
14 fact that they will often take in family members,
15 the accused's mother had raised her nine children
16 and was elderly. Taking in a teenage child in
17 Grade 8 seems to be a job you might accept but
18 not one that you would go looking for.

19 Thus, around the start of the school year in
20 2006, the complainant travelled from her home to
21 live with the accused's mother, the woman
22 identified as Auntie Laura, in Tulita.

23 Unhappy times soon struck the Yakeleya
24 family as the family matriarch, Laura, died in
25 January 2007. That left the complainant living
26 with a 70-year-old man, and some of the Yakeleya
27 family decided that was inappropriate. One gets

1 the impression that a bit of a family struggle
2 developed as to where the young complainant
3 should live after Laura died. It seems most
4 agreed that living with a 70-year-old male was
5 not the right answer and some family members
6 appeared to be pressing the young complainant to
7 go back to her mother in Fort McPherson. The
8 complainant did not want to go back as she had
9 formed attachments and friends in Tulita.

10 For a short time she moved around from a
11 friend's home to the home of Mrs. Powder. After
12 some time, the brother of the accused, Danny
13 Yakeleya, agreed to take the complainant, perhaps
14 for the rest of the school year. However, there
15 was a period of time in late March 2007 when
16 Danny Yakeleya would be out of the country, and,
17 during that period of time, I accept the evidence
18 of all of the witnesses who spoke about it that
19 the complainant was not to be in Danny Yakeleya's
20 home unless she was with one of her cousins. In
21 short, Danny Yakeleya did not want a 13-year-old
22 girl living in his home with no adult supervision
23 or other supervision. That is a common sense
24 proposition and I accept it. The complainant
25 thus began living with other friends or other

26 relatives.

27 Gary Yakeleya lives next door to Dan; and

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1 while there one evening, the complainant
2 indicates that she saw lights on at Danny's home,
3 and without telling anybody, she went to
4 investigate. She got there and let herself in
5 using a hidden key. She found nobody home, but
6 she decided to stay anyway, contrary to the
7 specific instructions from Danny Yakeleya.
8 Frankly, I find this element of her evidence
9 incredible and unbelievable. That she, a young
10 girl of 13 years of age, would take it upon
11 herself to investigate something irregular which
12 could imply a break-in or other wrongdoing going
13 on in the home and without even telling adults,
14 thus putting herself in harm's way, reflects such
15 a lack of self-care and self-responsibility that
16 that portion of her evidence must be rejected.
17 What I think really happened is that the
18 complainant was feeling a bit out of sorts camped
19 out with other relatives, and perhaps they were a
20 bit of out of sorts having her in their homes.

21 The evidence of Mr. Gary Yakeleya also puts the
22 idea of the witness observing the television
23 lights on in the home in some doubt because of
24 the geographic layout of the two homes.

25 The complainant intentionally went over to
26 Danny Yakeleya's home, contrary to his direct
27 order, and the story about going over to

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1 investigate the lights was, in my view, contrived
2 to justify going over there. Since the
3 complainant stayed in the home after determining
4 no one was there lends support to the theory that
5 this element of her evidence is likely a
6 fabrication.

7 It is the case, however, that a judge can
8 accept some, all, or none of a witness's
9 evidence, and my determination that she is
10 probably incorrect or intentionally wrong on that
11 point does not automatically mean that she was
12 not sexually assaulted.

13 That is the background by which this young
14 girl comes to be alone at the home of the brother
15 of the accused.

16 I now turn to the other element and that is:

17 How did the accused come to be in the home?
18 The accused gave evidence which I accept
19 that he had a tough three days leading up to the
20 Sunday night that he was at his brother's home.
21 He did not have an exclusive residence in the
22 community of Tulita as he spent only
23 approximately 25 percent of his time there as the
24 MLA for the Sahtu constituency, which includes
25 Tulita, Norman Wells, and other communities. The
26 constituency encompasses a large geographic
27 region with difficulty in access.

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1 He was in the area on constituency business,
2 having driven approximately 17 hours from
3 Yellowknife to Tulita earlier in the week, and
4 then went to a conference in another community.
5 When the conference ended on Sunday, he returned
6 to Tulita, intending to stay at brother Danny's
7 house. He reached and was ready to enter Danny's
8 house around midnight on Sunday. He indicates
9 that he was tired, hungry, and because he has
10 Type 2 diabetes, which causes mood swings, he was
11 also irritable. He entered his brother's home at

12 a time which put him and the complainant alone in
13 the home late at night.

14 From this point forward, the version that
15 each gives is significantly different. Let me
16 deal first with the complainant.

17 She said she was in bed, heard someone at
18 the door, went downstairs and saw Norman
19 Yakeleya. She cannot remember much about what
20 they talked about, but, ultimately, went back to
21 bed.

22 She indicated that she was lying on her back
23 when the accused came in, laid down beside her,
24 put one arm under her neck, the other on her
25 stomach, and then moved that hand from the
26 stomach down to where his fingers touched her
27 vagina through her clothes. At that point, there

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1 was a brief conversation where she says he asked
2 if she was afraid, and although she was, she said
3 no, but turned to the wall, breaking hand
4 contact, and, after a couple of minutes, the
5 accused left. The complainant indicates that she
6 then fell asleep and slept into the afternoon the
7 next day, missing school, and that the accused

8 was gone when she woke up.

9 The accused gives evidence on his own behalf
10 and he emphatically denies that he was in the
11 complainant's bedroom or that he touched her in
12 the way described or in any way. He indicates
13 that he was angry and loud when he entered the
14 home, triggered by annoyance of getting in, and
15 he found the complainant there unsupervised in
16 the home. He say an argument ensued but that
17 finally he relented and agreed that she could
18 stay but she had to go to school in the morning.
19 At that point, she gave him what he describes as
20 an uncomfortable hug and went to bed, while he
21 got some bedding from his brother's bedroom and
22 went to bed on the couch out of respect for his
23 brother.

24 The accused says that he fell asleep and he
25 did not see the complainant when he left the home
26 the next morning.

27 It is clear that after the complainant woke

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1 up in the late afternoon of the next day, she
2 went to the house of her friend Karen and

3 described some incident. Her description of the
4 incident to Karen is different than her evidence
5 in court in at least one particular. To Karen
6 she reported that she had fallen asleep and was
7 woken up by the accused touching her. In court
8 she indicates that she was never asleep and
9 observed the accused come in and touch her in the
10 manner she described.

11 Of interest is that Ms. Karen Iliopoulos
12 described the complainant as confused and upset.
13 The complainant's other friend, Ms. Amber Powder,
14 also observed the complainant to be upset. The
15 complainant's mother, Ms. Shirley Stewart, also
16 found the complainant changed and withdrawn when
17 she returned home to Fort McPherson.

18 As one would expect in a small community,
19 this allegation soon got around and it did not
20 sit well with either the accused or his family.
21 The accused is said to have called the
22 complainant and told her to tell the truth and to
23 tell her mother she had been lying about the
24 incident.

25 The calls both between the accused and the
26 complainant and the complainant's mother and the
27 accused are both admitted but with a different

1 spin put on them. The complainant implies that
2 she was being asked to lie by changing her story,
3 while the accused says she was asked to stop
4 lying and change her story to the truth.

5 The accused in this case is a public figure
6 with a lengthy background of community service
7 both in aboriginal and territorial politics in
8 the Northwest Territories. According to him, he
9 fought his personal demons of alcohol consumption
10 and his experience led to a career as a
11 counsellor as well as his political successes.

12 It is neither unreasonable nor unexpected,
13 although potentially dangerous, for someone to
14 contact a person who they assert is defaming them
15 and ask them to come clean. Such calls that were
16 made between the accused and the complainant did
17 not constitute or lead me to believe that the
18 accused was expressing elements of a guilty
19 conscience or confession, but are more consistent
20 with the indignant, practical reality that people
21 will be more quick to believe something bad about
22 a person than something good.

23 The complainant obviously believes strongly
24 that she was sexually assaulted, because although
25 it is obvious that giving evidence against a well
26 known public figure could not have been a

27 pleasant experience, she pursued her assertion,

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1 ultimately swore to tell the truth before me, and
2 indicated unequivocally in evidence in this open
3 court that this individual on trial intentionally
4 touched her vagina.

5 As I mentioned earlier, contact of an
6 individual's fingers with a 13-year-old's vagina
7 in circumstances as these does constitute a
8 sexual assault.

9 The Crown rests their case on the
10 credibility of the complainant coupled with the
11 observable upset and confusion of the complainant
12 as mirrored to her friends.

13 It is no longer the law in Canada that an
14 early complaint or a consistently repeated one
15 adds to the proof or assists in credibility, nor
16 does a delay or failure to complain expeditiously
17 lead to a lack of credibility. There was no
18 suggestion by the Crown that the early complaint
19 bolsters the complainant's evidence and no
20 suggestion by defence that the delay in going to
21 the RCMP weakens it. Those antiquated and
22 historic concepts have no business in the

23 Canadian courts.
24 Learned defence counsel, however, questioned
25 on these earlier statements to show
26 inconsistencies, and inconsistencies have always
27 been of concern to the courts.

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1 Inconsistency in an immaterial detail is
2 often simply the product of a poor or unfocused
3 memory with the unusual elements of an incident
4 more likely to be remembered than the more usual
5 elements. Further, children even as old as 13
6 years of age often have a poor perception of
7 time, distance, and chronology and less retention
8 of immaterial details.

9 The cross-examination by defence solely went
10 to the issue of inconsistent statement. It
11 supports the thesis of the defence that the
12 complainant is not at all sure about what, if
13 anything, happened and is variable or
14 inconsistent on critical as well as peripheral
15 details. It is also clear the complainant was
16 upset, but that upset is argued to point just as
17 easily to her upset at being scolded or becoming

18 at risk of leaving the community of Tulita as to
19 having been sexually assaulted.

20 The issue for me is not whether I believe
21 the complainant. Her statement about being
22 touched in an inappropriate way sounds credible
23 and could possibly be true. Were I to convict
24 the accused on that basis, I would be making an
25 error of law because the test is whether the
26 Crown has proven the case beyond a reasonable
27 doubt.

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1 It is useful at this time for me to remind
2 myself publically about a well known case from
3 the Supreme Court of Canada. This case,
4 officially styled in the law books, is referred
5 to as R. v. W.D. Initials there are used also
6 because of privacy concerns similar to those that
7 I articulated here earlier. The lawyers, due to
8 their experience, skill, and capability, simply
9 refer to this case as the W.D. case. The public
10 sometimes thinks we are talking about a hardware
11 lubricant, but the W.D. case is a very important
12 structural part of our criminal evidence in
13 Canada. And why it is a very important part is

14 that the courts, the Supreme Court of Canada,
15 wanted to re-emphasize that judges should not
16 inadvertently reverse the burden of proof when an
17 accused gives evidence on his behalf,
18 particularly when they may not believe the
19 evidence that the accused has given at trial. To
20 avoid that risk, a three-part test has been
21 formulated. The first prong of this test is that
22 if I believe the accused and he convinces me he
23 is not guilty, then it of course follows that the
24 Crown has not proved the case beyond a reasonable
25 doubt and the accused must be acquitted. There
26 is a middle ground where I may not believe
27 everything the accused has said, but his evidence

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1 denying the assault at least raises a reasonable
2 doubt and, if so, I must give him the benefit of
3 that doubt. And, finally, if I do not believe
4 the accused and his evidence does not raise a
5 reasonable doubt, then I must still consider all
6 of the evidence which I heard and which I do
7 believe to determine if the Crown has proven
8 beyond a reasonable doubt the case against the

9 accused. In other words, I would go back and
10 view any shortcomings or credibility issues in
11 the witnesses to determine if the Crown has
12 proven the case beyond a reasonable doubt.

13 Let me say that some elements of the
14 evidence of the accused and the way he presented
15 it and the way he responded to some
16 cross-examination do give me cause for concern.
17 However, he did remain steadfast in his denial of
18 this sexual assault as alleged by the complainant
19 and it is not possible for me to conclude with
20 sufficient certainty that his denial should be
21 rejected.

22 There are two realities to this case. The
23 first reality is that only two people really know
24 what happened in that house that night. Although
25 I heard from both of them, the second reality is
26 that I can never really know for sure. I have
27 concluded, therefore, that this case falls in the

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1 middle ground of the test formulated by the
2 Supreme Court of Canada where the accused's
3 evidence is sufficient to raise a reasonable
4 doubt.

5 Far too many people in today's society are
6 sexually assaulted. The complainant here tells
7 us that she was. Many others may harbour a
8 suspicion that she was, but suspicion cannot
9 displace my legal duty to convict the accused
10 only if I am satisfied beyond a reasonable doubt
11 of his guilt.

12 Mr. Yakeleya, will you please stand.

13 I find that the evidence against you does
14 not prove this case beyond a reasonable doubt, so
15 the charge against you is dismissed. You are
16 free to go.

17 THE ACCUSED: Thank you.

18 THE COURT: That concludes the case,
19 ladies and gentlemen. Would Madam Clerk call the
20 court to order, please.

21 THE COURT CLERK: All rise. This trial of the
22 Supreme Court is now closed.

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