

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

GREGORY MARK KOCHON

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Transcript of the Ruling on the proposed defence of mistaken belief in consent by The Honourable Justice J. E. Richard, sitting in Norman Wells, in the Northwest Territories, on the 10th day of March, A.D., 2010.

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APPEARANCES:

Mr. J. MacFarlane: Counsel for the Crown

Ms. C. Wawzonek: Counsel for the Defence

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Charges under s. 348(1) (b) & 271 Criminal Code of Canada

1 THE COURT: Good morning everyone. I am  
2 now going to give the Court's ruling on the  
3 request for a charge on the mistake of fact  
4 defence.

5 In this case the complainant has given  
6 evidence to the jury in which she describes  
7 being sexually assaulted by the accused at  
8 approximately 4:00 in the morning in her bedroom,  
9 in her residence. She was somewhat intoxicated  
10 when she went to sleep in her bed, fully clothed,  
11 with her seven-year-old daughter in the bed  
12 beside her. She awoke to find that she was  
13 naked, that the accused was on top of her, and  
14 that the accused was having sexual intercourse  
15 with her.

16 The accused testified at his trial and told  
17 the jury that he dropped by the complainant's  
18 residence at approximately 4 a.m., knocked at the  
19 door, and was let in by the complainant's  
20 seven-year-old daughter. He went to the  
21 complainant's bedroom and had beer with her, had  
22 a conversation with her. Then he and the  
23 complainant had consensual sex and then he left  
24 and went home.

25 Defence counsel asks that in addition to  
26 putting the defence of consent to the jury that  
27 the defence of honest but mistaken belief in

1 consent be also put to the jury for their  
2 consideration. As a result of this request I  
3 have carefully reviewed all of the evidence and I  
4 have decided that there is simply no air of  
5 reality to such a defence in this case. In  
6 particular, the accused in his testimony is not  
7 saying that he "thought the complainant was  
8 consenting." His evidence is rather to the  
9 effect that she was consenting and indeed was an  
10 active participant in the sexual activity.

11 In my careful review of the evidence I find  
12 that it is simply not possible for the jury to  
13 "cobble together" portions of the complainant's  
14 evidence and portions of the accused's evidence  
15 to construct a scenario whereby the complainant  
16 was in fact not consenting, but that the accused  
17 honestly but mistakenly believed she was  
18 consenting. No trier of fact could construct  
19 such a scenario from the evidence in this case,  
20 hence there is no air of reality to such a  
21 defence. R. v. Somers 2009 ONCA 567 cited by  
22 defence counsel is distinguishable.

23 For these reasons, the defence of mistaken  
24 belief in consent will not be put to the jury in  
25 the charge.

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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