

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NARCISSE SANGRIS

Transcript of the Reasons for Judgment delivered by The Honourable Justice K. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 28th day of November, A.D. 2013.

APPEARANCES:

Mr. B. Demone: Counsel for the Crown

Mr. P. Falvo: Counsel for the Accused

(Charges under s. 151 and 271 Criminal Code of Canada)

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

1 THE COURT: Narcisse Sangris is charged
2 with touching the complainant for a sexual
3 purpose contrary to Section 151 of the Criminal
4 Code. He is also charged with sexual assault
5 contrary to Section 271 of the Code, and these
6 charges stem from the same events, alleged to
7 have taken place on April 15th, 2011, in
8 Yellowknife, in the Northwest Territories.

9 I will preface this by saying throughout
10 these reasons I will refer to the complainant as
11 the "complainant" rather than by his name and
12 that is just because there is a publication ban
13 and it is an extra precaution I am taking.

14 I heard evidence and submissions on Monday
15 and Tuesday of this week. The Crown called the
16 complainant and an RCMP officer, Constable Long,
17 who participated in the search of Mr. Sangris's
18 apartment and who took photographs of the
19 apartment and the items found in it. Mr. Sangris
20 gave evidence on his own behalf. There were also
21 several admissions made through Agreed Statements
22 of Fact and I will refer to these as I summarize
23 and analyze the evidence.

24 The complainant testified he was at a cyber
25 cafe in Yellowknife, called the Frost Byte,
26 around three in the afternoon on April 15th,
27 2011. He was using Facebook to check his

1 messages. He received a message from Narcisse
2 Sangris on Facebook using the instant messenger
3 or "chat" function. The exchange between the two
4 is reproduced in Appendix "C" to the Agreed
5 Statement of Facts marked as Exhibit 1. That
6 conversation includes an invitation to the
7 complainant to come to the accused's apartment
8 and view pornography, and I will return to this
9 later.

10 This was not the first time that Mr. Sangris
11 had initiated contact with the complainant on
12 Facebook. Appendix "B" to Exhibit 1 also shows
13 an exchange from March 2nd, 2011, during which
14 Mr. Sangris extended an invitation to the
15 complainant to come to his home.

16 On April 15th, 2011, the complainant says,
17 he walked over to Mr. Sangris's apartment after
18 the Facebook exchange. On his way there, he saw
19 his mother who asked where he was going. He told
20 her he was going to a friend's house. He did not
21 tell her he was going to see Mr. Sangris and he
22 did not want her to know this.

23 When he arrived at Mr. Sangris's apartment
24 building, he rang the buzzer at the main door.
25 He said Mr. Sangris came downstairs to let him
26 into the building, and the complainant testified
27 this was the first time the two had met face to

1 face.

2 Mr. Sangris was wearing grey pajama bottoms
3 and a tank top. The complainant could smell
4 alcohol, although he did not observe Mr. Sangris
5 to be exhibiting obvious signs of impairment,
6 such as slurring his words or staggering during
7 the time they were together, nor did he observe
8 Mr. Sangris to pass out at any time.

9 The two went into Mr. Sangris's apartment.
10 No one else was present. Mr. Sangris offered the
11 complainant a cigarette and an alcoholic drink
12 and the complainant declined both of these.

13 The complainant testified that Mr. Sangris
14 played a pornographic DVD for him in the living
15 room while the complainant was on a couch in the
16 living room of the apartment. Mr. Sangris then
17 came over to where the complainant was in the
18 living room. He had at that point his pajama
19 bottoms and his underwear off and the complainant
20 could see Mr. Sangris's penis. Mr. Sangris
21 kissed the complainant on the lips. The
22 complainant said he tried to back away, but he
23 could not move. When asked, he could not recall
24 why that was. He said Mr. Sangris told him not
25 to be afraid. Mr. Sangris then unzipped and took
26 down the complainant's pants. The complainant
27 said he then tried to pull his pants back up, but

1 he could not.

2 The complainant testified that Mr. Sangris
3 started to rub his penis - that is, the
4 complainant's penis - and he then inserted his
5 finger in the complainant's anus and moved it
6 back and forth. The complainant said that this
7 was uncomfortable and that it made him feel he
8 could not breathe. He told Mr. Sangris that he
9 could not breathe and Mr. Sangris stopped.
10 Mr. Sangris encouraged the complainant to stay at
11 the apartment. The complainant wanted to leave,
12 but he did not feel that he could.

13 From the evidence, it does not appear that
14 there was a great deal of difference between them
15 in terms of size, but there was a significant
16 difference in the age. Mr. Sangris was
17 approximately 40 years old at the time, while the
18 complainant was 14.

19 The complainant said he lied to Mr. Sangris
20 and told him that his mom would ground him if he
21 came home late. He said he said this three
22 times. As he was leaving, Mr. Sangris told the
23 complainant to keep the event a secret.

24 The complainant said that he asked
25 Mr. Sangris to give him money. He said
26 Mr. Sangris had mentioned giving him money in one
27 of their previous Facebook chats. When asked on

1 cross-examination why he asked for the money, the
2 complainant said that he wanted to get something
3 from the store.

4 Once he left the apartment, the complainant
5 went to his cousin's residence to play video
6 games. They then went to Wal-Mart and they
7 played ball tag and they walked around. He
8 subsequently saw his mother at the Winks store
9 and he told her what happened. She called the
10 RCMP and, subsequently, he attended at the
11 Yellowknife detachment and he gave a statement.

12 The complainant testified that he never told
13 Mr. Sangris his age and Mr. Sangris never asked
14 him about it. On cross-examination, he said he
15 did not remember telling Mr. Sangris that he was
16 17.

17 Mr. Sangris, as I said earlier, testified on
18 his own behalf. He is 43 years old. On April
19 15th, 2011, he was living alone at an apartment
20 in Yellowknife. Just prior to this, he had
21 travelled to Edmonton and left his nephew
22 housesitting for him. He returned to Yellowknife
23 to find his apartment, which he said he usually
24 kept immaculate, to be very messy. None of his
25 belongings were missing from the apartment, but
26 he found some things that did not belong to him,
27 including pornographic movies. When he

1 testified, Mr. Sangris denied that he had any
2 pornographic films of his own, and he said he put
3 these pornographic DVD's aside in case the person
4 to whom they actually belonged came back to claim
5 them.

6 Mr. Sangris testified that he did not really
7 recall specifically the events of April 15th,
8 2011. He said he was drinking with a friend the
9 day before and she needed somewhere to stay and
10 so they returned to his apartment at around four
11 or five in the morning. The friend went to sleep
12 and Mr. Sangris stayed up, although he dozed off
13 from time to time. He woke his friend just
14 before noon so that she could go to work and then
15 he went to lie down where he had been previously.
16 The friend showered and left. Mr. Sangris said
17 he did not hear her leave. Subsequently, he
18 awoke and started chatting again on Facebook with
19 some of his friends.

20 Mr. Sangris testified that up until that day
21 he had not actually met the complainant in
22 person; however, he did know of him and the
23 complainant was part of Mr. Sangris's network of
24 friends on Facebook. He said, as well, that the
25 complainant used a different last name on
26 Facebook, so he did not actually know that he was
27 Facebook friends with the complainant.

1 Mr. Sangris engaged in Facebook chatting
2 with several people that day, including the
3 complainant. And I referred earlier to the
4 transcript of the April 15th, 2011, exchange
5 between the two which forms Appendix "C" to
6 Exhibit 1. In that exchange, which the defence
7 admitted as being initiated by Mr. Sangris,
8 Mr. Sangris told the complainant that he had a
9 pornographic movie for the complainant at his
10 apartment. Mr. Sangris told him to "walk over
11 now" to pick it up and he gave the complainant
12 his address. Mr. Sangris described the movie as
13 being "all about girl-on-girl". This exchange
14 took place between 3:39 and 3:45 in the
15 afternoon. Mr. Sangris testified on direct
16 examination that he does not actually remember
17 the exchange because he had not slept and he had
18 been drinking alcohol.

19 Mr. Sangris recalled that after he finished
20 chatting on Facebook, he put the computer down on
21 the coffee table and he fell asleep in the living
22 room again. He does not remember locking the
23 door to his apartment, and he testified that he
24 awoke to find his pajama bottoms and underwear
25 had been lowered down below his buttocks and
26 someone, who he recognized later to be the
27 complainant, was on top of him having anal sex.

1 Mr. Sangris told him to stop and then he got up
2 and he went into the bathroom. Mr. Sangris
3 stated that he hoped "whoever it was" would
4 leave. But the complainant did not. Mr. Sangris
5 observed the complainant in the living room using
6 Mr. Sangris's computer. He said at that point he
7 recognized the complainant from the community.
8 He told the complainant to get off of his
9 computer and to leave. He said that the
10 complainant walked towards him and stood by the
11 front door. Mr. Sangris said it was at that
12 point that he heard the complainant speak for the
13 first time up close. He said the complainant
14 told him he was 17 and then he asked Mr. Sangris
15 for money. Mr. Sangris refused to give him money
16 and he demanded that he leave. He said he told
17 the complaint he would not tell anyone.
18 Subsequently, the complainant left.

19 Mr. Sangris described this incident as
20 terrifying, and testified that after the
21 complainant left, he was shaking a lot. He took
22 a shower and he prayed.

23 Next, Mr. Sangris said he sent text messages
24 to his cousin and asked her to pick him up but
25 she was busy. He had to send texts because he
26 had no minutes left on his telephone to make
27 calls. He left the apartment because he felt he

1 just had to leave and he went to N'dilo to a
2 party with his cousin.

3 Mr. Sangris testified that he did not tell
4 anyone about this event, including the police.
5 He stated the reason was no one would be believe
6 that a gay man would be raped.

7 Mr. Sangris described his experience at the
8 party in N'dilo following his encounter with the
9 complainant. He said he was drinking with his
10 cousin and they were getting into hard liquor.
11 He partied all day Friday and all day Saturday,
12 and he says he passed out sometime and did not
13 awake until a little after four in the morning,
14 presumably on Sunday, April 17, 2011. He then
15 got up and he walked back to his apartment in
16 Yellowknife. When he checked his cell phone, he
17 says it appears he had received five calls from
18 his front door buzzer of his apartment building
19 that came in Friday around three or four in the
20 afternoon. He said he would not be able to buzz
21 anyone into the apartment building with his phone
22 because he did not have any minutes left for
23 making phone calls.

24 As set out in the Agreed Statement of Facts
25 marked as Exhibit 6, the RCMP had certain members
26 attend at Mr. Sangris's apartment on April 17th,
27 2011, at 3:25 p.m., and they arrested him. He

1 then gave a statement to the police at 4:30 that
2 afternoon. In his evidence on direct
3 examination, however, Mr. Sangris indicated that
4 he was sleepy, hungry, and just sobering up when
5 the police arrived. He also said that whatever
6 they said to him, he just went along with because
7 "they had the power". Mr. Sangris, however,
8 confirmed on cross-examination that he understood
9 that he did not have to give a statement to the
10 RCMP, and, as well, he admitted through Exhibit 6
11 that he gave the statement voluntarily.

12 Credibility is a key issue in this case and,
13 as such, the analytical framework to be applied
14 is that which is found in the Supreme Court of
15 Canada's decision in R. v. W.D., [1991] 1 S.C.R.
16 742. The framework is well known, but it is
17 useful to set it out. If I believe Mr. Sangris -
18 that is, that he is the one who was the victim of
19 the sexual assault and that he did not initiate
20 or willingly participate in any sexual acts with
21 the complainant - then I must acquit him. If I
22 do not believe all of what Mr. Sangris had to say
23 but his evidence nevertheless raises a reasonable
24 doubt, I must acquit him; and even if
25 Mr. Sangris's evidence does not raise a
26 reasonable doubt and even if I do not believe it,
27 I must nevertheless be convinced of his guilt

1 beyond a reasonable doubt by the evidence that
2 the Crown presented. The burden of proof never
3 shifts to Mr. Sangris.

4 I have considered Mr. Sangris's evidence
5 very carefully and I have thought about it a lot.
6 I have concluded, however, that it is simply not
7 believable, nor does it raise a reasonable doubt.

8 The Crown cross-examined Mr. Sangris
9 extensively on the statement that he gave to the
10 police on April 17th, 2011 about the events of
11 the previous Friday, and it is very clear that
12 what he told police is highly inconsistent with
13 the testimony that he gave in court here earlier
14 this week and with some of the evidence that was
15 adduced through the Agreed Statements of Fact.

16 Mr. Sangris told the police that it was the
17 complainant who asked to come over and that he
18 was consistently making this demand. Mr. Sangris
19 told the complainant that he could not come over,
20 according to what he told the police, but then
21 relented because the complainant was persistent.
22 This is completely at odds with what Mr. Sangris
23 said in his testimony on Tuesday; that is, that
24 he awoke to find the complainant on top of him,
25 having anal sex with him. It is also very
26 different from what is depicted in the
27 transcripts of the Facebook exchanges found in

1 Appendices "B" and "C" to Exhibit 1, which, as I
2 mentioned earlier, contained clear invitations
3 from Mr. Sangris to the complainant to come to
4 his apartment.

5 In his direct examination, Mr. Sangris said
6 that he did not own pornography and suggested
7 that the pornography that was found in his
8 apartment was there as a result of the time his
9 nephew was housesitting for him. However, when
10 he was interviewed by the police and he gave his
11 statement to the police on April 17th, 2011, he
12 admitted that he told the police that he did have
13 pornography.

14 Mr. Sangris told the police that the
15 complainant asked if he could watch pornography
16 and that he responded by saying, "Oh, my God. Go
17 ahead". He also told the police that he fell
18 asleep while the complainant was at his apartment
19 and he awoke to him watching pornography and
20 masturbating. In direct examination on Tuesday,
21 however, Mr. Sangris made no mention of the
22 complainant asking to watch pornography, nor did
23 he mention anything about the complainant
24 actually watching pornography. The only
25 conversation he recounted in his testimony was
26 that the complainant stood by the door and told
27 Mr. Sangris that he was 17. And he also said

1 that the complainant asked him for money.

2 That testimony is not only completely
3 inconsistent with what he told the police
4 earlier, it is also, in a word, bizarre. It
5 makes absolutely no sense that someone who has
6 allegedly just committed a sexual assault would
7 stop to state his age. It also makes no sense
8 that he would stop and ask for money.

9 It was put to Mr. Sangris that he told the
10 police he greeted the complainant at the door and
11 was surprised to see that he had come over. He
12 also agreed that he told police that he gave the
13 complainant a tour of his apartment when he
14 arrived and said, "Welcome to my home." This is,
15 as well, very different from his story that he
16 woke up to find the complainant was on top of
17 him, sexually assaulting him.

18 Mr. Sangris agreed that he told the police
19 that the complainant had been bugging him to have
20 a relationship but that he told the complainant
21 he could not because the complainant was only 15
22 years old. There is a stark contrast between
23 this statement and Mr. Sangris's testimony.
24 Mr. Sangris was asked in his direct examination
25 if, on April 15th, 2011, he had any knowledge of
26 how old the complainant was. He replied that he
27 did not. He also stated that he had no knowledge

1 of the complainants's age from knowing him in the
2 community and that he had never inquired about
3 his age. Yet on April 17th, 2011, he told the
4 police that the complainant was 15.

5 Mr. Sangris stated on direct examination
6 that the complainant had sexually assaulted him.
7 This is consistent with the statement that he
8 gave to the police. However, on direct
9 examination, he said that he did not tell anyone
10 about this. Then, on cross-examination, he
11 agreed that he had told the police and that he
12 had told his friends about it.

13 While it is reasonable to expect that there
14 may be some inconsistencies between a statement
15 given to the police and a person's testimony at a
16 later time, the inconsistencies here amount to an
17 entirely different story. They are inexplicable
18 to such an extent that they are simply not
19 believable, and, as such, Mr. Sangris's evidence
20 has no ring of truth to it.

21 Mr. Sangris expressed at various points
22 during cross-examination that he did not agree
23 with a number of things that were put to him in
24 his statement, and at one point he indicated he
25 disagreed with the whole statement, and he was
26 not even sure if they were his words. He
27 suggested that he just went along with what the

1 police suggested to him. Nevertheless, as I
2 noted earlier, he admitted that the statement was
3 given voluntarily, and there were certain
4 portions of the statement that were put to him in
5 cross-examination with which he agreed and these
6 were very key points.

7 I also considered Mr. Sangris's demeanour
8 and the way that he answered the questions that
9 were put to him. While demeanour certainly is
10 not the only or even a primary consideration in
11 assessing credibility, it is nevertheless a valid
12 factor to consider. In my view, Mr. Sangris was
13 evasive in his answers, he seemed deliberately
14 forgetful of the events and, in particular,
15 forgetful of what he said to the police on April
16 17th, 2011, notwithstanding having the
17 opportunity to review what he said. His
18 testimony, particularly on cross-examination,
19 entirely lacked candor and it simply did not
20 stand up under cross-examination, which
21 undermined his credibility irreparably.

22 I next turn to consideration of whether the
23 Crown has proved the charges against Mr. Sangris
24 beyond a reasonable doubt. The principle
25 evidence in the Crown's case was the
26 complainant's testimony and thus it is necessary
27 to assess the complainant's credibility.

1 Defence counsel drew my attention to the
2 issues he sees with the complainant's testimony.
3 He submitted that the complainant did not give a
4 complete account of what happened on April 17th,
5 2011. In support of this, he pointed out that
6 the complainant was not candid with his mother
7 about where he was going. In my view, the
8 circumstances themselves readily explain why the
9 complainant would not have told his mother where
10 he was going. Mr. Sangris, a man of
11 approximately 40 years old, invited the
12 complainant, who was then a 14-year-old boy, to
13 his apartment to watch pornography. I have
14 absolutely no doubt that this is not something
15 his mother, or any other parent for that matter,
16 would have allowed him to do had she known. It
17 is not surprising that the complainant did not
18 tell his mother where he was going, nor is it
19 surprising that he did not want her to find out.
20 He was doing something that he was not allowed to
21 do.

22 Defence counsel pointed out that the
23 complainant seemed to suggest he was overpowered
24 by Mr. Sangris in the apartment but that in this
25 context it was unlikely. I do recall the
26 complainant stating a number of times that
27 Mr. Sangris was older and stronger than he was

1 and that this played into his feeling that he
2 could not leave.

3 It is perhaps reasonable to surmise that
4 there was unlikely much physical disparity
5 between the complainant and Mr. Sangris at the
6 time, but that is irrelevant in this context.
7 Even if the complainant was willing to engage in
8 the activity, the law is clear that he could not
9 consent to this because of his age, an age which,
10 in my view, was fully known to Mr. Sangris. It
11 is also irrelevant that, as defence counsel
12 pointed out, there was no evidence of injuries or
13 torn clothing that would be consistent with a
14 struggle. It is trite that struggle and injury
15 are not necessarily components of sexual
16 interference or sexual assault. The age
17 difference between the complainant and
18 Mr. Sangris is, on the other hand, highly
19 relevant. Children are taught from an early age
20 that they have to obey adults; adults make the
21 rules. Thus it is not at all surprising that the
22 complainant would feel that he could not leave
23 because, as he said, Mr. Sangris was older and
24 stronger.

25 It was suggested that the complainant made
26 this story up when he ran into his mother later
27 so that he would avoid getting into trouble for

1 going to Mr. Sangris's apartment. While it is
2 certainly not unheard of for people to make
3 things up to avoid the consequences of their
4 improper actions, it is not logical to draw that
5 conclusion in this case.

6 The complainant testified in great and
7 intimate detail about what happened between
8 himself and Mr. Sangris in the apartment that
9 day. He told the Court that Mr. Sangris kissed
10 him on the lips, that he told him not to be
11 afraid, that Mr. Sangris took his pants down,
12 that Mr. Sangris rubbed his penis, and he
13 described the digital penetration of his anus.
14 He told the Court about how it felt, that it was
15 uncomfortable and caused him to feel that he was
16 unable to breathe. I cannot accept that the
17 complainant could make up such intimate and
18 descriptive details, nor can I accept that he
19 would willingly go through this very difficult
20 process only to avoid being grounded by his
21 mother.

22 The fact that the victim asked for money
23 before leaving the apartment also does not
24 diminish his credibility. On its face, this is
25 admittedly something very odd. However, the
26 complainant testified that Mr. Sangris had spoken
27 of giving him money in past Facebook interactions

1 if Mr. Sangris saw the complainant in person.
2 The complainant wanted money so that he could buy
3 something at the store. In this context, I do
4 not find it odd that the complainant, a
5 14-year-old boy, would ask Mr. Sangris to make
6 good on his promise just as he had asked
7 Mr. Sangris to make good on his promise to
8 provide him with pornography, a promise
9 Mr. Sangris fulfilled.

10 The complainant's evidence was internally
11 consistent and it was consistent with the rest of
12 the evidence. He spoke with candor and he was
13 forthright. It is also consistent with what is
14 on the Facebook exchange from earlier that day
15 and it has a level of detail that gives it a
16 resounding ring of truth.

17 Based on the evidence that Crown presented,
18 I am satisfied beyond a reasonable doubt that the
19 constituent elements of sexual assault under
20 Section 271 and sexual interference under Section
21 151 of the Criminal Code have been made out
22 against Mr. Sangris. Mr. Sangris touched the
23 complainant for a sexual purpose and he touched
24 the complainant in a manner that violated the
25 complainant's sexual integrity, and this would be
26 apparent to any reasonable person. Mr. Sangris
27 clearly intended to touch the complainant in the

1 way that he did. I find that his actions were
2 deliberate.

3 Given the two charges on the Indictment
4 arise out of the same set of circumstances and
5 given the close similarity of the essential
6 elements of each, I have concluded that the rule
7 against multiple convictions applies in this
8 case. Currently, each carries the same minimum
9 and maximum punishment. In 2011 when Mr. Sangris
10 was charged, Section 151 carried with it a
11 minimum punishment of 45 days on indictment. It
12 now carries a year, but Section 271 did not carry
13 any minimum punishment. In the circumstances, I
14 am inclined to stay conditionally the sexual
15 assault charge under Section 271 and I will
16 direct that conviction be entered with respect to
17 the Section 151 charge on the Indictment.

18 MR. DEMONE: Thank you, Your Honour.

19 THE COURT: Those are my reasons.

20

21
22 Certified Pursuant to Rule 723
23 of the Rules of Court

24
25 Jane Romanowich, CSR(A)
26 Court Reporter

27