

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RUSSELL DEAN GEORGE DOLL

Transcript of Reasons for Judgment delivered by The Honourable Justice K. Shaner, in Yellowknife, in the Northwest Territories, on the 13th day of November, 2013.

APPEARANCES:

Mr. M. Lecorre: Counsel on behalf of the Crown

Mr. T. Bock: Counsel on behalf of the Accused

Charges under ss. 151 C.C. and 271 C.C.

Ban on Publication of Complainant/Witness
pursuant to Section 486.4 of the Criminal Code

1 (REASONS FOR JUDGMENT)

2 THE COURT: Russell Doll is charged with
3 touching the complainant for a sexual purpose
4 contrary to section 151 of the Criminal Code of
5 Canada, and he is also charged with sexual
6 assault contrary to section 271 of the Code. The
7 charges stem from the same time period and the
8 events are alleged to have taken place some time
9 between February 1st and May 31st, 2005, in
10 Yellowknife, Northwest Territories. During
11 testimony it was evident that the year may be
12 wrong and that these events may have taken place
13 in 2006. However, given the provisions in
14 section 601(4.1) of the Criminal Code, this is
15 not an essential element of the offence nor is it
16 fatal to the proceedings.

17 I heard evidence yesterday and I heard
18 submissions from counsel this morning. The Crown
19 called the complainant and her father as
20 witnesses, and Mr. Doll gave evidence on his own
21 behalf.

22 I am going to give a summary of the
23 evidence. Of course this is not a verbatim
24 account but it can be summarized as follows:

25 Mr. Doll and the complaint's father were
26 friends. Mr. Doll stayed with the complainant
27 and her father for a short time in 2006 in a

1 three bedroom apartment in Yellowknife. The
2 complainant's older brother, who was 18 at the
3 time, came to live there for a short time as
4 well.

5 The complainant, her brother and Mr. Doll
6 all had their own bedrooms in the apartment. The
7 complainant's father slept in the living room.
8 From time to time others would visit the
9 apartment, including the complainant's uncle,
10 Jeff Pottinger.

11 Mr. Doll said that he was living in a cabin
12 before he went to stay with the complainant and
13 her father. He said the complainant's father
14 noticed that he did not have enough firewood and
15 it was an extremely cold winter, particularly at
16 that time of year, so the complainant's father
17 offered to take him in. Mr. Doll says it was
18 early January and that he stayed at the apartment
19 for only about six weeks.

20 Mr. Doll said he was earning an income from
21 carving and that at the time he agreed to pay
22 \$150 a week in rent when he could do so.

23 The complainant's father, when he testified,
24 said that he was asked by mutual friends to take
25 Mr. Doll in because they did not have room for
26 him and he was living out on the highway. By
27 "out on the highway" I took that to mean that he

1 was living in a cabin. He said Mr. Doll moved in
2 some time in March and stayed until they were
3 evicted. He said they never paid any rent and
4 neither of them were working. He also described
5 their life in the apartment as one of a constant
6 party, with a lot of drinking and marihuana use.

7 I pause to note that each of Mr. Doll and
8 the complainant's father recalled differently
9 when they shared the apartment. I find, however,
10 that this is not germane to my conclusion in the
11 case. The fact is that the three of them shared
12 an apartment together.

13 The complainant thinks she was five or six
14 years old at the time that these events occurred.
15 She is now 14. She told her father about the
16 events when she was nine and they were living in
17 Winnipeg.

18 Mr. Doll, when he testified, said that from
19 time to time he babysat the complainant when her
20 father was absent. The complainant confirmed
21 this as well. The complainant's father, however,
22 did not recall leaving Mr. Doll to babysit the
23 complainant other than when he had to leave
24 occasionally to go to the store. Mr. Doll said
25 Winnie, who was his girlfriend at the time, would
26 occasionally help babysit, as would her cousin
27 and the complainant's father's girlfriend.

1 Mr. Doll described the complainant as being
2 defiant when he looked after her. He said she
3 was a normal kid but that he found she was
4 "easily triggered". If she would not get her way
5 she would have temper tantrums.

6 Mr. Doll said that when he looked after the
7 complainant they would draw or play games. He
8 said on one occasion when he was looking after
9 her, as soon as her father left she went into the
10 bathroom and took a bath for two hours or so. On
11 cross-examination, he said that she left the door
12 open but he did not enter, and to check on her he
13 simply called out her name and she would answer.

14 The complainant testified that she
15 remembered two incidents when Mr. Doll touched
16 her vagina and one incident where she thinks he
17 was planning to touch her but he was interrupted
18 by her father. She said the first incident
19 happened in her bedroom. She said she liked to
20 sleep in Hallowe'en costumes and she remembers
21 waking up as Mr. Doll was unzipping her costume.
22 She was doing what she could to keep him from
23 taking it off and to keep him from unzipping it.
24 On cross-examination, she said she would do this
25 by stiffening up her body; however, he managed to
26 get it unzipped and she said he touched her
27 vagina under her clothes.

1 The complainant got out of the room and went
2 to get her father who was in the apartment. Mr.
3 Doll also left the room and went to the kitchen,
4 which was open to the living room. He told the
5 complainant that her father was sleeping and that
6 she should not wake him. She obeyed and she went
7 back to her room and went to sleep.

8 During the second incident, the complainant
9 says Mr. Doll entered her room and was trying to
10 unzip her costume. This time her father was out
11 of the apartment. However, before Mr. Doll could
12 get her costume undone, her father came home and
13 Mr. Doll quickly exited her room.

14 The third time Mr. Doll touched her, the
15 complainant was again in her room. She was alone
16 with Mr. Doll and he was babysitting her. She
17 was not wearing a costume at this time but just a
18 nightgown. She said Mr. Doll removed her
19 underwear and touched her vagina.

20 The complainant recalled that Mr. Doll was
21 in the apartment with them for another month or
22 so following this incident. As I said, the
23 complainant told her father what happened when
24 she was about nine. When she was asked why she
25 waited that long to tell anyone, she said that
26 every time she tried to say something she got
27 scared.

1 Mr. Doll denied that he ever touched the
2 complainant and he denied that he ever entered
3 her bedroom in the apartment.

4 In the circumstances of this trial
5 credibility is the key issue, and both the Crown
6 and the defence counsel submitted that the
7 appropriate analytical framework to be applied is
8 that which is found in the Supreme Court of
9 Canada's decision in R. v. W.(D.), [1991] 1
10 S.C.R. 742. That framework is as follows: If I
11 believe Mr. Doll then I must acquit him. If I do
12 not believe all of what Mr. Doll has to say but
13 his evidence nevertheless leaves me with a
14 reasonable doubt, I must acquit him. And even if
15 Mr. Doll's evidence fails to leave me with a
16 reasonable doubt, I must be convinced beyond a
17 reasonable doubt of his guilt by the
18 complainant's evidence. So it is not simply a
19 matter of preferring one person's evidence over
20 the other. It is, rather, an assessment of the
21 defence evidence in a logical manner to determine
22 if it raises a reasonable doubt and if necessary,
23 assessing the Crown's evidence to determine if it
24 has proved the case beyond a reasonable doubt.

25 I considered Mr. Doll's evidence very
26 carefully. There are a number of aspects of his
27 evidence that I find troubling and which, taken

1 together, have such a significant impact on his
2 credibility that I am unable to believe him.

3 On the whole, I found that Mr. Doll's
4 testimony was self-serving. He made much of his
5 accomplishments as an artist and his discovery
6 during his youth of his talent and passion for
7 carving. He seemed to try and paint the picture
8 of an average man who has had some problems in
9 life but generally lives a good and honest life.
10 This is, however, not the case. Mr. Doll's
11 criminal record affects both his credibility and
12 it affects the way his evidence stacks up against
13 the other evidence.

14 The criminal record is lengthy, containing
15 32 convictions. I am entitled to take that
16 criminal record into account pursuant to section
17 12 of the Canada Evidence Act. This criminal
18 record dates back to 1978 when Mr. Doll would
19 have been 17 or 18, and continues with a
20 consistent string of convictions in 1980, 1981,
21 1984, 1985, 1992, 1993, 1994, 1995, 1997, 1999,
22 2002, 2005, and 2006. Cumulatively, it reflects
23 a flagrant disregard for the law and cries out
24 for the Court to exercise caution in assessing
25 his testimony.

26 Second, in light of this record, which Mr.
27 Doll admitted, I am, frankly, puzzled by his

1 testimony that he spent 11 years living in Goose
2 Bay, Newfoundland, with his wife and children and
3 working in his father-in-law's business. Again,
4 he painted a picture of a rather average life,
5 and he said he left Newfoundland because he and
6 his wife had separated. As I just noted,
7 however, there are convictions sustained almost
8 every year since 1978. All of the convictions
9 occurred in Alberta and the Northwest
10 Territories, with the exception of one which
11 occurred in Whitehorse. It seems nearly
12 impossible that he could have spent 11
13 consecutive years in Newfoundland in light of
14 that. There is no 11 year gap in his record and
15 none of the offences occurred in Newfoundland.
16 At the very least, it leads to the logical
17 conclusion that Mr. Doll has painted a highly
18 inaccurate picture of his existence and lifestyle
19 during this time period, and the Court must again
20 exercise extreme caution in assigning weight to
21 his testimony.

22 Mr. Doll also downplayed his alcohol
23 consumption while he lived at the apartment.
24 Like the complainant's father, he said there was
25 a lot of drinking and marihuana use during the
26 time that they were living in the apartment, but
27 then he subsequently said he hardly drank at all

1 because he could barely afford to pay the rent.
2 In the context of all of the evidence, this is
3 just not credible and I conclude that it is
4 simply self-serving.

5 Mr. Doll's testimony about why he moved out
6 of the apartment is inconsistent and it changed
7 entirely on cross-examination. On direct
8 examination, he suggested he moved out the second
9 week of February because it had warmed up enough
10 that he could return to his cabin. I believe his
11 words were that he only moved into the apartment
12 because of the cold. In cross-examination,
13 however, he said he moved out because they were
14 evicted as the complainant's father had not paid
15 the rent, and that is consistent with what the
16 complainant's father said. This may on its own
17 seem like a minor point, but in the context of
18 all of the evidence it adds to the concerns that
19 I have about the credibility of Mr. Doll.

20 The theory of the defence is that if these
21 events happened they were not perpetuated by Mr.
22 Doll, and much was made of the fact that there
23 were other male persons in the apartment from
24 time to time, including the complainant's uncle.
25 It was dark when these things happened and the
26 complainant had her eyes shut at certain points.
27 It was suggested that perhaps the complainant was

1 mistaken about who it was who touched her.

2 While this is certainly possible, taken in
3 context, and in the context of all of the
4 evidence, it does not give rise to a reasonable
5 doubt. A reasonable doubt is of course a doubt
6 that arises based on the evidence logically. It
7 is not a trivial or trifling doubt.

8 The complainant and Mr. Doll were well-known
9 to each other. She knew what he looked like. He
10 was her father's friend and subsequently the
11 family's roommate. This is not a case of the
12 eyewitness identification of a stranger.
13 Similarly, the complainant knew what her uncle
14 looked like and what her brother looked like and
15 she could distinguish amongst all three.

16 I turn next to the consideration of whether
17 the Crown has proved the charges against Mr. Doll
18 beyond a reasonable doubt.

19 The complainant's testimony, like all
20 testimony, is not without some inconsistencies.
21 For example, as the defence pointed out, the
22 complainant did not recall going to counselling
23 in Winnipeg at the "Anchor" program. For the
24 most part, however, her testimony was consistent
25 and reliable particularly on key points. She was
26 unshaken in her testimony about Mr. Doll's
27 identity as the perpetrator and about what

1 happened. She said she saw Mr. Doll's face each
2 time, and that he touched her vagina under her
3 clothing, once when she was wearing a costume and
4 once when she was wearing a nightgown. Among
5 other things, it was put to her that she had
6 stated at the preliminary inquiry that she
7 noticed his beard. She testified, however, that
8 she noticed his face clearly enough.

9 Her memory was tested on cross-examination.
10 It was, after all, a very long time ago. She did
11 not recall every detail of her early years, but
12 then again who can? What people do tend to
13 recall, however, are traumatic events
14 particularly if there is nothing to cloud one's
15 memory.

16 It was put to her that perhaps it was her
17 father who told her what to say, but she denied
18 this. It was also put to her that she could have
19 dreamt this. She denied that.

20 The complainant's testimony was, on the
21 whole, straightforward and internally consistent.
22 Accordingly, I am satisfied beyond a reasonable
23 doubt that Mr. Doll touched the complainant as
24 she described on two occasions, and I am also
25 satisfied that the elements of both sexual
26 assault and sexual interference have been made
27 out.

1 Now on this point, counsel, I do note that
2 there are two charges contained on the Indictment
3 and so I would like to hear submissions from you
4 on how you would like me to treat these in light
5 of Kienapple.

6 MR. LECORRE: Crown would ask for a
7 conviction on the 151, Your Honour. It's the
8 more serious of the two charges the Crown would
9 submit, and that's the one where the Crown would
10 suggest that a conviction be entered in light of
11 your findings.

12 THE COURT: All right.
13 Mr. Bock.

14 MR. BOCK: That's fine, Your Honour.

15 THE COURT: So the other charge will
16 simply be quashed.

17 MR. LECORRE: Yes. Crown would suggest it
18 be judicially stayed in the circumstances.

19 THE COURT: Very well. In the
20 circumstances, I direct that a conviction be
21 entered on the charge of section 151 of the
22 Criminal Code and that -- I'm sorry, Mr. Clerk,
23 may I see the Indictment.

24 THE COURT CLERK: Yes, Your Honour.

25 THE COURT: A conviction will be entered
26 on Count 2, which is section 151 of the Criminal
27 Code. Count 1 on the Indictment with respect to

1 section 271 will be stayed.

2 (CONCLUSION OF THE REASONS FOR JUDGMENT)

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5 Certified to be a true and
6 accurate transcript pursuant
7 to Rule 723 and 724 of the
8 Supreme Court Rules of Court.

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Annette Wright, RPR, CSR(A)
10 Court Reporter

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