

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES  
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DAVID MICHAEL BUTTON

Transcript of the Reasons for Judgment delivered by The Honourable Justice K. Shaner, in Yellowknife, in the Northwest Territories, on March 5, 2015.

APPEARANCES:

Ms. J. Scott: Counsel on behalf of the Crown

Mr. R. Gregory: Counsel on behalf of the Accused

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Charges under s. 156 C.C. x 2

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

1 THE COURT: David Button is charged with  
2 two counts of indecent assault said to have  
3 occurred in Inuvik, in the Northwest Territories,  
4 in 1977 and 1978 respectively.

5 The complainant is the same person in each  
6 case. He was approximately 12 years old when the  
7 first assault is alleged to have occurred and 13  
8 years old when the second is alleged to have  
9 happened.

10 Because there is a publication ban in this  
11 case, I am going to be referring to the  
12 complainant as "the complainant" and not by his  
13 name or by initials.

14 The complainant was the only witness for the  
15 Crown.

16 The accused, Mr. Button, gave evidence on  
17 his own behalf, and his wife Myrna Button gave  
18 evidence as well. Mr. Button denies that he  
19 committed the indecent assaults.

20 The fact that evidence was tendered by and  
21 on behalf of Mr. Button engages the reasoning in  
22 R. v. W.(D.), [1991] 1 SCR 742, which I will  
23 discuss in more detail later in these reasons.

24 The complainant testified that when he moved  
25 to Inuvik with his father, his half-sister, his  
26 step-sister and his step-mother, it was 1976.

27 His father had taken a job as an industrial arts

1 teacher at the school there. The complainant  
2 surmised there were about four to 500 students  
3 attending the school, inclusive of students from  
4 communities outside of Inuvik.

5 The complainant said he knew Mr. Button.  
6 His first memory of Mr. Button was of his house,  
7 which consisted of two geodesic domes. The  
8 complainant recalled his father and Mr. Button  
9 were friends. Mr. Button was the school's  
10 guidance counsellor and so the two men worked  
11 together there. Mr. Button did point out that,  
12 as the guidance counsellor, he was part of the  
13 administration, whereas the complainant's father  
14 was, as a teacher, part of the staff; however,  
15 they did have occasion to interact.

16 The complainant was familiar with Mr.  
17 Button. He would bump into him at school,  
18 although he said he did not ever deal directly  
19 with Mr. Button in the latter's capacity as a  
20 guidance counsellor. Although Mr. Button  
21 indicated during his testimony that he did not  
22 know the complainant and did not recall him from  
23 school, he did indicate that he did hall  
24 monitoring. It is reasonable to conclude that  
25 the complainant would have seen him at school and  
26 known in what capacity he worked there. It is  
27 also reasonable to conclude that Mr. Button may

1 not have known, in particular, the complainant  
2 from the school setting given the number of  
3 students there.

4 Mr. Button and the complainant's father also  
5 worked together outside of school doing  
6 construction on Mr. Button's house. Mr. Button  
7 stated in his testimony that the complainant's  
8 father was actually employed to assist with the  
9 construction on the house from time to time and  
10 paid by a corporation in which Mr. Button and his  
11 wife were equal shareholders.

12 The complainant testified that he recalled  
13 his father taking him with him to Mr. Button's  
14 home, which, as I said, consisted of two geodesic  
15 domes and was located on Boot Lake Road. The  
16 complainant said this was one of his first  
17 memories about Mr. Button.

18 David Button and Myrna Button both  
19 characterized their relationship with the  
20 complainant's parents as one that was, at best,  
21 acquaintances. Mr. Button said they had  
22 different interests. The complainant's father  
23 and step-mother were raising a young family. The  
24 daughters were in various activities, including  
25 figure skating and gymnastics. Mr. and Mrs.  
26 Button, by contrast, did not have children and  
27 they had different interests.

1           Mr. Button said he had very little memory of  
2           the complainant. He described meeting the  
3           complainant in the complainant's family home on  
4           one occasion and he was surprised to learn of  
5           him. He said the complainant came downstairs  
6           while he was there and he was introduced to him.  
7           Myrna Button gave similar testimony. Mr. Button  
8           recalled no interaction with the complainant,  
9           even at the school, and he was emphatic in  
10          stating the complainant had never been in his  
11          house.

12          Mr. Button insisted he was not close to the  
13          complainant's father and that he knew very little  
14          about the complainant's family.

15          He confirmed, however, that he and the  
16          complainant's father were both employees at the  
17          school, Mr. Button as a guidance counsellor and  
18          the complainant's father as an industrial arts  
19          teacher, and, as noted, the complainant's father  
20          worked for Mr. Button doing construction on the  
21          latter's house when the need and opportunity  
22          arose. He was a paid employee of Mr. and Mrs.  
23          Button's company.

24          Mr. Button pointed out that the  
25          complainant's father did work on the outside of  
26          the house and did not have occasion to be on the  
27          inside of it through the three or four years of

1           their working relationship respecting the house.  
2           I note, however, that in his testimony Mr. Button  
3           said the complainant's father helped out with  
4           floors, which I infer would have taken him into  
5           the interior of the house.

6           While the complainant's father was helping  
7           with the house construction, there were times  
8           when Mr. Button, and sometimes his wife, would go  
9           to the complainant's row house for coffee. This  
10          was something to which Mr. Button testified.  
11          Myrna Button recalled going there as well and  
12          said that this is where she was introduced to the  
13          complainant. She also recalled that she had  
14          looked after the complainant's half-sister and  
15          step-sister once or twice.

16          Mr. Button said the purpose of these visits  
17          to the complainant's home was to design and plan  
18          the construction of his own house with the  
19          complainant's father; in other words, there was  
20          predominantly a business purpose associated with  
21          these meetings.

22          Although the nature of their business would  
23          change in the future, in 1976, the corporation,  
24          which was owned by Mr. and Mrs. Button, was  
25          almost entirely Mrs. Button's responsibility, and  
26          at that time she was obtaining and performing  
27          contract janitorial services for various

1 organizations and clients in Inuvik. One such  
2 contract was for cleaning services for the  
3 Northern Canada Power Corporation or NCPC  
4 offices. According to Myrna Button, the contract  
5 called for the public areas and the hallway to be  
6 cleaned. It was to be performed once a week  
7 between the close of business on Friday and the  
8 opening of business on Monday morning. This is  
9 an important fact to which I will return later.

10 Another contract of which Myrna Button was  
11 unsure, but of which David Button appeared to be  
12 confident, was a cleaning contract held for the  
13 Town Hall in Inuvik. The complainant testified  
14 that it was at the NCPC offices that the events  
15 comprising the first count on the Indictment took  
16 place. That was during the first part of the  
17 winter in 1977. According to the complainant, he  
18 would have been 12 at the time and he wanted to  
19 make money. His father arranged for him to go  
20 and work for Myrna Button performing janitorial  
21 services. This was his first job and he  
22 remembered his wage was \$2.55 per hour.

23 Both Mr. Button and his wife were adamant in  
24 their testimony that they would not have hired a  
25 12- or 13-year-old boy to work for them,  
26 particularly on the NCPC contract. Mr. Button  
27 and Mrs. Button confirmed that all employees were

1 required to have a social insurance number, and  
2 Mr. Button was given to understand that someone  
3 under the age of 15 could not obtain one at least  
4 at that time. Regardless of whether that was the  
5 correct matter in law, that was his belief. As  
6 well, Myrna Button testified that the youngest  
7 person she would have hired to work for her was a  
8 15 year old who she herself supervised. Both of  
9 them denied ever having hired the complainant.

10 The complainant said he went to the NCPC  
11 offices with Mr. Button and two people who were  
12 also cleaning, a man and a woman. The area being  
13 cleaned was the office facility. He said the  
14 building was just one storey. There was a long  
15 hallway along which there were offices on either  
16 side. There was also a reception area.

17 This description of the building differs  
18 somewhat from that given by Myrna and David  
19 Button, both of whom recalled the building was  
20 two storeys, with a flight of stairs leading up  
21 to a landing and reception area, behind which was  
22 a hallway about 80 feet long. It was the  
23 reception area and public area that they were  
24 hired to clean.

25 The complainant said he was in an office  
26 which he agreed was about ten feet by ten feet in  
27 size. He described it as having a desk, desk



1 chairs, typical office furniture, a dustbin, and  
2 a large black ashtray in the middle of the desk.  
3 He was kneeling over, emptying the dustbin, when  
4 Mr. Button entered the office. He said Mr.  
5 Button's belt was undone, his pants open, his  
6 penis out and erect. Mr. Button, he said, came  
7 over to him, and the complainant was at the time  
8 in a kneeling position. He said Mr. Button  
9 started to slap the complainant about the face  
10 and head with his penis. He said to the  
11 complainant, and I am paraphrasing, that he, that  
12 is Mr. Button, was going to show the complainant  
13 "how to be a man".

14 The complainant said this lasted about 35  
15 seconds. He was able to get away from Mr. Button  
16 and out of the office into the hallway. Mr.  
17 Button followed. The other two workers were at  
18 the end of the hallway cleaning offices.

19 Shortly afterwards, Mr. Button, the  
20 complainant and the two workers left together in  
21 a vehicle, which was being driven by one of the  
22 other workers. The complainant said that this  
23 was their means of transportation to and from the  
24 NCPC offices. He did not discuss the incident  
25 with Mr. Button, nor did he ask the two workers  
26 for help.

27 After he arrived home the complainant told

1 his father what happened. According to him, his  
2 father suggested that Mr. Button was just  
3 "playing around", that he was just "carrying on".  
4 When asked to explain what he thought that  
5 expression "carrying on" meant, the complainant  
6 said it was like two kids playing in a sand box.

7 The incident was not reported to the police  
8 at the time. From the evidence of both the  
9 complainant and Mr. Button, the relationship  
10 between Mr. Button and the complainant's father  
11 continued.

12 Some time later the complainant took another  
13 job working for Myrna Button. This time he was  
14 cleaning the Town Hall with a schoolmate. He was  
15 asked why he would want to work for Myrna Button  
16 given his experience at the NCPC offices just  
17 described. His response was that he was not  
18 concerned because Mr. Button was not involved  
19 with that cleaning contract and he just wanted to  
20 make money. In any event, the complainant quit  
21 working for the Buttons shortly afterwards and  
22 obtained a job working for the Hudson's Bay  
23 Company for more money. He did not work for  
24 either of the Buttons ever again.

25 The complainant failed Grade 8 and left  
26 school in Grade 9. He said he did not respect or  
27 trust teachers.

1           As a younger man, the complainant was  
2 convicted of possession of marihuana on three  
3 occasions, and on one occasion he had magic  
4 mushrooms in his possession as well. He was also  
5 convicted of break and enter. He pled guilty in  
6 all cases and eventually he received pardons for  
7 all of these offences. He has not had any  
8 difficulties with the law since that time and  
9 appears to have spent his life successfully  
10 employed, eventually becoming a business owner.  
11 He is now 50 years old.

12           In the summer of 1978, the complainant's  
13 father bought a car. It was a Bobcat. It was  
14 blue with wood panelling. There was a console in  
15 between the two front seats. The complainant  
16 said that he loved the car. It was shipped by  
17 barge to Inuvik in August or September of that  
18 year. The complainant said that he was 13 at the  
19 time so he could not legally drive the car,  
20 however he had taken it out without his father or  
21 step-mother's permission once before.

22           The complainant testified that he was not  
23 aware that his father taught driver's education  
24 or that the car was to be used for that purpose.  
25 Mr. Button testified, however, that he had  
26 secured a contract to deliver driver's education  
27 training in Inuvik and that the instructor would

1 be the complainant's father. He had learned  
2 through the complainant's father that the latter  
3 had experience teaching driver's education. The  
4 car belonging to the complainant's father, the  
5 Bobcat, was to be used in carrying out the  
6 driver's education contract.

7 Mr. Button said that he and the  
8 complainant's father purchased a device which  
9 allowed them to have a brake on the passenger  
10 side of the car to facilitate driving  
11 instruction. Mr. Button described it as a three  
12 foot steel loop attached to a brake pedal, which  
13 could be installed and removed readily. Mr.  
14 Button said the complainant's father purchased or  
15 chose the device and Mr. Button paid for it.

16 The complainant said that in the spring of  
17 1978 his father had become ill with cancer. His  
18 father had to take treatment, which required him  
19 to be away from Inuvik for extended periods of  
20 time as the treatment was offered in Edmonton,  
21 and the complainant was given to understand that  
22 his father's health was compromised and at risk  
23 because of the nature of the treatment. For this  
24 reason, his father had to stay in Edmonton for an  
25 extended period of time following each round of  
26 treatment.

27 The complainant recalled that David and

1 Myrna Button would come and help out his  
2 step-mother while his father was away getting  
3 treatment. It was during one of these treatment  
4 periods that the complainant says the events  
5 comprising the second count on the Indictment  
6 took place.

7 The complainant testified that Mr. Button  
8 came to the complainant's home and offered to  
9 give him some driving lessons in the car. The  
10 complainant took him up on this opportunity.  
11 When asked why he would get into a car with  
12 someone who had previously assaulted him, he said  
13 he just really wanted to drive the car, and he  
14 took a chance that there would not be another  
15 indecent assault.

16 There was a service road off of the main  
17 road, still close to the complainant's house,  
18 which was the planned route. The complainant was  
19 driving and Mr. Button was in the passenger seat.  
20 There was a console between them. The  
21 complainant said that as he was driving, Mr.  
22 Button reached over, put his right hand into the  
23 complainant's pants, tearing off the button. He  
24 grabbed and pulled the complainant's genitals.  
25 He also reached over behind the complainant with  
26 his other hand and locked the car door. There  
27 was a struggle. Mr. Button, according to the

1 complainant, tried to force his head close to Mr.  
2 Button's genitals. Mr. Button put his head close  
3 to the complainant's crotch. Mr. Button told the  
4 complainant he was going to show him "how to be a  
5 man," or words to that effect.

6 The complainant said that throughout this,  
7 he managed to get the car into park. He also  
8 managed subsequently to unlock and open the car  
9 door. He alit from the car and he ran home.  
10 This event occurred about two houses down from  
11 where he lived on the service road. His  
12 step-mother was at home and he told her what  
13 happened. She told him that Mr. Button was just  
14 "playing around", and no other action was taken.

15 The complainant went back to get the car.  
16 Mr. Button was standing outside on the passenger  
17 side. As the complainant went to get into the  
18 car, Mr. Button went to get in as well. The  
19 complainant says he returned home on foot,  
20 leaving the car where it was, and that Mr. Button  
21 returned the car to the residence.

22 The complainant said the incident lasted  
23 about a minute and a half. He said his testicles  
24 and penis were sore for about ten days  
25 afterwards.

26 The complainant said Mr. Button remained  
27 friends with his parents for a while longer and

1 he saw Mr. Button around town after that time,  
2 until the complainant left Inuvik in the mid  
3 1980s.

4 The complainant made a statement to the  
5 police in the summer of 2010 regarding these two  
6 incidents. He was contacted by the police and  
7 asked to do so.

8 As I noted, Mr. Button denies both of these  
9 incidents.

10 Mr. Button denied that he and his wife  
11 helped out the complainant's family while the  
12 complainant's father was undergoing cancer  
13 treatments. In fact, Mr. Button said that while  
14 he was aware the complainant's father had to take  
15 extended periods of leave for medical reasons, he  
16 was not advised directly by the complainant's  
17 father that it was for cancer treatment. The  
18 complainant's father did not discuss with him the  
19 reasons he had to go on leave other than to tell  
20 Mr. Button on one occasion, and it is unclear  
21 exactly when, that he had injured at one point a  
22 lymph node and that he had cancer that was in  
23 remission.

24 As I stated earlier, because Mr. Button gave  
25 evidence on his own behalf, as well as calling  
26 evidence from Myrna Button, the analysis that is  
27 set out in W.(D.) is engaged. That analysis

1           assists the Court in ensuring that the burden of  
2           proof, which is squarely on the shoulders of the  
3           Crown in this case, is not shifted to Mr. Button  
4           simply by reason of his giving evidence or  
5           calling evidence on his behalf. In other words,  
6           he does not have to prove he is innocent. It is  
7           always for the Crown to prove guilt beyond a  
8           reasonable doubt, and only in doing that will the  
9           Crown displace the presumption of innocence, to  
10          which every accused person is entitled.

11           The W.(D.) framework is, briefly, that if I  
12          believe Mr. Button's assertion that he did not  
13          commit the alleged act, I must acquit him.

14           If I do not believe him, I must nevertheless  
15          consider whether the evidence given in his own  
16          defence which I do believe leaves me with a  
17          reasonable doubt. If I answer that  
18          affirmatively, Mr. Button must, of course, be  
19          acquitted.

20           Finally, even if I find that the evidence  
21          given on Mr. Button's behalf does not raise a  
22          reasonable doubt, I must nevertheless be  
23          satisfied beyond a reasonable doubt of each of  
24          the elements of the offence of indecent assault  
25          before I can find that Mr. Button is guilty. If  
26          I am not, Mr. Button is entitled to an acquittal.

27           The W.(D.) framework must be applied to each



1 of the charges on this Indictment.

2 With respect to the first charge on the  
3 Indictment, alleged to have occurred at the NCPC  
4 offices, I cannot say that I believe Mr. Button  
5 when he says that he did not commit the offence.  
6 I find overall that Mr. Button was not a credible  
7 witness. There were things he said about his  
8 relationship with the complainant's father and  
9 the complainant's family that simply do not make  
10 sense in the overall context of the evidence. I  
11 agree very much with the Crown that he downplayed  
12 the nature of his relationship with the  
13 complainant's father and step-mother, as well as  
14 his knowledge of the family and what was going on  
15 in that family, including the complainant's  
16 father's health at various times.

17 He worked with the complainant's father at  
18 the school. They were full-time employees there.  
19 Not only that, they worked together, just the two  
20 of them, doing construction on Mr. Button's  
21 house, in addition to any time that they spent  
22 together at their main workplace, and of course  
23 they were involved in the driver's education  
24 contract together. In other words, they spent a  
25 lot of time together. While that does not  
26 necessarily mean that they knew every intimate  
27 detail of each other's lives, it seems highly

1           unlikely that Mr. Button would have been as  
2           unknowing or as uncaring as he makes out that he  
3           was.

4           Mr. Button said that in connection with the  
5           house construction, the two men met over coffee  
6           at the complainant's house to discuss design.  
7           Indeed, Mr. Button insisted that the  
8           complainant's father would not have had occasion  
9           to be in the interior of Mr. Button's home so,  
10          presumably, the complainant's home was the venue  
11          for those meetings. Given that the complainant's  
12          father and Mr. Button worked on the home for  
13          somewhere in the neighbourhood of three to four  
14          years, it is reasonable to infer that they met  
15          for coffee to discuss design and plan  
16          construction on many occasions. There was bound  
17          to be small talk and discussions about all kinds  
18          of things, including family. Mr. Button was  
19          bound to be able to make observations. Yet, Mr.  
20          Button claims to know almost nothing about the  
21          complainant and his family, even suggesting he  
22          basically had no idea who the complainant was.

23          The suggestion by Mr. Button that he had  
24          such a distant relationship with the  
25          complainant's family becomes even more incredible  
26          when one considers the matter of the arrangement  
27          struck between Mr. Button and the complainant's

1 father to carry out the driver's education  
2 contract. It does not make sense that a person  
3 like Mr. Button, who appears to be very exact,  
4 who appears to be very careful, and who appears  
5 to be someone who insists on doing things by the  
6 book, would hire an instructor about whom he knew  
7 almost nothing, based on a representation that  
8 that person had experience previously as a  
9 driving instructor. This was a contract that Mr.  
10 Button secured. Presumably, Mr. Button wanted to  
11 succeed with that contract, and it is hard to  
12 imagine that Mr. Button would risk his business  
13 reputation by leaving the performance of a key  
14 component of the contract, that is, carrying out  
15 the actual instruction, to someone he did not  
16 really know and about whose health and well-being  
17 he did not really care.

18 Finally, I note that Myrna Button stated in  
19 evidence that she looked after the step-sister  
20 and the half-sister of the complainant once or  
21 twice during the period when the complainant's  
22 father was working on the Buttons' house. This  
23 necessarily implies that there was more of a  
24 relationship between the Buttons and the  
25 complainant's family than Mr. Button lets on.

26 Despite my concerns about Mr. Button's  
27 overall credibility however, there are some parts

1           about the evidence concerning the NCPC cleaning  
2           contract and the incident that is alleged to  
3           occur there that create a reasonable doubt in my  
4           mind about the allegations contained in the first  
5           count on the Indictment.

6           Myrna Button testified about the terms of  
7           the NCPC contract and how she fulfilled that  
8           contract. I took into account that Myrna Button  
9           is the accused person's wife, and that can  
10          properly have an effect on the assessment of  
11          credibility. Nevertheless, I found Myrna  
12          Button's evidence on this point to be very  
13          consistent and straightforward. She was careful,  
14          generally, in her answers, but not rehearsed, and  
15          her evidence withstood cross-examination. She  
16          had a fairly good memory of things, particularly  
17          given how long ago the things she was asked to  
18          remember transpired.

19          One of the things that she could remember  
20          very clearly was the NCPC contract and, in  
21          particular, the terms of that contract. She said  
22          that the contract called for the common areas and  
23          public areas, including the hallway, to be  
24          cleaned once a week. The contract did not call  
25          for the offices themselves to be cleaned, and  
26          both she and Mr. Button said that the offices  
27          were not cleaned. In fact, Mr. Button said that

1 the offices were locked and that they did not  
2 have access to the offices.

3 I have considered whether it is possible  
4 that the incident occurred in the reception area  
5 by the desk rather than in an office. However,  
6 given the complainant's testimony about the  
7 office being enclosed, that it was a ten by ten  
8 space, I am not convinced beyond a reasonable  
9 doubt that this is a possibility.

10 The other thing that Myrna Button said was  
11 that there were no other workers on that job, it  
12 was just she and Mr. Button who performed the  
13 contract and they went together almost every  
14 time. The complainant was very definite in his  
15 evidence, including the incident which occurred  
16 inside an office and that there were two other  
17 people there to help clean that night.

18 Another issue that causes me to have a  
19 reasonable doubt is that if indeed there were  
20 other workers there, then their presence has an  
21 impact on the likelihood that Mr. Button would  
22 engage in such a brazen act. What was described  
23 was very brazen. He had his belt undone, his  
24 penis erect, and he is said to have attacked the  
25 complainant.

26 It was said that the other two workers were  
27 at the end of a hallway approximately 80 feet

1 long. That is a long way, but in an enclosed  
2 space it is not outside the realm of possibility  
3 that that would be within earshot and eyesight of  
4 where Mr. Button and the complainant would have  
5 been.

6 What this does is it leaves me unsure. In  
7 other words, I am not convinced beyond a  
8 reasonable doubt that Mr. Button indecently  
9 assaulted the complainant at the NCPC building  
10 that night. It might have happened; it could  
11 have happened; it is possible. But might, could,  
12 and possible are not enough in our system to  
13 convict an accused person. Accordingly, I find  
14 that Mr. Button is not guilty on Count 1 of the  
15 Indictment.

16 I now turn to Count 2. I am not going to  
17 repeat the reasons I have just given that I find  
18 Mr. Button to be an incredible witness overall,  
19 or why I find it difficult to accept that he knew  
20 very little about the complainant and his family.  
21 I will say, however, that I have applied those  
22 same conclusions on his overall credibility to my  
23 assessment on this count.

24 One of the things that Mr. Button said with  
25 respect to this count is that he would have had  
26 no reason to be at the complainant's residence  
27 when this second event allegedly occurred in

1           1978. In my view, however, he would have had a  
2           very good reason to be there, and that reason was  
3           the car. Mr. Button testified he did not have a  
4           car. He said that on several occasions. He also  
5           testified that the government owned most of the  
6           cars in Inuvik and that there were very few  
7           privately-owned vehicles. I infer from that that  
8           there were probably even fewer vehicles which  
9           would meet the standard required to deliver  
10          driver's education in any sort of endorsed  
11          program.

12                   Who had the car? The complainant's father  
13          had the car. The complainant's family had  
14          possession of the car, and it was the  
15          complainant's father's car which was intended for  
16          use in the driver's education course. Without  
17          that car, and without access to that car, there  
18          would be no way to perform that contract.

19                   In the circumstances, it would be entirely  
20          unreasonable to accept Mr. Button's testimony  
21          that he would have had no reason to be at the  
22          complainant's home that day in 1978.

23          Accordingly, I reject his denial.

24                   I turn my mind now to whether Mr. Button's  
25          testimony on this point raises a reasonable  
26          doubt.

27                   Mr. Button said the complainant's father was

1 ex-military and ran a strict, rule-adherent  
2 household. He said the complainant's step-mother  
3 would not have allowed him, Mr. Button, to take  
4 the complainant out driving under any  
5 circumstances.

6 I cannot accept that as a foregone  
7 conclusion. Mr. Button was a guidance  
8 counsellor. He held a fairly respected position  
9 in the school. He was part of the administration  
10 at the school where the complainant's father  
11 worked. He was also the complainant's father's  
12 boss, so to speak, having employed the  
13 complainant's father to help with the  
14 construction on the Button home and arranged for  
15 him to give the driving instruction under Mr.  
16 Button's contract. It seems entirely plausible  
17 that the complainant's step-mother would trust  
18 him with the car keys and trust him with the car.

19 It was also suggested that it would be  
20 unreasonable to conclude the complainant would  
21 not have gotten into a car with someone who had  
22 indecently assaulted him once before. Again, I  
23 cannot accept that as a foregone conclusion. To  
24 assume that a victim will forever avoid a  
25 perpetrator is to endorse one of an infinite  
26 number of reactions in the face of sexual  
27 violence and abuse to the exclusion of other



1 reactions.

2 Law reports are littered with cases of  
3 victims returning time and again, only to be  
4 revictimized, for all kinds of reasons and  
5 without any explanation whatsoever in some cases.

6 The complainant was a 13 year old boy.  
7 There was this car that he loved – a car that was  
8 sitting idle in the driveway; a car which he had  
9 taken out once before in secret; a car which he  
10 really, really wanted to drive. And here was Mr.  
11 Button – if not a family friend, someone with  
12 whom the complainant's father spent a lot of time  
13 and with whom the complainant's father had a  
14 relationship – and he was offering to take the  
15 complainant out for a drive. He was offering to  
16 let the complainant drive the car. In my view,  
17 that is an incredible inducement for a  
18 13-year-old boy, and it is, again, entirely  
19 reasonable that an adolescent boy would have  
20 gotten into a car with Mr. Button, hoping that  
21 history would not repeat itself.

22 I do not have any reasonable doubt that  
23 arises out of the testimony which was given by  
24 Mr. Button with respect to the second count.

25 Although Mr. Button's testimony does not  
26 leave me with reasonable doubt, as I said, the  
27 Crown is still required to prove its case beyond

1 a reasonable doubt, and so I must nevertheless  
2 consider whether the complainant's testimony  
3 satisfies me beyond a reasonable doubt that this  
4 event in the car did, in fact, take place. I am  
5 so satisfied.

6 The complainant described the events clearly  
7 and cogently. His testimony withstood  
8 cross-examination. I considered the manner in  
9 which Mr. Button is alleged to have attacked the  
10 complainant. I do not think that it would be  
11 difficult for him to have manoeuvred himself in  
12 the vehicle the way that the complainant  
13 described it. I do not find the complainant's  
14 statement to the police, wherein he omitted to  
15 tell them that when he returned to the car Mr.  
16 Button was standing there, diminishes his  
17 credibility in any way. The statement was made  
18 in 2010, more than 30 years after these events  
19 allegedly occurred. The complainant himself said  
20 his memory is better now that he has had a chance  
21 to think about things than it was when he first  
22 gave the statement some five years ago. In my  
23 view, it was, at most, an oversight and not a  
24 deliberate omission or an attempt to mislead the  
25 police.

26 The complainant had some difficulty during  
27 his testimony explaining whether Mr. Button used

1 his right or left hand to grab the complainant's  
2 testicles and penis in the car. He did, however,  
3 explain that he was confused when he was  
4 answering his question by the manner in which  
5 defence counsel was gesturing while asking the  
6 question and this accounted for his confusion. I  
7 accept his explanation. I do note, however, that  
8 this is not to suggest that defence counsel was  
9 deliberately trying to confuse the witness.

10 The past convictions, as I said, are old.  
11 They have been pardoned and these do not cause me  
12 to question the complainant's credibility,  
13 particularly in light of the complainant's life  
14 and the way he has led his life since that time.

15 The evidence of the complainant respecting  
16 the second count on the Indictment satisfies me  
17 that he was indecently assaulted by David Button.  
18 Accordingly, I find Mr. Button guilty on this  
19 count.

20 I direct the clerk to enter an acquittal on  
21 Count 1 and to enter a conviction on Count 2.

22 .....

23 Certified to be a true and  
24 accurate transcript pursuant  
25 to Rule 723 and 724 of the  
26 Supreme Court Rules of Court.

27 \_\_\_\_\_  
Annette Wright  
Court Reporter