

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- vs. -**

**JAMES WILSON**

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Transcript of the Ruling on Admissibility of Evidence by  
The Honourable Justice L. A. Charbonneau, at Inuvik in the  
Northwest Territories, on 28th May A.D., 2015.

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**APPEARANCES:**

Ms. A. Piché: Counsel for the Crown  
Mr. C. Davison: Counsel for the Accused

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*Charge under s. 271, 145(1)(a)  
Criminal Code of Canada*

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

1 THE COURT: These are my reasons for  
2 ruling that A.K.'s evidence was not admissible at  
3 this trial.

4 A.K. was called at the voir dire as I have  
5 said in the context of my other rulings in this  
6 matter. The Crown relied on her evidence and on  
7 other evidence in support of its position that  
8 A.K. should also be permitted to testify as part  
9 of the Crown's case. A.K. is 56 years old and is  
10 the complainant's sister. She explained that she  
11 and the rest of her siblings lived together as a  
12 family as they were growing up. A.K. moved out  
13 of that home when she was 19. A.K. was asked  
14 some questions about the complainant. She  
15 explained that the complainant has three adult  
16 children and lives with their brother P. and one  
17 of her daughters R. A.K. explained that the  
18 complainant went to school for a while when she  
19 was young but did not finish school. She  
20 explained that the complainant cannot read or  
21 write except that she is able to write her name.  
22 She cannot count or use money so she is not able,  
23 for example, to go to the store on her own; she  
24 has never had a job, and she needs assistance  
25 from her daughters or other family members to pay  
26 her bills. A.K. explained that it is very  
27 difficult for people to understand what the

1 complainant says, and this was also the case when  
2 she was growing up. A.K. said she talks to her  
3 sister on the phone from time to time and is able  
4 to understand her. She said that sometimes when  
5 she speaks to her sister she has to say certain  
6 things more than once in order for her sister to  
7 understand. On cross-examination A.K. confirmed  
8 that the complainant can use the telephone, she  
9 is able to feed herself and look after her  
10 personal needs. She was asked about  
11 communicating with the complainant, and she  
12 confirmed that when people use short simple words  
13 her sister can understand them. She also says  
14 that if someone uses a word her sister cannot  
15 understand, her sister will say so.

16 The Crown sought to adduce A.K.'s evidence  
17 at trial with the purpose of assisting the jury  
18 in assessing the complainant's evidence. Crown  
19 noted that the complainant would likely not be  
20 able to articulate for the jury things like the  
21 fact that she cannot read or write or count, how  
22 long she stayed in school for, and things of that  
23 nature. The Crown argued that the jury should be  
24 aware of these special characteristics of this  
25 witness in order to be in the position to fairly  
26 assess her credibility and the reliability of her  
27 evidence. Defence objected to the admissibility

1 of this evidence on the basis that it is not  
2 relevant. Defence argues that this evidence will  
3 not be of any assistance to the jury in deciding  
4 the case.

5 The outcome of this application, to me,  
6 boils down to going back to first principles.  
7 To be receivable evidence must be material,  
8 relevant and admissible. Materiality has to do  
9 with whether the proposed evidence goes to  
10 something that is in issue in the proceedings.  
11 Here the Crown says the evidence is material  
12 because it will assist the jury in assessing the  
13 evidence of the complainant. The credibility of  
14 the complainant and the reliability of her  
15 evidence will be an issue in this trial so the  
16 criterion of materiality is met.

17 But relevance is a different matter.  
18 Relevance has to do with the logical tendency of  
19 evidence to prove a fact. As the Ontario Court  
20 of Appeal said in R. v. Candir (2009), 250 C.C.C.  
21 (3rd) 139 (Ont. C.A.), appeal to Supreme Court of  
22 Canada dismissed 2012 CanLII 22174 (SCC):

23 To determine whether an item of evidence is  
24 relevant, a judge must decide whether, as a  
25 matter of human experience and logic, the  
26 existence of a particular fact, directly or  
27 indirectly, make the existence of a fact  
more probable than it would be otherwise.

27 In light of this, in my view, A.K.'s evidence

1 would be of little assistance to the jury in  
2 assessing the complainant's evidence. Based on  
3 the video-recorded interview, on the transcript  
4 of the complainant's testimony at the preliminary  
5 hearing, and the note written to counsel by the  
6 Court Reporter who took her evidence down at the  
7 preliminary hearing, I think it is fair to say  
8 that her difficulties in communicating and speech  
9 impediment will be obvious to the jury. I do  
10 agree that things like her level of literacy as  
11 far as being able to read, write or count may not  
12 be apparent, and I also agree that these are not  
13 things that she will likely not be able to  
14 explain and articulate for the jury, but I do not  
15 think that these are things that are necessarily  
16 relevant to her credibility as a witness or to  
17 the reliability of her account of events. A  
18 person could be illiterate but have a very keen  
19 memory and be highly credible and reliable in  
20 their account of an event.

21 As for any other cognitive difficulties that  
22 the complainant may have that may impact on  
23 issues of credibility and reliability I do not  
24 see how the evidence of A.K. at the voir dire  
25 would be helpful in understanding what those  
26 issues are, how they play into the complainant's  
27 ability to recall events accurately, or generally

1 bear on the reliability of her evidence. A.K.'s  
2 evidence about those topics was unclear and  
3 vague. She did not remember how long her sister  
4 was in school for. She quite simply did not know  
5 or certainly did not testify about anything that  
6 would assist understanding what is at the root of  
7 her sister's communication challenges.

8 The only aspect of A.K.'s evidence that  
9 might meet the requirements or relevance is when  
10 she explained that the complainant sometimes does  
11 not understand complicated words. I accept that  
12 in certain circumstances this might be evidence a  
13 jury would need to have in order to properly  
14 assess a witness's evidence. For example, the  
15 witness's hesitation or inability to answer a  
16 question could be mistaken for reluctance or lack  
17 of cooperation, or having something to hide, but  
18 in fact be caused by a lack of understanding of  
19 the question or confusion. If the evidence was  
20 that a proposed witness tends to come across as  
21 understanding everything that is being said and  
22 to give answers as though they did, but in fact  
23 has a very limited comprehension of certain  
24 things, the jury may well need to be made aware  
25 of this through another witness who has  
26 experience communicating with this person. But  
27 here on cross-examination A.K. said that when the

1 complainant does not understand a word, she says  
2 so, which suggests she might do the same in the  
3 trial context.

4 More importantly, if what transpired at the  
5 preliminary hearing and in the video is any  
6 indication of how the complainant will testify at  
7 trial, it is clear that there will be some  
8 challenges in adducing it and that those  
9 challenges will be apparent to the trier of fact.  
10 Simple words will have to be used, questions may  
11 have to be repeated, and some of the answers may  
12 not relate directly to the questions; but as I  
13 say, I think all of this will be very apparent to  
14 the jury, and I do not see how the evidence of  
15 A.K. would assist them one way or another in  
16 their assessment of that evidence. For those  
17 reasons, I conclude that A.K.'s evidence is not  
18 admissible at this trial.

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CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 21st, July, 2015.

Certified Pursuant to Rule 723  
of the Rules of Court



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Darlene Sirman, CSR(A)  
Court Reporter