*R. v. Sikora*, 2016 NWTSC 44 S-1-CR-2015-000070

**AMENDED ORIGINAL**

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

SEAN CHRISTOPHER SIKORA

**ORIGINAL amended as of July 18, 2016, to:**

**Page 1 Line 13 "of not guilty. As has been clearly mandated"**

Transcript of the Reasons for Judgment delivered by The Honourable Justice A. M. Mahar, sitting in Yellowknife, in the Northwest Territories, on the 16th day of June, 2016.

APPEARANCES:

Mr. M. Lecorre: Counsel for the Crown

Mr. C. Davison: Counsel for the Accused

(Charge under s. 271 of the *Criminal Code of Canada*)

**No information shall be published in any document or broadcast or transmitted in any way which could**

**identify the victim or a witness in these proceedings pursuant to s . 486 . 4 of the *Criminal Code***

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1. THE COURT: Sean Sikora is facing three
2. counts of sexual assault, on the same alleged
3. victim and within the same time frame.
4. There were only two witnesses in this trial,
5. the accused and his accuser. The evidence of Ms.
6. P., if found to be true beyond a reasonable doubt
7. by the Crown, describes two non-consensual
8. incidents -- or describes three non-consensual
9. incidents that would dictate a finding of guilt
10. on the three charges.
11. The evidence of Mr. Sikora describes two
12. consensual incidents and would lead to findings
13. of not guilty. As has been clearly mandated by
14. the Supreme Court of Canada and through
15. innumerable appellate and superior court
16. decisions, there is a particular sort of analysis
17. that the trier of fact must go through when
18. dealing with this evidentiary situation, by a
19. term of art referred to as the *W.(D.)* analysis.
20. In brief, the analysis is as follows. The
21. Court begins by assessing the evidence of the
22. accused. If I believe him, then that is the end
23. of the matter and I must find him not guilty. If
24. I do not fully believe him, but his evidence
25. raises a reasonable doubt, then I must also find
26. him not guilty. If I reject his evidence, I must
27. still consider whether or not the rest of the
28. evidence as presented by the Crown is sufficient
29. to prove his guilt beyond a reasonable doubt.
30. And, finally, if I am unsure what or who to
31. believe, then I must find him not guilty as well.
32. It has always struck me as odd that the last part
33. of the analysis is not found closer to the second
34. part, but there you have it.
35. In order to reject the evidence of an
36. accused person, the Court must be able to
37. articulate a reason for doing so. This has
38. sometimes been taken to suggest that all an
39. accused person needs to do to avoid conviction is
40. to testify in a way that is not obviously false
41. or internally incoherent. Even if the Court does
42. not fully believe the accused, his evidence would
43. at least have to raise a reasonable doubt.
44. This cannot be the process that the Court
45. goes through. The process must be more thorough
46. and subtle than that. To proceed otherwise would
47. ignore progress in the criminal law and take us
48. back to a time when corroboration was required
49. for any charge of a sexual nature. The analysis
50. cannot and must not begin and end with the
51. testimony of the accused. All of the evidence
52. must be considered first. This is the only way
53. in which a meaningful context for the
54. consideration of the evidence of the accused can
55. be created.
56. Ms. P. gave the following evidence, much of
57. the surrounding circumstances of which is agreed
58. to by Mr. Sikora. She and Mr. Sikora worked
59. together at Domino's Pizza in Yellowknife for
60. several months. Their relationship was casually
61. friendly, though some of the other co-workers
62. would comment to her about the two of them
63. flirting. She had no romantic interest in Mr.
64. Sikora. She denied flirting, sexual innuendo in
65. their conversations, and touching him on the arm
66. while they were talking. On one occasion, he
67. gave her a ride home. Nothing occurred during
68. the ride, on which they both agree. 15
69. Ms. P. described three incidents which she
70. says happened within a period of a few weeks, all
71. of which happened at night. The first incident
72. occurred behind the building.
73. Mr. Sikora pushed her against the wall and kissed
74. her briefly on the mouth. There was no warning
75. and no struggle. The second incident happened in
76. front of Domino's, to the side of the entrance.
77. She was, again, pushed against the wall and
78. kissed, this time for a couple of minutes, during
79. which time Mr. Sikora felt her breast under her
80. clothing. The kissing was on the lips with open
81. mouth and she says she went along with it. The
82. third and final incident occurred behind the
83. building. She had just returned from a delivery
84. in her vehicle, had parked and was sitting in the
85. driver's seat when she saw Mr. Sikora's vehicle
86. pulling up. They were the only two vehicles
87. behind the building. She had been crying earlier
88. because, she says, she was afraid of something
89. happening. The tunnel to the front of the
90. building was right beside her car. Mr. Sikora
91. parked about 15 to 20 feet away and came over to
92. the driver's side of her vehicle. She remained
93. seated. He opened the door, spun her around to
94. face him, undid his pants, put both his hands on
95. the back of her head and pushed her mouth onto
96. his penis. He held on to her for five minutes,
97. holding her head and thrusting his hips until he
98. ejaculated. She pushed against his stomach three
99. times with her hand, but otherwise there was no
100. struggle. No words were spoken by either of
101. them. She testified that she was afraid, that
102. Mr. Sikora was intimidating because he was in the
103. military and that she had seen pictures on
104. Facebook of him with guns. She stated as well
105. that at no time during any of the three incidents
106. or before or after did he threaten or physically
107. force her in any way.
     1. She told a friend what had occurred. The
     2. friend convinced her to tell her supervisor,
     3. which she did, and Mr. Sikora was fired. The
     4. following winter, she told her mother, who
     5. contacted the police.
     6. I make the following comments at this point.
     7. Ms. P.'s description of these incidents
     8. constitutes sexual assaults. Pushing her up
     9. against the building and kissing her without any
     10. warning, outside of a romantic context, is a
     11. sexual assault. What she says occurred during
     12. the final incident is a sexual assault as well.
     13. There is no requirement that victims yell for
     14. help, struggle, fight, or run away. People
     15. engaging in sexual behaviour have to take
     16. reasonable steps to make sure that their partners
     17. consent to what is happening, and mere
     18. acquiescence in not enough. There is no
     19. indication, on Ms. P.s's evidence, of
     20. Mr. Sikora even considering consent.
     21. Mr. Sikora testified in his own defence.
     22. His evidence was as follows. There were two
     23. incidents, not three. He and Ms. P. became
     24. friendly and then flirty at work. She would
     25. touch his arm frequently when they spoke. He
     26. would do the same. There were innuendoes made,
     27. though he only recalled one specifically.
         1. Eventually, they found themselves outside of
         2. Domino's, at the front of the store, talking.
         3. They turned to face each other while they were
         4. leaning against the wall, leaned in and kissed
         5. for about 30 seconds. It was entirely mutual.
         6. He agrees that he said something like "how long
         7. have you been waiting for that" and that she made
         8. an appreciative sound.
         9. The second incident happened a few weeks
         10. later. He came back to the store after a
         11. delivery, parking behind the building because
         12. there was no parking in front. Her car was also
         13. parked behind the building. She was standing
         14. beside her car. The cars were positioned as she
         15. described in her evidence. They walked toward
         16. each other and began kissing. She started
         17. rubbing his crotch and he her breasts. She led
         18. him over to her car, opened the door and sat down
         19. facing out of the vehicle. He undid his pants,
         20. took his penis out, and she performed fellatio on
         21. him until he ejaculated. His hands were on top
         22. of the car. After, she complained that he hadn't
         23. warned her at the end and he apologized. She
         24. asked him to get her keys from inside and he did.
         25. Afterwards, things went on between them as they
         26. had before. Some time later, he believes March,
         27. he was fired for inappropriate behaviour. He
108. became aware of the charges when he was arrested
109. at work the following November.
110. Both Ms. P. and Mr. Sikora were strong
111. witnesses. While a few minor inconsistencies
112. between their evidence at trial and previous
113. statements or testimony were brought out, they
114. were the sort of inconsistencies one would expect
115. given the passage of time and the frailties of
116. memory and I give them very limited weight.
117. Ms. P. in particular, given her young age and
118. level of education, was a surprisingly impressive
119. witness. She is clearly a highly intelligent and
120. capable person.
121. There were a few areas of what I will refer
122. to as logical dissonance in her evidence. I
123. found it odd that her co-workers would consider
124. these two people to be flirtatious with each
125. other while she maintains that there was nothing
126. of the sort happening. On a more problematic
127. note, I find her description of what occurred
128. during the final incident a bit hard to picture
129. in terms of how it would actually have played
130. out. If she was so worried about being alone
131. with Mr. Sikora, her lack of action when she saw
132. his vehicle pulling in behind the building is odd
133. given how easy it would have been for her to get
134. out of her car and walk through the tunnel to the
135. front of the building. But life seldom follows a
136. logical path and there was nothing about her
137. narrative that I found insulting to common sense,
138. just a little troubling. The explanation could
139. simply be a combination of youth, fear and
140. indecision.
141. There were some difficulties with
142. Mr. Sikora's evidence too. While I can easily
143. understand why a married man would not have
144. wanted to socialize outside of work with a young
145. woman he was developing an interest in, I find it
146. strange that there was so little communication
147. between these two people as the situation
148. dev eloped. As the Crown has pointed out, Where
149. are the text messages? Where are the phone
150. calls? Where are the long conv ersations? Why
151. aren't there any more rides together, even if she
152. was a driver by this point? There seems to have
153. been remarkably little mutual effort to get
154. together given what Mr. Sikora suggests was a
155. growing degree of mutual attraction. These
156. difficulties cause me some concern. On the other
157. hand, applying the same filter that I did to the
158. difficulties in Ms. P.'s evidence, I find nothing
159. ridiculous or insulting to common sense about his
160. evidence either. He was a candid witness who
161. took no advantage of many
162. opportunities during his testimony to adopt
163. slightly more favourable details and positions.
164. Moving now to the formal analysis of the
165. evidence, the first question is, Do I believe the
166. evidence of the accused? The answer is no. This
167. would require, essentially, rejecting the strong
168. evidence of Ms. P., which I am not prepared to
169. do. "Believe" is a strong word. The next
170. question is, Does his evidence raise a reasonable
171. doubt? There is a fundamental difference between
172. saying that I believe Mr. Sikora and saying that
173. I find his evidence believable.
174. On the issue of whether or not there were
175. two or three incidents, I find the following.
176. Both Mr. Sikora and Ms. P. described more or less
177. the same kind and degree of physical contact,
178. only Ms. P. had the context spread over three
179. incidents while Mr. Sikora confined it to two.
180. Given the passage of time between the incidents
181. and disclosure and the statement of both to the
182. police and the limitations of memory to which I
183. have already referred, I can have no certainty
184. whatsoever as to how many occasions of physical
185. contact there actually were. Any confusion
186. flowing from this uncertainty must be to the
187. benefit of the accused.
188. The end result of the testimony I heard is
     1. that I have two believable narratives from two
     2. credible witnesses that conflict with each other.
     3. I simply do not know who to believe and therefore
     4. the accused's evidence must have raised a
     5. reasonable doubt.
     6. I find Sean Sikora not guilty on all
     7. charges. Close court.

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11 Certified Pursuant to Rule 723 of the Rules of Court

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Jane Romanowich, CSR(A)

15 Court Reporter

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