

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

T. W. L.

Transcript of the Reasons for Judgment held before The Honourable Justice A.M. Mahar, sitting in Inuvik, in the Northwest Territories, on the 9th day of February, 2017.

APPEARANCES:

Mr. A. Godfrey: Counsel for the Crown

Mr. P. Harte: Counsel for the Accused

(Charges under s.271, s.349(1), 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 of Canada

This transcript has been altered to protect the identity of the witnesses, victim, or young person pursuant to the direction of the presiding Justice

1 THE COURT: There has been a trial this
2 week. T. W. L. is charged with three Criminal
3 Code offences. Two sexual assaults and one
4 unlawfully in a dwelling.

5 On November the 4th into the 5th, 2015,
6 there was a small party at T. L.'s residence in
7 Sachs Harbour in the Northwest Territories.
8 There were approximately half a dozen people
9 involved. These included the two complainants
10 L. K. and K. L.; their cousin and friend, M. L.;
11 the accused; T. L.; and J. K. A large amount of
12 vodka was consumed and everybody became highly
13 intoxicated.

14 The Crown called several witnesses. L. K.
15 is now 19 years old which would have made her
16 approximately 17 or 18 at the time of the events.
17 Her recollection of the party is that she went
18 there around 10 p.m. and stayed a couple of
19 hours. She believed that she was drinking before
20 she went, but in any event, she was consuming
21 straight vodka with chasers and any number of
22 cups somewhere around five in total. She became
23 very drunk.

24 She returned to her residence -- actually,
25 her aunt and uncle's residence. The residence of
26 Y. and L. C.'s which was next door to T. L.'s
27 residence. She was there with M. L. She went to

1 sleep or passed out on the mattress on the floor
2 in the living room along with M. L. She came to
3 or woke up and she saw the accused at the foot of
4 the bed. He was trying to climb on M. L. M. L.
5 kicked him off and came over to her. She said
6 nothing; did nothing. As he was touching her
7 leg, she blacked out. She recalls him touching
8 her and sex commencing when she blacked out
9 again. She woke up in the morning.

10 In the morning, she went to the nursing
11 station. The nursing station contacted the RCMP,
12 the sex assault kit was done. A vaginal swab was
13 positive for semen, and after a DNA warrant was
14 executed on the accused, the semen was determined
15 to be his. Her testimony was that he was not
16 invited to that house. She had simply left him
17 at the party. When she was asked if it was
18 possible that she invited the accused to have sex
19 with her instead of M. L., her answer was that
20 she did not remember saying that.

21 I am going to go slightly out of order
22 because it makes more sense in terms of the
23 evidence. M. L. also testified. With some minor
24 deviations, she testified to the same party, same
25 level of intoxication, and she and L. K. ended up
26 back at Y. and L. C.'s place passing out on the
27 bed in the living room. Her recollection is that

1 she came to. The accused was bothering her, on
2 top of her, and she remembers L. K. telling the
3 accused to basically do it to her instead,
4 inviting the accused to have sex with her is my
5 understanding of the words that were used.

6 She believes that L. K. had locked the door,
7 she did not see the accused come in, she woke up
8 around 9 o'clock in the morning, nobody was
9 there, and she later spoke to the RCMP. She came
10 back and spoke to the RCMP again a few days after
11 that. Her specific testimony about the comment
12 L. K. made to the accused was "L. K. told him to
13 do that to her instead of me."

14 J. M. K. was called. He was the only sober
15 witness apart from the RCMP officers that we
16 heard from. Sober at the time of the events, to
17 be clear. He is now 21 years old. He works as a
18 swamper for the hamlet. His cousin K. L.
19 contacted him on Facebook and asked him to keep
20 her company on that night. When he arrived at
21 T. L.'s place, J. K. was passed out. K. L. took
22 J. K. to the room. He stayed for about 90
23 minutes. When he left, he basically put K. L. to
24 bed in her room.

25 My understanding was that it was a different
26 room from the room that J. K. was in. He locked
27 the door to her room and left, and then he went

1 back to check on L. K. and M. L. It was around 2
2 o'clock in the morning when he arrived at the
3 T. L. residence. It was approximately 3:30 in
4 the morning when he attended at Y. and L. C.'s
5 residence to check on L. K. and M. L. He could
6 not hear anything. So his understanding was that
7 they were asleep. He checked the doors. The
8 side door was already locked. He locked the
9 front door and left.

10 K. L. testified. She had a very difficult
11 time with her testimony and was clearly very
12 upset. As I indicated before, all the parties
13 were heavily intoxicated. She appears to have
14 been especially so. She is not sure where she
15 went to sleep. She is not sure not only of what
16 room but in what residence. She remembers coming
17 to at some point, somebody getting on top of her,
18 pulling her pants down, and having sex with her.
19 She testified during the trial that she said no.
20 It became clear in cross-examination that she
21 originally believed this person to be J. K.

22 In her statement to the police, she
23 indicated that J. K. was bothering her, and J. K.
24 followed her into the room. She was asked what
25 woke her up, she indicated that J. K. did, doing
26 what, and she said pulling my pants down. She
27 agreed under cross-examination that when she told

1 the police that it was J. K., she was pretty sure
2 it was him. The RCMP asked her at the time if it
3 could have been the accused, she indicated no,
4 but it was possible if he was awake.

5 I take her evidence to be or I find from her
6 evidence that she was originally quite sure that
7 it was J. K., and it was likely only later when
8 she realized the results of the DNA testing that
9 she came to the conclusion that it was the
10 accused. Some of the accused DNA was found on
11 the inside of her underwear. There was no
12 indication if the DNA was semen, saliva, or what
13 it was, but it was simply that it was his DNA.
14 On the basis of this evidence, I am asked to
15 convict the accused. One of the interesting
16 aspects of K. L.'s evidence is that she recalls
17 the accused going back and forth to the other
18 house, the house next door.

19 With respect to the complainant L. K., I
20 found her to be a credible but utterly unreliable
21 witness. Her level of intoxication was such that
22 I am unable to make any firm conclusions based on
23 her recollection of events. Given the testimony
24 of M. L., which indicated an invitation to sexual
25 contact, in the context of this completely
26 unreliable evidence, the only conclusion that I
27 can come to is that the accused and L. K. had

1 sex. In terms of whether or not this sex was
2 consensual, I am simply not sure. On that basis,
3 I must acquit the accused.

4 With respect to the sexual assault on K. L.,
5 while I have my suspicions, which I have with all
6 of these offences, K. L. as well was a credible
7 and unreliable witness. Her level of
8 intoxication if anything was greater than that of
9 the other witnesses. Her ability to recall
10 events on anything approaching either a
11 chronological order or even locational
12 specificity is lacking. I am unable to conclude
13 where things happened, what exactly happened, and
14 given the need for proof beyond a reasonable
15 doubt, I find that I have a reasonable doubt.

16 I will be more specific about what concerns
17 me: It is tempting to speculate because of the
18 DNA evidence that the events and actions that she
19 originally attributed to J. K. were committed by
20 the accused, but given that four days or more
21 passed before her clothing was turned into the
22 RCMP and given that she placed herself in her
23 evidence in a location where the accused DNA
24 would have been found, at least in one version of
25 where she might have fallen asleep, I have
26 doubts.

27 I also have doubts based on her level of

1 intoxication of what may or may not have occurred
2 during one or many blackouts. I simply have no
3 way of being sure how the accused's DNA ended up
4 on her underwear, and as such, I must give him
5 the benefit of that doubt and find him not
6 guilty.

7 When an accused is facing several charges on
8 the same indictment, the trier of fact must be
9 careful not to conflate the charges, not to allow
10 the suspicions that arise on one charge to have
11 an impact on the proof required of the Crown
12 attorney on the other charges. I have already
13 indicated that I am highly suspicious of T. L.'s
14 activities that night.

15 With respect to the unlawfully in a
16 dwelling, there is no indication in the evidence
17 that T. L. was ever invited over to that
18 residence. He was, however, a former resident of
19 that home, and I was troubled by K. L.'s comment
20 that he was going back and forth between the two
21 residences. I was originally planning to convict
22 T. L. on this charge, but, Mr. Harte, giving
23 credit to where it is due, you did change my mind
24 in your submissions this morning. I am simply
25 not sure when the events at Y. and L. C.'s took
26 place. If they took place before J. K. locked
27 the doors or after, and if they took place before

1 given the lack of specific recollection available
2 to any of these witnesses and given T. L.'s prior
3 connection to that home in any event, I find it
4 very difficult to come to a conclusion with the
5 degree of certainty that I am required to in
6 order to enter a conviction.

7 I have to remember that all of these people
8 before this event were friends who were in
9 regular contact with each other and could be
10 expected to attend at each other's residences.
11 Accordingly, I reluctantly find T. L. not guilty
12 of that charge as well. I will say this though,
13 T. L., I am not finding you innocent. If I was
14 deciding this case on the balance of
15 probabilities, I would be finding you guilty on
16 all three charges, and you would be going away
17 for a long time. That is what I think happened,
18 but I am not sure.

19 What I am going to do is this: I am going
20 to use my common law jurisdiction to direct that
21 you enter into a peace bond for a period of two
22 years, with a nominal amount of \$1,000, no cash
23 deposit, but I will tell you that if you break
24 this peace bond, you are in breach of a court
25 order, and you can be brought back and dealt
26 with. So it's serious. You are to have no
27 contact directly or indirectly with the three

1 woman who testified here today, K. L., M. L., and
2 L. K. You are to have no contact directly or
3 indirectly. What that means is no texting, no
4 phoning, no messaging. If you see them at a
5 residence, you leave. Do you understand that?

6 THE ACCUSED: I understand, Your Honour.

7 THE COURT: Okay. Once you have signed
8 that peace bond, you will be free to go.
9 Anything, counsel?

10 MR. GODFREY: No, Sir.

11 MR. HARTE: No, Sir. Thank you.

12 THE COURT: Mr. Godfrey.

13 MR. GODFREY: No questions about that, Your
14 Honour. I do want to if I could assist the Court
15 with respect to J. K, I think you referred to him
16 with an incorrect last name. His last name is
17 actually K.

18 THE COURT: My apologies. Let the record
19 reflect K. Thank you. We will close court.

20 (ADJOURNMENT)

21 THE COURT: A couple of things I forgot,
22 T. L. I do not want you to have to wait around
23 to sign the order. You can sign that order
24 tomorrow. We will have that available here at
25 the courthouse. I think that although I have
26 misnamed J. K. it should be anonymized in the
27 transcript of when it is ordered. He was never

1 charged with a criminal offence, and I do not
2 want -- I do not think it is fair to him to have
3 his name out there. Any comment about that from
4 either one of you?

5 MR. GODFREY: That's fine.

6 THE COURT: I do reserve the option of
7 editing the transcript beyond simply grammatical
8 errors if necessary, I do reserve the right to do
9 that. So I just wanted to let you all know that.
10 Is there anything else that I forgot that you
11 want to deal with at this point?

12 MR. HARTE: My friend and I were chatting,
13 Sir, about the correcting -- ironically, the
14 correcting of J. K.'s name. And perhaps I've
15 spoken to several people about a lesson to be
16 taken from this series of events, and so I'd urge
17 Your Honour to consider anonymizing everybody's
18 name who needs to be anonymized in the transcript
19 so that it actually is something that people's
20 attention could be drawn to in terms of the
21 trouble that can arise from these kinds of
22 events. I'm just putting that out there for your
23 consideration, Sir.

24 THE COURT: And what do you say?

25 MR. GODFREY: I'm fine with that, Your
26 Honour.

27 THE COURT: Well, given T. L.'s close

1 connection to the parties involved as long as the
2 Crown attorney has no difficulty with the
3 anonymizing of his name, I am prepared to do that
4 given that his relationship with these people is
5 going to be obvious once the -- if the record is
6 read, then everybody in Sachs Harbour would know
7 who is being referred to as the complainants. So
8 I think on that basis, it might be necessary to
9 anonymize T. L.'s name as well.

10 MR. GODFREY: I don't have any difficulty
11 with that.

12 THE COURT: I'll just order that when a
13 transcript is prepared, that all the names be
14 anonymized.

15 All right. Anything else?

16 MR. GODFREY: Just on the expiration of the
17 bail period is to return any exhibits and order
18 that all exhibits will be returned.

19 THE COURT: All exhibits will be returned
20 at the conclusion of the bail period.

21 MR. GODFREY: Thank you.

22 THE COURT: Thank you. We will close
23 court.

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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 9th day of March, 2017.

Karilee Mankow
Court Reporter