

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

STEPHEN JAMES BOONE

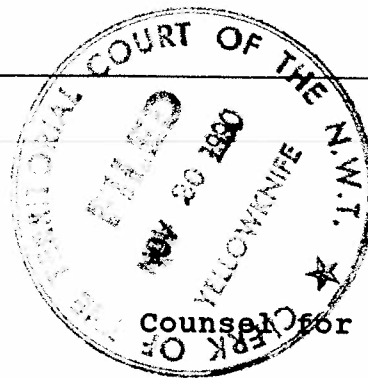


Transcript of the Reasons for Judgment of His Honour
Judge R. M. Bourassa, sitting at Yellowknife in the
Northwest Territories, on Thursday, November 15th,
A.D., 1990.

APPEARANCES:

MR. M. RODYCH:

MR. J. BRYDON:



Counsel for the Crown

Counsel for the Defence

(Charges Under Section 271 of the Criminal Code)

1 THE COURT: What is sexual assault or what isn't
2 is to be found in the Chase case which was a Supreme
3 Court of Canada decision that overruled the Supreme
4 Court of New Brunswick. The test to be applied in
5 determining whether there is a sexual nature to the
6 assault is an objective one, and as I understand it,
7 it is whether the impugned conduct viewed in light of
8 all of the circumstances, indicates a sexual context
9 of the assault that is visible to a reasonable
10 observer. The words, gestures, the actions
11 surrounding the conduct are all relevant.

12 The motive of an accused person may or may not be
13 relevant in so far as it appears from the
14 evidence. What his state of life is or his personal
15 beliefs are, as I have made it clear from rulings
16 during the evidence, is in my mind irrelevant. We are
17 dealing with what took place in the swimming pool on
18 the date of the alleged offence.

19 The defence is basically that the accused, who,
20 for a variety of reasons which don't have to be
21 articulated and nothing sinister should be taken from
22 them, likes children, and played with these kids. If
23 there was any touching, that is to say that if in fact
24 his hand went to the crotch or vaginal area of these
25 three girls or any one of them, or if it went to their
26 behind, bums, bottoms, variously described, it was all
27 incidental. It was all part of the

1 roughhousing. There was absolutely no sexual intent,
2 assaultive intent or desire.

3 The law is also abundantly clear that the Crown
4 has to prove its case beyond a reasonable doubt. The
5 accused does not have to testify. He has the right to
6 remain silent.

7 In this case the accused cooperated with the
8 police and provided a statement, Exhibit 1. He also
9 took the stand in his own defence to explain away the
10 circumstances. It was obvious that the accused, (I
11 may have more to say about this) was uncomfortable and
12 stressed on the witness stand. That's not
13 surprising. To be accused of an offence of this
14 nature is probably extremely stressful and difficult
15 for anyone to come to grips with.

16 Generally speaking, that's the law and the
17 context in which I have to make my decision.

18 Has the Crown proven its case beyond a reasonable
19 doubt? I have the evidence of the three children,
20 nine and ten years old. I have to say, and I say it
21 first and outright, that I found the three children to
22 be articulate, sharp, and by sharp, I mean in a
23 positive way - good witnesses. In fact, they gave
24 their evidence better than many adults give their
25 evidence. I can't find anything in their
26 cross-examination - and they were well cross-examined
27 - that would qualify their evidence. When uncertain

1 they said so; when certain they said so. When they
2 couldn't recall they said so. I was left with an
3 impression after hearing the three little girls that
4 they gave their evidence candidly to the best of their
5 recollection, and they gave their evidence honestly.

6 Much to-do has been made by some distant
7 observers of court rooms that children ought not to be
8 believed, or children tend to lie, or one has to take
9 what they say with a grain of salt. I think anyone
10 who had spent the time to listen to these three
11 children in court today would have that kind of notion
12 quickly disabused.

13 I found these three girls to be good witnesses: I
14 believe them. I believe C that in playing the
15 game of shark, the accused grabbed her or put his
16 hands between her legs and wiggled it, after being
17 explained the rules that it was to be the ankle. That
18 the accused first caught her by the leg, and it is
19 unclear whether that hand moved up or the other hand
20 came up and went between her legs. She confronted him
21 with that, "why did you do that", and he said, "oh, it
22 was an accident". She then said, "I stopped
23 playing. I did not like that", and she left the shark
24 game. She also overheard him talking to one of the
25 girls, J , I believe it was, "are you going to tell
26 your mom and dad or the cops", to which the accused
27 added, "I will give you a million dollars (or a

1 million bucks) if you don't". C was mad,
2 angry and scared.

3 I believe C as well, for the reasons I have
4 already given. She too was touched between her legs,
5 and confronted the accused who said his hand slipped
6 and that she didn't want to play any
7 more. Interestingly as well, she, that is to say
8 C, perceived that something was wrong with
9 C, that something was the matter with
10 C, and she asked her what was wrong, and
11 C said he (the accused) touched her. That
12 just reinforces that C was angry or upset or
13 scared.

14 There is the incident with C during the
15 shark game. She was grabbed by the ankle, held under
16 the water, and she was quite specific. "The second
17 time he had me by the leg, he put his hand on my
18 behind from behind me". "I asked why did you did
19 that. He said my hand slipped". I believe her.

20 Now, what about the other circumstances? I find
21 that all circumstances together, and it is difficult,
22 in fact it is impossible to isolate each little
23 incident and weigh and analyze it, but putting them
24 all together, the introduction of the girls to the
25 accused, his talking with nine and ten year olds
26 saying "you look sexy like Madonna". The introduction
27 of sex in conversation, and body consciousness to

1 these three little girls in the waiting area, followed
2 up by the hugging incident in the steam room. "You
3 girls look like you need a hug", the touching in the
4 pool, whether it was part of the shark game or whether
5 it is part of the throwing game, he was grabbing their
6 behinds to throw them, the nonstop interplay...it
7 seems that wherever these little girls went, Mr. Boone
8 found himself.

9 I agree with Defence counsel that there was some
10 difference in recollection as to exactly where they
11 went in order, but I don't take it as compromising
12 anyone's integrity in terms of veracity.

13 What I find peculiar is wherever the little girls
14 were Mr. Boone was close at hand. If they were in the
15 steam room, he was in the steam room. If they were in
16 the pool, he was in the pool. If they were in the hot
17 tub, that's where he was. And they all testified as
18 to going into the hot tub on at least two occasions,
19 the steam room at least twice, and the pool on a
20 number of occasions.

21 There was the request to the little girls to meet
22 him after the swimming for a drink at Red Rooster, the
23 comment, "I will be seeing you all over", while, I
24 think it was C who testified, "while looking at
25 my waist", in my view, putting all of this together,
26 gives the total conduct a sexual context.

27 After hearing the evidence of the accused, which

1 I listened to carefully, reading the statement,
2 Exhibit 1, over a number of times, I come to the
3 conclusion that I cannot accept the evidence of the
4 accused. He is not very credible. Even allowing a
5 generous leeway for what I said at the outset, concern
6 for being simply accused of this kind of offence, even
7 allowing a generous latitude for horseplay with kids,
8 and possible incidental or accidental touching,
9 putting all of the circumstances together, my
10 conclusion is that the circumstances and the touching
11 on each of these three little girls is made out, and
12 fits within the definition of a sexual assault. I can
13 arrive at no other conclusion, and I arrive at that
14 conclusion beyond a reasonable doubt. I have no
15 doubt.

16 The statements of the accused in his statement to
17 the police, frankly I find incredible. The accused in
18 the witness stand was contradictory. He speaks of the
19 girls being shy, and then moments later speaks of one
20 of the little girls virtually masturbating against his
21 leg "like a dog". He speaks of one of the little
22 girls teasing him, and that is the only conclusion
23 that I think we can take from his evidence, by dipping
24 her top and showing her nipple to him on many
25 occasions and looking at him for a reaction.

26 His evidence that he was trying to get away from
27 them just doesn't hold up in light of all of the

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evidence. Surely it is not hard for a 38 year old man to get away from an eight year old, even five of them. The equivocation, the qualifications, the back and forth of his evidence and his testimony, just leads me to the point where I don't accept his evidence. I don't believe him.

And finally, as pointed out by the Crown attorney his statement, "what is the going rate for touching a cunt?" confirms to me that the accused knew what he did. He was conscious of what he did. On all of the evidence before me, I am satisfied beyond a reasonable doubt, and I convict him on counts one, two, and three.

Certified a correct transcript,

Laurie Ann Young

Laurie Ann Young
Court Reporter