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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER BETWEEN:

HER MAJESTY THE QUEEN

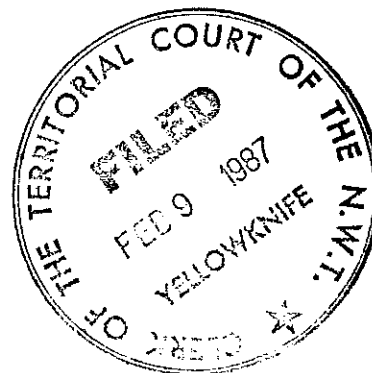
- and -

MARK PAPAK

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Transcript of the Oral Judgment of His Honour Chief  
Judge J. R. Slaven, sitting at Chesterfield Inlet, in  
the Northwest Territories, on October 1st, A.D., 1985.  
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APPEARANCES:

R. STARK, ESQ.: Counsel for the Crown  
MS. V. SCHULER: Counsel for the Defence



1 THE COURT: For the purposes of the decision I am about to  
2 make, I do not have to review the evidence of the two witnesses  
3 to comment upon it, but I feel I should do so, in case either  
4 party might wish to take further proceedings out of court in  
5 this matter.

6 Two witnesses, two sisters, aged 13 and 11, were very  
7 unsatisfactory witnesses. We are used, of course, to young  
8 witnesses and young, shy witnesses all the time, especially in  
9 cases like this, but these were most unsatisfactory. They  
10 contradicted themselves, they contradicted each other on many  
11 many particulars. And I agree with Miss Schuler that many of  
12 the answers elicited were on the basis of what were leading  
13 questions which Miss Schuler didn't object to, and I think quite  
14 properly, at this stage of the proceedings, and there being no  
15 objections, which I allowed to go in.

16 However, to assist any further proceedings, I will say  
17 this: if one of those two witnesses had been sworn, I would have  
18 committed. However, I would go along with the quote in  
19 McWilliams and the Stillo case, that the unsworn evidence of  
20 one cannot corroborate the unsworn evidence of another witness.

21 The wording in subsection 16 of the Canada Evidence Act is  
22 unsatisfactory and may be ambiguous: "No case shall be decided  
23 upon such evidence alone." But, clearly, section 16(1) applies  
24 to any legal proceeding, and I will take that as meaning a case  
25 against the accused, either for preliminary inquiry or trial.  
26 And following the Ontario case law and McWilliams, for what it  
27 is worth, in deciding that the unsworn evidence of one witness

1 corroborate the unsworn evidence of another witness.

2 I looked at the statement closely with reference to one  
3 thing, on page 2, the answer: "No, there's nobody telling me  
4 anything at all, not even my wife. Not until you come in. I  
5 even ask my wife." It is unclear to me if he asked his wife  
6 a month before, or if he asked his wife after he talked on the  
7 evening of the 22nd of July with Corporal Hoskins. I don't  
8 find any material evidence in the statement that can corroborate  
9 the unsworn evidence before me.

10 Accordingly, in my opinion, upon the whole of the evidence,  
11 no sufficient case has been made out to put the accused on trial,  
12 and I discharge him.

13 (AT WHICH TIME THE JUDGMENT WAS CONCLUDED)

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15 Certified a correct transcript,

16  
17 Debra Chipperfield  
18 Debora Chipperfield,  
19 Court Reporter.  
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