

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

In the matter between:

REGINA

vs.

RAOUL LAWRENCE ESMONDE

REASONS FOR JUDGMENT of The Honourable
Mr. Justice W.G. Morrow, given at Hay
River, N.W.T., on the 3rd day of November,
A.D. 1966, in the above matter.

Morrow, J. (Oral)

W. G. MORROW
JUDGE OF THE
TERRITORIAL COURT OF THE
NORTHWEST TERRITORIES
YELLOWKNIFE, - N.W.T.

This has been the most difficult case that I have had to try since my becoming a Judge. I appreciate the assistance that both counsel have given me, in this case. This has been difficult for me because I am aware of the association of the accused with the Territorial Court as a sheriff, and although normally I would not mention this, I think I should record the fact, I am aware of his association with the Court. Perhaps because of that fact I came into this case leaning more heavily against the accused than I normally would in any case. This may not be a good admission to make as a judge, but I want it recorded.

In this type of case we have the worst possible combination of problems of proof. We have two witnesses as to the offence, or the events that we shall call the offence. One is an eleven-

year-old girl ^{who} that I was not satisfied understood the nature of an oath, and therefore ~~would~~ not accept her sworn testimony. As a result, her evidence is of no real value in this case, except as it may be used as possible corroboration for some sworn evidence. The remaining sworn evidence was of the other child, although she impressed me as a very alert child, a child who knew what she was taking about.

It's true there were discrepancies in the evidence, but discrepancies of themselves do not mean that the evidence is not credible. In this case, however, the accused gave evidence, and his evidence was consistent with certain of the Crown's evidence, that is to say, consistent with his original statement put in as Exhibit 2 by the Crown. The accused was not too seriously challenged, and this is no fault of counsel for the Crown, but he was not too seriously challenged ⁱⁿ his evidence.

I must say, and I am sorry to have to say this, that, I have a suspicion that perhaps the alleged offence took place, but because of the difficulty of the complainant, or the Crown's ^{case} evidence being based upon the ^{sworn} evidence of one nine-year-old child, ^{unsworn} corroborated if possible by an ^{unsworn} eleven-year-old child, ^{unsworn}, I think I am in a position where I cannot say that I am satisfied beyond a reasonable doubt that the Crown has satisfied its burden, ^{and} and therefore I dismiss the charge.

Oral J. J. J. for the Crown.
Bruce D. Patterson for accused.