

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

COLIN ALLOOLOO



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Transcript of the Reasons for Judgment delivered by The Honourable Judge B.A. Bruser, sitting in Yellowknife, in the Northwest Territories, on the 27th day of April, A.D. 2001.

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APPEARANCES:

Mr. D. Claxton: Counsel for the Crown  
Mr. P. Fagan: Counsel for the Defendant

(Charge under s. 267(b) of the Criminal Code of Canada)

1 THE COURT: I do not need time to reflect  
2 upon the matter past this point.

3 This has been a two-day trial. Everything from  
4 yesterday, I reflected upon in some detail last  
5 evening and last night and this morning; and the  
6 material from this morning, I have thought about  
7 extensively over the noon hour; and since we  
8 reconvened in the afternoon, I have found that it all  
9 fits together. Accordingly, I deliver the judgment  
10 now.

11 The accused is charged that on or about the 22nd  
12 of December of 1999, at Rae-Edzo, in committing an  
13 assault on the complainant, William Drybone, he caused  
14 bodily harm to Mr. Drybone.

15 Credibility is the focal point of this  
16 proceeding. It is pivotal. The complainant, William  
17 Drybone, gives one version, the accused gives another  
18 version of how Mr. Drybone was treated by him. I am  
19 entitled to accept all the evidence of a witness, or  
20 accept some but not all of it, or to reject all the  
21 evidence of a witness. All this applies whether the  
22 witness be for the Crown or for the defence.

23 In summary, the complainant says that the  
24 accused, a police officer on duty, assaulted him in a  
25 cell, referred to as the drunk tank, at the RCMP  
26 detachment in Rae on the 22nd of December, 1999.

27 The drunk tank is a sparsely furnished cell with

1 a toilet, sink, and that's about it. It is commonly  
2 used to house people who are in advanced stages of  
3 intoxication. They are placed there where they cannot  
4 come to easily inflicted self-harm. In other words,  
5 it is to be a safe environment where they can be  
6 contained until they sober up.

7 Mr. Drybone testified that the cell was cold.  
8 There is corroborative evidence that that area of the  
9 detachment is kept at a lower temperature than the  
10 administration area unless there are prisoners to be  
11 housed, at which time the thermostat will be turned up  
12 to give them more comfort. The complainant says that  
13 because of the cold, he asked for a blanket three  
14 times. According to him, it was after the third  
15 request that the accused is said to have gone into the  
16 cell and beat him up, including smacking him on the  
17 jaw, which, the Court is asked to find, fractured it.  
18 That the jaw was fractured when seen sometime later by  
19 Dr. Cook, in Yellowknife, is not in dispute.

20 The accused is the same officer who arrested  
21 Mr. Drybone. No other police officer is said to have  
22 been involved in either the arrest or at the  
23 detachment. In fact, nobody else was on shift in Rae  
24 at the time. Inside the detachment there was nobody  
25 but the accused and his charge.

26 Resolving credibility involves many factual and  
27 legal considerations. Inconsistencies and conflicts

1 are two such factors. Defence counsel has very ably  
2 and aptly identified many inconsistencies and  
3 conflicts in the evidence of the complainant and as  
4 between him and other witnesses. Inconsistencies and  
5 conflicts do not necessarily undermine credibility.  
6 One has to be cautious about this in the assessment  
7 and weighing process. This is because inconsistencies  
8 and conflicts are part of everyday life. They are  
9 part of being human. By way of simple illustration,  
0 there might be the situation of something that could  
1 happen right in the courtroom here involving each and  
2 every one of us. We have, by the door, a sheriff. If  
3 a person were to charge through that door and run past  
4 the sheriff, run up to counsel table, grab something  
5 off the desk, and head out one of the two doors to my  
6 right, we would likely have several, if not many,  
7 different versions from people here today as to what  
8 happened; what the person looked like; whether he or  
9 she ran, walked; which counsel table the person went  
0 to; what was taken; things regarding identification of  
1 the subject: height, weight, and so forth, age, hair  
2 colour. The varying versions would in all probability  
3 come from honest, sincere people. But merely because  
4 the versions were not the same, were not identical,  
5 does not make these people incredible or dishonest. A  
6 golden thread may nevertheless run through what they  
7 had to say: Somebody came in, went past that person

1 in the corner, took something, and headed out the  
2 door. These people simply have different realities  
3 because of their different perspectives. Perspectives  
4 shape reality. This will become more significant as I  
5 proceed.

6 Another consideration in the assessment and  
7 weighing of credibility is the common sense  
8 consideration that the subjective belief of the  
9 rememberer is by itself no guarantee of the accuracy  
10 of a memory. In other words, our memories fail us,  
11 particularly over time, despite our honest efforts to  
12 recount what happened accurately and honestly. So we  
13 may be honest in telling people what is in our memory  
14 but still be mistaken. Or call it an honest but  
15 mistaken belief of fact.

16 Courts have long recognized these and other  
17 complexities and failings of humans in assessing  
18 credibility. Defence counsel has properly put before  
19 the Court the Supreme Court of Canada judgment of *D.W.*  
20 The Supreme Court of Canada, in that case, has helped  
21 judges and juries (that is, finders of the fact) by  
22 laying down some principles regarding credibility.  
23 Although defence counsel has read them, I intend to  
24 refer to them again because they are so critically  
25 important.

26 In summary they are: If I believe the accused,  
27 who denied having assaulted the complainant, I must

1 find him not guilty. It is not a question of maybe  
2 finding him not guilty - I must do so. I have no  
3 alternative. If I do not believe him, but if his  
4 evidence leaves me with a reasonable doubt, I still  
5 must find him not guilty. There is no alternative.  
6 If I do not believe him and if his testimony does not  
7 leave me with a reasonable doubt, I still have to  
8 consider all the evidence in the trial, for the Crown  
9 and for the defence, to determine if the prosecution  
10 has satisfied the heavy duty upon it, which is proof  
11 beyond a reasonable doubt. This is not a civil burden  
12 on the balance of probabilities. The outcome today  
13 does not take into account what the outcome may be in  
14 a civil trial. The two are separate.

15 I do not think the complainant is insincere or  
16 dishonest in telling the Court that from his  
17 perspective the accused broke his jaw. I think he  
18 truly believes what he told this Court. But I do not  
19 trust the accuracy of his perceptions, nor the  
20 accuracy of his memory. There are too many  
21 significant inconsistencies in his testimony and too  
22 many material conflicts between his evidence and that  
23 of other witnesses. For example, he says he went to  
24 the nursing station with his cousin Bobby Wanazah by  
25 snowmobile. Mr. Wanazah said he doesn't have a  
26 snowmobile and the two of them walked. Not only did  
27 they walk, but they walked in the winter about one

1 kilometre. Why could Mr. Drybone not remember that?  
2 I prefer the evidence of Mr. Wanazah. The complainant  
3 testified that he had bruising on parts of his body,  
4 but the attending nurse did not see it.

5 Then there is the complainant's state of  
6 intoxication. He seems to recall considerable detail  
7 about what happened to him, yet it was his own niece  
8 who called the RCMP to have him picked up because he  
9 was hanging about outside her home in what she  
10 believed to be a drunken state. In contradiction to  
11 this, the complainant says he was "just a little bit  
12 drunk". There is his denial of having been on a five-  
13 or six-drinking binge. But there is credible  
14 evidence, which I accept, that he had told other  
15 people he had been drinking for five or six days.

16 There were, and I'm allowing for the presence of  
17 the interpreter who helped him throughout, significant  
18 pauses in the complainant's testimony and plenty of  
19 times where he testified that he did not remember.  
20 One example that is noteworthy is his evidence that  
21 "It's been a long time and I don't remember." Also of  
22 considerable assistance to the Court is his testimony  
23 that when he drinks he tends to forget things.

24 The defence points out many other examples of  
25 inconsistencies and conflicts, all of which are,  
26 according to my recollection of the evidence, accurate  
27 and I adopt them in my reasons for judgment.

My confidence in the credibility of the complainant, as should be apparent by now, has been weakened by what I find to be his heavily intoxicated state. In other words, he was drunk at the time he was picked up by the accused and that drunken state did not quickly disappear between the time he was picked up and the time he says the accused assaulted him. I find that the reality of the complainant has been shaped in the murky world of mental impairment caused by excessive alcohol abuse. Furthermore, his credibility suffers from his proven crimes of dishonesty, and here I refer specifically to not all the record, but the break, enter, and thefts, theft being a crime of dishonesty.

Another aspect of the complainant's testimony that troubles me is his denial, which I interpret, on my assessment, to be a clear denial, again allowing for the interpreter, of having retained or hired a lawyer to sue somebody arising out of this. Yet today evidence has been filed with the Court, Exhibit 7, I believe, showing that a claim was filed last year. That claim is against the accused, Jane Doe, the Attorney General of Canada for the Royal Canadian Mounted Police, and the Government of the Northwest Territories as represented by the Minister of Health and Social Services.

There is no persuasive reason that I can find on



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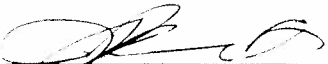
the totality of the evidence to reject the testimony of the accused. At best, from the Crown's perspective, there are some troublesome aspects of how the officer handled some of the paperwork, and to a minor extent some suspicion has been excited in my mind, but not enough to be more than that. Accordingly, applying the law to the assessment and weighing of the evidence as I have found it, I find the Crown has not proven its case beyond a reasonable doubt. I find the accused not guilty.

I thank both counsel very much for the very capable way each of you represented your respective interests, including the presentation of evidence and the submissions, and the patience and courtesy you have each shown to witnesses and to the Court and to each other.

MR. FAGAN: Thank you, Sir.  
MR. CLAXTON: Thank you, Your Honour.  
THE COURT: We'll close court.

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Certified Pursuant to Rule 723  
of the Rules of Court

  
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Jane Romanowich, CSR(A)  
Court Reporter