

2003 NWTTC A7

T-3-CR-2002001328

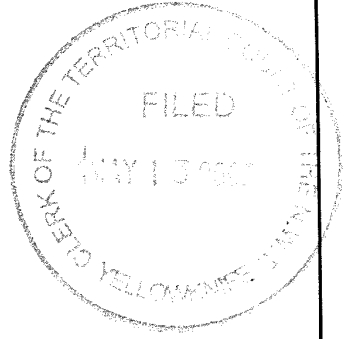
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ALBERT JOHNNY KOE



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Transcript of the Reasons for Judgment delivered by The Honourable Judge R.M. Bourassa, sitting in Fort McPherson, in the Northwest Territories, on the 30th day of April, A.D. 2003.

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APPEARANCES:

Mr. J. Burke: Counsel for the Crown  
Mr. T. Boyd: Counsel for the Defendant

(Charges under s. 267(b), 264.1(1)(a), 145(5.1) x2, and 92 of the Criminal Code of Canada)

1 THE COURT: Well, after listening to the  
2 evidence carefully, I conclude that Mr. Koe is not a  
3 very good witness.

4 The only sober witnesses I hear from were the  
5 police constables. With respect to the police  
6 constable: Strowbridge, was clear that of the two,  
7 Albert Koe was the drunkest. He would have arrested  
8 Albert Koe for being drunk in a public place had he  
9 found him in that situation. He was familiar with  
10 Albert Koe drunk and sober. He's had extensive  
11 dealings with Albert Koe, and in his opinion, Albert  
12 Koe was incoherent and highly intoxicated. Of course  
13 that dramatically contrasts with Mr. Koe's evidence.

14 I thought that Mr. Koe tried to down-play  
15 anything that even smelled of a negative influence on  
16 his case. His evidence was all over. At one point he  
17 invites his spouse to kindly come down to the cabin;  
18 at the next point, "no", he never invited her to come  
19 to the cabin, she just jumped on the snowmobile and  
20 wanted to come of her own accord even though her nose  
21 is broken.

22 He didn't know the gun was there. Here's a small  
23 cabin. Look at the photographs. It's tiny. The man  
24 has been living in the cabin full-time for a week,  
25 although at first his evidence was that he was there  
26 all the time. To say he had to knowledge that the  
27 rifle was under the bed, in my view, is -- can't

1 seriously be maintained. I have no doubt that he knew  
2 the gun was there.

3 Listening to all of his evidence, it's  
4 contradictory. It's inconsistent. I don't believe  
5 him.

6 Looking at Norma Norman's evidence very  
7 carefully, as I must, as well as the other Crown  
8 evidence, to determine where or not the case has been  
9 proven beyond a reasonable doubt: Her state of  
10 sobriety was such that while Constable Strowbridge  
11 admitted that he would pull her over if he thought she  
12 was driving for a drinking and driving offence, he  
13 wouldn't arrest her for being drunk in a public place.  
14 He said that she had been drinking. He has had  
15 extensive experience with her, knows her drunk, knows  
16 her sober, and had seen her more heavily intoxicated  
17 and didn't think that she was that intoxicated, if I  
18 can summarize his evidence.

19 Her evidence, I thought, was very  
20 straightforward. She's not a particularly voluble  
21 witness and I don't think she was anxious to give her  
22 evidence. She gave no indication of bias or a great  
23 desire to hang Mr. Koe, figuratively speaking. She  
24 said very clearly that he came to her house in the  
25 afternoon and said come to the cabin. She went. They  
26 were in the cabin for a few moments. He accused her  
27 of infidelities, punched her in the face, and broke

1 her nose. After a little while, he took her back to  
2 her house. A little while later he picked her up  
3 again and told her to come with him. And she said she  
4 knew he'd signed a paper that he was not to see her  
5 but that they were seeing each other. She stated that  
6 why she went with him was that she was scared.

7 She was adamant that she was punched the first  
8 time they were at his house, and that Colin Andrew,  
9 who was also present, observed this situation and  
10 asked if Albert "was fighting you". She said, "Yeah."  
11 "I was so scared of him," she said, "so I just went."  
12 "Too scared" to say anything. I don't find that  
13 reaction or evidence unreasonable or a stretch by any  
14 means.

15 I don't think anything comes of the fact that he  
16 took her home right under the shadow of the police  
17 detachment buildings.

18 The man, in his drunkenness, was supremely  
19 confident in what he was doing and had no fear from  
20 this woman.

21 I accept her evidence. In my view, her alcohol  
22 consumption wasn't such as to compromise the essential  
23 thrust of her evidence that she was punched in the  
24 face by this man, that he broke her nose, that he  
25 threatened to kill her, and I convict him on the  
26 charge of assault causing bodily harm, on the charge  
27 of uttering a threat to cause death.

1           He was also on an undertaking on Count 3 to  
2           abstain from communicating with Norma Norman, and  
3           obviously that was breached. The fact that she may  
4           have contacted him first, while I don't have that  
5           before me, if that's a fact, that goes to sentence but  
6           not to liability.

7           With respect to the 117 matter, possession can be  
8           inferred. To have possession, a person has to have  
9           knowledge and he has to have control. I've concluded  
10          on the evidence that there can be no question but that  
11          Koe had knowledge that the gun was there. I suppose  
12          the knowledge that the gun was there, and his  
13          occupancy of the cabin, would give control to Koe, but  
14          it would give control to anyone who was in the cabin  
15          knowing it was there. The gun is engraved with his  
16          brother's name. The accused knew it was there.  
17          Surely there must be a distinction between possession  
18          and access. No law was quoted to me. I'm reluctant  
19          to convict on the evidence that I've got. In my view,  
20          it may come close but it's just a shade short of  
21          possession as I would understand it in the law.  
22          Although he may have had access to the gun, I have  
23          nothing before me to indicate what he did with that  
24          gun or what he had with respect to that gun was more  
25          than access, and I don't have any law before me that  
26          would indicate that access can be equated to  
27          possession. So I'm going to acquit him on Count 4.

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(CONCLUSION OF REASONS FOR JUDGMENT)

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Certified Pursuant to Rule 723  
of the Rules of Court



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Jane Romanowich,  
Court Reporter