MEMORANDUM

DATE: December 13, 2018

TO: Distribution List

FROM: Tracy Downes
Judicial Executive Assistant
Territorial Court Judges' Chambers

RE: **R. v. Wade Kapakatoak, 2018 NWTTC 10.cor1**

FILE NUMBER: T1-CR-2017-001125

ERRATUM

On the cover page of the Reasons for Decision for the above file, the Corrected Judgement date has been amended to December 12, 2018.

Attached is the corrected Reasons for Decision.

Tracy Downes
Judicial Executive Assistant

R. v. Wade Kapakatoak, 2018 NWTTC 10.cor1

Date of Corrigendum: 2018 12 12
Date: 2018 08 09
File: T1-CR-2017-001125

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

WADE KAPAKATOAK

Restriction on Publication
Identification Ban – See the *Criminal Code*, s. 486.4.

By Court Order, information that may identify the victim must not be published, broadcast, or transmitted in any way.

NOTE: This judgment is intended to comply with the identification ban.

REASONS FOR DECISION
of the
HONOURABLE JUDGE GARTH MALAKOE

Corrected Judgment: A corrigendum was issued on December 12, 2018; the corrections have been made to the text and the corrigendum is appended to this judgment.

Heard at:	Yellowknife, Northwest Territories
Date of Decision:	August 9, 2018
Date of Trial:	June 18 and 19, 2018; July 5, 2018
Counsel for the Crown:	Blair MacPherson, Jill Andrews
Counsel for the Accused:	Thomas Boyd

[Section 271 of the *Criminal Code*]

[Ruling on *voir dire* and trial]

R. v. Wade Kapakatoak, 2018 NWTTC 10.cor1

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A. INTRODUCTION

A.1 Issue

[1] On June 18, 2018, Mr. Kapakatoak changed his plea from "not guilty" to "guilty" with respect to the charge that he committed a sexual assault on the victim named in the Information contrary to section 271 of the *Criminal Code.*

[2] Mr. Kapakatoak did not admit the facts as alleged by the Crown and it was necessary to have a *Gardiner* hearing to determine the facts.

[3] In pleading guilty, Mr. Kapakatoak has admitted the essential elements of the offence of sexual assault. In particular, he admits that there was a sexual touching of the victim without her consent. What is at issue is the nature of the sexual touching and the characterization of the victim's lack of consent. The Crown submits that Mr. Kapakatoak raped the victim and that she, through her actions, explicitly expressed that she did not wish to engage in sexual activity. The Defence invites the Court to find that there was sexual touching but this sexual touching did not include penetration and that the victim's level of intoxication made her incapable of consent.

[4] The Court's finding on these two issues may affect the sentence that Mr. Kapakatoak will receive.

[5] Before deciding these two issues, the Court has to first decide whether an utterance made by the victim to a third party is admissible. In particular, the third party testified that he observed the accused on top of the victim. He asked the victim, "Are you being raped?" The victim responded, "yes". The victim did not testify at the *Gardiner* hearing. Her utterance is hearsay. The Crown asks the Court to admit the utterance under the *res gestae* exception to the hearsay rule. The Crown submits that the utterance is evidence that the accused was not consenting and that there was penetration.

A.2 The Evidence

[6] The trial proceeded by way of a combined *voir dire* and trial. The evidence of the Crown consisted primarily of a surveillance video depicting a specific area behind the Capital Theatre in Yellowknife. The entire interaction between Mr. Kapakatoak and the victim is captured on this surveillance video taken of a small alcove of the building although there are times when one or both of the individuals are off screen. There is no audio to the surveillance video.

[7] The Crown called the following witnesses. Cpl. Benjamin Fage and Cst. Jeff Hemeon testified about the police investigation after receipt of a telephone call from Christopher Wood, reporting a sexual assault. This investigation included the arrest of the accused, Wade Kapakatoak and interactions with the victim. Christopher Wood, the manager of the Capital Theatre, testified about what he observed when he walked out the door into the alcove area. Lydia Bardak and Vivian Hansen testified about their efforts to try and locate the victim, who they believe is living in Edmonton.

[8] In addition to the surveillance video itself, the Court received the following exhibits:

(a) An Agreed Statement of Facts concerning the surveillance video of the incident behind the Capital Theatre in Yellowknife and the statement by Wade Kapakatoak given to the police on May 30, 2017;

(b) A Google Map of the location of the area in Yellowknife, NT where the incident took place;

(c) Photographs of the back alley behind the Capital Theatre;

(d) Still photographs taken from the surveillance video by Cst. Miranda Porr and shown to the accused, Wade Kapakatoak during his statement to the police; and

(e) A photograph taken on his cell phone by Christopher Wood of the accused and the victim. Based on my review of the surveillance video and this photograph, this photograph was taken about 21:34:29.

B. THE ELEMENTS OF SEXUAL ASSAULT

[9] By pleading guilty to the offence of sexual assault, the accused admits the essential elements of the offence. He admits to the *actus reus* and the *mens rea* of the offence. This means that he admits that he touched the victim in a sexual way without her consent. It also means that he admits that he knew that she was not consenting or was reckless or wilfully blind to the absence of consent. These elements were described in *R. v. J.A.*, [2011] S.C.J. No. 28, where McLachlin, C.J. stated:

> 23 A conviction for sexual assault under s.271(1) of the *Criminal Code* requires proof beyond a reasonable doubt of the *actus reus* and the *mens rea* of the offence. A person commits the *actus reus* if he touches another person in a sexual way without her consent. Consent for this purpose is actual subjective consent in the mind of the complainant at the time of the sexual activity in question: *Ewanchuk*. As discussed below, the *Criminal Code*, s.273.1(2), limits this definition by stipulating circumstances where consent is not obtained.
>
> 24 A person has the required mental state, or *mens rea* of the offence, when he or she knew that the complainant was not consenting to the sexual act in question, or was reckless or wilfully blind to the absence of consent. The accused may raise the defence of honest but mistaken belief in consent if he believed that the complainant communicated consent to engage in the sexual activity. However, as discussed below, ss.273.1(2) and 273.2 limit the cases in which the accused may rely on this defence. For instance, the accused cannot argue that he misinterpreted the complainant saying "no" as meaning "yes" (*Ewanchuk*, at para.51).
>
> 25 The issue in this case is whether the complainant consented, which is relevant to the *actus reus*; the Crown must prove the absence of consent to fulfil the requirements of the wrongful act.

[10] As stated at paragraph 25 in *R. v. Ewanchuk*, [1999] 1 S.C.R. 330, the *actus reus* is established by the proof of three elements:

(i) touching;

(ii) sexual nature of the contact; and

(iii) the absence of consent.

[11] As I stated earlier, all three elements of the *actus reus* are admitted by the accused. The determination of the sexual nature of the touching is a factual determination based on the evidence. Some of the touching can be clearly seem on the video. Since this is a situation where the accused says that he has no memory of the incident and where the victim did not testify, the Court must make this determination based solely on observing the video and the admissible portions of

the testimony of Christopher Wood, who observed a brief portion of the interaction. This determination is made later in this decision.

[12] With respect to the absence of consent, the Court must make a determination whether the victim did not consent to the sexual activity or whether she was so intoxicated that she did not have the capacity to consent.

[13] The *Criminal Code* deals with consent in the context of assault and sexual assault. Section 265 states:

> 265 (1) A person commits an assault when
>
> (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
>
> . . .
>
> (2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

[14] Section 273.1 of the *Criminal Code* defines "consent" as the voluntary agreement of the complainant to engage in the sexual activity and describes situations where no consent is obtained.

> 273.1 (1) Subject to subsection (2) and subsection 265(3), "consent" means, for the purposes of sections 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.
>
> (2) No consent is obtained, for the purposes of sections 271, 272 and 273, where
>
> (a) the agreement is expressed by the words or conduct of a person other than the complainant;
>
> (b) the complainant is incapable of consenting to the activity;
>
> (c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;
>
> (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
>
> (e) the complainant, having consented to engage in sexual activity, expresses by words or conduct, a lack of agreement to continue to engage in the activity.

[15] The Crown suggests that the victim, at times, expressed by her conduct, a lack of agreement to engage in the sexual activity and, at other times, was incapable of consenting to this activity. With respect to the victim being incapable of consent, the Crown submits that there were times during the sexual assault

where the victim was passed out while the sexual activity was taking place and other times where the victim was so intoxicated that she did not have the capacity to consent.

[16] In *R. v. Al-Rawi*, [2018] N.S.J. No. 18, the Nova Scotia Court of Appeal stated the following test for determining capacity to consent:

> 114. Capacity to consent mandates an inquiry as to whether the complainant had the minimal or limited cognitive capacity to understand the nature and quality of the activity, the identity of the person(s) with whom the activity is engaged, and the awareness of choice to agree or decline.

[17] The accused submits that the victim lacked the capacity to consent because of her level of intoxication; however, does not accept that she was either passed out or expressed her lack of agreement to sexual activity.

C. *RES GESTAE* OR SPONTANEOUS UTTERANCES

[18] The victim did not testify at the sentencing hearing. When the Manager of the Capital Theatre saw her and the accused, he spoke to her. He testified that he asked her, "Are you being raped?" She responded, "Yes."

[19] What the victim is reported to have said is hearsay. It is a statement that she made out of court. It is something that Christopher Wood heard her say. The Crown wants to have it admitted for the truth of its content, i.e., that the victim was being raped.

[20] The Court does not, as a rule, allow hearsay evidence to be admitted. The person who made the statement is not before the Court. She cannot be cross-examined as to what question she heard, what she said, what it meant or what the basis was for her statement.

[21] There are exceptions to this rule against hearsay. One such exception is for *res gestae* or spontaneous utterances. There are situations where the circumstances under which the out of court statement is made result in the statement being sufficiently reliable to be admitted for the statement's truth.

[22] *R. v. Oliver*, [1996] N.W.T.J. 69 (NWT SC) gives a summary of the meaning of the *res gestae* exception to the rule against hearsay:

> 12 . . . The *res gestae* rule was summarized in *R. v. Dakin* (1995), 80 O.A.C. 253, quoting from the Ontario Court of Appeal decision in *R. v. Khan* (1988), 27 O.A.C. 142; 42 C.C.C. (3d) 197 as follows:

> ... a spontaneous statement made under the stress or pressure of a dramatic or startling act or event and relating to such an occasion may be admissible as an exception to the hearsay rule. The stress or pressure of the act or event must be such that the possibility of concoction or deception can be safely discounted. The statement need not be made strictly contemporaneous to the occurrence so long as the stress or pressure created by it is ongoing and the statement is made before there has been time to contrive and misrepresent. The admissibility of such statements is dependent on the possibility of concoction or fabrication. Where the spontaneity of the statement is clear and the danger of fabrication is remote, the evidence should be received.

[23] The *res gestae* exception is also consistent with the principled exception to the hearsay rule. In *R. v. Sylvain*, [2014] A.J. No. 444 (Alta. C.A.), the Court stated:

> 32 The excited utterances exception under the common law is also consistent with the principled exception to the hearsay rule: *R. v. Mackenzie*, 2011 ONSC 6770 at para 10, 2011 CarswellOnt 12578. The reliability of "excited utterances" comes from the absence of an opportunity to concoct a story. It is true that the mere making of a 911 call does not necessarily bring that call within the "excited utterances" exception. The defence might well argue, as it did here, that the fact the call was made is equally consistent with the fact it was concocted. That is why a trial judge must assess all the relevant evidence relating to the call, including the content, timing and circumstances of a 911 call, and determine whether in light of all the evidence, it properly falls within the "excited utterances" category.
>
> 33 As for necessity, where, for some reason, the person making the 911 call is unable to testify, then the necessity branch of the test is clearly met: *R. v. Nicholas* (2004), 184 OAC 139 at paras 90-92, 70 OR (3d) 1 (CA). Where, as here, the caller did testify, the objection to hearsay statements arising from the absence of an opportunity to cross-examine is negated. More fundamentally though, the "excited utterances" exception to the hearsay rule does not arguably contain a necessity requirement. The policy underlying the necessity requirement is rooted in the "best evidence" proposition. Typically, that will be in-court testimony. But as pointed out by Justice David Paciocco in "The Perils and Potential of Prior Consistent Statements: Let's Get It Right" (2013) 17:2 Can Crim L Rev 181 [Paciocco] at 192-193:
>
> > ... [T]he "necessity" component performs a "best evidence" function. It exists to ensure that if it is possible to present "better evidence" in the form of in-court testimony, parties should not be permitted to resort to hearsay proof...
> >
> > ...
> >
> > The *res gestae* exceptions do not have a necessity requirement ... In-court testimony may not be better evidence than "excited utterances" because in-court testimony is not uttered in the pressure of the moment before an opportunity to concoct has arisen ...

[24] The fact that the spontaneous utterance is in response to a question does not, by itself, make the utterance inadmissible. In *R. v. Oliver*, [1996] N.W.T.J. No 69 at para. 31, Schuler J. states that the Court needs to consider the atmosphere in

which the questions are asked and whether or not the person responding to the questions is responding to the pressure of the questions or the pressure of the event.

D. IS THE UTTERANCE BY THE VICTIM ADMISSIBLE?

[25] The manager of the Capital Theatre, Christopher Wood testified that when he came out of the door of the building, he saw the victim reclined on the ground with her back against a grey electrical box. The man was laying on top of her. The complainant appeared to be not quite aware of what was going on completely.

[26] Mr. Wood asked the complainant, "Are you being raped?" She said in a timid voice, "yes".

[27] She said nothing further to Mr. Wood.

[28] There are many aspects of the victim's utterance of the word, "yes" which potentially move it out from the umbrella of the spontaneous utterance exception "where the spontaneity of the statement is clear and the danger of fabrication is remote":

(a) When he testified, Mr. Wood appeared to be uncertain whether the question that he asked the victim was "Are you being assaulted?" or "Are you being raped?";

(b) The video seems to show that at the moment that Mr. Wood asked the question, the accused could not have been having sexual intercourse with the victim;

(c) The victim's level of intoxication was such that she may not have heard or understood the question to which she responded, "yes"; and

(d) The victim's response of "yes" was spontaneous to Mr. Wood's question and not to the sexual activity.

[29] Let me deal with each of these issues separately.

Uncertainty about the question

[30] When Mr. Wood testified, he initially stated:

> A. She was she was lying there, she appeared to be what's the word I'm looking for? She appeared to be not quite aware of what was going on, completely. I asked her if she was being assaulted, and she said she was.
>
> …

> Q. And you said that you asked her if she was being assaulted; do you remember the exact words that you used?
>
> A. I said – I believe I said, Are you going [sp.] assaulted?
>
> Q. Are you sure of that?
>
> A. I could have been said, Are you being raped? I'm not 100 percent sure exactly how I put it.

[31] The Crown allowed him the opportunity to review the statement he gave to the police shortly after the incident. Mr. Wood then testified that he "asked her if she was being raped, and she said in a timid voice, yes."

Video evidence as Christopher Wood walks out

[32] The video shows the door opening at 21:31:16. At that moment, the accused has his red jacket on. His pants are on and done up. He has just positioned himself between the victim's legs. The victim's pants and panties are only on her left leg. She has one shoe on. The left foot has only a sock. The accused appears to have been digitally penetrating her within the minute before but at the moment the door opens, he was not "raping" her. As the door opens, he rolls away from her and it is apparent that he is fully clothed. The victim is sitting up and struggling to put her pants and panties on and appears to be speaking to someone behind the open door at 21:31:34. Mr. Wood can be seen walking out from behind the open door at 21:31:53. He is speaking on his cell phone.

[33] The video shows that at the moment that Mr. Wood would have asked the question, "Are you being raped?", the victim was not being raped, if that term means "sexual intercourse", as the Crown submits. Based on the video, her answer could not be true.

[34] In making this observation, I am aware that the answer "yes" to the question "Are you being raped?" could be a cry for help by someone who had been sexually assaulted over a period of time. Such a victim would want immediate help. She would not argue with the wording of the question from the person who could help her. It is unlikely that she would say, "No. I am being sexually assaulted but not raped." My point is this. The Crown urges the Court to accept that the victim's answer is proof that there was penetration. In my view, such an interpretation is reading too much into the response, which on the face of it, is false given the video evidence.

Victim's level of intoxication

[35] Mr. Wood testified that the victim appeared to be quite intoxicated. He said that "she appeared to be not quite aware of what was going on, completely." In the time between when the accused got off her and the time the police arrived, the victim is observed on the video as not being able to sit up. She had difficulty pulling her pants up.

[36] The video shows the police (Cst. Uhm and Cst. Dunphy) arriving at 21:38:39, which is about seven minutes after Mr. Wood opened the door. Cpl. Fage testified that when he arrived, he observed that the victim was "heavily intoxicated", "she was lucid, she had her eyes were [sp.] open, she appeared to have just been waking up and disoriented". Cpl. Fage also stated:

> Her lips were moving, but I couldn't make out anything, and I wasn't sure, at the time, if that was due to the intoxication or perhaps some language barrier, but there was no – I guess, no verbal communication from her, I could make sense of.
>
> …
>
> I don't know that she understood anything I said, just given her intoxication …
>
> But given her intoxication, I made the decision to arrest her pursuant to the *Liquor Act* for being drunk in a public place and to escort her back to the Yellowknife detachment for her safety.

Spontaneous reaction of the victim

[37] The victim's utterance was given as a result of being asked a question by Mr. Wood, a stranger who found the accused and the victim involved in sexual activity outside the door. The victim was reacting spontaneously to being asked the question. Without further context, it is difficult to decide what a spontaneous "yes" means. On one hand, the victim could be reacting to someone who could help her as she was being sexually assaulted. On the other hand, she could be reacting to a person who caught her and the accused engaged in sexual activity outside his door.

[38] The complainant may not have been only spontaneously reacting to the accused having sexual activity with her. She was also reacting to the unexpected presence of a stranger and to his question.

Analysis

[39] I cannot admit the victim's utterance as evidence. It is hearsay which does not meet the requirement for the *res gestae* exception; nor is it sufficiently reliable to allow it to be admitted under the principled exception to the hearsay rule.

[40] Arguably, the *res gestae* exception does not require necessity (see paragraph 33 of *R. v. Sylvain*, [2014] A.J. No. 444 (Alta C.A.)). Nonetheless, I am satisfied that based on the testimony of Vivian Hansen and Lydia Bardak, the victim could not be located for this trial.

[41] In the end, I am unable to admit the utterance by the victim because there is no guarantee of its reliability. Mr. Wood is not certain of the question that he asked. The victim may have been so intoxicated that she did not hear or understand the question to which she responded, "yes". There was no guarantee that the victim was responding truthfully to someone who she may have regarded as a stranger about to call the police.

[42] Let me briefly pause and comment on how the victim was treated in this case. I am tempering my comments because all of the parties involved have not been given an opportunity to present their side of the story. However, on the face of it, this is what it looks like from the Bench given the evidence presented in Court.

[43] The police received a call for service that a woman was being raped. The police arrived to find the woman, a street person, lying on the ground. She was intoxicated and uncooperative. The witness who called the police was there to tell them what he saw. He told the police that the woman said she had been raped. The woman was not taken to the hospital for a rape kit or for a physical examination. Instead, she was arrested under the *Liquor Act*. She was held in cells overnight.

[44] I am unable to imagine circumstances which would justify this type of treatment of a victim of sexual assault. This treatment of the victim by the police merits an examination. The victim could not be located for the trial. Ultimately, if the victim is avoiding this trial as a result of this treatment, then her treatment by the police has affected the judicial process. However, at a more basic societal level, it appears the victim was not treated with the dignity and compassion that she or any victim of a sexual assault deserves. I am reluctant to say more because this is not the forum for the examination of this issue and, as I said earlier, the police have not been given an opportunity to respond. Still, on the face of it, the treatment by the police of the victim was egregious. This treatment is an issue that should be examined and the police should have to explain.

E. EXPRESSED NON-CONSENT OR LACK OF CAPACITY?

[45] Given the observations of Christopher Wood and Cpl. Fage, I am satisfied that at the point in time where they observed the victim, she was unable "to

understand the nature and quality of the activity, the identity of the person with whom the activity is engaged, and the awareness of choice to agree or decline." In other words, she did not have the capacity to consent.

[46] The video assists me in determining the victim's lack of consent to sexual activity at other times. At the beginning, when the accused is kissing the victim at 20:54:16 in the video, she is clearly pushing him away and then appears to pass out. As he tries to undo her pants, she resists him. At various times through the length of the interaction, the victim is either resisting, or passive or apparently unconscious. There is never any indication of consent or the voluntary agreement of the victim to engage in sexual activity.

F. WHAT WAS THE SEXUAL TOUCHING?

[47] The video is clear with respect to the accused kissing the victim, fondling her breasts and digitally penetrating her.

[48] Not surprisingly, there is no photographic evidence of his penis entering her vagina. There are indicia on the video that the accused is having sexual intercourse with the victim. For example, there is a point where her pants and panties are on one leg and she is under him. His bare buttocks are exposed to the camera and he is thrusting as if engaged in sexual intercourse. Later, he gets off and we can see his exposed penis.

[49] Aside from the video evidence, there is no evidence that the accused had intercourse with the victim. There was no rape kit examination. The victim did not testify. For the reasons I have stated, her utterance to Christopher Wood is not evidence on the trial.

[50] The video evidence is clear that Mr. Kapakatoak's exposed penis was between the victim's legs while her genitals were exposed. Was there genital to genital contact? Yes. Is it possible that there was genital to genital contact without intercourse? Yes. Is it possible that Mr. Kapakatoak was unable to penetrate the victim? Yes.

[51] In the end, it is clear to me that Mr. Kapakatoak intended to have intercourse with the victim and attempted to do so. Whether he actually penetrated her, I cannot say beyond a reasonable doubt. Based on the video, during these times, she was either completely passed out (her body was completely unresponsive as Mr. Kapakatoak moved her legs around) or did not have the capacity to understand what was happening.

G. SUMMARY

[52] Mr. Kapakatoak has entered a guilty plea to sexually assaulting the victim. In doing so, he has admitted the essential elements of the offence. The Crown must prove any aggravating factors beyond a reasonable doubt.

[53] The sexual touching consisted of kissing, touching her breasts, digital penetration and genital to genital contact. At no time did the victim consent to any of this sexual contact. There was a range of indications of lack of consent: from gestures of expressed refusal; to lack of capacity to consent; to unconsciousness.

[54] When the victim had the capacity to consent, she can be seen to be repelling Mr. Kapakatoak. At other times, her movements are those of someone who is highly intoxicated. At other times, there is no movement at all. Her body is limp.

[55] None of these indications of lack of consent seemed to have had any deterrent effect on Mr. Kapakatoak. He appeared relentless and unwavering in the pursuit of his own sexual pleasure.

[56] The finding of guilt to the sexual assault charge contrary to section 271 of the *Criminal Code* is based on the facts as outlined above.

"Garth Malakoe"

Garth Malakoe
T.C.J.

Dated at Yellowknife, Northwest
Territories, this 9th day of
August, 2018.

Corrigendum of the Reasons for Decision
of
The Honourable Judge Garth Malakoe

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1. An error occurred in Paragraph 5, page 2. The wording of the sentence contains reads:

> [5] Before deciding these two issues, the Court has to first decide whether an utterance made by the victim to a third party is admissible. In particular, the third party testified that he observed the accused on top of the victim. He asked the victim, "Are you being raped?" The victim responded, "yes". The victim did not testify at the *Gardiner* hearing. Her utterance is hearsay. The Crown asks the Court to admit the utterance under the *res gestae* exception to the hearsay rule. The Crown submits that the utterance is evidence that the accused was not consenting and that there was penetration.

Paragraph 5 has been corrected to read:

> [5] Before deciding these two issues, the Court has to first decide whether an utterance made by the victim to a third party is admissible. In particular, the third party testified that he observed the accused on top of the victim. He asked the victim, "Are you being raped?" The victim responded, "yes". The victim did not testify at the *Gardiner* hearing. Her utterance is hearsay. The Crown asks the Court to admit the utterance under the *res gestae* exception to the hearsay rule. The Crown submits that the utterance is evidence that the **victim** was not consenting and that there was penetration.

2. The citation has been amended to read:

> *Citation: R. v. Wade Kapakatoak*, 2018 NWTTC 10.cor1

Date of Corrigendum: 2018 12 12
Date: 2018 08 09
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NOTE: This judgment is intended to comply with the identification ban.

REASONS FOR DECISION of the HONOURABLE JUDGE GARTH MALAKOE

Corrected Judgment: A corrigendum was issued on December 12, 2018; the corrections have been made to the text and the corrigendum is appended to this judgment.

[Section 271 of the *Criminal Code*]

[Ruling on *voir dire* and trial]