

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

HER MAJESTY THE QUEEN

AND:

THOMAS PAUL SHARP

Edward Horembala, Q.C.

For the Crown

Gordon Coffin

For the Accused

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] HUDSON J. (Oral): This is a *voir dire* held with respect to the evidence of the witness, Ms. V. She, in arriving at a bus stop in Whitehorse on November the 5th, the material date of these matters, she recognized the person at the bus stop by a photo, a photo she had seen at her children's school, which was accompanied by a letter. She also recognized by reason of having seen a photograph in the newspaper. The letter that was posted at the school has received a very uncertain translation by the witness, Ms. V., who no doubt was nervous to be in the witness box.

[2] The newspaper of July 11th, 2001, a portion of it has been made an exhibit. Officer Campbell has testified that certain photographs received from the

state of Washington were sent to them and they selected one to distribute. In my view, the photo and the newspaper is identical to the photo seen at the school.

[3] Dealing with the newspaper photo, it is part of an article the heading of which is "Sex Offender Identity Made Public". The article has many aspects and commentaries. One of them is, and I quote:

Sharp was released from a Washington state prison on May 14th for molesting a female....

Further:

The police say he also spent tens years in prison for burglary and attempted rape."

[4] The Crown seeks to have this article admitted, which would include the photograph, and also seeks to have the photograph from the school admitted together with the letter posted authored , I am told, by the principal of the school and is in French.

[5] There is also an article from another newspaper, which has the same although smaller photograph of the same date, that is the Yukon News.

[6] My task is to examine this evidence and, if relevant, and it would certainly in time and place have relevance, and if there is no lawful reason not to do so, then to admit it.

[7] Crown says that the letter of the article should be admitted as going to show good reason why the witness would remember the photo because of the way it was brought to her attention. It is argued that the letter and the article are

probative, to a high degree, to support the witness's evidence, showing the thought processes which enabled her to testify as she did, and that the probative value outweighs a prejudice to the accused or to the administration of justice.

[8] Unfortunately, I cannot agree wholly with the submissions of the Crown. Counsel said that since there is no jury, I, as trier of fact, could easily avoid any conclusions of propensity that might result from the admission of the article and the letter, and that I could simply use the evidence as proof of the witness's awareness of the picture and her certainty in saying that the person in the bus was the person in the picture. But there remains the need to show that justice does appear to be done, and I do not feel that perception is provided if the article and the letter are admitted.

[9] The photo may be admitted. The evidence of Ms. V. as to the time and place that she saw the photo, the newspaper photograph may be admitted, and it may be both newspapers. They may be cut so that the photo is shown to include, on the same paper of the notification, the name of the newspaper and the date, the masthead, I believe it would be called, to be entered into evidence. The articles themselves are not admitted and should be excluded from the document. It is the photograph which supports her evidence.

[10] The trier of fact here can observe the photo and heard the evidence of the witness that the man in the photo is the man in the bus. The trier of fact, having observed the accused in the courtroom, may make a decision as to the reliability, and reach the conclusion that the Crown would usurp, that the man in the bus was the accused.

[11] I would not go into more detail as to the prejudicial aspects of the articles at

this time in that I am speaking in public and open court, and I do not think it serves any good purpose, except to say that the articles which were published for a good purpose, for court purposes, are prejudicial beyond the probative value.

[12] The photos are in and allowed to continue to have a part of them, the date and the name of the newspaper and the date. The evidence of Ms. V. will be admitted to describe where and when she saw the photos, and the fact of the photos helping her to recognize the person on the bus, and at the bus stop.

[13] The articles, however, will not be admitted.

HUDSON J.