

IN THE PROVINCIAL COURT FOR SASKATCHEWAN

SASKATOON SASKATCHEWAN

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

DONALD LEO ROSS

HELEN SUSAN ROSS

DONALD GEORGE WHITE

PRELIMINARY HEARING PROCEEDINGS HOLDEN AT THE CITY OF
SASKATOON, IN THE PROVINCE OF SASKATCHEWAN, COMMENCING ON THE
21ST DAY OF NOVEMBER, A.D. 1991, BEFORE HIS HONOUR JUDGE R.
G. FINLEY, A JUDGE OF THE PROVINCIAL COURT FOR SASKATCHEWAN.

APPEARANCES:

Mr. M. K. Miazga	Department of Justice Saskatoon, Saskatchewan COUNSEL FOR THE CROWN
Mr. R. Kergoat	Saskatchewan Legal Aid Commission Saskatoon, Saskatchewan COUNSEL FOR DONALD ROSS
Mr. D. J. Mullord	Harrison & Buitenhuis Saskatoon, Saskatchewan COUNSEL FOR HELEN ROSS & DONALD WHITE

(There being no Court Reporter in attendance, the
proceedings were taken by means of a tape recording.)

MR. MIAZGA: Crown is ready to proceed on that matter.

I'm not sure if Defence have any applications they wish to make or not, so -

THE COURT: Alright. May I have the Informations please? Did you hand them up, did I put them with this other material? Well, I don't appear - oh, alright. Now, this is the preliminary hearings of - I find a twelve count Information, the accused being Donald Leo Ross, Helen Susan Ross and Donald George White, is that correct?

MR. KERGOAT: That's correct, Your Honour. I represent, for the record, Roger Kergoat representing Mr. Ross, Mr. Ross alone.

THE COURT: So you're for Donald Ross?

MR. KERGOAT: I am.

THE COURT: Mr. Mullord?

MR. MULLORD: Your Honour, I'm appearing for Helen Ross and Donald White.

THE COURT: Alright. I understand that there are some preliminary applications, is that correct?

MR. KERGOAT: That is correct, Your Honour.

THE COURT: Is this Crown applications, Defence applications, both?

MR. MIAZGA: Well, I think it is both applications, so perhaps it might be most appropriate to deal with the Defence application first, dealing - being that it

deals with the very Information -

MR. KERGOAT: At the starting point, before my learned friend goes into something more meaty, Defence makes an application pursuant to Section 539 for non broadcast and non publication of the matters in the preliminary hearing, according to that Section.

THE COURT: I'm making an order prohibiting the broadcast of publication at this preliminary hearing, until the accused have been discharged or, if committed for trial, the trial has ended.

MR. KERGOAT: Secondly, there is an order pursuant to Section 486(3) already that was done at the time of the initial election and bail hearing, with respect to the identity of the victim. I have no real status in bringing forward any application, but I do it as a courtesy to remind the Court, with respect to any orders that might to identify - any evidence or naming that might tend to identify the victims, alleged victims in the case, and I would submit that that should go so far as to include the names of the accuseds.

THE COURT: Well, that comes under the, and any information which could be disclosed, because there's specific authority to bar publication of the name of a witness or of the complainant, and then any other information that might tend to disclose, so it's

strange that there's no specific authorization.

MR. KERGOAT: Fair enough.

THE COURT: I'm making an order, so it's up to the - those who wish to broadcast to interpret it. I'm making an order, pursuant to Section 486(3) of The Criminal Code, directing that the identity of the complainant and any information that could disclose the identify of the complainant shall not be published in any document or broadcast in any way. That's the order you're asking for, is that correct?

MR. KERGOAT: The first order was with respect to the preliminary hearing, under 539, and then the second order, I just reminded the Court that it had been made previous to -

MR. MIAZGA: Yeah, I think it was made way back at the first appearance and maybe it's just appropriate to indicate that order still is in effect and will be in effect until the -

THE COURT: Alright. The earlier order under Section 586 is still in effect.

MR. KERGOAT: And the 539 order has been given? I failed to note that.

THE COURT: Yes.

MR. KERGOAT: Thank you.

MR. MULLORD: Your Honour, the first preliminary motion that we have this morning concerns the Information

itself, the validity of the Information. Your Honour will observe that there are twelve counts and each of those counts refer to offences that are said to have occurred between the 1st of January, 1983 and the 31st of December, 1989, that's a period of exactly seven years. I'm going to first of all refer to the requirements of Informations in The Criminal Code, Your Honour, Section -

UNKNOWN SPEAKER: That was in 1987 (inaudible - not clear) to a foster home, not in '89. We just had visiting rights.

THE COURT: The interpreter can interpret the proceedings of the Court at this stage but it's not now the time for any of the accused to be making statements, the proceedings may be interpreted.

MR. MIAZGA: Perhaps in regards to that matter, I had not mentioned anything about that but, of course, two of the accused, and I guess the record should clearly show this, are deaf, being Helen and Donald Ross, and require the services of a deaf interpreter. And perhaps we should have those two interpreters sworn in, just to get that matter resolved, which I should have done right at the outset but I forgot about that part.

THE COURT: Yes, please do so.

MR. MIAZGA: There's two interpreters who will be

taking turns doing the interpretation.

JERRY DEAN MARKIN, duly SWORN to
translate from English to Sign Language
& from Sign Language to English:

SUE SCHMID, duly SWORN to translate
from English to Sign Language & from
Sign Language to English:

MR. MIAZGA: Perhaps just to make sure there's no misunderstanding, we had, of course, conducted a short bit of the preliminary matters before the interpreters were sworn and perhaps Defence could just indicate whether or not - it was being interpreted, as I understand it, even though that wasn't addressed. Perhaps we could just see whether Defence are prepared to accept what happened or if we should go through the applications that have been made already.

THE COURT: Mr. Kergoat, are you prepared to accept that the proceedings to this date have been properly and regularly interpreted to the accused?

MR. KERGOAT: All the proceedings that I have appeared on have been interpreted to the accused, yes.

THE COURT: And the regularity of the - Mr. Mullord?

MR. MULLORD: And I'm satisfied also, Your Honour.

THE COURT: Alright. Now, interpreters, the - at this stage of the trial, the purpose of the interpretation is to interpret to the accused the proceedings as they go forward. The accused will be given their opportunity to consult with Counsel and to

ultimately make statements on their own, if they choose to do so.

Yes, now you're referring to Section -

MR. MULLORD: 581, Your Honour.

THE COURT: Alright.

MR. MULLORD: Alright. That Section provides, 581(1):

"Each count in an indictment shall in general apply to a single transaction and shall contain in substance a statement that the accused or defendant committed an indictable offence therein specified."

The definition Section of the Code, Your Honour, defines an indictment to include an Information, so this rule would apply, in my submission, also to Informations.

Subsection (2) states:

"The statement referred to in subsection (1) may be:

(a) in popular language without technical averments or allegations of matters that are not essential to be proved;

(b) in the words of the enactment that describes the offence or declares the matters charged to be an indictable offence; or

(c) in words that are sufficient to give to the accused notice of the offence with which he is charged."

Then subsection (3), and this is the subsection with which we're particularly concerned:

"The count shall contain sufficient detail of the circumstances of the alleged offence to give to the accused reasonable information with respect to the act or omission to be proved against

him and to identify the transaction referred to, but otherwise the absence or insufficiency of details does not vitiate the count."

It's my submission, Your Honour, it's - this morning that the counts of this Information fail to provide sufficient detail for the accused to know the act or omission to be proved against them and also fail to identify specifically the transaction which is referred to. I would advise the Court that this application is made pursuant to Section 601 of The Criminal Code, subsection (1), perhaps I'll read that, says:

"Any objection to an indictment or to a count in an indictment for a defect apparent on the face thereof shall be taken by motion to quash the indictment or count before the accused has pleaded, and thereafter only by leave of the court before which the proceedings take place, and the court before which an objection is taken under this section may, if it considers it necessary, order the indictment or count to be amended to cure the defect."

So it appears to me, Your Honour, from that subsection that leave of the Court is required for this motion, since the accused have previously entered pleas, and this should be considered both - firstly as an application for leave -

THE COURT: Is an election equivalent to a plea?

MR. MULLORD: I don't think it is, Your Honour. In which event perhaps these -

THE COURT: What's your position, Mr. Miazga?

MR. MIAZGA: Well, there - my position is that there hasn't been a plea entered, there's just been election and they've chosen judge and jury, I believe, and we're a long ways from that stage. So that that particular -

THE COURT: So your position is that the leave of the Court is not required to make this application?

MR. MIAZGA: That's not - my position is that it's not appropriate to make the application at this time, for other reasons.

THE COURT: Alright, but -

MR. MIAZGA: But I agree with you that there's no leave required on the issue of plea.

MR. MULLORD: I may be mistaken in that event, Your Honour. It may be that leave is not required. Section 601 subsection (11) says:

"This section applies to all proceedings, including preliminary inquiries, with such modifications as the circumstances require."

I bring that to your attention, Your Honour, just in support of my position that this is an appropriate point to raise the issue of the validity of the Information. The - I'll be referring to three cases this morning, Your Honour. The first is Regina versus Wiss (ph.), a development corporation, and I have copies of that case for the Court. That case, Your Honour, is authority for the position that the