

TC 00011 85 007

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

YELLOWKNIFE CRIMINAL SITTINGS

June 25, 1985

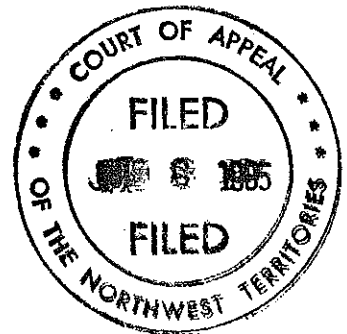
	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>	<u>COURT</u>
HER MAJESTY THE QUEEN Appellant	J. D. Sutton, Esq.	R.M. BOURASSA. J.	LAYCRAFT, C.J.A. LIEBERMAN, J.A. MARSHALL, J.

- v -

ERNEST MANTLA Respondent	A. Wright, Esq.
-----------------------------	--------------------

APPEAL N.W.T. #584

Assault causing bodily harm,  
s. 245.1(1)(a) C.C.




---

MEMORANDUM OF JUDGMENT  
DELIVERED FROM THE BENCH

---

LIEBERMAN J.A. (for the Court):

The respondent was originally charged with attempted murder. This charge was reduced to a charge under s. 245.1(1)(b) of the *Criminal Code*. A plea of guilty was entered. The respondent received a sentence of five months imprisonment.

The victim was a Royal Canadian Mounted Police constable who was acting in the course of his duties at Fort Franklin in the Northwest Territories. He was the only police officer in that isolated settlement and had been requested to attend at a dwelling house to quell a disturbance being caused by the respondent who had been drinking.



When the constable arrived at the dwelling house the respondent refused to leave and advanced upon the constable, slashing at him with a long kitchen-knife which he had pulled from his pocket. The constable retreated and finally found it necessary to draw his revolver and point it at the respondent. The respondent continued his attack but the constable displaying commendable restraint and presence of mind did not fire his weapon.

The respondent attempted to grab the weapon but was unsuccessful.

The altercation continued outside the dwelling house and the respondent attempted to escape in the constable's vehicle. He was finally subdued with the assistance of two onlookers.

The constable's heavy jacket fortunately protected him and he suffered only slight cuts, one of which however penetrated to the bone of a finger.

Respondent's counsel argues that because the charge was laid under s. 245.1(1)(b) and not s. 246(1) this Court should ignore the fact that the victim was a police officer, and relies upon *R. v. James* (1971) 3 C.C.C. (2d) 1 as authority for that proposition. With respect, we choose not to follow *R. v. James*. The argument advanced by respondent's counsel confuses the ingredients necessary to prove the commission of an offence with the circumstances surrounding the offence. We are of the view that the circumstances of the offence including the personal characteristics of the victim and the duties upon which he is engaged must be considered.

This is a serious offence and in our respectful view the sentence imposed is inadequate.

We allow the Crown leave to appeal, we allow the appeal, and for the sentence imposed we substitute a sentence of 18 months imprisonment. The weapon prohibition imposed by the trial judge is affirmed.

*J.H.*