

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

YELLOWKNIFE CRIMINAL SITTINGS

APRIL 17, 1996

<u>COURT</u>	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>	
JOHN TOOLOOAK UKUQTUNNUAQ Appellant	Tracey M. Foster	Wong, J	Lieberman, J.A. Irving, J.A. Richard, J.A.
- and -			
HER MAJESTY THE QUEEN Respondent	Alan Regel		

APPEAL #CA 00556

MEMORANDUM OF JUDGMENT

Richard, J.A. (for the Court):

The sole remaining issue on this appeal is the Appellant's complaint that, contrary to s.650 C.C., he was not permitted to be present during the whole of his trial and that therefore his constitutional right to a fair trial has been denied. The Appellant refers specifically to a meeting outside the courtroom in the trial judge's improvised chambers in Gjoa Haven when the trial judge, Crown counsel and defence counsel discussed the admissibility of certain evidence.

On the additional material presented on this appeal, i.e. the affidavit of trial prosecutor Susan Bour, the affidavit of the Appellant and the transcript of cross-examination thereon, the report of the trial judge pursuant to s.682 C.C., and the transcripts of examinations of two defence counsel, we accept that there was, as related in Ms. Bour's affidavit, an out-of-court discussion, with only the trial judge, Crown counsel

and defence counsel in attendance, and that the subject-matter of that discussion was as related by Ms. Bour.

Ms. Bour's affidavit indicates that the meeting took place "prior to the commencement of the trial" and was in the nature of a further pre-trial conference. The examination of defence counsel, Andrew Mahar, indicates the meeting may have occurred during the course of the trial. For the purposes of our decision, we assume it occurred after the trial had formally commenced.

In the circumstances we are compelled to the inference that the Appellant, being represented at that meeting by able counsel, waived his right to be in attendance personally. Such waiver is common place in similar circumstances. The absence of a record of that waiver does not affect our decision.

We are of the view, therefore, that there was no breach of s.650 C.C. and, consequently, no infringement of any of the accused's constitutional rights.

For these reasons, the appeal is dismissed.

DATED at YELLOWKNIFE, NWT,
this 18th day of April, AD. 1996

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Richard, J.A.

I concur:

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Lieberman, J.A.

I concur:

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Irving, J.A.