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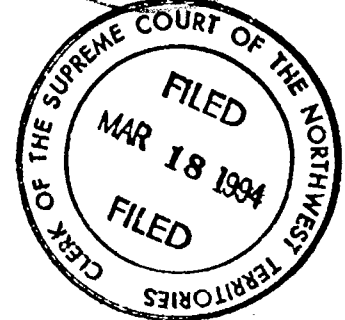
IN THE SUPREME COURT  
OF THE NORTHWEST TERRITORIES



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HER MAJESTY THE QUEEN

- and -



PAVINAQ PETAULASSIE

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Ruling on Voir Dire given by The Honourable Mr.  
Justice J.E. Richard, at Cape Dorset, Northwest  
Territories, on the 11th day of February A.D. 1994

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APPEARANCES:

S.A. Couper, Esq.,	Appeared for the Crown
C. Rehn, Esq.,	Appeared for the Defence
Cheryl Mendryk, Ms.,	Court Reporter

(Charged under Section 4(2) of the  
Narcotic Control Act)

1 THE COURT: I will now give the Court's  
2 ruling on the admissibility of certain evidence  
3 which the Crown wishes to present to the jury in  
4 this case.

5 The accused is charged with possession of a  
6 narcotic for the purpose of trafficking. On the  
7 voir dire, the Court heard evidence from two  
8 police officers of the circumstances surrounding  
9 the arrest of the accused at the Cape Dorset  
10 airport and the subsequent search of his luggage.  
11 The Court also heard evidence from the accused and  
12 his wife regarding these same circumstances.

13 Having considered all of the evidence, I find  
14 that I have quite a bit of difficulty in accepting  
15 the accused's testimony. I simply do not find him  
16 to be a credible witness on the voir dire.

17 The arresting officer, Constable McVarnock,  
18 testified that he had received, through the RCMP  
19 in Iqaluit, information from a confidential source  
20 to the effect that the accused was enroute from  
21 Iqaluit to Cape Dorset and that he was bringing  
22 with him some illegal narcotics inside of a  
23 soapstone carving.

24 Constable McVarnock and a fellow officer,  
25 Constable Tautuajuk, went to the Cape Dorset  
26 airport and met the accused's flight. Constable  
27 McVarnock says that he approached the accused and

*Gabe's*

1 told him that he was doing an investigation under  
2 the Narcotics Control Act and that he believed  
3 that the accused was carrying narcotics. He then  
4 placed the accused under arrest for possession of  
5 narcotics for the purpose of trafficking and  
6 advised the accused that he would be taken to the  
7 detachment to be searched.

8 Constable McVarnock says that he then advised  
9 the accused of his constitutional rights regarding  
10 retaining counsel and that the accused  
11 acknowledged that he understood. Constable  
12 McVarnock testified that he was -- I'm sorry,  
13 Constable Tautuajuk testified that he was with  
14 Constable McVarnock at the time of the arrest of  
15 the accused at the airport when the accused and  
16 his wife got off the plane. Constable Tautuajuk  
17 says under oath that he heard Constable McVarnock  
18 give the accused his Charter of Rights.

19 The accused's wife testified as to her  
20 observations at the time of the arrest at the  
21 airport. She says that she saw Constable  
22 McVarnock and her husband talking but that she did  
23 not hear the conversation. The accused testified  
24 on the voir dire that he was not told at any time  
25 that he had the right to retain and instruct  
26 counsel. As I've indicated, I do not believe the  
27 testimony of the accused on this point.

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1           At the detachment office, the accused was  
2 reminded of his right to counsel, was asked if he  
3 wanted to contact a lawyer, but he declined. He  
4 was also advised of his right to remain silent.  
5 The police then proceeded with a search of his  
6 person and of his luggage. In his luggage they  
7 found narcotics hidden in a soapstone carving.

8           After the discovery of the narcotics,  
9 Constable McVarnock asked the accused some  
10 questions about where he obtained the narcotics,  
11 what he intended to do with them, et cetera, and  
12 the accused replied to these questions. The  
13 accused was then placed in cells, and about an  
14 hour later, a Justice of the Peace arrived and the  
15 accused was released on an undertaking.

16           Taking into consideration all of the  
17 evidence, I'm satisfied that the statements made  
18 to Constable McVarnock were made freely and  
19 voluntarily by the accused, that is, they were not  
20 made under compulsion of fear of prejudice or  
21 under inducement of hope for advantage.

22           The accused submits that his arrest at the  
23 airport was not a lawful one inasmuch as the  
24 arresting officer did not have reasonable grounds  
25 for arresting him. In my view, the test for  
26 validity of the arrest on reasonable grounds set  
27 forth by the Supreme Court of Canada in R. v.

*Gabe's*

1 Storrey, and referred to in this Court in the case  
2 of Peesee Jaw, here in Cape Dorset last year, has  
3 been met on the evidence on the voir dire.

4 The arresting officer was operating from  
5 general information and intelligence that the  
6 accused was regularly selling narcotics in the  
7 community, but also on some current and very  
8 specific information gleaned from a source in  
9 Iqaluit known by Constable Power to be reliable.

10 Excuse me, sir are you on the jury? Thank  
11 you.

12 As I was saying, the arresting officer,  
13 Constable McVarnock, was operating from both  
14 general information and intelligence that the  
15 accused was selling narcotics in the community,  
16 but also on some current and very specific  
17 information gleaned from a source in Iqaluit known  
18 by Constable Power to be reliable that the accused  
19 was at that very moment carrying a specific  
20 quantity of a specific narcotic back to Cape  
21 Dorset in a specific manner.

22 It is of no assistance to the accused in  
23 contesting the validity of his arrest on this  
24 occasion that the police had, on at least two  
25 other occasions in previous months, arrested and  
26 searched him without finding any narcotics. So I  
27 find that the arrest was lawful and the subsequent

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1 and incidental search and seizure of the unlawful  
2 drugs in the accused's luggage were not  
3 unreasonable in the circumstances.

4 The other point raised on behalf of the  
5 accused on the voir dire is with respect to the  
6 accuracy of what was said between the accused and  
7 Constable McVarnock at the police detachment. The  
8 evidence indicates that there was a conversation  
9 or perhaps a question and answer session of about  
10 15 minutes duration in the interview room. No  
11 tape recording was being made and Constable  
12 McVarnock was not making notes at the time. He  
13 made notes of the contents of the conversation in  
14 his notebook sometime in the next hour while the  
15 accused was in cells and before the accused was  
16 released by the Justice of the Peace at 5:30 p.m.  
17 Constable McVarnock acknowledges that his notes  
18 are not verbatim.

19 The accused's recollection of what was said  
20 in this conversation, according to his testimony  
21 on the voir dire, is different than what is in the  
22 Constable's notes. In my view, this submission  
23 about the possible inaccuracy of the Constable's  
24 version or of his notes does not go to the  
25 admissibility of the conversation between the  
26 officer and the accused. In fact, there is not  
27 such a serious problem here as to cause any

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1 concern about the jury hearing this evidence and  
2 weighing it. I see no prejudice to the accused.  
3 In virtually every jury trial, the jury is asked  
4 to assess the reliability of testimony of  
5 witnesses, and I'm of the view that Mr.  
6 Petaulassie's jury is capable of doing that with  
7 respect to the Constable's testimony and the  
8 accused's own testimony if he chooses to testify.

9 In summary, then, I find firstly that the  
10 statements of the accused were made freely and  
11 voluntarily and are admissible at the  
12 option of the Crown; and secondly, it has not been  
13 shown to me that any of the accused's  
14 constitutional rights under Section 8 or Section  
15 10 of the Charter have been infringed; and  
16 therefore, any application under Section 24(2) of  
17 the Charter for exclusion of this evidence is  
18 denied. So the evidence of the statements and of  
19 the seizure is admissible.

20 Counsel, is there any clarification  
21 required?

22 MR. COUPER: Not from the Crown side, sir.

23 MR. REHN: No, sir.

24 THE COURT: Fine, then we'll adjourn to  
25 just confirm that the jury is here, and assuming  
26 that Mr. Goo Kingwatsiak is here, we'll just deal  
27 with his case, Mr. Rehn, and I propose putting it

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1 off to 3:00 this afternoon.

2 MR. REHN: I'm not aware, sir, if he's  
3 here yet. I think he was told to be here at 9:00  
4 if I recall, and I haven't seen him, but I can't  
5 see all of the outer corridor from here.

6 THE COURT: We're going to adjourn. When  
7 we reconvene we'll dispose of his case until this  
8 afternoon before we start with the jury trial.

9 MR. REHN: Very well.

10 (PROCEEDINGS ADJOURNED)

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12 I, Cheryl Mendryk, C.S.R.(A), hereby certify  
13 that I attended the above Proceedings and took  
14 faithful and accurate shorthand notes and the  
15 foregoing is a true and accurate transcript of my  
16 shorthand notes to the best of my skill and  
17 ability.

18 Dated at the City of Calgary, Province of  
19 Alberta, this 19th day of February, A.D. 1994.

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*Cheryl Mendryk, MS.*  
Cheryl Mendryk, Ms.  
Court Reporter.

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