FILE NO. CR 02783

IN THE SUPREME COURT OF THE

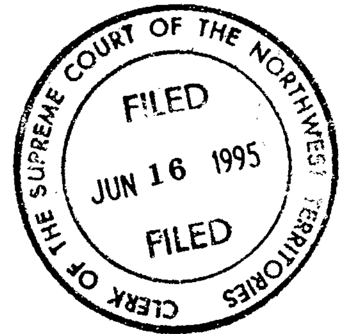
NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ALLEN AHEGONA



Decision in the Voir Dire of Allen Ahegona, before Mr. Justice J.E. Richard, taken on May 24, 1995 at Coppermine, Northwest Territories

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APPEARING:

Crown: L. Charbonneau, Ms.

Defence: V. Foldats, Esq.

Court Reporter: Joan Yaehne, C.S.R. (A)

Charged under Sections 239, 268 and 264.1(a) of the Criminal Code

1 THE COURT: Now, before the jury, the
2 accused, Allen Ahegona, is charged with the
3 following criminal offenses; Count 1, attempted
4 murder of Linda Kiloadluk on November 8, '94, by
5 forcibly administering poisonous substances to
6 her; Count 2, aggravated assault of Linda
7 Kiloadluk on November 8, 1994; Count 3, uttering
8 threats to cause death to Linda Kiloadluk on
9 November 8, 1994.
10 The named complainant, Linda Kiloadluk was,
11 at the time of the alleged offenses, the
12 common-law wife of the accused. Upon his
13 arraignment, the accused entered pleas of not
14 guilty with respect to Counts 1 and 3, and on
15 Count 2 his plea was not guilty of the offence
16 charged, but guilty of the lesser offence of
17 common assault. The crown did not consent to the
18 court accepting the plea of guilty to the lesser
19 offence.
20 The accused has been in custody awaiting his
21 trial here at his home community of Coppermine.
22 His preliminary inquiry was held here in
23 Coppermine on December 15, 1994, when he was
24 committed to stand trial.
25 At this Voir Dire, the crown seeks a ruling
26 on the admissibility of two items of proposed
27 crown evidence. The first item is a letter

written by the accused to his common-law wife, Linda Kiloadluk, on December 15, 1994, following the preliminary inquiry. When she received this letter, she turned it over to the police. A portion of the letter appears to be a clear attempt by the accused to suppress evidence against himself with respect to these criminal charges. In the letter, he urges his wife not to come to court to testify against him. Prima facie this evidence is admissible at the option of the crown prosecutor. It is an admission by the accused, a declaration made against his own interest, made outside the court room. Evidence that the accused person attempted to suppress evidence can be used for the purpose of showing consciousness of guilt. From a guilty conscience, the crown is entitled to ask the jury to infer actual guilt.

The only objection made on behalf of the accused as to the admissibility of this proposed crown evidence is an objection based on the 1994 decision of the Supreme Court of Canada in R v. Arcangioli. In that case, the accused person was charged with aggravated assault by stabbing the victim with a knife. After his altercation with the victim, the accused fled the scene of the crime. At his trial, the accused testified, and

1 admitted to being involved in the altercation
2 with the victim, but testified that he had only
3 punched the victim, and that he had seen a third
4 person stab the victim with a knife. In the
5 Supreme Court of Canada decision in Arcangioli,
6 the court discussed the issue of consciousness
7 of guilt, and the inferences that can be drawn by
8 the jury from conduct such as fleeing the scene
9 of a crime. The court held that the trial
10 judge's instruction to the jury in Arcangioli
11 was inadequate. It was pointed out that
12 Arcangioli's flight from the scene of the crime
13 was equally consistent with having punched the
14 victim, common assault, and with having stabbed
15 the victim, aggravated assault and was,
16 therefore, of no assistance to the crown in
17 proving aggravated assault. Because this had
18 not been adequately explained to the jury,
19 Arcangioli was granted a new trial.
20 Defence counsel in the present case asks me
21 to extend the reasoning in Arcangioli to this
22 case, where the accused has offered a plea to
23 common assault at the time of arraignment. He
24 submits that the letter containing an attempt to
25 suppress evidence in these circumstances is of
26 no probative value on the attempt murder,
27 aggravated assault, or uttering threats

1 offenses.

2 In my view, there is no merit to this
3 objection. The Arcangioli case deals with
4 proper instructions to a jury about inferences
5 they may or may not draw from circumstantial
6 evidence of consciousness of guilt. That
7 decision doesn't alter the law regarding the
8 admissibility of evidence in the first instance,
9 and it would be inappropriate to extend the
10 reasoning in Arcangioli to exclude evidence that
11 is otherwise admissible. The proposed crown
12 evidence, at this point in time does, indeed,
13 have some probative value as to the commission by
14 this accused man of a criminal offence, with his
15 wife as victim. By simply offering a plea to
16 common assault at the time of his arraignment,
17 the accused can not, in effect, prevent the crown
18 from presenting that evidence to the jury.

19 I, therefore, rule that the letter, Exhibit
20 A, is admissible at the accused's trial, at the
21 option of the crown prosecutor.

22 I turn now to the second item of proposed
23 evidence on which the crown seeks a ruling of
24 admissibility. On the Voir Dire, the witness,
25 Judy Hayohok testified that in December, 1994,
26 she was a guard at the RCMP Detachment here in
27 Coppermine while the accused was detained there

1 in cells. At the accused's request, the guard
2 retrieved some personal items for him from his
3 coat which was elsewhere in the detachment
4 building. In the course of doing this errand for
5 the accused, some papers fell out of the
6 accused's pocket onto the floor. One of the
7 pieces of paper that she saw, and which was
8 returned to the pocket of the coat, had some
9 writing on it. She said she read a portion of
10 the writing on this paper. At first, she said
11 there was a reference to the writing being
12 addressed "To Linda," but then she stated she
13 wasn't sure about that. She said that there were
14 words to the effect that "she should go to the
15 police in Cambridge Bay and tell them that she
16 drank that stuff accidentally." The witness
17 said she only glanced at the paper, only read a
18 couple of sentences on the page, and doesn't
19 remember what was at the top or bottom of the
20 page.
21 Upon consideration, I find that I am not
22 satisfied that this evidence of what Linda or
23 what someone else should tell the police in
24 Cambridge Bay, is an admission by the accused
25 made outside this court room, or a declaration
26 made by him against his interest. Firstly, it is
27 clear that those words seen by the witness were

only a portion of the writing on that piece of paper, and there is no context in which to place those words, in order to assign a meaning to them. The <u>Ferris</u> decision in the Alberta Court of Appeal is some authority for the proposition that the crown may not tender in evidence a partial statement of an accused person, as opposed to a complete statement. Secondly, and more importantly, I am not satisfied, on the Voir Dire evidence, that it has been proven that this was, indeed, a statement made by the accused. The witness did not identify the handwriting, all she could say is that it fell from the accused's jacket pocket.

For these reasons, I rule that the evidence of Judy Hayohok, as to what she remembers reading on part of that document, is inadmissible.

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1 I, Joan L. Yaehne, C.S.R.(A.), hereby certify
2 that I attended the above Decision, and took faithful
3 and accurate shorthand notes and the foregoing is a
4 true and accurate transcript of my shorthand notes to
5 the best of my skill and ability.
6 DATED at the City of Calgary, in the Province of
7 Alberta, this 5th day of June, A.D. 1995.
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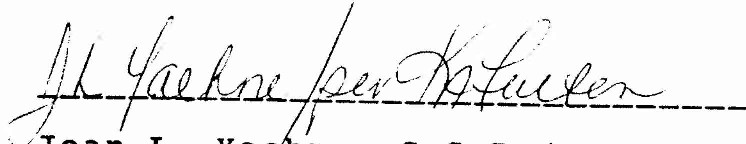
10 
11 Joan L. Yaehne, C.S.R.(A.)
12 JY/cg Court Reporter
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