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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

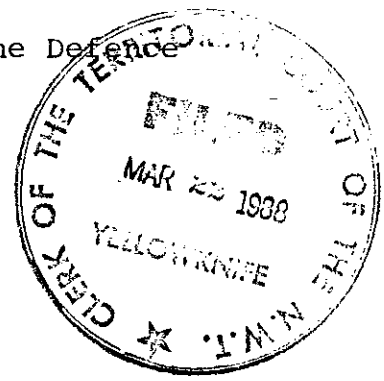
TERRENCE PATRICK NUGENT

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Transcript of the Reasons for Judgment of Chief Judge  
J. R. Slaven, sitting at Inuvik, in the Northwest  
Territories, on Thursday, October 29th, A.D., 1987.  
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APPEARANCES:

MS. N. BOILLAT: On behalf of the Crown

MS. J. LILLEGRAN: On behalf of the Defence



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Charges under Sections 238(5) and 3(1) CRIMINAL CODE  
*Narcotic Control Act*

1 THE COURT: I have heard evidence from five or six witnesses in  
2 this matter, and they are all pretty well in agreement and  
3 the facts are quite clear, I think.

4 Mr. Nugent parked in front of the Eskimo Inn. He intended to  
5 drink a quantity of liquor that day, and he went into the Sly Fox,  
6 in the Eskimo Inn, and drank quite a bit. He was apparently using  
7 his car as his living quarters, parking it at the Happy Valley  
8 Campground, which is quite some distance from the Inn.

9 For some reason, he returned to his car, he got in, he  
10 saw Constable White, he threw his keys in the back seat, and  
11 he says he knows enough about the law that if you've got the  
12 keys in the ignition or in your pocket or on your person, you  
13 can be convicted of care and control, so he got rid of the  
14 keys. Constable White, in the sight of Constable Jones, came  
15 over and told him not to drive, to keep away from the car, or  
16 he'd be arrested. So, he left the car and he talked to some  
17 people and eventually went back in the Sly Fox. He had one  
18 drink and told the bar manager, Mrs. Martindale, that Constable  
19 White had given him a break -- maybe he felt he'd got a break--  
20 because when he first saw Constable White, he had the keys  
21 still in his possession, that he had told Constable White  
22 he had thrown the keys in the back seat. He had another drink  
23 and said he was going to get someone to drive him to  
24 the Happy Valley Campground.

25 He went into the coffee shop in the hotel and he met a  
26 friend, Samantha Tory, and asked her if she'd drive him home.  
27 She said, okay. He left, and she went as soon as she finished

1 her coffee, went out and found him sleeping in the back seat  
2 with his feet hanging out and the door opened. She pushed  
3 his feet in, put a pillow under his head; there was a blanket  
4 or a sleeping bag there, which she placed on the floor. She  
5 closed the door and left him. So, this was about 1:30 in the  
6 afternoon. She returned about five, and he was still asleep  
7 in the back seat.

8 At 6:20, Constable Hann received a phone call from a male  
9 person who refused to identify himself, saying that the  
10 accused had tried to start his vehicle, that the accused was  
11 drunk. And the caller was upset; he said he thought this was  
12 wrong. He stated that the vehicle was at the Eskimo Inn and  
13 it was a grey and purple vehicle.

14 Constable Hann got Constable Jones, who was still on duty,  
15 and took her along with him. It was her first day on duty  
16 in Inuvik, having recently been transferred here, and she told  
17 him of the dealings she and Constable White had had with the  
18 accused a couple of hours ago. She described the accused's  
19 vehicle.

20 Constable Hann and Constable Jones arrived at the Eskimo  
21 Inn, and they found a vehicle matching the description  
22 given on the phone and by Constable Jones, still in the same  
23 place where Constable Jones and Constable White had seen it  
24 earlier. At this time, the accused was asleep behind the  
25 wheel, it appeared, directly behind the wheel, with his legs  
26 sprawled, his head back and his arms at his side. It would  
27 appear that between the time Samantha Tory last saw him in the

1 back seat about 5:30, and now at about 6:30 -- he doesn't  
2 remember -- but he must have got out of the back seat and got  
3 in the front seat. The keys eventually were found jammed  
4 between the seat and the back door, so apparently they  
5 hadn't been moved.

6 I am satisfied on the evidence I heard that at no time  
7 after Constable White first approached the accused, at no time did  
8 the defendant intend to drive that vehicle. On the evidence  
9 before me, I think it is obiter, but I think it would be  
10 sufficient for me to find that he did not have the necessary  
11 intent so that he could be convicted of having care and  
12 control while impaired.

13 However, the issue, it is agreed, is that Constable Hann  
14 had reasonable and probable grounds to make the demand. I  
15 accept, on the decision of the Saskatchewan Court of Appeal in  
16 R. v. Strongkill, that the evidence of the phonecall is  
17 admissible for the limited purpose of showing that Constable  
18 Hann had reasonable and probable grounds to believe that the  
19 accused had committed within the preceding two hours, as a  
20 result of the consumption of alcohol, an offence under Section  
21 237, that is, of being in care and control. The caller had  
22 said that the accused had just started, just attempted to start  
23 the vehicle. Also, I think we can accept the evidence  
24 of what Constable Jones said to Constable Hann about the  
25 same person. He had the conversation on the phone in  
26 his mind; he had the information given to him verbally  
27 by Constable Jones in his

1 mind. He found the accused in his car, as described. He  
2 found the accused behind the wheel. He didn't see keys, but  
3 he saw a number of loose wires in the dashboard area.  
4 The accused immediately awoke. Constable Hann formed the  
5 opinion that he was impaired, having slurred speech, that he  
6 swayed, his face was flushed and his eyes were glassy.  
7 So, I am satisfied that Constable Hann had reasonable and  
8 probable grounds to believe the accused had committed within  
9 the preceding two hours an offence under Section 237. And the  
10 fact that he might not have been in care and control was not  
11 a reasonable excuse for Mr. Nugent to refuse to blow, although  
12 he apparently thought that it was. I believe he said, I'm  
13 not going to blow, I didn't have the keys, et cetera; and I  
14 think he well believed that he didn't have to blow. He had  
15 some knowledge of the law, and unfortunately, it wasn't  
16 sufficient.

17 Accordingly, I find him guilty on the charge under Section  
18 238(5) and also the charge under Section 3(1) of the Narcotic  
19 Control Act.

20 (AT WHICH POINT THIS MATTER WAS CONCLUDED)

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22 Certified a correct transcript,

23  
24 Debra Chipperfield  
25 Debra Chipperfield,  
26 Court Reporter  
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