

1 THE COURT: The charge today is that Kim Melenchuk, a police
2 officer, assaulted Jason Ungungai while he was in the cells
3 on the 11th of August, 1988. The evidence is not contradic-
4 tory in any way in that Jason had been at a party and had
5 consumed a substantial amount of liquor, and by his own
6 evidence indicates that he was intoxicated and quite drunk
7 at the time. He did not resist arrest when he was picked up
8 on the street, having been observed by the police officer in
9 a condition where he was staggering and arrested under The
10 Liquor Act.

11 He went to the cells, and after his girlfriend
12 was later brought into the cells and after he had had a
13 short sleep for approximately an hour, Jason asked the police
14 officer if he could use the telephone. He was escorted from
15 the cell to the office in the police station and allowed to
16 use the telephone, which he did. When he called his father
17 and spoke to him in Inuktitut, the police officer heard Jason
18 say, "Thanks for calling the police," in a somewhat sarcastic
19 tone and was under the impression that Jason was not being
20 respectful to his father and was not obtaining a telephone
21 number of a lawyer that was a relative from somewhere in
22 Alberta or Saskatchewan. The police officer, therefore, had
23 him finish his conversation, took the telephone from the
24 Complainant, and then directed him back in the direction of
25 the cells. This was observed to some extent by the guard
26 who had been called in and who had given evidence that there
27 was nothing so irregular that he took note of it in any way.

1 Shortly thereafter and after the police officer
2 and the Complainant had gone around the corner away from the
3 view of the guard and within seconds, he heard some choking
4 sounds and did observe the police officer then with one of
5 his hands on the neck of Jason Ungungai, which appeared to
6 be choking him. The police officer gave evidence that he
7 was, in fact, using a choke-hold on Jason, because in moving
8 from the telephone back to his cell, Jason had turned
9 quickly, and it was the opinion of the police officer that
10 he had his arms and hands raised to the extent that he felt
11 he must take control of the prisoner and avoid an assault.
12 He held his hands on the throat of the prisoner until such
13 time as he noticed that the resistance had diminished
14 sufficiently that he then carried on and placed him in the
15 cells and turned the light off so that the prisoner could
16 go to sleep, at the request of the prisoner.

17 The Criminal Code requires that police officers
18 restrict their amount of force to that which is necessary to
19 control prisoners or other persons being arrested. It also
20 authorizes the police officer to use whatever force is
21 necessary to have control over persons when being arrested
22 and when in cells and when in custody.


23 It would seem to me that on the evidence before me
24 the police officer did not in any way apply excessive force,
25 and therefore, although there was force used, the charge
26 before the Court cannot be classified as an assault, because
27 in the process of maintaining control in the jail or at the

1 scene of an offence the police officer must have, and under
2 the Criminal Code does have, authority to apply whatever
3 force is necessary to ensure that he can maintain appropriate
4 and proper conduct of persons in custody.

5 Under the circumstances, I feel that there is no
6 doubt in my mind that no excessive force was used. At this
7 time, however, I do wish to say that Jason Ungungai appeared
8 to me to me very truthful in the evidence that he had given.
9 He did not exaggerate, and he did on a number of occasions
10 say he did not remember various things. For that, I feel
11 that it is appropriate that I indicate that it is the proper
12 thing to tell the Court if a person does not, in fact,
13 remember. In this case he indicated that he did not remember
14 what, in fact, had happened, both in the reaction that he
15 had or in how a number of things had occurred and what he
16 had talked about to his father or to the police officer and
17 other circumstances. It is helpful when the Court can feel
18 that those persons who have given evidence, even if they are
19 claiming that somebody has assaulted them, if the Court can
20 feel that that evidence was given and truthful.

21 The Court has found that there was no excessive
22 force used and that the force that was used was authorized
23 and proper under the Criminal Code, and the charge against
24 the accused is dismissed.

25 (AT WHICH TIME THIS MATTER WAS CONCLUDED).

26 Certified a correct transcript,
27 
Jill MacDonal, Court Reporter.