

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MICHAEL ALEXANDER LAFFERTY

Transcript of the oral Reasons for Judgment given by
His Honour Judge T.B. Davis, sitting at Yellowknife,
January 30th, A.D. 1985.



APPEARANCES:

MR. J.D. SUTTON Counsel for the Crown
MR. G. BOYD Counsel for the Defence

1 THE COURT: Having heard the evidence on the charge against
2 Michael Alexander Lafferty for assault which caused bodily
3 harm under Section 245.1 of the Criminal Code, it is obvious
4 to me that Mr. George Douglas, who was the victim referred
5 to in the Information, was in an intoxicated state when he
6 met the accused and some of the accused's friends on the 28th
7 of July, 1984 at Yellowknife. I am satisfied that when Mr.
8 Douglas answered the beckoning call of Mr. Lafferty that he
9 did come forward, and the evidence indicates that Mr. Douglas
10 thought that he might have made some disparaging remarks to
11 Lafferty about being in jail somewhere in the vicinity of
12 The Gold Range or The Rec Hall Bar which, in fact, are outlets
13 around the corner from and not on the same street as the
14 location where all the other evidence indicates the fight
15 between the two parties had taken place. The evidence then
16 also indicates that the first observation of anybody to the
17 fight was made by witnesses who were friends of the accused,
18 some of whom when they returned from inside The Yellowknife
19 Inn had seen Mr. Douglas use the back of his hand and slap
20 the accused or hit him in the face, to which he immediately
21 reacted with two fast punches that knocked Mr. Douglas to the
22 ground.

23 As a result of the striking, it would appear that
24 Mr. Douglas suffered some cuts to his face below his left
25 eye for which he was treated in the hospital and had to be
26 sutured. He also appeared to have received some bruises and
27 a bleeding nose; which had been observed by the doctor who

1 had given evidence. He then had fallen down, and when the
2 accused thought that he was starting to get up again, the
3 accused admits that he kicked Mr. Douglas on one or two
4 occasions, which kicks were observed by a number of the other
5 witnesses who had given evidence that they observed the two
6 kicks, one to the body and one to the face of Mr. Douglas.

7 I, therefore, have to from those facts determine
8 whether or not the defence as presented that Mr. Lafferty
9 should have been entitled to kick Mr. Douglas to keep him
10 from getting up and becoming involved with more of a fight,
11 whether that was lawful in the form of using force necessary
12 to protect one's self. It would seem to me that since Douglas
13 was obviously in a drunken state and since he had fallen
14 on being struck by the accused quickly that the accused
15 could have very easily at that time removed himself from the
16 circumstances of the confrontation, and it would have been
17 unnecessary for him to have used the force by kicking of
18 the victim, which kicking I do not believe from the evidence
19 was necessary for his own protection.

20 I do not relate the injuries suffered by Mr. Douglas
21 to the kicking, because it was obvious that some of the
22 witnesses had observed blood resulting from the punching.
23 I do not find that the punching which was an immediate
24 reaction to the backhand slap by the victim to be an assault
25 by the accused. I do, however, find that the kicking was
26 excessive. Therefore, I feel that the kicking itself is
27 sufficient to find that the accused is guilty of an assault,

1 but not guilty of an assault causing bodily harm. On that
2 basis, since there was excessive kicking, I am going to enter
3 a conviction for the included offence of assault on the facts
4 before the Court.

5 MR. BOYD: Your Honour, if we could put the sentencing of this
6 matter over for three weeks.

7 MR. SUTTON: I have no objection, sir.

8 (DISCUSSION AS TO SETTING A DATE)

9 THE COURT: That would be suitable to the Court, then, three
10 o'clock on Monday afternoon, February the 25th for sentencing
11 on these three matters.

12 MR. BOYD: Thank you, sir.

13 MR. SUTTON: Thank you, sir.

14 (AT WHICH TIME THE MATTER WAS CONCLUDED)

15
16
17
18 Certified a correct transcript,

19
20
21 
22 Jill MacDonald
23 Court Reporter