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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MICHAEL ALEXANDER LAFFERTY

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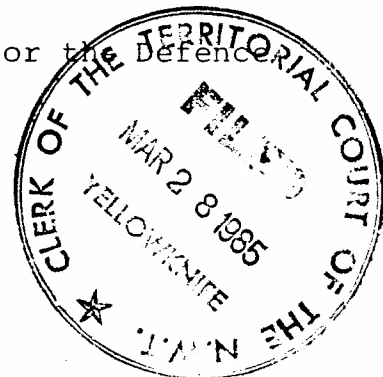
Transcript of the Reasons for Judgment given by His Honour Judge T.B. Davis, sitting at Yellowknife, in the Northwest Territories, Wednesday, January 30, A.D. 1985.

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APPEARANCES:

MR. J.D. SUTTON Counsel for the Crown

MR. G. BOYD Counsel for the Defence



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THE COURT:

Michael Alexander Lafferty is charged with taking a motor vehicle without the consent of the owner with intent to drive it, contrary to Section 295 of the Criminal Code.

The evidence before me has been produced by the Police Officer who was present and stopped a green Buick 1973 vehicle when the accused was in the passenger's seat in the vehicle with Mr. Lessard, who appeared also as a witness and has given evidence that he was convicted of having stolen the vehicle. The owner of a 1973 green Buick indicated that he was awakened in the middle of the night on the date in question and saw two persons in his vehicle pulling away from his house in his car without permission.

The conflict in evidence comes between the evidence given by Mr. Lessard, who was the driver of the vehicle, and the accused, who was the passenger in the vehicle. The major conflict is between the two parties as to whether or not at the time of entering the vehicle Lafferty was with Lessard, that is as Lessard indicates, or whether Lafferty had entered the vehicle subsequent to Lessard having stolen the vehicle. On the evidence before the Court, I must say that there is no doubt in my mind that the vehicle, being a green Buick, is the same vehicle that was identified by all parties. Although Defence counsel has raised the technical question as to whether or not the vehicle was identified, I am satisfied that the time element, as such, is such that the one vehicle is the same vehicle referred to throughout the trial.

Mr. Lessard's evidence says that when he entered

1 the vehicle that he was with Lafferty who sat next to him  
2 in the car. He also in his direct evidence indicated that  
3 Lafferty had driven the car at some time throughout the  
4 proceedings, but in cross-examination indicates that between  
5 the time they entered the car and the time of the arrest  
6 by the Police it was only a few minutes and that he was "sort  
7 of guessing" as to whether or not Lafferty had, in fact,  
8 driven the vehicle. Lessard's evidence also indicated that  
9 he had seen Lafferty at a party where the persons were drinking  
10 before the offence occurred. Lafferty indicates that he  
11 stayed in the house during the party and did not see Lessard  
12 until he approached the vehicle in which he found Lessard  
13 sitting with the motor running.

14 The major evidence that has to be determined by  
15 the Court as to whether or not it is sufficient to convict  
16 the accused or whether it is not sufficient is the evidence  
17 given by Lessard which said that Lafferty told Lessard that  
18 the vehicle was his sister's "before we had taken the vehicle."  
19 In his cross-examination he certainly weakened that explana-  
20 tion to some extent, but it seems sufficient to me to cause  
21 me to believe that Lessard's evidence as given in direct  
22 examination and even as weakened in cross-examination still  
23 was such to show that Lessard and Lafferty were together when  
24 the vehicle was stolen. That being confirmed by the fact  
25 that Mr. Romanchuck, the owner of the vehicle, saw the  
26 vehicle just shortly after it was being started and saw two  
27 people in the vehicle when it was pulling away, would make

1 Lafferty's entry of the vehicle so coincidental that I do  
2 not feel that at this time I can accept the explanation by  
3 Lafferty which says that he left the party and came upon  
4 this vehicle after it was started and was sitting waiting  
5 for him to enter it. Therefore, even though there is a direct  
6 conflict, I am today accepting the evidence given by Lessard,  
7 choosing that for its truthfulness over the evidence given  
8 by Mr. Lafferty, partially because there was discussion as  
9 to the ownership of the vehicle being Lafferty's sister's and  
10 partly because both of them acknowledged that they were, in  
11 fact, at the party together previously, even though Lafferty  
12 says he did not see Lessard.

13 The other reason that I am accepting the evidence  
14 of Lessard is that Lafferty's evidence concerning the time  
15 element is such that it is very vague in that he indicated  
16 that he went to the party at nine or ten or eleven o'clock.  
17 With wide variances in his estimates of time I do not feel  
18 that he has satisfied me to the extent that I can accept  
19 his evidence on the time aspect of when he did or did not  
20 leave the party, because the persons who were in the vehicle,  
21 as such, were not arrested until approximately three-forty  
22 in the morning. That gives a discrepancy of somewhere between  
23 two and three and a half hours or more, which has not been  
24 explained and which does not, therefore, put him in a  
25 position where I can feel that his evidence is enough to  
26 cause me to have any doubt that at the time of the theft of  
27 the vehicle the two parties were together.

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Therefore, under Section 21 of the Code I believe they both participated, and participating in the matters they both would, in fact, have been guilty of the same offence. On that basis, I am going to enter a conviction against the accused under Section 295 of the Code.

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Certified a correct transcript,



Jill MacDonald  
Court Reporter