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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

JERRY IRISH

Transcript of the Oral Reasons for Judgment Delivered
by His Honour Judge T. B. Davis, sitting at Aklavik
in the Northwest Territories, on Wednesday, February
1st, A.D., 1984.

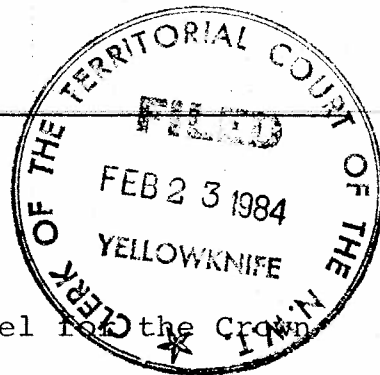
APPEARANCES:

MR. M. ZIGAYER:

Counsel for the Crown

MR. G. CARTER:

Counsel for the Defence





1 THE COURT: Mr. Jerry Irish is charged that he committed
2 an assault upon Beverly Irish, his sister, on the 11th day
3 of June, 1983, and in committing this assault, threatened
4 to use a weapon, in this instance a screw driver, contrary
5 to Section 245.1(1) of the Criminal Code of Canada.

6 It is obvious from the evidence that has been given
7 before this court originally intended to be a preliminary
8 inquiry, but then by consent, transferred to a trial, that
9 in the afternoon on June the 11th, 1983, the accused and
10 his sister were in the house of their parents, and there
11 was some disagreement between them because the accused had
12 been annoyed at a neice that had taken a tape for his
13 recording machine.

14 The alleged victim of the assault then attempted to
15 stop the accused from being concerned about the tape, and
16 she said that she tried to stop him from fighting and
17 making or causing an upset, and that in doing so, while
18 he was still some number of feet away from her, she was
19 of the opinion that he had taken the screw driver in his
20 hand, raised it above his head, and at the time had
21 threatened her to the extent that she became afraid.

22 During this time Clarence Rufus, who also gave
23 evidence at the hearing, was awakened and came into the
24 room to observe that the accused and his sister were having
25 this argument, and he observed also that the accused had
26 taken a screw driver from what I thought he said to be the
27 top of the television set, but it might have been the top of



1 a bookcase, and pulled it up and threatened the sister at
2 the time, but very shortly thereafter, Mr. Rufus was able
3 to immediately take charge of the situation and remove
4 the screw driver from the accused and hold him in a bear
5 hug for a few minutes until the police arrived.

6 Mr. Rufus, in giving evidence, indicated that the
7 accused and his sister were in relatively close proximity,
8 possibly up to three feet, while the sister herself, the
9 alleged victim, thought that at the time of what she
10 classified as the assault, the accused was more than ten
11 feet away.

12 I am satisfied that the accused technically was in a
13 situation where by his voice he threatened his sister, and
14 would have caused an assault under the terms of the Code.

15 My difficulty, though, arises from whether or not the
16 accused should be convicted of the charge and under the
17 section of the Code that is referred to, which says that
18 he carries, uses or threatens to use a weapon or an imitation
19 thereof when committing an assault, or whether it is a
20 person committing an assault which by definition means
21 that he attempts or threatens by an act or a gesture to apply
22 force to another person if that other person believes he
23 has the present ability to effect his purpose.

24 It would seem to me that the victim of the assault
25 giving evidence before the court is the person that should
26 be most strongly listened to in determining when and how
27 far the persons were apart when any threat would have been



1 considered to have been a threat by the alleged victim.
2 It also seems to me that a screw driver or any other item
3 that was not in the form of a weapon that has in itself some
4 ability to be effective at some distance would be nothing
5 more than causing the person to believe that there was
6 ability to carry out the threat that was being made, but
7 in doing so the threat would be such that it was only an
8 assault referred to under Section 245 of the Criminal Code
9 as determined by the definition section.

10 Under the circumstances, I believe that it would be
11 proper for me to enter a conviction for a common assault
12 or what has been in the past referred to as a common
13 assault, now being under Section 245 of the Criminal Code,
14 because I don't think in law that this set of circumstances
15 is such that it would qualify under what was intended by
16 the legislature to apply when Section 245.1(1)(a) is
17 referred to.

18 Under the circumstances then, I will find the accused
19 guilty of an assault contrary to Section 245 of the Criminal
20 Code.

21 MR. ZIGAYER: For clarification, sir, you have therefore
22 found that the accused did commit an assault, but in the
23 commission of that assault he did not threaten to use a
24 weapon?

25 THE COURT: It was not that he uses and threatens to use
26 a weapon. It is that he committed an assault by an act or
27 threatens by an act or gestures to apply force. That is



1 the finding that I am making.

2 MR. ZIGAYER: That is under 244, but under the offence
3 charged, am I correct that you have found that an assault
4 was committed, but that the accused did not threaten to
5 use a weapon in the commission of that assault?

6 THE COURT: Yes, my finding is that he was threatening to
7 apply force by his words and not by the use of a weapon.

8 MR. ZIGAYER: Alright then, is it that the screw driver is
9 not a weapon?

10 THE COURT: The screw driver in this instance would not be
11 classified as a weapon in my finding, that is correct. If
12 you wish, I could in my judgment on that, I could indicate
13 specifically that under the circumstances I am not finding
14 that the use by the accused of holding the screw driver,
15 even in the situation which he held it, was not in my
16 opinion a weapon as required to be such under Section
17 245.1(1). Does that point out your concern about the
18 clarification?

19 MR. ZIGAYER: Yes, sir. I was not in any doubt that you
20 found that there was an assault. It was just what weight
21 you gave or how you construed the possession of that screw
22 driver to be at the essential moment.

23 THE COURT: Yes, that would be the additional paragraph
24 that I would put in. It would clarify it to that extent
25 that I am not in a position to consider it a weapon for that
26 purpose. Is that alright then now?

27 MR. ZIGAYER: Yes, sir.



1 THE COURT: Alright, thank you.

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3 (AT WHICH TIME THE REASONS FOR JUDGMENT WERE CONCLUDED.)

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Certified a correct transcript,

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Laurie Ann Young

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Laurie Ann Young

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Court Reporter

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