IC CR 83 046

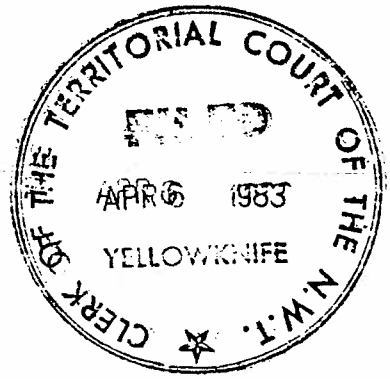
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

HER MAJESTY THE QUEEN

- and -

PETER KEYUAJUK



REASONS FOR JUDGMENT

of

His Honour Judge T.B. Davis

APPEARANCES:

MR. DAVID GATES — Appeared for the Crown

MR. JOSEPH BOVARD — Appeared for the Defence

Delivered at Yellowknife, N.W.T. - April 6, 1983

Peter Keyuajuk is charged that:

1. On or about the twenty-seventh day of November, A.D. 1982 at or near Pangnirtung in the Northwest Territories, did resist Constable Gilford John DARES, a peace officer to wit: a member of the Royal Canadian Mounted Police engaged in the execution of his duty of effecting the arrest of the said Peter KEYUAJUK by pushing and fighting contrary to Section 118(a) of the Criminal Code of Canada;

2. On or about the twenty-seventh day of November, A.D. 1982 at or near Pangnirtung in the Northwest Territories did, while bound by a probation order made by Chief Judge J.R. SLAVEN sitting in the Territorial Court of the Northwest Territories on the twenty-first day of January, A.D. 1982, wilfully fail to comply with such order, to wit: keep peace and be of good behaviour contrary to Section 666(1) of the Criminal Code of Canada.

The accused, Peter Keyuajuk, entered an agreed "Statement of Facts' through his Counsel, which in essence are sufficient to support a finding of Guilt if the legal argument as presented to the Court does not allow a dismissal to the charge.

The facts as admitted are that on November 27, 1982, the accused, who was in a drunken state in a coffee shop at Pangnirtung, N.W.T., resisted his arrest by two police officers outside the shop after he was informed that he was under arrest for being drunk. The accused forcefully resisted arrest, and

.../3

while shouting and arguing, tried to hit a police constable and tried to run away. With force he was handcuffed, but continued to resist by struggling and pushing a constable to the ground before being forcefully locked in a cell.

Defence Counsel moved for dismissal on the grounds that the police constables did not have the power to arrest the accused for being drunk under the Liquor Ordinance of the Northwest Territories, and were therefore not lawfully engaged in the execution of their duty by effecting the arrest of the accused.

The sections of the N.W.T. Liquor Ordinance read as follows:

> 79. (1) No person shall be in an intoxicated condition in a public place.
>
> (2) No prosecution in respect of an offence under subsection (1) shall be instituted except with the approval of the Commissioner. 1970(2nd), c.12,s.77.
>
> 80. (1) Where a peace officer finds a person who in the opinion of the peace officer is in an intoxicated condition in a public place, he shall, in lieu of charging such person under subsection 79(1), apprehend the person and deal with him in accordance with this section.
>
> (2) A person apprehended pursuant to this section shall not be held in custody for more than twenty-four hours after being apprehended.

(3) A person apprehended pursuant to this section shall be released from custody at any time, if in the opinion of the person responsible for his custody

(a) the person in custody has recovered sufficient capacity that, if released, he is unlikely to cause injury to himself or be a danger, nuisance or disturbance to others; or

(b) a person capable of doing so undertakes to take care of the person in custody upon his release. 1970(2nd), c.12,s.78.

105. Any peace officer may arrest without a warrant a person whom he finds committing an offence against this Ordinance or the regulations. 1970(2nd),c.12.s.101.

Defence Counsel argues that arrest is not mandatory under Section 105. The Ordinance specifies by Section 80(1) that a person who is intoxicated shall be apprehended, but does not state arrested, with the right to be released within 24 hours, and free from prosecution except with the approval of the Commissioner.

Defence indicates that "arrest" is a specific technical term with a particular connotation relating to criminal activity. The Liquor Ordinance specifically avoided the term arrest in relation to a person's state of intoxication by substituting the less technical word "apprehend".

Both Defence and Crown Counsel agree that Section 80 is a somewhat extraordinary section, but both take opposite views as to its proper legal interpretation and applicability. The section follows the Alberta statute whereby an intoxicated person can be picked up by the police and subsequently released without any further legal process or consequences.

Chief Judge Slaven in *R. vs Leslie John Rocher*, case # 320 in 1978 found that an assault had taken place on a police officer during an arrest for being intoxicated. His Honour found the accused was not intoxicated and, therefore, the constable who was assaulted was not engaged in the lawful execution of his duty since there was no duty to deal with the accused if he were not intoxicated. The accused was therefore acquitted on the charge of resisting a peace officer in the execution of his duty.

Chief Judge Slaven referred to and followed the requirement stated in *R. vs Tisdale*, 1971, 13, C.R.N.S. 120 that a police officer must determine on reasonable grounds that a person is intoxicated before he is acting in his course of duty in arresting that person. The police officer must form the opinion that a person is intoxicated on proper principles, based on sufficient materials or observations which could be justified by appropriate explanation and reasons, before the officer is to take the person into custody under the Alberta Liquor Control Act.

.../6

In both these cases the person who was taken into custody, or arrested as referred to by Chief Judge Slaven, was not intoxicated at the time of apprehension.

In *Moore vs The Queen*, 1979, 43 C.C.C. (2d) 83, the Supreme Court of Canada found that a person who, although not in violation of the provincial Motor Vehicle Act, being the expected offence for which he was apprehended, was guilty of obstructing the police officer when he refused to identify himself at the request of the police officer since the officer was entitled to arrest the accused if the arrest on a summary conviction offence was necessary to establish the identity of the person committing the offence.

The Supreme Court of Canada also held in *Regina vs Biron*, 1975, 23 C.C.C. (2d) 513, that even when a person is acquitted on an original charge, the subsequent charge of resisting arrest on that original charge will stand if the arrest was justified and, therefore, done in the execution of the police officer's duty.

The Nova Scotia Court of Appeal, having taken into account the *Biron* case, found that a subsequent charge of resisting arrest would not stand if the accused had been dismissed on the original charge because the accused was in a private dwelling when charged with disturbance in a public place.

.../7

Since the police officer did not find the accused committing the summary conviction offence contrary to the Criminal Code, then the arrest was unlawful and the officer could not then be said to be engaged in the execution of his duty.

The matter before the Court is to determine whether or not the arrest of the intoxicated (or drunken) accused was lawfully done in the execution of the police officer's duties under the Liquor Ordinance, being Chapter L-7 for the Northwest Territories.

In *Rex vs Commercial Brokerage Co.*, 1922, Vol. 38 C.C.C., p 378, Walsh, J. of the Alberta Supreme Court, reviewed the effect and meaning of the words apprehend and arrest as they are used in the Alberta Liquor Act. Walsh, J. gives to the word apprehend a broad interpretation as noted in various dictionaries and includes the arrest, capture, seizure, or taking hold of and detaining a person. His Lordship notes that a police officer does not apprehend a person if he turns away from him without putting him under arrest.

Having reviewed the cases and the applicable sections of the Liquor Ordinance, I am of the opinion that the legislature intentionally used the word "apprehend" in the sections of the Ordinance relating to the taking into custody of persons in

.../8

public places who are in an intoxicated condition so as to indicate that usual criminal or quasi-criminal proceedings or connotations are not to be associated with this offence under Section 79(1).

Any interpretation of the authority to apprehend as granted by Section 80 which would not include the right to arrest, take into custody, detain, capture, take and hold or obtain the surrender of a person would have an adverse effect on the obvious intention of the section and would render the section virtually inoperative.

There is no policy expressed in the relative sections of the Act which are adverse to society generally or are a confront to the administration of justice although they do allow a temporary arrest and detention of a person who is at the time of apprehension unable to properly care for and provide for his own well being and safety.

The accused before the Court was in an intoxicated condition and was subject to apprehension, including his forced and physically dominated arrest, pursuant to the Liquor Ordinance. His refusal and resistance to the arrest is therefore a violation of Section 118 C.C. to which a conviction shall be entered.

Thomas B. Davis
Judge