

LC CR 15 008
~~TC 00152~~

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN; upon the information
of D.I. Gallant, a Peace Officer, sworn the
15th day of March, 1978 at Fort Simpson, N.W.T.

- and -

ALLAN PAUL ANDERSON

Trial held at Fort Simpson, Northwest Territories, June 28th,
1978.

Reasons for Judgment of:

His Honor Judge R.W. Halifax

Counsel on the Hearing:

Mr. R.S. Kimmerly, for the Crown

Mr. E. Brogden, for the Accused

REASONS FOR JUDGMENT OF HIS HONOUR JUDGE R.W. HALIFAX

This matter came on for trial before me at Fort Simpson, Northwest Territories on June 28th, 1978, on a charge that:

"Allan Paul Anderson on or about the 28th day of May, A.D. 1978 at or near Fort Simpson in the North West Territories DID WILFULLY RESIST Constable Craig KRETZ, A Peace Officer, of the Royal Canadian Mounted Police of Fort Simpson in the North West Territories engaged in the lawful execution of his duty to wit, the lawful arrest of Allan Paul ANDERSON, Contrary to Section 118(a) of the Criminal Code of Canada.

Generally, the circumstances out of which this charge arose are that the Royal Canadian Mounted Police were carrying out drug searches at various places in Fort Simpson on May 28th, 1978. A vehicle owned by the accused's father stopped near a residence that was just searched. The vehicle contained the accused and two other persons, the accused being a passenger. The Royal Canadian Mounted Police approached the vehicle, searched the accused and one other person and then searched the vehicle. Constable Sims found several small pieces wrapped in tin foil in the glove compartment of the vehicle. The tin foil was given to Constable Kretz and he believed the substance contained therein to be "hashish". The accused advised Constable Kretz that the vehicle was his father's and that he was in possession of it for the night. The accused was then advised he was under arrest for possession of a narcotic. The accused denied knowledge of the substance and was advised a second time he was under arrest and was asked to get into the police vehicle. The accused was unwilling to do so and was

eventually forcibly placed in the police vehicle, during which Constable Kretz had the fingernail of the right hand ring finger pulled out. There is no doubt the accused would not get into the police vehicle voluntarily and resisted the forcible attempt made to place him in the vehicle and attempted to get away. Thereafter the accused, in an excited state was taken to the Royal Canadian Mounted Police Detachment at Fort Simpson and placed in the lock-up over night.

At trial, defence counsel raised the issue that the arrest in this case was unlawful pursuant to the provisions of section 450 of the Criminal Code.

Section 450 states:

(1) A peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence,
- (b) a person whom he finds committing a criminal offence, or
- (c) a person for whose arrest he has reasonable and probable grounds to believe that a warrant is in force within the territorial jurisdiction in which the person is found.

(2) A peace officer shall not arrest a person without warrant for

- (a) an indictable offence mentioned in section 483,
- (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
- (c) an offence punishable on summary conviction,

in any case where

- (d) he has reasonable and probable grounds to believe that the public interest, having regard to all

the circumstances including the need to
(i) establish the identity of the person,
(ii) secure or preserve evidence of or
relating to the offence, or
(iii) prevent the continuation or repetition
of the offence or the commission of another
offence,

may be satisfied without so arresting the
person, and

(e) he has no reasonable grounds to believe that,
if he does not so arrest the person, the person
will fail to attend court in order to be
dealt with according to law.

(3) Notwithstanding subsection (2), a peace officer
acting under subsection (1) is deemed to be acting
lawfully and in the execution of his duty for the
purposes of

(a) any proceedings under this or any other Act of
Parliament, and

(b) any other proceedings, unless in any such
proceedings it is alleged and established by
the person making the allegation that the peace
officer did not comply with the requirements of
subsection (2). R.S.C. 1970, c.2 (2nd Supp.),
s.5.

The offence for which the accused was being arrested
is one under section 3 of the Narcotic Control Act which is
one of those offences which may be punishable on summary
conviction or prosecuted by indictment and therefore an
offence within s. 450(2)(b). Being an offence within s. 450(2)
the issue was raised by the defence that the arrest of the
accused was unlawful as it was without warrant and therefore
the peace officer was not acting lawfully and in the execution
of his duty.

I have had the assistance of written argument provided
by both counsel, as well as reviewing the cases cited therein.

It is my opinion that the effect of s. 450(3) must be con-
sidered and that subsection's effect on subsection 2. In this

case Constable Kretz found what he believed to be a narcotic in a vehicle under the control of the accused and in which the accused was a passenger, and believed the accused to be committing an offence under section 3 of the Narcotic Control Act at that time. Section 450(1) provides for situations where a peace officer may arrest without warrant, paragraph (b) being:

"a person whom he finds committing a criminal offence."

It is my opinion that Constable Kretz at the time of the arrest believed the accused to be committing the offence under section 3 of the Narcotic Control Act as he found the accused committing the offence, and it was therefore a lawful arrest.

The only relevant provision of subsection 2 is paragraph (b) as there are no grounds in this case to bring paragraphs (d) and (e) into effect.

If subsection 2 means that an arrest made contrary thereto is unlawful then the accused must be found not guilty regardless of the provisions of subsection 1. I must concur with the decisions of R. v ADAMS 1972 21 C.R.N.S. 257 and R. v McKIBBON 1973 12 C.C.C. (2d) 66. It is my opinion that subsection 3 specifically applies to an arrest made under subsection 1, notwithstanding subsection 2. I am satisfied that the arrest in this case was made under section 450(1)(b) and therefore by virtue of subsection 3, the peace officer is deemed to be acting lawfully and in the execution of his duty.

On the evidence before me I am satisfied that there was a resisting by the accused to the lawful arrest made by Constable Kretz, a peace officer.

I therefore find the accused, Allan Paul ANDERSON, guilty of the offence charged.

R.W. Halifax, J.T.C.