IC CR 98 054

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

RAYMOND RABESCA

Transcript of the Reasons for Judgement and Reasons for Sentence delivered by The Honourable B. A. Bruser, sitting in Wha Ti, in the Northwest Territories, on the 17th day of April, A.D. 1998.

APPEARANCES:

MR. S. COUPER: On behalf of the Crown

MR. L. STANG: On behalf of the Defence

Charge under ss. 270(1)(a) C.C. and 264.1(1)(a) C.C.

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THE COURT: We have everyone in place. It is now 5:30 p.m. It has been a long day in a confining place. The room we are in is small and it has been packed to capacity with standing room only throughout the afternoon. It is hot in here. The air is not particularly fresh. The accused is in custody. In my view, it is better to push it a little longer even though those of us who are free may have to bear with me while I take a while to deliver the judgment. Better to do this than to keep the accused in custody longer awaiting the judgment to be given at some date that I cannot even determine right now with a measure of certainty.

I have had the opportunity, as I said in the absence of the accused a few minutes ago, to assess and to weigh the evidence in more depth than I could have done during the trial. As I said earlier, the evidence cannot be adequately assessed and weighed until it is all in and until the lawyers have made their final arguments.

Because of the physical difficulties in sitting this late and the circumstances which I have outlined, I reserve a right to give a measure of reasonable editing to the judgment if a transcript is prepared for whatever purpose at a later date.

The charges before the Court are that the accused Raymond Rabesca, on or about March 5th, 1998, at

Wha Ti, assaulted Constable Hendriks who is a peace officer and who was, at the material time, engaged in the execution of his duty. The second and remaining charge is that the accused on the same date, again in Wha Ti, knowingly uttered a threat to the same officer to kill him and his family.

The Crown elected to go summarily on both matters, to which the accused pled not guilty. The significance in proceeding summarily is mainly two-fold: First, in proceeding that way the Crown has prevented, and properly so as the Crown is entitled to do, the accused from choosing where he wished to be tried. The second significance in proceeding summarily is that if there are convictions, the penalty available to the Court is less than had the Crown proceeded by indictment. This is what is meant by proceeding summarily. There are other niceties that involve the two ways of proceeding which are not particularly significant for my purposes today.

In determining whether the prosecution has proven its case beyond a reasonable doubt, on Count 1 there are two sections of the Criminal Code of Canada that are particularly important. These have been referred to by both lawyers in their able submissions. Counsel have presented their respective interests thoroughly, fairly, and at times I might add, in a dogged but reasonable way.

One of the sections is Section 29. Section 29 is loosely called the duty of a person arresting another. Subsection (2) is significant for the purposes of Count 1. It provides that it is the duty of every one who arrests a person without a warrant to give notice to that person where it is feasible to do so of the reason for the arrest. There are other parts to subsection (2) which are not important for this case. If it is not feasible to give notice to the person of the reason for the arrest, the person making the arrest does not have to do so.

Section 29 covers everyone, both peace officers and people who are not peace officers. An illustration of where it may not be feasible to give notice of the reason would be if a peace officer attended upon a scene, was immediately attacked and had to react accordingly. It could not be reasonably expected that the officer would, in this example, be required in law to explain why the arrest was being made. That would have to come afterward. There could be many other illustrations of where it may not be feasible to do so. I give this one only.

The other section that is of consequence for Count 1, the assault of a peace officer, is Section 495. It provides that:

> A peace officer may arrest without a warrant
> (a) a person who has committed an indictable offence or who, on

reasonable grounds, he believes has committed or is about to commit an indictable offence.
(b) a person whom he finds committing a criminal offence; or...

Paragraph (c) is not of significance.

Subsection (2) sets out certain requirements. However, if those requirements are not met to the letter of the law, subsection (3) provides that in spite of what subsection (2) requires, a peace officer acting under subsection (1), which I have just gone over in some detail, is deemed to be acting lawfully and in the execution of his duty for the purposes of any proceedings under the Criminal Code of Canada. I have paraphrased the last part of this remark.

I return to subsection (2), paragraph (a). A peace officer cannot arrest a person without a warrant for an indictable offence mentioned in Section 553. That has to do with the indictable offences that fall within the exclusive authority of this Court and for which the accused might not have an election. Mischief is included in that category. Mischief is the offence that Constable Hendriks says he arrested the accused for. The particular mischief in question was interfering with the lawful use or enjoyment of property, although the officer used the words in evidence, "precluding the lawful use", et cetera, of property.

Paragraph (b) of subsection (2) provides that the officer cannot arrest without warrant for what is called a hybrid offence, that is an offence for which the person may be prosecuted by indictment or on summary conviction. Again, mischief is in that category. But if the Crown elected to go by indictment, then paragraph (a) would also apply because it is an absolute jurisdiction offence.

Finally, if an offence is a straight summary conviction offence, an officer cannot arrest without warrant.

An officer can arrest for an offence in any of the above categories if it is necessary to do so to establish the identity of a person, which clearly is not the case here; to secure or preserve evidence, which is clearly not the case here; or to prevent the continuation or repetition of the offence or the commission of another offence.

Paragraph (e) is linked to paragraph (d). Paragraph (e) applies where the officer has no reasonable grounds to believe that if he does not so arrest the accused, the accused will fail to attend court. That paragraph is not applicable because we're not dealing with a failure to attend court in the mind of the officer.

So there you have it. Those are the two important provisions that the lawyers have argued and which I

have given my consideration to.

Another provision of the Criminal Code that is relevant, apart from the mischief one which I have touched upon, is Section 30. It provides that every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal of it, and a person acting under Section 30 has the authority, by reason of Section 30, to detain such an individual for the purpose of giving him into the custody of a peace officer. In doing so, no more force than is necessary can be used.

The police have certain powers at common-law which I will now address.

I gave both lawyers an opportunity to read my computer annotation based on my understanding of an Ontario Court of Appeal judgment of R. v. Godoy (1997), 115 C.C.C. (3d) 272. The facts in that case are, in some ways, similar to what I am dealing with. As I go through Godoy, I will be making some remarks to incorporate the present case into the principles set out in Godoy, which I find to be sound law.

In that case, the police answered a disconnected 911 call and entered the home of the accused against his wishes. There is no ability on the part of people in Wha Ti or elsewhere in the Northwest Territories to dial 911. People dial the number of the local detachment and, if it is an emergency, they hope that a

person will answer and that they will not get a tape recording or be forwarded on to Yellowknife.

In this case, Constable Hendriks answered a complaint to attend at the accused's home. The call came from a lawful occupant of the home, an 18-year-old, who's the sister of the accused. Constable Hendriks entered the home after knocking and immediately the accused told him to leave in no uncertain terms. In this way, the opening facts of what I am dealing with are similar, but not identical, to that in Godoy. There really though is no major distinction between what the officer in Godoy was facing and what Constable Hendriks was facing. I will say more about what Constable Hendriks was responding to in a few moments.

The Court in Godoy held that the police have a power at commonlaw to enter a private home in response to a disconnected 911 call. The Court of Appeal found that when the police entered the home of the accused to investigate a disconnected call, they were acting in the course of their duty - and herein lies the significance of the principle to what I am dealing with - in the course of their duty to protect life, which obviously includes preventing death and serious injury. The Court of Appeal found that the police had a reasonable belief that someone inside the home was in serious distress and that his or her life or safety

might be in danger. In my view, it is not necessary when the police are responding to an emergency call and feel that they have to immediately enter a home for them to believe that someone's life is at imminent risk.

The Court of Appeal chose the language of "life" or "safety". There is evidence in this case from Constable Hendriks and from Darla Rabesca, the accused's sister, that the accused was behaving in a violent way or about to do so.

The Court of Appeal in Godoy went on to hold that entry in that case was necessary to determine the cause of the distress and to give aid, if necessary. The Court was identifying a two-fold interest that the police had a legitimate right to investigate: First, to investigate the cause of the distress; and, second, to give aid, if necessary.

Constable Hendriks was called out to the home. He was called out in response to a complaint which included alleged behaviour by the accused of violence towards someone else in that home. It would not have been reasonable for the officer to hang about in the yard or on an outside deck. While one might say that he ought to have knocked and called out "Police", even if he had done so in the circumstances that he was responding to, which I find to have been proven by the Crown, the presence or absence of the word "Police" is

immaterial. The officer had to get into the home in a hurry. He knocked and he entered. It must be remembered at all times that it was an occupant of the home who had placed the call telling the officer to get over there.

Godoy further sets out the principle that in determining if the exercise of police powers was justifiable, the Court must look at the totality of the circumstances surrounding the exercise of the power. I have already indicated that I have done this in the context of why it is that the officer went over to the home. I will flush that out in more depth shortly.

It is of interest to note that in Godoy the Court remarked that the officers only walked in the door. That's all Constable Hendriks did, he only walked in the door. In Godoy, it was found as a fact that before entry was made an officer in police uniform announced his intention to enter. Constable Hendriks was dressed in, for the most part, police uniform. He had the basics - the coat identifying him as a peace officer, I infer, and the shirt. He had jeans on. The accused knew him. The accused knew him to be a peace officer. There could be no doubt that the accused knew who he was and the officer did knock before entering.

Godoy, finally, sets out the principle that there is a compelling public interest in the police responding promptly and effectively to emergency

calls. It would be doing a disservice to the public for a court to hold otherwise. The police, as everyone recognizes, are present to serve and to protect. In this case, Constable Hendriks served and he was trying to protect.

I turn my attention now to the evidence in more detail. I have reviewed all of it. I shall not review all of it in these oral reasons. I intend to highlight the significant portions of the evidence as it applies to the law, and once I have linked my findings of fact to the law, I will pronounce judgment.

As I said earlier, I have weighed and assessed the evidence. Credibility is an issue here. It has been raised by the defence repeatedly through cross-examination and defence evidence and in argument.

The way to assess credibility has been set out by the Supreme Court of Canada in a case called D.W. The principles are, if I believe the accused, he would have to be found not guilty. This applies in particular to Count number 2 but is a principle to be taken into account in Count number 1. One count is not more important than the other, but there are issues which are at least equally important to both counts. They have to do with those sections of the Criminal Code that I have already gone over. If I do not believe the accused but if his evidence leaves me with a reasonable

doubt, I would have to find him not guilty. If I do not believe the accused and if his evidence does not raise a reasonable doubt, I still have to consider all of the evidence in the trial to determine if the Crown has proven its case beyond a reasonable doubt, which is the test that it has to meet. There is no onus on the accused to prove anything on Count 1 or on Count 2, but credibility has been raised and it is an issue which I have addressed my mind to with the Supreme Court of Canada principles very much in mind.

Constable Hendriks arrived in Wha Ti in August of 1997. He has known the accused since October of 1997. This places his knowledge of the accused to about five months before March 5th, 1998. He knows where the accused lives. He knows who lives in that home. This is the home I find that the Constable attended to in response to the complaint. He had been asked by the accused's mother, who was out of Wha Ti, to keep an eye on the home. He had received similar requests to keep an eye on the home in the past when the accused had been drinking. The officer agreed to do so.

On the evening of March 4th, 1998, Constable Hendriks received a message from his wife to keep an eye on the home. He then spoke to the accused's sister Darla. She was concerned that the accused was out and might be drinking. Constable Hendriks advised her to lock the door and to call him if there was a problem.

This is important because it sets the scene in the mind of the officer who had to have reasonable and probable grounds if he was going to effect an arrest of the accused in the home.

At about midnight, Darla called to say she had information that the accused had been drinking. This is not evidence that counts against the accused in any way; it is evidence simply that goes to the state of mind of Constable Hendriks and nothing more. At 5:25 a.m., Darla called to say the accused was there. She asked Constable Hendriks to come over. She said the accused was drunk, swearing, and that he was being violent. She was whispering. Surely, it is reasonable for the officer hearing a whispered voice to conclude that there were problems over at that home and that he had best get over there as quickly as possible. Darla did not say: "Get over as quickly as possible", but when one looks at all the circumstances up to that point, including the whispering and what was said, the officer knew, as any reasonable peace officer would, that he had best get over there and investigate. So he did exactly that. He knocked on the door, opened it and stepped into the hallway. He was confronted by the accused. The accused was swearing. It is noteworthy that the officer had received a complaint which included an allegation of the accused swearing and that Constable Hendriks attended at the home to find him

doing so.

Upon entering the home, Constable Hendriks confirmed with the accused's 23-year-old brother Curtis that he wanted the accused out of the home. Darla was not in that particular area of the home. If the officer was going to remove the accused from the home, it was very wise of him to speak to another occupant of the home, someone who was not drunk and swearing, and ask if that occupant (in this case the accused's brother) wanted the accused removed. What else could the officer do? I don't think he could have done anything more at that time. Perhaps he could have grabbed the accused and started taking him out of the home without asking, but in my view it was incumbent upon him to make a further inquiry which he did before taking any further action.

The accused was verbally abusive and in a highly intoxicated state. Constable Hendriks knows the accused when sober and when intoxicated. The accused was, I find as a fact, intoxicated and heavily so, but not to the point where he did not know what he was saying or who the officer was or what Constable Hendriks was saying.

Constable Hendriks, in my view, took a reasonable approach, which is one I see time and again used by peace officers throughout the Northwest Territories. He tried to coax the accused into coming with him in a

peaceful manner. The significance of this is that if the police behave like bulls they can expect to be met head-on in many cases by another bull and the head-butting will begin. The officer behaved more like a lamb. He tried to be peaceful. '

The incident got worse, unfortunately, from that point on, but not, I find, through any fault of the officer. It got worse because things were happening quickly. The officer faced a volatile accused who was noted to make a movement toward Curtis. At that point the officer had two choices. He had to make up his mind instantly. Should he let the accused go to and perhaps assault Curtis, who had said a moment before that the officer could remove the accused, or should he intervene? He chose the course that he was sworn to uphold - he intervened. Nothing less could be done. Had he not intervened, he would not have been fulfilling his duty; the duty being to keep the peace and, in this case, to prevent an assault on Curtis by the accused. It is then that the fight between the officer and the accused began.

Constable Hendriks might have used more force, but he was under a duty to use reasonable force consistent with the circumstances he was then facing. What he did was, I find, to hold the accused for a few seconds, four seconds at the most, against the wall and then he released him. He gave him another opportunity to come

along peacefully. The accused, however, came at him, requiring the officer to take more rigorous action which resulted in the accused being pinned to the floor. There really is no dispute in the evidence that the events at that particular time happened in that way and that Curtis helped to drag the accused out of the home. Curtis said he did so to allow the accused to get some fresh air. This placed the accused and Constable Hendriks, who was alone, on the deck or porch area. Constable Hendriks tried to talk to the accused again. The accused asked the officer why he was doing this. The officer responded that he would have to go with him and sleep it off. The accused grabbed some deck railing, described by Darla as being a fence. The officer, in trying to effect the arrest, tried to pry the accused's hand off the railing. That's when the accused swung at the officer, according to the Constable Hendriks. The officer says that he reacted instantly by punching the accused in the face. The accused went down to the deck floor with a nosebleed.

Constable Hendriks said that he arrested the accused for "precluding the lawful use and enjoyment of property." He said that he had to arrest the accused as the accused obviously was not wanted by the people in the home. This much, I find, was a fact. The accused's sister and his brother apparently did not want him in the home. It matters little whether or not

Curtis believed that charges would or would not be laid; that is beside the point. Curtis wanted him out of the home, as did Darla, by making the earlier call.

The accused was taken to the detachment. In cross-examination, the officer was questioned in more depth about the grounds for the arrest. He testified that the accused was drunk, was swearing and was being violent in the home. Defence counsel takes exception to this. The defence argues that it is not lawful to arrest someone where a peace officer attends at a home, knocks, enters, and is told by the occupant, who may be drunk and who may be swearing and loud, to leave. I agree. That alone would not amount to reasonable and probable grounds to effect an arrest of an occupant in a home. But, as was said in the Godoy judgment, there is more for the Court to consider. I have to consider all the facts up to the point of the arrest, including the telephone call. In my view, Constable Hendriks had more than the threshold reasonable and probable grounds to effect an arrest of the accused in the home.

In cross-examination, Constable Hendriks was pressed as to the arrest even further, to which he responded that he asked Curtis if he wanted the accused out and Curtis gave an affirmative response. Constable Hendriks was consistent in his testimony about why he removed the accused, about why he attended there, and his evidence is supported in part by that of Curtis,

one of the occupants of the home and someone who is close to the accused. I have no reason to disbelief Constable Hendriks. I accept his evidence as to why he made the arrest. I find, as I said a moment ago, that he had the necessary grounds.

Now, what about the arrest itself? When was it made and what was said?

Constable Hendriks said that he made the arrest for precluding the lawful enjoyment of property, or as he said I believe in chief, "use and enjoyment of property". The fact that the word "precluding" is not in the Criminal Code of Canada is not material for the purposes of determining whether or not the arrest was lawful. What the officer communicated to the accused is what is significant. What he communicated is that the accused was interfering with the lawful use and/or enjoyment of property. That's a crime under the Criminal Code of Canada. We're not here to determine whether or not there are more synonyms of preclude which are consistent with the Criminal Code of Canada than are inconsistent with it. This is not an English class; it is not a grammar class. It is an exercise in determining the realities of life consistent with the law.

I continue with the cross-examination responses by Constable Hendriks.

He told the accused why he was being arrested. (I

find that the words did at least meet the threshold of being reasons for the arrest). The Constable testified that the accused was obviously intoxicated, aggressive, and there was a need to remove him in the interest of the safety of the others, and also because the parents were out of town and they had told him that they were concerned. Could the officer have done anything else? Could he have walked away and said: "All right, be good, I have had a complaint to come to the home, I have had a complaint of swearing, of violence, I have witnessed with my own eyes swearing, I have witnessed violence, but I am going to leave because you do not want me here?" No. One could think of how terribly upset reasonable members of the public would be if, after the officer had left, the accused had continued to be violent and verbally abusive to people. What if he beat someone up? I could see all sorts of fingers being pointed at the police for not fulfilling their duty, and in my view the officer had a duty which he adequately fulfilled. He did what had to be done; he got an abusive drunk out of the home.

The evidence of Darla Rabesca supports the evidence of Constable Hendriks. She testified that the accused was in the home swearing but she tried to ignore it. She tried to go back to bed hoping the accused would go to sleep. She said in her words, "I let it be." Then she says it got worse, which is my

interpretation of her testimony because she testified that the accused was then picking on Curtis. He was picking on Curtis, as she heard it, to have a fight with him. She heard a commotion by or at Curtis' room. She heard Curtis trying to calm the accused down. She thought the accused was going to fight, so she went down to the living room and that's when she called the RCMP.

I find Darla Rabesca to be a highly credible witness. She has come to court and given this damning evidence against her own brother with whom she lives. I assessed her demeanour when she testified. I am completely satisfied that she was telling nothing but the truth, and I am totally satisfied that she made no effort to exaggerate or to invent evidence where she may not have been clear about anything.

She testified that she told Constable Hendriks that the accused was drinking in the home and that he might have a fight with Curtis and to come over to talk to the accused. This is the call that the officer responded to and it was only when in the home that he made the check with Curtis to find out if he wanted the accused removed. Curtis did want the accused to leave.

The officer did, however, try to talk to the accused, as I have already remarked upon, but it didn't work. Again I say what else could the officer have

done but to effect an arrest and remove the accused?

I find as a fact that the officer did communicate words of arrest to the accused which the accused, either through his intoxication cannot remember or through some other reason is unprepared to acknowledge.

The evidence of Curtis Rabesca is not persuasive in some regards. A trier of fact, in this case myself, is entitled to accept all of the evidence of a witness, reject it all, or accept some but reject other parts of it. I do not believe for one moment on the totality of the evidence Curtis' testimony that the accused, when the officer attended, was simply trying to go to sleep or about to get ready for bed. I do not believe for a moment that before the officer came the accused "was just talking."

Where there is a conflict between the evidence of Darla Rabesca and that of Curtis Rabesca, I far prefer the evidence of Darla. It has the ring of truth to it.

Curtis Rabesca would have the Court believe that everything was okay until the police came. If everything was okay, why did Darla phone the police? It's beyond any doubt whatsoever that she did call the police. Why else would the officer go there? Why would she call? If she was trying to go to sleep thinking that the accused would calm down but was

compelled to go to the living room to phone, it's because things were not okay in the home. I find that Curtis Rabesca was not being truthful with this Court.

The accused gave evidence. I find that where there is conflict between his testimony and that of other witnesses, that the accused was either intentionally making evidence up or he has an imperfect memory of what occurred due to his state of intoxication during the night in question. I will now explain why I say this.

During the first part of his evidence, the accused said that he did not think he said anything to the police officer upon arriving at the detachment. He said that when he sobered up he told the officer that when he got out he would tell the Chief and the Band what the officer had done to him. But the evidence is overwhelming that when the accused sobered up he was anything but aggressive in any way. He was meek, he was apologetic and he was crying.

I accept the evidence of the two guards about the threatening behaviour of the accused during the early stage at the detachment in the case of the one guard and later in the case of the other. I believe that later in the day when the accused made a threatening remark, the Constable simply was out of earshot, but the remark was heard by the matron.

The evidence of the accused that he was behaving

in a courageous and lawfully threatening way by telling the officer what he would do when he got out flies in the face of more plausible, more acceptable testimony about how meek, mild, apologetic and weepy he was.

The accused testified that he did not make any threats. In cross-examination, he testified that he did not think he had been swearing at Curtis before the officer arrived at the home other than perhaps calling him an "asshole". Darla Rabesca would not have called the police to attend and reported that the accused was being violent because the accused called the brother an "asshole". That's exactly the sort of thing that Darla was trying to ignore but it didn't go away; it got worse. I also detected a measure of evasiveness in the accused's demeanour and manner of answering questions.

Furthermore, what Constable Hendriks saw (I touched on this earlier) regarding the accused starting to go after Curtis, is perfectly consistent with Darla's complaint about the accused trying to pick a fight with Curtis before the officer arrived. It all fits together. It fits together in the Crown's lap, not in the defence lap.

The accused complains that inside the cell area Constable Hendriks punched him for no apparent reason. That testimony I do not accept. I do not accept it because I do not believe very much at all of what the

accused testified about. I find he has come to this courtroom making up a great big story to gain affection, attention, and sympathy.

There is also the accused's testimony that he was not brought before a J.P. I do not believe this. The accused was caught, in my view, in a lie in this courtroom. The Information is endorsed by Justice of the Peace Coey to the effect that on March 5th, 1998, the charges were read. I pointed that out to counsel. I pointed that out after the accused had denied being brought before to a J.P. I pointed it out obviously then because I didn't know the accused would say that. After he said that, I thought it might be significant. I wanted the accused to have another opportunity to reconsider that piece of his evidence. I do not believe that Justice of the Peace Coey would falsify an Information that she had read the charges if in fact she had not done so. This accused, from start to finish and throughout the middle, has come before this Court with a string of false accusations which I totally reject. In my view, the Crown might be on solid footing in considering a perjury investigation against the accused, but I leave that to the Crown. I need not comment further.

I find the accused guilty of both offences. I find that he made the threats. I find that he assaulted the officer. I find the officer was lawfully

engaged in the execution of his duty. His duty was to attend at the home, prevent the accused from going after Curtis and to get the accused out of that home because of the violent and abusive manner in which he was behaving. For these reasons, Sir, I find you guilty of both charges.

Is the defence ready to proceed to sentencing?

MR. STANG: Sir, I had hoped to have an opportunity to speak with Mr. Rabesca for at least a few minutes before proceeding to sentencing. I wasn't sure whether Your Honour wanted to complete that tonight or not.

THE COURT: It is late. I could complete it now or in Yellowknife in May. I think it best to complete it tonight, don't you?

MR. STANG: We certainly can, Sir. I would just ask for a ten minute adjournment.

THE COURT: Yes.

(ADJOURNMENT)

THE COURT: Go ahead.

(SUBMISSIONS ON SENTENCE BY MR. COUPER)

(SUBMISSIONS ON SENTENCE BY MR. STANG)

THE COURT: I won't go over the facts again; I did so in some detail during the judgment I gave earlier. I thank the accused's father for what he had to say. Because of what he had to say, I am not going to make a firearm prohibition order. I am also led to

this conclusion by what the accused had to say a moment ago and by what his lawyer had to say. The accused has a traditional lifestyle even though he does have some other employment sporadically. To make a firearm prohibition order for someone who has never been convicted of a firearm-related offence would, in these circumstances, be harsh, unnecessary and undesirable. I have dealt with this issue first because if I had made a firearm prohibition order it would have been a significant part of the punishment, in which case the sentence of imprisonment would have been much less than what I'm about to impose on the accused.

What should the period of imprisonment be? There has to be imprisonment; nothing less will do. Nothing less will get a message across to this accused who is now convicted for the fourth and fifth times for crimes against the police. Nothing less will do if the public generally is to be discouraged from this sort of unacceptable behaviour toward the police. Nothing less will do to reflect in a proper way the disapproval of the public, and by the public I do not mean only people here in Wha Ti, I mean the public generally. Crimes against the police are far too common. They are more common in some communities than in others. I do not have any statistics before me filed by the Crown or by the defence as to how common this crime is here. In the Delta where I spend most of my time, I am often

given statistics, and in those communities, like Tuktoyaktuk, where this sort of criminal behaviour is more common than in other parts of the Delta, sentences tend to be more harsh for this sort of criminal behaviour. The police are here to serve and to protect, as I have already remarked in another matter today. The fact that there is only one officer here is something to take into account. What might happen if the officer were taken out of commission through a broken arm, a broken leg, or otherwise? Who would there be to respond to emergency calls? The police would have to fly in from elsewhere. There would be a delay. The public would be at risk. The assault on the officer cannot be characterized as a minor push or a minor shove. It was of some consequence and it was a blow aimed at the head of the officer. The threat was to kill him and his family. His family consists of himself and his wife. The Constable from time to time is called out of the community in the course of his work. His wife is alone. Who is to protect her? Who can she call upon when she knows that her life has been threatened? Is she to accompany her husband on duty? Definitely not. This is another significance of this officer being the only one in the community. When he's gone, when there are threats like this, there is no one to watch over his family.

I have taken into account the fact that the

accused received the worse of it during the fight. I have taken into account the time in custody since March 5th, 1998. The time from then to now will count for much more than the actual number of days because it is a form of hard time, it being remand time.

The defence says that the total sentence, and I have considered totality, ought to be no more than three to five months imprisonment. The defence says the sentence ought to be served together rather than having one sentence added to the other. The defence says there should not be too great a jump over the past sentence of imprisonment. The accused received 36 days imprisonment in 1995 for assaulting a peace officer. In 1996 for the same type of crime, he received 45 days. That was little more than a hop. The time has come for a jump. This will not be a tiny jump. There has to be a significant jump in some cases where other messages are not working and where it is necessary to do so to protect the public.

The Crown says there ought to be a sentence of about one year in total, along with a firearm prohibition order, which I have already dealt with. In my view, the range sought by the Crown would have been appropriate were it not for the time in remand. There will be four months imprisonment for assaulting the Constable; there will be five months consecutive for the threats, which is a different crime committed a

little bit later and at a different location. It is more time than I have given for the assault. It is more time because there are two victims, the officer and his wife. There are few crimes more cowardly than threatening to kill somebody's family. There will not be any victim of crime surcharge given the apparent hardship. The total is nine months.

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Certified pursuant to Practice Direction #20 dated December 28, 1987.

Annette Wright
Court Reporter