

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DONALD CADIEUX



Transcript of the Reasons for Judgment (Oral) delivered
by The Honourable C/Judge R.W. Halifax, in Yellowknife,
in the Northwest Territories, on the 25th day of February,
A.D. 2003.

APPEARANCES:

Mr. S. Niblock:	Counsel for the Crown
Mr. P. Fuglsang:	Counsel for the Defence

Charge under s. 270 (1) C.C.

1 THE COURT: This matter was adjourned with
2 regard to Count 2 on the Information alleging an
3 offence under section 270 of the *Criminal Code*,
4 alleging on the 1st day of August, 2002, that the
5 accused assaulted Erick Youngstrom, a peace officer of
6 the Royal Canadian Mounted Police engaged in the
7 execution of his duty, contrary to section 270 of the
8 *Criminal Code*.

9 At the end of the trial there was argument with
10 regard to the circumstances whether the police were
11 entitled to arrest the accused in the manner they did
12 and enter his residence to do so. The matter was
13 adjourned for written argument to be filed by the 14th
14 of February and it was adjourned to today's date.

15 I have had an opportunity to review the written
16 argument filed by the Crown and defence.

17 I do not think there is really any issue with
18 regard to the circumstances here as to what occurred.
19 The police attended to a complaint regarding an
20 alleged spousal assault on the 1st day of August to a
21 residence on 54th Street, where they spoke to one
22 Doris Ekotla, who was at a neighbour's residence,
23 during which time another police officer observed the
24 accused in the window of his residence. After the
25 first officer spoke with Miss Ekotla, the two officers
26 attended at the door of the accused and knocked on the
27 door several times. The accused finally came to the

1 door. He advised the police that Doris was on her way
2 back. The accused was advised that they wished to
3 speak to him regarding the complaint, and the accused
4 said something about "Deal with it tomorrow" and
5 started to close the door, at which point the police
6 pushed their way in, the accused backing up, telling
7 the police to get out of his house. The police
8 continued, grabbed the accused. There was a scuffle.
9 He was pepper-sprayed. The alleged victim of the
10 assault got involved. There was another lady there
11 who got involved, who the police had observed sitting
12 on the couch in the living room through the window
13 before they went into the house.

14 The argument basically being here that the police
15 had no right to enter the residence in the face of
16 *Fenney* to effect the arrest of the accused.

17 The Crown's position is that there's exigent
18 circumstances here.

19 I have reviewed the evidence carefully.
20 Basically you start with the proposition that in these
21 circumstances the police were not entitled to enter
22 the residence without a warrant. I don't think that
23 is an issue at this stage in these circumstances,
24 unless they can show there was exigent circumstances.

25 The Crown has admitted, I think quite properly,
26 based on the evidence that there was no indication of
27 death or bodily harm or there was no evidence that had

1 to be preserved, so to speak, under the provisions
2 provided for under section 529.3(2).

3 There can be other exigent circumstances, and the
4 issue really comes down to in my view whether or not
5 such existed here.

6 Regarding the exigent circumstances, the Crown's
7 position is that the RCMP were responding to a spousal
8 assault complaint, that the complaint was received at
9 2:30 in the morning. The victim was found next door
10 bleeding from a wound above her eye. The accused was
11 in the home where the victim had left. They were
12 advised that there was another unidentified female
13 person in the home who the police could see through
14 the window sitting on the couch. That the accused
15 told the police that the victim was on her way back,
16 and that the accused told the RCMP they should deal
17 with it in the morning. The accused was told he was
18 under arrest for assault, and then he tried to close
19 the door and that amounted to exigent circumstances.

20 In my view, the fact of the matter is that the
21 alleged victim was not in the residence any longer;
22 there was no need to protect the victim, to enter the
23 residence to protect her and to arrest the accused.
24 Secondly, the view through the window indicated that
25 the other person, the unidentified woman inside who
26 eventually turned out to be Miss Betsaka, was in no
27 danger whatsoever. There was no necessity to enter

1 the residence to protect her.

2 I cannot find, in my view, that there are exigent
3 circumstances here. There may be speculation, but
4 that is not good enough. The Supreme Court of Canada
5 in *Feeney* basically said you cannot go into a
6 residence to effect an arrest without these kinds of
7 circumstances and I am not satisfied they are here.

8 There is this issue with regard to the fact of
9 the telewarrant and that the police could not
10 reasonably obtain a telewarrant so therefore they
11 should be entitled to go in, which is an interesting
12 argument.

13 Just as a response, Mr. Niblock. I pulled my
14 files out and the continuing correspondence I have had
15 for 13 years with your office with no response as to a
16 process for telewarrants in this jurisdiction. It
17 started with Mr. Gates. I can tell you that the last
18 letter I received from Mr. Gates - and I have it with
19 me today - is dated the 24th of October, 1989, where
20 he apologizes for not getting back to me and not
21 getting this job done of getting this process put in
22 place for getting telewarrants. In the meantime, as
23 Chief Judge I had already acquired the necessary
24 equipment so we could record the applications for
25 telewarrants.

26 This was then passed on to Mr. Don Avison, who
27 was the next Director in the Crown's office in

1 Yellowknife. After four meetings with Mr. Avison and
2 providing a draft proposal, I was advised that the
3 Crown wished to have further discussions with the RCMP
4 in this regard. For the next two years, I faithfully
5 wrote every four months asking for a response and
6 heard nothing.

7 So I don't look at the fact that there's not a
8 provisions for telewarrants in this jurisdiction is
9 anybody else's fault but the Crown's and the police.
10 The Court tried to set it up, with no cooperation from
11 parties who you would think would cooperate. It was
12 in their interest. So after three years I chose not
13 to pursue it any further since the Crown and the
14 police showed no interest. So there's your answer to
15 that ground of appeal. You make your bed, sometimes
16 you lie in it.

17 I can tell you there's been further
18 correspondence back with regard to this whole area
19 under section 529.1 with Superintendent Elliot as late
20 as the 26th of April, 2000, and what would be
21 required.

22 Now, of course if the Crown's office may wish to
23 reinstitute further consultations with regard to
24 setting up a telewarrant process, my door has always
25 been open. They just haven't chosen to do so at this
26 stage.

27 My view at this stage, as I say, in answering

1 that question, I don't think it should be passed up.
2 I don't think that exigent circumstances have been
3 shown in this case. There was no need to secure any
4 evidence; there was no need to protect anybody here.
5 In my view the police did not have the right to go
6 into the residence after the accused without a warrant
7 in these circumstances. They therefore were
8 unlawfully in the dwelling house. They were not in
9 there lawfully under a warrant. They were no longer
10 in execution of their duty. In my view, therefore,
11 the accused being arrested unlawfully is entitled to
12 resist that arrest and protect himself, and I don't
13 think he did any more than that in the circumstances.

14 The police just can't start kicking doors in and
15 have four of them going in and ganging up on somebody.

16 We like to think at least that we have certain
17 protections and rights of privacy in this country
18 still, in spite of the fact that the Supreme Court of
19 Canada spoke clearly on this matter.

20 Now I have, as well, the *Godoy* decision. In my
21 view it doesn't really apply here. That's a matter
22 with regard to a search which is something a little
23 different than an arrest.

24 So I therefore find the accused not guilty on the
25 270 charge.

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Certified pursuant to Practice
Direction #20 dated December 18,
1987.

Annette Wright

Annette Wright, RPR, CSR(A)
Court Reporter