

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**TRAVIS JEROME**

---

**REASONS FOR JUDGMENT**  
**of the**  
**HONOURABLE CHIEF JUDGE ROBERT DAVID GORIN**

---

Heard at: Inuvik, Northwest Territories

Date of Decision: February 14, 2020

Date of Written Judgment: March 23, 2020

Counsel for the Crown: Duane Praught

Counsel for the Accused: Charles Davison

[Ss. 270(1)(a), 129(a), & 733.1 of the *Criminal Code*]

R. v. Jerome, 2020 NWTTC 04

Date: March 23, 2020  
File: T-1-CR-2019-002322

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**TRAVIS JEROME**

**REASONS FOR JUDGMENT  
of the  
HONOURABLE CHIEF JUDGE ROBERT DAVID GORIN**

---

**A. INTRODUCTION**

[1] The accused, Travis Jerome, was previously charged with counts or assaulting a peace officer, resisting arrest and breach of probation, contrary to ss. 270(1)(a), 129(a), and 733.1 of the *Criminal Code*. All charges arose from an altercation between Mr. Jerome and his alleged victim, Constable Scott Brian Thomas, that occurred at the police detachment in Fort McPherson on October 25, 2019. Mr. Jerome pleaded not guilty to these counts and his trial was heard in Inuvik on February 11, 13, and 14 of this year.

[2] After hearing the evidence and the submissions of counsel, I determined that findings of not guilty on all counts were in order. I was also of the view that

written reasons for the acquittals were desirable. Mr. Jerome had been detained pending his trial, and was possibly in a “time-served” situation on other unrelated charges to which he had pleaded guilty and was to be sentenced following his trial on the within charges. For that reason, I determined that that I should enter the acquittals forthwith with my reasons to follow. My reasons are set out in the following paragraphs.

## **B. ANALYSIS**

[3] The evidence of the Crown consisted of photographs taken of Mr. Jerome following the altercation that occurred between Constable Thomas and himself. Constable Thomas testified as to his version of the events that lead to the within charges. During the course of his testimony, video-recordings of the interaction between Mr. Jerome, Constable Thomas and Constable Jenna Moore were entered into evidence. Finally, Constable Moore also testified.

[4] Mr. Jerome elected to call no evidence.

[5] In the present case, my reasonable doubt on all charges arose as a result of what I found to be substantial discrepancies in the evidence – in particular the testimony of the Constable Thomas, the police officer who Mr. Jerome allegedly assaulted, and the video recordings taken at the detachment of the RCMP’s dealings with Mr. Jerome. The video evidence included the physical altercation itself. As stated, the video recording were presented and entered as evidence while Constable Thomas was testifying. Under all of the circumstances I find it most practical to deal with my analysis of the evidence presented while reviewing it.

### ***The Photographs***

[6] The Crown entered photographs of Mr. Jerome taken the day following the altercation between himself and Constable Thomas. The photographs showed 1 on a pronounced black eye as well as other bruising to Mr. Jerome’s face.

### ***The Testimony of Constable Scott Brian Thomas***

[7] The Constable Thomas of the R.C.M.P. then testified, stating that:

- While on duty Fort McPherson in the early morning hours of October 25, 2019, he received reports of a domestic dispute between Mr. Jerome and his girlfriend.
- He responded to the complaint in full uniform accompanied by Constable Jenna Moore, who was similarly attired.
- Constables Thomas and Moore arrived at the residence where the report indicated Mr. Jerome was located. Constable Thomas ultimately placed Mr. Jerome under arrest on outstanding arrest warrants. He handcuffed Mr. Jerome, who at that time appeared to be intoxicated. Mr. Jerome was completely cooperative while being handcuffed and placed in the police truck.
- Once in the police truck Mr. Jerome became angry and belligerent. Mr. Jerome yelled and screamed and cursed the police. He banged on the partition between the back seat and front seats of the truck. This conduct continued with Mr. Jerome screaming while he was being transported to the detachment.
- Once at the detachment, Mr. Jerome became cooperative and walked on his own up to the cell-block area. When the police required him to wait at the guard's desk, he started to become belligerent again swearing at the police.
- Under the circumstances Constable Thomas felt it best to wait until lodging Mr. Jerome in cells before removing his handcuffs and searching him.
- Constable Thomas determined that doing so was appropriate due to prior interactions he had had with Mr. Jerome.
- Several weeks previously, he had arrested Mr. Jerome for causing a disturbance in a public place. Once the handcuffs were removed from Mr. Jerome, Mr. Jerome attempted to pull away from them and Constable Thomas was then able to control him with pain compliance techniques. There had also been an incident when Constable Thomas had been driving his vehicle in Fort McPherson, and Mr. Jerome made an obscene gesture to him from the road side. He asked Mr. Jerome why he had done so. Mr. Jerome replied by saying that he thought that Constable Thomas was another police officer. From that incident, Constable Thomas concluded that Mr. Jerome disliked the police in general

- On the date alleged respecting the present charges, while placing Mr. Jerome into cells Constable Thomas had Mr. Jerome lie down on his stomach. He removed one of the handcuffs from his right arm and then pulled his arm up behind his back during which time he also used a wrist-lock to keep control of his arm.
- Constable Moore then removed the cuff from his left wrist and then let it go.
- Constable Thomas grabbed Mr. Jerome's left arm while trying to maintain control of Mr. Jerome's right arm by keeping it in the position he had had it.
- Mr. Jerome pulled his left arm away resulting in Constable Thomas losing control of both Mr. Jerome's arms. Mr. Jerome then rolled away from Constable Thomas onto his back and attempted to punch Constable Thomas with his right hand. Constable Thomas was not sure whether or not Mr. Jerome hit him. He could not recall feeling any pain.
- Constable Thomas responded to Mr. Jerome's blow or attempted blow by punching Mr. Jerome in the face with a closed fist two times.
- Due to concerns over Mr. Jerome obtaining control of his or his partner's weapons and being knocked out by Mr. Jerome. He punched Mr. Jerome a third and fourth time.
- Constables Thomas and Moore managed to get Mr. Jerome on his belly. However, Mr. Jerome somehow remained on his back trying to get up and attempting to fight. Constable Thomas believes he punched Mr. Jerome again. Once he managed to get Mr. Jerome completely over, he dropped his weight on the back of his shoulders. Mr. Jerome was still trying to push away and move his arms away, so he used his forearms to push his head to the floor and keep him there.
- When Mr. Jerome finally got up, he got up aggressively. The officers left the cell and locked the door with Mr. Jerome still inside.
- At the earlier point when the cuffs were being removed while Mr. Jerome was lying on his stomach, Constable Moore had Mr. Jerome's legs crossed and was putting her weight on them.
- Constable Thomas assumes Constable Moore lost control of his legs at one point.
- The only personnel present at the detachment other than Constables Moore and Thomas was a guard.

- The only injury suffered by Constable Thomas was a sore knuckle that lasted a few weeks.
- Constable Thomas also reviewed the training he received as an RCMP officer respecting the level of force that is to be applied when dealing with noncompliant arrestees in different situations.

***The Video Recordings Taken of the Accused and the Police Officers at the Detachment.***

[8] As stated, video recordings of almost the entire interactions between Mr. Jerome and the two police officers while at the detachment were entered into evidence while Constable Thomas was testifying in chief. Constable Thomas indicated at what points in the videos, the events he had previously described occurred.

[9] One of the things Constable Thomas reviewed while the video was being played was when he was removing the handcuff from Mr. Jerome's right hand. He described pulling the Mr. Jerome's arm up behind his back in order to prevent Mr. Jerome from pulling it away.

[10] What I observed in the video was Constable Thomas lifting Mr. Jerome's right arm up behind his back in a position so extreme that it must have been causing the a great deal of pain at the shoulder joint. Also, in lifting the right arm as I have described, Constable Thomas was using the wristlock he had referred to earlier in his testimony. The wristlock I observed would have undoubtedly caused Mr. Jerome further pain.

[11] Officer Thomas explained that he decided to use this technique because:

Uh, I've done it before and in my experience it's usually effective to – where they're not able to move. They stay there. If you try to move you – you just gonna bend the wrists a little bit with a little pain applied, and they usually stop and stay there.

[12] He explained that he did not simply tell Mr. Jerome to put his right arm flat on the floor because:

Oh, then he has an opportunity to grab onto me or any of my tools, he's able to push himself around, do anything with the hand free. I'm not going to be in the cell with him with a hand free like that. We maintain control of both hands as best we can until we're out of that cell.

[13] Constable Thomas described the blow he said Mr. Jerome had attempted in the following excerpt:

Q Now the – the swing that you described earlier in your testimony. Did it take place in those few seconds that we just played?

A Yes it did.

Q Can you describe where it took place?

A As soon as he rolled over to his side and then back, he came up. It's – It's not real clear on the video, to be honest, it's not real clear on the video, *which is horseshit*. He did roll over and that's when he came up with his right hand.

[Emphasis added]

[14] With respect, the video was quite clear. I saw no punch or blow, I saw nothing that looked like anything other than a very minor movement of the Mr. Jerome's right arm. There appeared to be no real force behind the movement that I observed. *If anything*, this movement was more consistent with an attempt to keep Constable Thomas away from him than the alleged punch or swing.

[15] Furthermore, what I saw immediately before the movement I have referred to was the officer very likely putting the Mr. Jerome a considerably amount of pain and Mr. Jerome rolling away from him in order to make the pain stop. I saw nothing on the Part of Mr. Jerome that appeared to be aggressive physically.

[16] I then saw Constable Thomas punch Mr. Jerome a number of times in the face and when Mr. Jerome attempted to crawl away, continue to strike him from behind on the back of the head. On each occasion, the officer struck him with considerable force. Constable Thomas then put his forearm on the back of the Mr. Jerome's neck and held him to the floor face down.

[17] While reviewing the video, Constable Thomas explained that when he observed the Mr. Jerome tried to strike at him he felt compelled to react as he did because:

... basically, him making the strike at me, again, caused me to react as per my training to strike him to stop the threat, to stop him from continuously trying to fight with us. If he was able to strike me there at that point, or even after I threw the first punch, if he was able to strike me and knock me out, I'm knocked out of the cell with my female partner who is much smaller than him. He's got the advantage at that point, in my opinion, where I'm put on the floor, all my tools are available to him my partner's there alone. Anything, could have happened at that point.

[18] I was not able to observe any real indication that Mr. Jerome was attempting "continuously" to fight with the officers. However, it may have been that in the heat of the moment Constable Thomas misapprehended the Jerome's response when he rolled away from him and, perhaps motioned towards him with his hand. Also, in fairness it is not impossible that Mr. Jerome actually did attempt to strike Constable Thomas after escaping the wrist and arm hold. That said, after viewing the video recording, I was and remain far from being sure that he did so.

[19] What I see when viewing the video is Mr. Jerome: being placed in what I think was an excessively painful hold; rolling away from the police officer in order to escape it and stop the pain; *at most* motioning towards the officer without any real force; and then being punched on several occasions before the police left the cell.

[20] I also observed Officer Thomas throw and land 6 punches rather than the 4 he described. Although Mr. Jerome kicked the door after the police finally left the cell he was in, I did not observe him to be getting up off the ground in what I would describe as a particularly aggressive manner before doing so. However, Constable Thomas's vantage point was considerably closer to Mr. Jerome than mine.

### ***The Testimony of Constable Jenna Moore***

[21] After Officer Thomas' testimony was ultimately completed, the Crown called Constable Moore as a witness. In many respects her evidence dove-tailed with that of Constable Thomas.



[22] She recalled Mr. Jerome yelling, kicking and screaming on the drive back to the detachment. However, he exited the truck without incident and was cooperative at that time walking up the stairs to the cell area.

[23] She said that when he got to the cell area, Mr. Jerome resisted, became agitated and upset and did not want to go into the cells. However, she did not remember any specific details and could not recall him not being cooperative when it came to entering into the cell himself.

[24] Mr. Jerome was asked to get on his stomach. He cooperated and Constable Moore crossed his legs and put her weight on top of them. Constable Thomas got on top of Mr. Jerome's torso, and removed a handcuff. Constable Moore removed the other handcuff. Mr. Jerome then got an arm free, flipped on to his back and squirmed around on his back.

[25] Constable Moore then took the handcuffs out of the cell with her so that they could not be used as a weapon.

[26] Later in her testimony, she stated that Mr. Jerome was yelling and swearing while they had him on his stomach although she cannot remember anything specific. She described him as being somewhat cooperative until they removed the cuffs but that once the cuffs were off, that was then he began resisting.

[27] She said that the two of them were able to regain control over Mr. Jerome and that she got on Mr. Jerome's legs again while he was on his stomach. She remembers Constable Thomas telling the Mr. Jerome to quit resisting.

[28] She said that eventually Constable Thomas told her that he was good and to get up. They both left the cell. She described Mr. Jerome as acting aggressively after they released him.

[29] In cross-examination Constable Moore stated that she felt that the Mr. Jerome got up aggressively because he kicked the cell door when it was closed. She also conceded that she did not remember whether Mr. Jerome was particularly aggressive after the point that he got up.

[30] It is significant that during her evidence, Constable Moore did not describe the nature of the arm hold or wrist lock applied to Mr. Jerome. She also did not recount any punches thrown either by the Mr. Jerome or Constable Thomas. However, from the video evidence I saw, she may very well not have been in a position to see any force the Mr. Jerome may have attempted to apply to Constable Thomas. I accept her testimony that she was not able to see what Constable Thomas was doing during the struggle because she was focused on Mr. Jerome's legs. After Mr. Jerome rolled over Constable Moore left the cell with the handcuffs. Judging from the video footage I observed she appears to have been facing away from the altercation or out of the cell at the time of the punches that Constable Thomas landed on Mr. Jerome.

### C. CONCLUSION

[31] As I have said, based on what I saw in the video evidence, Mr. Jerome may well have been in a great deal of pain when Constable Thomas was simultaneously applying the arm hold and wrist lock at the same time. Certainly the arm was being pulled up behind Mr. Jerome's back far beyond what I think would be a normal range of motion. In my assessment, the pain Mr. Jerome would have been feeling at that time would only have been amplified by the wristlock that the constable was simultaneously applying. Mr. Jerome rolled away from the officer. His doing so would have been entirely consistent with attempting to escape the painful holds that Constable Thomas was applying.

[32] The Crown alleges that Mr. Jerome assaulted the officer by striking at him once immediately after he had rolled on to his back. I saw nothing that looked like that in the video. Notwithstanding the officer's description of the video as "*bullshit*", the video was quite clear. I saw at most a minor motion which, if anything, may have been consistent with an attempt to hold the officer away. I can certainly appreciate why Mr. Jerome would have tried to keep the officer away given the high level of pain he may well have been experiencing immediately prior to that point. I saw no closed fist and nothing that I would describe as being a striking motion. Constable Thomas' conceded that he could not remember whether or not the punch he described actually landed.

[33] I do not completely discount Constable Thomas's evidence respecting Mr. Jerome's purported striking motion insofar as it may have been how, in the heat of

the moment, he perceived things. It may well also be how he remembered things notwithstanding the video evidence to the contrary. And as I have also indicated, it is not impossible that Mr. Jerome actually did attempt to strike Constable Thomas.

[34] However, that is not what I observed in the video recording. Moreover, Constable Moore's testimony did not corroborate or contradict Constable Thomas' evidence that Mr. Jerome struck at him.

[35] Based on all of the evidence presented in this case, I was and remain far from being sure that Mr. Jerome punched or attempted to punch Constable Thomas. In short, I found the Mr. Jerome not guilty of the count of assaulting a peace officer, because I was left with a reasonable doubt as to whether he did anything of an assaultive nature.

[36] I found alternatively that if Mr. Jerome actually did or attempt to use force to keep Constable Thomas away from him, the totality of the evidence gave rise to an air of reality to the defence of self-defence set out in s. 34 of the *Criminal Code*. I found there was a sufficient factual foundation on the record for a properly instructed jury to give effect to the defence; see *R. v. Buzizi*, 2013 SCC 27 (CanLII), per Fish J, at para 16. I found that based on the evidence there existed a realistic possibility that Officer Thomas was applying excessive force to Mr. Jerome immediately prior to the minor motion I observed. I found additionally that the Crown had failed to prove beyond a reasonable doubt that Mr. Jerome was not acting in self-defence when he made that motion.

[37] I will add that notwithstanding the spirited submissions of Crown counsel, the evidence in this case was such, that I had no hesitation in acquitting Mr. Jerome on the count of assaulting a peace officer contrary to s. 270 of the Code.

[38] The Crown's position on the count of resisting a peace officer engaged in the execution of his duty was that it was subsumed within the count of assaulting a police officer. That being the case, I found Mr. Jerome not guilty of the count contrary to s. 129(a) as well.

[39] Finally, the Crown's theory was that Mr. Jerome breached the condition of his probation order requiring that he keep the peace and be of good behavior by committing the other offences alleged. Because he was found not guilty of those two counts, I also found him not guilty of s. 733.1.

---

Robert Gorin  
Chief Judge of the  
Territorial Court

Dated at Yellowknife, Northwest  
Territories, this 23th day of March, 2020.

*R. v. Jerome, 2020 NWTTC 04*

*Date: March 23, 2020*  
*File: T-1-CR-2019-002322*

---

**IN THE TERRITORIAL COURT OF THE  
NORTHWEST TERRITORIES**

---

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**– and –**

**TRAVIS JEROME**

---

**WRITTEN REASONS FOR DECISION  
of the  
HONOURABLE CHIEF JUDGE  
ROBERT DAVID GORIN**

---

[Charges under Ss. 270(1)(a), 129(a), & 733.1  
of the *Criminal Code*]