

IN THE APPELLATE DIVISION  
OF THE SUPREME COURT OF ALBERTA

BETWEEN:

HIS MAJESTY THE KING

RESPONDENT

-and-

BRUNO PERZENOWSKI

APPELLANT

TAKE NOTICE that Bruno Perzenowski, who on the 29th day of June, A.D. 1946, at the City of Medicine Hat in the Judicial District of Medicine Hat, in the Province of Alberta, at a trial held in the Supreme Court of Alberta, with Mr. Chief Justice William R. Howson presiding, was convicted by a jury for that he, the said Bruno Perzenowski, at Medicine Hat in the said Judicial District, on or about the 10th day of September, 1944, did unlawfully murder Karl Lehmann contrary to section 263 of the Criminal Code of Canada, and was thereupon on the said 29th day of June, A.D. 1946, sentenced by His Lordship, Chief Justice William R. Howson, Chief Justice of the Trial Division of the Supreme Court of Alberta, to be taken to the Provincial Jail at Lethbridge and there confined until the 16th day of October, 1946, and on that date to be taken to the place of his execution and there hanged by the neck until dead, does hereby apply for leave to appeal and does hereby appeal to the Appellate Division of the Supreme Court of Alberta against the said conviction on the following, amongst other grounds:-

1. The learned Trial Judge had no jurisdiction to try, hear, or deal with appellant for the following reasons:-

- (a) There was nothing before the Court to suggest that the military authorities had waived their jurisdiction.
- (b) There was nothing before the Court to suggest that the military authorities had asked the Court to exercise its jurisdiction.
- (c) The appellant and the person whom he is alleged to have killed were prisoners of war captured in England by British military authorities and turned over to the Canadian Military authorities. The Canadian Military authorities are therefore accountable to the British Military authorities for every prisoner of war they received from England, and an English Court, if any, is the only Court that has jurisdiction to deal with the appellant.
- (d) The appellant was not in the King's Peace.
- (e) Any act of the appellant in a German prisoner of war camp in killing a fellow prisoner of war is not a crime but is "an act of war."
- (f) Under Article 45 International Convention relative to the treatment of prisoners of war approved at Geneva July 27th, 1929, the appellant/<sup>who</sup> is a German prisoner of war and should be returned to Germany to be dealt with according to the law of Germany.

2. The learned Trial Judge erred in failing to instruct the jury in his charge regarding what effect there would be if the appellant were found to have committed a political offence.

3. The learned Trial Judge erred in his charge to the jury by failing to instruct the jury the effect of finding that the appellant had been carrying out an order of his military superiors.

4. The learned Trial Judge erred in his charge to the jury by failing to instruct the jury as to the effect of finding that the accused did something which he thought was right, but was wrong under our civil law.

5. The learned Trial Judge erred in his charge to the jury and thereby prejudiced the jury against the appellant by making the following statement:

"Now if you come to the conclusion that you have not any reasonable doubt then you go back to this point:- Is the accused guilty or not guilty as charged, because in this particular case there is no evidence other than provocation which would warrant a verdict of manslaughter."

6. The learned Trial Judge erred in his charge to the jury by failing to direct the jury that if they had a reasonable doubt whether the crime was manslaughter instead of murder they must give the benefit of that doubt to the accused and return a verdict of manslaughter.

7. The learned Trial Judge erred in his charge to the jury by instructing the jury that provocation was the only circumstance which would reduce a charge of murder to manslaughter.

8. The learned Trial Judge erred in his charge to the jury by failing to instruct the jury what effect there

would be if the appellant acted under a military order that he considered binding on him although his act was wrong under our civil law.

9. The learned Trial Judge erred in his charge to the jury by failing to instruct the jury what effect there would be if the act of the appellant were considered by the jury to be in the nature of a political offence.

10. The learned Trial Judge erred in his charge to the jury by failing to direct the jury what effect there would be if the act of the appellant were considered an act of war.

11. The learned Trial Judge erred in his charge to the jury by failing to instruct the jury that the appellant must be in the King's Peace before he could be lawfully convicted of murder.

12. The learned Trial Judge erred in his charge to the jury by omitting to read section 68 of the Criminal Code of Canada and the effect thereof upon the appellant who was an inmate of a German prisoner of war camp managed by German prisoners of war under German military law.

13. The learned Trial Judge erred in his charge to the jury when referring to the deceased, Karl Lehmann, "There is certainly no evidence that he was a traitor to Germany or to the German Army or to his comrades."

14. The learned Trial Judge erred in his charge to the jury by omitting to read section 51 of the Criminal Code

of Canada and the effect thereof upon the appellant under an order that he considered binding on him.

15. The learned Trial Judge erred in admitting as evidence two confessions signed by the appellant.

16. The learned Trial Judge erred in his charge to the jury by failing to fairly put the Defence before the jury.

17. The learned Trial Judge erred in his charge to the jury by failing to direct the attention of the jury to the defence of the appellant.

18. The learned Trial Judge misdirected the jury on the law.

19. The said conviction is against the law, and the evidence and the weight of evidence.

20. On such other grounds as may be permitted to be raised upon application after the transcript of evidence is available to counsel.

AND TAKE NOTICE that on the hearing of the Appeal the appellant will ask this Honourable Court for an order

- (a) Quashing the conviction or in the alternative
- (b) an Order reducing the conviction from murder to manslaughter, or in the alternative
- (c) An Order for a new trial.

The Appellant does not wish to be present at the hearing of the Appeal.

DATED at the City of Lethbridge in the Province of Alberta this 25th day of July, A.D. 1946.



Counsel for the Appellant  
Bruno Perzenowski

TO:

The Registrar,  
Appellate Division of the Supreme Court of Alberta,  
CALGARY, Alberta.

*App. 3271*

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NOTICE OF APPEAL



*Clerk of the Court  
Medicine Hat*

RICH & PATERSON,  
Barristers & Solicitors,  
Lethbridge, Alta.