

Citation: *R. v. Dolan*, 2022 YKTC 44

Date: 20220909
Docket: 22-00343
22-00314
22-00313
22-00303
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Cozens

REX

v.

DUSTIN PATRICK DOLAN

Appearances:
Nicolas Mercier
J. Robert Dick

Counsel for the Crown
Duty Counsel for the Defence

REASONS FOR JUDGMENT

[1] COZENS C.J.T.C. (Oral): Dustin Dolan is before the Court on show cause. This is a reverse onus show cause.

[2] The allegations before the Court arise firstly from Information 22-00314, that on July 29, 2022, a co-accused on this Information, Mr. Darin Sanddar, was arrested and firearms were located on him. As a result of that arrest, a search warrant was obtained and executed at the residence of Mr. Sanddar. Mr. Sanddar had been released following his original arrest. When the RCMP executed the warrant, Mr. Sanddar and Mr. Dolan were located in the residence along with 697.23 grams of cocaine, score

sheets, a prohibited weapon, 61.67 grams of heroin, and \$1,725 cash. The police, prior to executing the warrant, had observed Mr. Dolan driving to and from the residence several times on that date. He was on a Canada-wide driving prohibition. This Information had s. 5(2) charges with respect to both the care of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (“CDSA”), for the cocaine and the heroin, possession of property obtained by crime under a s. 354(1)(a) and a s. 320.18(1)(a) of the *Criminal Code* (the “Code”) charge as well.

[3] With respect to Information 22-00303, this alleges an offence under s. 320.18(1) of the *Code*. On that date, the RCMP on patrol at about 8:45 p.m. observed a vehicle being driven with a British Columbia plate. This vehicle was not known to the police. It was smoking excessively from the exhaust. They did not attempt to pull the vehicle over, but the RCMP were able to identify Mr. Dolan as the driver. He was, again, on a three-year driving prohibition that had been issued on April 8, 2022. A bench warrant was issued for his arrest.

[4] This is the charge set out in Information 22-00313. On August 24, 2022, at about 5:56 p.m., the RCMP located Mr. Dolan in his residence. He was picked up on the bench warrant. He was searched, and during the search, six packs of cocaine individually packaged were located as well as 22 grams of powder cocaine. He was released on a consent release on that date.

[5] On September 1, 2022, on Information 22-00343, RCMP received a complaint of a robbery. They attended the location, and Frederick Stick, who was the alleged victim of the robbery, was observed with a black, swollen left eye and a cut. The RCMP were

advised that Mr. Tyler Smith and Mr. Dolan had driven up to Mr. Stick. Mr. Smith took a wrench and he struck Mr. Stick and punched and kicked him. Mr. Dolan then took the vehicle of Mr. Stick along with the keys and a cellphone and said that they were doing this until Mr. Stick's sister paid the money that she owed. At that time, Mr. Dolan was not only on the driving prohibition — and I know he drove Mr. Stick's vehicle away is the allegation — he was on the driving prohibition as well as a condition on terms of his release order issued just days earlier not to be behind the steering wheel of any automobile.

[6] Mr. Dolan has a criminal record. The criminal record goes back to 2012 where there was an impaired operation of a vehicle. And then in 2020, a fail to comply with a court order under s. 145(5)(a); a fail to attend court under s. 145(2)(a), a fail to attend court under s. 145(2)(a); a mischief under \$5,000; a fail to comply with conditions of undertaking under s. 145(5)(1); and flight while pursued by a peace officer, contrary to s. 320.17 of the *Code*. These charges from 2020 all had sentences on the same date, although they did not all originate from the same Information.

[7] On June 4, 2021, he was again convicted of a flight while pursued by a peace officer, contrary to s. 320.17 of the *Code*.

[8] On April 8, 2022, he was convicted of dangerous operation of a conveyance, contrary to s. 320.13(1); again, another flight while pursued, s. 320.17; and a fail to comply with an order, s. 145(5)(a). He was also sentenced on that day on a separate Information for possession of property obtained by crime under s. 354(1)(a); a resist arrest under s. 129; and operation of a conveyance while prohibited under s. 320.18(1)

of the *Code*. On that date, he was sentenced to 120 days' custody, which included 58 days of pre-sentence custody as well as concurrent pre-sentence custody for some of the other offences.

[9] There are further earlier convictions from 2012 on the supplementary record of a s. 4(1) *CDSA* and in 2021 of a s. 5(1) *CDSA*.

[10] Crown opposes the release of Mr. Dolan on the primary, secondary, and tertiary grounds.

[11] Counsel for Mr. Dolan is suggesting that he be released with a surety, his mother, on \$500 either cash or promise; and that Mr. Dolan, who has an eight-month-old and a 15-year-old, is motivated to return to the counselling program he was involved in in July. When I look at the time that he had remaining in custody, he would have likely been released toward the end of May or June. He says he is motivated to return to the counselling program that he had been involved in in July. He says that he will work with Mike Palma, who has some construction and renovation work for him to do in town. Mr. Palma operates a business. He is not unfamiliar to the courts here. Mr. Dolan says he has worked on and off at a number of places. He has 15 years of carpentry experience, although he is not ticketed. He last worked for Mr. Palma a couple of days ago. He is prepared to abide by strict conditions.

[12] I note the Crown had no concerns with the *bona fides* of the surety. She has been a surety for Mr. Dolan before, and she has reported him to the police before.

[13] In my opinion, the plan for release does not address the primary, secondary, or

tertiary ground concerns. The criminal record and the actions of Mr. Dolan recently show a complete disregard for compliance with any restrictions that are placed on him by the Court. The driving prohibitions alone speak to that. The flight charges speak to that also. I have serious primary ground concerns and I do not think a surety, as *bona fides* as she is on this basis, even comes close to addressing the concerns, in particular when I look at the secondary ground concerns. The allegations that the Crown has put forward here raise serious secondary ground concerns with respect to the, notwithstanding the charges that he is released on, compilation of further charges.

[14] I am also satisfied the tertiary ground concerns are legitimate. The Crown's case is, of course, not a slam-dunk, although the driving prohibition charges seem to be quite strong. We are talking about serious offences. The robbery is a serious offence. The drug offences are serious offences. Frankly, the driving prohibition offences, if proven, are serious offences. They are offences against the administration of justice. There were no firearms involved here that are associated to Mr. Dolan except for the one in the residence that was located, which, at this point in time, whether the Crown is able to prove that Mr. Dolan had possession of it is an open question, but it was in the residence.

[15] As to imprisonment, the robbery charge alone, in those circumstances, has penitentiary possibilities attached to it. When you factor in the other charges, easily, if Mr. Dolan is convicted of the majority of these charges, in particular the robbery and the trafficking charges or s. 5(2) charges, he could find himself in jail for a long time.

[16] Therefore, on the primary, secondary, and tertiary ground concerns, the release plan does not satisfy these concerns and I order that Mr. Dolan be detained in custody.

COZENS C.J.T.C.