

SUPREME COURT OF YUKON

Citation: *HMTQ v. Guan*, 2010 YKSC 14

Date: 20100311
Docket S.C. No.: 09-01511
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

YAO LIN GUAN

Before: Mr. Justice R.S. Veale

Appearances:
Jennifer Grandy
Gordon Coffin

Counsel for the Crown
Counsel for the Defence

RULING ON *VOIR DIRE* DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): Counsel, I am going to give you my ruling on the *voir dire* evidence that we just heard before noon and I will give these reasons in writing, but, for the moment, suffice it to say that Corporal Walker seized a cell phone of the accused. After the accused's arrest, he received two phone calls. In one phone call, the person said, "Can you do McDonalds?" The answer was, "Yeah, what do you need?" "Three." The corporal confirmed three. "Yeah," he said, "Be there in a bit." There was a second phone call, he thought from the same voice, saying, "Hey, McDonalds thing, you comin'?" And he said, "Yeah, you wanted three grams?" "No, three balls." "Okay. Three balls. Be there in a bit."

[2] That is the evidence and the issue is whether that evidence is admissible in this case, which is a case of possession of cocaine for the purpose of trafficking under s. 5(2) of the *Controlled Drugs and Substances Act*.

[3] In my view, the analysis of *R. v. Ly*, [1997] 3 S.C.R. 698, by Justice McLachlin, as she then was, is the appropriate analysis. The evidence is not tendered for the truth of the statement by the person who made the call, it is tendered simply as one factor, among others, perhaps, that are circumstantial evidence with respect to the issue of possession for the purpose of trafficking.

[4] Therefore, on a hearsay analysis, *R. v. Duncan*, [2001] M.J. No. 405, is correct. If it were presented on hearsay analysis, I would reject the evidence because of the necessity issue. We know who the person was that made the call and they would have to call that person.

[5] I accept its admissibility subject to weight, based on the analysis in *R. v. Ly*, *supra*, which is that it is one of the circumstances that may be established.

VEALE J.