

SUPREME COURT OF YUKON

Citation: *R. v. Munch*, 2013 YKSC 41

Date: 20130507
Docket S.C. No.: 12-10156
Registry: Watson Lake
Heard: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

JARRET MUNCH

Before: Mr. Justice R.S. Veale

Appearances:

Ludovic Gouaillier
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Accused

REASONS FOR JUDGMENT

[1] VEALE, J. (Oral): This is a s. 525 application on behalf of Jarret Munch, who has been in custody since January 1, 2013. He was denied bail on January 18, 2013, and this is a review of that detention order.

[2] Section 525 is very explicit in that it is a review of detention where a trial is delayed. Section 525(3) gives the judge the discretion to take into consideration whether the prosecution or the accused has been responsible for any unreasonable delay.

[3] The trial has been set for June 5 in Watson Lake. Defence counsel has indicated that she has not had disclosure of specific statements in the form of either a DVD recording or a transcript relating to her client, Mr. Munch. The original request was made on January 14, 2013, to Crown counsel, and there was an indication that there was another discussion which took place on January 22, indicating that there would be some material provided, or some disclosure provided in the following three weeks, which clearly did not occur.

[4] However, there is a reverse onus on Mr. Munch to satisfy the Court as to why his continued detention is not justified under s. 515(10) on either the ground that it is not necessary to ensure his attendance at trial, or not necessary to ensure protection and the safety of the public, or a substantial likelihood that he will commit a criminal offence or interfere with the administration of justice.

[5] He is charged with two offences, possession of marihuana and possession of cocaine for the purpose of trafficking. Counsel for Mr. Munch indicates that there will likely be a guilty plea with respect to the possession of the 17 grams of marihuana.

[6] The allegations with respect to the possession for the purpose of trafficking are a little more complex and they are as follows. I am taking this directly from the show cause that took place on January 18, 2013. At approximately 10:30 a.m. on December 31, 2012, four RCMP members attended the residence and gained entry using a metal ram. I am referring to the residence of Mr. Munch. Inside the residence, officers noticed a Ms. Shaylene Porter in the living room on the sofa, along with her son, who was approximately three years of age, on a mattress on the floor. Officers heard a

commotion from one of the two bedrooms in the home. Constable Gossen went to one of the bedrooms and found Jarret Munch standing in the doorway. He was directed to get on the ground on his stomach, and he did so. At this point, Constable Dirnback kicked in the door of the second bedroom and saw an individual who was later identified as Tyler Voss, and he was observed throwing items outside of the bedroom window. Officers later identified these items as two bags containing several individually wrapped bags both of hard and soft cocaine. One of the bags contained 22.3 grams of powder cocaine; the other bag contained 56 grams of rock cocaine.

[7] There were other items located in the residence indicative with drug trafficking, including 17 grams of marihuana, which was found in the room where Mr. Munch was located. Also, the officers found two digital scales, five cell phones, several Ziplock bags with corners torn off, crack and marihuana pipes; \$857 in cash was found on Tyler Voss's person incidental to arrest. A Ziplock lid with unknown white powder was found in the kitchen, to which Mr. Munch later disclosed to officers in a warned statement that the white powder was sugar used for cutting cocaine.

[8] Now, all three of - these are the allegations of course - but all three of the individuals were arrested. Ms. Porter, I understand the charges have been dropped with respect to her, but the trafficking charge against Mr. Voss is still outstanding and is scheduled to be dealt with in June in Watson Lake as well. He has no criminal record, as I understand, and has been released with a \$5,000 cash deposit.

[9] So there is, clearly, an arguable issue with respect to the case before me. Unfortunately, Mr. Munch has a cocaine addiction. I think that is right, is it not, counsel?

Yes. And that, unfortunately, has led to a great deal of trouble with respect to his past. He has a long criminal record with at least five possession or trafficking offences from 1996 to 2007. I note that the sentences in those matters were 30 to 45 generally, suggesting that he has been a small player. That is a consideration in this particular section as to whether someone is a big trafficker or a small trafficker. He also has a failure to appear in 2000, and a failure to comply with a probation order in that year. In 2001, he failed to attend court; in 2003 he failed to attend court and comply with a probation order; in 2005, he failed to comply with a recognizance and escaped custody. In 2006, 2007 and 2008 he failed to comply with a number of process offences, such as not complying with probation orders, and ultimately three offences in 2008. I am advised by the Crown that he has an outstanding warrant from Alberta for a breach of probation. In 2012, he was convicted of assault causing bodily harm and a failure to attend court.

[10] I should indicate, however, that the defence has produced, and I thank them for producing the report from DVTO, entitled "Offenders Services: Enhanced Treatment Report" dated November 22, 2011. That is some time ago, but in Mr. Munch's favour I must say that he complied with all the requirements and did take the spousal abuse program and attended as required, except on one occasion where he had a reasonable explanation.

[11] The release plan put forward by the defence is that there will be \$1,100 cash deposit with two sureties. One surety is from Shayne Tibbett from Lower Post. He indicates that he will put a \$1,000 no cash deposit. He indicates that he is hopeful of being employed at the Wolverine Mine, which is between Watson Lake and Ross River,

so I am not satisfied that as a proposed surety that -- I do not have any difficulty with him as an individual or what he is presenting, and the Crown has no difficulty with the sureties either, but I am not satisfied that he will be able to keep any sort of an eye on or control over Mr. Munch.

[12] The second proposed surety is Josephine Elliott, and she is a friend of Mr. Munch's family, has known him for five years, and she has lived in the community of Watson Lake all her life. She has a grade 10 education. She also works at the Super A grocery store. She is a very solid citizen, there is no criticism of her coming forward and offering a \$1,000 no cash deposit, as well as the opportunity for Mr. Munch to stay at her residence pending the trial.

[13] I am very concerned about the lack of diligence on the Crown's part, not in terms of setting a trial date, but just in terms of responding to disclosure. The entire process breaks down when there is no disclosure because defence counsel cannot get instructions from their client because they do not know the real evidence that is out there before them, and it makes settlement of these matters extremely difficult. I am really dissatisfied with the delay in the Crown disclosure in this matter.

[14] However, I am concerned about the significant drug-related record of Mr. Munch. I know he has made some efforts recently to get his act together, but it is a very short distance to the trial date, a matter of several weeks, and I am basically not satisfied that there is not an issue with respect to the secondary ground, and that is the possibility that he may commit a further criminal offence or interfere with the administration of

justice. He does not have a good record in that regard and that is unfortunate for him, but that is the case I am faced with.

[15] Nevertheless, I want to put it on the record that although I have not found that he has met the reverse onus to be released pending trial, I want to indicate that if the matter does not proceed at Watson Lake on June 5, the matter should be either raised at that trial and an application for release or the matter brought back to this court and a further application for release, because there does not seem to be, to my mind, any validity for the delay that has taken place. I reject entirely the concept that defence counsel have to pester and raise issues every time they appear in court to set the record so that the Crown is obligated to produce the record. The disclosure, in my view, is a Crown obligation and one that has to be attended to once the accused person has counsel and is ready to proceed to either negotiations or trial.

VEALE J.