

Citation: *R. v. Asuchak*, 2011 YKTC 84

Date: 20111212
Docket: 11-00104
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Faulkner

REGINA

v.

RONALD RAY ASUCHAK

Appearances:

Jennifer Grandy

Ann Pollak (via teleconference)

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): Ronald Ray Asuchak was charged with possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and, as well, with dangerous driving contrary to s. 249.(1)(a) of the *Criminal Code*, and finally with failing to stop for a peace officer as better specified in s. 249.1(1) of the *Code*.

[2] On April the 21st of 2011, the Whitehorse RCMP drug section, acting on an informant tip and surveillance, attempted to stop a motor vehicle being operated by the accused in downtown Whitehorse. There were two police vehicles behind Mr. Asuchak with lights flashing. Mr. Asuchak applied the brakes and slowed down as if he were stopping. Constable Corbett, who was driving the police vehicle immediately behind Mr. Asuchak's, pulled up beside the accused's car intending to pass and pull in ahead. As

Constable Corbett pulled alongside, it appeared to Constable Corbett that Mr. Asuchak turned his head and glanced toward the police vehicle. At that point, Mr. Asuchak accelerated and drove off. Concurrently, a third police vehicle, operated by Corporal Lockwood, was approaching from the opposite direction. Lockwood turned his vehicle into Mr. Asuchak's lane to block Mr. Asuchak's escape. Mr. Asuchak drove off the roadway and shot the gap between Corporal Lockwood's van and another vehicle that was parked off the roadway at that point.

[3] Mr. Asuchak had a quantity of cocaine in the vehicle contained in one or possibly two sandwich-sized plastic bags. He attempted to dispose of the cocaine by holding the bags out the window and allowing the powder to blow away in the wind as he drove. Once the cocaine was gone, Mr. Asuchak stopped in the alley behind 807 Cook Street; 807 Cook was Mr. Asuchak's residence. Although most of the cocaine powder was scattered by the wind, the police later retrieved a baggie and a small quantity of cocaine from the roadway along Mr. Asuchak's route of flight. Soon after his vehicle came to a stop, Mr. Asuchak and his passenger, Courtney Cratty, were arrested.

[4] The front of Mr. Asuchak's clothes were covered in cocaine powder, and there was cocaine on the driver's side floor and driver's seat of his vehicle. A second baggie containing cocaine residue was found on the driver's side floor. Mr. Asuchak had a syringe loaded with a cocaine and water solution in his pocket. More syringes were found between the passenger seat and door of the vehicle. In addition to the syringe, the search produced \$1,058 in paper money located in the car and stuffed in various pockets of Mr. Asuchak's clothing. A further \$562 in rolled coins was located in the car.

A set of digital scales, commonly used to weigh drugs, was found sitting on the console between the two front seats.

[5] The search of Mr. Asuchak also produced a cellular telephone, which the police seized. In the hours following the arrest, the phone was ringing constantly. Constable Wright of the RCMP answered some of the calls. When he did so, one of the callers said, “Ron, it’s Reg. I’m not happy with these two; we did them up and it’s not good.” The caller then went on to offer to call it square if he was to be provided with “One more.” Another caller, identifying himself as Howard, said he wanted “One more” and had \$100. An expert witness gave it as his opinion that these calls referred to cocaine trafficking, but even a lay person would have concluded as much.

[6] The police also retrieved a number of text messages from the phone. One of the incoming texts is specifically addressed to Ron. Another asks the question, “You Got Any Hard?” “Hard” is a drug culture slang term for crack cocaine. There were other incoming calls and text messages that dealt with monies owed. Since the communications do not say that the debt was incurred for the purpose of drugs, the calls are certainly equivocal but, nonetheless, could be suggestive of drug trafficking.

[7] Just prior to the accused’s arrest, he had been the subject of police surveillance. He was seen to drive to an apartment building on Strickland Street; a man got into Mr. Asuchak’s car, and the vehicle drove off. However, after proceeding for a block or so, the vehicle made a U-turn and came back to the apartment where the same man who had got into the vehicle got out of it. The surveillance team suspected that a drug deal

had occurred and it was shortly after this that the police decided to stop Mr. Asuchak and arrest him.

[8] The quantity of cocaine that the accused had in his possession prior to arrest cannot be determined, as most of it was scattered to the winds. However, it was obviously a significant amount, given that the pursuers described a white cloud of powder billowing from the vehicle as the accused attempted for some blocks to evade the police. As noted, there was also cocaine powder on Mr. Asuchak and in the vehicle after his arrest. One of the pursuing policemen estimated the original quantity of cocaine as roughly golf ball sized. While Mr. Asuchak's possession of a loaded syringe is certainly evidence of personal use by him, the significant quantity of cocaine, the large amount of cash located in the vehicle and in various of Mr. Asuchak's pockets, the scales, the telephone and text communications, and the observations at Strickland Street, lead inextricably to the conclusion that Mr. Asuchak also possessed cocaine for the purpose of trafficking.

[9] However, Mr. Asuchak took the stand and provided an explanation for everything. He said that he was a serious cocaine addict and the cocaine, which he said was a quarter ounce, was entirely for his own use. He had just purchased it from the man police saw enter his car on Strickland Street. The scales had also been recently given to him by another man so that he could weigh his purchase. The cash, he said, was the proceeds of a GST rebate cheque in the amount of \$1,209 that he had recently cashed. He denied that the phone calls and text messages had anything to do with him, despite the fact that some of the communications were obviously intended for a man named Ron. The phone, he said, was his wife's and was used as a house phone

where any number of people had access to it. As for the text messages, he testified that he did not know anything about their contents. He did not like texting, and seldom even looked at texts or replied to them.

[10] Asked why he attempted to evade the police and dispose of the cocaine, Mr. Asuchak said that he did not realize it was the police. He had seen a vehicle coming at him and blocking the road; this would have been the vehicle operated by Corporal Lockwood. His passenger, Ms. Cratty, began screaming. Mr. Asuchak panicked, thinking that it was either a jealous husband or drug enforcers. So he attempted to escape and dispose of the cocaine. Finally, he said, the rolls of coin were not his but were his wife's. He was supposed to take it to the bank to exchange it for bills. His wife, Charlotte Barker, testified to the same effect.

[11] It may be that, as the accused says, the coins belonged to his wife. It is also likely true that he uses cocaine, as evidenced by the syringe found in his jacket. However, virtually everything else the accused said in his evidence is, in my view, patent nonsense.

[12] Let us begin with the chase. Mr. Asuchak says he did not know it was the police, but there were two police vehicles behind him with emergency lights on and Constable Corbett pulled beside Mr. Asuchak, where he had ample opportunity to see that it was the police. It is also significant that when the pursuit began Mr. Asuchak initially applied the brakes and slowed down. His explanation for then attempting to dispose of the cocaine makes no sense whatever. A jealous husband would have no interest in the cocaine. If it was drug enforcers, Mr. Asuchak testified that he had just bought and paid

for the cocaine he had on him. Enforcers come after you if you do not pay.

[13] The explanation for the money is similarly incredible. If the accused had cashed a GST cheque and received a quantity of bills, there would be no reason to separate the money into several tranches and stuff it in a number of different pockets and in the glove box. Moreover, his figures just do not add up. The GST cheque was for \$1,209 and he had, he says, just paid \$500 to purchase cocaine. Yet, he still had over \$1,000 on him, not even counting the coin.

[14] The explanation for the scale is in much the same category. Mr. Asuchak says he bought the cocaine from the man he picked up on Strickland Street. It will be recalled that Mr. Asuchak then drove away for a short distance, turned around, and then dropped the man off. Mr. Asuchak and the police differ on where the man got out of the car, but nothing turns on this. In either case, one would have to ask the question whether Mr. Asuchak was weighing the drug while he drove and the vehicle was in motion. It seems unlikely.

[15] Then we come to the phone calls and texts. Mr. Asuchak denies knowledge of the calls, despite the fact that he was in possession of the phone and despite the fact that one of the callers thinks he is communicating with Ron, as does one of the texters. No one asked to speak to Ron, as might be expected, if, as the accused claims, this was a phone used by many different people. He also claims that he pays no attention to text messages and seldom replies to them. Yet, while Mr. Asuchak was in possession of the phone, texts were coming in and being responded to. Even as adept a storyteller as Mr. Asuchak is, he offered no explanation as to how or why someone

else would be answering texts while he had possession of the phone.

[16] The whole story he tells is so absurd that it is unnecessary to go further and catalog the inconsistencies and contradictions that emerge in his cross-examination before I am able to say that his evidence is utterly incapable of belief. In the result, I find the accused guilty on the charge of possession of cocaine for the purpose of trafficking.

[17] I now turn to deal with the charges of dangerous driving and failing to stop for a peace officer. The pursuit in question lasted for several blocks. While there is no suggestion that the accused's vehicle reached speeds well in excess of the speed limit, it is clear that he was driving aggressively and was prepared to drive off the roadway and through the narrow gap between Corporal Lockwood's van and a parked car. Corporal Lockwood said he was surprised that the accused made it through without striking either the parked car or the police vehicle. Although there is no evidence that other drivers or pedestrians were, in fact, endangered, this was an urban and, going by the photographs, predominantly residential area. It would be entirely reasonable to expect both pedestrian and vehicular traffic to be present. The charge of dangerous driving has been proved.

[18] Finally, it is beyond doubt that the accused failed to stop and drove off in an attempt to evade the police, at least until he had disposed of the incriminating evidence. Consequently, the charge under s. 249.1(1) has likewise been proved.