

Citation: *R. v. Shoppers Drug Mart*, 2005 YKTC 63

Date: 20050907
Docket: T.C. 04-00624
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.
DARRELL PASLOSKI PHARMACY LTD.
O/A SHOPPERS DRUG MART (STORE #299)

Appearances:
Suzanne Duncan
Brenda Jerome

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Pasloski, as representative of Shoppers Drug Mart, has entered a guilty plea to s. 81 of the *Tobacco Act*, S.C. 1997 c.13. The facts that are presented to the Court are that on October 23rd of 2004, a test shopper program was underway within Whitehorse. A 15-year-old test shopper managed to buy a package of cigarettes from a clerk, a 17-year-old clerk at one of Mr. Pasloski's Shoppers Drug Marts here in town.

[2] The clerk had only been with Shoppers for a month and does indicate that he knew he should have asked for I.D., and in fact did ask for I.D. The test shopper said the he did not have any I.D. with him. Further, when asked whether he was aware of

what sort of training he had received in this regard or what the store policy was, the young clerk was unable to indicate what that might be.

[3] There is a bit of history. In November of 2002, a sale was made to a test shopper and resulted in a warning letter to Shoppers. The Crown has pointed out that this is a new clerk with only one month experience on the job and therefore should have had probably more current knowledge of the policies in training; that it is a large corporation, that is Shoppers is a large corporation, and that they clearly should have policy on training in place.

[4] The plea was tendered initially as a not guilty plea and only fairly recently changed; seeking a fine in the \$500 range and has tendered as precedent *R. v. Gullison* (c.o.b. Sourdough Automotive Services), [2000] Y.J. No.47, which was a somewhat similar scenario. Also seeking an order of publication under s. 59.

[5] The defence has raised the -- or has presented the information in regards to Shoppers' background in Yukon. They have been operating in Whitehorse since 1991. They have been subject to, over the years, a number of compliance checks, a vast majority of which they have passed. They have training procedures, company policy, they require all clerks to sign an understanding of the policies and procedures to partake in the training by senior personnel. They have automatic computer prompts with regards to tobacco products. They have decals set out throughout the store, posters in the staffroom, ongoing verbal reminders and cheat sheets to show what dates would qualify as a birth date that would allow a tobacco product to be sold; various presentations in the store and even pursued presentations and promoted

presentations in the schools; and initiated their own test program with using school students.

[6] The defence is seeking a somewhat lesser fine. In as much as the *R. v. Gullison, supra*, case is on point in a number of directions, there are a couple of things that I think are different, that do set it slightly aside or slightly to the side of being right on point, that is, that we are dealing, in *R. v. Gullison, supra*, with a smaller business whereupon the policy in training within the business was somewhat less of a structured program and required some diligence on the part of each of their clerks in order to in fact read -- they were offered manuals, as it were, in which they had to read and make themselves aware of what the company's requirements were.

[7] It seems to me that from what I hear, Shoppers has a much more proactive program in place where they actually initiate contact in regards to the dangers and what is absolutely necessary. Even in the presentations made by Ms. Jerome, her indications are that the facts support, in this case the clerk even was aware, clearly was aware, that test shoppers may attend and that he asked this individual if he was test shopper; he did not follow through beyond that. There are many reasons that could be attributed to that, certainly at 17 years old, we are not particularly experienced in dealing with day-to-day life situations such as this. That could also explain somewhat why a 17-year-old, when quizzed, may not have been able to specify what training they have taken or what policies there were.

[8] All things being considered and everything I have heard, it would appear to me that Shoppers has acted certainly with greater diligence than appears to have been

outlined in the *Gullison, supra*, case. The *Gullison, supra*, case, however, similarly did have a prior warning from the feds for non-compliance, as is the case here with Shoppers. All things having been said and understood to what all has taken place, I think that when you are dealing with a business as large as, from what I understand, roughly a total of 80 employees between the two stores, there has to be some understanding that the odd employee either might not get it or might not have been able to respond appropriately even though given the appropriate training.

[9] As such, I am I going to reduce the fine from the \$500 fine. I do believe that the offence has been made out, and it is aggravated by the fact that there was one prior warning. I am going to reduce the fine to a \$400 fine and allow time to pay on that. What would be requested?

[10] MS. JEROME: One week, Your Worship.

[11] THE COURT: Well, we need it today, or in two weeks, you see. The government cannot take it in one week because we cannot get the paperwork done that fast.

[12] MS. JEROME: All right.

[13] THE COURT: So I will allow you two weeks, how is that? Fourteen days time to pay.

[14] THE COURT: Thank you.

[15] MS. DUNCAN: The order under s. 59(c)?

[16] THE COURT: I am sorry. The order is appropriate. Again, it goes to educating the public and I think is an important aspect. Pursuant to s. 59, the Court is directing that the appropriate wording, as indicated, be published, quarter page in each of the daily newspapers in Whitehorse and that be done within a 30-day period from today's date.

[17] MS. DUNCAN: Thank you, Your Worship.

[18] THE COURT: Ms. Duncan, were you seeking my signature on the order that you did pass up?

[19] MS. DUNCAN: Yes, please, Your Worship, that would be helpful.

CAMERON J.P.T.C.