

SUPREME COURT OF YUKON

Citation: *R. v. Manning*, 2012 YKSC 72

Date: 20120827
Docket S.C. No.: 12-00413A
Registry: Whitehorse

BETWEEN:

REGINA

v.

JOSHUA CONNOR MANNING

Before: Mr. Justice L.F. Gower

Appearances:
Eric Marcoux
Colleen Harrington

Counsel for the Crown
Counsel for the defence

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is a bail review under s. 520 of the *Criminal Code*. The accused is facing nine counts of various trafficking charges from the 13th of January to the 9th of July, 2012. Eight of those nine counts involve trafficking cocaine in amounts, the Crown tells me, ranging from three and a half grams to one ounce and then up to four ounces, the four-ounce transaction having a potential street value of greater than \$10,000. Because of the nature of the charges, it is a reverse onus situation for the accused.

[2] Dealing with the initial hearing first, I am allowed by the case law in this area, on a s. 520 review, to give due deference to the decision below. It appears from the

transcript that the Crown there was only relying on the secondary ground, and that the Justice of the Peace was impressed with the proposed surety, who is also the proposed surety here today, Kelsey Elliot. The Justice of the Peace was aware that Mr. Manning did not have a criminal record, and he stated in paragraph 4 of his reasons:

"If you were before me with one count I would be more prone to release you, but with nine different counts, one for pretty much each month of the year to date."

And then he goes on in a separate sentence:

"You have had dealings with the RCMP and have been arrested on all those different times. So on the secondary grounds, I think if I release you, I am not confident that you would satisfy the secondary grounds and not re-offend."

It is difficult to know, with respect, what the Justice of the Peace meant, although these were brief oral reasons, by saying you have had dealings with the RCMP and have been arrested at those different times. It appears that Mr. Manning was not arrested until the last incident on July 9th, when someone was seen entering his house and was believed to be in possession of drugs. The police, I understand, obtained a warrant and searched the residence where Mr. Manning was then residing, and that culminated in his arrest.

[3] What is noteworthy about the brief reasons from the Justice of the Peace is that he seemed to be impressed by the number of charges and the period of time over which these charges occurred and, but for that, may well have been inclined to release the accused. From what I can pick up from the transcript of the alleged facts that were read into the record at the initial hearing, almost all of the individual counts are as a result of

the undercover operator contacting Mr. Manning to arrange for purchases, beginning on the 13th of January, and on each occasion after that, on the 17th of March, on the 6th of April, on the 7th of May, the 8th of May, the 4th of June, the 19th of June, the 8th of July and so on. On almost all of those occasions it was the undercover who contacted Mr. Manning to arrange a purchase, and as the defence counsel fairly points out it is not immediately clear why Mr. Manning was not arrested at an earlier time. I think there is some mitigation in Mr. Manning's favour as a result of those somewhat unusual circumstances.

[4] Turning to the Crown's position today, the Crown says that I can take a fresh look at this matter as a *de novo* hearing, and he is correct in that regard. He is now relying on all three grounds in saying that Mr. Manning has not met his reverse onus. With respect to the primary ground, which is that it is necessary to detain Mr. Manning to ensure his attendance in court, the Crown says that he has no strong ties in the Yukon Territory. In my respectful view, that is not a submission that can be maintained in these circumstances. Mr. Manning says, and he is corroborated by his brother, that he has lived in the Yukon for the last six years, moving here during high school. He is now 21 years old. He has family here by way of his brother, Evan Manning, and his father, who was present at the initial bail hearing. So, in my respectful view, the Crown's submission on the primary ground cannot be sustained.

[5] With respect to the secondary ground, the Crown points to the risk of reoffending because Mr. Manning has no job and will likely be tempted to return to the lifestyle of drug trafficking to support his habit and perhaps as a source of income. In response to that submission it is very important to note that Mr. Manning has no criminal record.

There is no suggestion of any previous breaches or any difficulty with the law prior to his arrest on July 9, 2012.

[6] Some of the other points raised by the Crown were that Mr. Manning now professes to have an addiction problem for which he wishes to seek counselling, although that was not mentioned in the Bail Assessment Report. That appears to be the case; however, I think I can take official notice of the fact that the time spent in the bail assessment interviews are often short and it seems that the focus of the time spent with Mr. Manning at that time was on the nature of his employment and what type of employment he might be able to secure upon his release. So I do not put a great deal of weight on that point.

[7] The Crown also points out that Kelsey Elliot is not an appropriate surety because she claims to have been dating Mr. Manning from last December and was therefore in some type of a relationship with him throughout the entire period of the alleged drug trafficking. Ms. Elliot has taken the stand and testified under oath that she was somewhat unsure of the nature of her relationship in the beginning, in terms of how to describe it but, although she was aware that Mr. Manning had a drug addiction, she did not fully understand the severity of the problem while they were dating and he never consumed drugs in her presence. Defence counsel also points out that the two of them were not living together at that time, so that, perhaps, partly explains why she was not more involved with assisting him with his addiction issues earlier.

[8] The Crown submits that the other proposed surety, Evan Manning, is not acceptable because he has deposed in his affidavit that he lives mostly from paycheque

to paycheque, but is willing to sign a pledge of \$2,000 as a promise based on his income. He says in his affidavit that that would be a very meaningful amount to him. The Crown's position is that, if it was required to pursue Mr. Manning on an estreatment application, it would likely be unsuccessful because of the statement that he lives mostly from paycheque to paycheque, as I understood the submission. However, Mr. Manning said earlier that he has been employed full time since June 2012 as a labourer with Arctic Backhoe and prior to that he worked at Riverside Super A for three years. That is not exactly what I would describe as sporadic employment.

[9] Evan Manning is also the older brother of the accused. He has indicated that he is aware that Joshua is struggling with some addictions issues and he will assist him in obtaining counselling and talk to him openly about what he is facing. In my view, that type of familial support and connection will be critical to Mr. Manning going forward, in addition to any help that he may be able to obtain from his father. I view Mr. Evan Manning as an appropriate surety, and one who has promised to provide support, not only emotionally and psychologically, but legally in terms of pledging \$2,000 towards Mr. Manning's release.

[10] Another point made by the Crown is that the accused effectively lied in his affidavit when he dealt with his application for his pre-employment carpentry course at the Yukon College. What he said in paragraph 7 of that affidavit is:

"Since my bail hearing on July 13, 2012, I have received an acceptance letter to attend Yukon College for the pre-employment carpentry course that begins on September 3, 2012. This has been my goal for a long time and I am very excited to attend college and focus on my future. If released, I will be attending Yukon College full time. The

Yukon Government will be paying my tuition through a grant that I have received."

The Crown quite properly pointed out to defence counsel that, at the time that the accused swore his affidavit on the 15th of August 2012, he had not yet in fact received funding through the Yukon grant application, but had merely made an application to obtain such funding. It appears that is correct, technically speaking.

[11] Why it was stated in the way it was by the accused is unclear to me at the moment. However, in all of the circumstances, it seems reasonable for him to have assumed that there would be no reason the funding would not be forthcoming and may have over-enthusiastically exaggerated by indicating that the funding was in fact already received by him, when that was not the case. Regardless, having pointed that problem out to the accused, steps have been taken with the assistance of Kelsey Elliot to actually pay the full amount of the tuition that is due at Yukon College, which Ms. Elliot has done through her own funds, until the grant application is finally processed. On the assumption that the grant is received Ms. Elliot will be repaid the sum of \$2,290 from Mr. Manning.

[12] Ms. Elliot has also indicated that she is willing to make an additional \$3,000 cash deposit, which she says is a significant amount for her and will prompt her to maintain close supervision over the accused during the period of his release. The plan is for the accused to reside with Ms. Elliot at her two-bedroom apartment, which is shared with a roommate. Because Ms. Elliot and Mr. Manning are in a relationship they will be sharing the same room on terms that they have discussed between themselves and with the roommate.

[13] The tertiary grounds are also raised by the Crown, mainly because the Crown says its case is strong, that these charges are grave, that the circumstances of the alleged offences involve for-profit trafficking. However, I am not satisfied that the tertiary grounds are engaged on these facts simply for those reasons alone. As defence counsel quite properly points out, the tertiary grounds are rarely engaged and often, according to the case law, only in extremely serious cases.

[14] In all of the circumstances I am not satisfied that Mr. Manning's detention is necessary on either the primary, secondary or tertiary grounds, and I am prepared to allow his release on strict conditions. Those conditions, and I am willing to receive assistance from counsel on this, include the posting of a \$3,000 cash deposit by Kelsey Elliot as surety, and by the pledge of a \$2,000 cash deposit by Evan Manning as a surety. Are there statutory terms that apply, Mr. Marcoux?

[15] MR. MARCOUX: Yes, usually keep the peace and be of good behaviour, report to the Court when required to do so, report -- at this time he could report immediately upon release to your bail supervisor, advise the Court of any change of address.

[16] THE COURT: Okay, and those are found in s. 515 or are they elsewhere?

[17] MR. MARCOUX: Now they are conveniently printed on the court release sheet.

[18] THE COURT: I see, yes, they are in s. 515(4).

[19] So the statutory release terms will apply. In addition to those statutory terms there will be an abstain clause with respect to alcohol and drugs. There will be a reside clause with respect to the residence of Kelsey Elliot. Do we have her address?

[20] MS. HARRINGTON: It's paragraph 1 of Ms. Elliot's affidavit. That's suite 203 --

[21] THE COURT: 7215 - 7th Avenue.

[22] MS. HARRINGTON: Yes.

[23] THE COURT: All right. So that will be specified in the reside clause. There will be a clause requiring Mr. Manning to attend Yukon College and to make his best efforts to continue in the pre-employment carpentry program at that institution. There will be a clause that Mr. Manning attend such counselling as may be recommended by the bail supervisor for his addiction to cocaine. There will be a clause that he not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol. I am prepared to include a curfew. I invite submissions from the Crown on that.

[24] MR. MARCOUX: Looking at his schedule for the Yukon program I think it is all during the day. I don't think there's any course in the evenings.

[25] MS. HARRINGTON: It does look like they end at 5:30. Mr. Manning indicated that when he gets a job, if he obtains employment, it would have to be in the evening because his courses are during the day.

[26] MR. MARCOUX: There could be a curfew from 9:00 p.m. to 6:00 a.m. except with the written permission of the bail supervisor. And if he finds a job then the supervisor can -- could give him permission.

[27] THE COURT: I will make that order. Have I omitted anything or do counsel have any questions or comments?

[28] MR. MARCOUX: I would like a -- the Crown is seeking a no contact order between Mr. Manning and a Christopher Brisson, who was involved in the allegations.

[29] THE COURT: That was the gentleman who ran into the house first?

[30] MR. MARCOUX: Yes.

[31] THE COURT: So ordered.

[32] MR. MARCOUX: Thank you.

[33] THE COURT: Defence counsel, anything more?

[34] MS. HARRINGTON: No, Your Honour. I believe that was --

[35] MR. MARCOUX: Usually, also, since all these allegations that involve trafficking over a cell phone, usually a no cell phone or any communication device clause that's included in this type of case.

[36] THE COURT: He will be living in the residence where there will be a phone. I am assuming that does not apply to the land line in the residence.

[37] MR. MARCOUX: That's correct; doesn't apply to a land line.

[38] THE COURT: Not to be in possession of a cell phone. I will make that order.

[39] MR. MARCOUX: Thank you.

[40] MS. HARRINGTON: The residence doesn't have a land a land line, but lots of --

[41] THE COURT: Okay. But to be clear, Mr. Manning is not personally to be in possession of a cell phone at any time that he is outside of the residence.

[42] MS. HARRINGTON: Okay.

GOWER J.