

Citation: *R. v. Bouquot*, 2004 YKTC 61

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Docket: T.C. 03-00378  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge McGivern

R e g i n a

v.

Branden Bouquot

Appearances:

John Phelps

Lynn MacDiarmid

Counsel for Crown  
Counsel for Defence

**REASONS FOR JUDGMENT**

[1] The accused stands charged that on or about the 21<sup>st</sup> day of September 2003 at or near Haines Junction, Yukon Territory, he did unlawfully commit an offence in that he did unlawfully possess a substance included in Schedule 2, to wit, marijuana for the purpose of trafficking, contrary to Section 5 of the *Controlled Drugs and Substances Act*.

[2] The Crown and the defence have agreed that the sole issue to be determined by the court is that of possession of the marijuana that was found in a motor vehicle by Corporal Hayes on September 21, 2003. A summary of the evidence presented to the court along with excerpts from the transcript of the contents of the record prepared in this proceeding is as follows.

[3] Corporal Hayes, a member of the Royal Canadian Mounted Police, was on routine patrol on the Alaska Highway approximately 15 kilometres east of

Destruction Bay when she stopped a vehicle for speeding. The accused was a passenger in that vehicle. The driver of the vehicle was given a speeding ticket and he also was given a 24-hour driving suspension because of his consumption of alcohol. The officer then checked the two passengers to determine whether one of them was able to drive the vehicle and if so, they would be allowed to continue on their way. The passenger in the front seat did not have a driver's licence and the officer then spoke to the accused who was sitting in the rear seat. Corporal Hayes asked him if he had a licence and he said that he did. The officer then asked him to step out of the vehicle and produce his driver's licence and he did so. The officer asked him if he had been drinking and he replied that he "had had one beer, ... and it was a while ago while he was in Whitehorse" (page 7 line 8). The officer also noted that the crotch area of his pants was damp and when she looked inside the vehicle she saw an open can of beer lying on the seat. The officer asked the accused if he would do sobriety tests to determine his ability to drive. The accused replied that he was too cold to complete the tests.

[4] I shall now refer to the transcript of the evidence given in-chief by Corporal Hayes: [p 8 line 4 to p 9 line 2]

Q. Upon his refusal or his declining to do the sobriety tests, what did you do next?

A. While he was standing outside the vehicle, I observed, through the open rear window, that there was a box of O'Keefe beer, as well as an open box of Kokanee beer, in the rear of the vehicle. I subsequently went around to the right, rear door and opened the back door, advising that I was to seize the open liquor in the vehicle.

Q. Now, I'll stop you right there just for a moment. When you say "the right, the right rear door", is that the passenger side.

A. The right, rear passenger side door.

Q. Thank you. What was your intention at this point in time of how you were going to deal with these individuals?

A. My intention at that time was to seize any liquor that was contained in the vehicle. It was also to have the vehicle towed, due to the issuance of the 24-hour suspension and the fact that neither

of the other occupants held a valid - - I'm sorry, neither of the occupants, due to the fact that Mr. Bouquot had been drinking and could not drive, I was going to have the vehicle towed, due to the location of the vehicle on that corner of the roadway which is very narrow and it's quite a sharp curve as well.

Then page 9 line 23 to page 11 line 10:

Q. Corporal Hayes, you just indicated you were about to seize the alcohol that you had viewed. What did you do next?

A. I opened the back, right, rear passenger door; and as I did, I observed two black garbage bags; and as I did the garbage bag that had [sic] was contained on the floor, fell towards the open door and a large Ziplock bag, containing individual clear baggies, fell from the vehicle, which was subsequently caught by myself.

...

Q. And what happens next?

A. Mr. Bouquot spontaneously stated to me ...

...

"I guess you found my cache."

Q. And what happened next?

A. As I picked up the bag of marijuana, I asked him - - I said, "Does this belong to you?"

And his reply was, "Yes, it's mine."

As a result of that - -

...

As a result, I placed the bag of what I believed to be marijuana back on the top of the garbage bag that it had fallen from, and I subsequently arrested Mr. Bouquot for possession of marijuana and possession of a controlled substance.

Q. And what happens next?

A. I then placed Mr. Bouquot in the back of the police vehicle, ....

[5] The officer then had some conversations with the other two men and placed them in her police vehicle. The officer then told them why they were under arrest, that they had the right to retain counsel as well as the services of a legal aid duty counsel. The officer then asked them if they understood what she had

said and two of them said, "Yes" and the accused said, "Absolutely, you're just doing your job".

[6] Arrangements were then made by the officer to have a tow truck come to tow the vehicle to Haines Junction. While waiting for it to arrive, the officer was making notes in the police vehicle and while doing so, she heard the three men speaking in the rear seat of the police vehicle. The officer said she overheard the following remarks:

[p15 line1 to p17 line 7]

A. I heard Mr. Bouquot state, "It's criminal for you taking my pot away. You're taking away somebody's medicines." ... Mr. Keays, who was the passenger in the front, right of the vehicle when it was stopped, stated, "The boss is not going to be happy with you."

And then, Mr. Barnie [corrected] asked myself, "Are we all going to be charged?"

And I replied, "Yes, with possession, you are all under arrest for possession for the purpose."

Mr. Barnie stated, "It's not all of ours, it's his," and pointed to Mr. Bouquot.[p 15 line 15] ...[p 16 line 23] "... All I'm doing is driving. It's not my shit, that's for sure. I have a wife and kid, and I sure hell don't need no shit. I have my carpentry."

Then Mr. Keays stated, "What happened," and he was acknowledging Mr. Bouquot.

And Mr. Bouquot stated, "It literally fell on her feet when she opened the door. We are all good people, just working. That's a product of my work. I sweated and sweated to produce it for people's medicines. It's for herbal substances," and I could not hear the last part of that sentence. I didn't understand what was being said.

And then, he stated, "That's what I do for a living. I harvest people's herbs."

[7] I will now summarize the cross-examination as well as including portions of the transcript of Corporal Hayes' cross-examination:

[8] After stopping the vehicle and dealing with the driver, the officer spoke to the accused and asked him if he had a valid driver's licence and he said he did. The accused also stepped from the vehicle when asked to do so. The officer was asked the following questions:

[p 49 line 27 to p 50 line 23]

Q. And do you recall where you were standing at that point?

A. I was standing just between the driver's door and the right rear, rear passenger door on the right side of the vehicle.

Q. And do you recall how Mr. Bouquot exited the vehicle, which side he - -

A. Which side of the vehicle he exited from?

Q. Yes

A. He exited from the - - I'm sorry, did I say I was on the right side? I was on the left, driver's side and left passenger's side; and Mr. Bouquot exited via the left, rear passenger door.

Q. Left, rear passenger door, behind - -

A. He exited the door directly behind the driver's door, which would be the left side of the vehicle.

Q. Did you assist him to get out of the vehicle, or did he get out himself?

A. I did not assist him.

Q. Do you recall if the window was open in the back of the vehicle?

A. Yes, it was, it was open.

Q. Do you recall if he opened the door himself to exit?

A. No, I do not.

[9] The officer then agreed with defence counsel that while she was still on the driver's side of the vehicle she asked Mr. Barnie to enter the vehicle and open the back door which was the one where the officer had seen the beer behind the right rear passenger seat.

[p 53 line 25 to p 55 line 1]

Q. So, Mr. Barnie entered the vehicle, and did he actually climb into the back and was struggling with the latch, trying to open it?

A. I do recall that he had difficulty attempting to open the back latch.

Q. And that would have been in the very far back we're talking?

A. That's correct.

Q. And basically, you got impatient and went around and opened the door yourself, and that's when the marijuana basically fell on you; is that correct?

A. He was having difficulty opening it; and so, I went around to the right passenger side to open the vehicle.

Q. Is there any reason you went to that side and not to the other side?

A. Yes, ... [line 20] ... I went to the right side to open the door of the vehicle so I wouldn't interfere with oncoming traffic.

Q. And then, the next thing you found the marijuana. Do you recall where Mr. Bouquot was at that point, exactly where he would have been standing?

A. Yes, he was directly to the left of myself, so he would have been situated right near the back, right tire.

[10] After finding the marijuana, the officer placed all three of the men in her police vehicle.

[11] The accused, Mr. Bouquot was placed in the right rear seat, Mr. Barnie in the middle of the seat and Mr. Keays was in the left side of that seat behind the officer.

[p 59 line 14 to 25]

Q. So, then you testified that Mr. Keays appeared to acknowledge Mr. Bouquot when he asked, "The boss is not going to be happy with you."

A. Yes.

Q. Would it have been difficult to actually determine who Mr. Keays was acknowledging, given he was on that side and both individuals were presumably to the right of him?

A. Yes, he, at the time, leaned forward and Mr. Barnie was seated next to him; and he was directing his attention to Mr. Bouquot, which was observed in the rear-view mirror by myself.

[12] After the remarks that were overheard by the officer in the police vehicle, the tow truck arrived and it towed the parked vehicle into Haines Junction with the police vehicle following behind.

[13] The evidence of the accused will now be summarized in part along with excerpts from the transcript of the court proceedings. The accused and two others left Whitehorse to drive towards Burwash, a community north of Haines Junction. After passing Cottonwood Campground the vehicle was stopped by a member of the RCMP. The following quotations are from the testimony of the accused in chief and are taken from the transcript:

[p 118 line 17 to p 129 line 24]

Q. And then, did the officer approach the vehicle, then?

A. The officer approached the vehicle and immediately made a comment - - no, I'm sorry, I would like to go back. I lit up a cigar at the point that we got pulled over, hoping that it might mask the smell of the alcohol that I had just spilled on myself. When the officer got to the window, she asked about the smell of the alcohol and whether the driver had been consuming alcohol or not, at which point I believe he denied that he had; and I inferred that I was the reason it smelled like alcohol. To the best of my knowledge, I told the officer that I'd been drinking since we left Whitehorse and that I was the reason it smelled like alcohol.

Q. Why did you tell her that?

A. I was concerned for the driver. I'm aware that he has two past convictions for impaired driving, and I didn't want there to be any suspicion that he might have been consuming alcohol while operating a motor vehicle.

Q. So, what happened after that?

A. The officer took [the] driver out of the vehicle and asked him to perform roadside tests, I gather. I'm not sure, I was left in the vehicle.

Sometime later, the officer returned with the driver and announced that he had been given a 24-hour roadside suspension and - -

Q. Can I just stop you there. How long did it take for him, when he was asked to perform tests. You said, "Sometime later - -

A. I'm not totally clear on that issue of how long, long enough to get cold. The window had been - - The driver's window was left unrolled in the vehicle, and I believe the passenger window also was a bit open. So, there was a cold breeze blowing through the vehicle, and I was becoming erratically shivering at that point due to the lack of nutrients in my system and - -

Q. Did you see what was going on or where they went?

A. The officer and the driver?

Q. Yes.

A. I did not try to look. No, I was in the rear of the vehicle and it was all tinted. I can't really see much out of it. It was getting dark, duskish at that point, so there was no reason ...

Q. So, she returns sometime later. Can you estimate - -

A. Somewhere around a half an hour, I would gather, the time it takes to fill out a ticket and take these tests and answer questions.

Q. So, she returns, and Mr. Barnie is with her?

A. Yes.

Q. And what happens then?

A. The officer indicated that Mr. Barnie had admitted or told her that I had a driver's licence that was valid and that I was okay to drive; and the officer inquired as to the licence and asked me to step from the vehicle and perform a roadside sobriety test.

Q. She asked you to perform it. Then what happened?

A. I exited the vehicle from the rear passenger side, because the rear driver's side door did not work from the inside. I put on my jacket. I went around the rear of the vehicle and attempted to perform the roadside sobriety test for the officer, at which point the sandals I was wearing would not allow me to perform the toe-to-heel test that she indicated I perform.

I explained to her it was because I was shivering so bad that I was slipping off the soles of my sandals. So, I kicked the sandals on the ground and performed the test barefooted in my socks, at which point, to the best of my recollection, she said "Okay ..." [p.121 line 23] ... and to the best of my knowledge the officer told me that I was okay to drive and that I would be driving the vehicle away from the scene. She just wanted to calculate how much alcohol we had

left. The officer asked Mr. Barnie to open the rear of his vehicle, at which point I recollect him indicating he could not do that from the outside.

He went into the vehicle from he [sic] rear passenger side and attempted to open the rear door for her. There was some fumbling and whatnot. It did not seem as if it was happening as a simple matter. So, the officer took it upon herself to go around to the rear passenger side and open the door.

Q. And where were you, then? What were you doing - - or where were you? That's my question.

A. As the officer had asked how much alcohol was in the vehicle, I had told her that we had about eight beers left, and I had followed her around to the passenger's side of the vehicle.

Q. So, she took it upon herself to go around and open the door?

A. That's correct.

Q. Just for clarification, this is the passenger rear door - -

A. Yes.

Q. - - on the right side?

A. M'hmm.

Q. And then, what happens?

A. It's not totally clear in my mind. It was a confusing situation. The officer produced what appeared to be a bag of marijuana, of what quantity I wasn't sure. It was very confusing, in that the bag that she produced it from had not been sitting there when I left the vehicle. So, I was very surprised by it. In my mind, from my information I'd been led to believe that the personal possession of marijuana was not a legitimate offence at that point in time. I didn't realize - - in the circumstances in which I had found myself, I thought I would make some statements regarding the matter to the police officer.

Q. So what did you say, of how did that come about?

A. I believe the officer asked me what this was, and I replied perhaps that that was my stash that she had found.

Q. Do you recall what was said next or what happened right after that?

A. From the best of my recollection, the officer asked if this alleged bag of marijuana belonged to me, to which I indicated again because as far as I was aware that a personal possession of marijuana was not a criminal offence, I indicated that the bag of

marijuana was mine; having no idea at that point in time exactly what it was that I had indicated as being mine.

Q. So, was it actually yours?

A. No, it was not mine.

Q. Do you know whose it was?

A. I'm not totally clear on that issue, as it was not mine, so it's not a position for me to hold. I was led to believe that perhaps it may have been Mr. Keays' bag of marijuana.

Q. You were lead to believe that, what do you mean by that?

A. At some point during the conversations, I had been lead to believe that he had some marijuana. I'm not sure under what context it was, other than the fact that we were smoking some.

Q. Did he actually make a comment to you or tell you he had marijuana? Can you be more specific about what you mean by - -

A. I'm not really sure where I gained that information throughout the day of drinking. It may have arisen that there was some marijuana around. I mean, we were smoking it, so I just left it at that.

Q. Okay, then after, so after she asks you if it's yours and you said it was, what happened next?

A. To the best of my recollection, she placed me into her police truck, and I don't recall if she said anything. She went back to the vehicle and returned with the other two occupants of the vehicle and placed them in the rear of the vehicle, at which point she got into the front of the vehicle and - - no, actually when she placed me in the back of vehicle, there was a briefcase in the back of the vehicle; and after she placed the other two accused in the vehicle, I was left with the briefcase on my lap. So, then she took the briefcase and dealt with that, and then, got in the front of the vehicle and proceeded to read us, I believe, our rights, Charter rights, our rights to speak with an attorney, so on and so forth.

She advised us that the pickup was going to [be] towed and that was going to take a while to get a tow truck there. One was available, though, in either Burwash or Destruction Bay.

Q. You said the pickup would be towed was that?

A. I'm sorry, the blazer, Mr. Barnie's vehicle.

Q. So, then what do you recall happening, after that, while you were sitting in the back?

A. Of the vehicle? I made a series of comments, that which I again had lead myself to believe that were not necessarily that incriminating at that point in time due to the fact that there was no

legitimate legislation given by our government to provide for the personal use of marijuana under that situation.

Q. You made a series of comments. Do you recall what those comments were?

A. I don't recall all of them, no, I made a lot of comments.

Q. To who, who were you speaking to?

A. I was speaking generally out loud. I made some comments to the officer. I made some comments to the co-accused. I was just generally making a lot of noise. I like to hear my own voice sometimes. I was feeling very much concerned about the statements that I made, and my nervous tendency was to talk. I was very much in a state of physical uncontrollability by that point. I was very cold and shivering uncontrollably, due to the extent that we were sitting in the vehicle without heat; just not thinking clearly, babbling really. I was very confused as to why the officer had not given Mr. Bernie an impaired and - -... [p.126 line 16] due to the relevance of the situation and his past record with such matters, and then, also confused as to the fact that she was going to let me drive away, and then, I found myself in this position, after making my own silly comments.

Q. Now, Corporal Hayes testified that you said to her, something to the affect "It's criminal you taking my pot away," and you apparently go on and say "I sweated and sweated to produce it, and it's for people's medicine." Do you recall making that statement?

A. I do recall making it. It was more on the context to regarding the bag of marijuana I knew I had in my pocket, and being as I was in the back of a police cruiser, I knew it was going to be confiscated; and obviously, I was disillusioned as to the minimal - - the level of the offences that which I would be committing, having possessed marijuana for a personal purpose.

Q. Was that statement true?

A. In regards to, sorry, this statement - -

Q. The statement about "It's criminal taking my pot away" and that you "sweated and sweated to produce that product - -

A. The pot that I had my pocket, I had produced from a seed, as there were seeds in the bag. Marijuana is something I've use as a personal and on a medicinal basis for several years.

Q. So, when you said "It's criminal you taking my pot away," that was a true statement, it means you meant it at the time?

A. I thought that I meant it from the best of my knowledge, I was making a statement that was legitimate as there were, in my mind -  
-

Q. What were you referring to? When you said "my pot", what were you referring to?

A. Oh, I guess it was a facetious inferment [sic] in, in knowing that I was going to lose my bag of pot; and in my mind, that was my medicine and that was how I felt about it. It was the bag of pot that was in my pocket. It was something I'd been smoking all day. I didn't want to lose it.

Q. So when you were referring to "my pot", and you say that "that's a product of my work," what specifically are you referring to?

A. In my mind, that was referring to the bag of pot in my pocket that I knew was going to get taken away. I also had lead myself to believe I was making statements in regards to the bag of marijuana she showed me, which in my mind, might have been a bag of personal marijuana. Those were the statements I would have made, had it been my bag of marijuana.

Q. Because at that point, you're aware that she has a bag of marijuana that has fallen out of the vehicle that you have admitted is yours, right?

A. Yes, I don't necessarily remember it falling out of the vehicle.

THE COURT:                      Actually, the officer didn't say it fell out. She said she caught it before it fell out of the bag.

Q. MS. MACDIARMID:      That's correct, Your Honour.

I guess what I'm just asking you is you have said in your testimony that you admitted you said that was yours.

A. M'hmm, yes.

Q. So, when you were referring, in your facetious statements about "you're taking my pot away," were referring to that pot?

A. I was referring in a broad and general mannerism, as if it were my bag of pot. I wasn't directly referring to my bag of pot. I felt it was an argument that needed to be made and wasn't going to get made. For some reason I took it upon myself to make it. There was some amount of concern, as the driver of the vehicle, I knew, had children and the passenger was a youth, and I was confused by the situation.

Q. Did you have any other knowledge of that bag that was - - that bag of marijuana that was subsequently found and - -

A. No, I had no previous knowledge that that bag of marijuana was in the vehicle. It was quite surprising. This is the nature of my spontaneous comment. It was out of a spontaneous reaction, in that that black garbage bag had not been sitting there when I had left the vehicle, and I was really confused as to the contents and as to why I was even being asked this question, and the answer came flying off the top of my head. ....

[page 130 line 4 to page 132 line 13]

Q. ... I'll just take you back to one other question, there was a beer found on the seat - -

A. Yes, a can of Budweiser.

Q. Do you know where that can originate from?

A. It was in my pocket, in my coat pocket, when the officer asked me to get out of the vehicle and conduct a sobriety test. I removed it from my left-hand coat pocket and left it on the seat as I exited the vehicle from the right. Totally unencumbered by any black garbage bags, I got out of the vehicle. ...

[Continued at line 21]

Q. So, I'll take you back. You're in the back of the police cruiser. Do you recall about how long you were in the back of the police cruiser with the other two co-accused?

A. Oh, lord, for some time till the tow truck came, and then, on the trip back to Haines Junction is - -

Q. Actually, I just mean before you left to go to Haines Junction, while waiting for the tow truck, sorry.

A. Somewhere in the grounds of an hour anyway, long enough to get really hungry and complain about it, and then, a strong desire to urinate probably overcame me.

Q. Was the officer with you the entire time?

A. No, she was not. She left the vehicle to get me some food, as I had asked of her. At one point, she left the vehicle to go and talk to the police officer, or sorry, the tow truck driver at one point and ...

Q. Did you continue to talk to and make comments to the other individuals when she was not there?

A. At the point the officer left to get me some food, I took it upon myself to inquire to the co-accuseds as to the nature of the statement I had made and in regards to what I had just admitted to apparently possessing and was informed - -

Q. Can you clarify statement? I didn't quite understand what you meant. You took it upon yourself to inquire about the nature of the statement. What do you mean by that?

A. As I said, when I got out of the vehicle, there was no black garbage bags, and there was no bag of marijuana. I was asked what this was and if it was mine and required - - and replied that it was, I had no idea of the contents of that black garbage bag or for the nature of the position I was putting myself in. I thought I was arguing grounds on a bag of personal marijuana.

Q. So, what was the nature of your question to the co-accuseds, then?

A. Well, I asked them what was going on and the nature of the black garbage bag and to what degree of trouble I had just gotten myself into.

Q. Do you recall what the reply was?

A. I believe Mr. Keays replied somewhere in the grounds of a couple of pounds I had just mistakenly admitted to being in my possession.

[14] I shall now summarize the cross-examination of the accused in a similar fashion. [p 173 line 5 to p 179 line 3]

Q. You heard the testimony of the officer?

A. Yes, I did.

Q. That's correct? The officer gave her testimony, referring to notes she was taking throughout the investigation; do you recall that?

A. That's correct.

Q. Her testimony clearly was that she invited you to do a sobriety test, and you declined. So, your testimony today is the she's mistaken on that point?

A. Unless I'm mistaken on the issue, the only declining that I might have offered was that I couldn't do it in my sandals; and I took off my sandals and walked down the road, in the middle, in my bare feet, in my socks.

Q. But you heard her testimony that you declined because you said you were too cold?

A. Obviously, maybe my mental state isn't that clear, hers is more clear, I don't now [sic] what to say. That's ...

Q. Your mental state isn't that clear; you may be mistaken on that point?

A. If that's what your asking, I told you from my point of view where I stood on the issue.

Q. Well, I'm asking you is it possible your mental state on that point isn't clear?

A. If it's not clear on that point, it's just as unclear on all my points.

Q. Okay.

A. And just as I'm clear in the statements I made, because I was completely, obviously, totally incapable of having any sort of judgement or reality of what went on that night.

Q. It's fair to say your recollection is questionable as to what happened that evening?

A. To some degree, yes.

Q. Now, when the officer opens the vehicle to see - - the door, the rear passenger door, to seize, what she says, some alcohol that she sees in the vehicle, something falls out. It surprises you, you said earlier today.

A. From my recollection, it didn't necessarily fall out. She reached in and pulled it out. My inference to it falling in her lap was more of an inference to it was there when she opened the door.

Q. And her testimony was that it was falling out, and she grabbed it and prevented it from dropping.

A. Perhaps, I'm not totally clear on that issue. I wasn't scoping her movements by any means. She made a rather hasty move around the rear of the vehicle to the side passenger door. I was under the impression she was suspecting that the contents of the vehicle were being moved around, or it was taking too long for him to try and open the door or some such matter.

Q. You were behind her - -

A. M'hmm

Q. - - when she opened the door?

A. M'hmm

Q. You walked around with her?

A. I followed her around the vehicle, so she probably had the door open by the time I got there.

Q. You immediately said to her, "I guess you found my stash"?

A. That's what I've testified to.

Q. Then she holds it up and says, "Is this yours"?

A. In my mind she asked me what this was; she said, "What's this"?

I said, "I guess you found my stash."

Then she says, "Is this yours"?

Q. But you heard her testimony that as it was falling out and she was catching it, you said "I guess you found my stash." That's what she said, isn't it?

A. It seems to me, yes, that's what she said. I would have to refer to notes - -

Q. So, she's mistaken on that point?

A. I'm not totally clear on that point, so ... I can't even say I had a clear point of view. I don't really remember that clearly.

Q. So, it's likely that she is correct in her interpretation of what took place?

A. It's a possibility. I was really confused as to why she was not waiting for the driver to open the rear door for her, and she had just all of a sudden gone around to the side of the vehicle and decided to open the door of her own accord. So, she had already asked him to open the rear door for her, and he was inside trying to do that.

Q. But we heard her testimony. Her testimony was she walked around the vehicle; she opened the door, is that correct?

A. That's correct.

Q. And you don't take any dispute with her testimony as to what took place?

A. With that particular issue, no.

Q. Okay, you were following her as she did this?

A. Yes.

Q. As she opened the door, something began to fall out, and she grabbed it?

A. Yes.

Q. At this point, you said, "I guess you found my stash."

A. That's what I testified to. I was confused about anything falling out, because nothing had been there to fall out when I just finished getting out of the vehicle.

Q. You were surprised that anything fell out?

A. It was more of a surprise remark than anything. I was very surprised anything fell out. There was nothing there to fall out when

I had last exited the vehicle. Otherwise it probably would have just fallen out when I got out of the vehicle.

Q. And the first thing that came to your mind is you're surprised that there's something behind the door, falling out, is, "I guess you found my stash"?

A. Yeah, yes.

Q. And "stash", the correction of the statement that the officer said was "cache", stash is a reference to marijuana product?

A. Yes.

Q. But you didn't know what it was falling out, because that wasn't there?

A. I had an idea what it was. I had no idea, the quantity or what it - - it was grass, I has [sic] some in my pocket and - -

Q. But you had an idea, as it's slipping out, as it's falling, what is [sic] was.

A. Yes, I'd been smoking marijuana all day, and I'm familiar with it.

Q. And because you had been smoking marijuana all day, you knew what was falling out the door?

A. No, not necessarily in that inferment [sic], I knew what marijuana looks like in a bag, and it looked like a bagful of marijuana.

Q. It certainly doesn't look like your bagful of marijuana, does it?

A. No.

Q. Much larger?

A. Definitely.

Q. In fact, numerous times larger than your bag of marijuana?

A. Yeah, I didn't get that clear a view of it. I saw a bag of marijuana and manifested the statement, "I guess you found my stash."

Q. Isn't it true that knew what was falling out from prior knowledge, and that's why you said, "I guess you found my stash"?

A. No, it's not true.

Q. Then the officer holds it up to you, and says, "Is this yours?"

And you reply, "Yes, it's mine."

A. That's correct, that's what I testified to.

Q. Was that a true statement?

A. No, it was not mine.

Q. Were you lying to the officer?

A. Yes, I was.

Q. In fact, it's your testimony you were lying throughout the evening?

A. Like I testified in the beginning, I was fairly impaired through the whole situation. I'd consumed a lot of beer and marijuana that day.

[page 193 line 2 to p. 198 line 1]

Q. Getting back to the discussion on the roadside with the officer and your statements, you are then taken to the RCMP vehicle and placed in the rear seat. You indicated you're getting nervous at this point and you talk a lot when you're nervous, is that right?

A. I also testified that I was very cold and shivering, yes.

Q. And the combination of being nervous, cold and shivering, is that fair to say?

A. Very much so.

Q. You're nervous because of what's going on around you?

A. Mostly because the police officer didn't seem to be aware that simple possession of marijuana at that point in time was not a punishable offence and had thus put me in her vehicle. I had just stated some fairly incriminating statements that obviously had no grounds.

Q. You've made the statement, "I guess you found my stash." You've made the statement, "Yes, it's mine;" and now you find yourself in a predicament in the back of a police vehicle, and you're nervous about that; nervous, cold and shaking?

A. That would be correct.

Q. The police officer doesn't have the same opinion on the law as you at this point in time, you're aware of that; but in this state, it's your testimony that you continue to make statements with respect to this marijuana?

A. Yes, I'm not that familiar with the law. I have not really been arrested all that - - to that point in the past where I'm supposed to be aware of my right to say nothing. I was cold and shivering and babbling.

Q. Mr. Keays asks you what happened, you say: It literally fell on her feet when she opened the door. We're all good people, just working. That's a product of my work. I sweated and sweated to produce it for people's medicines. It's for herbal substances. That's what I do for a living. I harvest people's herbs. You've made this

statement after you know the officer is not in agreement with your view of the law; and that's an accurate statement, isn't it?

A. No, it's not an accurate statement. It's a completely misleading statement I fabricated to try to explain my philosophical point of view towards the personal possession of marijuana. I was trying to, in my muddled state, to try and pull together as much of that magazine article as I could.

Q. You know you're in trouble, you know the RCMP officer doesn't agree with your views, so you tell the RCMP officer that you grew the marijuana?

A. I'm obviously in an unclear state of mind. Why would I do that?

Q. You testified today that you, in fact, do grow marijuana?

A. I might have testified that I have grown some for my own personal use before.

Q. Is that the 9.5 grams that you had on your possession?

A. That would be correct.

Q. Where did you grow it?

A. On the Sunshine Coast.

Q. And you brought it from the Sunshine Coast with you to the Yukon?

A. Yes, I did. That's why I told the officer it was damp still, because I'd just finished harvesting. I'm curious about the seeds in that bag of marijuana that was seized from me.

Q. But that statement that you made with respect to being a product of your sweat equity, that has to do with the marijuana that fell out of the vehicle didn't it?

A. No, it was in regards to the marijuana in my pocket, and then, the facetious manifestation of statements I was trying to corroborate to make a point.

Q. The facetious statements had to do with the marijuana in the back of the vehicle, as well though, because you were making facetious statements earlier about it.

A. By that point, I'm just making statements about marijuana in general.

Q. So, the statement about the sweat equity, is that to do with the marijuana in the back of the seat, as well, the back seat of the vehicle, the marijuana that is now an exhibit?

A. I'm not understanding the question clearly, I'm sorry.

Q. Was your statement, with respect to the sweat equity on harvesting these herbs, directed at all the marijuana that was located?

A. No, it would have been directed towards the bag in my pocket. I had no former knowledge of that marijuana before. It wasn't my marijuana, so why would I make those statements towards it?

Q. It wasn't made with respect to that marijuana?

A. It was made with respect to the marijuana in my pocket, in my mind; because at that point, I know I'm in the back of a police cruiser, and I'm probably going to lose it, and I was upset about that.

Q. But you testified earlier that you were hoping to be released after a minor search. You were hoping that they wouldn't find the 9.5 grams?

A. I was hoping.

Q. So, isn't it true that your statement had to do with the larger amount of marijuana that was in the vehicle, not the minor amount of marijuana that you were hoping that they didn't find on you?

A. No, that's not true.

Q. They hadn't seized it?

A. They were going to, I knew full well.

Q. But you testified earlier that you were hoping they wouldn't. That's why it was in your sock.

A. I was also hoping that I was driving away from the scene.

Q. Okay, but you got into the vehicle, the police vehicle, you were told you were being placed under arrest, and you put the marijuana in your sock?

A. That is correct.

Q. And you testified earlier today that you were hoping they wouldn't find it, that you would be searched, there would be a minor search, and you would be released. Isn't that true?

A. That's correct.

Q. So, the reference that you made in the vehicle shortly thereafter had to do with the seized marijuana, didn't it?

A. No. At the point that she brought back the other two and read us all our rights and considered us suspects, I realized at that point that it was a lot more serious than just me having admitted to a personal bag of marijuana.

[15] All of the above excerpts from the official transcript, the summarized testimony of the accused and the officer, as well as all of the evidence adduced by the Crown and the defence has been considered by me in determining whether or not the Crown has established the guilt of the accused beyond a reasonable doubt.

[16] If the accused's evidence is believed then he must be acquitted. If his evidence raises a reasonable doubt as to his guilt then he must be acquitted. Even if the evidence of the accused is rejected but the evidence tendered by the Crown does not prove the guilt of the accused beyond a reasonable doubt, he must be acquitted.

[17] Some of the evidence given by accused on his own behalf differs from that given by Corporal Hayes. Some of those differences are set out below. While his explanation regarding his knowledge of the marijuana in the black garbage bag may be a belief that he presently holds, it is not an accurate recollection. The conversations the accused had in the police vehicle with Mr. Barnie and Mr. Keays make it perfectly clear that the accused knew of the marijuana in that bag and the purpose for it being there.

[18] When the officer first spoke to the accused, she asked him if he had been drinking, he told her he had had one beer a while ago in Whitehorse. The accused later testified that he had been drinking during the whole trip from Whitehorse to where they were stopped by the officer and that he was impaired.

[19] The accused also testified that, to the best of his knowledge, the officer told him it was "okay" for him to drive the vehicle after he had performed a sobriety test. The officer, on the other hand, testified that the accused did not perform any such test because he said that he was "too cold" to do it. The accused agreed however, that his "mental state" may not have been that clear on that issue and that the officer's recollection was clearer than his.

[20] The accused also agreed that he told the officer that the marijuana found in the vehicle was his, but in his testimony he said that he was not referring to that marijuana but to some other marijuana, which he had in his pocket.

[21] The accused further testified that the remarks he made while sitting with Mr. Barnie and Mr. Keays in the rear seat of the police vehicle did not refer to the marijuana in Mr. Barnie's vehicle but to the marijuana he had in his pocket. The totality of that exchange between Mr. Keays and the accused simply cannot refer to anything except the marijuana in the garbage bag.

[22] On several other occasions, as one can observe from the above quotes incorporated in this judgment from the official transcript, the accused stated that he was not clear on several matters on which he was cross-examined.

[23] I do not believe the evidence of the accused whenever it conflicts with the evidence of Corporal Hayes. In those instances, I accept the evidence of the Corporal and I reject the evidence of the accused. The evidence given by the accused as well as the words spoken by him in the presence of the officer is not capable of raising a reasonable doubt as to his guilt.

[24] I am satisfied beyond a reasonable doubt that the accused had knowledge of the marijuana in the vehicle, that he had control of that marijuana and that it was there with his consent. I find that he had possession of that marijuana. Therefore I must and do find him guilty as charged on the charge of possession for the purpose of trafficking in marijuana.

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MCGIVERN T.C.J.