IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R.* v. *D.J.P.*, 2004 YKSC 09

Date: 20040123
Docket No.: S.C. 03-01500
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

Applicant

And:

D.J.P.

Respondent

Publication of identifying information is prohibited by section 110(1) of the *Youth Criminal Justice Act*.

Appearances:
Mr. François Lacasse — Counsel for Her Majesty the Queen
Mr. Malcolm Campbell — Counsel for the Respondent

Before:
Mr. Justice R.S. Veale

REASONS FOR JUDGMENT

INTRODUCTION

[1] This case is about the interpretation of the words “happens to be located” in s. 47(2) of the *Controlled Drugs and Substance Act* (CDSA), S.C. 1996, c. 19 s.1. D.J.P. was arrested in Kelowna, British Columbia, and the Crown has brought proceedings at Whitehorse, Yukon Territory, where D.J.P. resides. The Youth Court judge ruled that the Youth Court of Yukon had no jurisdiction to hear the matter when the subject-matter of the proceedings arose solely in British Columbia.

[2] The Crown seeks a writ of *certiorari* quashing the decision of the Youth Court judge and *mandamus* directing the Youth Justice Court of Yukon to exercise jurisdiction and proceed to trial.

[3] The precise issue is whether the Yukon has jurisdiction to hear a case where the subject-matter arose in British Columbia and the accused resides or is located in the Yukon Territory.

FACTS

[4] The following facts are not in dispute:

(a) On May 23, 2002, following an ongoing drug investigation that began in Whitehorse, Yukon, during the fall of 2001, members of the Drug Section of the Whitehorse Detachment of the Royal Canadian Mounted Police (RCMP) advised their counterparts in Prince George, British Columbia, that the main target of their investigation, M.O'B., would be traveling from the Yukon to British Columbia to purchase illicit drugs and that he would be accompanied by D.J.P.

(b) On May 25, 2002, members of the RCMP observed the two individuals arrive at the bus terminal of Kelowna. The RCMP conducted surveillance operations on the two individuals on May 25 and 26, 2002.

(c) On May 26, 2002, Corporal Chevarie of the Whitehorse Detachment of the RCMP informed his counterparts in Kelowna that there were reasonable grounds to believe that the two individuals were in possession of illegal

drugs and that they should be arrested at the Kelowna bus terminal prior to their return to Whitehorse.

(d) On May 27, 2003, in the morning, members of the Kelowna Detachment of the RCMP arrested M.O'B. and D.J.P. in the Kelowna bus terminal. A bag in the possession of D.J.P. at the time of his arrest contained over a kilogram of cocaine.

(e) On the same day, D.J.P. was released on a Promise to Appear on August 6, 2002, in Kelowna

(f) Both M.O'B. and D.J.P. returned to their place of residence in Whitehorse on May 30, 2002.

(g) On June 26, 2002, a single-count information alleging a charge of conspiracy to traffic in cocaine was sworn against D.J.P. in Whitehorse.

(h) On June 27, 2002, D.J.P. was arrested in Whitehorse, where he was of his own volition, along with M.O'B. and other individuals as part of a take down operation conducted by the Whitehorse RCMP. This ended the main investigation that had lead to the arrest of D.J.P. in Kelowna the previous month.

(i) The same day D.J.P. appeared in court in Whitehorse.

(j) On June 28, 2002, D.J.P. was released on an Undertaking made before a responsible person pursuant to s. 7.1 of the *Young Offenders Act.*

(k) On July 25, 2002, the original single count information was stayed and replaced by a new information alleging two counts: (1) a count of conspiracy to traffic in cocaine, a controlled substance, contrary to s. 465

of the *Criminal Code*; and (2) a count of possession of cocaine, a controlled substance, for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act* (CDSA). Count number 2 related to the events that lead to the arrest of D.J.P. in Kelowna on May 27, 2002.

(l) On August 6, 2002, the accused did not appear in Kelowna as charges had been laid in Whitehorse in relation to the seizure of cocaine from D.J.P. on May 27, 2002.

(m) On September 22, 2003, D.J.P. appeared in Whitehorse, Yukon Territory, for trial before Her Honour Judge Maltby acting as trial judge of the Youth Court of Yukon.

(n) At the outset of the trial, the Crown stayed count 1, the conspiracy charge. The trial proceeded solely on the basis of count 2, the possession for the purpose of trafficking charge.

(o) Counsel for D.J.P. filed a pre-trial motion inviting the trial judge to decline jurisdiction to hear the trial for want of territorial jurisdiction.

(p) The trial judge then rendered judgment by allowing D.J.P.'s pre-trial motion essentially on the grounds that the offence had occurred in British Columbia and that s. 47(2) of the CDSA did not provide the Court with the necessary jurisdiction to proceed with the trial.

ANALYSIS

[5] Section 47(2) of the CDSA provides:

"Proceedings in respect of a contravention of any provision of this Act or the regulations may be held in the place where the offence was committed or where the subject-matter of the proceedings arose or in any place where the accused is apprehended or happens to be located.	Toute infraction à la présente loi ou à ses règlements peut être poursuivie au lieu de sa perpétration, au lieu où a pris naissance l'objet de la poursuite, au lieu où l'accusé est appréhendé ou en tout lieu où il se trouve."

[6] Pursuant to s. 47(2), territorial jurisdiction under the CDSA arises on four different grounds:

1. where the offence occurred;
2. where the subject-matter of the proceedings arose;
3. where the accused is apprehended; or
4. where the accused happens to be located.

[7] The Crown submits that the Youth Court judge erred when she interpreted "happens to be located" as follows:

> The "happens to be located", to give a common-sense meaning and keeping in mind the purpose of this legislation, lends itself better to the interpretation that it is where they happened to be located when either the crime took place or when the crime was discovered. That is not the case for either of those interpretations for Mr. D.J.P. (para. 16)

[8] The modern rule of statutory interpretation can be found in several Supreme Court of Canada decisions. One such formulation is found in the reasons of Major J., in *CanadianOxy Chemicals Ltd.* v. *Canada (A.G.),* [1999] 1 S.C.R. 743*:*

> Statutory provisions should be read to give the words their most obvious ordinary meaning which accords with the

> context and purpose of the enactment in which they occur; *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27, at paras. 21-22.

[9] The Crown submits that the phrase “where the accused happens to be located” simply means that proceedings against the accused under the CDSA can be held where that accused is.

[10] The Crown says that this fulfills the purpose of s. 47(2) to ensure that offenders in the drug trade, which knows no boundaries, whether local, regional, provincial, national or international, can be prosecuted where they happen to be located. In this case, the accused was located in the Yukon for the whole of the proceedings leading to his trial, from his arrest on June 27, 2002, until his trial on September 22, 2003.

[11] Counsel for D.J.P. submits that the initial arrest and first appearance occurred in Kelowna, British Columbia, between May 25 and May 27, 2002. Counsel submits that s. 47(2) is ambiguous with respect to the pertinent time frame. He submits it could be the time of the offence, the discovery and proceeding on the offence and the time of trial.

[12] While counsel for the accused does not suggest there has been any prejudice to the accused in this case, he contends that the Crown cannot create jurisdiction in another province simply by re-arresting the accused in that other province when there is a valid arrest and court process in the original province. While he concedes that there has been no abuse of process in this case, counsel submits that a restrictive interpretation should be placed on the words to prevent potential abuse.

[13] I agree with the purpose of s. 47(2) as expressed in *R.* v. *Cameron,* [1999] Q.J. No. 1812 at para. 8:

> In short the purpose is clearly to temper the rigor of the old common law rule and to introduce one more in tune with the

> requirements of the day. Advances in communications and transportation have effectively ushered in a new age. Commerce traverses provincial and international lines daily on an ever-increasing basis. So to (sic) does crime. It follows that the old common law rule is no longer adequate to address the problems posed in the prosecution of matters having an extra-provincial and international dimension. That surely is why Parliament chose to address the question. In that context I would submit that Section 47(2) of the Controlled Drugs and Substances Act must receive a purposive interpretation in order to acknowledge and to remedy the difficulties which it was designed to address.

[14] That case involved the prosecution of an offence in Quebec for property or proceeds of property seized in both Ontario and Quebec under the CDSA. The interpretation of J. Fraser Martin J. was of the identical s. 47(2) of the CDSA. However, defence counsel submits that the *obiter dictum* of the trial judge at para. 9 is not authoritative:

> Me Oliver urges caution. He suggests that if the provision in question is interpreted in the manner suggested by Me Roy the net effect, although he concedes that his example is perhaps absurd, may be to oblige a person accused of the possession of let us say five joints of marihuana in Vancouver and who has been arrested in St-John's Newfoundland to answer the charge in St-John's. While the example itself may indeed be far-fetched it begs to be addressed since the legislator has built no discretion into the provision in question that indeed may be the eventual consequence. Furthermore, from the wording of the Section it would at first sight appear that the traditional distinction between territorial jurisdiction and the more limited jurisdiction over the person has been set aside. If that is so, then the hypothesis of Me Oliver may well be correct.

[15] The submission of defence counsel is that there are no multi-jurisdictional aspects in the case at bar and hence a restrictive interpretation limiting s. 47(2) to offences of a multi-jurisdictional character is appropriate. Thus, he advocates limiting s. 47(2) to the

time of the offence, the discovery of the offence and the commencement of proceedings, all of which creates one jurisdiction in the province of British Columbia.

[16] Counsel for D.J.P. also submits that the words “where the accused is apprehended or happens to be located” modify the phrase “in any place” and that the latter relates to the time of the offence.

[17] In my view, it must first be determined whether the plain meaning of the words is clear or whether there is some ambiguity that requires interpretation. I cannot find any ambiguity in the words, either in the English or French version. Section 47(2) in its plain meaning would allow the Crown to hold proceedings under the CDSA where the accused happens to be located.

[18] Defence counsel submits that the object of the CDSA and the intention of Parliament must be read in the context of the common law rule that an accused has the right to be tried where the alleged offence occurred (*R. v. Cardinal* (1985), 21 C.C.C. (3d) 254 (Alta C.A.) at 257). He further relies upon *R.* v. *O’Blenis,* [1965] 2 C.C.C. 165 (N.B.S.C.) for the proposition that any statutory encroachment on the common law rule must be strictly construed.

[19] However, I cannot agree that a plain reading interpretation offends the object of the CDSA or the intention of Parliament. Section 47(2) of the CDSA is discretionary as to where proceedings may be held. I do not find any abuse in the exercise of that discretion and none was alleged. In fact, having the proceedings in the Yukon is to the benefit of the accused as he was not simply located here temporarily but in fact resides here. However, the fact of residency is not required in s. 47(2).

[20] While there is no doubt that cases of abuse of process that are prejudicial to the accused may arise, this case is not one of them. In my view, it would be inappropriate to attempt to place a restrictive interpretation on a statutory discretion that has been exercised in good faith. No doubt cases of abuse of discretion may arise and a restrictive interpretation may be appropriate on those facts. However, it would not be appropriate on this record.

[21] Further, the interpretation of the trial judge results in the words “in any place where the accused happens to be located” being redundant as they must be modified by the location or discovery of the crime. However, the latter meanings are already separately incorporated into s. 47(2).

[22] In my view the trial judge has erred in her interpretation.

[23] I therefore, make an order in the nature of *certiorari* quashing the decision of the Youth Court judge. I order that *mandamus* issue directing the Youth Justice Court of Yukon to exercise jurisdiction under s. 47(2) of the CDSA and proceed with the trial of this matter.

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VEALE J.