

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Myers*, 2020 NSPC 54

Date: 20201223

Docket: 8313019, 8313021

Registry: Truro

Between:

Her Majesty the Queen

v.

Luke Jacob Daniel Myers

Judge:	The Honourable Judge Alain Bégin,
Heard:	December 10, 2020 in Truro, Nova Scotia
Decision	December 23, 2020
Charge:	5(2) Controlled Drugs and Substances Act
Counsel:	Lee-Ann Conrod, for the Crown Attorney Nic Hoehne, for the Defendant

By the Court:

(All emphasis in this decision has been added)

[1] Luke Myers was the passenger in a motor vehicle that was stopped in Truro on December 23, 2018, two years ago today. From the expert testimony by RCMP Cpl. Lane, and the inculpatory admissions by Mr. Myers in his voluntary statement to the RCMP on December 23, 2018, Mr. Myers would appear to have possessed Cocaine and Methamphetamine for the purpose of trafficking.

[2] The basis of the offence is possession plus the intent or purpose of intentionally making the narcotic available for others (*R. v. Taylor* (1974) 17 CCC (2d) 36 (BCCA)). Mr. Myers did not testify, as is his right, but his videotaped statement to the police on December 23, 2018 was played in Court and was entered as Exhibit number 5. Further, we have the expert evidence of Cpl. David Lane that confirmed that the exhibits seized by the police would be indicative of Mr. Myers possessing the methamphetamine and cocaine for the purpose of trafficking.

[3] **The legal issue for this Court is the determination of whether the search of Mr. Myers' backpack that was located in the front of the motor vehicle was a legal, or illegal, search. If the search was illegal it would be as a result of a breach of Mr. Myers' s.8 Charter rights which protects everyone against unreasonable search or seizure, and the backpack and its contents would not be in evidence before the Court. Neither would Mr. Myers' statement to the police, nor the expert report of Cpl. Lane, that were both resultant from the search of the backpack.**

[4] **There is acknowledgment by Defence counsel that if the backpack was legally searched by Sgt. Rose, then the voluntary statement by Mr. Myers to the police, and the expert report by Cpl. Lane would be admissible, and Mr. Myers would be guilty of the two possession for the purpose of trafficking charges.**

[5] **Are the items seized from the backpack, and the statement by Mr. Myers to the police, admissible evidence as they both resulted from Sgt. Rose's initial search of Mr. Myers' backpack in the vehicle?**

[6] This was a criminal trial. The Crown has the onus of establishing beyond a reasonable doubt that Mr. Myers committed the offences with which he is charged. The onus of proof never switches from the Crown to the accused.

My Analysis of the Evidence

[7] I have reviewed all of the evidence that was presented at the trial, along with all of the Exhibits. It is not my function as a trial judge when rendering a decision to act as a court reporter and recite all of the evidence that I have heard and considered. It suffices for me to highlight the pertinent parts. Further, any quotes that I attribute to a witness may not be an exact quote, but paraphrases and captures the essence of their testimony.

Sgt. Rose

[8] Sgt. Rose testified that he was on patrol in Truro in a marked cruiser on Dec. 23, 2018. He testified that:

- He saw a red truck with the license plate was that crooked, and only partially attached
- He sees the driver spit out of the vehicle and this gets his closer attention
- There was also an issue with one of the taillights being burnt out
- He runs the plate and learns that the plate is not attached to the red truck
- He observes the driver being “antsy” and acting “nervous” so Sgt. Rose advises the other police via the radio of his concerns
- Cst. Jordan advises Sgt. Rose on the radio that the truck he is observing could be the same truck that he recently had issues with
- A traffic stop is made by Sgt. Rose due to the *Motor Vehicle Act* infractions noted
- Sgt. Rose immediately recognizes the driver as TJ Fraser who had recently been arrested on drugs and weapons charges
- The accused, Mr. Myers, was the passenger in the vehicle and he was of no immediate concern to Sgt. Rose
- Sgt. Rose also noted concerns with the Motor Vehicle Inspection Sticker
- TJ Fraser advises Sgt. Rose at the start of their interactions that he did not have insurance for the red truck, and in his statement to the police Mr. Myers states that TJ Fraser told Sgt. Rose “the truck is not legal”
- Sgt. Rose goes back to his car to call for back-up due to officer safety concerns with TJ Fraser, and Sgt Rose also orders a tow truck for the red

truck at that time as he could not allow it to be driven due to the lack of insurance and no proper license plate

- Sgt. Rose also sees a large wad of cash on the dash of the red truck when he had stopped it, along with a Pictou County biker support patch, and a portable debit machine
- Sgt. Rose advises the other police on the radio that he was going to do an inventory search of the truck
- **The purpose of the inventory search is for officer liability reasons as the police do not want to be blamed, or held liable, for items that allegedly disappear from a vehicle once it has been towed away. The inventory search is also to conduct a cursory search to ensure that there are no weapons or other hazards in the vehicle before it is towed away**
- To effect the inventory search, Sgt. Rose places TJ Fraser in the back of his cruiser, in cuffs
- Mr. Myers is positioned on the sidewalk in sight of Sgt. Rose and Sgt. Rose commences the inventory search on the sidewalk side of the vehicle. The first thing he looks at is the backpack that was in front of the passenger seat
- Upon opening the backpack he sees an unsigned bank card, marijuana and cocaine
- Sgt. Rose looks up at Mr. Myers and states “this is cocaine” and immediately stops the inventory search “everything more or less stopped” as there was “a change in jeopardy” and there was now going to be a need for the truck to be towed to the police station instead of the tow truck compound
- The change in jeopardy was that the matter had changed from a *Motor Vehicle Act* matter to a *Criminal Code* matter
- Mr. Myers and TJ Fraser asked to speak with counsel
- The truck was secured in the police detachment and searched the following day pursuant to a search warrant
- The following items were seized from the truck:
 - A money clip with money along with TJ Fraser’s bank card
 - A Samsung phone with 20 missed calls
 - Money in the ashtray
 - A scoresheet
 - A USB stick
 - A pellet handgun under the driver’s seat
 - A .22 cal bullet
- The following were seized from the backpack:

- Bag of cannabis
- RBC bank card belonging to an unknown individual named A.M.
- Cocaine
- ICE pills
- Spoon
- Cash
- Weigh scale
- Baggies

[9] On cross-examination Sgt. Rose testified that:

- TJ Fraser and Mr. Myers were cooperative
- The intention was for Sgt. Rose to do a detailed inventory of the items in the truck before it was towed, but matters never progressed that far in this case as he “hadn’t even gotten to that”
- He started his search on the passenger side as it was safest for him to start from the sidewalk side of the truck
- He confirmed that he did not immediately seize the truck and get a warrant to search as he did not initially think that he was going to seize the truck, but that it would be going to the tow truck compound, not the police station
- “Once it became clear it was going down the *Criminal Code* route, I immediately stopped the search”
- Mr. Myers and TJ Fraser were initially detained for officer safety due to the recent dealings with police and TJ Fraser involving drugs and weapons, and for reasons of conducting an inventory search as he knew the truck was going to be towed due to no insurance or license plate

Cst. Melanson

[10] Cst. Melanson confirmed that inventory searches are conducted depending on situational factors, and that when they are conducted, they are quite detailed as the police will be held accountable for anything that is allegedly missing from the vehicle

Cpl. Lane

[11] Corporal Lane was qualified as an expert in the trafficking of cocaine and methamphetamine. His evidence was not contradicted and it confirmed that the

items seized from Mr. Myers' backpack would be indicative of Mr. Myers possessing those drugs for the purpose of trafficking.

There was no Defence evidence called.

Roadside Inventory Searches

[12] The Courts must be extremely vigilant in any situations where an individual is stopped roadside by the police, and the police then proceed to search that person's vehicle to purportedly conduct an "inventory search" of the vehicle. An inventory search **cannot** be a roundabout way of conducting a fishing expedition/search of a vehicle in the hopes of possibly finding evidence of a crime versus simply a *Motor Vehicle Act* infraction.

[13] Each situation must be closely scrutinized based on the facts as they existed at the time of the motor vehicle stop.

[14] The Crown pointed to the following sections of the *Motor Vehicle Act* as authorization for the inventory search by Sgt Rose:

s. 13: the requirement for a motor vehicle to be registered

13 (1) Every owner of a motor vehicle, trailer or semi-trailer intended to be operated upon a highway in the Province shall, before the same is so operated, apply to the Department for and obtain the registration thereof, except as provided in Sections 23(6), 26 and 30 or regulations made under Section 25.

s. 37(1)(a) & (g): a vehicle cannot be operated without proper registration

37 (1) It shall be an offence against this Act for any person to commit any of the following acts:

(a) to operate or for the owner thereof to permit the operation upon a highway of any motor vehicle, trailer or semi-trailer which is not registered or which does not have attached thereto and displayed thereon the number plate or plates assigned to the owner by the Department for the current registration year, subject to Sections 26 and 30 and any regulation made under Section 25;

(g) to operate or have under his control or in his charge any motor vehicle on which motor vehicle there is displayed any fictitious number plate, or any number plate that is defaced or altered or any

number plate other than as provided in this Act or in any regulations

s. 230(1): the requirement for insurance to operate a vehicle

230 (1) No person shall drive a motor vehicle registered or required to be registered under this Act unless there is in force in respect of the motor vehicle or in respect of the driver of the motor vehicle a motor vehicle liability policy.

s. 261(1): the authority to arrest without a warrant

261 (1) A peace officer may arrest without warrant a person whom he finds committing an offence or has reason to believe has recently committed an offence against this Act

s. 273(1): the authority to seize and detain a vehicle

273 (1) The Registrar, any official of the Department or any peace officer may seize a motor vehicle with which an offence has been committed under this Act or under any section of the Criminal Code (Canada) having particular relation to motor vehicles and may detain the same until the final disposition of any prosecution instituted for such offence but such motor vehicle may be released on such security for its production being furnished as the Registrar may require.

[15] The Crown emphasizes that it was not an investigative search by Sgt. Rose, but that it was an Inventory Search after the detention of the vehicle pursuant to the *Motor Vehicle Act* pursuant to the sections just noted.

[16] The Crown also relies on the following authorities:

R. v. Cooper, 2016 BCPC 259: a case from the BC Provincial Court which held at para 6 (emphasis added):

“The officer determined that **due to the position and condition of the vehicle, and the condition of the accused, the officer should have the vehicle towed to a safe location.** The officer also determined that he should search the vehicle for the purpose of conducting an inventory of its contents and for any evidence explaining the cause of the accident.”

[17] At para 11:

“The provision does not explicitly provide the authority to conduct an inventory search of the vehicle when a peace officer exercises the power to take the vehicle into [his] custody and causes it to be taken to and stored in a safe place. I am satisfied however, that **the jurisprudence establishes that where authority is granted to the police to take possession of a vehicle and store it in a safe place, it is implicit in the legislation that the police have the duty and responsibility when exercising that authority to ensure the safety of the vehicle and its contents and conduct an inventory search to that end.**”

[18] And at para 12:

“The law in British Columbia accords with other jurisdictions and recognizes that **with the responsibility to take control and possession of a vehicle there is a duty imposed on the police to safeguard the vehicle and its contents.** When the police are authorized to take possession of a vehicle, they are, **in order to properly fulfil their lawful duty and responsibility to secure the property, entitled to conduct an inventory of the vehicle’s contents. The police must be able to take reasonable steps to meet their duty to safeguard the property, including entering the vehicle and itemizing any property of apparent value therein (R. v. Caron, 2011 BCCA 56, R. v. Strilec, BCCA 198)**”

[19] At para 16:

“...The rationales are manifold including: serving the interests of any person who has an interest in the property and who looks to the police to safeguard the property while it is in police custody; public safety concerns of contraband being held in police controlled or authorized storage facilities; and permitting police to engage in protective measures against potential civil liability for loss or damage to property in a vehicle which has been taken into police custody (**R. v. Wint** (2009) 93 O.R. (3d) 514 OntCA)”.

[20] And at para 20:

“...**the Court must now determine whether the authorized search was conducted in a reasonable manner...**Police officers must not be allowed to take possession of and search a vehicle as a result of a contrived reason employed as a means to conduct a search of a vehicle. The Court must assess all the evidence to determine the *bona fides* of the officer’s actions.”

[21] I accept that the law as noted in *Cooper* applies equally to Nova Scotia, and in particular **that where authority is granted to the police pursuant to the Motor Vehicle Act, or other authorizing legislation, to take possession of a vehicle and store it in a safe place, it is implicit in the legislation that the police have the duty and responsibility when exercising that authority to ensure the safety of the vehicle and its contents and conduct an inventory search to that end, and, in order to properly fulfil their lawful duty and responsibility to secure the property, entitled to conduct an inventory of the vehicle's contents. The police must be able to take reasonable steps to meet their duty to safeguard the property, including entering the vehicle and itemizing any property of apparent value therein.**

[22] In *R. v. Wint*, 2009 ONCA 52, the Ontario Court of Appeal held that the police were entitled to conduct an inventory of the car pursuant to s. 175 of their *Highway Traffic Act*. The Court also held that the police were not restricted to itemizing the visible property of apparent value as such a narrow interpretation would not achieve the purpose of inventory searches, which is to protect the interests of any person with property in the car when it is seized and who would look to the police to safeguard their property while it is in police custody.

[23] At para 15 (emphasis added):

“...Thus, if the police find a purse and could not look inside it, they would have no way of knowing whether it contained pennies or thousands of dollars, and if the latter, what steps should be taken to safeguard the large sum of money. That, in our view, would defeat the purpose of the exercise. **In short, if inventory searches are to be meaningful and serve the purpose for which they are intended, the police cannot be hobbled...They must be able to search and itemize the contents of objects such as purses, wallets and bags like the one observed in this case, to determine their contents. Of course, any inventory search must be executed in a reasonable manner and as is the case with other warrantless searches, reasonableness of police conduct will be judged against the totality of the circumstances revealed in the case.**”

[24] Pursuant to *Wint*, Sgt. Rose's search of the backpack in conducting the inventory search was reasonable.

[25] The Defence submits that it was an illegal search of Mr. Myers' backpack, and that the police should have immediately seized the vehicle and sought a warrant to search the vehicle before conducting any search of the vehicle. I cannot

imagine that a search warrant would have been authorized for the truck based solely on the *Motor Vehicle Act* infractions and the wad of cash on the dash.

[26] The Defence also submits that from the outset that Sgt. Rose wanted to search the truck for drugs due to the police's very recent interactions with TJ Fraser, and the fact that there was a wad of cash on the dash of the truck. Sgt. Rose could have simply given the backpack to Mr. Myers and sent the individuals on their way.

[27] In reviewing the facts of this case, I find that:

- Sgt. Rose had formed the decision to have the vehicle detained and towed pursuant to s. 273 of the *Motor Vehicle Act*, and Sgt. Rose had in fact called for a tow truck before he decided to conduct the search of the truck based on the following:
 - o The license plate on the truck did not belong to the truck so it could not be operated on Nova Scotia roads
 - o The driver informed Sgt. Rose that there was no insurance on the truck so that it could not be operated on Nova Scotia roads
 - o There was a suspicious Motor Vehicle Inspection sticker on the truck
 - o The driver of the vehicle told Sgt. Rose that the truck was "not legal"
 - o Another police officer had just informed Sgt. Rose on the radio that he believed that he had recent issues with the same vehicle

[28] I also accept that Sgt. Rose initially intended to have the truck towed to the tow truck compound, and not to the police station. There was no initial intention by Sgt. Rose to have the vehicle seized and taken to the police station, and this only occurred after the legal jeopardy had changed for the two individuals in the truck upon the discovery of the cocaine in the backpack.

[29] I find that Sgt. Rose was initially only conducting an inventory search of the truck, and not an investigative search. This is based upon the evidence of Sgt. Rose, and supported by the evidence of Cst. Melanson, that inventory searches are conducted for reasons of officer and public safety, and liability.

[30] I also accept the evidence of Cst. Melanson that the decision to do an inventory search depends on situational factors. In this situation, Sgt. Rose had observed the driver being "antsy" and "nervous" and the driver had very recently been charged for offences of drug trafficking and weapons. Added to this was the large wad of cash that Sgt. Rose had observed on the dash of the truck, a portable

debit machine, and a biker support sticker. All of these factors, including the various Motor Vehicle Act infractions and the admission by the driver that the truck was “not legal,” would have created a situation where an inventory search would be prudent before sending a vehicle off to an insecure tow truck compound.

[31] I also accept that Sgt. Rose was conducting an inventory search based on the fact that as soon as Sgt. Rose spotted a strange bank card, marijuana, and cocaine in the backpack that he stopped his search (“everything more or less stopped”) as the jeopardy for the two individuals in the truck had changed from *Motor Vehicle Act* infractions to *Criminal Code* charges. Sgt. Rose testified that, “Once it became clear it was going down the *Criminal Code* route, I immediately stopped the search.”

[32] Sgt. Rose then advises on the radio that the truck was now going to be towed to the secure facility at the police station instead of to the tow truck compound.

[33] Had Sgt. Rose intended to conduct an investigative search the truck instead of merely conducting an inventory search, he would very likely have continued his search of the truck and discovered the various items that were subsequently found in the search of the truck pursuant to the warrant.

[34] I find that the search of the backpack belonging to Mr. Myers was as a result of a legal inventory search and that it is admissible as evidence in this trial. There was no breach of Mr. Myers’ s. 8 *Charter* rights.

[35] Consequently, the voluntary statement by Mr. Myers to the police acknowledging that he was possessing the drugs for the purpose of trafficking is also admissible. As is the expert report, and testimony, of Cpl. Lane that are as a result of the discovery of the backpack contents by Sgt. Rose.

[36] Should it be necessary, I can provide a detailed *Grant* analysis. I have turned my mind to a *Grant* analysis and I have determined that even if it is found that the search of the backpack was as a result of an illegal search, that I would still admit the contents of the backpack into evidence as any breach of Mr. Myers’ *Charter* rights was minor. The voluntary statement by Mr. Myers, and the evidence of Cpl. Lane, would also be admitted into evidence. This was a traffic stop that involved serious considerations for officer safety and some steps would have had to be taken to ensure the safety of the officer, and of the public, by conducting an inventory search.

[37] As the contents of the backpack are admissible, along with Mr. Myers' statement to the police, and the expert evidence of Cpl. Lane, **Mr. Myers is guilty of the two counts contained in the Information.**

Judge Alain Bégin, JPC