Indexed as:
R. v. Piascik (N.W.T.S.C.)

Between
Peter Piascik, Appellant, and
Her Majesty the Queen on the information of Corporal Gregory Charles Downing, a member of the Royal Canadian Mounted Police, Respondent

[1990] N.W.T.J. No. 27

Action No. CR 00983

[1990] N.W.T.R. 175

Northwest Territories Supreme Court
Yellowknife, Northwest Territories

de Weerdt J.

Heard: February 23, 1990
Judgment: March 1, 1990

Criminal law -- Offences under regulations -- Strict liability -- Accused appealing conviction on charge of unlawful possession of liquor in prohibited area -- Conviction upheld -- Crown not having to prove knowledge or wilful blindness on part of accused -- Fort Franklin Liquor Prohibition Regulations, R.R.N.W.T. 1980, Reg. 103, s. 3.

This was an appeal from conviction by an accused pilot on a charge of unlawful posses-sion of liquor in a prohibited area. The accused had landed an aircraft belonging to his employer in a prohibited area and two parcels containing liquor were unloaded. The ac-cused's testimony at the trial was that he had no recollection of loading any of the parcels. The accused had personally loaded the aircraft without any assistance. The Crown took the position that the offence under s. 3 was one of strict liability and therefore proof of knowledge, or even wilful blindness, was not necessary to support a conviction. The accused contended that unlawful possession did not constitute a strict liability offence.
HELD: The conviction was affirmed. It was not necessary for the Crown to prove that the accused had knowledge of the presence of liquor in the packages. Likewise, there was no burden of proof to be discharged by the Crown with respect to wilful blindness by the accused regarding the contents of the packages. It was evident that the accused paid no heed to the contents of the packages notwithstanding that they could readily be felt to contain liquid in glass containers, like bottles of liquor. Reasonable care and due diligence would have led the accused to ascertain the contents and avoid any potential breach of the regulations.

Sheldon B. Tate, for the appellant.
Alison M. Crowe, for the respondent.

REASONS FOR JUDGMENT
de WEERDT J.:-- Last September the appellant was convicted at Fort Franklin, following trial before a Territorial Judge, of unlawfully having liquor in his possession in a prohibited area contrary to the Fort Franklin Liquor Prohibition Regulations, R.R.N.W.T. 1980, Reg. 103. A fine of $350, or one month's

imprisonment in default, was imposed by way of sentence. The appellant now appeals his conviction but not the sentence.

I

The regulations are not questioned in this appeal. Assuming their validity and force, therefore, pursuant to the Liquor Act, 1983 (1st), c.26, s.46(7), as amended by 1985 (1st), c.1, s.9, the following sections of the regulations are pertinent:

Prohibited Area

2. All that portion of the Territories that lies within 25 km from the building in the Hamlet of Fort Franklin commonly known as the Hamlet Office is declared to be a prohibited area.

Prohibition

3. No person shall possess, purchase, sell or transport liquor within the prohibited area described in section 2.

Penalty

4. Every person who violates any provision of these regulations is guilty of an of-fence and liable on summary conviction to a fine not exceeding $500 or to im-prisonment for a term not exceeding 30 days or both.

The contraction "km" in s.2 of the regulations is not specifically defined in the regulations or in any Act of the Northwest Territories. As I held in Weston v R., [1986] N.W.T.R. 145 (S.C.), it no doubt means "kilometres". In any event, it is common ground that the appellant, an air pilot, landed an aircraft belonging to his employer within the area described in s.2 of the regulations on the date charged. And it is likewise not in dispute that he there and then off-loaded two packages, each of which on inspection proved to contain liquor.

II

As the pilot-in-command of the aircraft, the appellant had control over the freight carried on the aircraft, which he personally had loaded on to the aircraft at Yellowknife and like-wise off-loaded at Fort Franklin as I have mentioned.

Each of the two packages in question was addressed to a private individual at Fort Franklin. Unfortunately, although these packages were entered as exhibits at trial, they were unavailable to me for inspection on this appeal. I am unable, in consequence, to give a more precise description of them than that of Corporal G.C. Downing of the Royal Canadian Mounted Police, who seized them. Cpl. Downing described them as "small boxes", "taped" and "in plain brown wrappers". One of them was "a Liquor Control Board box with no unusual markings" except for the addressee's name and the tape. That box had a green tag or sticker on one side bearing words to the effect: "Northwest Territorial Liquor Control System, Yellowknife". The other box, apparently similar in dimensions, came off the aircraft immediately after the first.

Cpl. Downing testified that he picked up "the Liquor Control Board box", and "As soon as I picked it up, I knew there was a liquid in it. I could just tell from picking it up that something inside was moving. So I shook it a little bit more. I could hear the sloshing, and there was clinking inside. That led me to believe there was liquor in the box. I put that one down, and I picked up the second box and did the exact same thing, and I got the same results. The sloshing of liquid and the clinking of something that was glass led me to believe that both boxes contained liquor".

Each of the boxes in fact contained two bottles of liquor.

It was the appellant's testimony at trial that he had no particular recollection of either box being loaded on to the aircraft. though he had performed this task himself, without assistance. Approximately 90% of the freight which he routinely carried was destined for the "Co-op" store at Fort Franklin. Other freight in assorted packages was also carried. The appellant testified that he had no recollection of the green sticker on the box above described, and furthermore that he had not noticed anything about either box to suggest it might contain liquor. His evidence was that he had not heard any sounds of sloshing or clinking from the boxes until they were picked up by Cpl. Downing after the appellant had off-loaded them at Fort Franklin. It was only then, he testified, that he suspected that they might contain liquor.

Apparently the freight carried by the appellant for his employer, Air Sahtu, was initially received by Spur Aviation at Yellowknife, for shipment to Fort Franklin. The appellant, and presumably those who received the freight for shipment, had knowledge of the prohibition against transporting liquor to Fort Franklin. The appellant himself resided at Fort Franklin, so was well aware that it was a "dry" community.

The appellant denied all knowledge as to the contents of the two packages. He testified that if he had known that they contained liquor he would not have carried them to Fort Franklin. He was aware that liquor did come in to that community, in spite of the regula-tions, and that this was done almost invariably by air.

III

The appellant presented a two-fold argument on the hearing of this appeal. First, he contended that the trial judge had erred in finding that the appellant was wilfully blind as to the contents of the two packages being liquor. Second, he contended that the trial judge had erred by holding that the offence of unlawful possession was in effect the same as the offence of unlawful transportation contrary to s.3 of the regulations.

For the respondent Crown, it was contended that proof of knowledge, or even wilful blindness, is not necessary to support a conviction of unlawful possession under s.3 of the regulations. It is enough, in the Crown's submission, that there has been a manual handling of a package containing liquor, in circumstances where there was control of the package by the accused, without proof of knowledge of the contents by the accused. It is then up to the accused (according to the Crown) to show, on the balance of probabilities on the whole of the evidence at trial, that due diligence was exercised by the accused to avoid having liquor in his possession contrary to s.3 of the regulations. And the Crown's position is that the appellant failed to thus show that he exercised such diligence on this occasion.

The position taken by the Crown is that offences under s.3 of the regulations are of-fences of strict liability because they are not criminal offences, strictly speaking (although prosecuted by the same procedure as for summary conviction offences under the Criminal Code), but are instead what are known as "public welfare" offences: R. v. Sault Ste Marie, [1978] 2 S.C.R. 1299, 40 C.C.C. (2d) 353, 3 C.R. (3d) 30, 85 D.L.R. (3d) 161, 21 N.R. 295. That was, in effect, what I held in Weston v. R. (supra) at page 155, where I said (with reference to the offence of unlawful transportation contrary to s.3 of the regulations):

Adopting the language of Dickson J. (now C.J.C.) in R. v. Chapin, (1979) 2 S.C.R. 121, 7 C.R. (3d) 225, 10 C.R. (3d) 731, 45 C.C.C. (2d) 333, 95 D.L.R. (3d) 13, 26 N.R. 289 (Ont.), it can be said of the offence in the case before me, as it was said by him of the offence in that case (at p. 237):

"It is a classic example of an offence in the second category deli-neated in the Sault Ste Marie case, supra. An accused may absolve himself on proof that he took all the care which a reasonable man might have been expected to take in all the circumstances or, in other words, that he was in no way negligent."

It is the appellant's contention, however, that although this is good law in relation to of-fences of unlawful transportation contrary to s.3 of the regulations, it is not to be extended to offences of unlawful possession under that section. And for this view of the law he relies upon 21 Can. Encyclopedic Digest (Western, 3rd ed.), Title 85 ("Liquor Control"), paragraph 38, which states:

38 For a conviction of illegal possession it is essential to show that the accused had the liquor and that he had some element of control over it. It also must be shown that he had knowledge of the presence of the liquor.

The authorities cited at the foot of this paragraph are, it must be noted, all of a vintage more than a decade older than that of the Sault Ste Marie case. And no reference is made to R. v. Pierce Fisheries Ltd., [1971] S.C.R. 5, 12 C.R.N.S. 272, (1970) 5 C.C.C. 193, 12 D.L.R. (3d) 591, in which it was held that possession of undersized lobsters contrary to federal fishing regulations was an offence of strict liability (per Ritchie J., at page 206, C.C.C.).

Although not cited by counsel, I take the view that R. v. Pierce Fisheries Ltd. provides an apt illustration of the proposition that unlawful possession may constitute a strict liability offence. See also R. v. Maillet (1984), 53 N.B.R. (2d) 69, 138 A.P.R. 69 (C.A.). I agree with counsel for the appellant that the offences of unlawful transportation and unlawful possession are separate and distinct offences under s.3 of the regulations, each of which may be comprised of elements not shared with the other though they may have elements in common. But I find myself compelled to agree with Crown counsel that both are offences of strict liability within the categories delineated in the Sault Ste Marie case.

Accordingly, I hold that it is not necessary for the Crown to prove that the accused had knowledge of the presence of liquor in the packages handled by the accused and under his control as pilot-in-command, load-master and sole agent of his employer for those purposes at Fort Franklin at the time charged.

Likewise, there is no burden of proof to be discharged by the Crown with respect to wilful blindness by the appellant regarding the contents of the packages.

IV

It is apparent, on the evidence before the trial judge, that the appellant paid no heed to the contents of the two packages, notwithstanding that they could be readily felt to contain a liquid and, with a little shaking, could be heard to have liquid contents in glass containers, like bottles of liquor. Reasonable care on the part of the appellant would have resulted, first, in an external examination of the packages, revealing the green Liquor Control Board sticker on one package and the names of the addressees on each package. Due diligence would then have led the appellant to cause the packages to be left at Yellowknife with Spur Aviation for further checking, so as to avoid any potential breach by him of s.3 of the regulations.

Although I do not find myself in agreement with the reasons given by the trial judge for his decision to convict the appellant, I nevertheless cannot find the result of that decision to be wrong in law, given the evidence before him and the nature of the offence as an offence of strict liability (and not one requiring proof by the Crown, beyond a reasonable doubt, of knowledge by the appellant of the contents of the packages). Absent due diligence on the part of the appellant, and this he did not exercise, he was guilty of the offence of unlawful possession as charged.

The appeal is dismissed accordingly.

de WEERDT J.