

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RORY QUENTIN MOORE

Transcript of the Reasons for Judgment delivered by The Honourable Justice V. A. Schuler, in Yellowknife, in the Northwest Territories, on the 10th day of April, 2012.

APPEARANCES:

Ms. J. Andrews: Agent for Counsel D. Vaillancourt on behalf of the Crown

Mr. S. Shabala: Agent for Counsel J. Chadi on behalf of the Accused

Charges under s. 5(2) CDSA C.C. x 2

1 (REASONS FOR JUDGMENT)

2 THE COURT: Rory Quentin Moore is charged
3 under the Controlled Drugs and Substances Act
4 with two counts of possession for the purpose of
5 trafficking, one in relation to cocaine, and one
6 in relation to marihuana, arising from
7 circumstances that took place in June 2010.

8 Many of the facts were admitted by the
9 defence for purposes of the trial, including that
10 any person who possessed the marihuana and
11 cocaine seized from the vehicle at the time in
12 question possessed them for the purpose of
13 trafficking. It was admitted that 2,912 grams of
14 marihuana were found in a tire in the bed of the
15 truck, and 268 grams of cocaine inside the back
16 seat of the truck. The total value is said in
17 the Agreed Statement of Facts to be between
18 \$40,000 and \$90,000, depending on how the drugs
19 are sold.

20 The issue I have to decide is whether the
21 Crown has proven beyond a reasonable doubt that
22 Mr. Moore was in possession of the drugs. The
23 definition of "possession" for purposes of the
24 Controlled Drugs and Substances Act is the
25 definition in the Criminal Code, and that
26 definition has been held to require knowledge,
27 consent, and some measure of control over the

1 subject matter, in this case the drugs. That is
2 set out in the case R. v. Terrence, [1983] 1
3 S.C.R. 357. It is also clear that mere passive
4 acquiescence or indifference does not amount to
5 consent or control.

6 Apart from the admitted fact that Moore was
7 a passenger in the vehicle in which the drugs
8 were located, the only evidence about Moore's
9 involvement comes from Mr. Livingstone. He is
10 separately charged and awaiting trial. He
11 testified that he has not been promised anything
12 for giving evidence in Moore's trial.

13 He was a difficult witness in many ways. He
14 tended to ramble, and he did not always focus on,
15 or answer, the question asked. He has only a
16 grade 3 education, has been a drug addict pretty
17 well his whole life and an alcoholic, so he has a
18 number of challenges.

19 Livingstone testified that his cousin, Yews,
20 is a drug dealer with gang connections.
21 Livingstone says that he has been used by Yews in
22 the past as a mule, and that Yews tells him what
23 to do and threatens to beat him up or have him
24 beaten up if he does not do it.

25 Livingstone himself, as I said, is an
26 admitted drug addict. He said that at the time
27 these events happened he was using crystal meth

1 for pain. He also admitted, after some waffling,
2 that Yews gave him crystal meth while they were
3 at the farm near Abbotsford, B.C., where most of
4 the events in question took place.

5 Livingstone met Moore through Yews about a
6 year or more before their trip to B.C.

7 Livingstone and Moore often lived in a house in
8 Yellowknife that was owned by Yews or another
9 associate of his named Paul. Livingstone said
10 that there was no drug dealing going on out of
11 the house. He said that Moore had sold him some
12 crack, and Moore had also told him at one time
13 that Yews told Moore not to give Livingstone any
14 drugs. Livingstone said that his intuition tells
15 him that Moore deals in drugs because "they" (and
16 it was not completely clear who "they" are) are
17 always making him drive him around. Livingstone
18 gave no examples of what happened on such drives.
19 He also said "they" bully him, but Moore doesn't.

20 Yews has a clothing store in Yellowknife and
21 Livingstone said that he and Moore have moved
22 clothes and other things for the store and had
23 made a trip to B.C. once before to do that. He
24 said that it is his conclusion that Yews would
25 use the trips to deal drugs.

26 Livingstone described how in June 2010 Yews
27 called him in Yellowknife and initially spoke to

1 Moore and then to Livingstone. Yews told
2 Livingstone to bring Yews' truck back to B.C.
3 That truck is the Ford F-150 from which the drugs
4 were later seized.

5 Before this trip to B.C., according to
6 Livingstone, Yews told Livingstone that he had
7 done his taxes for him and that Moore would give
8 him the money. For some reason he didn't
9 explain, Livingstone refused that offer, even
10 though he seems to have had very little money.
11 According to Livingstone, Moore was stressed out
12 and said he could not leave for B.C. without
13 \$1,000, which he did not have, so Livingstone
14 gave him all the money he had, which was \$500.
15 Livingstone testified that Moore did not say why
16 he wanted the money, but Livingstone thinks he
17 knows why but does not want to get into it, so he
18 was not forthcoming about that.

19 According to Livingstone, the gas for the
20 trip between Yellowknife and B.C. costs about
21 \$500. Since Moore paid the expenses on the way
22 down and back, I suppose it is possible that is
23 what he wanted the money for, in which case why
24 not just leave the money with Livingstone since
25 he was doing the driving. I found this part of
26 Livingstone's evidence very unclear and I am not
27 sure what to make of it.

1 Livingstone did the driving to B.C. He says
2 that there was no discussion between him and
3 Moore about what they were going to do there. At
4 one point when he was asked about that, he said
5 "we could have maybe talked about drugs", which
6 is fairly typical of how vague his answers often
7 were.

8 Livingstone said that he spent the three
9 weeks they were in B.C. at Yews' farm, working
10 night and day, fixing trucks and lawn mowers and
11 hauling scrap for Yews. He was not able to say
12 very much about what Moore did, just that he did
13 not see either Moore or Yews very much and that
14 they, in other words Yews and Moore, hung out
15 together. He said that for the entire three
16 weeks, he and Moore wanted to come back to
17 Yellowknife but that Moore said "no, we can't."
18 Livingstone said about that, and my recording of
19 his words were "I'm assuming I knew what was
20 going on which I knew what was going on." Again,
21 very vague. He said that for three weeks off and
22 on he stayed there. He did not say where else he
23 stayed, yet he also said that he could not leave
24 the farm because he had no gas and no money.

25 The Ford truck that Livingstone had driven
26 down to B.C. actually belonged to Yews'
27 girlfriend. Livingstone testified that some time

1 while they were in B.C., the truck was put into
2 his name because Yews has a hard time getting
3 insurance. Livingstone had his own truck, which
4 was being kept on Yews' property and which
5 Livingstone obtained insurance for with proceeds
6 from welfare payments that he obtained while in
7 B.C., intending, he said, to drive that truck
8 back to Yellowknife. Livingstone testified that
9 a day or so before the day he and Moore left
10 B.C., Yews told Livingstone, "You're going to be
11 mad, I need you to take my truck back but I'll
12 pay you." The truck he was referring to was the
13 Ford F-150. There was no evidence as to whether
14 Moore was present for that conversation.

15 The next day, Livingstone saw Yews and Moore
16 at the Ford F-150. His evidence on this was very
17 vague. At various times in his testimony he said
18 that he was "pretty sure" they were trying to put
19 something inside the bed liner; that he was
20 "pretty sure" Moore was standing beside the truck
21 when he, Livingstone, pulled up; that "I did and
22 I didn't see something there"; that he can't say
23 a hundred percent if he saw something; and at one
24 point he said that he was not really paying
25 attention.

26 He said he asked them what they were doing
27 but he could not remember what they replied,

1 although in cross-examination he said that Yews
2 said "We're trying to put something in here."
3 The police found nothing in the bed liner, and
4 Livingstone was not able to say whether anything
5 was carried away from the truck by either Yews or
6 Moore. I cannot be satisfied on Livingstone's
7 evidence what, if anything, Yews and Moore were
8 doing in relation to the bed liner.

9 Livingstone said that Yews and Moore then
10 went into the garage in which there was a table
11 and a bench and a lot of other items. Yews was
12 trying to seal something with a sealing machine
13 that was located on the table. Yews was wearing
14 gloves. Livingstone saw various bags that he was
15 sure contained drugs, but he was not very clear
16 as to whether he saw anything in the raw or just
17 saw packages of what he observed to be marihuana
18 being sealed. He testified that Moore was
19 standing at the side of the table on which the
20 machine used for the sealing was located, but
21 that Moore was not using the machine or packaging
22 anything.

23 Livingstone testified in-chief that Moore
24 was wearing gloves while at the table. In
25 cross-examination, he testified that Moore was
26 wearing one glove. When he was referred to his
27 evidence at the preliminary inquiry where he said

1 that he did not see Moore at any point wearing
2 gloves, Livingstone said that he was probably
3 thinking of later when he saw Moore at the
4 camper, so he was inconsistent as to whether
5 Moore wore gloves.

6 Livingstone then took it upon himself to
7 hide the packages of what he believed was, and we
8 know from the seizure, was marihuana in a tire
9 that he got from outside the garage. He
10 testified that no one told him to do it, that it
11 was all his idea because Yews had been
12 threatening him and putting him in this position.
13 He said that Yews handed him the packages and he
14 stuffed them in the tire. Livingstone then took
15 the tire outside and reassembled it and put air
16 in it. He then put the tire in the back of the
17 truck and loaded more tires in there. Moore was
18 not involved in that. He said Moore did help put
19 some tools that Yews wanted them to take to
20 Yellowknife, in the back of the truck.

21 Next, Livingstone testified he took the
22 package that he believed contained cocaine, and
23 that was later found to be cocaine, and on his
24 own initiative took the rear seat out of the
25 truck and into a nearby camper or RV. He
26 testified that he told Moore to go and grab it or
27 go and get the stuff or the package, and that

1 Moore brought it to him and then left. He did
2 not see where Moore got the package from. When
3 he was referred to his evidence at the
4 preliminary inquiry, he did not adopt what he had
5 said there; and what he had said there was
6 unclear as to whether he was saying that Yews
7 gave him the package, or that Yews gave Moore the
8 package and that Moore then passed it to him.
9 When he was referred to his evidence at the
10 preliminary inquiry that he felt from the vibes
11 that Moore did not like any of this, Livingstone
12 said he cannot now remember that, but he thinks
13 that it is correct.

14 Livingstone hid the package of cocaine in
15 the seat and put the seat back in the truck. He
16 was not able to say exactly where Moore was at
17 that time.

18 At some point during all of this, according
19 to Livingstone, Yews said, "If you get caught,
20 don't say anything because", and he named
21 someone, "will shoot you." It was not clear
22 whether Moore was present when Yews said that.

23 Livingstone and Moore left in the F-150 to
24 head back to Yellowknife not long after that,
25 maybe three hours later, somewhere between 9 and
26 11 p.m. Livingstone testified that no one said
27 anything to him about what to do with the drugs

1 on arrival in Yellowknife. As far as he was
2 concerned, he was going back to the house that he
3 had been living in, in other words, the house
4 owned by Yews or this Paul person. They drove
5 straight through. Moore paid for gas and bought
6 them something to eat. Livingstone had no money.
7 He said that Yews had not given him any despite
8 saying that he would.

9 Livingstone did the driving except for when
10 Moore drove a bit while Livingstone napped.
11 While Livingstone was driving, they were stopped
12 for speeding in Alberta. Livingstone described
13 Moore as sitting back as if nervous when they
14 were stopped, and afterwards Moore asked
15 Livingstone why he had told the officer they were
16 going to Yellowknife. When they saw the police
17 pull up outside Yellowknife, Livingstone told
18 Moore "Here we go", and Moore replied "Your
19 cousin's done a lot of bad stuff and the cops
20 really want him."

21 That is essentially Livingstone's evidence.

22 As to Livingstone as a witness, I agree with
23 Crown counsel that Livingstone appeared to be
24 sincere. The question is whether he is reliable.
25 He is a drug addict. He said he has been using
26 drugs since the age of ten. He is an alcoholic.
27 He claimed that his memory may be better now than

1 it was at the time of the preliminary inquiry
2 about 18 months ago, because he has had two years
3 since the date all this happened to think about
4 everything.

5 He was vague on a number of points, as I
6 have already given examples of.

7 The drugs were found hidden in the vehicle
8 as he described, and so there is some truth in
9 what he testified.

10 The fact that he described himself and Yews
11 as being much more involved than Moore, suggests
12 that he was not deliberately exaggerating Moore's
13 role in all of this. At the same time, some of
14 the language that he used and that I have
15 referred to, suggests that Livingstone himself
16 may be making some assumptions about Moore's
17 role.

18 I also have to question whether Livingstone
19 was downplaying his own role in what happened.
20 His saying that he just acts as Yews' mule and
21 does whatever Yews says seems inconsistent with
22 his evidence that he came up with and acted on
23 the idea where to hide the drugs. It also seems
24 inconsistent with his testimony, that even when
25 Yews expressed concern that the cocaine in the
26 seat would be found, Yews just went along with
27 Livingstone hiding it there.

1 I do bear in mind that there is no
2 corroboration of Livingstone's evidence and that
3 I should be careful about accepting his evidence
4 in light of the problems that I have identified.
5 What I do accept from Mr. Livingstone's evidence,
6 and what he did not waiver on, is that Mr. Moore
7 was present near the table while Yews was sealing
8 up the packages of drugs in the garage, and was
9 present and in and around the garage while the
10 drugs were being hidden and loaded into the
11 truck. I am not satisfied, however, that Moore
12 was wearing any gloves because of the
13 contradictions about that, so I cannot conclude
14 that he must have handled or intended to handle
15 any of the drugs.

16 When I consider the contradictions between
17 Livingstone's evidence at trial and what he said
18 at the preliminary inquiry, I cannot be
19 completely satisfied whether Moore went and got
20 the package of cocaine and handed it to
21 Livingstone, or whether Yews handed it to Moore,
22 who passed it to Livingstone, or whether Yews
23 himself handed it to Livingstone and Moore was
24 nearby.

25 I am satisfied that Moore must have seen
26 what Yews was doing in the garage. And whether
27 or not Moore could see any raw drugs, I am

1 satisfied that he must have known or, at the very
2 least, suspected and turned a blind eye to the
3 fact that the packages contained drugs. I do not
4 know what else he could have thought was being
5 packaged in such a manner.

6 Did Moore know that the drugs had been
7 placed in the vehicle? It was not clear from
8 Livingstone's evidence exactly where Moore was
9 when Livingstone put the marihuana in the tire,
10 and it was not clear whether Moore saw what
11 Livingstone was doing to the back seat of the
12 truck. It is very odd that, according to
13 Livingstone, there was no conversation about any
14 of this, no questioning by Moore about what was
15 going on. In light of Livingstone's evidence
16 that Yews also threatened Moore, I suppose it is
17 possible that Moore was afraid to say anything.
18 The fact that the packaging was going on and then
19 very shortly afterward they were on their way
20 back to Yellowknife after three weeks of being at
21 Yews' indicates to me that Moore must have, at
22 the very least, known that there may be drugs in
23 the truck and turned a blind eye to it.

24 As for Moore saying to Livingstone, "Why did
25 you tell them that we're going to Yellowknife?"
26 after they'd been stopped by the police in
27 Alberta, that indicates that he was concerned

1 that they would be stopped by the police again
2 and, therefore, that he knew the drugs were in
3 the vehicle.

4 As for the remark, when they saw the police
5 outside Yellowknife, about Livingstone's cousin
6 having done a lot of bad things and the police
7 wanting him, that suggests that Moore knew or
8 was, at the very least, concerned that the drugs
9 were in the vehicle. Certainly, that remark
10 indicates that Moore was aware of Yews' drug
11 activities, and that strengthens the evidence
12 that he knew what was going on in the garage.

13 On all the evidence, I am satisfied beyond a
14 reasonable doubt that Moore actually knew or was
15 wilfully blind to the fact that the drugs were
16 somewhere in the vehicle.

17 I turn now to the issue of control. Even
18 with knowledge about the drugs, is there any
19 evidence that Moore had some measure of control
20 over the drugs?

21 Livingstone did not see Moore handle any of
22 the packages in the garage. I am not satisfied,
23 as I said, that Moore was wearing gloves or that
24 he handed the cocaine to Livingstone. Yews was
25 the one telling Livingstone that he had to do
26 what he said. Livingstone was the one who had
27 the idea where to hide the drugs and who actually

1 hid them. Moore did not help to hide the drugs,
2 according to Livingstone's evidence. There is
3 also the evidence that Livingstone had the
4 impression that Moore did not like what was
5 happening, which suggests that he was not
6 willingly going along with what was happening. I
7 do not put a lot of weight on that evidence. It
8 was said by Livingstone that this came from the
9 vibes that he felt, so it was not very weighty
10 evidence.

11 There was no evidence that Moore had any
12 involvement in changing the registration of the
13 truck into Livingstone's name. According to
14 Livingstone's evidence, Moore had no involvement
15 in loading the truck except after the tires had
16 been put in it, when he helped put in some tools
17 owned by Yews.

18 Moore drove the truck only briefly while
19 Livingstone napped. In my view, that does not
20 amount to control over the drugs. He paid for
21 the gas and their stop for food. Livingstone
22 said he had no money, and there is no evidence as
23 to where Moore got the money so I suppose that
24 raises the possibility that it came from Yews,
25 but there is no evidence of that.

26 Moore had a girlfriend and child in
27 Yellowknife and, according to Livingstone, wanted

1 to get back to Yellowknife. But he had no money,
2 so this may have been his only way to get back.

3 The truck was in Livingstone's name and
4 actually owned by Yews' girlfriend, so Moore had
5 no right of control over the truck. There is no
6 evidence that Moore directed where the truck was
7 to go or directed Livingstone in any way.

8 It was Livingstone who did the talking to
9 the police officer when they were stopped in
10 Alberta. According to Livingstone, he may have
11 said to Moore, "Be calm, be cool" which, if
12 anything, suggests that Livingstone was the
13 experienced one giving directions.

14 I have considered whether the fact that
15 Moore drove briefly and paid for gas and food is
16 evidence that he had control, but I have
17 concluded that on its own, without more, it is
18 not, nor do any of the comments made by Moore to
19 Livingstone in the vehicle (which I have referred
20 to above) amount to evidence that he had control.

21 Although the whole thing is very suspicious,
22 there is no evidence from which I can say that
23 Moore had any control over the drugs, that he had
24 any ability, for example, to agree or direct that
25 they be put in the truck in the first place, no
26 evidence that he did in fact give any directions
27 about that, no evidence that he had the ability

1 to direct that they not be put in the truck or to
2 tell Livingstone to remove the drugs from the
3 vehicle once they were on the road or to take
4 them to a particular place, and no evidence that
5 he did any of those things.

6 On the whole, Livingstone's evidence lacks
7 certainty. It lacks clear facts that would
8 permit me to determine whether Moore played an
9 active role in Yews' plan to transport the drugs
10 to Yellowknife, or whether his role was passive
11 acquiescence with his own goal being just to get
12 back to Yellowknife. While I might go so far as
13 to say that probably Moore was in on the deal,
14 that is not the test, and nor is guilt by
15 association. The test is whether the Crown has
16 proven beyond a reasonable doubt that he was in
17 possession of the drugs as "possession" is
18 legally defined, and at the end of the day the
19 evidence does not reach that standard.

20 Therefore, I must find Mr. Moore not guilty and
21 an acquittal will be entered.

22 Anything further, counsel?

23 MS. ANDREWS: No.

24 MR. SHABALA: Nothing, Your Honour, thank
25 you.

26 THE COURT: Thank you very much. We'll
27 close court.

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accurate transcript pursuant
to Rule 723 and 724 of the
Supreme Court Rules of Court.

Annette Wright, RPR, CSR(A)
Court Reporter