

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JUSTIN TAGGART

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Transcript of the Reasons for Judgment on Conditional Sentence Breach Hearing delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 20th day of November, A.D. 2013.

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APPEARANCES:

Mr. M. Lecorre: Counsel for the Crown  
Mr. C. Davison: Counsel for the Accused

(Charges under s. 5(1) x2 of the  
Controlled Drugs and Substances Act)

1 THE COURT: I have reviewed the evidence,  
2 Counsel, and I am able to give my decision on the  
3 question of whether this alleged breach has been  
4 established. I will just provide brief reasons  
5 for my decision.

6 Justin Taggart is under the terms of the  
7 Conditional Sentence Order that I imposed in  
8 December 2012. One of the terms of this order is  
9 that he has to be inside his residence, subject  
10 to certain exceptions and conditions. This house  
11 arrest condition is going to be in force until  
12 April 30th, 2014.

13 The Crown alleges that Mr. Taggart breached  
14 his house arrest condition on November 2nd, 2013,  
15 by being outside his residence, more specifically  
16 at the Reddi Mart on Old Airport Road in  
17 Yellowknife. This morning a hearing was held  
18 into that allegation. Mr. Taggart disputes it.

19 The Crown relies on the evidence of Su-Ellen  
20 Kolback who has been Mr. Taggart's conditional  
21 sentence supervisor from the time the sentence  
22 was imposed. She has met with him regularly  
23 since the sentence was imposed and I accept that  
24 she is familiar with him and what he looks like.

25 She filed a breach report and a brief  
26 witness statement but also testified at the  
27 hearing this morning. She explained that on the

1 day in question, which was a Saturday, she was in  
2 her vehicle on Old Airport Road. Her daughter  
3 was with her, on the passenger seat. She was  
4 stopped at a red light on the corner of Old  
5 Airport Road and Byrne Road. The Reddi Mart was  
6 on her right side and she was on the right-side  
7 lane of Old Airport Road. She said her daughter  
8 was talking to her and, as Ms. Kolback turned  
9 toward her, she saw Mr. Taggart coming out of the  
10 Reddi Mart. She said he looked in her direction  
11 and then he got into a black truck, on the  
12 driver's side. She turned right at the lights  
13 and then she turned into the parking lot of the  
14 McDonald's, which is on the other side of Byrne  
15 Road. She said that as she was doing this, she  
16 saw Mr. Taggart turning away from her and looking  
17 back as he was sitting in the truck. Then she  
18 drove through the McDonald's parking area and  
19 came back out the exit of the McDonald's parking,  
20 and then she saw this black truck proceeding on  
21 Byrne Road towards Beck Court, which I guess  
22 would be in a southerly direction. She did not  
23 see a licence plate and she did not follow the  
24 vehicle.

25 She also said that she thought that the  
26 Reddi Mart is about a five-minute drive from the  
27 residence where Mr. Taggart currently lives,

1           assuming that there is no traffic. She noted the  
2           time on the clock in her vehicle and it said  
3           4:24. She was asked if it was getting dark out  
4           in cross-examination and she said that it was not  
5           and the streetlights were not on.

6           I do not understand Defence here to be  
7           calling into question Ms. Kolback's credibility  
8           in the sense that I do not think anyone is  
9           suggesting that she lied under oath or is trying  
10          to mislead the Court in her testimony. In having  
11          listened to her, I have no doubt that she told  
12          the truth as far as she understood it to be; that  
13          is that she is quite certain that it was  
14          Mr. Taggart that she saw, and in that certainty,  
15          she was not shaken. It is not her credibility  
16          that is the point here, it is more a question of  
17          the reliability of her identification evidence.

18          Defence has called evidence as well.  
19          Mr. Taggart himself says he did go out that  
20          afternoon because he went and did some of his  
21          community service work hours, which is another  
22          requirement of his conditional sentence. He said  
23          that he did not go to the Reddi Mart that day and  
24          that after he returned home from doing his  
25          community service work, he just stayed home, he  
26          had dinner with his family and then they watched  
27          a hockey game. He said he thought they had

1 dinner at around five.

2 His father also testified, and for clarity,  
3 I will refer to him as "Mr. Taggart's father".  
4 Mr. Taggart's father said that he was at home  
5 that day. He did not recall specifically what he  
6 was doing. He was not sure if his son went out  
7 during that afternoon. He did say there was a  
8 hockey game that night that started at five, and  
9 because of that and because the plan was to watch  
10 that game, the family had supper together at  
11 four. He said his son was there for dinner and  
12 remained at home all evening. Mr. Taggart's  
13 father said that he watched the hockey game while  
14 Mr. Taggart was in an adjoining room and worked  
15 out for part of the time and sometimes also came  
16 out and checked out on the game. It sounds like  
17 Mr. Taggart's father watched hockey for most of  
18 that evening, and apparently there were many  
19 games in many time zones that night.

20 Mr. Taggart's father did appear a bit  
21 nervous and a bit uncomfortable during his  
22 evidence, but I do not find that surprising  
23 because that is the effect that the courtroom has  
24 on most people, especially those who are not in  
25 the habit of spending time there. He was not  
26 clear on certain details, but I also do not find  
27 that surprising for someone who is talking about

1 a day or an afternoon that at the time was  
2 essentially not very eventful, and they would not  
3 know, at the time of the events, that they would  
4 have to recall the details of what they were  
5 doing.

6 Counsel are in agreement that the standard  
7 of proof that applies on a hearing like this, and  
8 this is very clear, is not the standard of proof  
9 beyond a reasonable doubt; it is a standard of  
10 balance of probabilities. Because of that, Crown  
11 is correct, the approach to the evidence is not  
12 the same as it would be after trial when there  
13 has been conflicting evidence. It is not the  
14 approach that is set out in the D.W. case. What  
15 I have to examine here is the civil standard of  
16 proof: What scenario is more probable than the  
17 other?

18 So put another way, in this case, it boils  
19 down to this: Is it more probable that both  
20 Mr. Taggart and his father perjured themselves  
21 under oath this morning and lied about what was  
22 going on that afternoon, or is it more probable  
23 that everyone at this hearing told the truth but  
24 Ms. Kolback made an honest mistake in her  
25 identification of Mr. Taggart at the Reddi Mart?  
26 Because, as I said, I am quite certain that she  
27 is sure this is who she saw.

1           The Crown invites me to reject the evidence  
2           of Mr. Taggart and the evidence of his father and  
3           asks me to consider inconsistencies between their  
4           versions of events. Those differences are about  
5           the time that the family had dinner. Was it  
6           four? Was it five? Where exactly Mr. Taggart's  
7           son was during the hockey game? Was he in the  
8           room watching the game or was he in another room  
9           working out? Was Mr. Taggart out in the  
10          afternoon or not? And, if so, was it because he  
11          was doing community service work or was it  
12          because he went to do groceries? On that point,  
13          I think Mr. Taggart's father's evidence was he  
14          really did not know. So I do not see that as an  
15          inconsistency per se. As for the others, I do  
16          not think they are significant inconsistencies.  
17          If these two witnesses had given identical  
18          details on the events of that afternoon, I would  
19          be far more suspicious because, as I said, this  
20          would be an uneventful day for them and there  
21          would be no reason for them to remember all the  
22          details.

23                 Mr. Taggart said that he did go out that day  
24                 to do some community service work, and his  
25                 evidence about that is corroborated by the fact  
26                 that after all of these observations and after  
27                 seeking direction from her supervisor,

1 Ms. Kolback checked her messages at her office  
2 and she did have two messages from Mr. Taggart.  
3 This is consistent with their agreement that when  
4 he leaves to go do his community service work, he  
5 has to call her when he leaves the house to go,  
6 and he has to call her when he returns after.  
7 She said that she did have two messages from him,  
8 that they were both about his community service  
9 work, and that the second one was left at 3:08.  
10 She did not remember the time of the first one.

11 The fact that there was actually hockey that  
12 night (quite apart from the fact that I think I  
13 could probably take judicial notice that there is  
14 always hockey on Saturdays in the winter) and the  
15 specific fact that there was a hockey game  
16 starting at five between the teams that  
17 Mr. Taggart's father referred to is also  
18 admitted. If the plan was to watch a hockey game  
19 that started at five, it would make sense to have  
20 supper at four, and so for that I would tend to  
21 accept the evidence of the father as to the time  
22 that the family had dinner.

23 What is interesting about the inconsistency,  
24 I think, is if Mr. Taggart was trying to mislead  
25 the Court or if he and his father had somehow  
26 cooked up a story, it would be a better story for  
27 Mr. Taggart to say, like his father did, that he



1 had dinner at four because that would place him  
2 in the house at the time that Ms. Kolback says  
3 she saw him at Reddi Mart. But what Mr. Taggart  
4 said was that he had supper around five. So his  
5 evidence does not put the suppertime in conflict  
6 with the time that Ms. Kolback said she saw him  
7 at Reddi Mart. That is another reason why I find  
8 it difficult to use these inconsistencies as a  
9 basis to reject his evidence.

10 The law does recognize the frailties of  
11 eyewitness identification. This applies when a  
12 person is identifying someone that is unknown to  
13 them, which is not the case here. But it also  
14 applies to identification when the witness only  
15 gets a quick look at someone, even somebody they  
16 know.

17 I do recognize that Ms. Kolback is well  
18 acquainted with Mr. Taggart, and were there not  
19 any other evidence for me to consider, I might  
20 find that her identification in the way that she  
21 describes it is compelling enough to make out the  
22 standard. But there is contrary evidence here.  
23 And, she was in a vehicle on a Saturday afternoon  
24 on a busy Yellowknife street, she had her  
25 daughter with her, and after she made the initial  
26 observations, she had to pay attention to the  
27 light, she had to pay attention to her driving as

1 she was turning, and, after that, she was quite  
2 some distance away. So on the whole, I think it  
3 is more probable that, certain as she might be,  
4 she did make an honest mistake about who she saw.  
5 I think that is more probable than the other  
6 alternative which is that both Mr. Taggart and  
7 Mr. Taggart's father lied under oath this morning  
8 in talking about this.

9 I do not find I have any real basis to  
10 reject their evidence. Of course Mr. Taggart  
11 would be in great jeopardy if he breached his  
12 order again, and I suppose it can be argued that  
13 his father would naturally want to protect him  
14 from some of those consequences. But that would  
15 always be the case when people testify in their  
16 own cases and would always be the case when they  
17 call witnesses who are their friends or family  
18 members. On its own, I just do not find a  
19 sufficient basis to reject their evidence.

20 The Court is of course concerned that its  
21 orders be strictly complied with, and with that  
22 in mind, I would suggest that any time that there  
23 is a concern that a person who is on house arrest  
24 is not complying with the term of their house  
25 arrest, whether this is an observation that a  
26 police officer makes on a regular patrol or a  
27 conditional sentence supervisor or anyone else

1 concerned with upholding the law, the prudent  
2 thing to do would be to take immediate steps to  
3 try to either confirm the identity of the person  
4 by following them, if that is possible, or by  
5 getting a licence plate number, which may not  
6 always be determinative but certainly could help.  
7 Another option would be to attempt to confirm in  
8 a positive way that the person is not inside  
9 their house through an immediate phone call or an  
10 immediate in-person visit. Now, I am not saying  
11 this to be critical of Ms. Kolback. I realize  
12 she was not working that day, she had her  
13 daughter with her and she may well not have had  
14 any of these options. I am just saying, in a  
15 general way, for enforcement purposes and given  
16 that there is a standard to be met, there are  
17 ways where situations could be cleared up. In  
18 fact, in the event that it is a mistake and the  
19 person is in compliance, then of course it would  
20 avoid their arrest and a breach hearing if it  
21 turns out that, in fact, they are in compliance.  
22 But that is all besides the point as far as this  
23 hearing is concerned. On the whole, for the  
24 reasons I have given, I am not satisfied that a  
25 breach has been established on a balance of  
26 probabilities.

27 Is there anything further you need,

1 Mr. Lecorre?

2 MR. LECORRE: No, Your Honour.

3 THE COURT: So the Conditional Sentence  
4 Order is still in force. It remains in force and  
5 as of now is in effect again. Is there anything  
6 else required to have Mr. Taggart return under  
7 the scope of that order as far as you are aware,  
8 Mr. Davison?

9 MR. DAVISON: Not that I am aware of.

10 THE COURT: Once I decide there has been  
11 no breach, that is that and there are no further  
12 steps to be taken?

13 MR. DAVISON: I think that's correct.

14 THE COURT: I think so too. All right,  
15 Mr. Taggart, you have heard my decision. This  
16 order is in force for quite a long time yet, and  
17 I know you understand that there is no more  
18 buffer on this. So you really need to adhere  
19 strictly to the conditions and phone in when you  
20 are leaving, phone in when you come back, and  
21 otherwise comply with all the conditions.

22 One thing that occurred to me when I was  
23 reviewing the order, I do not think the new  
24 address is reflected on the order. At least in  
25 the -- Well, maybe it is. I do not know. But I  
26 do not think it was ever amended. There is a  
27 condition in there that says the address can

1 change with the permission of the supervisor,  
2 which is fine. So we can leave it that way. Is  
3 it the expectation that this will -- this current  
4 address, whatever it is, will be the address for  
5 the next foreseeable future?

6 MR. DAVISON: His father is indicating  
7 "yes". Yes, both Mr. Taggart junior and  
8 Mr. Taggart senior are indicating they do expect  
9 it will continue --

10 THE COURT: Because while we are all here,  
11 it would make sense. 136 Enterprise was your  
12 other address; right?

13 THE ACCUSED: Yes.

14 THE COURT: The old address?

15 THE ACCUSED: Yes.

16 THE COURT: What is the address where you  
17 are living now?

18 MR. DAVISON: I understand it's 800 Range  
19 Lake Court.

20 THE COURT: 800 Range Lake Court?

21 MR. DAVISON: Yes.

22 THE COURT: Mr. Clerk, I'm going to  
23 amend -- Well, the order said "current address",  
24 but I think that can be amended to the address  
25 Mr. Davison has just said as of today's date just  
26 so that the order is consistent with reality.

27 MR. DAVISON: Sure.

1 THE COURT: And it can be changed again  
2 with the permission of your conditional sentence  
3 supervisor. But I think it would be better if  
4 the order reflected the actual address.

5 So if there is nothing further, Mr. Clerk, I  
6 will ask you to amend the original and make sure  
7 Mr. Taggart gets a copy of the amended version  
8 before he goes.

9 THE COURT CLERK: Yes, Your Honour.

10 THE COURT: I think that is it for today,  
11 Mr. Clerk.

12 THE COURT CLERK: That is correct, Your Honour.

13 THE COURT: We will close court. Thank  
14 you, Counsel.

15 .....

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18 Certified Pursuant to Rule 723  
19 of the Rules of Court

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22 Jane Romanowich, CSR(A)  
23 Court Reporter

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