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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

DOLLY SYDNEY



Transcript of the Proceedings of a Reasons for Judgment
held before His Honour Judge B. A. Bruser, sitting
at Inuvik in the Northwest Territories, on Wednesday,
February 6th, A.D. 1990.

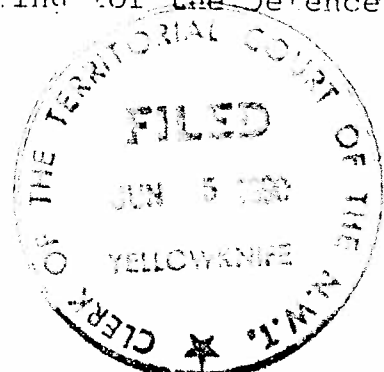
APPEARANCES

A. FERGUSON, Esq.

Appearing for the Crown

JOYCE LILLEGRAN, Ms.

Appearing for the Defence



1 THE COURT: The accused is charged in a 2 Count Information.
2 The Crown is asking me only to consider Count #1.

3 Count #1 charges that Dolly Sydney, between
4 the first day of August, 1989 and the first day of
5 November 1989, in Inuvik, in The Northwest Territories
6 did unlawfully sell liquor contrary to Section 77 (c)
7 of the Liquor Act.

8 The definition of a 'sale' within the Liquor
9 Act is broken down into two subparagraphs:

- 10 (i) The exchange, barter or
11 traffic of liquor and,
12 (ii) the selling, supplying or
13 distributing by any means
14 whatsoever, of liquor.

15 The word 'selling' would appear to imply a
16 profit motive. It is separated from the words
17 supplying or distributing; which, in my view need not
18 imply or incorporate a profit motive.

19 I am reinforced in that view by the reference
20 in the Larry Mc Gee decision referred to me by Counsel
21 at page 16. At that page Defence Counsel, who is
22 the same Counsel now before me, pointed out
23 that the Oxford Universal Dictionary defines the
24 word 'supply' as being a verb, and secondly, by
25 definition it means "to help, aid, assist ... to
26 furnish ... provide".

27 There is nothing in the definition of 'supply'

1 in the common usage of the word to indicate an
2 intention to make a profit.

3 At page 27 of the McGee decision, there is
4 obiter from Chief Judge Slaven, as he then was, to
5 the effect that a person would be supplying liquor
6 contrary to paragraph 2, (25) of the Liquor Act even
7 if the individual had not received a monetary
8 advantage -- I gather that is the import of what
9 Judge Slaven was referring to. I agree with that
10 interpretation of the definition of supply.

11 I turn now to the evidence before me. I will
12 not go over it all. It has been quite detailed. We
13 have heard a good number of witnesses from the Crown.
14 There has been no defence evidence.

15 In looking at the Western Arctic waybills and
16 in considering the testimony of Bob Milner it is
17 noted, that on September
18 20th the weight of the case was 46 pounds, and
19 that weight is referred to in that part of the Exhibit
20 numbered 5543 as being 46 pounds, which,
21 according to his testimony is the weight of one
22 case of 40 ounce liquor - a case containing 12
23 bottles of hard liquor. The description of that
24 waybill is "1 CS Canadian Club" - - Canadian being CDN,
25 which I judicially note is the standard definition
26 for Canadian, however it is used.

27 The consignor is noted to be Dolly Sydney.

1 That is, her name is that of the consignor, although
2 Mr. Milner was unable to identify her as the person
3 who physically put forward the case.

4 The consignee of September 20 is Joan Kikuak
5 of Tuktoyaktuk. An agent for Western Arctic Air
6 signed the document. That agent was Mr. Milner.
7 Above his signature in the lower left hand corner
8 is the name which appears to be Jones, or Jonas
9 Kikuak. His signature, or her signature as the case
10 may be, is immediately above the words "received in
11 apparently good order".

12 Next, I turn to the waybill of October 21st,
13 #5855. Again the consignor is Dolly Sydney and the
14 consignee is Susie Kikuak of 'TUK' - Tuktoyaktuk. I
15 take judicial notice that 'Tuk' is a short form for
16 Tuktoyaktuk used in this area.

17 This time there were two cases of liquor, the
18 weight being 92 pounds, according to the testimony
19 of Mr. Milner. The weight is noted in the waybill,

20 being #5855. The signature of somebody is
21 above the words, "received in apparent good order".
22 There is another waybill #5556 from Dolly Sydney to
23 someone in Tuktoyaktuk -- Tootsie Grueben. There is
24 no weight. The description is "CC Whiskey 1C/s".
25 There are other waybills without her name on them.
26 I will pass over them and place no weight upon them
27 at all.

1 There is another waybill #5041 from
2 Dolly Sydney to Tootsie Lugt in Tuktoyaktuk for
3 all cases of beer. The weight is not clear but it
4 is purportedly given. Again there is a signature
5 indicating that the consignment was received in
6 apparently good order. Waybill #5086 from Dolly
7 Sydney to Tootsie Lugt in Tuktoyaktuk is for
8 "65 beer/box". Nobody has signed that as being
9 received in apparently good order.

10 There is another way bill #5534 dated October
11 2nd 1989 indicating one box of personal effects,
12 which was sent having a two pound weight. I place
13 no weight on that document.

14 I notice that the weight of the liquor
15 referred to in waybill #5855 matches the expected
16 weight of two cases of liquor. For waybills #5855
17 and #5455 to coincide exactly in weight with liquor
18 and yet to be something else would be unfounded
19 on the evidence. Regarding those two waybills at
20 least, I conclude that liquor was sent.

21 On the other waybills the description is
22 liquor. I infer that liquor was sent as described.
23 These are declarations against the interest of
24 Dolly Sydney. I find that Dolly Sydney was the
25 consignor, either personally or through an agent
26 on her behalf, and it makes no difference which.

27 Then there is the evidence of the pay transfers

1 The dates fit within the dates of the Western Arctic
2 consignments. The amounts of money fit. The accused
3 has been identified by Bay employees, although she
4 was not identified by all of them.

5 For example, Mc Crowther was not asked to
6 identify her. Rose Marie Gordon was not asked to
7 identify her. But in each case the name Dolly
8 Sydney was what the employees remembered. Dolly
9 Sydney is the accused before me. Dolly Sydney is
10 the person identified by another Bay employee as
11 having been in the Bay; that employee being Bertha
12 Harrison. Also William Mc Quarrie of the Bay
13 identified her.

14 Therefore, during this period in question
15 Dolly Sydney was in the Bay. I conclude that she
16 received significant amounts of money during that
17 same time period. She was in the liquor store
18 according to the manager of that store, Kurt
19 Lozinski. He could not tie her, or link her, to
20 any particular transaction but he did remember
21 that she came in during this time period and she
22 usually bought a case of liquor at a time. The
23 liquor he mentioned was hard liquor.

24 I conclude that with the money from the
25 Bay the accused went into the liquor store in
26 Inuvik and bought significant quantities of hard
27 liquor. Hard liquor, incidentally, is what forms

1 the basis of most of the waybills with her name on
2 them.

3 The Crown's theory is that the accused
4 received money in Inuvik, via the Bay, from
5 Tuktoyaktuk, went to the liquor store, bought
6 the liquor, went to Western Arctic and shipped
7 the liquor to Tuktoyaktuk. I agree with the Crown.

8 The Crown's case is mainly circumstantial. In order
9 to make out a circumstantial case the evidence must
10 not only be consistent with the guilt of the accused,
11 but it must also be inconsistent with any other
12 rational conclusion.

13 Miss Lillegran, in her able submissions, argues
14 that it would not be uncommon for other people to
15 sign someone else's name.

16 As I indicated earlier it does not matter
17 whether or not the accused went into
18 Western Arctic air terminal or had someone do so
19 on her behalf and sign on her behalf. In order for
20 there to be evidence of any other rational
21 conclusion there has to be an evidentiary basis
22 for it. Another rational conclusion cannot be
23 founded on conjecture, speculation, or possibility.

24 Could you stand up, please? For the
25 reasons given I find that the Crown has proven
26 its case beyond a reasonable doubt on each and
27 every essential element, and I find you guilty of

1 the offence as charged.

2 THE COURT: Can we deal with sentencing now?

3 (SUBMISSIONS BY COUNSEL)

4 THE COURT: Mrs. Sydney, the offence you have been
5 convicted of is viewed by the Legislature as
6 serious enough to attract for
7 a first offence, a fine up to \$5,000, and up
8 to 12 months imprisonment.

9 It is a serious offence, as people in the
10 Northwest Territories are increasingly realizing
11 that alcohol abuse is their number one
12 health problem.

13 Alcohol abuse is at the root of most of the
14 crime that we see in the courts. There is, and
15 I speak from experience, a heavy rate of crime and
16 other offences in Tuktoyaktuk. Most of it is
17 related to people abusing alcohol.

18 In the case before me there were several
19 transactions in which you purchased liquor and sent
20 that liquor to Tuktoyaktuk. The overall quantity
21 of the liquor combined is high. In the McGee case
22 referred to by your lawyer originally, one trans-
23 action was involved. In your favour the Crown is
24 not alleging that this was a commercial venture.
25 The Crown has not told me that you were making
26 money from the sale of liquor. I use the word
27 'sale.' because what you did, did amount to a

1 a sale within the Liquor Act. If there were
2 evidence before me that you were making a profit
3 off what you did, I can assure you that the fines,
4 notwithstanding your financial situation, would
5 be far greater than what I am about to impose.

6 I have taken into account the fact that you
7 have no income, your common-law spouse is the sole
8 earner of income in the family and you have two
9 young children.

10 There will be a fine in the amount of \$300
11 or in default 30 days imprisonment. There will
12 be no victim surcharge fine added on because of
13 hardship.

14 (DISCUSSION RE TIME TO PAY)

15 You will have until June 5th, either to pay
16 the fine in full, or in part, or to enroll in the
17 fine option program and work the fine off.

18 As I have indicated this is, in some ways, a
19 technical offence that you have been found guilty
20 of. I would expect that people in the region now,
21 because of the Mc Gee decision and because of what
22 I have rendered today will know that they cannot do
23 this. Penalties can be expected to be high in the
24 future. That is all.

25
26 Certified a correct transcript

27
Peg Leighland, Court Reporter.