

FC 00166
TC CR 83 003

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

HER MAJESTY THE QUEEN

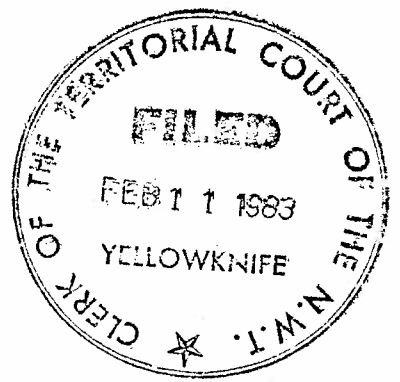
- and -

VINCENT MCCARTHY

REASONS FOR JUDGMENT

of

His Honour Judge T. B. Davis



APPEARANCES:

MR. JOHN R. SHIPLEY	Appeared for the Crown
MR. ED J. BROGDEN	Appeared for the Defence

Inuvik, Northwest Territories - December 1, 1982

Vincent McCarthy, a part time taxi operator in Inuvik, N.W.T. is charged under Section 59(c) of the N.W.T. Liquor Ordinance, with the unlawful sale of liquor. At the trial of the accused, Defence Counsel indicated that there is no dispute on evidence relating to dates, places, continuity of exhibits, seizures, liquor or money seized, but evidence of the facts and circumstances was presented, much of which was admitted by the accused while on the stand.

On October 11, 1982, an undercover R.C.M.P. officer purchased a bottle of liquor from the accused for \$50.00. In preparation for the transaction, the officer dressed in work clothes, a baseball hat, and long hair. Upon approaching the cab he indicated that he was a stranger to the community, and while in the presence of another person who was known to the taxi driver, requested some liquor. After being told that other people were sold out, the accused taxi driver drove to an apartment and produced one bottle in exchange for fifty dollars, composed of three bills which had been recorded by their serial numbers. Mr. McCarthy admitted to having kept the \$50.00 although he received the bottle from a dozen or so bottles which he said were owned by his girlfriend or two brothers who live in his residence. Although the Liquor Store price is \$13.00 or \$14.00 per bottle, Mr. McCarthy indicates that he did not pay for the bottles in his residence.

The event took place on a community annual weekend celebration known as Delta Days, when there is more than the usual partying and carnival atmosphere. There was no denial of the basic facts by the accused. He expressed them in a slightly different way, in that he felt he was helping the police officer who had convinced the accused that he wanted a drink and could not get it elsewhere.

Defence Counsel, in argument, suggested that based on the accused's recollection that the officer had approached him on more than one occasion and on the fact that the accused had not agreed to the sale until after the officer said he had been unable to get liquor from others, there is a valid defence based on "Entrapment".

Upon agreement between Counsel, the Court adjourned the decision to allow briefs to be submitted on the argument relating to "Entrapment".

After having reviewed the briefs and some of the case law usually related to drug offences, I have accepted points from each as valid under the factual circumstances in this case.

Defence Counsel acknowledges that society needs the opportunity for police to participate in undercover work as an investigative resource, even though it has some inherent deceit by covering up the true identity of the police agent. The problem for the Court, therefore, is to try to decide at what level such investigative procedures become so deceitful that they should be classified as unlawful. In many instances the Courts must determine if a deceitful scheme is such that it both implants in the mind of the accused and entices him to commit an offence which he would not otherwise have intended, so that such a scheme could also be classified as Entrapment.

Although Canadian jurisprudence on this point is not clear or settled, I am satisfied that the Trial Court can consider Entrapment as a defence if there is an abuse of police powers which would be shocking to the general conscience of society. Such a situation could exist where the police participated in or developed a scheme involving the accused who had no pre-disposition to commit an offence, and then pressured, forced or enticed the accused to participate in an unlawful act so as to have grounds for laying a criminal charge.

Having read the cases as presented in the extensive briefs of Counsel, I interpret the trend as expressed by the more recent decisions of the Supreme Courts to indicate that actions by an undercover agent in providing the opportunity, even with some persistence, or by repeated solicitation to participate in a criminal offence, need not be "Entrapment", which could give rise to a valid legal defence.

After finding a change in jurisprudence as partially expressed in the Kirzner decision (1978) 38 C.C.C. (2d) 131, (1978) 2 S.C.R. 487, 81 D.I.R. (3d) 229, by the Supreme Court of Canada, and subsequently in Amato v The Queen (1982) 69 C.C.C. (2d) 31, I must determine if the facts in the case at bar are such as to justify such a defence of "Entrapment".

I find that the police had not used tactics such that there was no room for independent intent by the accused, or that the circumstances were so shocking and outrageous that they would bring the administration of justice into disrepute. Therefore, the defence of Entrapment can not be justified in this case and a conviction will be entered.



Thomas B. Davis
Judge