

R. v. Steven Mark Ormrod, 2014 NWTTC 26

Date: 2014 11 06

File: T-1-CR-2013 001611

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

STEVEN MARK ORMROD

REASONS FOR DECISION

of the

HONOURABLE JUDGE ROBERT D. GORIN

Heard at: Yellowknife, Northwest Territories
Oct 22, 2014

Reasons Filed: November 6, 2014

Counsel for the Crown: J. Bond, A. Piche

Counsel for the Accused: C. Sicotte

[Sections 5(2) of the Controlled Drugs and Substances Act; 91(1); 91(2)
95(a); (96(a); 86(1); 354(1); & 96 of the *Criminal Code*]

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A INTRODUCTION

[1] The accused is charged with 33 counts, all of which arise as a result of items that the police observed and seized during a search of the premises that were rented by the accused. At the conclusion of his preliminary inquiry on October 22nd, I ordered that he stand trial on all of 33 counts that were before me, finding that in each case that the test for committal set out by the Supreme Court of Canada in *U.S.A. v. Sheppard*, [1977] 2 SCR 1067, had been satisfied. I advised that written reasons would follow. My reasons are set out below.

[2] The first two counts on the information allege that the accused had possession of cocaine and cannabis for the purpose of trafficking. The accused took no issue with being committed on either of those two counts.

[3] The 31 remaining counts all relate to firearms that were discovered and seized. They include counts for: possessing a loaded restricted firearm; possession of a firearms that had been obtained directly or indirectly by an indictable offence; possessing a prohibited weapon; possessing a firearm without being the holder of a permit license; and careless storage of a firearm. The accused argued that the evidence was insufficient for him to be committed to stand trial on those counts.

B ANALYSIS

[4] I will briefly review the evidence including the agreed facts that were presented at the preliminary inquiry. The accused was the leaseholder of the real property located at 101 Kam Lake Road in Yellowknife. On October 2, 2013 the police searched a number of buildings located at that address.

[5] During the search, the police arrested a number of individuals who were present. The accused, who was inside a school bus located on the property, surrendered himself to the police.

[6] One of the buildings searched was a residence that was apparently being occupied by a number of people. Inside the residence were bedrooms, a bathroom, a kitchen, and other common rooms including a workshop. It was apparent that a number of people were staying in the residence at the time. Substantial amounts of cocaine and marijuana were found throughout the building. As well, items including ledgers, a safe, digital scales, a police scanner, multiple cell phones, large amounts of cash, and a live video monitoring system were found. Bongs, water pipes, and vapourizers were also located.

[7] A handgun that had been wrapped in a towel was located in a drawer in the workshop. A copy of a promise to appear for court that the accused had entered into in relation to an unrelated matter was also found in the workshop outside the drawer where the handgun was found. A wallet that contained the accused's personal identification was found in one of the bedrooms located in that same building.

[8] Also of particular note, nine long guns including a sawed off shotgun were found under a bed in a trailer that was located at the same address as the residence. Other than being hidden from plain view under a bed, the firearms were not secured.

[9] The accused's landlady testified that the accused was leasing the real property located at 101 Kam Lake Road. She also testified that another residence, which she described as being an "A-frame" located on the same property, was occupied by someone else. It appears that the A-Frame was never targeted or searched by the police. The accused's landlady could not say who was given

permission to use or not use the various “outbuildings” located on the property, including the trailer where the 9 long guns were found.

[10] For the purpose of the preliminary inquiry, the accused admitted as a fact that:

- the handgun and the long guns that I have referred to were all firearms as defined in s. 2 of the *Criminal Code*;
- the handgun was a restricted firearm and the sawed off shotgun is a prohibited firearm as defined in s. 84 of the *Criminal Code*;
- the accused did not have a possession and acquisition license for any type of firearm;
- the sawed off shotgun had been reported stolen by an individual approximately three months before the search; and
- another of the long guns that were seized was reported stolen about 9 months after the search.

[11] The qualifications of Corporal Eric Irani to give expert opinion evidence on the practices of drug traffickers were admitted. His report providing his opinion on the involvement of the accused and others in the trafficking of controlled substances was also admitted. The report concluded that, given the amount of cocaine and cannabis found in the premises, along with the presence of the other items I have referred to, including the firearms, the accused and three other persons possessed the seized cocaine and cannabis for the purpose of trafficking. Given the evidence, including Officer Irani’s expert opinion, I was in agreement with the Crown that the test for committal on counts one and two was clearly made out. As stated, the accused took no issue with being committed on those two counts.

[12] The accused argued however that the link between himself and the firearms was not strong enough for a reasonable jury to find that he was in possession of them. Specifically, he submitted that it would be unreasonable for a trier of fact to infer that he had the knowledge and control over the firearms necessary in order for him to have legal possession of them. He submitted that this was particularly so in the case of the 9 long guns found outside of the building in which his personal identification and his promise to appear were found. The accused submitted that based on all of the evidence, someone other than himself, including

the person who was in the A-frame located at the same address, may have stored the guns there. He stated that the only link between himself and the trailer was the unwritten, “unspecified” lease of the real property located at 101 Kam Lake Road.

[13] Whether or not the evidence is direct or circumstantial, the test for committal is whether or not there is any evidence upon which a reasonable jury, properly instructed, could return a verdict of guilty. Where there is only circumstantial evidence, the preliminary inquiry justice must weigh the evidence to assess whether it is reasonable capable of supporting the inference that the accused committed the offence: *R. v. Arcuri*, [2001] 2 SCR 828, at paras. 21 – 23. The rule in *Hodge’s Case* (2 Lewin 225, 168 E.R. 1136), which states that circumstantial evidence must be inconsistent with any rational conclusion other than the accused’s guilt, has no application in determining whether the accused should be committed to stand trial following his preliminary inquiry: *R. v. Herman* (1984), 11 CCC (3d) 102 (Sask.C.A.). Rather, the question is whether or not the guilt of the accused is one of the reasonable inferences which the jury could draw.

[14] For reasons I will later discuss, I think the evidence that links the accused with trafficking is also relevant to the issue of whether or not he possessed the firearms. I therefore think it appropriate to first review the evidence against the accused on the counts of possession for the purpose of trafficking. The evidence presented at the preliminary inquiry was that the accused was leasing the residence in which the drugs were found. In addition to his legal interest in those premises, he was found in close proximity to the residence in question at the time the search was carried out. His personal effects were found in the residence in close proximity to the drugs and other drug related paraphernalia that were found by the police.

[15] Corporal Irani’s reasons for concluding that the accused, along with other persons, was in possession of the seized drugs for the purpose of trafficking included the amount of the drugs and their packaging. They also referred to the presence of large amounts of cash, numerous cell phones, apparent score-sheets, digital scales, surveillance devices, and the firearms.

[16] I found the circumstantial evidence of the accused’s possession of the cocaine and marijuana for the purpose of trafficking to be quite strong. It is

sufficiently compelling that I find that even without the presence of the firearms or the expert opinion evidence of Corporal Irani it would easily be open to a trier of fact to find that the drugs were possessed by the accused for the purpose of trafficking. Also, based on the circumstantial evidence, it would be no great leap for a trier of fact to infer that the accused was to some extent acting in concert with other occupants of the residence in a common trafficking operation.

[17] I find that the evidence linking the accused to drug trafficking is relevant in determining whether he had possession of the firearms. Corporal Irani's expert evidence is important in this regard. On the final page of his report Corporal Irani states:

“Police located 9 long rifles and a .45 caliber handgun during the search. Drug dealers commonly have various weapons to protect themselves and their valuable commodities from rip-offs from rival drug traffickers or customers. Also, weapons are used to intimidate other drug traffickers and customers if the need arises.”

[18] Therefore, the possession of firearms is clearly supportive of an inference that drugs were possessed for the purpose of trafficking. However, the converse is also true. Based on Corporal Irani's opinion, it follows that where, as in this case, there is evidence other than the presence of firearms that independently supports an inference that the accused was in possession of drugs for the purpose of trafficking, that evidence can also support the further inference that the accused had knowledge, control and possession of firearms found in reasonably close proximity to the drugs.

[19] Officer Irani's opinion provides a stronger link between the firearms and the persons who illegally possessed the controlled drugs than might otherwise be the case. As I have stated, it would be open for the trier of fact to infer that the accused along with the other occupants was part of a common drug trafficking operation. If that is the case, based on Officer Irani's opinion evidence, a reasonable trier of fact might also infer that both the handgun in the workshop and the 9 long-guns in the trailer were possessed by the people who were part of the trafficking operation for the purpose of protecting themselves and their drugs from others. Furthermore, it would make sense for the people involved in the trafficking

operation to make each other aware of where the various weapons were located in order to better protect their common interests. This would be so in the case of all of the firearms regardless of whether they were stored inside or outside the main residence.

[20] It may be that the accused's identification was found in one of the rooms in the main residence. However, it does not necessarily follow that that was the room or the building he occupied or was the only room or building to which he had access. Given the evidence of his status as leaseholder combined with the evidence of his physical presence at the premises, a trier of fact might reasonably infer that he had access to and control of all of the rooms and all of the buildings covered by the lease. Indeed, at the time of the search, the police found the accused in a structure located on those premises outside of the main residence.

C CONCLUSION

[21] As I stated to counsel at the conclusion of the preliminary inquiry, the question is not whether I think the evidence is weak or even very weak. The question is whether or not there is some evidence on which any reasonable trier of fact could reasonably draw the inferences necessary for there to be a conviction on each of the alleged offences before me. As stated in *Arcuri* (supra), in a circumstantial case the preliminary inquiry justice must to some extent weigh the evidence to determine the reasonableness of the inferences to be drawn.

[22] Put another way, the justice must determine whether the circumstantial evidence is sufficiently strong that the line separating speculation from reasonable inference has been crossed. There may be times when locating that line with precision is quite difficult. Although the question is one of law, its determination by a preliminary inquiry justice may in practice be somewhat subjective. In any case, for the reasons I have given, I have reached the conclusion that the evidence was sufficient for a reasonable and properly instructed jury to find that the accused had knowledge and control and was ultimately in possession of the seized firearms.

[23] Consequently, I also found that there was some evidence on which a jury could find that the accused was responsible for their safe storage. The evidence

indicated that the firearms were not stored in a secure manner and a jury might well find that they were stored carelessly contrary to s. 86 of the *Criminal Code*.

[24] Finally, there was evidence that two of the firearms were stolen. Taking into account the doctrine of recent possession, I found that there was sufficient evidence of the accused's knowledge that they were obtained through the commission of an indictable offence as required under s. 354(1) of the *Criminal Code*.

[23] In short, I found that there was "some evidence" on all of the elements of each of the offences alleged on the information and committed him to stand trial accordingly.

Robert David Gorin
T.C.J.

Dated at Yellowknife, Northwest
Territories, this 6th day of November, 2014.

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