**AMENDED ORIGINAL**

*R v Beaulieu*, 2024 NWTTC 05 **T-1-CR-2023-000619**

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HIS MAJESTY THE KING**

**- v -**

**RYAN BEAULIEU**

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**Transcript of the Reasons for Judgment held before the Honourable Chief Judge R.D. Gorin, sitting in Yellowknife, in the Northwest Territories, on the 16th day of February, 2024**

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**APPEARANCES:**

S. Frame: Counsel for the Crown

V. Chiatoh: Counsel for the Defence appearing

 as agent for C. Davison

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Charges under s. 5(2) of the *Controlled Drugs and Substances Act*, 9(2) of the *Cannabis Act* and 60(3) of the *Corrections Act*

Amended Original June 12, 2024 to correct cover page

**I N D E X**

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**RULINGS, REASONS**

Reason for decision 1

Decision 16

(VIDEOCONFERENCE COMMENCES)

 Ryan Beaulieu is charged with possessing fentanyl for the purpose of trafficking contrary to section 5(2) of the *Controlled Drugs and Substances Act*. He is also charged with possessing contraband, to wit cannabis and fentanyl contrary to section 60(3) of the *Corrections Act*.

 When his trial began, he pled guilty to simple possession of fentanyl contrary to section 4(1) of the *CDSA*, conceding that he had possession of fentanyl but not for the purposes of trafficking. However, the Crown did not consent to that lesser plea and therefore a trial on the full count was still necessary.

 Although he maintained his not guilty plea to the *Corrections Act* count, Mr. Beaulieu also concedes that all of the elements of the alleged offence are made out except that it has not been proved that he had possession of cannabis, but rather fentanyl only. The Crown concedes that there has been no proof that he possessed cannabis.

 For the following reasons I find him not guilty of possession of fentanyl for the purposes of trafficking but guilty of the lesser and included offence of simple possession of fentanyl. I also find him guilty of possession of contraband, to wit fentanyl contrary to section 60(3) of the *Corrections Act*, and I am going to propose that that charge be amended to conform with the evidence so that the words “cannabis and” are omitted.

 The charges arose from April the 3rd of last year when Mr. Beaulieu was being admitted into the Yellowknife correctional centre. During the intake procedure, he was discovered to have secreted 20 grams of a mixture of fentanyl, bromofentanyl, which is an analogue of fentanyl, and cutting agents in his rectum in an attempt to get the drugs into NSCC.

 The drugs were detected as a result of a newly installed scanner at NSCC that allowed staff to see objects within the body of an inmate being admitted.

 Sergeant Boechler of the RCMP was qualified as an expert in the area of production, trafficking, illegal possession of fentanyl and its analogues, and its consumption, dangerousness, terminology, packaging, pricing and distribution. He testified that it was his opinion that the fentanyl was possessed for the purposes of trafficking.

 In support of his opinion, he cited the amount of fentanyl, which he described as being “massive,” and the manner in which it had been secreted. Mr. Beaulieu, on the other hand, testified that he is a long-time opiate addict and that he was attempting to bring in the fentanyl for personal use in order to avoid withdrawal and its associated pain and discomfort.

 This is a case where the approach set out by the Supreme Court of Canada in *D.W.* applies; that is, if I believe Mr. Beaulieu when he says he did not possess the illegal substance for the purposes of trafficking, I must find him not guilty of the full offence charged. Secondly, if I do not believe him but his evidence leaves me with a reasonable doubt on that point, I must find him not guilty. Thirdly, even if I do not believe him to the extent that his evidence leaves me with a reasonable doubt, I must examine the whole of the remaining evidence that I accept and determine whether or not that evidence has proved the guilt of the accused beyond a reasonable doubt. If not, I must find him not guilty. It is only if I reject Mr. Beaulieu’s to the extent that it does not raise a doubt that he possessed the fentanyl for the purpose of trafficking and am satisfied on the basis of the remaining evidence that intent to traffick has been established beyond a reasonable doubt that I can find him guilty as charged.

 Crown counsel points out that steps 1 and 2 are not to be carried out in silos; that is, all of the evidence other than the testimony of Mr. Beaulieu, including that of Sergeant Boechler, should be considered when I determine whether or not I believe Mr. Beaulieu, or his evidence leaves me in reasonable doubt. He is certainly correct in that regard.

 However, the converse is also true. Weaknesses in the evidence the Crown is relying on can, in conjunction with the evidence of the accused, lead the Court to the conclusion that it believes the accused or is ultimately left with a reasonable doubt by his evidence. Once again, the evidence of the accused is not to be considered in isolation.

 As I have said, Sergeant Boechler based his opinion on the amount of the drugs and the fact that Mr. Beaulieu had secreted the drugs in his rectum. I will first deal with the second factor he referred to.

 Sergeant Boechler testified that in all cases where he had heard of drugs being secreted in such a fashion, it had been for the purposes of crossing a border or getting drugs into a prison. He said that he had never heard of that technique – not being used for the purposes of trafficking. However, that does not mean that it is impossible or even unlikely that such possession is not for the purposes of trafficking where the drugs are being smuggled into a prison.

 Based on Mr. Beaulieu’s evidence, he has been a long-time user of opiates and had been “dope sick” in the past. He described the symptoms of what that term meant to him and what his experience had been. He was an addict at the time he committed the offence and during the relevant time frame had at times been observed to be under the influence while he was in the custody of the police in police cells prior to being taken to NSCC. He also appeared to be feeling the effects of opiates to some extent during and around the time he was at NSCC on the date charged.

 Sergeant Boechler gave evidence of a 10‑to-1 markup between prices for fentanyl in prison, compared to usual street prices. I appreciate that that could be a very strong motivation for someone to go to the rather extreme extent of putting fentanyl in their rectum.

 However, a similarly strong if not stronger motivation would exist for someone who had been extremely ill as a result of withdrawal and wished to avoid that experience. Mr. Beaulieu said that at the time he was taken into custody, he was at his father’s residence. He had recently purchased the drugs, and he’d put them in his underwear prior to being taken into police custody as he knew he would not be searched there.

 After spending several days in police custody in various locations, he put the drugs in his rectum shortly before being transported to NSCC. He did so because he knew that the searches in that facility would be more thorough and more intrusive. He said that in the past he had become dope sick after being admitted into NSCC. He readily admitted that he had smuggled drugs into NSCC in a like fashion on the previous occasion he had been incarcerated there. This was prior to the installation of the scanner that I have referred to. He also said that he had become dope sick on that prior occasion. This appears very possible since it is possible he used up the drugs he had had with him on that prior occasion and then became dope sick. The questions that were posed to him about that prior occasion were quite scant.

 At the end of the day, I do not find the fact that the drugs were secreted in the manner they were to be evidence that is particularly strong in refuting Mr. Beaulieu’s testimony that he had the drugs for personal use. The evidence of Sergeant Boechler that I find to be considerably stronger is his testimony that the amount of the opiates, 20 grams, is inconsistent with personal use.

 He testified that a typical dose for fentanyl that is cut and sold at the street level for sale is 0.1 of a gram. Fentanyl is typically cut at the ratio of one part of pure fentanyl to 99 parts buffer for sale on the street. That ratio can certainly be higher or lower. Sergeant Boechler said that based on the fentanyl being cut at the one to 99 ratio, typical daily dosage would vary considerably depending on the tolerance of the user. Some people might use one third or one half or the full amount of the 0.1 gram. There would be heavy users, however, who would consume up to 3 points of a gram a day. He testified that there are even some rather rare cases where the user has an extremely high tolerance and might use a full gram daily.

 Constable Boechler testified that even if Mr. Beaulieu had been on a prescribed methadone program for some time -- that is, even if he were a heavy user -- the massive amount of drugs he had in his possession would not typically be for personal possession. His actual words were:

“The gross amount of drugs is significant. This is not what we would typically see in a capacity of a user to be in possession of. This is a massive amount of drugs.”

 However, if Mr. Beaulieu were a heavy user, it is certainly within the realm of possibility that he would use up to 0.3 grams of fentanyl cut at the prescribed level each day, and therefore, the fentanyl he had in his possession would have lasted him for 66 days. I do not find it unbelievable that he would have had that amount on his person for personal use, given the circumstances. This is even more so when one considers his statement that although he had previously brought fentanyl into NSCC, he had ultimately become dope sick and had suffered the extreme discomfort that he described in his testimony as being typical for him.

 I have no hesitation in accepting Mr. Praught’s submission that one can possess illegal drugs for both the purpose of trafficking and personal consumption at the same time. I have no doubt that this is often the case with severe addicts. That said, why would Mr. Beaulieu sell the drugs if he was to ultimately become sick for lack of them? It may be that there is a great profit margin while in prison, but if one is selling and then buying in the same market, it would be a wash. In fact, it would be even more problematic for the addict if the availability were limited.

 Another difficulty is that we do not know the concentration or potency of the fentanyl in question. The Certificate of Analyst noted that among other things, fentanyl, bromofentanyl and cutting agents were found in the substance seized from Mr. Beaulieu. The problem is that I do not know how much cutting agent was in the substance. The certificate and evidence are silent in this respect. I do not know the potency of the fentanyl.

 Similarly, I do not know how much of the substance was bromofentanyl. I heard evidence that bromofentanyl is a designer analogue of fentanyl, that is, an analogue developed for the purposes of trafficking. Sergeant Boechler testified that bromofentanyl is a relatively new arrival on the trafficking scene. Other analogues vary considerably in terms of their potency when compared to fentanyl. For example, Constable Boechler testified that one analogue called “alfentanil” has approximately the same potency as morphine, which is 100 times less potent than fentanyl. On the other hand, carfentanil is 10,000 times more potent than morphine is.

 Due to a dearth of information on bromofentanyl’s potency -- Sergeant Boechler was not able to provide any evidence in that regard -- I do not have conclusive evidence of how potent the drugs that Mr. Beaulieu had were. I have nothing to refute Mr. Beaulieu’s evidence on that topic, which was that those drugs were of poor quality or potency.

 In explaining why a heavy user would not simply buy a large quantity of drugs, Sergeant Boechler stated that drug users purchase drugs as they need them; they do not typically have more money to front. He drew the analogy to his frequent use of granola bars. He said that he eats them, but he would not buy them in a very large quantity -- for example, a skid of them -- because of the storage costs -- something that I note would not be a factor with the amount of fentanyl Mr. Beaulieu had. Sergeant Boechler stated that although he might get a deal if he buys more granola bars, he still buys in smaller quantities.

 He also said that because users typically do not have the money necessary to buy larger amounts; they typically buy at 1 gram, which is still a pretty substantial amount. I accept that.

 Mr. Beaulieu said that he had brought in the fentanyl sometime before his arrest by placing a mail order from Peace River. He said that he did so because of the lack of availability of fentanyl in Hay River. Sergeant Boechler, on the other hand, said that based on what he had heard, fentanyl, although not as easy to obtain in the lower mainland of British Columbia, was easier to obtain in Hay River than in Yellowknife.

 Under all of the circumstances, I find Sergeant Boechler’s testimony concerning the amount of fentanyl Mr. Beaulieu had on him and the consistency of that amount with the intention to traffick in it to be persuasive. However, taking into account the amount of drugs that were found and the quality of the evidence concerning their potency, I find that this evidence does not weigh against that of Mr. Beaulieu to the extent that I am able to say that the element of intention to traffic has been proven beyond a reasonable doubt.

 Mr. Beaulieu’s evidence certainly had its weaknesses. It also had its strengths. In terms of its strengths, there was his apparent frankness. He admitted to lying and stealing from friends in order to get the money to support his habit. While this admission certainly is something that could impact adversely on his credibility -- that is, the fact that he admitted to something so unsavoury as an indicator that he was being untruthful -- he admitted it just the same. It is not something that would have been discovered to be untrue -- without his testimony. Similarly, he admitted stealing a skidoo and selling it in High Level to get money and cocaine.

 After he testified that he had been dope sick the last time he was incarcerated at NSCC in 2022, prior to the scanner having been installed, I asked whether he had smuggled in drugs on that occasion. He immediately admitted that he had. This is also something that I think reflects positively on his truthfulness. There was no way of knowing whether or not he had done so, and yet he admitted that he had without any hesitation. He admitted living the life of a drug trafficker. He was lying; he was stealing. On an earlier occasion when incarcerated, he had smuggled drugs into NSCC.

 At the end of the day, I do not find that his admission to having lied and stolen necessarily detracts from his credibility. He said that he was eating the substance he had on him immediately prior to being taken to NSCC when he was in police custody. He said that because he was eating it, the impact it had on him was lessened. The fact that that would happen was corroborated by the evidence of Sergeant Boechler. I accept Mr. Beaulieu’s evidence that he had developed a strong tolerance to opiates. He began using heroin in jail, according to his testimony, back in 2015.

 His behaviour and consumption of drugs while in custody were apparent on the evidence of those who observed him. He testified that the symptoms associated with being dope sick can last several weeks. Sergeant Boechler’s evidence was that dope sickness can last several days. Although Sergeant Boehcler and Mr. Beaulieu’s evidence differed somewhat in this respect and in terms of the actual symptoms of dope sickness, I do not discount Mr. Beaulieu’s evidence in this regard. He said that he secreted the drugs in the manner that he did in order to get them into jail so that he would not get dope sick. Given the higher security that applied during the intake procedure that he was aware of and based on his prior experience, it would have made sense for him to do that.

 In terms of the weaknesses in his evidence, there was the fact that he called the drug he had on him “heroin” when he spoke to the ambulance attendant on his way from NSCC to the hospital after being discovered. On the other hand, fentanyl and heroin are similar drugs in that they are both opiates. While I think that an experienced user such as Mr. Beaulieu would have known the difference between the two, as a result of their appearance, I do not think that much hinges on the difference in terminology. I do not have a strong basis to find that he would have had a motive to lie on the point. His evidence as to what happened while undergoing intake at NSCC was in some ways quite different from the other evidence that was presented in this case. However, I accept that due to his consumption of narcotics, his memory of what had occurred may be hazy.

 I think it is noteworthy that he said that when originally obtaining the drugs that were seized, he ordered them by phone from someone in Peace River and sent them the purchase amount by email. Presumably, this would have been done through a bank account, yet there was no record of that transaction presented to the Court. It is true that we have no evidence contradicting the transaction, but without the Crown knowing Mr. Beaulieu’s testimony in advance, that evidence would have been uniquely in the ability of Mr. Beaulieu to obtain. His testimony concerning how he obtained that money in the first place seemed to possibly be evolving during his testimony. Having said that, it was never truly inconsistent. He was asked how he got it and what he had stolen. He admitted to stealing a skidoo. He was asked where he sold it. He said in High Level. He was asked how he got it there. He said he drove it. He later said that he drove it there with a truck.

 As noted by Mr. Praught, there was one point in Mr. Beaulieu’s testimony when he paused and smiled prior to responding to a question; however, I do not know that this was something particularly noteworthy or damaging to his credibility. It may have simply been a nervous response prior to giving an answer that reflected poorly on him.

 It is true that in his testimony he would answer questions using the words “I guess” or “I don't know.” There were certainly a number of times when he testified that his memory was a blur. Mr. Praught said that Mr. Beaulieu’s evidence lacked detail and consistently fell back into the fog of drug use. This may to some extent be true, but it also fits into his narrative of using drugs at the time and being a drug addict.

 Mr. Praught pointed out that Mr. Beaulieu was crying and distraught when the drugs were discovered during the intake process at NSCC. It may well be that Mr. Beaulieu was crying because he knew that he was facing a long prison term as a result of being caught red-handed with possession of fentanyl for the purposes of trafficking. However, he may also have been crying because of the prospect of now having to go through the ordeal of withdrawal. I note that his testimony of methadone and other similar drugs being unavailable at NSCC was never contradicted. The only treatment available at NSCC according to Mr. Beaulieu was following withdrawal. He would have known this from his previous periods of incarceration at NSCC, that he described. His emotional state may also have been the result of facing criminal charges other than PPT, such as simple possession, which under the circumstances could significantly increase his period of incarceration.

 I certainly agree with Mr. Praught when he states that someone in possession of an illegal drug can have both the intention to use it and sell it to others. The two intentions are obviously not mutually exclusive, and as stated, I think that having both of those intentions at the same time is likely common with traffickers. However, based on all of the evidence and having gone through all of the steps set out in *D.W.* in the order set out in that decision, I am not sure that Mr. Beaulieu had the intention to traffic at any of the relevant times. I have a reasonable doubt that he had it around the time he was arrested by the police, held in police custody or during the time he was being admitted into NSCC. Therefore, I find him not guilty of possession for the purpose of trafficking.

 However, I accept his guilty plea to the lesser offence of simple possession of a Schedule 1 substance contrary to section 4(1) of the *Controlled Drugs and Substances Act*. I find him guilty of that offence. An acquittal will be entered on the full count, Madam Clerk, and conviction will be entered on the included offence I have referred to. That is count 1.

 And as stated, I propose to amend count 3 to conform with the evidence so that the words, quote “cannabis and” end quote, will be eliminated. And I am assuming that that is not problematic, counsel?

S. FRAME: Not a problem.

V. CHIATOH: It is not, Your Honour.

THE COURT: So there will be that amendment, and I find him guilty of that count as well. So that is count 3. And I thank all counsel who have appeared on this matter. (VIDEOCONFERENCE CONCLUDES)

**(PROCEEDINGS ADJOURNED TO 1:30 PM, MARCH 1, 2024, YELLOWKNIFE)**

**CERTIFICATE OF TRANSCRIPT**

Veritext Legal Solutions, Canada, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings transcribed from the audio recording to the best of our skill and ability. Judicial edits have been applied to this transcript.

Dated at the City of Toronto, in the Province of Ontario, this 27th day of May, 2024.

Veritext Legal Solutions, Canada

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