

CANADA / JUDGMENT

R. v. Smith

2022 BCSC 2309

COURT

Supreme Court of British Columbia

DECIDED

11 May 2022

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Smith,

2022 BCSC 2309

Date: 20220511

Docket: 179832

Registry: Victoria

Regina

v.

Randy Patrick Smith, also known as Randy Smith

Before: The Honourable Mr. Justice Baird

Oral Reasons for Judgment

Counsel for the Crown:

C. Peel

Counsel for the Accused:

N. Brooks

Place and Date of Trial:

Victoria, B.C.

May 9-10, 2022

Place and Date of Judgment:

Victoria, B.C.

May 11, 2022

INTRODUCTION

- [1] The accused, Randy Patrick Smith, is before the court on trial of a 10-count indictment alleging narcotics and weapons offences. Most of the Crown's evidence went in by way of admissions of fact filed on authority of s. 655 of the Criminal Code. I am grateful to counsel for their economical approach to the conduct of the case.

CROWN EVIDENCE

- [2] On June 1, 2020, Canada Border Services Agency officers from Mississauga, Ontario notified the Saanich Police Department here in Greater Victoria that they had intercepted a parcel addressed to the accused at his residence at 871 Marigold Road, Victoria, B.C. (the "residence") containing two conducted energy weapons, or Tasers. These are prohibited weapons which the accused had no lawful authorisation to possess.
- [3] After receiving this information, between June 3 and June 19, Saanich police officers conducted a number of days of surveillance monitoring the accused's movements and activities. He was seen in and around the Marigold Road residence on multiple occasions. He was followed here and there operating a Hyundai Santa Fe SUV registered in his name. He was the only person the police observed operating this vehicle. He was usually its only occupant, but sometimes he took on passengers. He was never seen to be doing anything illegal. He was not under surveillance every day.
- [4] At some point, the Border Services Agency delivered the package with the two conducted energy weapons to the Saanich Police Department. On June 12, 2020, a general warrant was issued authorising the Saanich police to inspect and disable these weapons, and to perform a controlled delivery of the parcel to the accused at his residence. On June 25, 2020, the parcel was delivered to the accused by an undercover police officer posing as a postal worker.
- [5] The accused was arrested at around noon on the same day, June 25, 2020, after he was seen by surveillance officers leaving the house with a small dog. He was not carrying a bag of any kind when he left the house. He got into his Santa Fe and drove off. He was followed, stopped, and arrested by the emergency response team in somewhat dramatic circumstances for the possession of prohibited weapons.
- [6] The Santa Fe was searched as an incident to this arrest. The conducted energy weapons that the police were looking for were not found in it, but there was a camouflage pattern bag on the back seat. Inside of it there was a small black vinyl knapsack containing a closed zippered pouch with three baggies of cocaine in it, weighing cumulatively 26.52 grams, also

a yoghurt bottle containing 90 millilitres of GHB, 1.7 grams of fentanyl, a Ziplock bag with three bags inside containing 55.8 grams of methamphetamine, 22.15 grams of fentanyl, and 28.55 grams of fentanyl; a second Ziplock bag with four bags inside of it containing 27.9 grams of methamphetamine, 6.27 grams of fentanyl, 4.49 grams of cocaine, 10.49 grams of fentanyl and \$620 cash.

- [7] Photos of the vehicle and its contents were filed in evidence by consent. It was admitted that the narcotics in the camouflage bag were of such quantity that they could not be for personal consumption and must be taken to have been intended for trafficking by whoever possessed or owned it. It was admitted that, depending on the quantity sold -- that is, by the ounce or by the gram -- the drugs in the bag had a street value of between approximately \$8,700 and \$25,000.
- [8] During the subsequent search of the accused's house, the police found over 1.5 litres of GHB, the conducted energy weapons that had been delivered to the accused - which were being charged in the living room - plus two Taser flashlights, brass knuckles, a switchblade, a butterfly knife, two blowguns and a Morning Star, all of which the accused, through his counsel, has admitted are prohibited weapons that he had no lawful authorisation to have in his possession, care or control.

ACCUSED'S EVIDENCE

- [9] The accused testified at trial and called no other witnesses. He is a 48-year-old recovering drug addict. He readily conceded that he has a reasonably lengthy criminal record related to his addiction problems but I note that the train of convictions ends abruptly in around 2016.
- [10] In brief terms, the accused testified that in late 2019 he took work as an outreach worker with agencies in downtown Victoria who render assistance to the city's large and growing homeless population. By June 2019 he was engaged by several such agencies, including Pacifica Housing, Our Place Society, and AVI.org.
- [11] These were the early days of the pandemic, of course, and the accused told me that he was working long hours with clients who had been required only recently to shelter in various local hotels purchased by the Province of British Columbia as a public health measure. These included a Howard Johnson Hotel on Gorge Road East and an old Travelodge on Douglas Street. The surveillance officers saw the accused going in and out of these places while they were following him around.
- [12] The accused's role as an outreach worker included delivering "harm reduction" gear to his clients, including Naloxone kits in case of drug overdose, clean needles, condoms, hand sanitizer, and the like. His job was to communicate regularly with his clients, to connect them with community resources, and to assist them in the conduct of their daily lives. He told me, and I accept, that part of his responsibilities included driving his clients to their medical and Social Services appointments. He took them shopping for food, and he helped them move with all of their bags and possessions from shelter to shelter, if and when

necessary.

- [13] In short, an important part of his outreach role involved his clients loading their belongings in and out of his car with some regularity. It was a condition of his employment to maintain business insurance on his car so that he could transport his clients from place to place, and the surveillance police officers saw him doing just that on at least a couple of occasions. It is conclusively established that the accused was in this line of employment; the Crown does not dispute it. He produced in evidence engagement letters from all of his employers as well as time sheets and paychecks.
- [14] The accused testified that he had worked a night shift on the evening of June 24, 2020 and through the night of June 25, 2020. He had arrived back home in the early morning, perhaps around 6:00 or 7:00 a.m. He went into his house to sleep. His parents live upstairs. He was awakened by his mother telling him that a postal worker, really a police officer, had arrived with a package for him. This was the package, of course, containing the Tasers, which the accused admitted he had ordered online for reasons not clarified by questioning from either counsel.
- [15] The Crown has no evidence to rebut the inference that I was invited by defence to draw from the evidence that the camouflage bag with its valuable and highly illegal contents were left in plain view in the back seat of the accused's car in the driveway of his residence from the time that he arrived home at around 6:00 or 7:00 in the morning until around 12:00 noon when he left again with his dog shortly before being arrested.
- [16] The accused admitted in his testimony that he was continuing to struggle with polysubstance addiction at the material time. He told me he was using cocaine, methamphetamine, fentanyl and GHB "from time to time". He confirmed that the GHB found in his bedroom belonged to him, along with all of the prohibited weapons referred to in the indictment and specifically in Counts 5-10, and that he knew these items were in his basement suite. He did not say why he had any of the prohibited weapons, including the recently-delivered Tasers, but then again he was never asked.
- [17] The only question for me to decide is whether the Crown has proven beyond a reasonable doubt that, in the legal sense of knowledge and control, the accused was in possession of the narcotics found in the camouflage bag in the back seat of his car when he was arrested. He swore up and down that neither the bag nor its contents were his. He did not know that the bag was in the car, to whom it belonged, or when it was left there. He says that it must have belonged to one of his outreach clients.

DISCUSSION

- [18] First of all, for the record, as the accused has admitted all of the essential elements of Count 4, that is, simple possession of GHB, and Counts 5-10, namely possession of prohibited weapons, Taser flashlights, brass knuckles, a linear switchblade, butterfly knife, two blowguns and a "Morning Star", I find him guilty of those counts, although I have to say that, to my eye, most of the items in Counts 5-10 have the appearance of jumble sale collector's bric-a-brac rather than weapons intended for use to inflict injury.
- [19] With respect to Counts 1-3, namely possession of fentanyl, methamphetamine and cocaine for the purpose of trafficking, the accused's defence consists of a straightforward and insistent denial that the backseat camouflage bag and its contents were his or that he knew of their presence in the car. He says the items must belong to somebody else, he does not know who, but he thinks probably one of his many drug-addicted homeless clients.
- [20] If I believe the accused's evidence I must acquit him. If I do not believe him but his evidence leaves me with a reasonable doubt, I must acquit him. If I am not left in doubt by the evidence of the accused, I must ask myself whether the evidence that I do accept amounts to proof beyond a reasonable doubt of his guilt. If not, I must acquit. If the evidence goes only so far as to persuade me that the accused is probably or likely guilty, I must acquit.
- [21] As I said, the Crown does not contest the accused's evidence that he was actively engaged in paid employment as an outreach worker on the streets of Victoria at the time of the events described. I have already said that I accept the fact that part of this employment involved the regular transport of addicted homeless citizens in his car from place to place for a variety of different reasons. The drug paraphernalia found here and there in his motor vehicle is equipment that he was distributing for free in large quantities to his drug-addicted clients for harm reduction purposes.
- [22] The defence theory is that there is an available innocent inference to be drawn from the evidence: that the camouflage bag must belong to one of the accused's clients who left it in the vehicle after being transported somewhere by the accused. The Crown concedes that this theory is conceivable but nevertheless argues on all of the evidence that for me to draw this inference would not be reasonable.
- [23] In consideration of all of the evidence, it is, of course, entirely possible that the accused is lying to me when he denies all knowledge of the bag and its contents, and that he is doing so with the powerful motivation of avoiding a lengthy penitentiary sentence if convicted. There is no doubt that the circumstances of this case are extremely suspicious, and certainly one of the available inferences is that the accused was outrageously abusing his trusted position as an outreach worker and instead preying upon and profiting from some of our most vulnerable and unhappy citizens.

- [24] And yet, I find that I have reservations about this possibility. I do not think it reasonable to suppose that a drug dealer would leave a significant amount of narcotic drugs worth thousands of dollars for several hours, unattended and in plain view on the back seat of a motor vehicle parked in an outdoor driveway accessible to any member of the public passing by. If the drugs belonged to the accused, I would expect him, instead, to take the bag into his residence for safekeeping. The fact that he did not do this is a factor which lends a degree of plausibility to his denial of knowledge that the bag was his and that it was in his car, even if I have some difficulty accepting, for similar reasons, that someone else would have left it there.
- [25] Additionally, I note that in all the days of surveillance the accused was never seen handling the camouflage bag or anything similar to it. He was never observed to be doing anything consistent with drug trafficking. It seemed, instead, that he was merely going about his business as an outreach worker. He was not carrying this camouflage bag when he left his residence and got into his car immediately before his arrest. There is no evidence of his fingers prints on any of the plastic baggies containing the drugs. There were no cutting agents, score sheets, baggies, money or other evidence of drug trafficking found in the basement suite when it was searched, or any other evidence that I find to be consistent with the theory that Mr. Smith was a drug dealer.
- [26] Because of this combination of factors, I find that I am unable to reject the accused's evidence that the bag may have been left there by a drug-using client, and that he was not aware of it or what was in it. On Counts 1, 2 and 3, in short, I do not have the required degree of certainty on the element of possession to properly ground a conviction. Bearing in mind the heavy burden on proof reposed on the Crown, while I wish to make it clear to you, Mr. Smith, that I do not necessarily believe what you have told me, I find that I am unable conclusively to reject it.

CONCLUSION

- [27] Stand up, please, Mr. Smith. With respects to Counts 1, 2 and 3, namely possession for the purpose of trafficking of fentanyl, of methamphetamine, and of cocaine, on the totality of the evidence, although I have grave suspicions about all of it, I am unable to reject your testimony. I find that your testimony might be true and I hereby enter acquittals on each of those three Counts. In light of your testimony and the admissions of fact, I find you guilty as charged and hereby enter convictions on each of counts 4-10. You may be seated.

- [28] Thank you, counsel.

"Baird J."

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Prepared on 26 October 2026 · Esheria