

Citation: *R. v. Asuchak*, 2012 YKTC 77

Date: 20111205
Docket: 11-00104
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

RONALD RAY ASUCHAK

Appearances:

Jennifer Grandy
Ann Pollak

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): The application, although it was not specifically stated as such, was, I gather, for exclusion of certain evidence obtained from the accused, his motor vehicle and the environs thereof, back on April 21st of this year.

The claim that his arrest was unlawful and the subsequent search of the accused and his car was unreasonable: the applicant says the police lacked reasonable and probable grounds so to do, thus violating ss. 8 and 9 of the *Charter*.

[2] In my view, this case is rather similar to *R. v. Silver*, 2005 YKTC 62, 2007 YKCA 4, which is contained in the Crown materials. It is similar, except, in my view, in this case the grounds for stopping and arresting the accused were even stronger.

[3] Initially, the matter arose because information was obtained by the police from an informant who had proven to provide reliable information in the past. The applicant made much of the fact that Constable Corbett said that the informant had, on occasion, provided information that could not be corroborated, but nothing particularly turns on that. It simply means that they could not corroborate the information and thus did not act on it, and that is as far as it went. Constable Corbett certainly believed the informant to be reliable and he had some grounds so to believe.

[4] The information that the informant provided was rather specific. The informant advised that Ron, who Constable Corbett knew to be Ronald Asuchak, the accused, was in possession of a large quantity of cocaine and was trafficking it in downtown Whitehorse, and that he was operating a grey Nissan with a licence number that the informant provided. So the information was well beyond a mere conclusory statement.

[5] There were also some other things immediately available and found out subsequently that tended to support or corroborate what the informant was saying. Firstly, at the time the constable received the information he knew Mr. Asuchak and that he was a known drug trafficker with two very recent possession for the purpose of trafficking cocaine convictions. It was confirmed that the licence number provided by the informant was indeed associated to a grey Nissan vehicle, albeit it was not registered to the accused, and a short time later it was confirmed that Mr. Asuchak was indeed operating this vehicle in the downtown area of Whitehorse.

[6] Subsequent surveillance of the accused produced one interesting observation, and that was Mr. Asuchak driving to an apartment building on Strickland Street where a

man came out of the apartment building and got into Mr. Asuchak's vehicle. They drove down the street for a block or so, turned around, came back, and the man got out. It goes without saying that normally, when someone goes to pick up another person for whatever purpose, such as was suggested to the witness of going to a party, usually the party lasts longer than to simply drive up the street, turn around and come back. So it was a suspicious observation and one that was suggestive that a drug transaction had occurred, albeit, as Ms. Pollak is at pains to point out, certainly was not conclusive of that by any means.

[7] The constable was entitled to look at these things cumulatively, and by the time he decided to direct that the accused be stopped and arrested he had, in my view, reasonable and probable grounds so to do. However, the matter goes far beyond that because before the accused was actually stopped, actually arrested, and before any search of the accused or his person, there had been substantial additional observations. Firstly, when the officers attempted to stop Mr. Asuchak he clearly made attempts to evade them. He attempted to drive away and was driving erratically. More importantly, as he drove along he was throwing what appeared to all the world to be cocaine out of the window of the car.

[8] Now, in order to actually arrest the accused and conduct a warrantless search, the officers need only have had reasonable and probable grounds in this emerging situation. Here, the totality of the information and the observations went far beyond reasonable and probable grounds, probably even beyond the making of a *prima facie* case. In my view, neither the arrest nor the search were arbitrary or unreasonable; quite the contrary.

[9] Although it was not mentioned, I should note that amongst the items that I gather were seized were a baggie and some powder found on the laneway. Those would have been admissible in any event since they had been abandoned and no right to privacy would apply with respect to those items.

[10] In the result, the application is dismissed.

FAULKNER T.C.J.