

Citation: *R. v. Fred*, 2019 YKTC 17

Date: 20190228
Docket: 17-00648B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Walker

REGINA

v.

MICHELLE CRYSTAL FRED

Appearances:
Ludovic Gouaillier
Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] WALKER T.C.J. (Oral): This is the Court's decision in regards to what is now a single count matter, that is to say, a charge that Michelle Fred:

On or about the 9th day of January in the year 2018 at the City of Whitehorse, Yukon Territory, did possess a substance included in Schedule I, to wit: Cocaine for the purpose of trafficking, contrary to Section 5(2) of the *Controlled Drugs and Substances Act*.

[2] It came before the Court for trial in the month of December and it was adjourned for continuation on today's date. The expressed intention at the time of the original trial date was that defence would call evidence. However, that was not the case and matters simply proceeded by way of argument on today's date before the Court.

[3] The evidence that the Court heard on the original trial date came from one witness, that of Cst. Kidd, a member of the Royal Canadian Mounted Police, stationed in Whitehorse. Cst. Kidd, along with another officer, had responded to a report of a traffic accident and they came upon a single vehicle in a ditch. This was at about 1:15 in the afternoon and the accused was, in fact, the occupant of the vehicle. She was sitting in the passenger seat with a cell phone in her lap. The cell phone was being charged.

[4] The officer asked Ms. Fred a number of questions. She unquestionably was attempting to avoid identification. In fact, there is a charge for which she has pleaded guilty in which she did admit to fraudulently impersonating another individual, contrary to s. 403 of the *Criminal Code*, and that matter remains outstanding for sentencing.

[5] Through the officer's efforts and knowledge, he was able to determine, in fact, it was the accused. Once that was resolved, she was arrested for two reasons:

- (1) She was in possession of a cell phone, which was contrary to a recognizance that she had outstanding; and
- (2) She had committed an offence, contrary to s. 403 of the *Criminal Code*.

[6] When she was taken out of the vehicle and up on the highway and was searched, paraphernalia (a crack pipe) was found on her and she was then arrested for possession of a controlled substance. They awaited the arrival of a female officer for a more detailed search.

[7] The officers then went down to the vehicle. In the centre console of the vehicle they quickly determined there were bags of white powder. Because of concerns for officer safety, the vehicle was then taken to the detachment and further searches were carried out at that time. Importantly, on Ms. Fred there was found an electronic scale and in a purse there was found a substantial amount of money, about \$825 more or less, in \$20 bills.

[8] With respect to the various bags of powder, one bag in particular, which was found in the centre console, contained 15 grams of cocaine, later determined by the appropriate laboratory. There were other containers which contained substances of which may have been what are called "cutting agents". Others were also analyzed and there was a mixed result, but the primary drugs, which were the concern of this matter, were the 15 grams of cocaine found in the centre console.

[9] Ms. Fred is charged with possession for the purpose of trafficking. In that regard, the Court has two factors that it has to determine:

- (1) Was she in possession; and
- (2) If so, can it be determined that she was in possession for the purpose of trafficking?

[10] With respect to the continuity of exhibits, that was established by the affidavit of Cst. Potter, which was submitted as an exhibit.

[11] With respect to an expert opinion as to the link between the drugs (the 15 grams of cocaine) and whether or not they were for the purpose of trafficking, it was found in

an affidavit of Cst. Gillis, who was admitted as an expert without challenge by defence counsel.

[12] Samples of the drugs were taken and sent off for analysis, as indicated previously.

[13] During the course of her interaction with the police services, Ms. Fred made various utterances with respect to having driven the vehicle or not driven the vehicle. These were essentially contradictory: some were self-serving, some were inculpatory, and some were exculpatory. Essentially, they were, for lack of a better term, a “wash” one with the other.

[14] What is important is that on this day, on January 9, 2018, Ms. Fred was sitting in a vehicle as the lone occupant that was off the road; immediately to the left of her in the centre console was 15 grams of cocaine; and she had in her possession various drug paraphernalia, including a pipe, a set of scales, and she had the amount of funds that I have referred to.

[15] Was Ms. Fred in possession?

[16] Has it been established beyond a reasonable doubt that she was in possession of this drug? This is a circumstantial case. Based upon that, it was certainly a question for the Court why forensics and fingerprinting was not carried out. Cst. Kidd was questioned with respect to that and he said that they, in his mind or in their minds, had established possession by Ms. Fred and it was not necessary to do that.

[17] What weighs against Ms. Fred are a number of things.

[18] One is her giving of false names and false information as to whom she was. Cst. Kidd on cross-examination acknowledged that he was looking for her for other matters or knew that she was being investigated for other matters. But the fact that she would give a false name immediately upon her interaction with the RCMP is of concern and is a suggestion that she was attempting to hide her identification so that she would not be investigated further.

[19] Secondly, she had on her possession a scale. It is correct that a scale is equally consistent with drug trafficking as it is consistent with drug possession. She had a large amount of money also in her purse. She had what is commonly referred to as a "crack pipe" in her possession, as well, and she was surrounded by other drug paraphernalia, including measuring cups that were in the centre console, cutting agents, and, of course, the drugs in question.

[20] In my mind, it is inconceivable that Ms. Fred would have been there and not have had knowledge of the fact that the drugs were in the vehicle. If, in fact, by some chance, there was another driver, another individual, why would that driver have left valuable drugs in the vehicle unattended if not at least on the assumption that Ms. Fred would know they were there and she would be in control and she would protect them, thus accepting possession on her part? But I do not conclude that. There is nothing to conclude that. That is only a suspicion.

[21] Quite frankly, Ms. Fred was there. She was in the passenger seat. Nobody else was there. She had upon her items which were consistent with being in possession of

drugs, the drugs were beside her, and I conclude that it has been established to my satisfaction that Ms. Fred was in possession of the 15 grams of cocaine on that day.

[22] As to next step in this matter, it is whether or not that was possession for the purpose of trafficking.

[23] I have the report of Cst. Gillis. It was admitted as an exhibit without any question and its contents are telling. I do conclude that he did have expertise in these matters. He went carefully through a description of the cocaine trade: how cocaine is cut with various other items; how cocaine is used, whether it is by injecting or by shooting or by its conversion into crack cocaine and then how crack cocaine is used; the value of 15 grams of cocaine; and that if an individual was smoking crack cocaine, 15 grams would have a certain longevity of approximately 4.3 days, or 15 days of snorting, or 7.5 days of injection.

[24] On page 5, he notes that a well-used glass pipe was seized, indicating that individuals were using drugs. Cst. Gillis noted that the scale was located during the investigation; that street weights and scales are very important to establish the weight of the drugs that are sold; and importantly, there was a cell phone present.

[25] While it is addressed by defence counsel that there was only one cell phone and it was not ringing at the time, indications are that, in fact, the cell phone's battery may have been dead and thus it really does not mean one way or the other whether or not it was ringing at that time. The fact that a drug dealer would not allow a cell phone to have the battery run out is not consistent of anything. Anybody can have their battery run out. What is important is that the officer examined the cell phone and the constant

flow of emails [text messages]¹ over the period of time from November 2017 until the day of the offence on January 9.

[26] Cst. Gillis found that there was packing material consistent with trafficking and there was a larger bag of white powder, which he assumes was for a cutting agent.

[27] With respect to the monies involved, they were in denominations which are consistent with drug dealing and consistent with the profits from drug use. Typically, it is a cash business, but he did note that in the Yukon Territory, unlike any other location, that, in fact, payments are often made by e-Transfer.

[28] He concludes that:

5.4 Based on my review and analysis of this investigation, I believe the cocaine seized on January 9, 2018 was possessed for the purpose of trafficking.

[29] Importantly, there was an appendix, and the appendix is the detailed examination of the various text messages. Cst. Gillis goes through various sessions and interprets the language used. In all those sessions, which are 40 in total, he provides in each of those sessions, which were text messages back and forth, how they involved drug dealing and drug use. That is not necessarily proof that Ms. Fred, on this particular day, was in possession of the drugs for trafficking but it does show that she has a history and a pattern of behaviour consistent with drug trafficking, which then lends itself to an inference that, on this day, the drugs, in fact, were being possessed for the purpose of trafficking.

¹ The reference to emails is incorrect and should have referenced text messages.

[30] Importantly, the last text message, which was at 11:40 a.m. on the day of the offence, she notes:

Ive been paying/covering for beer, groceries, pot, shatter, fuel, and all the blo for how long now. Yet you treat me like I use you... You like all the benefits but not the job it takes to get them. Constantly put me down and yet you have not changed. I don't try to change r you

[31] That suggests that she is providing and that she is working to provide that, and the inference is that she was working to provide it by the trafficking of drugs.

[32] Therefore, I find Ms. Fred guilty of possession for the purpose of trafficking.

WALKER T.C.J.