

Citation: *R. v. Patterson*, 2019 YKTC 5

Date: 20190212
Docket: 17-00623
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

DEREK VINCE PATTERSON

Appearances:

Sue Bogle

Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] CHISHOLM C.J. (Oral): Derek Patterson faces charges of possessing stolen property and obtaining money through false pretences, contrary to s. 354(1)(a) and s. 362(1)(a), respectively, of the *Criminal Code*. It is alleged that both the stolen property and the money obtained by false pretences are of a value of less than \$5,000. The offences are alleged to have occurred in Whitehorse on or about November 16, 2017. The Crown proceeded by way of Indictment.

Summary of the Relevant Evidence

[2] The Crown called evidence from four witnesses: Cst. Barr, Lillian Martin, Paul Martin and Michael Travill. Mr. Patterson testified in his own defence.

[3] Martin Contracting and Development Ltd. (“Martin Contracting”) is a building contracting company based in Stewart Crossing, Yukon. It is not disputed that equipment was stolen from one of the storage buildings of Martin Contracting in November 2017, although the exact date was not established. The owners of the company and the RCMP became aware of the theft on November 15.

[4] On November 16, 2017, Mr. Patterson attended Mike’s New & Used, a pawn shop in Whitehorse, and sold equipment, including a compressor, a shop radio (that also charges batteries) and a Motomaster battery charger. Paul and Lillian Martin both testified that these items formed part of the equipment stolen from their company, Martin Contracting. Mr. Patterson also sold a torque wrench with a Yukon Government label on it. He sold these four items to the pawn shop owner for \$200.

[5] Ms. Martin testified that when she learned of the theft, she was staying in Whitehorse with one of her daughters. Her husband, Paul, was visiting them at the time. He returned to Stewart Crossing when he learned of the theft.

[6] Ms. Martin decided to check some local pawn shops to see if she could locate the stolen equipment. She located the three items that Mr. Patterson had sold to Mr. Travill at his pawn shop.

[7] As part of the sales agreement, Mr. Patterson had the legal right to buy back the four pieces of equipment for \$240, though he never did. He testified that it was his intention to do so, but that his drug addiction was so severe that once he found employment, he was not able to hold down the job and secure funds to buy back the items.

[8] Mr. Patterson testified that in November 2017, he was suffering from a serious drug addiction. He and his girlfriend had been in Whitehorse since early November and were staying at a local motel. Mr. Patterson was unemployed and receiving social assistance. He was borrowing some money from his parents, who I understand live in Mayo, Yukon. He had only permanently been in Whitehorse for a few weeks.

[9] On the evening of November 15, 2017, Mr. Patterson and his cousin, Brad Lafrieniére, were looking to buy drugs. Mr. Patterson had roughly \$300 with him. He and his cousin went to the 98 Bar to purchase cocaine. Mr. Patterson entered the bar for this purpose, while his cousin remained in the truck that they were driving. He did not see anybody from whom he might buy cocaine. Mr. Patterson testified that he overheard a “native guy” talking about selling tools. He struck up a conversation with this stranger who explained that he was in the process of shutting down his construction business in Dawson City and relocating.

[10] After speaking for a short period of time, the stranger took Mr. Patterson outside to his truck where various tools were located. He agreed to buy a shop radio, a compressor and a battery charger for \$180. He thought this was a great deal and that the tools could be used for upcoming construction work which he understood his cousin, Brad, had lined up in Whitehorse. Nonetheless, he explained that later that evening while still looking for drugs, he tried to sell the same tools to a drug dealer. The drug dealer rejected this suggested arrangement and, and as I understood it, Mr. Patterson ultimately paid the dealer cash for the drugs.

[11] The next day, November 16, when looking for more drugs, he ended up selling the tools to a Whitehorse pawn shop. He was unhappy that he only received \$200 for the tools, including a torque wrench that he had in his truck. He explained that he intended, once employed, to return to the shop and buy back the tools. He did not ultimately return, although he did do some construction work with his cousin. They were both ultimately let go from this work due to drug addiction issues.

[12] The police arrested Mr. Patterson for these offences on December 30, 2017 in Carmacks.

Analysis

[13] This is not a credibility contest between the Crown and defence witnesses. The burden is, of course, on the Crown to prove the charges beyond a reasonable doubt. This burden never shifts to the defence.

[14] This case requires an analysis of the principles set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, which I summarize:

If I believe the evidence of the accused, I must acquit.

If I do not believe his testimony, but am left in reasonable doubt by it, I must acquit.

Even if his evidence does not raise a reasonable doubt, I must consider, on the basis of the evidence I do accept, whether I am convinced beyond a reasonable doubt of his guilt.

[15] The manner in which Mr. Patterson testified did not disclose any overt attempt to mislead the court. On the other hand, his testimony does raise concerns with respect to his credibility. His explanation of how he came to buy the tools is, in my view,

problematic. He described how his drug addiction had taken over his life. His and his cousin's plan was to buy drugs. Yet, despite limited funds and a desire for his daily fix, he became sidetracked and bought tools from a stranger in a bar with a good portion of the money he had.

[16] It is important to keep in mind that Mr. Patterson had no employment, a strong drug addiction and limited funds to buy even essential daily items, let alone illicit drugs. His stated purpose in entering the bar was to purchase drugs for him and his cousin in order to feed their respective addiction.

[17] Additionally, despite the fact that he testified that he was buying these items for possible future work with his cousin, he did not consult him about what construction equipment, if any, might be needed. Although Brad Lafrieniere runs a contracting business, he did not ask him to come and inspect the items which the stranger was selling to determine which items would be of use for any upcoming work. Additionally, if he truly intended to buy work tools which would be of benefit to him and his cousin, it is quite odd that one of the items he purchased was a radio - which can hardly be considered as a necessary work accessory.

[18] Mr. Patterson explained that this spur of the moment purchase resulted from his inability to think straight due to his drug dependency.

[19] Defence counsel submits that I should consider favourably the fact that Mr. Patterson, as required, provided his name and proper photo identification to Mr. Travill before selling the property. However, this only occurred after he had admittedly tried to sell the property, without success, to a drug dealer.

[20] Overall, I find that Mr. Patterson's explanation runs completely contrary to his desire to feed his drug addiction. It defies belief. Indeed, in cross-examination, he stated that during this time, he used drugs daily and this habit was taking over his life. The day after he bought the tools, he was so desperate for money that he sold them. The notion of spending precious money on tools that were of no immediate use to him does not accord with common sense.

The law regarding recent possession

[21] Regarding the possession of stolen property charge, the Crown must prove that Mr. Patterson knew the items sold to the pawn shop were "obtained by the commission in Canada of an offence punishable by indictment". The Crown has led circumstantial evidence which it argues proves this requisite knowledge.

[22] The Crown also argues that the property in Mr. Patterson's possession had been stolen recently and, as a result, I should exercise my discretion to apply an inference of Mr. Patterson's guilt.

[23] In *R. v. Kowlyk*, [1988] 2 S.C.R. 59, the Supreme Court of Canada states at para. 12:

In summary, then, it is my view, based on the cases, both English and Canadian, which I have referred to, that what has been called the doctrine of recent possession may be succinctly stated in the following terms. Upon proof of the unexplained possession of recently stolen property, the trier of fact may -- but not must -- draw an inference of guilt of theft or of offences incidental thereto. Where the circumstances are such that a question could arise as to whether the accused was a thief or merely a possessor, it will be for the trier of fact upon a consideration of all the circumstances to decide which, if either, inference should be drawn. In all recent possession cases the inference of guilt is permissive, not mandatory, and

when an explanation is offered which might reasonably be true, [page75] even though the trier of fact is not satisfied of its truth, the doctrine will not apply.

[24] The defence argues that I should accept the explanation of Mr. Patterson, but that even if I do not, it is an explanation that might reasonably be true, and therefore the doctrine of recent possession does not apply.

[25] I disagree. As I have explained, I reject Mr. Patterson's explanation and find that it could not reasonably be true.

[26] In terms of the recency of the theft, Mr. Martin initially testified that he thought he had been away from Stewart Crossing for two to three days. However, on cross-examination, he agreed that it could have been four or five days.

[27] As explained by the Court in *R. v. Farnsworth*, 2017 ABCA 358 at para. 7:

...The trial judge correctly observed that a finding of "recency" is relative and incapable of any exact or precise definition. It is dependent on factors such as the item's rarity, the readiness with which it can be and is likely to pass from hand to hand, the ease with which it can be identified and the likelihood of transferability: *R v Wilson* (1924), 35 BCR 64 at para 2; *R v Saieva*, [1982] 1 SCR 897 at 902.

[28] The Court in *R. v. Zinck*, [1989] N.B.J. No. 517 (N.B.C.A.) stated:

...McWilliams in his book *Canadian Criminal Evidence*, second edition at p. 84 cites Best in his book on evidence at p. 193 as follows:

What shall be deemed recent possession must be determined by the nature of the articles stolen, i.e., whether they are of a nature likely to pass rapidly from hand to hand; or of which the accused would be likely, from his situation in life, or vocation, to become possessed innocently.

[29] Caselaw reveals that a wide range of time periods have been found to come within the concept of recency. Depending on the individual circumstances of the case, it may be a matter of hours (*R. v. Mitchell*, 2017 ONSC 1255, where the accused was at a casino with stolen money about five hours after the robbery); a matter of days (*R. v. Rimmer*, 2011 BCCA 411 where the accused was in possession of jewellery and coins 29 days after the break and entry; *R. v. Choquette*, 2007 ONCA 571, where the accused was in possession of rifles 17 days after theft); to a matter of months (*R. v. Bakos*, 2008 ONCA 712, possession of motor cycle parts four months after the theft).

[30] In the matter before me, the tools were stolen in Stewart Crossing and ended up in Mr. Patterson's possession in Whitehorse, a fair distance away, within less than a week. As outlined, Mr. Patterson also came to have possession of the property when he had limited means and was in the throes of a drug addiction.

[31] Additionally, he did not have just one tool, but three of the six tools stolen from Martin Contracting. The fact that a variety of the property stolen was in his possession is a factor that I may consider in determining the issue of recency (see *R. v. Rimmer* at para. 6).

[32] Having considered all of the relevant factors in this matter, I find that the possession of the stolen property from Martin Contracting was recent. As indicated, I do not accept Mr. Patterson's explanation of possessing it and his explanation does not raise a reasonable doubt. I also draw an inference from this recent possession that Mr. Patterson was in possession of the property with knowledge that it was stolen.

[33] Based on the evidence that I accept, I find that the Crown has proved beyond a reasonable doubt Count 1 of the Information with respect to the property of Martin Contracting. Regarding the torque wrench with a government label on it, although suspicious, I find that the Crown has failed to prove to the requisite standard that the wrench was stolen property.

[34] Additionally, Mr. Patterson obtained money from Mr. Travill by way of a contract, knowing that the property he was selling included stolen goods. Therefore, I also find beyond a reasonable doubt that Mr. Patterson obtained this money by way of false pretence. Therefore, I find him guilty of Count 2.

CHISHOLM C.J.T.C.