

SUPREME COURT OF YUKON

Citation: *R v Graham*, 2015 YKSC 39

Date: 20150903
S.C. No.: 14-01509
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

KUNTONIAH GRAHAM

Publication of information that could disclose the identity of the complainant or witnesses has been prohibited by court order pursuant to s. 486.5 of the *Criminal Code*.

Before the Honourable Mr. Justice R. Wong

Appearances:
Eric Marcoux
David C. Tarnow

Counsel for the Crown
Counsel for the Accused

REASONS FOR JUDGMENT

[1] WONG J. (Oral): The accused, Kuntoniah Graham, also known as Jimmy Graham, is charged on a two-count indictment: Count #1: Trafficking cocaine at Whitehorse on August 30, 2013; and Count #2: At Whitehorse, also on August 30, 2013, possessing cocaine for the purpose of trafficking.

[2] The evidence disclosed the following:

[3] In May 2013, the Royal Canadian Mounted Police approached D.S., a known illicit drug trafficker in Whitehorse, to be a potential police agent in order to secure evidence against his drug trafficking partners and bosses. He would also be required to testify in court against these persons if they were ultimately charged with drug trafficking offences. The investigation was codenamed Project Monolith, aimed specifically at five main targets as being major-player, large-scale traffickers in Whitehorse: Asif Aslam, Jesse Allan Ritchie, Matthew Truesdale, Michael David Brereton, and Shaun Naidu.

[4] Prior to this approach by the police, D.S. had also, from time to time, been a confidential informant for the police about his drug associates in exchange for cash, removal of his drug enemies, and ignoring some of his illicit activities.

[5] D.S.' previous role for his partners and bosses was to retrieve large amounts of delivered drugs, deliver payment monies for these drugs, break up the drug amounts into smaller quantities for street-level sales, and distribute the drugs to street traffickers. He was known to be a tough, violent man. His bosses also used him as an enforcer and to collect unpaid drug debts. D.S. is clearly a man with a sordid past and of unsavoury character. However, he also comes across as a pragmatic realist. D.S. had accumulated financial debt to his partners and was considering leaving Whitehorse and relocating elsewhere.

[6] The police decided that D.S. would be amenable and useful as a police agent and would be ideal for securing evidence against the targets in Project Monolith. A written agreement was entered into between the RCMP and D.S. on August 29, 2013. Wherein for being a police agent, D.S. would be paid \$1,500 per week for expenses,

\$117,500 when charges were laid against the targets, and another \$117,500 at the conclusion of the trials against the targets. He would also be placed under the witness protection program and be relocated with a new identity.

[7] On August 30, 2013, D.S. received text communication from Jesse Ritchie to attend at the address of 11 Redwood Street in Whitehorse and collect "paper", a codename for a kilogram package of cocaine, located at the bottom drawer of the stove. It was the same drawer at which monies had previously been placed. His police handlers instructed D.S. to retrieve the drugs and turn it over to the police. He would be followed and protected by police surveillance during the retrieval.

[8] 11 Redwood Street is an address familiar to D.S. and his drug associates, as it was used as a social clubhouse. D.S.' person and truck was searched by the police before he started the trip, in order to ensure that he was not carrying any drugs, weapons, or extra cell phones. Several police officers had beforehand set up surveillance six to 10 houses down the street from 11 Redwood. D.S. was followed by other police officers and was observed entering the driveway of 11 Redwood.

[9] D.S. testified that the accused, Jimmy Graham, with whom he is familiar and with whom he had previously engaged in illicit drug deals, was on the property doing some work on a vehicle. He said he spoke to the accused briefly and they both entered the kitchen in the house. Seated in the kitchen was an unidentified man. D.S. asked the accused if the "work" -- meaning "cocaine" -- was still there. The accused said, yes, and pointed to the bottom drawer of the stove. D.S. opened the drawer and saw a twice-folded brown Super A Foods Store paper bag. He picked up the bag, felt content weight in the bag, and closed the drawer. He returned to his vehicle, placed the bag

under his seat, and drove back to the police safe house. There, he and his vehicle were searched again for other drugs, weapons, and extra cell phones, and was debriefed as to what transpired at 11 Redwood.

[10] The brown paper bag was examined by the police. Inside the paper bag was a plastic Petro-Canada gas and convenience store bag encasing a taped vacuum-sealed brick, later analyzed to be one kilogram of cocaine. Halfway up the exterior of the plastic bag, the accused's right index and middle finger prints were found. The kilogram of cocaine had a wholesale value of \$75,000, and possibly a retail value of \$90,000 to \$100,000 if sold in small, individual street-level packets.

[11] The police surveillance team were unable to note the presence of the accused outside the house of 11 Redwood. However, they did notice the presence of a blue Volkswagen Jetta with heavily tinted windows in the driveway of 11 Redwood associated with the accused. The accused was not charged with these offences until December 2013, when Project Monolith concluded.

[12] At his trial, the accused did not testify. His fraternal twin brother, Dezi Graham, testified that both he and the accused would frequently attend at 11 Redwood as a social gathering place and enjoy barbeque dinners with other attendees. They would bring food purchased from Super A Foods and from Petro-Canada gas and convenience stores, which would explain the presence of the plastic bag encasing the cocaine with the accused's fingerprints.

[13] Defence's contention is that D.S. fabricated the presence and actions of the accused on August 30, 2013, as there were no police observations of the accused on

the property at the material time. It was also submitted that the accused's fingerprints on the plastic bag could have been placed there on an earlier innocent occasion.

[14] However, Dezi Graham's evidence is of no assistance. He was not present at 11 Redwood at the material time on August 30, 2013, when D.S. attended, and he is not able to confirm where the accused was on August 30, 2013.

[15] Crown's contention is that D.S.' evidence and corroboration of the accused's fingerprints on the encasing plastic bag justifies a finding of guilt on these two charges.

[16] Defence submitted that no credence should be given to D.S.' evidence. He is a self-serving, unsavoury, ruthless character who is capable of disloyalty and betrayal to meet his own selfish ends.

[17] However, I find D.S. to also be a pragmatic realist. The only way he would be able to disassociate himself from his Whitehorse drug trafficking colleagues, extricate himself from any outstanding drug debts to them and start anew elsewhere would be to cooperate with the police and secure the necessary evidence for Project Monolith.

[18] When D.S. and the police went to 11 Redwood to retrieve the cocaine, they did not expect to find anyone on the property. D.S. had previously been given a house key for 11 Redwood by his bosses. It is conceivable that the accused and the unidentified man in the kitchen were present to safeguard the cocaine until it was retrieved by D.S.

[19] Defence also contended that D.S. not only fabricated the story about the accused being present at the time of the drug retrieval, the cocaine removed was from another source which D.S. picked up en route to 11 Redwood.

[20] I think that theory is insupportable, as both D.S. and the police did not initially expect to find anyone at 11 Redwood. The short time from the safe house departure

and travel to 11 Redwood would not permit an intervening pickup of drugs from another source by D.S. without observation by the police handlers following him.

[21] Accordingly, I accept D.S.' evidence as to what occurred with the accused on August 30, 2013. I also find that the accused's fingerprints were placed on the plastic bag when he stored the cocaine within it. I reject the contention of earlier innocent placing of fingerprints on the plastic bag as fanciful speculation.

[22] At law, unlawful possession is made out when the accused knowingly and manually handles an illicit substance; and the purpose for trafficking is made out if the intent is for ultimate distribution for the benefit of two or more persons. Therefore, I am satisfied that the charge of unlawful possession of cocaine for the purpose of trafficking is established. As Count #1, the charge of trafficking cocaine, is the same delict as Count #2, that charge is now duplicitous (see *Kienapple v. R.*, [1975] 1 S.C.R. 729) and I need not deal with Count #1.

[23] Kuntoniah Graham, would you please stand up?

[24] On Count #2, the charge of possessing cocaine for the purpose of trafficking, I find you guilty as charged.

WONG J.