

Citation: *R. v. McGivern*, 2007 YKTC 29

Date: 20070212
Docket: T.C. 06-00394
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Mr. Justice Foisy

REGINA

v.

RORY McGIVERN

Appearances:
Ludovic Gouaillier
Zeb Brown

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] FOISY T.C.J. (Oral): The question in this case is whether the defence has shown, on a balance, that the accused, who pled guilty to the charge of trafficking in marihuana, was entrapped. The entrapment alleged is that the police officer here, operating a kiosk in the community of Faro, afforded the accused the opportunity of committing the offence of trafficking in a physical location with which the person, that is, the accused, has associated as a place where the criminal offence of trafficking drugs is likely occurring.

[2] The police were involved in a operation called "Meander" in ten smaller communities of the Yukon. The intent was to target known drug traffickers in each

community and eventually charge them. This was to be done by catching and charging the target directly, or accomplishing the same result through the use of an opportunity purchaser, who would, it was hoped, after a request to purchase drugs by the police kiosk operator, have the target supply the kiosk operator or would lead the kiosk operator to the target.

[3] The kiosk in this case was set up in the approximate geographical center of the community of Faro, on the edge of a parking lot. Wares were displayed, some of which were paraphernalia showing the marihuana leaf and other items. It was hoped that people in the drug sub-culture would be attracted to this kiosk and would afford the police the opportunity to ask suspicious characters who seemed interested in the wares displayed if drugs could be supplied.

[4] In this case, the accused attended at the kiosk and asked if pipes were being sold. Pipes, in accordance with Corporal Yule's evidence, the disguised kiosk operator in this case, are useful in smoking drugs. No pipes were available. As the accused was leaving, Corporal Yule asked the accused if he would help him out with a little weed. The accused answered that he would and that he would see, and left. He returned a short time later with a small film container containing 1.7 grams of marihuana, which he exchanged for a toque. No targets were charged and the only drug involvement all the time that the kiosk that was open was with the accused.

[5] I am told by one of the police witnesses, that in all ten communities, two targets were charged along with 15 other non-targets. In Faro, some 20 to 23 people in all attended the kiosk that day.

[6] Since the police did not know where traffickers were operating in Faro, that is, for example, a bar or place of business or the residence of the targets, they attempted to set up their own place, that is, the kiosk, with the hope of flushing out the two targets directly or indirectly. Obviously, in this case, it did not happen. While the police hoped that the kiosk placed in the near center of Faro would have this result, I am of the view that it was not the reasonable suspicion that this location, where the accused attended, was a place where the activity of trafficking was or is a likely place where the crime of trafficking drugs would occur.

[7] As is shown in this case, it attracted only the commission of the crime by the accused, who was not a target. Nor did the accused's actions lead to a target. I conclude that the reasonable suspicion of likelihood here does not go beyond the hope that was expressed by the police officers in establishing this program. Accordingly, I am of the view that on a balance of probabilities the defence has been shown and I order a judicial stay of proceedings to be entered.

FOISY T.C.J.