R. v. Spinks, 2003 YKSC 19

Date: 20030331
Docket: S.C. No. 01-00793B
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

HER MAJESTY THE QUEEN

AND:

TONY CECILE SPINKS

Kevin Drolet — For the Crown

Edward Horembala, Q.C. — For the Defence

MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH

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[1] CHRUMKA J. (Oral): The accused, Tony Cecile Spinks, is charged that he on or about the 7th of March, 2000, at or near Whitehorse in the Yukon Territory, was in possession of a 1996 Chevrolet pick-up truck, valued at less than $5,000, knowing that this truck had been stolen.

[2] The essential elements are, of course, with regard to be proven, firstly is that the truck was, in fact, stolen. Secondly, that the accused had it in his possession, and thirdly, that he knew that at the time he had it in his possession that it was stolen, or that it had been stolen previously.

[3] The evidence is clear that this vehicle was, in fact, stolen and that it was in the possession of Mr. Spinks.

[4] The exhibits filed, and the evidence given, indicate that this 1996 Chevrolet four-by-four, with a particular VIN number that ended in 1178836, was stolen from Don Folk Chevrolet Olds in Kelowna, British Columbia on the 18th of June 1999.

[5] According to the documentation, at the time of the theft it was valued at $24,365.06. On the 23rd of July of that same year, it was purchased through the boyfriend of Deanna Mazur, for Deanna Mazur, at an amount of $12,000, according to the bill of sale. That is less than half of the value of it prior to it being stolen, or at the time that it was stolen.

[6] There is no evidence as to how it was paid for and from where the money came. Later in testimony, Deanna Mazur agreed in cross-examination that she had paid $14,000 for the vehicle. She also gave evidence of her personal circumstances, as well, and they do not suggest, the personal circumstances, that she was a person of means.

[7] On the 5th of August, I understand from the documentation, that the vehicle, this 1996 Chevrolet, was registered in her name using a VIN number for a 1992 Chevrolet truck. This was the VIN number that was attached to the vehicle and also it is shown in the bill of sale.

[8] Approximately a year later, through her own efforts, and the efforts of her brother, she was satisfied the vehicle had been stolen. This was because of the VIN

plate was not properly attached. It was scratched and it appeared to have been affixed. At least, that is how I would describe or summarize her evidence, that it was a VIN number from a different vehicle and not for the vehicle that she had purchased. Also, her brother had attempted to find this VIN number in another location without success.

[9] After that she tried to pass the vehicle off to a purchaser and to recover the money that she had paid for it. She said she was out a considerable amount of money and she wanted to recover some.

[10] About a year later, she testified that she was successful in doing this by selling the vehicle to the accused, Mr. Spinks, for the sum of $10,000. There was considerable evidence, though not clear, as to how that transaction, how that deal was made, when it was made, and how payment was to be made, in fact, when payment was made. But in any event, I find the evidence is that Mr. Spinks took possession of the vehicle in August of 2001 and that it was registered in the name of his common-law who, according to the information that was provided to me by way of an admission, this is Ms. Elayne Sayney, and that because she experienced trouble with her vision she did not drive the Chevrolet pick-up registered in her name. As a result, the vehicle was in the possession of Mr. Spinks on the 7th of March 2002 when he was seen driving the vehicle and that resulted in this charge.

[11] There is evidence, which both of them agree on, as to where they first met, this being on the Canadian Tire lot. There is evidence as to where the vehicle was delivered to the accused, Mr. Spinks at the Super A lot. There is, however, no bill of

sale prepared by her, no bill of sale received by Mr. Spinks for the purchase of the vehicle, nothing to evidence the amount of money that was to exchange, what was to be the purchase price. But there is evidence, from both of them, that $5,000 was paid to Ms. Mazur. She is unclear as to when it was paid by Mr. Spinks. It was paid the day he took possession of the vehicle and then by Christmas another $500 was paid.

[12] There is no question, in my view, that Deanna Mazur was a very reluctant witness. She was not forthcoming. She was not forthright in her testimony at times. She had to be advised by myself to speak up when it should not have been required. Certainly, she spoke up considerably louder in cross-examination, than she did, at relevant times, during her examination-in-chief. The distinct impression that I had was that she did not want to implicate anybody, but she did not want to suffer the consequences of not implicating anyone.

[13] Those consequences were expressed to, and related to her, by the investigating officer who interviewed her on the day that she was brought in for the interview. She was interviewed twice and the manner of the first interview was such that she was informed, very specifically, unless she came through with certain evidence she was going to be charged herself. It was at that time that she said things that implicated Mr. Spinks.

[14] She is the only direct witness who testifies as to Mr. Spinks' knowledge that the truck was stolen and that it had been stolen prior to it being purchased by him, and that he, at that time, knew that it was stolen.

[15] But clearly, in cases such as this, that inference can be drawn from the item, the article itself. There is no evidence of recent possession in this particular case, because this vehicle had been stolen in 1999. It was found in possession of Mr. Spinks in 2002. There is evidence of the manner in which the deal went down, of how the deal was made, and what was said.

[16] The lack of documentation is another factor when one considers knowledge, of a person having a specific knowledge, or particular knowledge that a person might have about an item. The VIN number was obvious to the Crown witness, Mazur, that there was something wrong with it. Also, the make of the vehicle can be taken into consideration when determining whether or not the Crown has proved knowledge.

[17] There are other factors that point to -- from which knowledge can be inferred. I discussed them during the submissions of counsel. There, of course, are statements, which go the other way, such as the incomplete evidence of the Crown witness, Mazur, the reluctance with which she answered questions, the fact that she could well be trying to save herself from prosecution. The fact that she testifies under the protection of the *Canada Evidence Act,* R.S.C. 1985, Chap. C-5, I do not regard that of any consequence, because the *Canadian Charter of Rights and Freedoms* prevents any testimony she gives to be used later to implicate her with a crime of possession.

[18] But there is, as is stated, the one remark, which does not really have a ring of truth, where Mr. Spinks is alleged to have told her, “The cops know it’s stolen. It’s

hot. I will buy it from you." Those words sound like words of somebody who is trying to commit a form of suicide. He knows he is going to be apprehended if he is ever caught with the vehicle and he continues to drive it after he does buy it from her. He, almost, drives it for a period of nine months in the city where Deanna Mazur is, in which the R.C.M.P. are investigating this possession of stolen property, and in which the vehicle would be clearly visible to them.

[19] I must also, when I consider the evidence, I have to consider the lack of or failure of there to be documentation. That is one factor which is important. The other factor is the phony VIN number, which is obvious to just about everybody if you look at it, and the make of the vehicle.

[20] But then I have to also consider the fact that Deanna Mazur is an accomplice. Her evidence is not that of a witness who is independent. If this were a jury trial, I would, clearly, have to instruct the jury with respect to the warning that the Supreme Court of Canada has outlined in the *R. v. Vetrovec; R. v. Gaja* [1982] 1 S.C.R. 811, 67 C.C.C. (2d) 1, and that warning would have to be given. It would be dangerous to convict on the basis of her evidence without there being either corroboration or other evidence to support her evidence. Of course one could, if one believed her, one could do that, but the *Vetrovec, supra,* warning would clearly have to be given.

[21] The burden is on the Crown to prove beyond a reasonable doubt that the vehicle was stolen. The Crown has done that. The burden is on the Crown to prove that it was stolen to the knowledge of the accused and that at the time he was driving it he had that knowledge. On all of the evidence, and I am not going to

speculate or to suggest that I may be suspicious. On all of the evidence I am not satisfied that it has been proven beyond a reasonable doubt that he had the requisite knowledge that this vehicle, which was in his possession, had been stolen prior to he being found in possession of it. I find him not guilty.

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CHRUMKA J.