

IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Carl Beavies, 2004 NSPC 36

Date: April 30, 2004
Case No.(s): 1205660, 1205661,
1205642
Registry: Halifax

Between:

R.

v.

Carl Beavies

Judge: The Honourable Judge C. H. F. Williams, JPC

Heard: Decision on Application rendered orally
on April 30, 2004 in Halifax, Nova Scotia

Counsel: Timothy McLaughlin, for the Federal Crown
Warren K. Zimmer, for the Defence

By the Court

Introduction

- [1] The applicant, Michelle Jollimore, is the registered owner of a black 1996 Chevrolet Multipurpose vehicle, Model KTA, VIN # 1GNEK13R8TJ357884. This vehicle was seized pursuant to a Consent Order, issued from this Court, dated February 6, 2003, under the authority of the *Controlled Drugs and Substances Act*, s.16. She makes an application for the return of the vehicle pursuant to the *Controlled Drugs and Substances Act*, s.20, claiming that she has 100 percent interest in the vehicle. Further, she asserts that Carl Beavies, the person who was convicted of designated substance offences, and the subject of the consent order, was her boyfriend who never possessed any ownership interest or any title, or any other title or interest in the forfeited vehicle.

Relevant Evidence and Findings of Fact

- [2] From the affidavit and viva voce evidence, the applicant, in October 2001, purchased a black 1996 Chevrolet Multipurpose vehicle, Model KTA, VIN # 1GNEK13R8TJ357884 for \$18,000.00, on instalment payments, from a friend. She obtained a Certificate of Registration of a Vehicle, issued October 29, 2001, declaring that she was the sole owner of the registered vehicle. Likewise, she obtained a Vehicle Permit stating that she was the owner of the vehicle that displayed Nova Scotia license plate number, DNX 720.
- [3] From her employment as a hair stylist and with some assistance from relatives the applicant made regular monthly instalment payments that commenced on October 28, 2001. Although they were in a relationship since October 2000, she received no assistance or contributions from Beavies toward the purchase or regular payments for the vehicle. When she became pregnant, she took her maternity leave in October 2002 and delivered her child in December 2002. While on maternity leave her income consisted of employment insurance benefits, a child allowance and baby-sitting services.
- [4] At the time that she was employed, Beavies, who did not reside with her, would drive her to and from work in her vehicle. Further, depending on her schedule, he, with her permission, would have the use of the vehicle. However, unknown to the applicant, Beavies was the target of a police investigation and the police would see him often and alone driving the vehicle.
- [5] On September 6, 2002, Beavies entered a guilty plea to three designated substance offences that occurred on or about June 4, 2002 and between July 23 and July 25, 2002. The applicant declared that she had no knowledge of or involvement in these offences and did not know that Beavies was involved in any criminal pursuits much less when he had permission to use her vehicle or when it was in his possession.

Issues

[6] Here, two salient issues arise:

1. Because the police, in their investigations, saw only Beavies operating the vehicle, on these observations and only on these observations, can it be concluded, without doubt, that Beavies exercised exclusive control over the vehicle, to render the applicant a mere “nominal owner?”
2. Did the applicant, in the circumstances, exercise reasonable care to be satisfied that her vehicle was not likely to be used in connection with an unlawful act by Beavies when he had her permission to use it?

Relevant Legislation

[7] The *Controlled Drugs and Substances Act*, s.2(1) states:

“offence-related property” means, with the exception of a controlled substance, any property, within or outside Canada,

(a) by means of or in respect of which a designated substance offence is committed,

(b) that is used in any manner in connection with the commission of a designated substance offence, or

(c) that is intended for use for the purpose of committing a designated substance offence;

[8] Section 20, states:

20. (1) Where any offence-related property is forfeited to Her Majesty pursuant to an order made under subsection 16(1) or 17(2), any person who claims an interest in the property, other than

(a) in the case of property forfeited pursuant to an order made under subsection 16(1), a person who was convicted of the designated substance offence in relation to which the property was forfeited,

(b) in the case of property forfeited pursuant to an order made under subsection 17(2), a person who was charged with the designated substance offence in relation to which the property was forfeited, or

(c) a person who acquired title to or a right of possession of the property from a person referred to in paragraph (a) or (b) under circumstances that give rise to a reasonable inference that the title or right was transferred from that person for the purpose of avoiding the forfeiture of the property,

may, within thirty days after the forfeiture, apply by notice in writing to a judge for an order under subsection (4).

.....

(4) Where, on the hearing of an application made under subsection (1), the judge is satisfied that the applicant

(a) is not a person referred to in paragraph (1)(a), (b) or (c) and appears innocent of any complicity in any designated substance offence that resulted in the forfeiture of the property or of any collusion in relation to such an offence, and

(b) exercised all reasonable care to be satisfied that the property was not likely to have been used in connection with the commission of an unlawful act by the person who was permitted by the applicant to obtain possession of the property or from whom the applicant obtained possession or, where the applicant is a mortgagee or lienholder, by the mortgagor or lien-giver,

the judge may make an order declaring that the interest of the applicant is not affected by the forfeiture and declaring the nature and the extent or value of the interest.

.....

(6) The Minister shall, on application made to the Minister by any person in respect of whom a judge has made an order under subsection (4), and where the periods with respect to the taking of appeals from that order have expired and any appeal from that order taken under subsection (5) has been determined, direct that

(a) the property, or the part of it to which the interest of the applicant relates, be returned to the applicant; or

(b) an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Analysis

- [9] At the outset I think that I should say that the consent order signed by both counsels concerning Carl Beavies, a certified true copy of which is attached to the applicant's affidavit, may be presumptive evidence with respect to Beavies but it may not be the case without any supporting evidence, to conclude and find that there is no issue that the vehicle in question is an "offence-related property" within the meaning of the *Controlled Drugs and Substances Act*, s.2(1) with respect to the applicant.
- [10] The present reality is that the vehicle has been seized and forfeited. However, the forfeiture applies only to any interest that Beavies might have in the seized vehicle. Moreover, the forfeiture was by the consent of Beavies presumably as a result of plea discussions. I find that there is some affidavit evidence which disclosed that on several occasions Beavies was seen alone in the vehicle and operating it. However, that evidence is vague with respect to details of activities and, in particular, activities concerning designated substance offences. Overall, on a close scrutiny and assessment of this evidence I find it difficult to conclude that Beavies did use this vehicle in connection with the commission of a designated substance offence. The fact that the police saw him alone and often in the vehicle, their observations do not, without more, confer legal title of the vehicle to him.
- [11] Additionally, on the evidence, I am satisfied that the applicant is the registered owner of the vehicle. Further, I am satisfied that she has the legal title and ownership of the vehicle. However, the Crown's assertion is that she is only the titular owner as distinct to the averment that she acquired title of the vehicle from Beavies for the purpose of avoiding its forfeiture.
- [12] Notwithstanding, it is common ground, and, I am satisfied and find that the applicant was not convicted of any offence that resulted in the forfeiture of her vehicle. Further, the Crown does not aver and I am satisfied and find that she is not charged with any offence in relation to which her vehicle was forfeited. Additionally, on the evidence, I am satisfied that Beavies did not transfer title to her in circumstances that would give rise to a reasonable inference that he did so to avoid its forfeiture. On the evidence, I am satisfied and find that at no point in time did Beavies have legal title to the vehicle.
- [13] The whole thrust of the Crown's case was that the applicant, because of her income and other means could not afford such an equipped vehicle. It sought to prove that by her banking and other financial documents, the applicant had insufficient income to support the carriage of regular payments for the vehicle. By this approach the Crown attempted to demonstrate and to suggest strongly, but merely on speculation, in my view, that someone must have provided monies to the applicant or that she had an undisclosed source of income that she used to pay for the vehicle. That position, in my view, is not positive proof against any legal title.
- [14] I say that when I consider, on a close assessment, the total evidence and my observations and assessment of the applicant as she testified. In order for me to set aside the legal title vested in the applicant, the Crown, as the party asserting that she is merely a nominal owner, must

provide evidence that her acquisition of title falls squarely within the scope of s. 20(1)(c). To satisfy that test the Crown must adduce evidence that the applicant obtained title from Beavies in circumstances that could give rise to a reasonable inference that he transferred title of the vehicle to the applicant to avoid its forfeiture. Here, the evidence is that the applicant was the initial title holder and remained throughout the only legal owner with the right of possession of the vehicle. There is no evidence that Beavies at any time had legal title or had the lawful right of possession of the vehicle. Thus, there is no basis for me to find that the applicant acquired title from Beavies under any set of circumstances, or at all.

- [15] Moreover, I am satisfied and find that she did not know that Beavies was a target by the police in their investigation of designated substance offences. Given their relationship, in which, on the evidence, it was disclosed that he was unfaithful to her, I am satisfied and find that she had no reason to suspect and did not suspect that he was involved in any unlawful acts when she permitted him to use and he was in possession of her vehicle. Therefore, on the evidence that I accept, I am satisfied and find that in the circumstances of this application, the applicant took all reasonable care to be satisfied that her vehicle was not likely to be used in connection with the commission of an unlawful act by Beavies.

Conclusions

- [16] On the evidence before me, I am satisfied and conclude and find that the applicant is not a person who has been convicted of the designated offence with Beavies in relation to which her vehicle was seized. Further, I am satisfied and conclude and find that the applicant has not been charged with any designated substance offence in relation to which her vehicle was seized. Additionally, I am satisfied and conclude and find that she did not receive title or a right of possession of the seized vehicle from Beavies in circumstances that would give rise to a reasonable inference that such a transfer of title was for the purpose of avoiding its forfeiture, or at all.
- [17] In addition, I am satisfied and I conclude and find that Beavies never had or continues to have any possessory title or interest in the seized vehicle. He may have consented to forfeit any interest he might have in the vehicle knowing full well that he had no interest, implied or otherwise, but may have reasoned that it was a convenient gesture for plea discussion purposes. Therefore, I conclude and find that his self-serving conduct, in the circumstances, should not and must not frustrate the applicant's valid assertion as the lawful owner of the vehicle or to prevent her from exercising and asserting her lawful rights of possession free from any unwarranted encumbrances.
- [18] In the result, I conclude and find that the applicant, Michelle Jollimore, has satisfied the conditions for her application set out in the *Controlled Drugs and Substances Act*, s.20 and her application is granted. In the result, I conclude, find and declare that she has 100 percent ownership interest and title in the black 1996 Chevrolet Multipurpose vehicle, Model KTA,

VIN # 1GNEK13R8TJ357884.

- [19] Consequently, pursuant to the *Controlled Drugs and Substances Act*, s.20(4), I declare that her 100 percent ownership interest and title in the said vehicle are not affected by its seizure and forfeiture. I therefore order that the said vehicle be returned to the applicant pursuant to the provisions of the *Controlled Drugs and Substances Act*, s.20(6).
