IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Timmons, 2010 NSSC 236

Date: 20100413
Docket: PtH 310652
Registry: Port Hawkesbury

Between:

Her Majesty the Queen

v.

William Tracy Timmons

Judge:	The Honourable Justice Frank Edwards
Heard:	April 8 and 13, 2010, in Port Hawkesbury, Nova Scotia
Written Decision:	June 16, 2010
Counsel:	Wayne MacMillan, for the Crown Ralph Ripley, for the Accused

By the Court (Orally):

[1] We are here this morning for the decision on the matter of *The Queen and William Tracy Timmons*. Mr. Timmons is charged in a three count Indictment. Count No. 1 that:

> in the location noted on the Indictment on the 11th of October, 2008, did unlawfully possess a substance included in Schedule 1 to wit; cocaine, contrary to s.4 of the *Controlled Drugs and Substances Act.*

Count No. 2:

> Furthermore on the same date, the same place, did unlawfully possess a substance included in Schedule 2 to wit: marihuana contrary to s.4 of the *Controlled Drugs and Substances Act.*

And Count No. 3:

> Furthermore on or about the 11th day of October, 2008, same location, did possess a substance, included in Schedule 2 to wit: marihuana for the purpose of trafficking contrary to s.5 of the *Controlled Drugs and Substances Act.*

[2] Counsel agreed that the crown evidence heard by me, on December 15, 16 and 17th, 2009 on a *Charter Application* could be considered as evidence on the trial proper along with additional evidence called by the Crown on April 8th, 2010.

The factual background is therefore dealt with, to some extent, in my decision on the Charter motion, which decision is dated January 27, 2010.

[3] In short, the police responded to a “domestic” call at the Accused’s residence and arrived there at approximately 12:30 a.m. October 11, 2008. Once inside the home the police found, in plain view, a quantity of what they thought was marihuana in the Accused’s bedroom. As I note later, that particular item was never analysed and verified to be marihuana. In any event, the police proceeded to get a search warrant.

[4] In the course of the subsequent search police found a small quantity of what they believed to be cocaine (which has now been proven to have been cocaine) in a bedside table in the Accused’s bedroom. The cocaine was wrapped in toilet paper and a portion of a magazine cover. The magazine cover portion corresponded with a portion of a magazine cover which apparently had been cut off a magazine found in the kitchen area of the home.

[5] Police also found 84 marihuana plants hanging to dry in the shed adjacent to the Accused’s house. The shed also contained a generator and a humidifier which

at the time were not connected for operation. In the bushes approximately 50 meters from the rear of the Accused's home the police found two blue plastic tote bins, one bin contained 1784 grams of marihuana divided in fairly equal portions in ten to twelve ziplock bags. That bin contained 63 ounces or four pounds of marihuana. The second bin contained 1290 grams of loose marihuana.

[6] Inside a storage room in the house in a box police found a large sum of cash. They found another bundle of cash in the freezer portion of the kitchen refrigerator. The total was $30,650. The cash was found in several bundles and in what the police later labelled bundles A to H. The following denominations were found. Bundle A 80 fifty dollar bills $4000; Bundle B 100 fifty dollar bills $5000; Bundle C 70 one hundred dollar bills $7000; Bundle D six one hundred dollar bills; 19 fifties and 99 twenties for a total of $3530. Bundle E there were two one hundred dollar bills, three fifty dollar bills, and 100 twenties for $6000. F had 100 twenties for $2000 and G had 100 twenties for another $2000; Bundle H had ten one hundreds, five twenties and two tens for $1120 and that totalled, as I've mentioned, $30,650.

[7] No marihuana was confirmed by later analysis from what had been found inside the residence. The bag I mentioned, which had been found in the bedroom; there was also a container of seedlings of which police were suspicious at the time, but that was never confirmed to be marihuana; and then there was a garbage bag which the auxiliary constable, his name escapes me at the moment, had referred to and the contents of that were never analysed.

[8] So that leaves us with the marihuana which was found hanging in the shed and found in the tote bins. I have no doubt but that the tote bins belonged to the Accused and that he had concealed them in the bushes. This is a rural area. The house is at the end of a long driveway. There is no chance that the tote bins were left there by a passerby or by a neighbour.

[9] The cumulative effect of all of the evidence has to be considered. Some individual items of evidence viewed in isolation might not be conclusive evidence of guilt. The money, for example, would not be particularly incriminating if it was the only evidence found, but when I consider the money in the context of all of the other evidence I have no difficulty concluding that it was derived from drug trafficking, and I accept the expert evidence given with relation to that.

[10] Similarly, if the bins were the only evidence found, while highly suspicious they might not be absolutely conclusive of the Accused's possession. But viewed in context possession by the Accused is the only reasonable inference I can draw in the circumstances.

[11] Counsel argued that the number of plants found in the barn is open to question and therefore the expert's calculation of weight is suspect. I accept that there were 84 plants, however, even if I did not, their presence and the manner in which they were hung, in light of the expert evidence on that point, is indicative of someone who is producing. The quantity in the barn, even if suspect, has to be looked at in context of what was found in the bins. I am satisfied beyond a reasonable doubt that the amounts found are consistent with the Accused producing solely for resale and not for personal consumption. Therefore I am satisfied beyond a reasonable doubt that the Accused is guilty as charged on counts two and three in the Indictment.

[12] As to count number one, the cocaine, Counsel argued that Ms. Shaw could have brought the cocaine into the Accused's home without his knowledge. It was

wrapped in a small package approximately two inches by two inches and could have escaped his notice, it was suggested. Assuming the two slept together it was suggested the package could have been in the bedside table on Ms. Shaw's side of the bed.

[13] The onus is on the Crown to prove the Accused's possession of the cocaine beyond a reasonable doubt. The emphasis there on the word reasonable. The Crown is not required to prove its case to an absolute certainty nor does it have to negative every possible conjecture consistent with the Accused's innocence. The manner in which the cocaine was wrapped suggested the wrapping took place inside the Accused's home. The cocaine was found in his bedroom in a bedside table next to the bed he slept in. I have no reason to believe that Ms. Shaw brought the cocaine into the Accused's home without his knowledge and consent. I am satisfied that that is extremely unlikely.

[14] I am satisfied beyond a reasonable doubt that the Accused knew the cocaine was there and that it was there for his use and benefit. I am satisfied beyond a reasonable doubt that the Accused unlawfully had possession of the cocaine and therefore I find him guilty as charged on count number one in the Indictment.

J.