

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. MacDonald, 2007 NSSC 385

Date: 20070921

Docket: CR. Am. 274222

Registry: Amherst

Between:

Her Majesty the Queen

v.

Craig Douglas MacDonald

Judge: The Honourable Justice J. E. Scanlan

Heard: 20 & 21 September 2007, in Amherst, Nova Scotia

Written Decision: 15 February 2008

Counsel: Bruce Baxter, for the crown
Robert Gregan, for the defence

By the Court:

[1] I'm dealing with the single count in the indictment which alleges that the accused, Craig Douglas MacDonald:

Did steal a 1992 Nomad travel trailer, the property of Richard Metro of a value exceeding five thousand dollars contrary to section 334(a) of the Criminal Code of Canada.

[2] I really have no difficulty with some of the elements of the offence. By that, I am referring to the time, date, place, nor do I have any difficulty with the issue as to whether or not the value exceeded five thousand dollars, or that it was the Nomad travel trailer, which was the property of Richard Metro. Those are really not the issues that I have to deal with. The issue in this case is as to whether or not Craig Douglas MacDonald was directly involved, or a party to the offence. There is a jurisdictional issue in relation to any suggestion that there was a fraud, but really this, in the circumstances of this case, is a situation where the accused is either a party to the offence, or was actively involved in the offence itself. In terms of jurisdiction, he would have had to have done some of his actions, in terms of assisting, or aiding and abetting in the offence, within this jurisdiction to have the jurisdiction correct as well.

[3] As I listened to the tale of woes as expressed by the various participants in this, I was reminded of some strange movie where there is a den of drug dealers and thieves. It was a matter of who could scam who. It was a matter of scamming the scammers, seeing who could come out at the end on top. As Joey Fagan and Craig MacDonald fled, I suppose they were even wondering if they would come out of it with their skin intact.

[4] Joey Fagan was clearly involved in this, and he was up to his neck in it. When he went to see Mr. Metro with his friend Geoffrey Legere, he left the property telling Geoffrey the trailer was going to be his before the winter was out. I guess he didn't wait very long to carry through on that promise. He saw an opportunity to find some property for himself and steal it, and make some money to buy some drugs, or to get drugs in return for the property, but he couldn't do it alone. The customers that were going to buy this property knew him, would know that it wasn't his trailer. He needed somebody to represent to the people he was

about to scam that it was their property, because the Nimas knew him, or at least knew his family, and they knew he wouldn't have a trailer and a Kubota tractor. It had to be some third person who had a long lost uncle. I guess it wasn't a long lost uncle. It was recently lost uncle. In order to do that, he needed somebody to help him out, and that was Craig MacDonald, who was also up to his broken neck in this whole affair.

[5] I know the crown didn't proceed with the charge in terms of the Kubota tractor. There wasn't an awful lot of information on this. It's interesting that the evidence of Joey Fagan is that they were going to check out about the money for the Kubota tractor, which Joey Fagan had helped load up the night before. It was when they were driving by the house that he noticed the trailer in the front yard of one of the Nimas. What were they going to do, in terms of getting the money, not only for the tractor from one of the brothers, but the money for the trailer. He said Joey had to go in the negotiate the deal, and make sure he got the money. Well Joey, in terms of a witness, he said he was on crack and ecstasy and acid, marijuana. He wasn't thinking all that clear. He thought they were going in to negotiate the deal, but remember, in terms of the trailer, the evidence was that Craig Metro, now who we all know is Craig MacDonald, had negotiated not only in person, but on the telephone in terms of the trailer. Mr. Metro, that is Mr. MacDonald, knew about the tractor. He was with Joey going to get the money. There was no confusion about the tractor. That was supposed to have come from the uncle that died as well. It turned out they had to make the deal with the trailer as well. I would point out that Joey says, "I wasn't driving". He said it was Craig MacDonald that was driving. That's contrary to the evidence of Mr. MacDonald.

[6] We heard Mona LeBlanc. She said that the receipt was signed in the house. Everybody else, except for Mr. MacDonald, said the receipt was signed in the house. At the kitchen table, they thought. That's where the deal was done. That's why, in terms of Joey, he thought the deal was done for all he got, he said, was a hundred dollars and a few joints. The Nimas, of course, they don't want to be caught for dealing dope, so they deny there was any drugs involved. They say they paid cold, hard cash. Two of the sons say they got part of the money from their mother, part of it they had. Quite frankly, I doubt that anybody had any cash, because they got lots of drugs for it. That's what they were doing. They were giving drugs in return for property. It was a den of thieves, drug dealers and liars, all trying to scam one another. Scamming the scammers.

[7] I'm not going to go all through the *R. v. D. (W.)* case, counsel. I'm aware of the three steps that are involved, and I am instructing myself in terms of the *W. D.* case. As well, I am cognizant of the risks associated with convicting an accused person on the evidence of any co-accused or co-conspirators in any offences. It is risky. But you look to the evidence, the real evidence, which is uncontroverted in this case. While the Nimas were buying goods for drugs, and they were not nice people...when I say that I'm not referring to the father by the way. I'm satisfied that Mr. Nima, senior, I believe it was Lloyd, when he gave evidence, he was almost apologetic for his sons, or at least one of his sons. He wasn't pleased with the way he made his living, and his involvement in drugs. Like I say, he was certainly apologetic. He was apologetic to Mr. Metro, even though Mr. Metro wasn't here today. So as I indicated, they're not only co-accused, but some of them are not nice people.

[8] Lloyd Nima arranged to have somebody haul this trailer home from Nova Scotia. He was on the way home to his son's house with the trailer in tow, behind a tow truck that he had hired to haul the trailer, when the R.C.M.P. stopped him. The tow truck driver doesn't know what's going on. He gives his card to the R.C.M.P., says why he has the trailer behind him. Lloyd Nima identifies himself. Mr. Boudreau, the tow truck driver, says "Yeah, I'm hauling for Lloyd". The son in the car behind identifies who he is. The most tell tale sign of it all, in terms of whether or not they knew the trailer was stolen, was that once the police had stopped them, they didn't tell Mr. Boudrea to dump the trailer someplace. They took it to their home. If they knew it was hot at that point in time, one would question as to why they would possibly take it to their home. As I indicated, what transpired thereafter was not pretty, in terms of how it was going to be paid for, but certainly they didn't know it was hot. I'm convinced they didn't know it was hot at that point in time. Why? Because Craig MacDonald had represented himself as being the rightful owner. He wanted to dump the trailer because he was sick, as he was, had a common-law wife, young child, and he just had to sell it really cheap. In this case, really cheap meant drugs for property.

[9] Mr. MacDonald, just about everybody in this case has lied, and that includes you. You attempt to minimize your involvement in this case. You knew about the tractor. You knew about the trailer. You knew where they came from. You knew you were the cover for Joey Fagan. That's how you got involved. That's why you signed your name "Craig Metro". You could have signed it "Craig MacDonald". Mr. Metro's nephew didn't have to be Craig Metro. It could have been Craig

MacDonald. You were surprised when you had to sign a receipt, because these people, even if you look at the receipt, it's not very sophisticated. It's about as bare bones a receipt as you ever want to see. They weren't very sophisticated in terms of getting the goods, but they insisted on a receipt. The father asked, "Do you have a receipt?" and he said yes, and it was signed by Craig Metro.

[10] Once you got the dope, which you didn't even turn over to Joey Fagan, who was the guy who found this trailer and tractor, and everything else that there was there to steal. He didn't get his fair cut. You took the dope, you bailed out of Dodge. Things were getting too hot and you didn't want the Nimas after you. They weren't nice people. They were drug dealers. You and your young bride, or common-law wife, left Dodge in a hurry, as soon as this thing started to unravel. I suppose you would have had a lot more time, had it not been for the fact that the police just happened to stop this trailer behind the tow truck. It wouldn't have unravelled nearly as quickly had officer Dolan not put two and two together, having seen this trailer with no plates the night before. It met the description of the one that was stolen. Everybody figured out in a hurry where this trailer went. As I said, as I listened to the evidence, it was a den of drug dealers and thieves scamming one another, and you were in it up to your broken neck.

[11] I am satisfied, beyond a reasonable doubt, that that scheme was hatched in Nova Scotia, the property was removed from Nova Scotia, and you left Nova Scotia with Joey Fagan to go up and finish off the deal and pick up not the money, but the dope, so you could be paid. I am satisfied, beyond a reasonable doubt, as to your guilt, Mr. MacDonald. For the record, every time I refer to Craig Metro, I intended to refer to Craig MacDonald.

J.