

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Emmerson*, 2014 NSSC 225

Date: 20140618

Docket: *Halifax*, No. 412094

Registry: Halifax

Between:

Her Majesty the Queen

v.

Steven Charles Emmerson

Judge: The Honourable Justice Allan P. Boudreau

Heard: May 29, 2014, in Halifax, Nova Scotia

Oral Decision: May 29, 2014

Counsel: Jeff Moors, for the Crown
Trevor McGuigan, for the defence

By the Court: Orally

Introduction:

[1] Steven Charles Emmerson is charged on a four count indictment dated February 14, 2013; that, on November 5, 2010 he had in his possession the following drugs for the purpose of trafficking;

Count #1 – Cannabis Resin

Count #2 - Hydromorphone

Count #3 – Morphine

Count #4 - Diazepam (or valium)

There is no evidence that “hydromorphone” was found in Mr. Emmerson’s possession, therefore, as directed by both the Crown and defence, a verdict of not guilty is entered on count 2.

[2] With regard to counts 1, 3 and 4, it is common ground that Mr. Emmerson knowingly had those drugs in his possession. The only issue is whether the Crown has proven beyond a reasonable doubt that he had those drugs in his possession for the purpose of trafficking.

Background:

[3] I recited most of the pertinent background facts in my decision on the Charter issue raised in the defence's preliminary application. I will not necessarily recite all of those again; however, they are the same ones which apply to the Trial Proper. It was agreed by the Crown and the defence that the testimony and the exhibits from the Charter Application would also form part of and be admitted as evidence in this trial. The Crown did not call any additional witness and did not introduce additional evidence at this trial.

[4] The defence elected to present evidence by way of the testimony of the accused, Mr. Emmerson.

Issue:

[5] As I stated previously, the only issue on the trial is whether the Crown has proven beyond a reasonable doubt that Mr. Emmerson possessed some or all of the drugs for the purpose of trafficking.

Evidence:

[6] I will now go over some of the evidence which relates to the only issue at trial. I will not necessarily review all of the testimony or evidence; however, all of the evidence is for me to consider.

[7] The first witness at the trial was Constable Sheppard, he was what we call the exhibit person. He had the drugs in his possession and sent them to the lab for analysis. Exhibit No. 1, shows that Mr. Emmerson possessed 98 morphine pills, he described the packaging which we have in front of us. Exhibit No. 4, was 80 valium pills, which again were described by the constable and the packaging, which we have before us. Exhibit No. 7 was a package containing 4.70 grams of cannabis resin, and again we have that packaging before us. Those were the drugs that Constable Sheppard testified to. He also testified that there were 3 pills with the cannabis, which were considered to be ecstasy, but there is no count with regard to ecstasy.

[8] The first factual witness of events was Constable Scott Kuhn. Constable Kuhn testified as to the events that led police to Dartmouth, on November 5, 2010, and I will not recite those again, we are all familiar with those. He testified to making a second call to Detective Pepler, who had said the accused, Mr.

Emmerson, was mulling drugs at the Burnside Jail. Constable Kuhn took mulling drugs to mean that they were hidden in the rectum. The details that led to the x-ray at the Dartmouth General Hospital are well known to us as well. It was there, after the x-ray, while waiting for the result, or the actual x-ray, that the attending doctor may have said there is something inside of him, but there was no word of what it may be. In that room, waiting for the x-ray, Mr. Emmerson said to the officers that he had drugs in him. Shortly after that the excretion in the portable toilet took place. Mr. Emmerson excreted three condom packages. Police officers said they could not see what was inside the condoms. Constable Kuhn testified that Mr. Emmerson explained what was in the packages. Constable Kuhn testified that after the excretion in the hospital, Mr. Emmerson stated something to the effect about making money since he was going to jail anyway or in any event.

[9] The next witness was Detective Pepler, who testified he had told Constable Kuhn that Mr. Emmerson had drugs, a jail pack on him, to take to the Correction Centre. Detective Pepler testified that he knew the source informant for approximately one month that he had been reliable in the past and that Detective Pepler believed his information to be correct. The informant had also provided information in the past that was confirmed on two other occasions. Detective Pepler said that he did not have any information about the type or quantity of

drugs, just that Mr. Emmerson had a jail pack to be transported to the Correction Centre.

[10] The next witness was Special Constable Steven Longtin; however, Constable Longtin had no evidence that pertained to the issue remaining at this trial.

[11] Next Crown witness was Constable David Comer, who didn't add much more than what Constable Kuhn had said.

[12] The next Crown witness was Constable David Lane. Constable Lane testified as to the street value of the 98 morphine pills. He said they would be worth between \$10 and \$20's dollars a piece on the street and could be twice to five times more in prison. He said they were usually sold one or two at a time and if one takes his stated value for that, that would be a street value between \$1,000 to \$2,000 dollars. The 80 valium pills, Constable Lane testified that they were referred to as berries and that they sold for \$1 to \$5 dollars on the street, that even the cigarette paper in which they were wrapped would be valuable in prison. He said they would sell between \$2 and \$25 dollars in prison. They would have a street value of at least \$100 dollars. The cannabis resin, that was the 4.7 grams, also included four "buttons" in the package. Constable Lane said a gram would go

for about \$20 dollars on the street, and would go between \$40 and \$100 dollars in prison. That would be a value of at least a hundred dollars for the hash. If one totals those, the total value would be between \$1,200 to \$2,200 dollars on the street. RCMP Constable Lane testified that because of the quantity and variety of drugs, what he described as a multi-commodity, how they were seized and how they were packaged, resulted in his opinion that it was consistent with the intent to traffic those drugs. He testified that the multi-commodity means more customers and different drugs also means more customers. He said there was a high demand for those drugs in prison. He had been qualified as an expert to give that testimony and that opinion.

[13] On cross-examination, RCMP Constable Lane agreed that one could use 10 to 15 morphine pills in a day if one was a serious addict. He also agreed that valium could be used to calm a person down and that hash could be used for pleasure and calming as well. He was not able to testify as an expert as to the effects of valium. He said he was not a pharmacologist or a toxicologist. He agreed that on their own, addicts can use different drugs and that different drugs on their own are not determinative of the intent of a person. However, he restated his opinion that because of the multi-commodity and the variety and the quantities in this case, that in his opinion, it was consistent with the intent to traffic. He said

that taking those to the prison, plus the totality was, in his opinion, consistent with the intent to traffic.

[14] Mr. Emmerson testified that because his girlfriend had rendered as his surety earlier he knew he was going to jail. He testified that he was a serious addict for some two and a half to three years before November 5th, 2010, and that he used between 10 and 15 opiate type tablets, which I take to be morphine types, each day. He said he was a heavy user and that he would take two or three pills at a time, several times a day, which he said amounted to 10 to 15 a day. He testified that he would start to feel sick within six hours of not taking his opiates. He said he borrowed money from his mother that day, \$500 dollars to buy these drugs, that he wrapped them up and in a public bathroom or washroom to insert them in his rectum. He said he never considered selling the drugs because he wanted them to make sure he wouldn't get sick. He denied having uttered the words to Constable Kuhn that he knew he was going to jail and wanted to make money.

Analysis:

[15] In this case the accused, Mr. Emmerson, testified and denied having the drugs in his possession for the purpose of trafficking in the event he was successful in getting them into the Burnside Jail. He said they were for his personal use only.

[16] In the circumstances, in this analysis I must be mindful of the approach outlined in the case of R. V. WD.

[17] Mr. Emmerson testified that he had purchased the drugs and put them in his rectum earlier on the day of November 5, 2010. He said he had been very addicted to opiate type drugs for some two and a half years before November 5. He said he would use 10 – 15 opiate pills per day, and that if he went more than six hours without a “fix” he would get very sick – vomiting - diarrhea – hot and cold sweats, etc.

[18] He said he borrowed \$500 from his mother to purchase the drugs because, since his surety had cancelled and rendered, he knew he would be going to jail for approximately one month before his next court appearance. He said he needed the drugs to keep from getting very sick while in jail. He denied having any intention to traffic or sell drugs while in jail.

[19] I can say unequivocally that I do not accept Mr. Emmerson's testimony or explanation. I reject it because it is inconsistent in itself and inconsistent with the facts as we know them.

[20] Mr. Emmerson testified that he had taken 2 - 3 morphine pills when he got up between eight and ten a.m. on the morning of November 5, 2010. Except for saying that he smoked a marijuana joint a short time before he was first arrested, there is no evidence that he took any other opiates that day. Yet, by approximately 1:00 a.m. on the morning of November 6, 2010, some 15 hours later, there was no evidence that Mr. Emmerson showed any signs of withdrawal or was otherwise sick with vomiting or diarrhea.

[21] Mr. Emmerson said that he borrowed approximately \$500 from his mother to purchase the drugs found in his possession. If one looks at the prices which RCMP Constable Lane testified that these drugs would cost on the street, they would have cost Mr. Emmerson between \$1,200 - \$2,200 Mr. Emmerson was asked if his testimony had been "tailored" to fit the excuse of personal use. He denied this; however, it is odd and very coincidental that he used the exact number of pills (10- 15 per day) which Constable Lane testified earlier would constitute a strong and prolonged addiction.

[22] Mr. Emmerson testified that he purchased the drugs found in his possession some time earlier that day and put them in his rectum some two hours before he was first arrested. He said he did this in a public washroom. When one looks at the intricacies of the wrapping, it is hard to believe one would carry all of that material on their person, do all the work required to package and insert them in the rectum in a public washroom.

[23] As I said, I reject his explanation; however, I must still go on to consider whether his evidence, taken alone or together with all of the evidence, raises a reasonable doubt or leaves me with a reasonable doubt. A reasonable doubt is one which would leave me unsure of Mr. Emmerson's guilt.

[24] The other evidence worthy of note is the admission Mr. Emmerson made at the hospital after he had excreted the drugs. He said he did not know there could be a danger of serious harm if they leaked. I accept Constable Kuhn's testimony that Mr. Emmerson also said something to the effect that, since he knew he was going to jail anyway, he might as well make some money.

[25] On top of that we have the compelling evidence of RCMP Constable Lane who testified that the quantity and variety of drugs were consistent with the intent to traffic those drugs in prison. The totality of the circumstances led Constable

Lane to that opinion. Constable Lane was open and frank and admitted on cross-examination that some of the drugs, by themselves, could be for personal use; however, the quantity and variety, what he called multi-commodity, was consistent with trafficking and not personal use.

[26] Thus, in conclusion, I find that the Crown has proven, beyond a reasonable doubt, that Mr. Emmerson possessed the drugs in question for the purpose, not only of transporting them to the Burnside Jail, but with the intent and for the purpose of trafficking them in that institution.

[27] I therefore find Mr. Emmerson guilty of counts #1, #3 and #4.

Justice Allan P. Boudreau