

Date: 20041015
File No. 47380-2C
Registry: Richmond

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

Reasons for Judgment
Before the Honourable Judge E.D. Schmidt
October 15, 2004

REGINA

v

MARY JEAN DUNSDON

Counsel for the Crown

G. Sair

Counsel for the Defence

J.W. Conroy, Q.C.

[1] THE COURT: This case arises from an incident at a nearby beach where a police operation was trying to determine if there was anything illicit going on on that beach. They had information that a certain person, who turns out to be the accused, was selling product on the beach that may be laced with illicit drugs. And, sure enough, the undercover officers heard her, in a fashion that indicated to them vending, saying, "crazy cookies". They engaged in conversation with

DUPLICATE

her, and ultimately bought a cookie. On questioning she indicated that they were cannabis cookies.

[2] Ultimately she was arrested and the cookies went off to the lab for analysis, and an Certificate of Analysis came back from the lab that said that the cookies contained cannabis resin. She was charged with unlawfully trafficking in a controlled substance, to wit, cannabis resin, in an amount not exceeding three kilograms, contrary to s. 5(1) of the Controlled Drugs and Substances Act. The Crown tendered the certificate which I have just referred to as evidence. The defence tendered Dr. Pate to examine that certificate and provide what they hoped would be evidence to the contrary, pursuant to s. 51(1).

[3] In amending the *Controlled Drugs and Substances Act* in 1997 which contained Schedules VII and VIII, Parliament has attempted to improve their ability for law enforcement in this area and target persons who traffic, according to the amount and quantity in which they traffic and deal with them in different ways, depending on their culpability vis-à-vis the quantity that they were trafficking. In doing so, they have established two kinds sub definitions of cannabis, as defined in Schedule 2, which will be treated differently than other subdivisions of cannabis.

[4] It appears from the evidence that I have, both from Exhibit 4, the Cannabis Identification Operating Procedure, which is the guideline used by the analysts that produce the certificate, and the evidence of Dr. Pate, that these two subdivisions of cannabis are types of cannabis that can be identified by sight and can be quantified. Because if you cannot quantify the drug, then you cannot come within either Schedule VII or Schedule VIII for the purposes of the offences that Parliament was attempting to create based on the amount of drug in an accused's possession.

[5] Cannabis resin is one of those subdivisions in Schedules VII and VIII. Dr. Pate has told us that resin is something that can be seen. That is also the definition in the Standard Operating Procedure, Exhibit 4, which defines cannabis resin as, (a) a solid or sticky resinous material containing cannabinoids, prepared from cannabis plant material; or (b) a liquid extract to be the cannabis plant material or cannabis resin; or (c) mouldy or decomposed material containing cannabinoids and lacking the botanical characteristics of cannabis (marihuana). That is the first category. The second category or subdivision is cannabis (marihuana), and that is defined in Exhibit 4 as the cannabis plant or parts of a

cannabis plant that may include flowers, seeds, hulls, leaves, stems and their fragments; again, something that can be seen.

[6] The difficulty in this case is that the analyst was unable to identify either cannabis resin or cannabis (marihuana) by sight in the sample of the cookie that she analyzed. What she was able to do was to identify a number of other cannabinoids under Schedule II that are mentioned separately there.

[7] In creating these different offences for those two substances, resin and marihuana, Parliament has ascribed different weights of those substances that will attract, not only different penalties, but different court process. The analyst, Jenny Luk, who gave evidence in this case, said that they cannot quantify cannabis resin when it is in the form of a baked product, such as a cookie. It therefore becomes impossible to place it in one of these categories that the Parliament has created, because it cannot be seen and it cannot be quantified.

[8] In my view, the Crown has not proven beyond a reasonable doubt that cannabis resin was present, and alternatively the defence has presented evidence to the contrary with respect to the certificate.

[9] The question now becomes whether the court should amend in order to bring the charge to conform with the evidence. The court says no, it should not amend at the conclusion of the trial where the amendment would be to a different charge which has different election and mode of trial available.

[10] This is not a case that is going to throw the law or law enforcement into a tailspin. It is simply a case where it was wrongly charged. Had the charge been worded differently, then it most likely would have led to a more successful prosecution. Perhaps that is why there have been no cases in these seven or eight years, and it is simply not problematic except if the wrong charge is laid. The accused will be acquitted.

(JUDGMENT CONCLUDED)