

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:)	Ms. J. Zurbriggen and
)	Mr. D. Grohmueller
HER MAJESTY THE QUEEN)	for the Crown
)	
- and -)	Mr. J. Rogala,
)	for the Accused
DALLAS RIVER PERREAULT,)	
)	Judgment delivered
Accused.)	October 5, 2017

1 ROLSTON, P.J. (Orally)

2 All right. So, Mr. Perreault, what's required

3 here today is that, the Crown prove beyond a reasonable

4 doubt, that on the day in question, that nobody disputes,

5 that you were in unlawful possession of a cannabis resin,

6 or marijuana, in your cell. We've heard some facts today,

7 put forward, through your testimony, and also the testimony

8 of the correctional officer who, I'm certain you're

9 familiar with, Marcus Kerger. Mr. Kerger testified at

10 length about what was going on, generally, in that cell,

11 cell block, I should say, and generally, with the different

12 inmates, and also, specifically, on that day. The evidence

13 that the court heard from him was that on that day, they

14 were a little bit, or not a little bit, maybe very

15 suspicious of the presence of illicit substances, because

16 of the fact that various people on the range were acting

17 differently, that made them seem that they were intoxicated

18 in some way. As a result of that, they were wanting to try

19 and determine the location of drugs in the unit.

20 On this day, May the 13th, 2017, after the upper

1 tier unit, which you were housed on, went to rec, including
2 yourself, because everybody went. Krueger (sic) says that
3 he, or Kerger, I should say, says that he had detected an
4 odor of a burning smell coming from the vicinity of your
5 cell, and ultimately did, found some ashes, burnt paper, in
6 your cell, in the toilet area. Then upon further search,
7 found this balled up sock in your bed, or bedding. Inside
8 that sock was a two-inch vile, that had marijuana, what
9 turned out to be cannabis resin in it, that was seized, and
10 there's been no issue as to what that substance is.

11 I find all of his testimony credible in terms of
12 his description of the environment, and the description of
13 went on that day. I have no difficulty accepting his
14 evidence in terms of the fact that he was forthright and,
15 and frankly presented as a witness who, when he wasn't
16 certain of something, would say so. In particular, the one
17 of the key points as to your potential impairment or, the
18 impact of, or the fact you had been using substance, he
19 said, you know: I don't know. I suspected that he was
20 high, based upon my observations of him. But you would
21 have to ask him. In other words, he conceded that it's
22 possible that he was wrong. He conceded on another series
23 of questions that he couldn't recall, specifically, who was
24 even on the range that day, and who exactly was getting
25 high that day and who wasn't. So as I said, I found the
26 correctional officer to be quite credible, in terms of his
27 evidence.

28 The Crown's obligation here is to prove the case
29 beyond a reasonable doubt. There is no direct evidence of
30 you having possession of the cannabis resin, in your hands.
31 In other words, there's nobody who can say, or who's told
32 me that Mr. Perreault had it in his hands, and I saw that.
33 So what we're dealing with then is a case of, as Mr. Rogala
34 said, constructive possession; where the Crown is

1 effectively required to prove that there's no other
2 reasonable inference, other than that you had possession of
3 the cannabis resin at the time in question. That
4 possession can be joint possession, in other words, if the
5 Crown can prove beyond a reasonable doubt, that you and
6 others shared possession, then they've made out their case,
7 and certainly they don't have to prove ownership. In other
8 words, they don't have to prove who was the one who had
9 ultimate control of the cannabis resin, all they have to
10 show is that some measure of control is exercised by
11 yourself, with your knowledge.

12 Based upon the correctional officer's description
13 of the scene that day, and also your own description of
14 what happened, because there wasn't a great deal of
15 inconsistency, the top tier inmates, at the remand center
16 in Alpha 8, I believe was the name of the unit, were given
17 certain freedoms; and that is that on a daily basis, for a
18 period of time inmates would be free to leave their cells.
19 The cells were either left open, meaning unlocked, or
20 sometimes, in certain circumstances, could be locked, but
21 often were not. Inmates were free to go down a set of
22 stairs, into a common area, where there would be
23 telephones, there would be a sitting area, there would be a
24 TV, and other areas, but apart from the living quarters,
25 where the cells were located.

26 On this particular day, before eight o'clock, in
27 the evening, based upon the evidence I heard, there was a
28 time, between 20 and 30 minutes, prior to rec period, where
29 inmates were allowed to leave their cells, and did so. The
30 evidence that I heard from Mr. Perreault was that he, as he
31 usually does, went and tried to make a phone call, or did
32 make a phone call, to his girlfriend, and then his usual
33 routine would be to go and watch TV. I'm satisfied, first
34 of all, that Mr. Perreault, sometime around 8:30, or 8:20

1 to 8:30, was hand cuffed, alongside another inmate, and was
2 taken for rec time. So on that date in question, there was
3 a period of 20 to 30 minutes where the Crown has to
4 effectively demonstrate that Mr. Perreault had exclusive
5 opportunity to possess the drugs in question.

6 The evidence that I heard from the correctional
7 officer was that, based upon his experience, the inmates
8 would use one cell as a place to light up their illicit
9 drugs. That wasn't necessarily the same person who was the
10 owner, if I can put it that way, of that cell or occupant
11 of that cell, that they would break the rules and go into
12 other cells. It logically makes sense that you wouldn't
13 want to, if you could get away with it, light up in your
14 own cell, for this very reason, that you would be left
15 holding the bag, so to speak. In a place like a jail
16 institution, it seems to me that searches are common place.
17 Certainly, Correctional Officer Kerger, mentioned that they
18 do rounds, in his testimony. They were particularly, at
19 that period of time, attuned to the fact that there was
20 drug use going on. So it seems to me logical that any
21 inmate would want to store drugs as far away as possible
22 from themselves.

23 So what's left is there is Mr. Perreault's
24 possession, the only logical conclusion that I can draw.
25 In other words, is it the only logical conclusion that Mr.
26 Perreault would be complicit in the storing of drugs in his
27 own cell, and I'm not satisfied that that's the case. In
28 fact, a very clear and present possibility is that, during
29 the half hour, or 20 minutes, other inmates went in and
30 smoked, and then feared getting caught, so stuck something
31 in his bedding, so that they wouldn't be caught.

32 So for that reason, the Crown has failed to make
33 their case out. I will say that, I considered Mr.
34 Perreault's evidence, frankly, I found him to be believable

1 for the most part. I had certain concerns about, perhaps
2 some of his evidence in terms of his knowledge of what goes
3 on, but I suspect that my concerns come from the fact that
4 when you're in a jail setting, you don't want to point
5 fingers at other people. At the end of the day, I'm not
6 satisfied that the Crown's made out their case, and so
7 there'll be an acquittal of the charge on the docket.

8

9

(OTHER MATTERS SPOKEN TO)

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11 THE COURT: Is Mr. Perreault in custody on other
12 matters?

13 MR. ROGALA: Yes, he is, Your Honour.

14 THE COURT: All right. So you'll remain in
15 custody, but these charges are over with sir.

16 THE ACCUSED: Okay.

17 THE COURT: All right.

18 THE CLERK: And that concludes our docket.

19 MR. GROHMUELLER: Thank you very much.

20 MR. ROGALA: Thank you, Your Honour.

21 THE CLERK: Order, all rise. This court is now
22 closed.

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