



MEDICAL MARIJUANA

Citation: United States v. Boje
2000 BCSC 0246
Date: 20000209
Docket No.: CC990245
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE UNITED STATES OF AMERICA, APPLICANT

AND:

RENEE DANIELLE BOJE, RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE CATLIFF

C. Greenwood, Counsel for the Applicant
J.W. Conroy, Q.C. , Counsel for the Respondent

Place and Dates of Hearing: Vancouver, British Columbia, 1-3 November; 15 & 21
December, 1999

[1] The United States of America seeks the extradition of the respondent to California where she has been indicted by a grand jury on a number of drug charges.

[2] The extradition hearing commenced on 1 November. For the next three days I heard a number of applications by the respondent. At the conclusion of argument I dismissed the applications for reasons which I subsequently put into writing and have delivered separately.

[3] The hearing on the main issue continued for two days in December at the conclusion of which I reserved judgment.

[4] The principal evidence tendered against the respondent at the hearing was contained in the affidavits of Edward Norskog and John Cater and can be summarized as follows. On 29 July 1997 the authorities searched a residence at 1605 Stone Canyon Road, Belair, California pursuant to a search warrant. There, approximately 4,116 marijuana plants were seized as well as documents and equipment relating to the cultivation of the plants. One document seized was a lease for the residence in the name of Todd McCormick.

[5] The respondent (who did not live at the residence) was seen that day moving and watering marijuana plants on the patio of the residence from 1:45 to 3:15 p.m.. Later that afternoon she was seen inside the residence with three other persons for a period of about 45 minutes to an hour smoking from a glass pipe with a cannabis internet site displayed on a large television screen.

[6] The respondent was detained as she was leaving the residence with her co-accused Evangelidi. After waiving her Miranda rights the respondent said to the police that she had met Todd McCormick two months previously and had regularly visited the residence to help him tend the plants. She said that she was paid for her assistance, but "would do it for free".

[7] Evidence was also led by the applicant from an expert that the possession by an individual of 4116 marijuana plants was inconsistent with possession for personal use and only consistent with possession for sale.

[8] The Canadian offences which are said to arise out of these circumstances are:

(1) conspiracy to produce cannabis (marijuana) contrary to s. 7(2)(b) of the Controlled Drugs and Substances Act and s. 465(1)(c) of the Criminal Code;

(2) production of cannabis (marihuana) contrary to s. 7(2)(b) of the Controlled Drugs and Substances Act;

(3) conspiracy to possess cannabis (marihuana) for the purposes of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act and s. 465(1) of the Criminal Code;

(4) possession of cannabis (marihuana) for the purposes of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act;

(5) conspiracy to traffic in cannabis (marihuana) contrary to s. 5(1) of the Controlled Drugs and Substances Act and s. 465(1) of the Criminal Code.

[9] It has been said many times that the role of an extradition judge is a modest one. It consists only of determining whether there is sufficient evidence to establish a prima facie case. The standard of proof at an extradition hearing and at a preliminary inquiry is the same, viz: whether "there is evidence upon which a reasonable jury properly instructed could return a verdict of guilty". (*U.S.A. v. Sheppard* (1976), 30

C.C.C. (2d) 424 at 427). An extradition judge may not assess credibility, consider defences or weigh the evidence.

[10] Mr. Conroy concedes that on the facts adduced by the applicant there is a prima facie case made out against the respondent for aiding and abetting in the cultivation of marijuana. In my view, there is also evidence upon which a reasonable jury properly instructed could find the respondent guilty of conspiracy to cultivate marijuana. This could be inferred that from her statement that she had known Mr. McCormick, the lessee of the premises, for some two months and regularly visited his home to help him tend the plants.

[11] The word "produce" in the Controlled Drugs And Substances Act is defined to include "cultivating". I therefore find a prima facie case against the applicant on the first two Canadian offences listed above.

[12] The respondent is also charged with conspiracy to possess, and possession of, marijuana for the purposes of trafficking, as well as conspiracy to traffic in marijuana. Possession involves the elements of knowledge and control. Mr. Conroy submits that the applicant's evidence points only to knowledge by the respondent of plants on the patio. In my view it could be inferred from the whole of the applicant's evidence that the respondent had knowledge of all the plants on the premises. She said she had been employed to tend "the plants" for some two months and she was seen inside the premises for some time on the day in question.

[13] Mr. Conroy submits there is no evidence that the respondent had control of the plants, control being an essential ingredient of the legal concept of possession. However, Mr. Greenwood refers to s. 4(3)(b) of the Criminal Code. This provides:

- (3) For the purposes of this Act,
 - (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

[14] Under s. 4(3)(b) it appears the applicant is not required to prove the respondent had control as an element of possession. If Mr. McCormick had possession of the 4116 marijuana plants with the knowledge and consent of the respondent she is deemed also to have had possession of the plants.

[15] It is my view that there is evidence from which a jury could reasonably conclude that Mr. McCormick was in possession of the plants at his residence and that the respondent knew and consented to such possession.

[16] The evidence of Detective Constable Lose was that the possession of plants in question could only be for the purpose of commercial distribution. This was based on the large quantity of plants and their great commercial value. Accordingly I find that there is evidence sufficient to warrant the committal of the applicant on the 3rd, 4th and 5th Canadian offences listed above.

[17] Mr. Conroy referred to Canadian cases which concern an exemption from criminal sanction when marijuana is used for medical purposes. I have dealt with this matter in my other reasons. I am not persuaded that it is now a condition precedent

in a prosecution for the offences with which I am concerned that the Crown prove an absence of a ministerial exemption. The question of an exemption is in my view more appropriately described as a defence to such charges if brought in Canada. I may not of course consider the question of any defence to these charges.

[18] For these reasons I order the issuance of a warrant of committal pursuant to s. 29 of the Extradition Act.

"Catliff, J."