

The Queen v Dickson [2012] NTSC 73

PARTIES: THE QUEEN

v

EDWARD LEIGH DICKSON

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY AT ALICE
SPRINGS

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 21207946

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HEARING DATES: 28 June, 11, 25 September 2012

RULING OF: OLSSON AJ

FINDINGS ON DISPUTED FACTS HEARING:

CATCHWORDS:

Disputed facts hearing – Plea to one count of aggravated supply of cannabis
– Dispute as to whether offender a courier or principal supplier – Findings
of fact.

REPRESENTATION:

Counsel:

Prosecution:	Dr N Rogers SC
Accused:	M Preston

Solicitors:

Prosecution:	Office of the Director of Public Prosecutions
Accused:	M Preston

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA AT ALICE SPRINGS

The Queen v Dickson [2012] NTSC 73
No. 21207946

BETWEEN:

THE QUEEN

AND:

EDWARD LEIGH DICKSON

CORAM: OLSSON AJ

FINDINGS OF FACT

(Published 27 September 2012)

Introduction

- [1] In this matter Mr Dickson has pleaded guilty to aggravated supply of a dangerous drug, namely cannabis plant material. I will refer to him as "the offender".
- [2] The facts related to the commission of the offence were partly in dispute.
- [3] Accordingly, a disputed facts hearing was conducted with reference to relevant areas of that dispute.
- [4] I now express my findings in light of the evidentiary material placed before me.

[5] I will, however, do so in the context of those facts that were admitted, so as to facilitate the presentation of a cohesive narrative.

The factual context of the offending

[6] I will first direct attention to the uncontentious facts that were initially presented to me.

[7] Shortly prior to Monday, 27 February 2012, the offender purchased a white Toyota land cruiser station wagon registered in South Australia, with the intention of travelling in it to Darwin.

[8] On Monday, 27 February 2012 he drove to Adelaide Airport where he picked up Anthony Kaissis, an acquaintance who had flown from Brisbane to Adelaide, having agreed to assist in driving the Toyota to Darwin.

[9] In his oral evidence the offender said that Kaissis had been going to Darwin in any event to see his accountant and that the two of them also planned to go fishing whilst there.

[10] The two men drove from Adelaide to Alice Springs, refuelling along the way. The offender paid for the fuel.

[11] At about 9:30 AM on Tuesday, 28 February 2012, the Toyota was stopped by police at the intersection of the Tanami and Stuart highways, approximately 20 km north of Alice Springs. At that time Mr Kaissis was actually driving it.

[12] Police formed a suspicion that there might be dangerous drugs conveyed in the vehicle and they therefore conducted a search of it under section 120C of the Police Administration Act.

[13] As a result of that search, police located the following items on the roof rack on the vehicle:

(1) A black and grey carry bag packed with 17 cryovac bags, each containing approximately 1 pound of cannabis plant material;

(2) A black and grey carry bag packed with 16 cryovac bags, each containing approximately 1 pound of cannabis plant material; and

(3) A black Sea-sak dry bag packed with two Cryovac bags, each appearing to contain approximately 1 pound of cannabis plant material.

[14] The three carry bags and their contents are seen in photographs 2, 3 and 4 of exhibit P 12. The evidence before me indicates that no fingerprints were found on any of the Cryovac bags. They were being tested for the presence of DNA material. I have not been advised of the outcome of any such testing.

[15] Police located a plastic container inside the vehicle. This contained 10.08 g of cannabis plant material. A small Clipseal bag containing 3.77 g of cannabis plant material and \$1990 in cash were also found.

- [16] The offender was arrested and conveyed to the Alice Springs Watch House where he was held under the provisions of section 137 of the Police Administration Act.
- [17] All of the items found, including the Toyota vehicle, were seized and conveyed back to the Alice Springs Police Station, where they were exhibited.
- [18] The offender was later charged.
- [19] There were approximately 33 pounds of cannabis located in the two black and grey carry bags and about 1 1/2 pounds of cannabis in the Sea-sak carry bag.
- [20] On analysis it was determined that there was a total of 15,671.71 g of cannabis plant material in and on the vehicle.
- [21] The cannabis plant material found in the three bags is the subject of the first count to which the offender has pleaded.
- [22] The remaining 13.85 g of cannabis plant material in the plastic container and Cipseal bag are the subject of the second count. This was accepted by the Crown as probably material for the offender's own use.
- [23] It is not disputed that the quantity of cannabis plant material found in the various cryovac bags constituted a commercial quantity of that material for the purposes of the Misuse of Drugs Act.

- [24] The value of the cannabis seized, at the time of the offences, varied according to whether it was sold by the gram, the ounce, or the pound. It also varied dependent on whether it was sold in town or in a remote area. Given those variables the sale price of the material could have been as little as \$122,500 or as much as \$783,550.
- [25] By any test, this was a major quantity of cannabis plant material intended for the Top End market.
- [26] The Crown accepts that Mr Kaissis was not involved in the transport of the cannabis. Indeed, it appears that he was quite unaware of its presence on and in the vehicle.
- [27] In a voluntary electronic record of interview conducted subsequently to the offender's arrest, the offender stated to police that he had been requested by a third party to convey a quantity of cannabis from Adelaide to Darwin. He said that he agreed to do so.
- [28] The offender stated to the police that the third party delivered two black and grey carry bags, later found to contain a total of 33 pounds of cannabis, to him at his home address in Adelaide. That person loaded the carry bags into the cargo area on the roof rack of the Toyota vehicle.
- [29] The offender asserted that he was also provided with two pounds of cannabis as payment for conveying the drugs to Darwin. He stated that the two small separate quantities of cannabis had been left in his vehicle by a friend of his.

- [30] He told the police that had been instructed to deliver the carry bags containing the cannabis plant material to another person on arrival in Darwin. When asked what was in the carry bags that had been delivered to him, the offender responded "I knew there was cannabis but didn't know how much..... I thought there was about 15 pounds..."
- [31] He claimed that it was the cannabis plant material in the black Sea-sak carry bag that was his payment for couriering drugs from Adelaide to Darwin.
- [32] The Crown did not accept that explanation - hence the need for a disputed facts hearing.
- [33] I here pause to record that the offender was somewhat more forthcoming to the Probation and Parole Officer who prepared the pre-sentence report in this matter as to how the offence came about, than he was to the police in his electronic record of interview.
- [34] The offender related to her that he was supplied with the bags of cannabis by a person who he only knew as "J". He stated that he met him at a barbecue organised by persons associated with a church in Darwin. [The offender later described the relevant circumstances in some detail in the course of his oral evidence. I do not find it necessary to recite this in detail. In cross-examination he said that the barbecue meeting was just over two years ago.]

- [35] The offender said that, in the course of conversation, he told "J", that he occasionally travelled to and from Darwin.
- [36] He went on to relate to the Probation Officer that, in accordance with a plan that the two of them evolved, "J" flew to Adelaide from interstate, hired a vehicle and then collected and transported the bags containing cannabis to his residence.
- [37] In the course of his oral evidence before me he said that this plan had been made about three or four days prior to his actual departure from Adelaide when J had come around to his house about seven o'clock one evening. This was the first time that he had seen J since the barbecue at Parap and a brief subsequent visit to him the following day, where he was residing at Parap.
- [38] He narrated to the Probation Officer that the plan envisaged that he would convey the cannabis to Darwin and there meet "J", who would collect it from him. J was to provide "\$5000" to cover "a week's fishing costs, including flights and accommodation".
- [39] It was reported that, initially, the offender denied that he was to benefit financially. It was only when queried further by the Probation Officer that he admitted that he would gain payment of the "\$5000".
- [40] This narrative is to be contrasted with the submission originally made by counsel for the offender in June 2012 to the effect that the relevant plan had been conceived at the barbecue.

- [41] The offender asserted to the Probation Officer that it was "J" who packed the drugs into the vehicle, as the offender did not want to touch them for fear of leaving fingerprints on the packaging. He further told her that he had been approached by "J" to take the clones found by the South Australian police, but he refused. However, he had failed to dispose of them.
- [42] The offender claimed to the Probation Officer that he did not know precisely how much cannabis had been packed and placed in or on his vehicle.
- [43] The disputed facts hearing went forward against the background that, subsequent to his arrest, South Australian police searched the offender's residential premises at 16 Allchurch Avenue North Plympton under a search warrant.
- [44] The evidence indicates that no-one was home when the police arrived, although a number of documents and medicinal products bearing the offender's name were found in the premises. It is not disputed that he rented the premises at the relevant time.
- [45] The police found six cannabis plants approximately 1.2 m high, growing hydroponically under lights, in one room and another six cannabis plants approximately 40 cm high, growing in the same manner, in another small room in the house.
- [46] The South Australian police further located numerous empty 20 L drums of horticultural nutrients used in hydroponics in a shed in the rear yard. They

also found a bud stripper, 51 well rooted cannabis clones, five propagation trays, two separate watering systems including barrels of water, an electrically wired grow room, many vacuum seal bags and a vacuum heat sealer. i.e. a Cryovac machine.

[47] Oral evidence was called from DSC Godwin, a SAPol detective, who was the exhibits officer present at the search of the North Plympton premises. He presented as an objective and impressive witness, with very considerable experience in the drug scene in Adelaide. I accept his evidence.

[48] He gave a detailed description of what was discovered at the offender's residential premises. This was supplemented by photographic and video images.

[49] In essence, the police officers found what can only be described as a substantial and quite sophisticated hydroponic system used for propagating and growing cannabis on a substantial scale. It included automatic watering, lighting and temperature control mechanisms, as well as quantities of nutrients. There were two separate growing rooms.

[50] On searching the premises, police perceived what appeared to be a three stage process in existence.

[51] In one room there was an array of six major healthy plants, virtually at maturity, as appear in photograph 27 of exhibit P7. DSC Godwin was of the

opinion that these would have yielded of the order of 10 –12 pounds of saleable heads, when harvested.

[52] In a second room, there were a further six healthy plants, as depicted in photograph 19 of the same exhibit. These were 2 to 3 months from full maturity.

[53] In the course of his oral evidence the offender said that the more mature plants were about 4 1/2 months old, whilst the younger ones were about four weeks old.

[54] Significantly, the police officers also found an additional 51 well rooted clones (or cuttings) in a plastic bag with other materials associated with cannabis propagation. When laid out by the police these were photographed and are seen in exhibit P9.

[55] DSC Godwin made the point that the clones were still in relatively good condition, as appears in the photographs, and that the material with the clones was still wet. It was his opinion that the contents of the plastic bag were consistent with them having been dumped (as seen in photograph 10 of exhibit P7), possibly because of the projected absence of the cultivator and a consequent inability to nurture them in the necessary manner.

[56] This witness said that their condition suggested that they had been placed in the bag very, very recently, possibly within the previous 24 – 48 hours.

- [57] It is to be borne in mind that the equipment found in the premises included five propagation trays, which contained heating pads used in the propagation of cannabis clones.
- [58] No scales were located in the various areas depicted in the police photographs and video. DSC Godwin made the point that an experienced person may well be able to judge the size and weight of a quantity of cannabis, just from looking at it.
- [59] The Crown argues that the situation described indicates that the offender was conducting a substantial operation of the nature of a production line, designed to produce considerable quantities of cannabis on a regular, rotational basis.
- [60] It was contended that, manifestly, the quantum of usable material being produced was far beyond that required for the offender's personal needs and the only reasonable inference to be drawn is that the bulk of the production was intended for sale to third parties.
- [61] Dr Rogers SC pointed to the evidence of the police witnesses to the effect that the cannabis in various of the one pound Cryovac bags varied in colour from a light green to a brown toning. She invited attention to evidence led before me from the botanist Cowie concerning the change of colour of cannabis material as it dried over time.

- [62] It was her contention that the colour variations were consistent with the material found in the carry bags having been harvested and stored for varying times and of having been produced by the offender's hydroponic system.
- [63] The Crown argues that the only logical and reasonable hypothesis arising on the evidence is that the offender was not merely acting as a courier for some third party named J, but had actually grown and was proposing to sell the cannabis found on his vehicle in his own right.
- [64] The offender gave oral evidence, in the course of which he denied having grown the cannabis material packed in the two black and grey carry bags. However, he admitted for the first time that, contrary to what he had told the police, he had grown the cannabis in the Sea- sak bag.
- [65] He had harvested and packed this, he said, about a week prior to departure from Adelaide and had intended to leave it in Darwin, buried in a container on a road near Howard Springs, as a stash for his personal use from time to time when he went to Darwin for fishing in a boat that he co-owned with two other partners.
- [66] He further conceded that, once again contrary to his initial statements to the police and the Probation Officer, it had been agreed that he should receive \$5000 cash as consideration for acting as a courier.

[67] He testified that he had sustained a serious work-related injury when he was about 45 years of age and, despite various operative treatments to his back, he had suffered significant, fairly continuous pain ever since. This had led to his resort to cannabis as a means of pain relief about 12 years ago.

[68] I took him to say that, initially, he had purchased cannabis from a third party but that, in more recent times, had decided to produce it for his own use. He told Dr Rogers SC in cross-examination that he probably last bought cannabis (from a third party) about a year prior to acquiring the hydroponic equipment. He had usually purchased quantities from an Albanian that would last him for a month or a couple of months.

[69] He stated that he had been given the necessary hydroponic equipment by a friend's wife after the friend had been killed in an industrial accident; and had then developed the growing rooms discovered by the police. He did not volunteer precisely when this had occurred.

[70] It is to be borne in mind that he gave evidence to the effect that, when at sea in connection with his fishing or fishing charter activities, he did not smoke cannabis at all. At other times he tended to smoke one or two cones per night.

[71] Against that background, the offender gave evidence to the effect that, all of the cannabis produced by him was intended for his own use.

- [72] The offender said that he had been living at the South Australian address for about 14 or 15 years and had initially converted the general area of what are now growing rooms into a home gym about five years after he went to that address.
- [73] Some of the present construction occurred late in 2011 to fit it hydroponic growing purposes. He claimed that he initially had problems in effectively growing cannabis because of spider mites and other "bugs".
- [74] He confirmed that, at the time when he was convicted in South Australia for good growing cannabis in mid-2000, he had been personally using cannabis for some time.
- [75] When it was put to him that what was found by the police indicated the presence of an ongoing rotation production operation he conceded that this was so in relation to the current two crops, but insisted that he had not intended to grow any further cannabis because of prohibitive electricity costs.
- [76] He conceded that the amount that he would have harvested from the 12 existing plants would have far exceeded any personal requirement for the immediate future.
- [77] He asserted that it had been his intention to Cryovac the surplus, bury it in a drum and then simply resort to it from time to time as required.

- [78] He gave evidence to the effect that he had propagated the plants found at his premises from clones established by himself. He denied that the fresh 51 clones found in the green garbage bag had been produced by him and contended that they could not have come from the existing growing crops.
- [79] He argued that the younger plants would have been too young to provide clones that appeared to be two or three weeks old and that, if they had come from the older plants, they would have had flowers on them.
- [80] He stated that, when J had brought the bags of cannabis to be loaded on the Toyota the afternoon of the planned departure from Adelaide, he had unexpectedly produced the 51 clones in a foam crate about 90 cm x 45 cm and, for the first time, requested him to also transport them to Darwin. The offender said that he refused to do so.
- [81] The offender acknowledged that a considerable number of plastic Cryovac type bags or continuous bag material had been at his premises. However, he emphatically insisted that these were primarily used for Cryovaccing frozen fish caught during local fishing activities in two boats that he operated from Adelaide.
- [82] When asked how he had funded the purchase and equipping of the various boats employed in his charter fishing activities, the offender testified that he had done so from substantial lump sum payments received by him from WorkCover in respect of his permanent injuries. There is no evidence to refute that contention.

- [83] It was put to the offender in cross-examination that it was highly unlikely that a person such as J, whom he had only met twice before would have entrusted him with a large quantity of cannabis of very considerable value without demanding some payment for it.
- [84] He insisted that that was the actual situation, notwithstanding the fact that he had no direct means of contact with J and J had no direct means of contact with him. He was to merely advise his arrival at a restaurant in Fannie Bay, following which "J would catch up with him".
- [85] It is to be noted that, in the course of cross-examination, the offender said, for the first time, that when J brought the consignment of cannabis to be loaded on the Toyota, he was accompanied by the Albanian who had been the offender's previous supplier of cannabis.
- [86] He denied that his statements to the police indicated that he personally had packed their bags of cannabis into the container on the roof rack and said that this had been done by the others, save that he might have finally adjusted the position of the bags.
- [87] The offender is recorded as having told the police that he was first asked to carry cannabis to Darwin three or four years ago.
- [88] In cross-examination he stated that it was the Albanian person who had asked him to do so, despite the fact that the transcript suggests that he had

been so asked by J. At any event, he stated that he agreed to transport the cannabis because he needed money to pay medical bills.

[89] Although I have given careful consideration to the offender's evidence, I find myself unable to accept much of what he said as remaining a reasonable possibility. Whilst he presented as a somewhat passionate witness, I agree with Dr Rogers SC that his story simply does not carry with it the ring of truth or, for that matter, the ring of reality. As demonstrated, there have been significant narrative shifts over time.

[90] There is not the slightest doubt that, at the material time, he was cultivating substantial rotational crops of cannabis producing far more than he personally could ever use and was doing so in a quite sophisticated and professional manner. On his own evidence he needed funds with which to meet his medical expenses.

[91] He has clearly varied his story over time and I find his narrative concerning the 51 cannabis clones unconvincing. The plain inference to arise from the whole of the evidence is that he had, for some time, been cultivating cannabis on a rotational basis and his belated statement that the clones discovered by the police had unexpectedly been brought to him by J is simply not believable.

[92] Equally the suggestion that he was going to Cryovac all of the proceeds of his production and bury them in a drum at his place of residence for future use, together with his evidence that he proposed to create another stash in

Darwin, somewhere along a bush road, beggars belief. These assertions bore the hallmark of recent inventions to explain away what could otherwise not be explained.

[93] His credibility is further significantly undermined by the fact that he admittedly did not tell the truth to the police in the course of his record of interview and that some of what he said (for example the references to the Albanian person) emerged for the first time in the course of his recent oral evidence.

[94] Further, his evidence as to conveying a very large amount and value of cannabis to Darwin in a situation in which neither J nor he had any means of communication with one another defies belief.

[95] I do not accept the offender as a witness of truth.

Conclusions

[96] I conclude that the Crown has established beyond reasonable doubt that the cannabis found on the Toyota was both grown by the offender and being transported to Darwin for ultimate sale by him, for his own benefit. There is no other logical and believable possible inference to be drawn.