

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. States*, 2017 NSSC 276

**Date:** 20171026

**Docket:** CRH460121

**Registry:** Halifax

**Between:**

HER MAJESTY THE QUEEBN

v.

RICHARD DALE STATES

**Decision**

**Judge:** The Honourable Justice Michael J. Wood

**Heard:** September 18, 19, 20, 21, and October 25, 2017, in Halifax,  
Nova Scotia

**Oral Decision:** October 26, 2017

**Counsel:** Jeff Moors, for the Federal Crown  
Luke Craggs, for the Defendant

**By the Court (Orally):**

[1] Mr. States is charged with possession of fentanyl for purposes of trafficking contrary to s. 5(2) of *Controlled Drugs and Substances Act (CDSA)*.

[2] Mr. States never had actual possession of the drug and so the Crown must prove constructive possession. The burden of proof of course is on the Crown to establish that beyond a reasonable doubt.

[3] Constructive possession is proven where the accused is shown to have knowledge of drugs and some measure of control over them.

[4] Circumstantial evidence can be relied on to prove constructive possession if guilt is the only reasonable inference that can be drawn from the proven facts.

**Control Requirement**

[5] The control requirement for constructive possession means that the accused needs to have “some measure of control” over the substance even if they did not in fact exercise that control. In this case the Crown and the defence agree that Mr. States had sufficient control over the package containing fentanyl to satisfy this requirement.

[6] As a result, the only issue is whether the Crown has proven the requisite knowledge on the part of Mr. States beyond a reasonable doubt.

**Knowledge Requirement**

[7] The Crown must prove that the accused had knowledge of the “character” of the illegal substance in their possession.

[8] If the accused is shown to have honestly believed the drug was a different controlled substance than the one which was in their control, that is still sufficient to prove the element of knowledge.

**Circumstances of the Delivery**

[9] The basic facts are not seriously in dispute.

[10] Mr. States has lived in Ahern Manor on Gottingen Street in Halifax for many years. One of his neighbours was Gail Wilson who lived on the same floor.

[11] Mr. States asked Ms. Wilson if he could have a package delivered to her address. He never said where it was coming from or what it contained. Ms. Wilson said this discussion was in May or June of 2015.

[12] On June 29, 2015, a Canada Border Services officer at the Vancouver International Mail Center in British Columbia, identified a suspicious package which had arrived in the mail from China addressed to Ms. Wilson in Halifax. Subsequent investigation determined that it contained a half kilogram of fentanyl.

[13] The drugs were removed and the package sent on for delivery to Ms. Wilson. After at least one unsuccessful attempt the package was delivered by an undercover police officer to Ms. Wilson on July 15, 2015.

[14] Following the delivery Ms. Wilson left the premises without the package. An alarm which had been inserted by the RCMP in the package, did not indicate that it had been opened.

[15] After several hours the police entered Ms. Wilson's apartment pursuant to a warrant – they found the unopened package but nothing else of any significance. The package was seized.

[16] Ms. Wilson came home later that day to find her apartment had been rearranged – she thought there may have been a break-in. She spoke to a friend and entered her apartment. Mr. States came from his apartment across hall and joined them. They read the search warrant which had been left by the police.

[17] Either that evening or the next day Mr. States said to Ms. Wilson that if the package he had asked her to accept had anything to do with the police search she was to have the police talk to him.

[18] On August 6, 2015, Mr. States was arrested at his apartment and taken to the Halifax Regional Police station on Gottingen Street. He was interviewed by Cst. Mike MacPherson and this statement was entered in evidence by the Crown for its truth.

[19] Mr. States and his apartment were searched at the time of his arrest but nothing significant found.

### **Mr. States' Statement and Trial Testimony**

[20] Because Mr. States testified and also because his video statement came into evidence, I want to focus on his evidence to some extent.

[21] Mr. States' agreed that he asked Ms. Wilson if he could have a package sent to her apartment. He said it might have been in the early fall of 2014, and he said this was the result of a third party asking if a package could be sent to him.

[22] In his police statement Mr. States did not identify the person who asked about the package and Cst. MacPherson did not ask him for any details concerning this person.

[23] At trial Mr. States said that it was an acquaintance named "Ian" who he had met through the moving business. He did not have any contact information and never heard further from "Ian".

[24] The police statement was video recorded and played at trial. I observed Mr. States to be anxious and upset about finding himself under arrest for a charge of importing fentanyl and very concerned about the trouble he may have caused for Ms. Wilson. He was emotional and despite saying several times that he did not want to say any more because of his legal advice he continued to talk. Some of his narrative was disjointed and there were frequent interruptions by both Mr. States and Cst. MacPherson. The topics jumped around quite a bit and were often repeated.

[25] Cst. MacPherson was obviously interested in what Mr. States knew about the contents of the package. This subject came up multiple times and the response by Mr. States was not always the same. His responses included the following:

- He said he was told it contained "steroids or something";
- He didn't know it contained anything illegal;
- He did not have the slightest clue it had anything to do with drugs;
- He figured it was "steroids or something";
- He thought it "could be steroids – for all he knew it could be a chair";
- He thought it was steroids;
- He thought it may be a steroid;

- He had no clue what it was – maybe steroids;
- Didn't know anything illegal was involved.

[26] In his trial evidence Mr. States said that he had no idea what “Ian” was going to order for delivery to him. He said he had no clue what was coming and he didn't think about it. He said that he was under stress and did not express his thoughts clearly in his police interview – he was guessing that the package might have contained steroids.

[27] At trial Mr. States said that he believed steroids were things that body builders would use.

### **Position of Crown**

[28] The Crown says the circumstances of delivery, as well as Mr. States' police statement, establish knowledge that the package contained fentanyl. Guilt is the only rational inference that could be drawn from the proven facts.

[29] In addition the Crown says that Mr. States' evidence, properly interpreted, is an admission that he believed the package contained steroids which are also a controlled substance under the *CDSA*. They said this is sufficient to establish the knowledge requirement even though the actual drug in the package was fentanyl.

### **Position of Defence**

[30] The defence said there is reasonable doubt with respect to Mr. States' knowledge of the package contents. The circumstances did not raise a suspicion to a level which would suggest that he was willfully blind.

[31] The defence also says that even if Mr. States believed the package contained steroids this is an equivocal term and may not be a reference to anabolic steroid, which is one of the categories of substances listed in Schedule IV of the *CDSA*. He could have been referring to some other type of product used by body builders.

### **Analysis**

[32] In my analysis I start with the obvious proposition that the burden is on the Crown to prove that Mr. States knew the “character” of the package contents beyond a reasonable doubt. There is no burden on Mr. States to disprove this issue.

[33] Mr. States presented evidence through his police statement as well as his trial testimony. Portions of that testimony would, if accepted by me, result in his acquittal – these are the statements to the effect that he had no idea what was in the package. Even if I don't believe that Mr. States is being completely truthful when he makes these comments (and perhaps that would be because of his other comments about believing the package contained steroids) his evidence might still leave me with a reasonable doubt about whether he knew the package contained illegal drugs.

[34] In either of these circumstances I would have to find him not guilty because the Crown would not have met their burden of proving his knowledge beyond a reasonable doubt.

[35] I do not agree with the Crown position that Mr. States' police statement alone is sufficient to prove the required knowledge beyond a reasonable doubt. Taken as a whole his comments leave a degree of uncertainty about whether he believed the package contained steroids. There are contradictory statements about what he knew or believed about the contents. For the same reason I am not prepared to accept Mr. States' testimony that he did not know what was in the package. His clearest statement to this effect was in his trial evidence when he was trying to explain his comments to Cst. MacPherson about steroids. This was somewhat self-serving and an attempt, in my view, to distance himself from what seemed to have been repeated and voluntary statements. I do not find Mr. States' trial explanation with respect to what he was trying to communicate to Cst. MacPherson to be particularly credible.

[36] Despite my credibility concerns about Mr. States' trial evidence this testimony together with the police statement does leave me with a reasonable doubt about whether he honestly believed that the package contained a controlled substance listed in a schedule to the *CDSA*. The steroid comments vary from apparent unqualified belief to suspicion, assumption and even denial.

[37] The Crown relies on the steroid comments because they say it is a controlled substance under Schedule IV of the *CDSA* and, as a matter of law, knowledge of another controlled substance is sufficient. That schedule lists one type of steroid – anabolic steroids. I don't know whether Mr. States' use of the word “steroid” relates to this prohibited category or even some other product which might be used by a body builder. He was clear and consistent when he maintained that he believed there was nothing illegal about the package and its contents.

[38] I repeat that Mr. States' evidence leaves me with a reasonable doubt concerning his knowledge of the package contents.

[39] Even if this were not the case, the totality of the evidence does not prove Mr. States' knowledge beyond a reasonable doubt. A circumstance where someone requests another to receive a package will not prove knowledge of the contents to the criminal standard. Other circumstances will have to exist.

[40] Here there is not much to suggest that Mr. States' thought the package contained anything of value or importance which one would expect with a shipment of a drug like fentanyl. For example:

- After the initial brief discussion with Ms. Wilson he never followed up to see if she had received anything or to confirm her participation in the arrangement.
- There was no indication of compensation being paid to or offered to either Mr. States' or Ms. Wilson for their assistance.
- When Mr. States initially became aware that police had searched Ms. Wilson's apartment he never asked her anything about whether the package had arrived.
- Once he knew that the police wanted to talk to Ms. Wilson he told her that if it had anything to do with the package he had asked her to accept she should tell them to speak to him. He made no attempt to have Ms. Wilson cover for him.

[41] In cases where courts have found sufficient evidence to infer knowledge the circumstances are much different than here. Frequently the accused is involved in setting up the delivery, is paid compensation and after receipt of the package handles it in a manner consistent with having knowledge that it contained drugs. None of that exists here and, in fact, the police moved in before Ms. Wilson had a chance to deliver the package to Mr. States.

[42] For all of these reasons I find Mr. States not guilty of the offense as charged. He is released from the conditions in the recognizance related to this matter.