

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Jacquard, 2010 NSSC 32

**Date:** 20100111

**Docket:** Hfx. 316791

**Registry:** Halifax

**Between:**

Her Majesty the Queen

- and -

Derald Anthony Jacquard and Laird James MacIsaac

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice David P.S. Farrar

**Heard:** **Trial** - January 11, 2010, in Yarmouth, Nova Scotia  
**Decision** - January

**Subject:** Criminal Law - Possession for the purpose of trafficking 5 (2)  
**Controlled Drugs and Substances Act** SC 1996 c, 19

**Summary:** The accused were charged with possession for the purpose of trafficking in a controlled substance namely Metamphetamine which had been received by one of the accused by mail.

**Issue:** Did the accused or either of them have possession of the controlled substance. It was agreed that if there was possession, that possession was for the purpose of trafficking.

**Result:** Both of the accused were acquitted

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**SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Jacquard, 2010 NSSC 32

**Date:** 20100126

**Docket:** Yar. 304912 & 304915

**Registry:** Yarmouth

**Between:**

Her Majesty the Queen

v.

Derald Anthony Jacquard & Laird James MacIsaac

**Judge:**

The Honourable Justice David P. S. Farrar

**Heard:**

**Trial** - January 11, 2010, in Yarmouth, Nova Scotia

**Decision** - January 12, 2010, in Yarmouth, Nova Scotia

**Counsel:**

Phillip J. Star, for Laird James MacIsaac

Stanley MacDonald, for Derald Anthony Jacquard

**By the Court:**

[1] This matter was set over for today's date for decision. Derald Anthony Jacquard and Laird James MacIsaac both of Yarmouth, Nova Scotia, were charged that they:

“On or about the 26th day of October, 2007, at or near Yarmouth, Yarmouth County, Nova Scotia, did unlawfully have in their possession for the purpose of trafficking Metamphetamine a substance included in Schedule 1 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 and did thereby commit an offence contrary to Section 5 (2) of the Act and thereby commit an offence under Section 5 (3) (a) thereof.”

[2] The Crown called five witnesses in this trial which was held on January 11, 2010. As well, the Crown and the defence filed an Agreed Statement of Facts under Section 655 of the Criminal Code agreeing to the contents of the evidence of Constables Kenneth Smith and Guy Daigle. The defence did not call any evidence.

[3] Originally the defence had raised a number of issues under the Canadian Charter of Rights and Freedoms (The Charter) and sought to have certain evidence excluded under Section 24 (2) thereof. After the evidence concluded both defendants withdrew The Charter applications.

[4] The parties further agreed that if the accused were found to have possession of the controlled substance the possession would be for the purposes of trafficking.

[5] Therefore, the only issue for determination by me was whether, on the evidence before me, one or both of the accused had possession of the controlled substance.

[6] I will set out the salient points of the evidence as it relates to the charges. Although, I will not set out all of the evidence I have considered it all.

[7] On October 25, 2007 the RCMP, through Canada Post, became aware of a suspicious package which had arrived at the Halifax International Airport. The package was addressed to the accused Derald Jacquard at 35 Porter Street in Yarmouth, Nova Scotia.

[8] The package was seized and turned over to Corporal Gordon Vail of the Bedford RCMP. I should point out, at this point in time, there was no issue at trial that the package contained Metamphetamine, a controlled substance. Corporal Vail inspected the package and determined it contained five envelopes. The five

envelopes contained 18 sealed bags each containing approximately 1000 tablets of the controlled substance.

[9] In preparation for, what Corporal Vail called, a controlled drop, he removed all but 10 tablets of the drugs and replaced them with a material with a weight equivalent to the drugs. He then placed the 10 tablets back into an envelope and sealed it and placed the envelope back into the package. The package was also equipped with a device that would allow the investigators to know when it was opened.

[10] That evening, October 25, 2007, Corporal Vail attended at the residence of a Provincial Court Judge in Halifax and obtained a General Warrant and Assistance Order.

[11] Corporal Vail and other members of the RCMP then travelled to Yarmouth arriving here at approximately 2:00 am, on October 26, 2007.

[12] At approximately 9:00 am on the morning of October 26, 2007 a briefing was held with the Yarmouth members of the RCMP to plan the controlled drop.

[13] Corporal Geoffrey White was assigned to deliver the package to the accused at 35 Porter Street.

[14] Constable William Balfour was tasked with conducting surveillance on 35 Porter Street. To undertake that surveillance Constable Balfour positioned himself to the west of 35 Porter Street. The evidence established that 35 Porter Street was one half of a duplex, the other half being 37 Porter Street.

[15] Constable Balfour could see the steps and shared porch of 35 and 37 Porter Street but he could not see the doors of the two houses. He took up his position of approximately 11:12 am.

[16] Meanwhile Corporal Vail and Constable McCarron took up a position in a marked vehicle approximately one block away from 35-37 Porter Street. From this location they could see the duplex through binoculars but could not see specific activity.

[17] Constable Kenneth Smith was assigned to watch the rear of the duplex. Two other RCMP members, Corporal Greg Fraser and Constable Guy Daigle were also involved in the operation.

[18] At 11:52 am Constable White arrived at 35 Porter Street. He testified that as he approached the duplex 35 was on the right and 37 was on the left.

[19] Corporal White knocked on the door a couple times without a response. He heard a woman and child in 37 Porter Street and asked the woman if anyone was at home at 35 Porter. She responded that there was. Eventually, the inside door of 35 Porter opened and Mr. Jacquard presented himself. He accepted the package and returned into the house. Corporal White informed Corporal Vail that the delivery had been made and Corporal Vail noted that the time of the delivery was 11:54 am.

[20] At 11:58 am Constable Balfour saw Laird MacIsaac pull in to 35-37 Porter Street. Constable Balfour saw Mr. MacIsaac proceed up the stairs of the duplex but could not see which of the two doors he entered.

[21] Two to three minutes after MacIsaac arrived Corporal Vail testified that he became aware, from the alarm device in the package, that it had been opened. He ordered the surveillance team to enter 35 Porter Street. He put the time of his order at 12:00 noon.

[22] Constable McCarron testified that he and Corporal Vail were the first to enter 35 Porter. Very soon after entering the house Constable McCarron became aware that Constable Smith had observed Jacquard coming out of the back door of 37 Porter Street.

[23] Constable Smith's testimony indicates that he observed Jacquard coming out of the rear door of 37 Porter Street as if he was in a hurry. He was immediately placed under arrest by Constable Smith and Corporal Fraser.

[24] As a result of hearing that Jacquard had been exiting 37 Porter Street Constable McCarron testified that it was his decision to leave 35 Porter Street and enter 37 Porter Street to search it for the package.

[25] Corporal Vail testified that it was his decision to enter 37 Porter Street after being told by Corporal Fraser that there was an access to 37 Porter Street through a door in the basement of 35 Porter Street.

[26] Constable Balfour testified that he saw the RCMP members enter one of the doors of the duplex and then less than a minute later exit that door and enter the other. Because of his vantage point he could not tell which door they had entered first.

[27] It appears that both Corporal Vail and Constable McCarron independently and for different reasons made the decision to enter 37 Porter Street. In any event Constable McCarron entered 37 Porter Street by kicking in the locked door.

[28] After entering the residence he testified that he went upstairs where he saw Mr. MacIsaac standing at the doorway near the sink in the bathroom. He also observed four envelopes under some towels on a shelf about a foot to a foot and a half from the floor. These were the envelopes which had been in the package that had been delivered. However, he could not recall if he saw the envelopes at that time or later when he returned to the house. Mr. MacIsaac was placed under arrest

and read his rights by Corporal Vail. Constable McCarron searched MacIsaac and found two cell phones and an unknown amount of cash.

[29] Corporal Vail's evidence is consistent with the evidence as set out above. He added, however, that when he entered the house at 35 Porter Street Jacquard was not present, the only person in the house was an adult woman.

[30] Corporal Vail also observed the package and one set of envelopes in an upstairs bedroom at 37 Porter Street. He also observed the four envelopes in the bathroom as had Constable McCarron.

[31] Constable Daigle also entered 35 Porter Street through the rear door. He observed an adult woman at that residence and no one else. He then went to 37 Porter Street and ran upstairs. He says that when he got there the bathroom door was closed and when he opened it MacIsaac was inside. Constable Daigle says it was he who arrested Mr. MacIsaac. Finally, he observed an adult female and a child at 37 Porter Street.

[32] That is in essence the evidence at trial. The evidence established the following:

[33] 1. The package was delivered to 35 Porter Street on October 26, 2007 at 11:54 am.

[34] 2. The package was addressed to and accepted by Derald Jacquard.

[35] 3. At 11:58 am Laird MacIsaac arrived at 35-37 Porter Street.

[36] 4. At approximately 12:00 noon the RCMP members entered 35 Porter Street. The only person present at that time, in that residence, was an adult female.

[37] 5. At or very shortly after the RCMP entering 35 Porter Street Jacquard was observed leaving the backdoor of 37 Porter Street. He appeared to be in a hurry and was arrested at that time.

[38] 6. Shortly after entering 35 Porter Street the RCMP made the decision to enter 37 Porter Street. When they entered they found the package and one of the envelopes in an upstairs bedroom. MacIsaac was found near the doorway of the bathroom. Four of the envelopes which had previously been in the package were found in the bathroom in the vicinity of MacIsaac under some towels on a shelf.

[39] 7. At the time of entering 37 Porter Street there was, in addition to MacIsaac, and adult woman and child present.

[40] The evidence is also instructive for was it did not establish. In particular:

[41] 1. A cell phone was seized from Jacquard, two cell phones were seized from MacIsaac and a computer was seized from 35 Porter Street. These items were all sent for forensic analysis. There was no evidence of any connection between MacIsaac and Jacquard, and no evidence of any connection between

either of those individuals and the individual from British Columbia who allegedly sent the package.

[42] 2. There is no evidence of what happened with the package after it was delivered to Jacquard at 35 Porter Street. In particular, how it got from 35 to 37 Porter Street, whether or not the doorway in the basement was used for the purposes of transporting it, or how it got upstairs into the bedroom at 37 Porter.

[43] 3. And finally, and this is not an exhaustive list, no evidence was led to establish any relationship between any of the four adults individuals present at 35-37 Porter Street on October 26, 2007.

[44] The Crown asks that the Court draw the inference from all of the circumstances that the necessary elements to constitute possession of the controlled substance are present. As previously stated, if the necessary elements are established it is acknowledged by the defence that the possession was for the purpose of trafficking.

[45] The defence for both accused argued that the Crown has not proven possession by either individual beyond a reasonable doubt.

[46] Possession, as set out in Section 4 (3) of the CRIMINAL CODE is as follows:

(a) “ A person has anything in his possession when he has it in his personal possession or knowingly

(i) has it in the actual possession or custody of another person, or

(ii) has it any place, whether or not that place belongs to or is occupied by him for the use or benefit of himself or of another person; and

(b) where one or two or more person with the knowledge and consent of the rest, has anything in his possession or custody or possession, is shall be deemed to be in the custody and possession of each and all of them.”

[47] In **BEAVER** v. the Queen (1957), 118 C.C.C. 129 Justice Cartwright of the Supreme Court of Canada stated at page 140;

“In my view the law is correctly stated in the following passage in the judgment of O’Hallaron, J.A. with whom Robertson, J.A. concurred.”

[48] He quotes from R. v. HESS (1948) 94 C.C.C. 48 at pages 50-51:

“ To constitute possession within the meaning of the criminal law it is my judgement that where, as here, there is manual handling of the thing it must be coexistent with knowledge of what the thing is and both these elements must coexistent with some act of control (outside of public duty). When those three elements exist together I think it must be conceded that under Section 4 (1) (d) of the Opium and Narcotic Drug Act, Canada, it does not then matter that the thing is retained for an innocent purpose.”

[49] In the case of R. v. JONES, [2006] N.S.J. 163, The Nova Scotia Court of Appeal reviewed the onus on the Crown as to whether possession has been proven. At paragraph eight the Court held:

“Where a person is charged with an offence involving possession of a prohibited drug the crown bears the onus of establishing that the accused had knowledge of the presence of the drug and that the accused maintained some measure of control over the drug.”

[50] The Court of Appeal continued:

“These elements must be proved by objective relevant and admissible facts from which a rational inference may be drawn.”

[51] Turning now to the specifics of this case, it has been proven that Jacquard had actual possession of the package and that at the time of receiving it he exercised control over it. Is that sufficient for me to conclude that he had knowledge of the contents of the package? To borrow from the words from the Supreme Court of Canada in R. v. COOPER (1977) 34 C.C.C. (2d) 18 at page 33;

“ Is it the only reasonable inference to be drawn from the proven facts?”

[52] (i.e. the knowledge of the contents of the package)

[53] In my view it is not. The fact that Jacquard had possession of the package for a period of time is not sufficient to prove that he had knowledge of its contents. The evidence, at it’s best, is suspicious but that is not enough to find guilt beyond a reasonable doubt. Further, there is no evidence that Jacquard was expecting a delivery, no evidence of the connection between him and the sender and no evidence of what happened to the package after it came into his possession.

[54] As a result I find the accused Jacquard not guilty of the offence contrary to Section 5 (2) of the Controlled Drugs and Substance Act.

[55] With respect to MacIsaac, it has been proven that he arrived at 35-37 Porter Street shortly after the parcel was delivered and was found in the bathroom in the vicinity of four of the packages. This evidence falls far short of what would be necessary for me to find that he was in possession of the controlled substance on the law that I have set out herein. As a result I find that the accused MacIsaac is also not guilty of the offence.

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JUSTICE DAVID P.S. FARRAR  
JUSTICE OF THE SUPREME COURT