

**“Client acquitted of selling MJ after Judge agreed with argument police did not have enough evidence to arrest and search client.”
[COMMENTS BY RICHARD NEARY]**

R. v. A.L.

Between

Regina

v.

A.L.

[2005] B.C.J. No. 3105

2005 BCPC 699

Victoria Registry No. 3200-1

British Columbia Provincial Court

(Youth Justice Court)

Victoria, British Columbia

Neal Youth Ct. J.

Heard: June 17, 2005.

Oral judgment: June 17, 2005.

(17 paras.)

Counsel:

Counsel for the Federal Crown: L. Mascolo

Counsel for the Defendant: R. Neary

1 NEAL YOUTH CT. J. (orally):— I have listened to the evidence on the voir dire, and of course it focuses largely on what we heard from Constable Gubbins.

2 Constable Gubbins' observations of the transaction in question that precipitated his decision to proceed with the arrest of the accused were made from at least 150 feet away. Although there were no obstructions to that, it is also significant from his evidence that the transaction he observed lasted only seconds and involved the accused allegedly and one other male. The transaction that he observed was furtive in that he saw the accused move away from a group of friends along with another male, reach down into a pocket, pull her hand out of that pocket and extend it with a closed fist. He, beyond that point, cannot specify precisely what it was that may have passed between the accused and the other male.

3 However, his observations of the male were that in extending his left hand, that he believed, and the best of the evidence he gave us, was he believed that there was money that had been exchanged. He was unclear as to whether or not it was a bill, although again believed it was, but he could not specify whether or not it was folded or unfolded. He seemed to make the observations based on the apparent size of what it was he was seeing, but that evidence raises some credibility concerns as he was unclear as to whether it was folded or unfolded. It is unclear as to how he could conclude precisely what size it was that he was taking note of.

4 In the circumstances, all that Constable Gubbins can tell us is that he saw a suspicious transaction involving the accused and another person where there was an exchange of something that took place between the two. In the circumstances, I am satisfied that falls well short of any reasonable and probable grounds either objectively or subjectively, and, as such, I am satisfied that the corresponding decision to proceed with the arrest of the accused was unwarranted and premature. I find that there has been a warrantless search of the accused, and, as such, a breach of her Charter rights in that regard.

5 Now, are there submissions with respect to s. 24?

6 MS. MASCOLO: If I can just have a moment, Your Honour.

7 THE COURT: Do you want to have a moment to talk to Mr. Neary?

8 MS. MASCOLO: Sure. Thank you.

9 THE COURT: Okay.

10 MR. NEARY: Thank you, Your Honour.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

11 MS. MASCOLO: Your Honour, the Crown calls no further evidence in this matter.

12 THE COURT: Okay. Mr. Neary, any submissions?

13 MR. NEARY: Simply no, Your Honour. You can render your decision.

14 THE COURT: All right. Thank you. Based on the evidence I do not have, I find the accused not guilty as charged on both matters before me. Thank you both for your assistance in getting the matter before me in a very professional manner this morning. Thank you.

15 MS. MASCOLO: Thank you, Your Honour.

16 MR. NEARY: Thank you very much, Your Honour.

17 THE COURT: All right. Thank you.