

CANADA / JUDGMENT

R. v. Aeichele

2020 BCSC 2300

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 2300 R. v. Aeichele

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Aeichele,

2020 BCSC 2300

Date: 20200605

Docket: 45595-2

Registry: Penticton

Regina

v.

Cheryl Lynn Aeichele

Elkena Michael Knauff

Before: The Honourable Mr. Justice G.P. Weatherill

Oral Reasons for Judgment

Counsel for the Crown appearing by teleconference:

J.M. Le Dressay

Counsel for the Accused Cheryl Aeichele:

J.H. Pennington

Counsel for the Accused Elkena Knauff:

M.A. Patterson

Place and Date of Trial/Hearing:

Penticton, B.C.

September 17-19, October 11, 2019;

March 2-4 and May 25-26, 2020

Place and Date of Oral Judgment:

Penticton, B.C.

June 5, 2020

Introduction

[1] THE COURT: These are my reasons for judgment. The accused are jointly charged on a three-count indictment with:

Count 1, possession of methamphetamine for the purpose of trafficking;

Count 2, possession of cocaine for the purpose of trafficking;

Count 3, possession of fentanyl for the purpose of trafficking,

all contrary to s. 5(2) of the Controlled Drugs and Substances Act, R.S.C. 1996, c. 19.

[2] I shall refer to the three charges as the "Charges" and to the methamphetamine, cocaine, and fentanyl, the subject of the Charges, together as the "Drugs".

[3] The Charges relate to events that took place at the Penticton Walmart parking lot on the afternoon of September 20, 2017. The Crown alleges that the accused were caught red-handed in the midst of selling illicit drugs in a dial-a-dope operation.

Voir Dire

[4] The trial commenced on September 17, 2019, with a voir dire that took place over three days. The accused alleged a number of breaches of their Charter rights prior to, during, and after their arrest on September 20, 2017. Two of the RCMP officers who testified on the voir dire, Constables Chad Jackson and Adam Burton ("the Officers"), were involved in the accused's arrest. Their voir dire evidence and observations respecting their surveillance at the Penticton Walmart parking lot, the identity of both accused, the search and seizure of the Drugs, and the arrests was admitted into evidence at the trial with the consent of both accused.

- [5] Although I found that the Officers failed to promptly inform the accused of the reason for their initial detention, violating their s. 10(a) Charter right and that Ms. Aeichele's s. 10(b) Charter right was infringed when she was not given access to counsel for some 90 minutes after her arrest, I found that the arrest and search and seizure of the Drugs was lawful, and that the fruits of the search were admissible at trial under s. 24(2) of the Charter. My reasons for judgment on the voir dire are indexed at 2020 BCSC 298.

Circumstances

- [6] At approximately 2:00 p.m. on September 20, 2017, the Officers, who were both members of the Penticton RCMP's Targeted Enforcement Unit, were parked in an unmarked police vehicle in the Penticton Walmart parking lot. September 17, 2017, was a "Welfare Wednesday", a day of the week that is known to result in increased illicit street drug use, and the Officers were conducting routine surveillance. As members of the Targeted Enforcement Unit, their mandate was to disrupt known prolific offenders, including those involved in street-level drug use.
- [7] The Officers' attention was soon drawn to an individual, Mr. Sandeep Rai, who was known to them to be a low-level property offender and drug user. Mr. Rai appeared to be waiting for someone in the parking lot. The Officers decided to watch him for a while to see what, if anything, transpired. They observed him to be milling around Walmart's front entrance, looking up and down rows of vehicles in the parking lot, visiting a nearby Subway, using his cellphone, sitting at a picnic table, and generally hanging around. All told, the Officers' surveillance of Mr. Rai lasted approximately one-and-a-half hours. At that point, Mr. Rai was joined by another known street-drug user, Mr. Nigel Laforme, and the two of them loitered together. To the Officers, the two appeared to be waiting for someone to arrive.
- [8] At approximately 4:00 p.m., the Officers observed both Mr. Rai and Mr. Laforme leave the area near the east-facing front entrance of Walmart and walk briskly around the northeast corner towards the northwest corner of the building. The Officers lost sight of them momentarily because of vehicles and traffic in the parking lot, and relocated their vehicle. The Officers observed Messrs. Rai and Laforme at a white Explorer SUV ("Explorer") that was parked in a stall near the northwest corner of the Walmart building. They noted that where it was parked was a somewhat isolated and nondescript area with no other vehicles nearby. Most of the adjacent parking stalls were empty. They observed Mr. Rai standing at the driver's window of the Explorer and Mr. Laforme standing at the passenger window. There were two individuals inside the Explorer.
- [9] The Officers determined that there was probably an illicit dial-a-dope drug deal unfolding and decided to intervene.

- [10] Constable Jackson, who was driving the unmarked police vehicle, pulled in behind the Explorer. The Officers got out. As they did so, Messrs. Rai and Laforme started walking away. They were told to stop. Constable Jackson went to the driver's door of the Explorer and Constable Burton went to the passenger door. Constable Jackson asked the four individuals to explain what they were up to. He did not recognize the driver, Ms. Aeichele, and asked her for her driver's licence, which she provided. He did recognize the passenger, Mr. Knauff.
- [11] On the passenger side of the Explorer, Constable Burton was conducting a visual inspection of the inside of the vehicle, but saw nothing untoward.
- [12] Although the Officers suspected they had interrupted a drug transaction in progress, they did not believe at that point that there were any grounds to arrest any of the four and, after a few minutes, told them they were free to go. Messrs. Rai and Laforme immediately left the area on foot. While the Officers were standing there, Ms. Aeichele reversed the Explorer, which required her to negotiate around Constable Jackson's police vehicle. As the Explorer was doing so, Constable Burton saw a small yellow baggie, that he immediately identified was a "dime bag", on the pavement underneath where the Explorer had been parked. He could see that the baggie contained a hard-white substance that he recognized as crack cocaine.
- [13] The Officers' earlier suspicion that they had interrupted a dial-a-dope drug transaction was then confirmed and they ordered the Explorer to stop. Ms. Aeichele complied, and Ms. Aeichele and Mr. Knauff were arrested for possession of a controlled substance. They were asked to exit the Explorer. As they did so, they denied having any drugs. As Ms. Aeichele exited the driver's side door, Constable Jackson observed more "dime bags", a loose \$20 bill and a loose \$5 bill on the driver's side door sill between the driver's seat and the door. Ms. Aeichele was formally arrested and Charter warned at 4:04 p.m.
- [14] Meanwhile on the passenger side, Constable Burton noted that Mr. Knauff appeared somewhat agitated, which prompted Constable Burton to search him. Constable Burton found a large baggie containing four smaller baggies of a white substance in Mr. Knauff's right-hand pant pocket. The subsequent analysis of the contents disclosed that it was cocaine weighing .95 grams, .98 grams, .91 grams, and .96 grams in the four smaller baggies. Mr. Knauff was formally arrested and Charter warned at 4:06 p.m.
- [15] A search of the Explorer disclosed illicit drugs and drug paraphernalia all consistent with a dial-a-dope operation, including the Drugs, money, a digital scale, empty dime bags matching the dime bags seen on the pavement underneath where the Explorer had been parked, two cellphones, credit cards, and identification belonging to third parties located in a large brown purse ("Purse"), and a small unlocked safe disguised as a dictionary ("Dictionary Safe"), located in the console between the Explorer's front seats. The Dictionary Safe contained various quantities of what was later determined to be methamphetamine, solid-block cocaine, powdered cocaine, a mixture of cocaine and benzocaine, and a fentanyl/caffeine mixture. The Dictionary Safe also contained a spoon, nail, small measuring cup,

paper funnel, and approximately 20 empty yellow baggies identical to the dime baggie found underneath the Explorer and on the driver's door sill. The Purse contained a digital scale, a Visa credit card, a Petro-Canada gas card, and a B.C. Services card in the names of third parties, small yellow baggies, a pipe typically used to smoke methamphetamine, two walkie-talkies and, according to the Officers, a Guess wallet containing Ms. Aeichele's driver's licence and cash in denominations of \$5, \$10, and \$20.

The Crown's case

- [16] In addition to the Officers' testimony, the Crown called Constable Daniel Minkley, who was qualified as an expert in the area of packaging and concealment of illicit drugs for street-level sale, the pricing of street-level drugs generally, and in particular of fentanyl, methamphetamine, and cocaine, methods of sale, street-level sale, and purchase habits, drug jargon and slang, and how dial-a-dope operations typically work.
- [17] He stated that in a typical dial-a-dope operation, the buyer contacts a known trafficker by text or cellphone, ordering the type and quantity of drug he or she seeks to buy. The buyer and seller arrange a time and location to meet and the price. The trafficker, usually in a vehicle, arrives at the set location at the set time, a hand-to-hand exchange of cash and drugs takes place, and they depart. The trafficker usually has the drugs prepackaged, allowing the exchange to be very brief, usually under one minute. A more sophisticated dial-a-dope operation will involve two persons, one driving the vehicle and the passenger who receives calls from buyers and ensures drugs are prepackaged in the correct quantity and type, so the transaction can take place quickly. Dial-a-dope operators usually stock the quantity and type of drugs expected to be sold in one outing, returning to their main supply to restock as required. It is not unusual for a buyer to have to wait for one to two hours for a dealer to arrive with his order because the dealer is busy selling drugs elsewhere.
- [18] Dial-a-dope operations involving pairs of dealers have increased over the last 10 years because cellphone legislation now prohibits the use of cellphones while driving. In a typical dial-a-dope operation it is not unusual for the dealer to receive 20 to 30 calls per hour, so it is difficult for one person to drive and take calls at the same time. Doing so would increase the risk of being stopped by the police. Also, while the driver is operating the vehicle, the passenger is handling and packaging the drugs for the next sale. Having two persons involved in the operation also increases the ability to spot police surveillance and adds an extra level of security in case of being robbed of drugs and cash.
- [19] Once the dealer arrives, the transaction is very, very brief. It is common for the buyer to go to the car door and the transaction take place through the window. It is also common for a buyer to get in the dealer's vehicle and the vehicle drives a short distance and the transaction takes place within the vehicle. The vehicle then stops, the buyer gets out with their drugs, and the dealer departs to the next location for the next transaction.

- [20] It is also common for street-level illicit drug sales to involve what are known as "dime bags". The dime bag that was located under where the Explorer was parked contained .63 grams, which would typically be held out and sold as a half a gram quantity selling for between \$60 and \$80. This baggie was yellow in colour with spider markings on it. This and other similar baggies were referred to at trial as "spider baggies".
- [21] In sum, Constable Minkley's evidence was that the existence and packaging of the Drugs found in the Explorer, the Dictionary Safe, the spider baggies on top of the bulk drugs, the packaging of the drugs found in Mr. Knauff's pocket, the presence of a digital scale, especially in conjunction with the bulk quantities of drugs found in the Dictionary Safe, the large quantity of empty small spider baggies, spoon, nail, small measuring cups, folded paper "funnel" in the bottom of the safe, are all consistent with an illicit dial-a-dope drug operation.
- [22] No fingerprint analysis was undertaken of the Visa credit card or B.C. Services card found in the Purse, nor of the scale or spider baggies, including the one found underneath the Explorer. The only item sent for fingerprint identification was the Dictionary Safe. There is no evidence of what the results, if any, were.
- [23] Samples of the Drugs were sent to Health Canada for analysis. The certificates of analysis confirmed that the Drugs were methamphetamine, a mixture of cocaine and benzocaine, solid block cocaine, and a mixture of fentanyl and caffeine in bags of varying sizes. The certificates were admitted into evidence without debate. The Drugs set out in Counts 1, 2, and 3 have been admitted.

The Defence evidence

- [24] Both accused called evidence.

Mr. Daniel Burgess

- [25] The first defence witness was Mr. Daniel Burgess, a 36-year-old self-admitted drug addict and trafficker for about 22 years, with a criminal record. He engages in property theft and other criminal activities to feed his drug habit. He started using cocaine at the age of 14, then crystal methamphetamine, and then heroin. At the height of his use, he testified that he consumed up to seven grams of methamphetamine, 3.5 grams of heroin and cocaine daily when he had the money. He has known the accused Ms. Aeichele for about four years, having dated her in the past. They are now good friends. He has also known Mr. Knauff for about three years.
- [26] He stated that it is not unusual for him to buy illicit drugs for personal use in bulk, if he has the money, because the cost per gram is cheaper. He added that he could sell some of the bulk drugs and make money.

- [27] He described his "job" as stealing, committing property crimes, and selling drugs to support his addiction. He stated that he does not use a scale when consuming drugs for personal use.
- [28] The purpose of Mr. Burgess's evidence is unknown. It was not discussed or referred to during submissions.

Ms. Cheryl Aeichele

- [29] Ms. Aeichele testified. She is 41 years old and resides in Vernon. She, too, has a drug-related criminal record. Her evidence was that on September 20, 2017, she borrowed her friend Courtney Mercier's Explorer. She planned to drive to Kelowna to visit her daughter and grandchild. First, she planned to run some errands in Penticton, pick up Mr. Knauff whom she had previously arranged to meet at the TD Bank, and drop him off at his home. She stated she has known Ms. Mercier for four years and that she had borrowed her Explorer a number of times in the past. She stated that she dropped off another friend, drove to the TD Bank where she picked up Mr. Knauff, and then drove to the Penticton Walmart where she intended to pick up tampons for her daughter. She explained entering the Walmart parking lot from the south, driving across the front entrance of the store and around to the north side and parking at the far west side. She said the parking lot in front of the Walmart was quite busy and there were no parking spaces available there. As soon as she parked (there were no other vehicles around her), Mr. Rai and Mr. Laforme appeared essentially out of nowhere. She said she knew Mr. Rai from attending Grade 9 in Vernon in 1993. She had never seen Mr. Laforme before. Ms. Aeichele stated that the two of them simply came up to the Explorer to say hi. Within 20 seconds of her arrival, the Officers were at the car.
- [30] She confirmed seeing the Purse on the floor of the Explorer when she picked it up from Ms. Mercier earlier. She denied that it was hers. She described it as an "ugly brown purse" that she assumed belonged to either Ms. Mercier or one of her friends. She denied that her Guess wallet was inside the Purse, as the Officers suggest, insisting instead that it was between her right hip and the console. She testified that when she borrowed the Explorer and got in, all she brought with her was the Guess wallet. The Purse was already laying on the front floor between the driver's and passenger's seats.
- [31] She denies knowing that the Drugs were in the Explorer and denies having any knowledge of a dial-a-dope operation or being involved in one. She denies looking in the centre console and of having any knowledge of the Dictionary Safe or the Drugs inside. She stated that if she had known that the Drugs were in the console, she probably would have just left them there and done nothing because she did not feel it appropriate to "invade" Ms. Mercier's belongings.

Mr. Elkena Michael Knauff

- [32] Mr. Knauff also testified. He is 34 years old. His evidence was that at the time of the alleged offences, he was living with his mother at 725 Armstrong Drive, Penticton, and was working for a roofing company. He was on probation at the time of his arrest on September 20, 2017.
- [33] At 7:00 a.m. that morning, his boss picked him up from his mother's home and took him to work at a building site on Front Street in Penticton. He had \$300 cash with him at the time. He worked until 3:00 p.m.
- [34] He stated he needed to pay his mother \$500 towards a long-distance telephone bill he had incurred while he was incarcerated and asked his boss for an advance of \$200, which he received. He stated that afterward, he walked to the TD Bank in order to cash the \$200 cheque. On leaving the bank, he says he happened to see Ms. Aeichele's Explorer across the street and asked her for a ride home. He stated that she agreed to drive him but said that she first needed to pick up some items for her daughter at Walmart. He said it was not a prearranged meeting.
- [35] Another fellow was getting out of the Explorer as he got in. Ms. Aeichele then drove to Walmart, taking a circuitous route. She entered the Walmart parking lot by way of Green Avenue on the south, crossing in front of the main entrances and around to the north side of the building. She chose to park in an area near the northwest corner of the building. He stated that the main parking area in front of the Walmart was busy at the time. He could not explain why Ms. Aeichele did not park in empty parking spaces nearer to Walmart's entrance.
- [36] He testified that once parked, two strange men walked up to the Explorer, one coming to the driver's side, one to his side. He said his window was already down and he spoke briefly to the man on the side, although it was not much of a conversation. Very shortly thereafter, the man at the driver's door said, "Oh shit, police." The man standing at the passenger window immediately dropped a baggie of something into his lap. He did not know what it was, but he was scared because he was on probation and the police were there. His reaction was to put the baggie into his pants' pocket in order to hide it, thinking that he would dispose of it later.
- [37] There was then a conversation with the Officers. The two strange men left the scene and the Officers said he and Ms. Aeichele could leave as well. Ms. Aeichele was in the process of reversing out of the parking space when she was told to stop. The Officers said that both Ms. Aeichele and he were under arrest. He was searched and the baggie that he had put in his pocket was discovered and he was arrested.
- [38] He denies having any drugs with him that day. He denies seeing any drugs in the Explorer. He denies looking in the glove box or centre console, because he considered it would be rude to do so. He denies that he was at the Walmart that day to traffic illicit drugs. He explains the baggie of drugs found in his pants pocket as an innocent possession.

Issues

[39] The issues, put simply, are:

- a) has the Crown proven beyond a reasonable doubt that either Ms. Aeichele, Mr. Knauff, or both were in possession of the Drugs on September 20, 2017, when they were arrested; and
- b) if so, whether that possession was for the purpose of trafficking.

Possession and trafficking

Possession

[40] Dealing first with possession.

[41] To ground a conviction against each accused, the Crown must prove beyond a reasonable doubt that they each had knowledge and control of the Drugs: *R. v. Beaver*, [1957] S.C.R. 531; *R. v. Terrence*, [1982] 1 S.C.R. 357.

[42] Section 4(3) of the Code defines "possession" to be:

(3) For the purposes of this Act,

- (a) a person has anything in 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 in 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 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.

[43] Possession is established where an accused exercises physical control over a prohibited object with full knowledge of its character, however brief the physical contact may be, and where there is some evidence to show the accused took custody of the object willingly with intent to deal with it in some prohibited manner: *R. v. York*, 2005 BCCA 74.

[44] Where the accused has knowledge of the character of the item, knowingly puts or keeps the item in a particular place, and intends to have the item in a place for his or her own use or benefit or that of another person, possession has been made out: *R. v. Morelli*, 2010 SCC 8.

[45] An item can also be held in common possession. Section 21(2) of the Code reads:

- (2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

- [46] Therefore, if the Crown proves that one of Ms. Aeichele or Mr. Knauff was in possession of the Drugs, the other will be deemed also to be in possession if the Crown proves a common intention to carry out an unlawful purpose, namely possession of the Drugs for a dial-a-dope operation within the meaning of that section: *R. v. Zanini*, [1967] S.C.R. 715.

Trafficking

- [47] Section 1 of the Controlled Drugs and Substances Act defines "trafficking" to include offering for sale, exposing for sale, or having in possession for sale.

Discussion

- [48] Both accused opted to testify and by doing so put their credibility in issue.
- [49] If I believe Ms. Aeichele's evidence, I must acquit her of the Charges. If I do not believe her but I am left with a reasonable doubt by her evidence, I must acquit her of the Charges. Even if I am not left in doubt by her evidence, I must still ask myself whether, on the basis of the evidence I do accept, I am convinced beyond a reasonable doubt of her guilt: *R. v. W.(D.)*, [1991] 1 S.C.R. 742.
- [50] The same process applies to Mr. Knauff.
- [51] The principles of law are clear. I must not convict Ms. Aeichele or Mr. Knauff of the Charges based on a mere suspicion that they were individually or jointly in possession of the Drugs or possessed the Drugs for the purpose of trafficking, or whether they have provided a rational alternative explanation for the Drugs being in the Explorer, including between the driver's door and driver's seat, in the Purse, in the Dictionary Safe hidden in the centre console, and on Mr. Knauff's person.
- [52] The paramount question is whether, on the whole of the evidence, I am left with a reasonable doubt about their guilt: *R. v. C.L.Y.*, 2008 SCC 2 at para. 6.

Ms. Aeichele

- [53] Ms. Aeichele says that she borrowed the Explorer to pick up and drop off another friend, pick up Mr. Knauff at the TD Bank, pick up some supplies for her daughter at the Penticton Walmart at the south end of Penticton, drop Mr. Knauff off somewhere between the TD Bank and the Walmart, and then travel to Kelowna to visit her daughter and grandson.
- [54] As to whether I believe Ms. Aeichele, I must ask whether her evidence makes rational sense. As was stated by the Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA) at 357:
- ... the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

- [55] Ms. Aeichele denies all knowledge of the Drugs being in the Explorer, denies that the Purse was hers, and denies seeing money and a dime bag on the door jamb of her seat. She maintained the Purse must have belonged to Ms. Mercier or one of her friends. She also denied having any knowledge of the Dictionary Safe or its contents. She insists that the Guess wallet was not in the Purse as Constable Burton suggests, but it was on or near her lap or tucked between her hip and the Explorer console. This suggestion was not put to either Constable Jackson or Burton.
- [56] For me to accept Ms. Aeichele's evidence and explanation, it must not only be rational, but it must be believable.
- [57] I find that neither is the case. Ms. Aeichele's evidence is not in harmony with the preponderance of probabilities that any practical and informed person would accept as reasonable. Her suggestion that the Purse was not hers and that she did not see the dime bag or money on the driver's door jamb, and that she had no knowledge of the Dictionary Safe does not ring true and it is not believable. Nor is her evidence of how Mr. Knauff was her passenger in harmony with Mr. Knauff's evidence. She stated that her plan that day was to pick up Mr. Knauff from the TD Bank and then drive him home after stopping at Walmart, whereas Mr. Knauff's evidence was that his meeting up with Ms. Aeichele after he exited the TD Bank was pure happenstance.
- [58] Having heard and watched her testify, I did not believe much of what she said, either in direct or in cross, especially during cross-examination. I observed her to fidget in the stand and appear quite nervous. She was anxious to talk. She stammered and squirmed in the witness box and added superfluous commentary. She was argumentative and was unnecessarily interruptive.
- [59] I conclude most of her evidence was made up. It was not rational or believable. She was not telling the truth when she said that the Purse was not hers and that she had no knowledge of the Dictionary Safe and Drugs in the Explorer. I did not believe her when she suggested that she took the Explorer with the Purse that did not belong to her that was on the floor between the front seats, or when she said that the Guess wallet was not in the Purse, or when she said she was unaware of the Dictionary Safe in the console. I also did not believe her when she denied seeing or knowing about the spider dime baggies and loose cash on the driver's door jamb.
- [60] Her explanation for taking the "long-way-around" route from picking up the Explorer to picking up Mr. Knauff and to the Walmart was because she is "not a normal person", and her reasoning for parking at a somewhat isolated northwest end of the parking lot made no sense.
- [61] When asked whether, following her arrest, she confronted Ms. Mercier about the Drugs, she responded, "Why would I? I probably did. They are not hers obviously."
- [62] I reject her evidence as untrue.

Mr. Knauff

- [63] Respecting Mr. Knauff, I likewise did not believe much of his evidence. It too was pure fancy. I watched him closely while he testified and noted him to fidget, constantly move back and forth in his seat, placed his hands on his face, scratching his cheek and hair, and appeared nervous. He also talked extremely quickly (as Mr. Patterson put it, "like a runaway train") to the point of having to be asked to slow down a few times. While I appreciate that many witnesses are nervous testifying in court, Mr. Knauff did not exude any confidence that he was telling the truth. He had difficulty answering questions that he did not seem to expect. For example, when asked to explain why Ms. Aeichele would not have parked closer to the entrance to Walmart when she told him she was making a quick stop and parked unnecessarily far away in a more private area, his response was that perhaps it was because the Explorer would be easier to find. When asked why a complete stranger would walk up to the passenger door when his companion, who he understood knew Ms. Aeichele from Grade 9 some 20 years earlier, was on the driver side, he stated he had no idea. He also could not explain why this complete stranger would drop a baggie containing four smaller baggies of a white substance into his lap. Neither could he explain how the same dime bag packaging found underneath the Explorer was found in the Dictionary Safe and between the driver's door and the driver's seat.
- [64] In redirect, in an attempt to explain why Ms. Aeichele may have parked the Explorer where she did, he suggested there was an entrance to Walmart on the north side near where Ms. Aeichele parked. He later recanted that evidence when confronted by Crown.
- [65] Mr. Patterson asserts that the baggie of drugs found in Mr. Knauff's pants pocket is explained by Mr. Laforme dumping it in his lap when the Officers arrived, Mr. Knauff panicking and quickly stuffing the bag in his pocket in case the Officers did not believe him. He says Mr. Knauff intended on disposing of the baggie afterwards. He argues that this is a case of "innocent possession", as that phrase is used in the line of authorities referred to in various cases such as *R. v. Chalk*, 2007 ONCA 815 at para. 23 to 25.
- [66] For Mr. Knauff to have the benefit of these cases, I first have to accept his evidence. I do not. The totality of his evidence was utterly implausible, irrational, and defied credulity. Simply put, it was made up and it is totally rejected.
- [67] There is a difference between a witness who lies on the stand and one who raises a reasonable doubt. Having rejected both accused's evidence as being made up, it cannot form the basis of a reasonable doubt: *R. v. J.M.H.*, 2012 PECA 6 at paras. 34 to 38; *R. v. Williams*, 2007 BCPC 412 at paras. 22 to 24.
- [68] Accordingly, the following cases upon which both accused rely are distinguishable on their facts and do not apply: *R. v. Iturriaga*, [1993] B.C.J. No. 2901 (B.C.C.A.); *R. v. Tsang*, 2014 BCSC 1055; *R. v. Chualna*, 2003 BCCA 650; *R. v. Harper*, 2019 BCSC 1460; *R. v. Bhatti*, 2018 BCSC 1657; *R. v. Hardy*, 2013 BCPC 66; *R. v. Hayer*, 2017 BCPC 145.

- [69] Even though I do not believe either Ms. Aeichele or Mr. Knauff and have rejected their evidence, I must still ask myself whether the Crown has proven the charges against them beyond a reasonable doubt.
- [70] The Crown's case is circumstantial.
- [71] Circumstantial evidence must be evaluated cumulatively. It is not to be evaluated piecemeal. I must apply logic, common sense, and experience to the evidence and determine whether, on the whole of the evidence, Crown has proven possession and control beyond a reasonable doubt: *R. v. Ukwuaba*, 2015 ONSC 2953 at paras. 99 and 100.
- [72] A reasonable doubt is a doubt based on "reason and common sense". It is not "imaginary or frivolous"; it "does not involve proof to an absolute certainty"; and it is "logically connected to the evidence or absence of evidence". While a reasonable doubt or theory alternative to guilt is not rendered speculative because of a lack of evidence and a gap in the evidence may result in inferences other than guilt, those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.
- [73] The question is whether the circumstantial evidence, viewed logically in light of human experience, is reasonably capable of supporting an inference other than the accused's guilt: *R. v. Villaroman*, 2016 SCC 33 at paras. 28, 36 to 38.
- [74] The Crown relies on the evidence of the Officers, which I accept without reservation, as well as the direct evidence on type and volume of Drugs that were located in the Explorer and on Mr. Knauff's person following a search. Additionally, the Crown relies on other indicia of drug trafficking found in various parts of the Explorer, including empty baggies, drug paraphernalia, the contents of the Dictionary Safe, various denominations of cash found in Mr. Knauff's wallet and in the Explorer, a digital scale with white residue found in the Purse, all of which the Crown says was consistent with street-level drug trafficking.
- [75] Additionally, the Crown relies on Constable Minkley's expert evidence which is wholly consistent with the direct evidence before me. I accepted him as qualified to give evidence on, inter alia, the use, method of distribution, method of concealing, sale price, and packaging of illicit drugs.
- [76] Constable Minkley has over 10 years of experience in drug investigations, trafficking, and on how illicit drug trade works at the street level, how a dial-a-dope business operates, the packaging of drugs for street-level sales, and the quantities and pricing of illicit drugs. He testified that since the cellphone driving legislation was introduced a few years ago, there has been an increase in two-person dial-a-dope operations which is now quite typical.

- [77] Despite able cross-examination, I am satisfied that Constable Minkley's opinion carries weight and I accept it without reservation. Notwithstanding the lack of some indicia of a drug trafficking operation, such as score sheets, many of the elements of a dial-a-dope operation as described by Constable Minkley are present in this case and were unfolding before the Officers' eyes.
- [78] Even without Constable Minkley's testimony, the evidence against both accused is overwhelming. I am satisfied beyond a reasonable doubt that Ms. Aeichele and Mr. Knauff were jointly in possession of the Drugs, as that term is legally defined, for the purpose of trafficking. There is no doubt that they were jointly engaged in a classic dial-a-dope operation that was interrupted by the Officers when Ms. Aeichele and Mr. Knauff were in the midst of selling illicit drugs to Messrs. Rai and Laforme. There is no other rational or plausible explanation, and to come to any other conclusion on the evidence would defy common sense, logic, and reality.

Decision

[79] Accordingly, Ms. Aeichele and Mr. Knauff, I find you both guilty of Counts 1, 2, and 3 of the indictment.

[80] Those are my reasons.

"G.P. Weatherill J."

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