

CANADA / JUDGMENT

R. v. Alexander

2025 BCSC 1910

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1910 R. v. Alexander

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Alexander,

2025 BCSC 1910

Date: 20250925

Docket: 90508-2

Registry: Nanaimo

Rex

v.

Peter Anthony Alexander

Before: The Honourable Justice Layton

Oral Reasons for Judgment

Counsel for the Crown:

C.J. Gibson

Counsel for the Accused:

T.L. Spettigue

Place and Date of Trial:

Nanaimo, B.C.

August 21-22

& 25-28, 2025

Place and Date of Judgment:

Nanaimo, B.C.

September 25, 2025

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Introduction

- [1] The Indictment charges Mr. Alexander with four counts of possessing a controlled substance for the purpose of trafficking, on August 2, 2022 in Nanaimo, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. The drugs in question are fentanyl (count 1), methamphetamine (count 2), cocaine (count 3) and 3, 4-methylenedioxyamphetamine ("MDA") (count 4).
- [2] All of the charges arise from evidence located by police during a warranted search of a residence at 52 Athletic St., Nanaimo.
- [3] The Crown called five Nanaimo RCMP officers as witnesses at trial. Four of them were involved in the surveillance or search of 52 Athletic St.: Cst. Ty Skrine, Cpl. Todd Creed, Cst. Fabrice Cambray and Sgt. Robert Christenson. Viewed as a whole, their testimony was to the effect that substantial amounts of the drugs named in the Indictment were located at 52 Athletic St., primarily in the living room, and that Mr. Alexander was also found inside the residence, and when searched incident to arrest was found to possess \$1,820 in cash.
- [4] The fifth Crown witness, Cpl. Mihai Ilioi, was qualified as an expert to give opinion evidence regarding the methods of packaging and concealment, trafficking, prices, usage, and drug jargon and slang, for fentanyl, methamphetamine, cocaine and MDA for the time period from August 2022 to the present.
- [5] The Crown also filed admissions of fact made under s. 655 of the Criminal Code, R.S.C. 1985, c. C-46. These admissions cover the nature of the drugs located by the police at 52 Athletic St., fingerprint and digital evidence derived from two notebooks and three cell phones found in the residence, and the evidence of several police officers regarding their observations during the search and in seizing items when conducting searches incident to two arrests.
- [6] The contents of one of these cell phones indicate that it was used by Mr. Alexander, and include indicia of drug trafficking at 52 Athletic St. This phone was found on a coffee table in the living room, near a closed, skull-shaped container, inside of which was the bulk of the drugs located by police.
- [7] Mr. Alexander testified in his own defence. He essentially admitted to trafficking drugs from 52 Athletic St. for several months starting in the spring of 2022. But Mr. Alexander testified that, about two weeks before the police search on August 2, he stopped selling drugs and thereafter conducted no drug-related activity, aside from some debt collection and maintaining his heavy daily drug habit. He denied knowing anything about the drugs in the skull-shaped container.
- [8] At the close of evidence, the only disputed issue was whether the Crown had proven beyond a reasonable doubt that Mr. Alexander was in possession of the drugs in the living room. The defence conceded that whoever possessed those drugs did so for the purpose of trafficking.

- [9] In determining whether the Crown has proved the four counts beyond a reasonable doubt, I will begin by reviewing the evidence elicited at trial. I will then set out the applicable legal principles. Finally, I will apply those legal principles to the evidence to determine whether the Crown has established Mr. Alexander's guilt on the criminal standard.

Crown Case

- [10] At about 8:30 p.m. on August 1, 2022, the Nanaimo RCMP received a complaint of forcible confinement, aggravated assault and pointing a firearm, which led officers to start an investigation with a view to obtaining a warrant to search 52 Athletic St.

Cst. Skrine Reviews Security Camera Footage

- [11] As part of this investigation, at around 4:30 p.m. on August 2, 2022, Cst. Skrine reviewed recorded footage from a security camera at a residence next door to 52 Athletic St. The footage captured one side of the end of the driveway at 52 Athletic St. and part of the street beyond, but did not show the front door to the house or the rear door that led to an alley in the back.
- [12] The purpose of Cst. Skrine's review was to determine whether the complainant in the forcible confinement investigation, or his girlfriend, could be seen entering or exiting 52 Athletic St. Cst. Skrine used the fast-forward function to review footage from 12:00 a.m. to 8:04 p.m. on August 1, 2022, because that period of time was most relevant to the investigation. Cst. Skrine did not see either the complainant or his girlfriend on the footage.
- [13] Cst. Skrine took several screenshots of the footage using his iPhone and made accompanying notes. As Cst. Skrine testified, and as is reflected in the screenshots, the quality of the footage was poor. About all that can be said from this evidence is that during the night-time hours quite a few people appeared to come and go from 52 Athletic St., sometimes for short periods of time.

Real-Time Surveillance

- [14] After reviewing the footage, Cst. Skrine conducted surveillance of the driveway of 52 Athletic St., from inside the same neighbouring residence, while waiting for the Emergency Response Team ("ERT") to execute the search warrant. He had roughly the same view as was captured by the security camera, and so could not see either the front or back entrances to the residence.
- [15] Cst. Skrine took photos of the driveway of 52 Athletic St. while conducting this surveillance. His first photo was of a man standing at the back of a white truck in the driveway at about 6:14 p.m. This man met a woman who arrived from the direction of the street about fifteen minutes later. Based on the photos, she does not appear to be carrying anything.

- [16] At 6:32 p.m. Cst. Skrine saw a second man, arriving from the direction of the street, who he identified as Reggie Butler. Cst. Skrine's photos show that Mr. Butler was shirtless and did not appear to be carrying anything. He is seen in several photos standing with the first man near the truck. The final photo showing the first man and Mr. Butler was taken at 6:36 p.m.
- [17] At 6:50 p.m., Cst. Skrine observed another woman arrive from the direction of the street. His photos show her carrying a take-out tray with some large drink containers.
- [18] Cst. Skrine identified the first man he saw, at 6:14 p.m., as Mr. Alexander, whose photo he had seen before when conducting surveillance on other matters. But the Crown indicated that Cst. Skrine's recognition evidence was not being led to identify Mr. Alexander as the first man in the photos. I will therefore not use his recognition evidence for this purpose.
- [19] However, based on my review of the photos, the first man's physique and clothing are inconsistent with that of the man named "Peter", who as I will describe shortly was inside 52 Athletic St. with Messrs. Alexander and Butler and two women when police executed the search warrant. Based on Cst. Skrine's testimony, I further find that the first man did not leave the property at 52 Athletic St. between 6:36 p.m. and when the police executed the search warrant. I therefore find that the man who Cst. Skrine saw starting at 6:14 p.m. was Mr. Alexander.

ERT Executes Search Warrant

- [20] ERT members executed the search warrant not long after 7:00 p.m. Cpl. Creed and two other ERT members stood at the front door. One of them announced "police, search warrant", and tried to open door. The door was locked, so he used a ram to breach it and then stepped back. About three or four seconds after the door was breached, Cpl. Creed looked inside the residence.
- [21] Cpl. Creed first noticed the living room to his right, but could also see the kitchen to the left and the hallway extending beyond the living room directly in front of him. Two people were sitting on a brown couch against the far wall in the living room: a woman he did not recognize and a shirtless man he knew to be Reggie Butler. In a hanging chair next to the couch was a man who Cpl. Creed did not recognize, but who Mr. Alexander testified was named Peter.
- [22] Cpl. Creed called out "police, search warrant", then saw a man walk from what I find was probably the bathroom, on the left side of the hallway, into the first bedroom on the right side of the hallway, which as I will explain contained a bunkbed. Cpl. Creed yelled at the man to come out and show his hands. The man did so right away, at which point Cpl. Creed recognized him as Mr. Alexander.

- [23] Cpl. Creed told Mr. Alexander that he was under arrest for unlawful confinement, and added that everyone else was detained for that offence. Cpl. Creed testified that Mr. Alexander started walking towards the front door, where Cpl. Creed was standing, but on the way reached down and grabbed a wad of cash from the coffee table in front of an L-shaped couch. Cpl. Creed testified that Mr. Alexander then continued towards him, and that he turned Mr. Alexander over to Sgt. Christenson just outside the front door.
- [24] In cross-examination, Cpl. Creed disagreed with the suggestion that Mr. Alexander did not take anything from the coffee table, but instead had reached down to put on his shoes, which were near the door, at which point Cpl. Creed had told him that he did not need his shoes. Cpl. Creed did not recall which hand Mr. Alexander used to grab the cash, but testified that he still had it in his hand on leaving the house.
- [25] Cpl. Creed next directed a woman who emerged from the same bedroom as had Mr. Alexander out of the residence to a waiting police officer. She turned out to be Amber Blanchard. Cpl. Creed described a similar process for Mr. Butler.
- [26] Cpl. Creed testified that Peter then got out of the swinging chair, put his hand in his pocket, and lay down on the floor between the ottoman in front of the brown couch and the coffee table, and began to wriggle around. Peter did not take anything from where he was lying down or remove anything from his pocket. Cpl. Creed told Peter to come out of the house, and he did so. Cpl. Creed testified that Peter appeared to be "really high" and had a very bad limp. Another ERT member, Cst. Mousseau, who was standing just off the door threshold and behind Cpl. Creed, similarly described Peter as being "high" and having a "broken ankle".
- [27] Finally, Cpl. Creed directed the woman sitting on the couch, who was named "Jenna", to exit the house. She did so and was turned over to an officer.

Searches Incident to Arrest

- [28] The evidence of Cst. Mousseau, filed by written admission, is that he saw Mr. Alexander emerge from the front door of 52 Athletic St. with an object in his hand. Cst. Mousseau grabbed that object, to discover that it was a wallet with cash and a bank card inside. Cst. Mousseau put the wallet into the back pocket of Mr. Alexander's shorts before handing him off to Sgt. Christenson.
- [29] Sgt. Christenson was waiting on the front step when Mr. Alexander exited the residence. His view into the residence was very limited because he was standing behind Cpl. Creed and another ERT officer. Sgt. Christenson took custody of Mr. Alexander, handcuffed him from behind and then brought him over to Cst. Cambray. Sgt. Christenson did not notice anything in Mr. Alexander's hands.

- [30] Cst. Cambray arrested Mr. Alexander for forcible confinement, and then searched him incident to arrest, including all of his pockets. Cst. Cambray located and seized a wallet, bank cards, an identification card, a watch, a bracelet, and a "wad of cash". He did not recall where any of these items were located, or whether the cash was in the wallet. The cash totalled \$1,820 in the following denominations: 6 X \$100, 41 X \$20, 39 X \$10, and 2 X \$5.

General Layout of the Residence

- [31] After calling everyone out, the ERT members searched 52 Athletic St. to ensure that no one else was present. An RCMP Forensic Identification Service member then took photos of the interior of the residence.
- [32] The photos show that 52 Athletic St. is a single-story bungalow, with three bedrooms, one bathroom, a kitchen and a living room.
- [33] The front entrance of the residence leads directly into the living room, most of which is to the right. To the immediate left is a large opening to the kitchen. Straight ahead is a hallway leading from the living room to the back of the house. Viewed from the front entrance, there are three doors on the left side of the hallway.
- [34] The first door on the left side of the hallway is another, smaller entrance to the kitchen. The second door on the left side of the hallway leads into the bathroom. The bathroom has another door, not visible when looking down the hallway, which leads to a bedroom at the back of the house ("Back Bedroom").
- [35] The Back Bedroom has two other doors. One is a sliding patio door that leads onto a deck, and from there into the backyard. The other is a door that, at the time of the police search, was closed. A mass of clothes hanging from the back of this door, and a bin and other materials in front of it, lead me to infer that this door was not used by the occupants of the house. If opened, this door would access the end of the hallway farthest from the living room. This unused door is the third door on the left side of the hallway.
- [36] Viewed from the entrance, there are two doors on the right side of the hallway. The first leads to a bedroom containing a bunkbed ("Bunkbed Bedroom").
- [37] A second door on the right side of the hallway, almost at its very end, leads to a bedroom with a significant amount of clutter at the entrance, including a mattress on its side ("Mattress Bedroom"). Immediately across the hallway from the door to the Mattress Bedroom is the door I have already described that leads to the Back Bedroom.
- [38] I will next describe in more detail each room in 52 Athletic St., including any items of note found, starting from the front of the house and moving towards the back.

Living Room

- [39] The living room was somewhat cluttered, with items on many of the exposed surfaces. Nonetheless, photos suggest that it was used as a living area, as demonstrated by items such as art on the wall, a laundry basket with clothes draped over it, numerous plants, an acoustic guitar, and food and drink containers.
- [40] One of the main pieces of furniture was an "L" shaped couch, with a coffee table in front of it. The longer section of this couch was against the wall just to the right of the front door and thus closest to the street. On the opposite side of the room, facing the L-shaped couch, was a brown couch with an ottoman in front of it. In the corner next to the brown couch was the hanging chair in which Peter had been sitting.
- [41] Police found a large number of relevant items from the living room, mostly from the vicinity of L-shaped couch and the coffee table in front of it.
- [42] The police seized a cell phone from the seating area on the L shaped couch, which was plugged into a charger. This phone was subsequently made the subject of a cellphone search. The parties agree, and so do I, that given its contents this phone belonged to Ms. Blanchard.
- [43] Inside a backpack on the L-shaped couch was a zip-lock bag holding 339 grams of white powder. Police seized the bag, which analysis determined was, "found to contain caffeine". Given the presence of this bag near large amounts of fentanyl, with which caffeine is often mixed, I find that it contained 339 grams of caffeine, and reject the defence suggestion that it might have contained some other substance, such as a "pre-workout powder", an ingredient of which was caffeine.
- [44] In a clear tote next to the backpack containing the caffeine was a page from a notebook. Based on some of its contents, and Cpl. Illo's testimony, I find that the page was used at least in part as a score sheet, a term that I will use in these reasons to describe a drug-related record regarding matters such as quantities sold or resupplied, amounts owed, customer names and/or how much a customer had purchased.
- [45] Also on the L-shaped couch, perhaps a few feet away from the clear tote, was a Puma bag, inside of which was a plastic bag containing 27.4 grams of fentanyl.
- [46] Near the edge of the coffee table closest to the L-shaped couch was a red, skull-shaped container with a zip up cover. The cover was in place but unzipped.
- [47] Numerous items were located inside this skull, including a \$100 bill, a \$20 bill, two loose plastic baggies containing drugs, a pelican-brand hard black case, and a cloth bag. The pelican case and cloth bag both contained bags that themselves held drugs

[48] The two loose plastic baggies inside the red skull contained: (a) 29.63 grams of fentanyl, bromazolam and caffeine; and (b) 1.31 grams of fentanyl, bromazolam and caffeine. Cpl. Ilioi explained that bromazolam is a benzodiazepine, often mixed with fentanyl and its analogues, which acts as a central nervous system depressant. Benzodiazepines such as bromazolam thus compound the effects of opioids like fentanyl.

[49] The pelican case inside the red skull contained five plastic baggies in which was located:

- a) 50.24 grams of fentanyl with a calculated base of 5.4%, bromazolam and caffeine;
- b) 58.93 grams of fentanyl with a calculated base of 5.1%, bromazolam and caffeine;
- c) 3.53 grams of fentanyl and caffeine;
- d) 1.2 grams of fentanyl, bromazolam and caffeine; and
- e) 14.32 grams of fentanyl, bromazolam and caffeine.

[50] The cloth bag found the red skull contained:

- a) a plastic baggie with no visible residue;
- b) a plastic baggie with residue insufficient in quantity to justify or permit sending a sample for analysis;
- c) a rolled-up plastic baggie containing the following items:
 - i. a plastic baggie containing a substance Cst. Skrine determined was of insufficient quantity to permit submitting a sample for analysis;
 - ii. a plastic baggie containing 0.62 grams of a substance Cst. Skrine believed to be a cannabis concentrate;
 - iii. a plastic baggie containing 0.55 grams of methamphetamine;
- d) a plastic baggie containing 28.15 grams of fentanyl with a calculated base of 5.9%, bromazolam and caffeine;
- e) a plastic baggie containing 20.80 grams of fentanyl, bromazolam and caffeine;
- f) a plastic baggie containing 28.45 grams of fentanyl, bromazolam and caffeine;
- g) a plastic baggie containing 19.74 grams of fentanyl, bromazolam and caffeine;
- h) a plastic baggie containing 0.99 grams of cocaine, fentanyl and caffeine;
- i) a plastic baggie containing 11.43 grams of MDA;
- j) a plastic baggie containing 8.10 grams of cocaine;
- k) a plastic baggie containing 0.49 grams of fentanyl and caffeine; and
- l) a plastic baggie containing 0.28 grams of cocaine and methamphetamine.

- [51] Also on the coffee table, perhaps a couple of inches from the red skull, was a plastic baggie containing 1.95 grams of methamphetamine.
- [52] About four inches to the right of this baggie, and thus about six inches from the red skull, was a cell phone that the parties agree belonged to Mr. Alexander, a conclusion that I accept based on the phone's contents and his trial testimony.
- [53] Reviewing a celebrite report regarding contents recovered from Mr. Alexander's phone, Cpl. Ilioi testified that it contained calendar entries, contacts, instant messages and photos indicative of use in trafficking fentanyl, methamphetamine and cocaine. The phone appears to have downloaded and used the Signal messaging application, which has many more privacy functions than do more mainstream products, leaving open the possibility that some Signal communications were not captured in the celebrite report.
- [54] About eight inches behind the red skull, and slightly further to the left, were homemade brass knuckles. Also on the coffee table, two or three inches from Mr. Alexander's phone, was a small weighing scale that Cst. Skrine determined was operational by turning it on. A few inches further to the right was a metal tray with white matter that Cst. Skrine testified looked like drug residue. A swab taken from the scale tested positive for fentanyl and caffeine. Cpl. Ilioi testified that drug traffickers use scales to weigh their product.
- [55] An inch or so above and to the right of Mr. Alexander's phone was a metal measuring cup with white residue on the inside. The residue was determined to be cocaine. Cpl. Ilioi explained that the appearance and presence of this cup was consistent with it having been used to produce a small batch or batches of crack cocaine.
- [56] A few inches from the measuring cup were four pipes of the type used to smoke methamphetamine, and beside them was a small torch that could be used as a heat source for this purpose.
- [57] Immediately to the left of the red skull was a one-page document relating to benefits payments issued to Danielle Bazowski by the British Columbia Ministry of Social Development and Poverty, which I find was probably issued in July 2022. As I will discuss, Mr. Alexander testified that Ms. Blanchard had a close friend named Danielle.
- [58] On a tray underneath the coffee table were various items including: (a) a box of unused zip-lock bags; (b) a scale with dead batteries, a swab taken from which tested positive for fentanyl; (c) steel wool, which Cpl. Ilioi indicated is sometimes used to help remove impurities when smoking cocaine; (d) a spoon on which was a white powder; and (e) covered partly by the spoon and a flashlight, a British Columbia identification card in the name of Brian Gordon Heavers. No other evidence connected Mr. Heavers to 52 Athletic St.

- [59] At the corner of the L-shaped couch closest to the front door, wedged behind the back cushions, was an extendable baton in a holster that could be clipped around a person's waist. Under a sitting cushion in the same area of this couch was a metal bar with the rubber handle. Wedged amidst some items next to the front door, near the L-shaped couch, was a wooden bat-like object, about 18 inches long, upon which was written "tuna bonker".
- [60] On the other side of the front door, in the larger of the two entrances to the kitchen, was a camouflage backpack on top of a money counter, both of which were in an uncovered bin along with other items. This backpack contained:
- a) a flare gun, although no flares suitable for firing from it were found in the house;
 - b) an imitation firearm (BB gun) containing a clip;
 - c) a butcher's cleaver;
 - d) what appeared to be a protective vest with a firearm holster attached, which Mr. Alexander testified was "knife" or "stab" proof;
 - e) 0.18 grams of fentanyl, methamphetamine and cocaine inside a small tied-off piece of plastic;
 - f) a zip-lock bag containing 8.5 orange tablets of dimenhydrinate and 6 blue tablets of varenicline or its salts; and
 - g) two spiral-bound notebooks.
- [61] I find that both of these notebooks belonged to Mr. Alexander and that he used them in part to record matters relating to his drug trafficking business. I make this finding based on: (a) writings that appear to have been exchanged between him and Ms. Blanchard; (b) the presence inside one of notebooks of a sheet with an array of six photos of Mr. Alexander and Ms. Blanchard; (c) Cpl. Ilioi's testimony that both books contained entries consistent with them being used as score sheets; (d) the presence of Mr. Alexander's fingerprints on pages inside both books, including on a page containing score sheet entries; (e) the books' presence in a bag that also contained weapons and drugs; and (f) Mr. Alexander's testimony that the books belonged to him.
- [62] Police seized a cell phone from the centre seat cushion on the brown couch, which was subsequently the subject of a cellphone search. The parties agree, and so do I, that given its contents this phone belonged to Mr. Butler.
- [63] On top of the ottoman in front of the brown couch was a pipe used for smoking methamphetamine. Also on the ottoman was a roll of aluminum foil, which Cpl. Ilioi indicated was often used to smoke fentanyl. Inside the ottoman, police found a magazine for a BB or pellet gun.

Kitchen

- [64] The kitchen had the usual appliances, counter area and cupboards, and a rack with stacked dishes. On a floor mat were bowls with food and water for a cat, which was itself depicted in that area in one of the photos.
- [65] The end of the kitchen leading into the larger entrance to the living room was packed with items, such as clothing, bags and bins. At the dividing line between the usable part of the kitchen and the cluttered storage area was a table, and on the edge facing the useable part was an electric hair trimmer. A hair trimmer manual and attachments also appear to have been found in the usable part of the kitchen.

Bunkbed Bedroom

- [66] The Bunkbed Bedroom was extremely cluttered with boxes, clothing and household items, to the point where there was little floor space not occupied with objects. Sgt. Christenson, who searched this room and thus had the best sense of its contents, testified that there was a mix of clothing in the room, both male and female, and also female makeup and jewelry. The top and bottom levels of the bunkbed were full of items. Given the state of this room, I find that no one used it as a bedroom.
- [67] One wall in this room had a fairly large opening inside of which was an operational home-made taser, which when activated created a loud noise and sparked a blue electrical arc between two nodes at one end.
- [68] Under some clothing in a laundry basket near the door was a metal imitation firearm (BB gun). In a bag in the room, police found a pistol magazine and a plastic pill bottle holding 9 mm ammunition, although no 9 mm firearm was found in the residence. Also located in the room was in box containing .22 calibre ammunition.
- [69] Inside a bag hanging by the door was a driver's license in the name of Amber Blanchard, with her address listed as 52 Athletic St. Also in this bag were homemade brass knuckles, similar to those located on the coffee table in the living room.

Mattress Bedroom

- [70] The entry to the Mattress Bedroom was so cluttered that I find it was not used for any purpose except storage. Nothing of relevance was located in this room.

Bathroom

- [71] The bathroom contained a washer and dryer. The placement of toiletries and laundry detergent suggest that someone was living in the house. This room also contained no items of relevance.

Back Bedroom

- [72] The Back Bedroom contained a bed, and although cluttered its appearance is consistent with being used as a bedroom. The clothing in the room appeared to be more female, and there were also female products such as small bottles of nail polish.
- [73] A fanny pack on the floor near the door to the bathroom contained, among other things, a plastic baggie holding 8.29 grams of methamphetamine, and another plastic baggie containing 1.58 grams of fentanyl and caffeine.
- [74] To the side of the bed, near its head area, police found a baseball bat with nails stuck in it, three "throwing" knives and a couple of wooden sticks similar to the "tuna bonker" located near the front door to the house.

Mr. Alexander's Testimony

- [75] In this section of my reasons, I will focus on Mr. Alexander's evidence in chief, but at times will include testimony on uncontested points that was elicited in cross-examination.
- [76] Mr. Alexander was 41 years old at the time of the trial.
- [77] He confirmed as accurate a printout of his criminal record as an adult, which includes just under 50 convictions from June 2003 until January 2024. In addition, he had recently been convicted, but not yet sentenced, on four counts of possession for the purpose of trafficking regarding drugs located in Port Alberni on February 3, 2022. I have considered Mr. Alexander's criminal record only to assess his credibility, and have not used it to engage in propensity reasoning: *R. v. Corbett*, 1988 CanLII 80 (SCC) at paras. 22-25, 30 and 36.
- [78] Mr. Alexander testified that, at the time the search warrant was executed on August 2, 2022, he had been in a romantic relationship with Amber Blanchard for about nine months, although he had known her for roughly two years. He had for many years been an almost daily user of drugs, in particular methamphetamine, to which he was addicted.
- [79] Mr. Alexander said that he had a room in a townhouse at 13 Hillcrest Avenue in Nanaimo, while Ms. Blanchard lived at 52 Athletic St. But they spent most nights together, and basically split their time between the two residences. He thus stayed overnight at 52 Athletic St. about three times each week, although he would at times be there for up to seven nights in a row. Ms. Blanchard slept in the Back Bedroom, and therefore so did he.
- [80] Mr. Alexander testified that a woman named Danielle also stayed at 52 Athletic St., on and off, in the Back Bedroom "I guess". He described Danielle as being "kind of in a relationship" with Ms. Blanchard, stating that the two women were "flirtatious", but adding that this did not cause any issues with his relationship with Ms. Blanchard. Mr. Alexander did not know Danielle's last name, but I find she was the "Danielle Bazowski" whose social benefits document was on the coffee table near the red skull.

- [81] Mr. Alexander stated that it was perhaps in October 2021 when he first visited 52 Athletic St., but he only began to hang out there in April 2022, in order to see Ms. Blanchard. He testified that the mess depicted in the police photographs reflected the general state of the residence whenever he visited. He also testified that he never saw anyone except Ms. Blanchard with the key to the residence.
- [82] Mr. Alexander said that drug use was pretty common at 52 Athletic St. when he was there. It was common for him to consume crystal meth on the couch using the pipes on the coffee table.
- [83] Mr. Alexander testified that he had known Reggie Butler for about two years at the time the search warrant was executed. He had known the other man in the house, Peter, for about six months, and had known the other woman in the house, Jenna, for about a year. He saw all of them quite frequently. Ms. Blanchard, Danielle, Mr. Butler and Peter used crystal meth pretty much every time he saw them, and he considered them to be addicted. He had also seen Jenna used drugs, but not necessarily every time they were together.
- [84] Mr. Alexander stated that his phone was the one found by police on the coffee table.
- [85] Mr. Alexander indicated that, prior to his arrest on these charges, he was receiving disability payments of \$1,545 per month, but that until late June or early July 2022 he also made money by selling drugs. He explained that, after paying between \$4,000 and \$6,000 a week to obtain product, his profit would be about \$1,000 in cash and perhaps another \$1,000 worth of drugs for his own use. In chief, he testified that people would come to 52 Athletic St. to buy drugs from him if he was there, and he could meet people at his own residence at 13 Hillcrest Ave. But he did not have any other main selling locations, and he did not drive around selling drugs.
- [86] Mr. Alexander said that around the beginning of July he decided he could no longer handle selling drugs and began to pull back. The reasons for doing so included that he had a criminal charge. But his main focus in explaining this decision was that Ms. Blanchard had been at 52 Athletic St. in mid-June 2022 when a person with a machete tried to rob her and Mr. Butler. Mr. Alexander was not present, but he viewed this violent incident as a sign that he needed to stop dealing drugs.
- [87] Mr. Alexander described the actions he had taken to withdraw from drug trafficking. First, he either moved or arranged to move from 13 Hillcrest Avenue to a nearby basement apartment. Second, and in my view much more importantly, Mr. Alexander said that he stopped taking calls to sell drugs, and if a person did call and ask for drugs, he would lead them on in a sense, and deflect the request, and would not meet up with the person.

- [88] Asked in chief why he was not more direct in telling people he was no longer selling drugs, Mr. Alexander said that he did not want too many people to know what he was doing or what was going on with him, and he wanted to get away from it all, and so he was not upfront with them. Mr. Alexander testified that the last time he sold drugs was about two weeks before the police searched 52 Athletic St., although he may still have been trying to collect drug debts owed to him.
- [89] In cross-examination, Mr. Alexander confirmed that, while he claimed to have stopped selling drugs prior to the search warrant being executed, he had continued to use crystal meth pretty much every day right up until that point.
- [90] Mr. Alexander provided extensive detail about events that occurred in the couple of days before the police searched 52 Athletic St. on August 2, 2022.
- [91] Mr. Alexander testified that on July 31, 2022, he received texts on Signal while at 13 Hillcrest Ave., from an individual who sent a couple of photos of a person who looked like he had been beaten. The individual sending the texts suggested that Ms. Blanchard had been involved with the beating, and inferred that the incident was ongoing. Mr. Alexander said that he was unsuccessful in contacting Ms. Blanchard electronically to find out if this information was true. So at about 2:30 a.m., which was 30 minutes or so after he received the Signal texts, he went to 52 Athletic St. The front and back doors were locked, and no one answered when he banged on them. He eventually reached Ms. Blanchard through Danielle, who said she was fine.
- [92] Mr. Alexander testified that he remained confused by what was happening, so that morning he returned to 52 Athletic St. He brought with him the camouflage backpack that police later found in the opening between the living room and the kitchen. Mr. Alexander explained that he brought the items inside the backpack, such as the replica gun and the "stab proof" vest, because he was unsure what was going on, and given the mid-June robbery incident at 52 Athletic St. he feared for his safety. Asked about the notebooks, he said that they had already been in the backpack.
- [93] Mr. Alexander said that Ms. Blanchard was at 52 Athletic St. when he arrived, and he showed her the photos and told her what had been said to him, but she denied any knowledge or involvement. He testified that he was trying to find out why "this" had been said to him in the Signal texts. He then got a couple more Signal messages from the same individual who had sent him the photos, stating that "this" had to do with Ms. Blanchard. When he put the suggestion to Ms. Blanchard, she again denied it.
- [94] Mr. Alexander stated that, by this point, he was unsure why he had been sent the photographs; he did not have any context and could not "put two and two" together. He hung out at 52 Athletic St. for a bit. A friend messaged him about going swimming, and was being persistent. Mr. Alexander testified that he was not in a state to do anything, and ended up sending the friend "this", by which I infer he meant the photo he said had been sent to him on Signal, and told the friend that he was trying to figure something out and this was what

was going on. Mr. Alexander ended up staying at 52 Athletic St.

- [95] Mr. Alexander said that, in addition to the people in the house when the search warrant was executed, at least five other people were in and out of 52 Athletic St. on that day, although the only two that he knew were "Thomas" and his buddy "Slugs". At a certain point, he went into the Back Bedroom and fell asleep. He said that his phone was on the coffee table in the living room.
- [96] Mr. Alexander described first becoming aware of the police presence when he was awakened by a bang and yelling. He jumped up, grabbed his wallet and walked through the bathroom into the hallway. He saw Ms. Blanchard in the Bunkbed Bedroom, and walked across the hallway to join her. He was shocked, and told her, "we're getting arrested". They had no other conversation.
- [97] Mr. Alexander testified that he then heard someone call out, "police, search warrant", and "Mr. Alexander, come out". He put his wallet in his shorts pocket and emerged from the Bunkbed Bedroom. Because his feet were bare, he walked towards the front door and looked for his shoes. The police officer yelled that he was under arrest for forcible confinement and did not need his shoes, so he stood up and walked towards the officer, and he was pulled out and arrested.
- [98] Mr. Alexander denied taking anything from the coffee table on his way out the front door. The only cash in his possession was in the wallet he had put into his shorts pocket before looking for his shoes. He did not have his wallet in his hand when he left the house.
- [99] On being shown a photo of the red skull where it was located by police on the coffee table, Mr. Alexander testified that he had never seen this object before the search warrant was executed, and had not noticed it when leaving the house because he was looking for his shoes and the police officers at the front door were screaming at him.
- [100] Mr. Alexander denied having any knowledge of the Puma bag on the L-shaped couch, or the bag of fentanyl located by police inside it. He also denied knowing anything about the bag of caffeine in the backpack on the L-shaped couch.

Legal Principles

- [101] An accused is presumed innocent of the charged offence unless and until the Crown proves each element of that offence beyond a reasonable doubt. The high standard of proof beyond a reasonable doubt is explained in *R. v. Lifchus*, 1997 CanLII 319 (SCC) at paras. 13 and 22-39. The burden of proving every element of the offence on this standard never shifts from the Crown: *R. v. J.H.S.*, 2008 SCC 30 at para. 13.
- [102] The reasonable doubt standard does not, however, apply to individual pieces of evidence, as opposed to the ultimate issue of whether each element of the offence has been proven: *R. v. P.A.*, 2024 BCCA 93 at para. 42; *R. v. B.J.*, 2023 BCCA 166 at para. 73.

Assessing Credibility and Reliability

[103] Credibility refers to a witness's honesty, assessing whether they are trying to be accurate. Reliability relates to whether a witness's evidence is inaccurate for a reason other than dishonesty, such as faulty powers of observation, memory or narrative skills.

[104] Some of the factors that may help a trier of fact in assessing a witness's credibility and reliability include:

- a) the witness's ability and opportunity to observe events, and then to remember and describe them accurately;
- b) whether the witness's evidence is consistent with independent evidence that has been accepted;
- c) the internal consistency of the witness's evidence, for instance as between examination-in-chief and cross-examination;
- d) whether the witness has made prior inconsistent statements regarding the subject-matter of their testimony;
- e) the extent to which the witness's evidence accords with common sense and logic, as opposed to appearing unlikely or unreasonable;
- f) whether the witness has a motive to mislead the court; and
- g) the witness's courtroom presentation or demeanour when testifying, although given individual and cultural differences, and the sometimes unfamiliar or intimidating nature of the courtroom, caution should be exercised against placing too much weight on this factor.

See *R. v. S.G.S.*, 2024 BCSC 1471 at paras. 11-13; *R. v. Rektor*, 2025 BCSC 77 at para. 106.

Assessing Guilt Where the Accused Has Testified

[105] Given that Mr. Alexander has testified, I must acquit if I believe his exculpatory evidence, cannot decide whether or not to believe it, or find that it raises a reasonable doubt. Even if the exculpatory evidence does not raise a reasonable doubt, I can only find Mr. Alexander guilty if I am convinced that each element of the offence has been proven on the criminal standard based on the evidence I have accepted. This framework for assessing guilt or non-guilt applies not only to Mr. Alexander's exculpatory testimony but also to any other evidence that is inconsistent with guilt, and I must consider the exculpatory evidence in the context of the evidence as a whole. See *R. v. Seangio*, 2024 BCCA 143 at paras. 101, 105, leave ref'd 2024 CanLII 98822 (SCC); *B.J.* at paras. 64-72; *R. v. C.L.S.*, 2021 ABCA 147 at para. 45.

Assessing Guilt in a Circumstantial Crown Case

[106] If I conclude that the exculpatory evidence does not raise even a reasonable doubt, then given that the Crown case is circumstantial in nature the proper approach to assessing guilt or non-guilt is described in *R. v. Villaroman*, 2016 SCC 33.

[107] The principles set out in *Villaroman* include:

- a) in drawing inferences from circumstantial evidence, a trier of fact must guard against jumping to unwarranted conclusions or bridging gaps in the evidence (paras. 26-27, 29-30);
- b) the trier of fact must consider all plausible or reasonable possibilities arising from the evidence or the lack of evidence that are inconsistent with guilt, and unless those possibilities have been negated by the Crown the standard of proof beyond a reasonable doubt will not have been met (paras. 35-37, 41);
- c) only plausible or reasonable possibilities need be negated, meaning possibilities based on logic and human experience, as opposed to possibilities based only on speculation or conjecture (paras. 37-38, 42, 50).

See also *R. v. Farac*, 2025 BCCA 238 at paras. 26-29.

Elements of the Charged Offence

[108] To convict Mr. Alexander of possession of a controlled substance for the purpose of trafficking, the Crown must prove beyond a reasonable doubt that:

- a) the substance was the controlled substance asserted in the count;
- b) Mr. Alexander was in possession of the substance, which requires knowledge of its nature and some measure of control; and
- c) he possessed the substance for the purpose of trafficking.

[109] Section 2(1) of the CDSA adopts the definition of possession found in s. 4(3) of the Criminal Code. Section 4(3) states:

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.

- [110] The definition in s. 4(3) encompasses personal possession, constructive possession and joint possession: *R. v. Morelli*, 2010 SCC 8 at para. 15.
- [111] Here, the Crown relies on constructive possession or alternatively joint possession to prove its case.
- [112] The principles applicable in determining whether constructive possession has been established, including in a circumstantial Crown case, are set out in *Farac* at para. 25, quoting with approval from *R. v. Choudry*, 2021 ONCA 560 at para. 19:
- [19] The relevant legal principles on constructive possession are not in dispute:
- Constructive possession is established when an accused does not have physical custody of an object but knowingly has it in the actual possession or custody of another person or has it in any place for their own or another's use or benefit: *Criminal Code*, s. 4(3)(a); *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at para. 17; and *R. v. Lights*, 2020 ONCA 128, 149 O.R. (3d) 273, at para. 47.
 - Knowledge and control are essential elements of constructive possession, which is established when the Crown proves beyond a reasonable doubt that the accused: (i) has knowledge of the character of the object said to be possessed; (ii) knowingly puts or keeps the object in a particular place, whether or not the place belongs to or is occupied by the accused; and (iii) intends to have the object in the place for the use or benefit of the accused or another person: *Morelli*, at paras. 15, 17; *Lights*, at paras. 44, 47.
 - Tenancy or occupancy of a place where an object is found does not create a presumption of possession: *Lights*, at para. 50; *R. v. Watson*, 2011 ONCA 437, at para. 13; *R. v. Lincoln*, 2012 ONCA 542, at paras. 2-3; and *R. v. Bertucci* (2002), 2002 CanLII 41779 (ON CA), 169 C.C.C. (3d) 453 (Ont. C.A.), at para. 18.
 - When the Crown relies largely or wholly on circumstantial evidence to establish constructive possession, a conviction can be sustained only if the accused's knowledge and control of the impugned objects is the only reasonable inference on the facts. The trier of fact must determine whether any other proposed way of looking at the case as a whole is reasonable enough to raise a doubt about the accused's guilt, when assessed logically and in light of human experience and common sense: see *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at paras. 55-56; *Lights*, at para. 39; and *R. v. Stennett*, 2021 ONCA 258, at paras. 60-61.
- [113] Neither constructive nor joint possession requires proof of manual handling or any proprietary interest in what is alleged to be possessed: *R. v. Ahmadzai*, 2012 BCCA 215 at para. 26; *R. v. Fisher*, 2005 BCCA 444 at para. 24.

[114] To establish a measure of control, all that is required is an ability to exercise some power, as opposed to proof that such power was actually exercised: *R. v. Webster*, 2008 BCCA 458 at paras. 42-44. Knowledge without a measure of control, sometimes called mere acquiescence or quiescent knowledge, is not sufficient to establish possession within the meaning of the criminal law: *Fisher* at paras. 21-22; *R. v. Tahirsylaj*, 2015 BCCA 7 at para. 26, quoting with approval from *R. v. Pham*, 2005 CanLII 44671 (ON CA), *aff'd* 2006 SCC 26.

[115] Joint possession is established where a person other than the accused is in possession of the item with the accused's knowledge and consent, and the accused has some measure of control over that item: *Fisher* at para. 24.

[116] As noted, a conviction for possession of a controlled substance for the purpose of trafficking requires not only proof of possession but also proof that the substance was possessed for the purpose of trafficking.

[117] Section 2 of the CDSA defines "traffic" and the related term of "sell" as follows:

"traffic" means, in respect of a substance included in any of Schedules I to V,

- (a) to sell, administer, give, transfer, transport, send or deliver the substance,
- (b) to sell an authorization to obtain the substance, or
- (c) to offer to do anything mentioned in paragraph (a) or (b),

otherwise than under the authority of the regulations.

[]

"sell" includes offer for sale, expose for sale, have in possession for sale and distribute, whether or not the distribution is made for consideration;

[118] There is no closed list of factors that may assist in determining whether the inference can be drawn that an accused is in possession of a controlled substance for the purpose of trafficking. But factors of relevance in deciding this issue can include the quantity and value of the drugs possessed, the nature of their packaging, the absence or presence of items that may be associated with trafficking such as weigh scales or score sheets, and large amounts of cash in the accused's possession: *R. v. Liu*, 2011 BCSC 1269 at paras. 30-35; *R. v. Karaim*, 2023 BCSC 502 at para. 64; *R. v. Howell*, 2014 BCSC 2290 at para. 75.

Analysis

[119] The admissions made under s. 655 of the Criminal Code establish that each drug listed in the counts in the Indictment was found in the living room at 52 Athletic St. The only disputed issue is whether Mr. Alexander was in possession of those drugs.

Possession

- [120] I have concluded that Mr. Alexander's exculpatory testimony, viewed in the context of all of the evidence, is not credible or reliable and does not raise a reasonable doubt as to his guilt, and that the evidence that I do accept proves beyond a reasonable doubt that he was in constructive possession of all of the drugs in the living room.
- [121] In particular, I reject Mr. Alexander's claim that he stopped drug trafficking about two weeks prior to the August 2, 2022 search of 52 Athletic St.
- [122] For one thing, text messages exchanged just days before the search show Mr. Alexander to be conducting himself in a manner inconsistent with having decided to stop selling drugs.
- [123] On July 30, 2022, someone listed in Mr. Alexander's contacts as "Berry" texted him with a request to buy crack cocaine and fentanyl, and proposed stopping by in 15 minutes. Mr. Alexander replied that he was at a friend's place but could meet in half an hour. The two men confirmed this plan in subsequent texts, with Berry telling Mr. Alexander that he would come to "your place". Based on still later texts, it appears that Mr. Alexander did not make it back to his place, and that Berry went home empty handed, but Berry texted the next day to say that he would stop by in about half an hour.
- [124] While there is no communication confirming that a drug deal was completed the next day, I would not expect this sort of information to be confirmed by text. And, unlike the night before, Berry did not text again to indicate he was having trouble connecting with Mr. Alexander. But whether or not the drug deal was completed, these exchanges with Berry lead me to infer that, not long before the police search, Mr. Alexander remained committed to dealing drugs, contrary to his claim to have decided to stop doing so two weeks prior. Indeed, at one point in his evidence Mr. Alexander appeared to concede that in sending these texts he may have intended to sell Berry drugs.
- [125] The other text exchange that undermines Mr. Alexander's claim to have stopped selling drugs occurred on August 1, 2022. Someone listed in his contacts as "Arabs", who earlier that day had texted with a request to "pop in for 70", texted again with an offer to sell Mr. Alexander 100 grams of caffeine for \$100. Mr. Alexander replied, "no I just found a big bag". Cpl. Ilioi testified that drug dealers dilute fentanyl with caffeine prior to sale, and much of the fentanyl inside the red skull was mixed with caffeine.
- [126] I reject Mr. Alexander's explanation that, in replying as he did to "Arabs", he was referring to a bag of caffeine at 13 Hillcrest Ave., and that he was not at that time dealing drugs and was just deflecting Arabs' request. Rather, I view Mr. Alexander's reply as an implicit assertion that he was still involved in selling drugs, and I find that the big bag of caffeine he referred to is most likely the one found inside a knapsack on the L-shaped couch.
- [127] I thus reject Mr. Alexander's explanation that, in sending these texts to Berry and Arabs, he was intentionally leaving them with the false impression that he was still dealing drugs, because he wanted to get away from it all and did not want people who asked to buy drugs

to know what was going on with him. If Mr. Alexander had really wanted to get away from it all, the way to do so would have been to tell people he was out of the business, or to not reply at all. His explanation is also somewhat inconsistent with the call records for his phone, which show that he answered three phone calls from Arabs over the course of August 1 and 2, 2022.

- [128] The defence submitted that, were Mr. Alexander still selling drugs, there would be many more texts about trafficking on his phone in the two weeks prior to the police search on August 2, 2022. I do not agree. In a text from early July, he told his supplier that he had someone working for him, who he expected was about to bring him \$1,000 that could be used to help reduce his debt to the supplier. It therefore appears that some of his income came from one or more workers, who presumably communicated with customers without his involvement. Mr. Alexander may also have been conducting his drug business via phone calls. And the texts show that he was an established presence at 52 Athletic St., meaning that customers could have dropped by without texting in advance. Mr. Alexander may also have been texting about drug transactions using Signal, with the result that those texts did not show up in the cellebrite report for his phone.
- [129] Another reason why I reject Mr. Alexander's evidence that he stopped selling drugs about two weeks before the police search relates to three calendar entries made on his phone on July 21, 2022. I accept Cpl. Illoi's evidence that these entries constitute electronic score sheets pertaining to monies owed to the phone's user by other individuals. I also note that one of the entries mentions the need to "reload" an individual, which connotes an intention by Mr. Alexander to supply that individual with more drugs in the future.
- [130] The fact that Mr. Alexander possessed \$1,820 in cash when arrested further undermines his claim to have stopped dealing drugs. His social benefits payments could not possibly account for having this amount of money, in particular given his daily and therefore expensive habit as a heavy drug user. Plus, as explained by Cpl. Illoi, the denominations were consistent with drug trafficking. While Mr. Alexander mentioned collecting debts even after stopping drug trafficking, these assertions were vague and at times slightly equivocal, and in his testimony he did not directly address where the cash in his wallet had come from.
- [131] But it is not simply the presence, in Mr. Alexander's shorts pocket, of this amount of cash, in these denominations, which undermines his claim to have stopped drug dealing. Also undermining this claim is how that cash ended up in his shorts pocket on arrest.
- [132] I find that, as described by Cpl. Creed, Mr. Alexander grabbed the cash from the coffee table on his way out the door. The close proximity of this cash to the stash of drugs inside the red skull and the Puma bag, and also to drug paraphernalia such as a scale and unused zip-lock baggies, is a strong indication that it comprised proceeds of recent drug sales at 52 Athletic St. In grabbing the cash, Mr. Alexander was, through his conduct, declaring an interest in those proceeds, which in turn supports the inference that he knew about and

had at least some measure of control over the drugs.

- [133] I reject Mr. Alexander's testimony that he did not grab the cash from the coffee table. I find it implausible that Cpl. Creed would have mistaken Mr. Alexander bending down to grab his shoes near the door for him picking up a wad of money from a different place in the room. Moreover, Mr. Alexander's claim to have put the wallet in his back pocket before leaving 52 Athletic St. is inconsistent with Cst. Mousseau's evidence that Mr. Alexander had the wallet in his hand when he exited the house.
- [134] The most likely sequence of events, which I find in fact occurred, is that Mr. Alexander took the cash from the table, and then put the money in his wallet as he was walking by Cpl. Creed. Cpl. Creed's failure to see Mr. Alexander transfer the cash to his wallet is not surprising, because Cpl. Creed's attention would probably have remained on what was happening in front of him, given his responsibility to direct the remaining four people out of the residence, one of whom (Mr. Butler) he believed presented a potential danger of violence.
- [135] In rejecting Mr. Alexander's evidence about stopping dealing drugs, I have also relied on photos on his phone, accessed and modified in late July and very early August, which depict bags of drugs and him holding a large "fan" of cash. I find it more likely than not that these photos were on Mr. Alexander's phone for reasons connected to his active role in the drug trade at that time, regardless of whether he took, sent or received them.
- [136] Of further relevance in rejecting Mr. Alexander's exculpatory testimony is that his phone was found just inches away from the red skull, and thus at the epicenter of the drug operation at 52 Athletic St.
- [137] I appreciate that Brian Heaver and Danielle Bazowski also had personal items in that area. But unlike with Mr. Alexander, there is nothing else indicating that either of them was at that time involved in drug trafficking. Moreover, while there is no evidence shedding light on when or how Mr. Heaver's identification card or Ms. Bazowski's social benefits document ended up in that area, the cellebrite report indicates that Mr. Alexander's phone answered a call at 5:48 p.m., a little over an hour before the search warrant was executed. I therefore find that he put his phone where it was found on the coffee table no earlier than when that call ended, at about 5:49 p.m.
- [138] This point segues into my consideration of Mr. Alexander's testimony that he never saw the skull on the table. This skull is strikingly unique in appearance, making it improbable that a person could put their phone down just inches away without noticing it. In closing submissions, the defence argued that the skull could have been put there by one of the people who were in the house when the police arrived, or by a visitor, after Mr. Alexander had put down his phone. The defence suggested that the skull might, for example, have been kept in a bag somewhere else in the house, and then brought out onto the table only after Mr. Alexander went to sleep in the Back Bedroom.

- [139] Given the credibility concerns I have regarding Mr. Alexander, I do not accept that he was sleeping in the Back Bedroom when the police arrived. Instead, I find that he was either in the bathroom or in perhaps in the Back Bedroom for another purpose.
- [140] Regardless, it makes no sense that one of the other people who were in the house when the police arrived would have put the skull on the table only after Mr. Alexander went to sleep. They were all his friends or close acquaintances, one a romantic partner with whom he spent most nights, and they all did drugs together. Mr. Alexander admitted that he had sold drugs from that location in large amounts for at least several months, and he testified that other people sold drugs from that location as well, often openly. He basically agreed that selling drugs at the residence was never discouraged. In these circumstances, there is no reason why any of these people would have had the least hesitation in bringing out the skull while Mr. Alexander was in the room, or why the skull would have been kept in a bag prior to him going to sleep in the Back Bedroom sometime after 5:49 p.m.
- [141] I would add that Cst. Skrine's surveillance of the end of the driveway at 52 Athletic St. in the 55 minutes or so before the search warrant was executed, shows Reggie Butler and two women who Cst. Skrine did not know arriving at the residence. I infer that these three people thereafter went inside the residence. Only the second woman, who arrived at 6:50 p.m., appears to have carried anything, namely, several large drink cups in a take-out tray. I therefore conclude that none of these people brought the red skull to 52 Athletic St. on arriving there in the early evening.
- [142] The defence contends that the drugs are unlikely to have been Mr. Alexander's because he would not leave such valuable product on the table in a room with several drug addicts while he went to sleep. I reject this submission essentially for the reasons just given. That is, I do not accept that Mr. Alexander was taking a nap in the Back Bedroom. But regardless, I reject that he would not have trusted these people, his friends or close acquaintances, to keep away from his drugs while he left the room, whether momentarily or for a longer time. Furthermore, there is evidence to indicate that Mr. Butler and Ms. Blanchard were also involved in selling drugs, which suggests that the two of them and Mr. Alexander were to some extent working cooperatively in trafficking drugs from 52 Athletic St.
- [143] On a related point, the defence asserts that the evidence suggesting that Ms. Blanchard and Mr. Butler were both trafficking in drugs, including the possibility that the extent of their involvement was masked by the use of Signal, leaves open the reasonable inference that the drugs in the red skull and the Puma bag belonged to one or both of them, and that Mr. Alexander had no measure of control over these drugs.
- [144] I also reject this submission. Substantial evidence connects Mr. Alexander to drug trafficking at 52 Athletic St. in the time period shortly before the search warrant was executed, including texts and calendar entries on his phone, which was found near the red skull, and his grabbing the wad of cash from the coffee table on exiting the residence. As noted, Ms. Blanchard and Mr. Butler were Mr. Alexander's friends and fellow drug users,

and I find that any involvement they had in drug dealing at 52 Athletic St. was associated or overlapped with Mr. Alexander's own drug dealing at that location.

- [145] The defence further contends that Mr. Alexander's exculpatory version of events is supported by the fact that: (a) no domestic items belonging to him were found in 52 Athletic St.; (b) there did not appear to be men's clothing in the only usable bedroom; and (c) there is no evidence that he had a key to the house.
- [146] However, in my view these aspects of the evidence are of marginal assistance to the defence, given Mr. Alexander's admission in his testimony that he stayed over at 52 Athletic St. about half the time, and sometimes for up to seven days, and the evidence establishing that he used the residence as a physical base for drug trafficking. In short, he admitted having a very substantial connection with the residence. Given this connection, I find highly improbable, and thus reject, Mr. Alexander's claim that he had no way to get into the house unless Ms. Blanchard was present.
- [147] Another factor I have relied on in rejecting as not credible Mr. Alexander's exculpatory evidence is his extensive criminal record, with over 50 convictions including multiple entries for breaching court orders or undertakings and for offences of dishonesty such as fraudulently obtaining food or accommodation, theft, possession of stolen property and robbery: *R. v. Parchment*, 2015 BCCA 417 at para. 25. That said, Mr. Alexander's criminal record is only one factor among many that in my view diminish his credibility, and is not the main basis for my decision to reject his evidence.
- [148] In rejecting Mr. Alexander's evidence, I have also taken into account his occasional evasiveness or tendency to downplay his connection to drug dealing or 52 Athletic St.
- [149] For instance, in chief Mr. Alexander left the impression that he would meet people to sell drugs at 13 Hillcrest Ave., yet in cross-examination agreed that he did not sell drugs from this location. He also attempted to minimize the extent to which he sold drugs from 52 Athletic St. But these attempts proved unsuccessful when he was confronted with numerous texts in which he identified 52 Athletic St. as the place to which people should come to see him for drug-related reasons. In one instance, when a person asked who he was in response to his text, he simply replied "52 Athletic St.", which I infer allowed the other person to know who he was. In other texts, people stated their intention to drop by to buy drugs without asking where he was located, a further indication that 52 Athletic St. was the physical base for his drug operation.
- [150] Although not necessary to my finding that Mr. Alexander is not a credible witness, this conclusion is further supported by the improbability of the narrative he provided about receiving photos of a beaten-up man from an unnamed individual around August 1, 2022. He appears to have advanced that narrative to explain how the camouflage backpack ended up at 52 Athletic Street. In any event, I will now explain why in my view central aspects of the narrative are false, in light of two text exchanges found on Mr. Alexander's phone.

- [151] In cross-examination, Mr. Alexander was confronted with a text exchange, already in evidence as part of the Crown case, which showed that on July 29, 2022, an individual texted him to say that there was a "leak" or "informant" who was revealing what was happening in "your house". The text was accompanied by a screenshot of a text conversation that, while too small in size on the cellebrite report to read, I infer provided evidence of the leak or informant. The individual who sent this information made clear to Mr. Alexander that the leak was a significant problem. Once this individual had fully set out that problem, Mr. Alexander replied "okay". The next, and final, communication in this thread was sent by Mr. Alexander two days later, at 4:10 a.m. on August 2, 2022, when he texted a photo of a man who appeared to have been beaten up, without any accompanying explanation.
- [152] This text exchange is on its face substantially inconsistent with the narrative that Mr. Alexander provided in chief. But what is more, the photo of the beaten-up man that Mr. Alexander sent to the other individual contains a small background feature that proves it was taken in the living room at 52 Athletic St. I further find that a money counter visible in the photo is the same money counter that police located just underneath Mr. Alexander's camouflage backpack in the larger entrance to the kitchen. Given the placement of the money counter under his backpack, I reject Mr. Alexander's evidence that he had never seen it before.
- [153] In cross-examination, Mr. Alexander claimed that he had not known what the "guy" who had texted him about a leak or informant at his house was talking about, and that he had sent the photo of the beaten-up man at 4:10 a.m. a couple of days later because the guy was being pushy and he wanted to let the guy know what was going on. This explanation is patently improbable, including because sending the photo two days later would make no sense if, as Mr. Alexander claims, he did not know what the guy was talking about.
- [154] I instead find that Mr. Alexander texted the photo of the beaten-up man to the individual who had alerted him to the informant problem and its seriousness to demonstrate that the problem had been resolved. The inaccurate narrative that Mr. Alexander provided about this photo in chief thus detracts from his overall credibility. I have not, however, used my findings regarding Mr. Alexander's involvement with the photo of the beaten-up man or the text message put to him in cross-examination to help support the Crown case or to engage in improper propensity reasoning.
- [155] Further supporting my decision to reject Mr. Alexander's narrative in chief about the photo of the beaten-up man is a second text exchange, also included as part of the Crown case, which took place between 1:21 p.m. and 3:01 p.m. on August 1, 2022. I have concluded that this is the same text exchange that Mr. Alexander referred to in chief, when he recounted that a friend had wanted to go swimming, and that he had responded by saying that he was trying to figure something out and had sent the friend the photo of the beaten-up man to explain what was going on. Mr. Alexander was not taken to this text exchange in chief or cross-examination, but having viewed the exchange myself I asked the parties to make submissions on its potential relevance in their closings.

- [156] During the exchange, Mr. Alexander sent the photo of the beaten-up man to his friend, and then stated that he would love to go to the lake but had just had a long night and he had to keep going. When Mr. Alexander's friend asked if he was alright, he replied, "I'm okay just got this fucking guy here who got smash out". In my view, this text exchange, viewed with the text exchange about the leak at Mr. Alexander's house and the items visible in the photo he sent in both exchanges, establishes that Mr. Alexander was present when the beaten-up man was at 52 Athletic St., which is substantially inconsistent with the narrative he provided in chief.
- [157] This finding is not inconsistent with Cst. Skrine's evidence about what he saw on the neighbour's security camera footage, because the beaten-up man could have been removed from the house through the back door into the alley. Indeed, this would be the best way to avoid raising suspicion.
- [158] Given that the Crown directly put to Mr. Alexander in cross-examination that his narrative in chief about the photo was false, and that the text exchange about going swimming was already part of the Crown case, it may be that the Crown's failure to confront Mr. Alexander with that text exchange does not breach the rule in *Browne v. Dunn*: *R. v. Khuc, Bui, Pham & Tram*, 2000 BCCA 20 at para. 44.
- [159] But even were I to give this text exchange reduced weight based on a breach of the rule in *Browne v. Dunn*, it would still hold some probative value in undermining Mr. Alexander's narrative as to how he ended up with the photo of the beaten-up man. In any event, I would come to the same conclusion regarding his credibility on this narrative were I to accord this text exchange no weight whatsoever.
- [160] As a final point, my conclusion that Mr. Alexander knowingly gave misleading testimony about the photo of the beaten-up man does not depend on a finding that the photos in the celebrite report under the heading "Data Files (43)" were modified or accessed at the times indicated. That said, I find that these photos must have been taken after Mr. Alexander received the text about the leak or informant in the early morning hours of July 29, 2022, and that Mr. Alexander likely took a photo of the beaten-up man at 52 Athletic St. during the text exchange with his friend who wanted to go swimming, and thus on the afternoon of August 1, 2022. In this latter regard, I note that the text exchange shows that he sent the photo at exactly the same time, down to the second, as the photo is said to have been modified and accessed in the information found under the heading "Data Files (43)".
- [161] For the reasons I have provided, I find that Mr. Alexander's exculpatory testimony, when viewed together with the whole of the evidence, does not support a reasonable doubt as to whether he had possession of the drugs in the living room at 52 Athletic St. on August 2, 2022.

[162] I further find that the Crown's circumstantial case establishes beyond a reasonable doubt that Mr. Alexander knew about the drugs in the living room and had some measure of control over them on August 2, 2022. To put it another way, there is no plausible or reasonably available inference that is inconsistent with Mr. Alexander possessing those drugs, and I find that the Crown has proven on the criminal standard that he was in constructive possession of all of them.

[163] My reasons for finding that Mr. Alexander's constructive possession of the drugs in the living room is established beyond a reasonable doubt is largely based on the analysis provided in explaining why his testimony does not support a reasonable doubt as to guilt, but by way of overview the factors I have relied on to conclude that he was in possession of these drugs include:

- a) Mr. Alexander's testimony that he spent significant amounts of time at 52 Athletic St.;
- b) the texts, calendar entries and photos on Mr. Alexander's phone, which establish that 52 Athletic St. was his physical base for selling drugs and that he was still selling drugs in the days immediately before the police search of the residence on August 2, 2022;
- c) Mr. Alexander being in possession of a large amount of cash when searched incident to his arrest, in denominations consistent with drug trafficking;
- d) Mr. Alexander having grabbed that cash from the coffee table on his way out of 52 Athletic St., from which I infer that he had an interest in money derived from the sale of drugs kept in that immediate vicinity, including drugs kept in the red skull;
- e) the presence of Mr. Alexander's phone on the coffee table, very near to the red skull in which many of the drugs were located and also to drug-trafficking paraphernalia such as the wad of cash, the operational weighing scale and the measuring cup that had been used to make crack cocaine; and
- f) the score sheets that Mr. Alexander kept in the camouflage backpack at 52 Athletic St.

[164] Finally, and to be clear, I repeat that I have not relied on any of my findings regarding Mr. Alexander's involvement with the photo of the beaten-up man or the texts related to that matter in concluding that the Crown has established beyond a reasonable doubt that he was in constructive possession of the drugs in the living room on August 2, 2022.

Purpose of Possession

[165] As the parties agree that whoever possessed the drugs in the living room did so for the purpose of trafficking, I will deal much more briefly with this element of the charged counts.

[166] I find that the Crown has established beyond a reasonable doubt that Mr. Alexander possessed the drugs in the living room for the purpose of trafficking. I have come to this conclusion based on the expert evidence of Cpl. Ilioi and the circumstances upon which his opinion was based, including but not limited to:

- a) the large quantities and substantial value of the fentanyl located in the living room;
- b) the presence of all four types of drugs in or near the skull container, consistent with keeping a stash for distribution through sale;
- c) the manner in which these drugs were packaged;
- d) the close proximity of the drugs to the wad of cash, in denominations consistent with drug trafficking, which I have found that Mr. Alexander took from the coffee table on his way out of the residence;
- e) the presence on or very near the coffee table of caffeine, weighing scales, unused plastic bags and a measuring cup that had been used to make crack cocaine;
- f) the presence on or near the L-shaped couch of a one-page score sheet;
- g) the score sheet entries in Mr. Alexander's notebooks, which were found in the camouflage backpack in the larger entrance to the kitchen from the living room;
- h) text exchanges, contacts entries and photos found on Mr. Alexander's cell phone, which are indicative of him selling or intending to sell drugs from 52 Athletic St. in the days leading up to the police search; and
- i) the presence of various items, including the homemade taser, imitation firearms, batons, a flare gun, a meat cleaver, and brass knuckles, both in and near the living room, which are often used by drug traffickers for protection or debt collection.

Conclusion

[167] I reject as not credible the exculpatory parts of Mr. Alexander's testimony, and conclude that his testimony does not support a reasonable doubt as to whether he was in possession of the drugs in the living room at 52 Athletic St. on August 2, 2022.

[168] The evidence that I have accepted establishes beyond a reasonable doubt that Mr. Alexander was in constructive possession of the drugs in the living room at 52 Athletic St. on August 2, 2022, and that he possessed them for the purpose of trafficking. Neither that evidence nor any gaps in it support a reasonable doubt as to whether he knew about or had some measure of control over these drugs, or whether he possessed them for the purpose of trafficking.

[169] Mr. Alexander, please stand up.

[170] For the reasons I have stated, I find you guilty of possession of a controlled substance for the purpose of trafficking on all four of the counts in the Indictment.

"D. Layton J."

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