

CANADA / JUDGMENT

R. v. Campagna

2024 BCSC 2173

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 2173 R. v. Campagna

N THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Campagna,

2024 BCSC 2173

Date: 20241004

Docket: X085132

Registry: New Westminster

Rex

v.

Kyle James Campagna

Before: The Honourable Justice Girn

Oral Reasons for Judgment

Counsel for the Crown:

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E. Amer

Counsel for the Accused:

T.L. Spettigue

Counsel for the RCMP:

S. Hauer

Place and Dates of Trial:

New Westminster, B.C.

June 13-14, 17-18, 20 and

21, 2024

Written Submissions received:

September 27, 2024

Place and Date of Judgment:

New Westminster, B.C.

October 4, 2024

Introduction

- [1] Kyle James Campagna ("Mr. Campagna") is charged with seventeen counts on Indictment 85132-2, which includes possession of firearms and ammunition and trafficking and possession for the purpose of trafficking various controlled substances.
- [2] The charges stem from an investigation carried out by the Langley RCMP in the Fall of 2021 following the death of a female victim who overdosed on controlled substances allegedly purchased from a drug trafficking line.
- [3] As part of the investigation, two undercover police officers were utilized to buy controlled substances from the alleged drug trafficking line. Later, the police executed a warranted search of a residential unit located in Langley, British Columbia ("the suite"). Mr. Campagna along with two other males were arrested inside the suite when the police entered.
- [4] The police seized a variety of bulk and pre-packaged controlled substances worth approximately \$129,000, over \$9700 in cash, drug trafficking paraphernalia and firearms and ammunition, located primarily in the master bedroom. There is no direct evidence tying Mr. Campagna to the items located in the suite. As such, the Crown's case against Mr. Campagna was entirely circumstantial. While not testifying himself, Mr. Campagna did present defence evidence.
- [5] It is also alleged that Mr. Campagna trafficked controlled substances on five separate occasions to undercover officers.
- [6] Substantial admissions were made and filed as evidence pursuant to s. 655 of the Criminal Code. These admissions address the location, nature of, continuity and integrity of the controlled substances and other exhibits. As well, there was a formal admission regarding the nature of the firearms and ammunition found in the suite. Photographs and videos taken during the investigation were also admitted. Finally, Mr. Campagna admits that if the Crown proves that he possessed the drugs located in the suite, they were for the purpose of

trafficking.

- [7] The Crown submits that when all of the evidence is considered in its totality, it has proven beyond a reasonable doubt that Mr. Campagna trafficked drugs to the undercover operators and was in possession of the controlled substances, firearms and ammunition found in the suite. The Crown submits that Mr. Campagna was in constructive or joint possession of the controlled substances, firearms and ammunition found in the suite.
- [8] Mr. Campagna submits that the Crown has not proven beyond a reasonable doubt that he was the individual who was engaged in trafficking of controlled substances. He argues that passive acquiescence is not sufficient to find guilt. As it relates to the controlled substances and firearms found in the suite, given that the Crown's case is a circumstantial one, Mr. Campagna argues that the evidence supports other reasonable possibilities or plausible theories that are inconsistent with guilt.
- [9] Accordingly, the issues to be determined are:
- a) Has the Crown proven beyond a reasonable doubt that it was Mr. Campagna who trafficked controlled substances to the undercover officers?
 - b) Did Mr. Campagna possess the controlled substances found in the suite?
 - c) Did Mr. Campagna possess the firearms and ammunition found in the suite?

Summary of the Evidence

- [10] As there were substantial admissions, where possible, I have integrated them into this summary.
- [11] As noted above, sometime in October 2021, the Langley RCMP began a drug investigation after they located a business card with a telephone number believed to be connected to a drug trafficking operation. The business card was found on a female who had died from a drug overdose.
- [12] After conducting surveillance, the police then engaged two undercover officers to purchase controlled substances from those operating the drug trafficking line.
- [13] At the start of the trial, counsel for the RCMP sought an order pursuant to ss. 486.5(1) and 486.5(9) of the Criminal Code to protect the identity of the undercover officers. This application was not opposed by Mr. Campagna. The application was granted. Accordingly, in these reasons I will refer to the two undercover officers as UCO Alana and UCO Joseph.

Trafficking of Controlled Substances to Undercover Officers

- [14] As I have noted earlier, Mr. Campagna is charged with trafficking of controlled substances on five separate occasions to undercover officers. I will outline the details of each allegation.

November 10, 2021

- [15] UCO Joseph testified that after attending a briefing, he was given a telephone number to purchase fentanyl from the suspected drug trafficking line. The number used by UCO Joseph was the same one listed on the card found on the overdose victim.
- [16] On November 10, 2021, UCO Joseph called the line and spoke to a male named Ray. UCO Joseph told Ray that he needed "three points of pink", meaning pink fentanyl, and asked if they could meet in Aldergrove near the Dollarama store.
- [17] UCO Joseph was told that they would let him know. Later in the afternoon, UCO Joseph called the same telephone number but this time a different male answered. The male advised UCO Joseph that he was 7-8 minutes away. A few minutes later, the male said they were in the parking lot and drove up to UCO Joseph who was standing outside his vehicle. A female was driving with a male passenger in the front passenger seat, who motioned UCO Joseph to get inside their vehicle. Once inside the back seat, the male in the front passenger seat introduced himself as Teddy. UCO Joseph then gave \$60 to Teddy, who then dropped two packages into UCO Joseph's hand and took the money. Teddy then gave UCO Joseph an extra package and stated "this is for the phone being down". The interaction took about 4-5 minutes.
- [18] The drugs purchased on this occasion tested as fentanyl, weighing 0.335 grams.
- [19] UCO Joseph provided a general description of Teddy as a Caucasian male with shorter hair, baby face, early 20's and appeared to be on the bigger side. UCO Joseph made an in-court identification of Mr. Campagna as the person he came to know as Teddy.

November 19, 2021

- [20] UCO Alana testified that she was assigned to purchase drugs from the same drug trafficking line and called the telephone number from the same business card. On November 5th, she made her first purchase of cocaine from an individual named Ray.
- [21] On November 19, 2021, at approximately 9:25 a.m., UCO Alana once again called the same number but spoke to a different male. Arrangements were made for her to meet up in an area in Langley, where she met with two males. She described the first male as Caucasian and recognized his voice as the person she spoke to earlier on the telephone. She described the second male as being of Persian descent. UCO Alana testified that the two males were very distinct in appearance and she would not be able to confuse them.
- [22] The first male told her that they were going to open the line soon even though the business card indicated that it was open 24/7. He also told UCO Alana that his boss had just purchased the drug line and they were making changes, including providing a better product. The second male was not as conversive as the first male. The majority of the conversation came from the first male.

- [23] In cross examination, UCO Alana acknowledged that her notes stated that the second male spoke about the line changing hours and that they would deliver in this area. UCO Alana acknowledged the difference between her notes and her testimony in regard to the change in hours and said she would defer to her notes in the event of a discrepancy.
- [24] While I accept that UCO Alana was mistaken about this aspect of the conversation, her evidence regarding the other parts of what the first male said in regards to his boss taking over the line, about his predecessor Ray and about changing their product was not contradicted.
- [25] The second male then showed UCO Alana three small baggies of powder cocaine in his right hand. He did not speak. UCO Alana offered \$100 to the first male who accepted it. She was not sure where he put the money after he took it from her.
- [26] At the end of their interaction, the first male introduced himself as Teddy and the other male as Tyler. It was Tyler who presented the drugs to UCO Alana and Teddy who accepted the cash.
- [27] The powder in the baggies purchased by UCO Alana later tested as cocaine and weighed 0.84 grams without packaging.
- [28] UCO Alana made an in-court identification of Mr. Campagna as the first male who introduced himself as Teddy and accepted cash from her. She had not seen Mr. Campagna prior to the November 19th purchase. The interaction between UCO Alana and the two males was also captured on 2 videos (pre-meet and post meet) and were entered into evidence. She was able to positively identify the two males in the videos as the persons from whom she purchased controlled substances, and identified Mr. Campagna as Teddy.
- [29] On this day, Constable Hamanishi ("Cst. Hamanishi") was working on the surveillance team and acting as the cover for UCO Alana. At one point, he walked past the two males later identified by UCO Alana as Teddy and Tyler and was able to see them clearly. Cst. Hamanishi testified that he observed the interactions between UCO Alana, Teddy and Tyler. Cst. Hamanishi made an in-court identification of Mr. Campagna as the Caucasian male known as Teddy.
- [30] Corporal Torenvleit ("Cpl. Torenvleit") was also part of the surveillance team on this day. Shortly before UCO Alana met up with Teddy and Tyler, Cpl. Torenvleit observed them walking on the street in the area where the drug purchase occurred. He was in his vehicle at the time. Cpl. Torenvleit described Teddy as a heavier set Caucasian male. This matched the description provided to him by UCO Joseph, who had dealt with Teddy previously. Cpl. Torenvleit also identified Mr. Campagna as the male known to the UCOs as Teddy and the person he arrested in the suite upon execution of the search warrant.

November 20, 2021

- [31] On November 20, 2021, UCO Joseph called the same telephone number attempting to purchase more fentanyl. He was directed by the person on the line, whom he recognized as Teddy, to meet in the area of 200th Street and 88th Avenue in Langley. Once he arrived at the pre-determined location, UCO Joseph called the drug line to advise that he had arrived.
- [32] UCO Joseph testified that Teddy told him that they were able to see him. UCO Joseph then walked up to the car in which Teddy was seated in the front passenger seat. Teddy directed UCO Joseph to go to the back seat of the car. The driver was a female who said her name was Zoe and Teddy reintroduced himself to UCO Joseph. There was a South Asian male seated in the backseat who introduced himself as "Deep". UCO Joseph presented Teddy with money who turned back and gave UCO Joseph two baggies with pink coloured fentanyl. The entire interaction lasted 4-5 minutes.
- [33] The controlled substances purchased later tested as a mixture of fentanyl and etizolam and each package weighed 0.075 grams.
- [34] UCO Joseph testified that Teddy was the same person he interacted with on November 10, 2021 and spoke to over the telephone previously.
- [35] On this day, Cpl. Torenvleit was on surveillance duties and observed Teddy and an unknown male enter a vehicle at the loading bay near the building where the suite is located. He believed Teddy to be the same male that had been observed since November 10, 2021, during the undercover buys. On this occasion, Cpl. Torenvleit was approximately 200-300 meters away.
- [36] Later that day, Cpl. Torenvleit was conducting surveillance and observed Teddy meeting up with an individual who was seen putting something into their pocket and leaving immediately. Corporal Torenvleit observed a tattoo on Mr. Campagna's neck while Mr. Campagna was standing next to a male. Cpl. Torenvleit estimated he was close by, approximately 20 meters away.

November 26, 2021

- [37] On November 26, 2021, UCO Joseph once again called the same telephone number attempting to purchase fentanyl. When he first called the number, no one answered. However, shortly thereafter he received a call back wherein UCO Joseph was advised to meet in an area in Langley. UCO Joseph drove to the area and observed the same vehicle from the previous meeting having arrived. The driver was a different person but the front passenger was once again Teddy, who UCO Joseph recognized from previous interactions.

- [38] UCO Joseph got into the vehicle. Teddy dropped a small baggie into UCO Joseph's hand and then took the money from UCO Joseph. After UCO Joseph exited, the vehicle left very quickly. UCO Joseph testified that Teddy was wearing a black shiny puffy jacket and had studded earrings which he had not observed previously on Teddy.
- [39] The controlled substance purchased later tested as a mixture of fentanyl and etizolam and each package weighed 0.170 grams.

November 30, 2021

- [40] At approximately 11:14 a.m. on November 30, 2021, UCO Joseph once again called the same telephone number and spoke to Teddy, who asked what he needed. Shortly thereafter, they met in the same parking lot in Langley. Once UCO Joseph arrived at the predetermined location, he called the telephone line and spoke with Teddy, who then walked up to UCO Joseph's vehicle. Teddy reached into the car to take money from UCO Joseph and drop the drugs into UCO Joseph's hand. Teddy then told UCO Joseph, "I'll see you around". He then walked to a taxi nearby. This interaction took less than a minute.
- [41] The controlled substance purchased tested as a mixture of fentanyl and etizolam and each package weighed 0.180 grams.
- [42] After UCO Joseph purchased the controlled substance from Teddy, the surveillance team followed Teddy. Cpl. Torenvleit observed Teddy near a cellphone store talking to a male, and then taking a taxi to a residential building. Cpl. Torenvleit then observed Teddy meeting with another male. Cpl. Torenvleit observed what he believed to be a hand to hand drug transaction between Teddy and the male. However, he did not actually observe what was being exchanged. After this interaction, the male went back into the building and Teddy walked away.
- [43] Later that day, Cst. Hamanishi was conducting surveillance inside the complex where the suite is located. He observed two males enter the suite where the search warrant was later executed. Cst. Hamanishi recognized them as the two individuals he saw on November 19th interacting with UCO Alana. The first male, who was Indo-Canadian, used a key to unlock the door, and the second male, whom Cst. Hamanishi knew to be Teddy, was behind him. Teddy had a coffee cup in his hand.
- [44] Cst. Hamanishi also saw them on December 8, 2021, when the search warrant was executed. He also observed both males while working on an unrelated investigation. Cst. Hamanishi made an in-court identification of Mr. Campagna as the person he knew to be Teddy whom he had seen during surveillance and at the suite.

December 3, 2021

- [45] One final undercover drug purchase was made by UCO Joseph on December 3, 2021, when UCO Joseph telephoned the drug line to purchase fentanyl. His calls went unanswered on two occasions.
- [46] Shortly thereafter, UCO Joseph received a text message and then a telephone call from an unknown number. The voice on the other line was the person he recognized from prior occasions as Teddy. Teddy apologized for missing the calls and said he was in the shower.
- [47] UCO Joseph told Teddy that he needed "two points pink D", meaning two points of fentanyl. Teddy directed UCO Joseph to meet at a parking lot in Langley. Once UCO Joseph arrived, he called the drug line and recognized Teddy's voice. Teddy advised that he would be down in a few minutes. UCO Joseph observed Teddy with another male walking from a nearby building walkway. They made eye contact with UCO Joseph. Teddy walked in another direction and the second male approached UCO Joseph's vehicle and sold him the drugs. The individual then met up with Teddy. UCO Joseph drove by Teddy and the other male and Teddy nodded in response.
- [48] Photographs taken by the surveillance team of this interaction were tendered into evidence. UCO Joseph was able to recognize Teddy and the other male in these photographs, as well as the area from where they came when he first saw them. After this date, UCO Joseph had no other interactions with Teddy.
- [49] UCO Joseph made an in-court identification of Mr. Campagna as Teddy, the individual he dealt with on each of the occasions when he purchased controlled substances from Teddy.

December 8, 2021

- [50] On December 8, 2021 at approximately 11:26 a.m., UCO Joseph telephoned the drug line once again. The phone was answered by a Langley RCMP officer that UCO Joseph knows very well. The telephone call was made after the police had already executed the search warrant at the suite and taken Mr. Campagna and two other males into custody. At 1:12 pm, UCO Joseph sent a text message to the same line "yo, Teddy, anyone working?" There was no response.

Execution of the Search Warrant**Initial Entry and Arrest**

- [51] On December 8, 2021 at approximately 9:29 a.m., Cpl. Torenvleit and other members executed a search warrant at the suite.

- [52] When initial entry was made into the suite, Cpl. Torenvleit observed a closed bathroom door with the shower running. Upon entering the bathroom Cpl. Torenvleit recognized the male in the shower as the individual the UCOs knew to be Teddy and whom he had previously observed during surveillance. Mr. Campagna admits that he was the individual that was in the bathroom and arrested in the suite.
- [53] After being arrested Mr. Campagna was taken into the kitchen area.
- [54] Two other males were located inside the suite. All three males were arrested for possession for the purpose of trafficking. One of the males was Tyler Sanghera ("Mr. Sanghera"), who Cpl. Torenvleit had also observed on surveillance during the undercover drug purchases. The third male, identified as Devon Justice ("Mr. Justice"), was arrested in the living room.
- [55] The suite is located on the third floor of the building and consists of three bedrooms and two bathrooms, one of them being an ensuite in the master bedroom. There is also a balcony off the living room.
- [56] It is not disputed that Zoe Stewart (Ms. Stewart") was the tenant of this suite. The suite was fully furnished and appeared to be occupied by more than one person. There were multiple pairs of men's shoes at the entrance of the suite along with jackets hanging in the main entrance closet.
- [57] The master bedroom appeared to be occupied by a female (likely Ms. Stewart, as testified to by Mr. Sanghera, whose evidence I will outline later in these Reasons). Female clothing was hung up in the walk-in closet and female toiletries were found in the ensuite bathroom. It was in this bedroom that the bulk of the controlled substances, money and other drug paraphernalia were located.
- [58] Photographs and a pre-search video reveal that the bed in the master bedroom appeared to have been slept in and was not made up. The ensuite bathroom had multiple toothbrushes, at least four.
- [59] The second bedroom was occupied by Mr. Sanghera. The bed in this room appeared to have been slept in and was not made up.
- [60] A third bedroom appeared to be used as a storage room and the cat's room with cat litter. As well, there was a desk with books in Ms. Stewart's name and crafting supplies in this room. While there was no bed in this room, there was a portable clothes rack with several sweatshirts and coats hanging on it.
- [61] The bedroom doors were closed but none were locked.

Search of the Residence

- [62] Cpl. Torenvleit, Cst. Hamanishi and Constable Shook ("Cst. Shook") testified that they were on the search warrant execution team.

[63] Cpl. Torenvleit and Cst. Hamanishi assisted in locating items that were later seized by Cst. Shook. Cst. Shook captured a pre-search video of the residence prior to seizing items. He also took photographs assisted by Cst. Hamanishi.

[64] I will now outline the relevant items found in the various rooms.

Living Room

[65] Two small baggies of controlled substances, which later tested as cocaine, were located in plain view on a bookshelf in the living room. Also located on this bookshelf was a black book with what appeared to be an accounting of drug sales, along with a two digital scales and a bundle of business cards. These business cards were the same as the one located on the overdose victim.

[66] On the sofa a wallet was located, which had the drug trafficking line business card in it. As well, some earbuds were on the sofa. Cst. Hamanishi testified that he located the wallet on Mr. Justice. However, at the preliminary inquiry Cpl. Torenvleit testified that he located a wallet in the master bedroom. It was unclear if these are one and the same, because a backpack that had Mr. Justice's identification was also located in the living room.

Main Bathroom

[67] Two cellphones were seized from the counter of the main bathroom where Mr. Campagna was showering.

Kitchen

[68] On the fridge door a document addressed to Tyler Sanghera with an address in 70 Mile House was located.

Second Bedroom

[69] The second bedroom belonged to Mr. Sanghera as acknowledged by him. On the bedroom door were letters made from blue tape titled "Tyler's Room". Each letter had various hand writings on them including "Teddy is my MASTER" and "Teddy loves ZOE".

[70] A small amount of cash and drugs were also seized from this room. No drug packaging paraphernalia or drug line business cards were located in this room.

Master Bedroom

[71] This room was a standard bedroom with a bed, shelving unit and a small computer desk along with a chest of drawers with a television sitting on top. It had a walk in closet and an ensuite bathroom.

- [72] A substantial amount of various types of controlled substances both bulk and pre-packaged were located and seized throughout the master bedroom. Some of the controlled substances in this room were in plain view sitting on the computer desk. The bulk of the controlled substances were located in a clear storage container with drawers on the shelving unit and inside a plastic grocery bag sitting on a chair beside the computer desk. As well, large amount of Canadian currency, drug line business cards and drug paraphernalia were located in this bedroom.
- [73] A machete was located behind a stand up mirror that was up against a wall.
- [74] On top of the shelving unit, Cpl. Torenvleit located a wallet with the same kind of business card that was found on the overdose victim. The wallet did not have any identification in it.
- [75] Also on the shelving unit, in plain view, was a bag of pre-packaged drugs.
- [76] On the same shelf, a clear storage container with drawers was located on the shelving unit. Inside one of the drawers of this container was a BC Care Card and birth certificate in Mr. Campagna's name, two large bundles of business cards with the same telephone number that was located on the overdose victim and used by the UCOs, and two baggies of bulk cocaine powder. A cellphone and a green box with a variety of controlled substances were also located in this drawer.
- [77] A shoe box was also located on the bottom shelf of the shelving unit, which contained a small Luger pistol with a loaded magazine, boxes of ammunition, rifle magazines and other items. There were no controlled substances in this box.
- [78] Cpl. Torenvleit testified that he located an assault rifle standing up in plain view in the walk in closet. A duffle bag was also located inside the closet which had licence plates, prescription bottles, what appeared to be cooking instructions for controlled substances and a Halloween type mask inside it.
- [79] On a chair by the computer desk in plain view was a plastic shopping bag full of pre-packaged controlled substances in various different colours.
- [80] On the computer desk was a plate with pills and six pre-packaged bags of controlled substances.
- [81] Cash in various denominations was located in plain view on top of a dresser drawer that was both loose and bundled with elastic as well inside a black pouch. A bag of elastics was also found on the dresser.
- [82] After Cpl. Torenvleit and Cst. Hamanishi located the various items in this room, Cst. Shook seized them. He confirmed that officers located items but were told not to move them from where they were found.
- [83] Given that possession is one of the key issues in this trial, the scale of the controlled substances, cash and drug paraphernalia located inside this bedroom is important to

outline.

[84] I will now summarize the items seized by Cst. Shook from the master bedroom.

[85] The following items were seized from a shelving unit in this room:

- A bag of pre-packaged controlled substances which included ten zip top style baggies of cocaine and 21 zip top baggies of cocaine.

- Inside a jar, eight separately wrapped baggies of cocaine.

- inside the drawer of a clear plastic storage container:

- o two baggies of white powder cocaine;

- o BC ID and birth certificate in Mr. Campagna's name;

- o green box with an assortment of pre-packaged and bulk controlled substances:

- small baggie containing three smaller tied up baggies, two containing a pink substance that analyzed as a mixture of fentanyl, carfentanil and flualprazolam and one baggie containing cocaine;
 - large baggie of bulk powder cocaine;
 - zip loc bag with 17 tightly wrapped baggies of carfentanyl;
 - clear baggie with 42 individually wrapped packages of powder cocaine;
 - clear baggie of methamphetamine;
 - clear baggie of rock cocaine;
 - small clear baggy containing 10 pills of benzodiazepine (also known as Xanax);
 - 13 orange baggies of methamphetamine;
 - 7 clear baggies of rock cocaine;
 - 7 clear baggies of a pink substance analyzed as a mixture of fentanyl and etizolam;
 - 17 clear baggies of a green substance analyzed as a mixture of fentanyl, W-19 and etizolam;
 - 19 clear baggies of purple substance analyzed as fentanyl;
 - two zip top baggies of cocaine;
 - two zip top baggies of methamphetamine;

- o cellphone sitting on top of the green box; and

- o two large bundles of business cards that were the same as those found on the overdose victim and throughout the residence.

· On the bottom shelf, an air Jordan shoe box containing a Ruger pistol with loaded magazine inserted, two rifle magazines and two boxes of rifle magazines with ammunition.

[86] Located on top of the dresser drawer in plain view:

- loose cash along with bundle of cash tied with elastic band totalling \$2,148 in plain view;
- a black pouch with cash bundled with elastic containing \$50 and \$100 denominations totalling \$7,000; and
- bag of elastic bands

[87] On top of the computer desk in plain view, cash, two scales and multiple packages of coloured pills were located, which included:

- 34 pills that analyzed as Hydromorphone;
- A clear zip top baggie containing 21 tightly wrapped packages of mixture of fentanyl and etizolam (mint green coloured);
- 69 tightly wrapped packages of cocaine;
- A clear zip top baggie containing 41 tightly wrapped packages of mixture of fentanyl and etizolam (mint green coloured);
- A clear zip top baggie containing 82 tightly wrapped packages of rock cocaine;
- A clear zip top baggie containing 106 tightly wrapped packages of rock cocaine;
- A clear zip top baggie containing 67 tightly wrapped packages of white rock substance that analyzed as fentanyl;
- A zip top baggie containing 6 different baggies which contained various numbers and colours of fentanyl and etizolam or a combination of them; and
- Shaw bill addressed to Zoe Stewart.

[88] Sitting on top of a chair beside the computer desk was a plastic shopping bag with pre-packaged baggies of controlled substances. The bag was not sealed, but rather ripped in one part. In total there were 30 clear baggies of pre-packaged controlled substances in various colours. Each baggie contained approximately 94 - 100 tightly wrapped packages of controlled substances that were analyzed as either fentanyl, etizolam, W-19 or a combination of two or more of these substances. Each bag of controlled substances weighed 10 grams to 30 grams with total weight of 547.79 grams).

[89] In total, 1.8 grams of carfentanil, 615.385 grams of fentanyl, 204.37 grams of cocaine, 18.64 grams of methamphetamine was seized from the suite.

[90] It has been admitted by Mr. Campagna that if the Crown proves possession of the controlled substances seized, they were possessed for the purpose of trafficking as defined in s. 2 of the Controlled Drugs and Substances Act.

[91] As well, the opinion of the drug expert, Constable Walker, that the totality of the items and controlled substances located inside the residence are indicative of a mid-level dealer pre-packaging drugs for sale at street level is admitted.

[92] The value of the controlled substances is admitted as follows:

- Carfentanil: \$360;
- Fentanyl: \$112,300;
- Cocaine: \$15,755; and
- Methamphetamine: \$720

[93] Finally, with respect to the firearms it is admitted that:

- The Ruger pistol is a functioning prohibited firearm within of the Criminal Code of Canada;
- The Ruger pistol was loaded with a magazine and the serial number had been defaced;
- The cartridge magazine is a prohibited device within the meaning of the Criminal Code of Canada;
- The carbine rifle is a functioning firearm within the meaning of the Criminal Code of Canada;
- The rifle cartridge magazines is a prohibited device; and
- Mr. Campagna did not possess a firearms licence, authorization, or a registration certificate at the material time.

Defence Evidence

[94] The defence called one witness, Mr. Sanghera. He is currently in custody serving a sentence on unrelated matters. He has a criminal record which consists of mostly breaches of court orders and probation.

[95] Mr. Sanghera testified that in the Fall of 2021 he was engaged in criminal activity and was involved in a drug trafficking line that was being operated out of the suite.

[96] Mr. Sanghera testified that around June 2021 he moved into the suite with Ms. Stewart because he was having trouble at home with his family. Ms. Stewart and Mr. Sanghera's sister were friends and Ms. Stewart agreed to rent out one of her bedrooms to Mr. Sanghera.

[97] Mr. Sanghera and Mr. Campagna met in high school. Mr. Sanghera had moved to 100 Mile House for a period of time and when he returned he reconnected with Mr. Campagna.

- [98] Mr. Sanghera testified that Mr. Campagna lived in Richmond with his girlfriend, Olivia. During the Fall of 2021, Mr. Sanghera saw Mr. Campagna a few times a week when Mr. Campagna would visit Mr. Sanghera at the suite.
- [99] He introduced Ms. Stewart to Mr. Campagna. According to Mr. Sanghera, Ms. Stewart and Mr. Campagna became involved in an intimate relationship sometime in early Fall 2021. However, Mr. Campagna continued to be in a relationship with Olivia and live with her in Richmond. Mr. Campagna also began staying overnight at the suite once every few weeks and slept in Ms. Stewart's room. Mr. Sanghera testified he knew this as he could hear them having sexual relations.
- [100] Mr. Sanghera testified that Ms. Stewart ran a drug trafficking line out of the suite. She offered to cover his rent if he worked for her. Mr. Sanghera began working sometime in mid-July. He acknowledged that he was also a drug user at the time.
- [101] In addition to working for Ms. Stewart, Mr. Sanghera testified that he worked fulltime at a warehouse in Port Coquitlam working the day shift and only sold drugs on his days off on the weekends and after work.
- [102] Mr. Sanghera stated that Ms. Stewart would have one person and a driver work each shift. When he worked the drug trafficking line Mr. Sanghera was required to answer the phone, take orders and then have a driver take him to meet up with the customer to sell them controlled substances.
- [103] Ms. Stewart told the workers who answered the drug trafficking line that they had to go by the name, Teddy. Mr. Sanghera testified that Ms. Stewart also called herself Teddy.
- [104] According to Mr. Sanghera, Ms. Stewart pre-packaged the drugs for sale and would give Mr. Sanghera enough supply for his shift, which would sit on the kitchen table. However, he also stated that Ms. Stewart wanted to make sure there were no drugs in the apartment and would go pick up the drugs from elsewhere.
- [105] Mr. Sanghera stated that Ms. Stewart had four regular workers, all of them men. Three of them would sometimes stay overnight and sleep in Ms. Stewart's room.
- [106] Mr. Sanghera stated that he was allowed to have friends accompany him when he worked his shifts. When Mr. Campagna visited the suite, he would answer the drug trafficking line for Mr. Sanghera when Mr. Sanghera was having a nap. Mr. Campagna would then wake up Mr. Sanghera. It is unclear whether Mr. Campagna would take the orders or simply wake Mr. Sanghera and hand the phone to him.
- [107] Mr. Sanghera admitted that Mr. Campagna was with him when he was selling controlled substances but stated that Mr. Campagna did not ever possess them. However, he could not recall if Mr. Campagna ever received cash from customers, stating that Mr. Campagna would just stand there while Mr. Sanghera dealt with the buyers.

- [108] Mr. Sanghera testified that Ms. Stewart had gone on a trip for a few days when the search warrant was executed. While she was away, she left "quite a bit of drugs with somebody else who stayed there frequently." Mr. Sanghera did not provide any details of who this person was or even his name despite the fact that Mr. Sanghera appeared to be the only other person who lived there with Ms. Stewart.
- [109] When it was put to Mr. Sanghera in cross examination that Mr. Campagna and Ms. Stewart were running the drug trafficking line, Mr. Sanghera replied that he and Mr. Campagna were good friends and Mr. Campagna would have told him if he was working with Ms. Stewart.
- [110] Mr. Sanghera explained the circumstances surrounding Mr. Campagna's presence in the suite on the morning the police executed the search warrant stating that Mr. Campagna came over the night before and had slept there overnight. Mr. Campagna slept on the sofa after the two of them played video games in the living room. Mr. Sanghera stated he saw Mr. Campagna sleeping on the sofa when he woke up the next morning.
- [111] In assessing the reliability and credibility of Mr. Sanghera's evidence, I do not need to accept or reject all or none of his evidence. It is not an "all or nothing process". In determining facts, the court is free to reject some aspects of a witness's evidence and accept others and assign different weight to different part of a witness's evidence.

Legal Framework

Credibility and Reliability

- [112] In *Gill v Gill*, 2024 BCSC 346, Justice Fleming (as she then was) reviewed the applicable legal principles:
- [131] Credibility or truthfulness and reliability or accuracy are related but distinct concepts. A truthful witness, for example, may be mistaken about what they observed or in their recollection. Also, credibility and reliability are not all or nothing concepts. I may believe some, all, or none of a witness', here a deponent's, evidence and attach different weights to different parts of their evidence: *R. v. R. (D.)*, [1996] 2 S.C.R. 291, [1996] S.C.J. No. 8 at para. 93.
- [132] The basic approach to the assessment of the truthfulness of any interested witness was discussed many years ago in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, [1951] B.C.J. No. 152 (C.A.) at 357:

In short, the real test of the truth of the story of a witness 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.

- [133] *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296, identified several factors that may be considered in assessing credibility and reliability. Relevant here are: the capacity and opportunity of the witness to observe the events at issue; the witness's ability to remember those events; the ability of the witness to resist being influenced by their interest in recalling those events; internal and external inconsistency in the witness's evidence, meaning did their evidence change between direct and cross-examination (here between affidavits) or between prior statements and their evidence; whether the witness's evidence harmonizes with, or is contradicted by other evidence, particularly independent or undisputed evidence; and whether their evidence seems unreasonable, improbable or unlikely, bearing in mind the probabilities affecting the case.
- [134] Related to the last factor, which captures the Chorny principle, judges are permitted if not expected to rely on their common sense and life experience in assessing reasonableness and plausibility. However, the law prohibits stereotypical reasoning or speculation about human behaviour from affecting the assessment of credibility. Bearing in mind the disputed allegations of family violence, it is well recognized that there is no typical victim, typical perpetrator or typical ways in which a victim or perpetrator will behave.
- [135] It follows perhaps that the credibility of a witness (deponent) must be assessed in the context of the evidence as a whole. Lastly, credibility is not a numbers game. The fact that more witnesses say one thing and less say another, is not determinative. Instead it is the force of the evidence of any given witness or deponent that counts.
- [113] While *Gill* and *Bradshaw* are not criminal cases, this Court has applied these principles in criminal cases: see e.g., *R. v. Coghill*, 2024 BCSC 1101 at para. 47; *R. v. Hooper*, 2023 BCSC 1871 at para. 62; *R. v. Brodie*, 2017 BCSC 1787 at paras. 48-49

Identification

- [114] The reliability of identification evidence depends on the circumstances in which it is tendered: *R. v. Field*, 2018 BCCA 253 at para. 22, leave to appeal to SCC *ref'd*, 38314 (10 January 2019).
- [115] In *Field* at para. 23, Justice Hunter outlined the reliability of three types of identification evidence:
- (i) Eyewitness evidence by a stranger: Experience has shown that eyewitness evidence proffered by a stranger to the accused is the least reliable identification evidence. It has been described as "inherently unreliable": *R. v. M.B.*, 2017 ONCA 653 at para. 29. In light of the many instances in which identification has proved erroneous, the trier of fact must be cognizant of "the inherent frailties of identification evidence arising from the psychological fact of the unreliability of human observation and recollection": *R. v. Burke*, 1996 CanLII 229 (SCC), [1996] 1 S.C.R. 474 at para. 52.

(ii) Identification by the trier of fact through photographic evidence: On occasion, the trier of fact will have the benefit of photographic evidence taken at or sufficiently near the scene of the crime to have probative value in determining the identity of the perpetrator. As long as the photographic evidence is of sufficient clarity and quality to permit identification of the person shown in the photo, the evidence can be admitted and weighed with other evidence by the trier of fact: *R. v. Nikolovski*, 1996 CanLII 158 (SCC), [1996] 3 S.C.R. 1197 at para. 23.

(iii) Recognition evidence: The Crown may also choose to tender opinion evidence from a person or persons who can identify the individual shown in a photo or video. This evidence is admissible if the witness had a prior acquaintance with the accused and is therefore in a better position than the trier of fact to conclude whether the individual in the photo is the accused: *R. v. Leaney*, 1989 CanLII 28 (SCC), [1989] 2 S.C.R. 393; *R. v. Brown* (2006), 2006 CanLII 42683 (ON CA), 215 C.C.C. (3d) 330 (Ont. C.A.).

[Underlining in original.]

[116] The frailties of eyewitness identification has been discussed by the courts on numerous occasions. For instance, in *R. v. Hibbert*, 2002 SCC 39 at para. 50, the Supreme Court noted that the particular "danger associated with eyewitness in-court identification is that it is deceptively credible, largely because it is honest and sincere". It is important to recognize "the very weak link between the confidence level of a witness and the accuracy of that witness": *Hibbert* at para. 52. A witness may be confident in their in-court identification of an accused in the prisoner's box, but such in-court identification has "almost no value as reliable evidence of positive identification" and "should be given very little weight": *R. v. Drynock*, 2020 BCSC 1832 at para. 51, citing *Hibbert* at paras. 49-52. This is particularly so where the in-court identification of an accused occurs in circumstances where the perpetrator was a stranger to the witness. In that case, the evidence "is of virtually no probative value on the issue of identification": *R. v. Ha*, 2013 BCSC 2472 at para. 21; see also *R. v. Sipes*, 2011 BCSC 917 at para. 91.

[117] On the other hand, recognition identification evidence can be more reliable than stranger identification evidence but it should still be approached with caution: *R. v. Smith*, 2011 BCCA 362 and *R. v. Pierce*, 2011 BCCA 485

[118] In *Smith*, at para. 28, Neilson J.A. noted that even in recognition cases the trier of fact must "be aware that mistakes in identifying an accused may still occur. The key is the quality of the identification evidence".

[119] At paras. 30-31, Neilson, J.A. went onto note:

[30] The appellant's first argument suggests that "recognition" evidence falls in a different legal category than identification evidence, and the trial judge erred in placing Mr. Chieng's evidence in that category. With respect, that misconceives the concept of "recognition" in this context. In *R. v. Bardales* (1995), 101 C.C.C. (3d) 289 (B.C.C.A.), *aff'd* [1996] 2 S.C.R. 461, 107 C.C.C. (3d) 194, Mr. Justice Wood, while dissenting in the result, provided this useful and

accurate description of the role of recognition in cases where the identity of the accused is at issue:

[102] With respect, I am of the view that there is no legal distinction between eye-witness identification cases on the one hand, and so-called "recognition" cases on the other. In both, the identification of the accused is based on the evidence of one or more witnesses who offer the opinion: "That is the person who I saw." Where it is a factor, recognition is a circumstance which does no more than enhance the weight to be attributed to that opinion by the trier of fact.

...

[106] As suggested in the McIsaac case, where recognition is a factor, considerable weight may attach to the opinion of an eye-witness, depending on the intimacy of the relationship between that witness and the accused and the length of time it has subsisted. Indeed, the nature of the relationship may be such as to obviate the need for all but the most cursory of cautions. On the other hand, where the "recognition" is based on a casual relationship characterized by infrequent contact, the potential weight of the opinion may not be much greater than that offered by a complete stranger.

[31] Thus, "recognition" evidence is not a distinct category. The concept of recognition in the context of eyewitness identification simply intimates the witness's evidence is based in part on his or her dealings with the accused before the crimes were committed. The extent and quality of those encounters is but one factor to be considered in weighing the witness's evidence.

[120] The Court of Appeal has repeatedly stressed the need for caution in all identification cases, including recognition identification evidence. In *Pierce*, Smith, J.A. noted at para. 40:

[40] The trial judge in this case was clearly alive to the caution needed in considering the identification evidence of the Crown witnesses. To that end, he engaged in a critical review of the evidence of each of the witnesses and concluded that, in spite of some discrepancies and inconsistencies in the evidence, the cumulative effect of the evidence established beyond a reasonable doubt that Mr. Pierce was the male patron at the pub on the day of the incident and the individual who robbed Mr. McFadden. That is the task of the trier of fact as it was aptly described in *R. v. Keshane* (1992), 11 B.C.A.C. 86:

[13] The special nature of eyewitness identification evidence and the importance of subjecting it to the most careful scrutiny have long been recognized. The trier of fact must be satisfied as to both the honesty of the witness and the correctness of the identification, which in turn is to be found from evidence of the circumstances in which it has been made. ...

[14] There is no special formula by which to assess eyewitness identification. Rather, such evidence is to be examined on a case by case basis. And even where the witness' identification is not based on the recognition of a distinctive characteristic of the accused this does not necessarily undercut the efficacy of the identification. Similarly, where there is

a discrepancy between the description given by a witness and the person subsequently identified by that witness, this is not necessarily fatal to a positive identification. The sufficiency of the identification evidence will depend on the circumstances surrounding the original identification, the nature of the discrepancy, and whether there is other cogent evidence in the case pointing away from the guilt of the accused. [citations omitted]

- [15] Whether or not evidence of identification is sufficient is a question for the trial judge. In the absence of error, it is not an arena in which this Court will interfere. The function of the Court is not to retry the case but to assess the evidence adduced before the trial judge and to determine whether the conclusion he reached is unreasonable or cannot be supported by the evidence. [Citations omitted.]

See also *R. v. L.(W.M.)*, 2010 BCCA 355, 295 B.C.A.C. 156.

[emphasis added]

Possession

- [121] The Controlled Drugs and Substances Act, S.C. 1996, c. 19, defines possession as possession within the meaning of subsection 4(3) of the Criminal Code, R.S.C. 1985, c. C-46. Subsection 4(3) of the Criminal Code defines possession as follows:

- (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.

- [122] Under subsection 4(3), possession can be personal (s. 4(3)(a)), constructive (s. 4(3)(a)(i)), or joint (s. 4(3)(b)). While aspects of the definitions overlap, and a person could have possession in more than one way, the Crown's proof of any state of possession is sufficient.

- [123] In this case, the Crown relies on the doctrines of constructive and joint possession.

- [124] In *R. v. Cashman*, 2022 BCSC 892 at para. 58, aff'd 2024 BCCA 317, Justice Devlin cited the Ontario Court of Appeal's decision in *R. v. Choudhury*, 2021 ONCA 560 at para. 19, for a summary of legal principles relevant to constructive possession:

- 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.

[125] In R. v. Tio, 2019 BCSC 144, Justice Marzari outlined the principles relevant to joint possession:

[54] Joint possession arises where more than one person has possession of an item. An accused person not in actual or personal possession may nonetheless possess the item jointly, if they know another person has custody or possession of it and the accused consents to this possession in the sense of exercising or having the right to refuse consent to the presence of the controlled substance and thereby exercise control over it. "Mere acquiescence" or consent without a measure of control is not sufficient. This was explained in R. v. Colvin and Gladue (1942), 1942 CanLII 245 (BC CA), 78 C.C.C. 282 (B.C.C.A.) at 287 as follows:

"[K]nowledge and consent" cannot exist without the co-existence of some measure of control over the subject-matter. If there is the power to consent there is equally the power to refuse and vice versa. They each signify the existence of some power or authority which is here called control, without which the need for their exercise could not arise or be invoked.

[126] Neither ownership nor manual handling is required to prove constructive or joint possession: Tio at para. 55. That said, "the accused must have knowledge and be in a position to exercise some element of control over the item": Cashman at para. 54, citing R. v. Fisher, 2005 BCCA 444 at para. 24.

[127] Ultimately, whether constructive or joint, the question is whether the accused had (a) knowledge of the existence and nature of the item, and (b) a measure or right of control over the item: Tio at para. 56.

Knowledge

- [128] In proving the accused's knowledge, the Crown must establish "more than mere quiescent knowledge": *R. v. Howell*, 2014 BCSC 2290 at para. 8.
- [129] In cases involving controlled substances, the Crown is not required to establish that the accused had knowledge of the specific substance, only that the accused knew the item or bag contained a prohibited substance: *R. v. To*, 1992 CanLII 913 at para. 16, 16 B.C.A.C. 223 (B.C.C.A.).
- [130] Knowledge can be properly inferred from circumstantial evidence. As Chief Justice McEachern noted in *To* at paras. 38-39, knowledge can be legitimately inferred from physical possession in proper circumstances, but that inference can be rebutted if the accused offers an explanation which raises a reasonable doubt, or other inferences consistent with innocence can be drawn from the circumstances. See also *Cashman* at para. 57.
- [131] Besides actual knowledge, the Crown can establish the element of knowledge by demonstrating the accused was either reckless or wilfully blind as to the existence of the prohibited substances. An accused is reckless where they are "aware that there is danger and that [their] conduct could bring about the result prohibited by the criminal law", but despite the risk, still persists: *R. v. Sansregret* (1985), 17 D.L.R. (4th) 577, 1985 CanLII 79 at para. 16. An accused is wilfully blind where their suspicion is aroused to the point that they see the need to make a further inquiry, but where they deliberately choose not to do so: *Sansregret* at para. 22; see also *R. v. Prevost*, 2013 BCSC 705 at paras. 5-7.

Control

- [132] In the context of constructive possession, where the items are not in the accused's physical possession, the Crown must establish some measure of control or right of control over the items: *Fisher* at para. 22. The Crown must demonstrate that the accused was able to exercise some power over the item, but need not demonstrate that the accused in fact exercised that power: *R. v. Lee*, 2010 BCCA 589 at para. 20, citing *R. v. Morelli*, 2010 SCC 8 at paras. 137-138.

Circumstantial Evidence

- [133] As with other offences, where circumstantial evidence is relied upon in large or in whole by the Crown, a conviction can only be sustained where the accused's guilt is the only reasonable inference on the totality of the evidence: *Cashman* at para. 58, citing *Choudhury* at para. 19; see *R. v. Villaroman*, 2016 SCC 33 at paras. 55-56.

[134] In Villaroman, the Court noted that alternative inferences to guilt "must be reasonable, not just possible" (para. 42). A reasonable doubt "cannot arise from speculation or conjecture" (para. 50). Accordingly, the Crown may need to negative reasonable inferences other than guilt arising from circumstantial evidence, but:

certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": R. v. Bagshaw, [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

(Villaroman at para. 47)

[135] As well, the court must not examine the evidence in piecemeal but rather consider whether all of the evidence taken together in its totality proves the accused's guilt and is inconsistent with any other rational conclusion: Villaroman at para. 35.

[136] The Crown refers to cases in which courts have relied on circumstantial evidence in determining that an accused had knowledge and control of drugs in a residence.

[137] The court is entitled to bring a measure of common sense in this assessment. The court is not expected to consider the case as a "completely intellectual exercise where no conclusion can be reached if there is the slightest competing possibility" (R. v. To (1992), 16 B.C.A.C. 223 at para. 41, cited in Fisher at para. 42 and R. v. He, 2008 BCCA 418 at para. 66).

[138] For instance, in R. v. Lee, 2010 BCCA 589 at para. 42, Justice Frankel stated that "it is not unreasonable for a trier of fact to conclude that someone living in premises in which marihuana or other illegal drugs are openly located is in a position to exercise some measure of control over those drugs".

[139] In R. v. Nguyen, 2009 BCCA 89 at paras. 35-37, referred to by Frankel J.A. in Lee, the Court of Appeal found that the trial judge reasonably inferred from the circumstances that the accused occupied the home in issue, which along with the extensive nature of a cannabis grow-operation, permitted the inference that she exercised some control.

[140] In R. v. Hollaman, 2023 BCSC 1612, the accused was located in the bathroom of a residence during the execution of a search warrant. Business records and other documents bearing the accused's business name were found in the residence. Various items including drugs and a taser were located in the home. Justice Wilson noted that the presence of personal documents in a location are an indication of occupation and control: at para. 79, citing R. v. Emes (2001), 157 C.C.C. (3d) 124, 2001 CanLII 3973 (Ont. C.A.).

Party Liability

[141] The Crown submits that, should the Court not be satisfied that the accused possessed an alleged item in question, the accused should still be found guilty of possession as a party to the offences.

[142] Section 21 of the Criminal Code provides the following:

21 (1) Every one is a party to an offence who

- (a) actually commits it;
 - (b) does or omits to do anything for the purpose of aiding any person to commit it; or
 - (c) abets any person in committing it.
- (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.

[143] Section 21(1)(b) and (c) capture the doctrines of aiding and abetting, while s. 21(2) involves the principle of common intention. Under s. 21, an accused can be found guilty of a possessory offence without actually being found in possession: *R. v. Bransford*, 2018 BCSC 755 at para. 53, *aff'd* 2019 BCCA 408; *R. v. Pavalaki*, 2014 BCCA 491 at para. 24; *R. v. Loutit and Wiebe*, 2024 BCSC 525 at para. 16; *R. v. Bi*, 2011 BCCA 10 at para. 20.

Aiding or Abetting

[144] To be liable under s. 21(1)(b) or (c), the Crown must prove that the accused: (1) had knowledge that the principal intended to commit the offence; and (2) provided actual assistance to the principal in carrying out that purpose: *Pavalaki* at para. 24, citing *R. v. Barreau* (1991), 9 B.C.A.C. 290, 1991 CanLII 241 at para. 24 (B.C.C.A.).

[145] To find the accused liable for having aided or abetted, the Crown must prove that the accused intended to aid or abet the principal perpetrator. Mere presence at the scene alone is not enough, but presence can be evidence of aiding and abetting if accompanied by other factors, such as prior knowledge of the principal offender's intention to commit the offence, or attendance for the purpose of encouragement: *R. v. Dunlop*, [1979] 2 S.C.R. 881 at paras. 31 and 45, 1979 CanLII 20 (SCC)

Common Intention

[146] In *R. v. Cooper*, 2020 BCCA 206 at para. 27, our Court of Appeal explained that a common intention has three essential elements: (1) an agreement to participate in an unlawful purpose; (2) the commission of an incidental and different crime by another participant; and (3) knowledge, that is reasonable foreseeability of the likelihood of the incidental crime being committed.

- [147] Where there is evidence that two or more accused acted in concert, s. 21(2) can apply even where it is uncertain which of the accused was the actual perpetrator of the specific offence (i.e., which was the principal offender): *R. v. Sundman*, 2018 BCSC 602 at para. 204; *R. v. Cadeddu*, 2013 ONCA 729 at para. 59.
- [148] In other words, if the Crown proves that one of two or more persons were in possession of a controlled substance, then the other person or persons will be deemed to also be in possession if the Crown proves a common intention to carry out an unlawful purpose: *R. v. Aeichele*, 2020 BCSC 2300 at para. 46, *aff'd* *R. v. Knauff*, 2023 BCCA 107.

Discussion

Did Mr. Campagna traffic in controlled substances?

- [149] On this issue, there are two questions I must address. First, is Mr. Campagna the individual who interacted with the undercover officers on each of the five occasions as alleged? Second, was Mr. Campagna a party to the drug trafficking or was he passively acquiescing?
- [150] In assessing identification evidence of the Crown witnesses, even in a recognition case, I am required to engage in a critical review of the evidence of the identification witnesses.
- [151] In doing so, I have considered the conditions under which the undercover officers made their observations, whether anything impaired their ability to make their observations and whether their evidence was tainted or contaminated through discussions with other officers. I have also considered the duration of their interactions. Did the undercover officers provide detailed descriptions or merely generic, vague descriptions and was there any material discrepancy between the description given by the officers and the appearance of Mr. Campagna? Finally I have also considered independent confirmatory evidence such as photographs and videos.
- [152] As I have already noted, I am mindful of the need to be cautious in these circumstances.
- [153] With the governing legal principles firmly in mind, I turn to their application to the circumstances in the case at bar.
- [154] I will begin with the purchase of controlled substances by UCO Alana on November 19th. UCO Alana testified that Tyler presented the controlled substances to her and that Mr. Campagna accepted the cash from her. UCO Alana was also able to identify Mr. Campagna in the video footage. While the video footage was brief, it is clear and depicts the two individuals with whom UCO Alana says she interacted with that day. UCO Alana confirmed Teddy as the Caucasian male and the second male as Tyler who was different in appearance from Mr. Campagna. She identified Mr. Campagna as being the individual who introduced himself as Teddy.

- [155] While I accept UCO Alana's evidence of identifying Mr. Campagna as being Teddy, videotape evidence alone can provide the necessary evidence to enable a trier of fact to identify the accused: *R. v. Nikolovski*, [1996] 3 S.C.R. 1197 at para. 28, 1996 CanLII 158 (SCC).
- [156] The Court noted at para. 28 that videotape evidence "can and should be used by a trier of fact in determining whether a crime has been committed and whether the accused before the court committed the crime. It may indeed be a silent, trustworthy, unemotional, unbiased, and accurate witness who has complete and instant recall of events. It may provide such strong and convincing evidence that of itself it will demonstrate clearly either the innocence or guilt of the accused".
- [157] In addition to watching the pre and post meet videos played in Court, I have further taken the opportunity to review the video footages and have paused the videos and carefully reviewed the still frames. While Mr. Campagna is slightly heavier now, I am satisfied beyond a reasonable doubt based on the video footage that Mr. Campagna is the male depicted within the video that UCO Alana testified to as being Teddy. It is also clear to me that the second individual is Mr. Sanghera.
- [158] While my conclusion on the videotape evidence establishes identification, I will now address whether the Crown has proven beyond a reasonable doubt that Mr. Campagna is guilty of trafficking in a controlled substance on this occasion.
- [159] Mr. Campagna argues that he was passively acquiescing and not aiding or abetting in the trafficking of controlled substances to UCO Alana.
- [160] The Crown says on this transaction, Mr. Campagna aided and abetted by taking the cash from UCO Alana. The Crown further relies on the evidence of Mr. Campagna stating his boss had taken over the line and was planning to provide better product. This evidence was not contradicted.
- [161] Mr. Campagna wants the court to accept Mr. Sanghera's evidence that Mr. Campagna only accompanied Mr. Sanghera when he went out to sell drugs. Therefore by extension, on this occasion, Mr. Campagna was not involved in the trafficking of controlled substances. The facts simply do not support this.
- [162] I am unable to accept that Mr. Campagna was simply present at the scene. While Mr. Campagna did not handle the controlled substances that UCO Alana purchased, he did accept the cash from UCO Alana. I have considered the entire circumstances surrounding the transaction. UCO Alana testified that it was Mr. Campagna who was also speaking with her and not just Tyler. I acknowledge that UCO Alana's notes stated that Tyler (the darker skinned male) spoke of changing the drug line hours. However, this does not mean that Mr. Campagna was silent. I accept her evidence that it was Mr. Campagna who told her that they were going to open the line soon and that his boss had recently purchased the drug line and they were making changes including providing a better product.

- [163] In my view, the evidence simply does not support that Mr. Campagna was merely a casual observer. I am satisfied that he aided in the transaction to traffic controlled substances to UCO Alana and that he and Mr. Sanghera were working together in concert with one another and I find him to be a party to the offence.
- [164] Accordingly, I find Mr. Campagna guilty on count 2 of the Indictment.
- [165] I will now move on to the other counts of trafficking (1, 2, 4 and 5).
- [166] The Crown submits that on each of the four instances involving UCO Joseph, it was Mr. Campagna who sold the controlled substances to him.
- [167] Mr. Campagna argues that the Crown has failed to prove beyond a reasonable doubt that it was him that trafficked the controlled substances to UCO Joseph. Is Mr. Campagna the person UCO Joseph dealt with who went by the name of Teddy?
- [168] The answer to that question is an overwhelming "yes".
- [169] As it relates to these counts, this is not a case in which the only identification evidence is in-court identification of the accused by a stranger. While I need to be cautious, there is a significant difference between cases in which a witness is asked to identify a stranger never seen by him before the offence, and cases in which a witness recognizes a person previously known to him.
- [170] UCO Joseph dealt with Teddy on four separate occasions, albeit brief, with the longest interaction being 4-5 minutes. UCO Joseph's evidence is essentially that he recognized Mr. Campagna as the person who sold him the controlled substances on four separate occasions. He also testified that the individual he spoke to on multiple occasions over the telephone was the same individual he dealt with and spoke to in person on four separate occasions when he purchased controlled substances. Finally, UCO Joseph recognized Mr. Campagna from photographs taken on December 3rd as the individual he had met on those four previous occasions.
- [171] I note that when comparing the photographs from December 3rd with the video from November 19th, there is no doubt that the persons identified as Mr. Campagna in each of them by UCO Joseph are the one and same. I have already found, after having reviewed the video from November 19th, 2021, that it is Mr. Campagna. Having also reviewed the photographs taken on December 3rd, I am once again satisfied that the person identified by UCO Joseph as Teddy is in fact Mr. Campagna.
- [172] I note that on both occasions Mr. Campagna is wearing the same sweatshirt with the hood over his head and grey sweatpants.
- [173] I will briefly address some of Mr. Campagna's submissions on why UCO Joseph's evidence should raise for concerns for the Court.

- [174] Firstly, Mr. Campagna's counsel argues that UCO Joseph could not identify a key identifying feature: the tattoos on Mr. Campagna's right side of his neck. Mr. Sanghera testified to this as well.
- [175] In my view, it is reasonable that UCO Joseph did not see the tattoos on Mr. Campagna's neck or elsewhere on Mr. Campagna's hands and arms. Two of the four interactions occurred inside a car with Mr. Campagna seated in the front passenger seat and UCO Joseph in the back seat. It makes it logically possible that UCO Joseph did not see the tattoo as the right side of Mr. Campagna's neck would have been facing outward. As well, UCO Joseph testified that Teddy was wearing a puffy jacket.
- [176] Mr. Sanghera also testified of a tattoo on Mr. Campagna's right arm which went from his elbow to right underneath his hand, and also had a tattoo on his right hand. He not able to describe how big it was or what it is was. He also testified that Mr. Campagna had a tattoo of a Cadillac sign on his left arm.
- [177] The interactions with the undercover officers occurred in November and December when it was cold outside. It is evident from the video and photographs taken during this period that Mr. Campagna's arms were fully covered. In fact, in the photographs of December 3rd, Mr. Campagna head is covered with his sweatshirt and he appears to have some sort of item masking his chin and neck area.
- [178] In terms of the hand tattoo, given that there was no description of what the tattoo was or its size, in my view, the fact that UCO Joseph did not see one does not affect the reliability of his evidence.
- [179] While in his notes from November 10th UCO Joseph described Mr. Campagna as a Caucasian male with a thin build, he also testified that Mr. Campagna was seated in the front passenger seat on two occasions and was wearing a puffy winter jacket while UCO Joseph was seated in the back seat of the vehicle.
- [180] It must be remembered that even where there is a discrepancy between the description given by a witness and the person subsequently identified by that witness, this is not necessarily fatal to a positive identification.
- [181] There is also evidence from Cst. Hamanishi and Cpl. Torenvleit who were on surveillance when UCO Joseph was meeting with Mr. Campagna. They also identified Mr. Campagna as the person meeting up with UCO Joseph and the person they arrested in the suite when the warrant was executed on December 8th.
- [182] Accordingly, assessing the evidence of UCO Joseph, Cst Hamanishi and Cpl. Torenvleit and the independent confirmatory evidence of the photographs, I am satisfied that Mr. Campagna was the individual who trafficked controlled substances to UCO Joseph on November 10th, 20th, 26th, and 30th. I find him guilty on counts 1, 2, 4 and 5.

Did Mr. Campagna possess the controlled substances found in the suite?

- [183] Mr. Campagna argues that he was not involved in the drug trafficking operation, but rather was only a visitor at the suite to see Mr. Sanghera. He was at the suite when the search warrant was executed because he had slept there overnight. Mr. Campagna argues that he had no knowledge or control of the controlled substances found in the suite, including those in the master bedroom, and that it was Ms. Stewart's drug operation. He says Mr. Sanghera's evidence supports this. This, he submits, is an alternative plausible theory that goes against a finding of guilt.
- [184] It is accepted that Ms. Stewart was not in the suite when the police arrived to execute the search warrant. I do, however, find that that she was very likely the female driving the vehicle on November 10th and November 20th.
- [185] Mr. Sanghera testified that Ms. Stewart was away for a few days at the time. Mr. Campagna was showering in the main bathroom while Mr. Sanghera was in his bedroom and Mr. Justice was on the sofa prior to being arrested.
- [186] I accept Mr. Sanghera's evidence that Ms. Stewart ran a drug trafficking operation out of the suite. Taking into consideration the significant amount and variety of controlled substances and cash and business cards located in plain view inside the master bedroom, I am satisfied that it was an organized and substantial operation.
- [187] I also accept Mr. Sanghera's evidence that he worked for Ms. Stewart. Cash and controlled substances were located inside his room. However, there are other aspects of Mr. Sanghera's evidence I must reject because it was vague and at times simply not plausible. In particular, I reject Mr. Sanghera's evidence regarding Mr. Campagna's involvement.
- [188] I will address some of these:
- a) In regards to Mr. Campagna's involvement in the trafficking of controlled substances to the undercover officers, Mr. Sanghera said Mr. Campagna sometimes accompanied him when he went to meet with customers. He testified that he only worked the drug line when he was off on the weekends and on his days off because he worked in a warehouse in Port Coquitlam during the day and that Mr. Campagna sometimes came with him. Mr. Sanghera's evidence simply does not align with undisputed facts. November 10th was a Wednesday and Mr. Campagna was accompanied by a female, likely Ms. Stewart. November 26th was a Friday and there is no evidence that Mr. Sanghera was the driver that accompanied Mr. Campagna when they met with UCO Joseph. November 30th was a Tuesday and Mr. Campagna was alone. November 19th was a Friday and Mr. Sanghera accepted that he was in the video with Mr. Campagna. The only day which fell on a weekend was November 20th when Mr. Sanghera could have been with Mr. Campagna. However, on that occasion it was Mr. Campagna who accepted the drugs and cash from UCO Joseph.
 - b) Regarding his evidence that when Mr. Campagna would visit Mr. Sanghera, Mr. Campagna would answer the phone while Mr. Sanghera was napping. I find this simply not plausible and inconsistent with the overall evidence.

- c) Regarding Mr. Sanghera's evidence that Ms. Stewart wanted to make sure there were no drugs in the apartment and that she would go pick up drugs from elsewhere, this is inconsistent with his evidence that she left an enormous amount of controlled substances with another person, whose name Mr. Sanghera was not able to offer even though he lived there. As well, this evidence defies logic and common sense. If this were the case, Ms. Stewart would not leave a substantial amount of controlled substances and cash in plain view in her room with no lock on it while she was away.
- d) I also found Mr. Sanghera's testimony that Ms. Stewart would refer to herself as Teddy while also directing workers to go by the name Teddy when they answered the drug line simply not believable. As is his explanation of the writing on the blue tape on his bedroom door "Teddy loves Zoe" as Zoe loving herself.

[189] I will now turn to the rest of the Crown's evidence.

[190] The Crown submits that there is a great deal of evidence to establish that Mr. Campagna had possession of the controlled substances in the suite, in particular, in the master bedroom.

[191] In order to find Mr. Campagna guilty of the charges as they relate to possession for the purpose of trafficking, I do not have to find that he lived at the suite.

[192] Mr. Sanghera testified that Mr. Campagna slept on the sofa the night prior to his arrest. The pre-search video shows neither sofa having been slept in. However, the pre-search video does reveal that the bed in the master bedroom appeared to have been slept in and not made up. As well, some of the dresser drawers were left open despite the fact that Ms. Stewart was away.

[193] I am also not required to decide who owns the controlled substances. While ownership of the controlled substances may be relevant to prove possession, the question for me is whether Mr. Campagna was in possession of the controlled substances regardless of who owns them.

[194] The vast majority of the controlled substances and cash were located in the master bedroom. There is no evidence that any of the bedroom doors had locks on them, including the master bedroom. This in my view, supports that anyone inside the suite had unfettered access to the master bedroom. According to Mr. Sanghera, Ms. Stewart was away for a few days. Allowing persons who are not part of the drug operation unfettered access to her valuable drug supply and cash would seem unusual and highly unlikely.

[195] It must be remembered that the drugs and cash in the bedroom were not safely stored in a safe or some other hidden location. Some were strewn throughout the master bedroom in plain view. The drug operation in the suite represented a significant financial investment, as drug trafficking is a profit-motivated criminal activity. It is simply not reasonable to conclude that Ms. Stewart who was purportedly running the drug operation from the suite would permit unknown persons to have ready access to the master bedroom.

[196] The discovery of Mr. Campagna's BC Care Card and birth certificate inside the clear box in the master bedroom where a substantial number of drugs and drug line business cards were also found is an indication of occupation and control. In this regard, the comments in *R. v. Emes*, 2001 CanLII 3973 (O.N.C.A.) at para. 8, 157 CCC (3d) 124 are instructive. In upholding the trial judge's decision, the Court wrote:

Personal papers are, as a general rule, maintained in a location to which a person has access and control. When documents such as income tax forms, invoices, cancelled cheques, leases, insurance papers and the like are located in a residential premise it is surely a fair inference that the person identified in the documents is an occupant with a significant measure of control. This is a matter of logic and common sense. While the existence of the papers at the location in question could be as a result of the documents being stolen, or simply stored there, or abandoned, such explanations do not, in my view, accord with the factual probabilities of the circumstances here.

[197] I have also found Mr. Campagna trafficked controlled substances to undercover officers on five separate occasions, all within a month of the search warrant execution at the suite. He trafficked cocaine and fentanyl (including a mixture of fentanyl and etizolam) to the undercover officers. A substantial amount of cocaine and fentanyl and a mixture of fentanyl and etizolam were also located in the suite. This is also relevant in my consideration on the issue of possession.

[198] I have also considered Mr. Campagna's various conversations and his actions during the interactions with the undercover officers. For example, on November 10th, it was Mr. Campagna who motioned UCO Joseph to enter the vehicle and it was Mr. Campagna who gave UCO Joseph an extra package and said "this is for the phone being down". As well, on November 19th, Mr. Campagna remarked that "his boss had just purchased the line and they were changing the product". On November 20th, once again, it was Mr. Campagna who directed UCO Joseph to go the back seat of the car and introduced himself as Teddy. Finally, it was Mr. Campagna who gave the drugs to and accepted cash from UCO Joseph and accepted cash from UCO Alana. This in my view, lends further support that the only reasonable inference is that Mr. Campagna was involved in the drug trafficking operation being operated out of the suite.

- [199] In determining whether Mr. Campagna had constructive possession of the controlled substances in the suite, I cannot ignore the volume of drugs and cash. The quantity and value of the drugs makes it inconceivable that they would be casually entrusted to someone who did not know what was in the master bedroom, which was not locked, with Ms. Stewart nowhere to be seen.
- [200] It must be remembered that the Crown need not prove that power or control was in fact exercised; *R. v. Lee*, 2010 BCCA 589 at para. 20. Similarly, in *R. v. Dipnarine*, 2014 ABCA 328, the court noted that "knowledge and consent" in this context means some measure of power or control to direct or restrain a thing, but not necessarily exclusive or predominant power or control (para 18). In *Dipnarine*, the basement of a home in which the accused was a co-tenant contained a substantial number of drugs and drug paraphernalia, indicating it was being used as a site for a drug trafficking operation. The court asserted that to "infer, without evidence, that the basement was somehow out of any range of consent or control by the appellant," as defined in the case law, "has no reality" (para 21). The court concluded with the following observations:
- [28] In sum, there is no evidence to support a thesis that the cocaine was exclusively under the control of Paszkiewicz and the appellant was not in a position to "exercise a directing or restraining power" over the cocaine and lacked any "measure of control" over it. Whoever was actually working at the table and chair in the basement to prepare packages from \$12,000 worth of cocaine was plainly quite confident that the other co-tenant was not going to interfere. That demonstrable level of trust as to such valuable drugs supports a common sense inference about co-participation. The inference to the contrary proposed by the appellant is, as this Court observed in *Nguyen*, speculation.
- [201] I have also considered the importance of trust to those engaged in a drug trafficking operation. In *Cashman*, the accused was a co-tenant of a two-storey home in which drugs and drug paraphernalia were found in the other tenant's room, the kitchen, and the spare bedroom. Justice Devlin in *Cashman*, relying on the comments in *Dipnarine*, concluded that the "demonstrable level of trust" with regard to the valuable drugs supported a "common sense inference about co-participation" and found that "it is inconceivable that Mr. Harmes would expose his valuable illicit drug operation to someone outside his trusted group of associates, especially someone residing within his own residence": at para. 71
- [202] In my view, the same common sense inference can be made to Mr. Campagna. In the case at bar, significant cash and drugs were found in plain view in the master bedroom. The entire suite was on one floor, with no locks on any bedroom. This, in my view, demonstrates that if Ms. Stewart was in fact the owner of the controlled substances, she was confident that others in the suite, including visitors such as Mr. Campagna, were not going to interfere with her operation. Taking into consideration all of the evidence in its totality and applying common sense and logic, I am of the view that this demonstrable level of trust supports an inference of co-participation on the part of Mr. Campagna.

- [203] Having considered all of the evidence, I am unable to see how the competing inferences that Mr. Campagna asks me to consider are indeed alternate plausible theories.
- [204] In *Dipnarine*, the Court said the presence of competing inferences does not necessarily mean a finding of guilt is an unreasonable verdict. Rather, if the trier of fact considers an alternative interpretation of the circumstances, taken as a whole, to be unreasonable or irrational, the trier of fact is not bound to give effect to that alternative simply because it is impossible to exclude it entirely: paras. 22-25. In concluding its analysis by referencing *R. v. Lifchus*, [1997] 3 SCR 320, the Court said: "the law does not require such proof to absolute certainty".
- [205] Accordingly, I am unable to find that the alternative inferences advanced by Mr. Campagna are reasonable. They do not raise a reasonable doubt.
- [206] I find that the only reasonable inference is that Mr. Campagna had knowledge of the controlled substances located in the suite, including those found in the master bedroom, and had a degree of control over them. Considering all of the evidence, I am satisfied that Mr. Campagna had constructive possession of the controlled substances located inside the suite.

Did Mr. Campagna possess the firearms and ammunition found in the suite?

- [207] I will begin with my assessment of whether Mr. Campagna was in constructive possession of the rifle that was purportedly in plain view in the walk-in closet of the master bedroom.
- [208] Cst. Shook testified that he seized the rifle from the walk in closet and that it was leaning up against the wall. Cpl. Torenvleit testified that he did not move any items when he located them including the rifle.
- [209] The photographs taken of the rifle shows it standing up against a wall. There are also two art frames and two clear plastic containers depicted in the walk-in closet near the rifle.
- [210] However, the pre-search video, which was comprehensive, does not depict any rifle in the walk-in closet, whether standing or not. In addition, neither the two art frames nor the clear plastic containers that were in the photographs near the rifle are captured in the pre-search video.
- [211] This was not canvassed in either officer's evidence. In my view, the officers may have been mistaken as to where this rifle was found. Mr. Sanghera's room and closet were also captured in the video and the rifle is not in his closet.
- [212] The only room in which the video does not capture the inside of a closet is the spare bedroom. The closet door in this room is closed and blocked by numerous items including a clothes rack. Any items in that closet would not have been in plain view to anyone including Mr. Campagna and the others found in the suite.

- [213] The spare bedroom was not being used for any purpose other than storing items and the cat's litter box. No drugs, cash or paraphernalia were located inside this room. In all of the circumstances and considering the conflicting evidence of where the rifle was actually located, I am not satisfied the Crown has proven beyond a reasonable doubt that Mr. Campagna had the requisite knowledge and control over the rifle. Accordingly, he is acquitted of count 17.
- [214] I will now turn to the Ruger pistol and ammunition. These items were found in an air Jordan shoe box on the bottom shelf of the shelving unit in the master bedroom. Unlike the controlled substances and other items which were in a clear storage box that also had Mr. Campagna's personal identification, the pistol and ammunition were not mingled with controlled substances, identification or any other items related to drug trafficking. As well, the Ruger pistol and ammunition were not in plain view unlike the controlled substances and cash located throughout the master bedroom and living room.
- [215] In my view, the concealment of the items in the shoe box suggests that there are other reasonable inferences including that they may have belonged to Ms. Stewart and Mr. Campagna had no knowledge of their existence. While it is entirely possible that Mr. Campagna knew these items were there, that is not the test I am required to apply. I must be convinced beyond a reasonable doubt that the only reasonable inference is the guilt of the accused. I am not convinced it is. Accordingly, Mr. Campagna must be acquitted on counts 13-16.

Conclusion

- [216] I am satisfied that the Crown has proven beyond a reasonable doubt that Mr. Campagna trafficked in controlled substances to undercover officers on November 10th, 19th, 20th, 26th and 30th, 2021. Accordingly, I find him guilty of counts 1 through 5 on the Indictment.
- [217] I am satisfied that the Crown has proven beyond a reasonable doubt that Mr. Campagna was in possession of the controlled substances located in the suite. Accordingly, I find him guilty of counts 6 through 12 on the Indictment.
- [218] I am not satisfied that the Crown has proven beyond a reasonable doubt that Mr. Campagna was in possession of the Ruger handgun, rifle and cartridge magazines. Accordingly, I find him not guilty of counts 13 through 17 on the Indictment.
- [219] Before we adjourn, I wish to thank counsel for the utmost professionalism they demonstrated in the conduct of this trial. They worked together to produce comprehensive admissions saving valuable court time. The Court is indebted to you. As you embark on what will certainly be lengthy and successful careers in your chosen roles in the criminal bar, I encourage counsel to maintain this professionalism.
- [220] Thank you, counsel. We will adjourn now.

"Girn J."

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