

CANADA / JUDGMENT

R. v. Crawley

2025 BCCA 266

COURT

British Columbia Court of Appeal

DECIDED

31 July 2025

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2025 BCCA 266 R. v. Crawley

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Crawley,

2025 BCCA 266

Date: 20250731

Docket: CA49715

Between:

Rex

Respondent

And

Gerry William Crawley

Appellant

Before:

The Honourable Madam Justice Fisher

The Honourable Mr. Justice Abrioux

The Honourable Justice Donegan

On appeal from: An order of the Provincial Court of British Columbia, dated
December 4, 2023 (conviction) (R. v. Crawley, Surrey Docket 247862-1).

Counsel for the Appellant:

P.C. Fagan, K.C.

Counsel for the Respondent:

J.R. Lawn

G. Hutchings

Place and Date of Hearing:

Vancouver, British Columbia

March 18, 2025

Place and Date of Judgment:

Vancouver, British Columbia

July 31, 2025

Written Reasons by:

The Honourable Madam Justice Fisher

The Honourable Justice Donegan

Concurred in by:

The Honourable Mr. Justice Abrioux

Summary:

The appellant, a commercial truck driver, crossed the border into Canada with 64 kilograms of cocaine in a hidden compartment of his truck. The trial judge determined that he knew of the cocaine's existence and found him guilty of importing and possessing cocaine for the purpose of trafficking. The appellant says the judge erred in refusing to accept additional written submissions after the close of the trial, permitted inappropriate cross-examination by Crown counsel, and impermissibly inferred guilt from an absence of evidence.

Held: Appeal dismissed. The trial judge was entitled to refuse to consider additional written submissions in these circumstances, and these submissions would not have materially affected the outcome of the case. There was no inappropriate cross-examination. The judge did not infer guilt from an absence of evidence; her conclusion that the appellant knew of the cocaine's existence was reasonably open to her on the record.

Reasons for Judgment of the Honourable Justice Fisher and the Honourable Justice Donegan:

Introduction

- [1] After a seven-day trial, a provincial court judge found the appellant, Gerry Crawley, guilty of importing and possessing 64 kilograms of cocaine for the purpose of trafficking.

- [2] Mr. Crawley was a commercial truck driver who operated his own truck. The events giving rise to the convictions occurred on March 18, 2021, when he arrived at an international border crossing driving his truck and pulling a trailer with goods destined for Vancouver. During secondary inspection, officers located an after-market hidden compartment in the sleeper area of his truck containing the bricks of cocaine. At his trial, the only issue was whether Mr. Crawley had the requisite knowledge of these drugs. The judge rejected Mr. Crawley's evidence denying knowledge, found it did not raise a reasonable doubt, concluded the Crown had met its burden, and convicted him of both counts.
- [3] On appeal, Mr. Crawley argues that the judge made several errors resulting in an unfair trial and miscarriage of justice. For the reasons that follow, we would dismiss the appeal.

The Trial

Overview of the Crown's Case

- [4] The Crown called 15 witnesses in its case, including several Canada Border Services Agency ("CBSA") officers who dealt with Mr. Crawley and conducted inspections of his truck. Much of their evidence was not in dispute.
- [5] On March 18, 2021, Mr. Crawley was returning to Canada after having picked up goods in Vernon, California. When he arrived at the Pacific Highway Commercial Border crossing in Surrey, British Columbia, he was driving a truck he owned and was pulling a trailer owned by the company he was working for at the time--Crossroadz Limited ("Crossroadz"). When questioned by the primary inspection line CBSA officer, Mr. Crawley advised, among other things, that he owned the truck and that the load he was transporting had been "live-loaded", meaning that he witnessed the goods (hair products) being loaded into the trailer in the warehouse. When asked about the truck and trailer being scanned, Mr. Crawley advised that he could not recall, but that it had been done within the last six months. However, records accessed by the officer revealed that no examinations had been performed at any border crossing in Canada during the last year. The officer decided to refer Mr. Crawley for a secondary inspection, specifically for large-scale imaging ("LSI") of the truck and trailer.
- [6] The primary inspection line officer had no difficulty communicating with Mr. Crawley during their three- or four-minute interaction, nor did he notice anything that might suggest Mr. Crawley was nervous. He did, however, notice that when he was discussing the secondary inspection referral, Mr. Crawley became somewhat incoherent and began gesturing that he was having difficulty hearing him, even though the officer's manner of speaking had not changed.

- [7] Once at the LSI bay, Mr. Crawley spoke to another CBSA officer and advised, among other things, that everything in the truck belonged to him. Imaging of the truck showed the presence of a mass in the back wall of the cab, an area that would normally be hollow. Previous imaging of the truck on December 16 and 30, 2018 (Mr. Crawley was driving the truck on these occasions as well) did not show the same anomaly. Officers decided to inspect the truck.
- [8] During the initial inspection, an officer observed some buttons affixing a six-inch decorative strip to the back wall of the cab in the sleeping area. When he popped off the buttons, a screw head became visible underneath. The officer thought this was unusual, so he referred the truck for further examination. In the meantime, Mr. Crawley spoke to another CBSA officer about his ownership of the truck and his trip to California. He confirmed that he owned the truck, and advised that he had owned it for two years, the same duration he had been working for Crossroadz. About his trip, Mr. Crawley told the officer that he left Canada on March 14 and travelled to "a little place in Weed, California" where he picked up the load at a warehouse on March 16. He slept in his truck, and no one else had been in it. When the officer told him the imaging had revealed anomalies that would be checked, Mr. Crawley's eyes widened noticeably, and he became very still. He visibly relaxed his posture and appeared calmer when the officer informed him that the trailer would be off-loaded.
- [9] During the further examination of the truck, an officer accessed the back wall of the cab from the upper bunk by prying off one of the button caps on the trim, which revealed a Robertson screw head. He then removed the numerous Robertson screws (somewhere between two and three dozen) that held both sides of the trim in place. Removing the trim revealed a compartment between the padded wall and the metal wall of the cab. Inside the hidden compartment were the bricks of cocaine, valued at approximately \$3,000,000. Officers found a similar hidden compartment in the wall of the lower bunk area of the cab, but it was empty.
- [10] From within the accessible, unlocked storage compartments located under the lower bunk officers found: (a) a Dewalt bag containing a drill and a yellow Dewalt case with drill bits. The Robertson drill bit from the case was in the drill; and (b) a black MasterCraft tool bag containing a Ziploc bag holding Robertson screws and caps that were the same as those used to attach the panel to the back wall of the cab. From within the centre storage area below the bottom bunk, officers located another bag containing similar screws and caps.
- [11] The Crown also called a number of expert witnesses. Their qualifications and opinions were not in dispute.

- [12] One witness was qualified to provide opinion evidence with respect to after-market compartments, including construction techniques used, related functionality and costs associated with them. This witness inspected Mr. Crawley's truck and opined that the two hidden compartments were after-market constructions. They were each approximately four and a half inches. Widening the voids in this way had the effect of moving the bed closer to the driver's seat and creating less space in the cab.
- [13] This expert also opined that building the two hidden compartments would have taken a significant amount of time ("minimum two weeks working conscientiously on it"), at a cost of \$60,000 to \$100,000.
- [14] Two forensic identification examiners were qualified to provide opinion evidence in the area of fingerprint examination, comparison and identification. In short, the first expert opined that: (a) Mr. Crawley's fingerprint was located on the back side of the panel located in the hidden compartment in the lower bunk level; (b) a fingerprint located on a black plastic vent on the lower bunk area of an exterior wall did not belong to Mr. Crawley; and (c) a fingerprint and palm print impression located on the back of a press board panel did not belong to Mr. Crawley. The second expert opined that a fingerprint located on the cocaine packaging did not belong to Mr. Crawley.
- [15] By admission, opinion evidence from a witness in relation to the importation of cocaine into Canada and the trafficking and possession of cocaine in the Lower Mainland of British Columbia (including distribution routes, packaging and value, among other things) was also before the court. In brief, regarding transportation, this expert opined that: (a) cocaine is not indigenous to Canada; (b) when cocaine is transported by land, it typically moves from a source country like Columbia to Mexico, the United States, and then Canada; (c) cocaine that ends up in Vancouver is typically transported up Highway I-5, which runs from Mexico to Vancouver; and (d) the I-5 route has cities which operate, by virtue of their location, as "hub cities" for staging cocaine for transportation. Los Angeles and Vancouver are hub cities.
- [16] Regarding couriers, the expert explained there are two types--those that know they are carrying the cocaine, and those that do not ("blind couriers"). In regard to the former, he opined that these couriers are typically part of the importation group or are third parties recruited to transport the drugs for payment. Characteristics of an acceptable courier of this type include people without prior drug convictions who have an established and unblemished border-cross history and profile. In regard to the latter category of courier, he opined that in addition to the acceptable characteristics of a courier with knowledge, an acceptable blind courier would be someone transporting in circumstances that make it unlikely they will discover the drugs, such as a driver with a full load with no reason to stop and examine the load before arriving at their destination.
- [17] The expert also offered opinions about the advantages and disadvantages of a blind courier. Regarding advantages, he said use of a blind courier: (a) insulates importers from detection if discovered by law enforcement, as the courier is unable to identify them; (b) prevents

unintentional disclosure by the courier; and (c) saves money by not having to pay the courier. Regarding disadvantages, he said it: (a) foregoes the importer's control over the courier's actions, leaving them susceptible to the courier's schedule, as well as loss of the valuable commodity if discovered by the courier (this loss of control can, however, be minimized by choosing a courier with a regular pattern of travel); and (b) makes loading and removing the drugs cumbersome, as it is attempted without the courier's assistance and knowledge.

- [18] Pamela Fik, the owner of Crossroadz, testified. Her evidence was disputed.
- [19] Ms. Fik testified that she and her niece started Crossroadz in the spring of 2019. She employed Mr. Crawley, who she knew to be a friend of her brother, Paul Singh. She testified that her brother did not have any involvement with Crossroadz, beyond financially contributing to the start-up costs. When interviewed by police, Ms. Fik refused to give her niece's name, nor did she mention her brother. At trial, she explained that she did not think her niece needed to be involved and wanted to protect her. She did not mention her brother because she knew he had been in "trouble with the law before" and police did not ask about him. To her knowledge, her brother had never driven Mr. Crawley's truck, but he did have access to the yard where it was parked.
- [20] Ms. Fik further testified that Mr. Crawley's first trip for Crossroadz was in July 2019. She said that Mr. Crawley would contact her when he was interested in working and that he told her he wanted to do trips to southern California, specifically the Los Angeles area. While he was firm about this, he did do trips to other locations on occasion. She estimated that until the time of his arrest, Mr. Crawley had made about 37 trips for Crossroadz and that, to her knowledge, he did not drive for anyone else. After Mr. Crawley's arrest, the company ceased operating.
- [21] In the course of their investigation, police seized documentation from within Mr. Crawley's truck, including logs that recorded Paul Singh as having taken four trips in the truck between September 25 and December 9, 2019.

The Defence Case

- [22] Mr. Crawley chose to testify. He testified about his background, his use and ownership of the truck, his relationship with Crossroadz and Paul Singh, and the events of March 14-18, 2021. He denied knowing anything about the cocaine.
- [23] At the time he testified, Mr. Crawley was 66 years old. He had been a truck driver early in his career and returned to it in 2008 following the downturn in the global economy. Prior to his arrest on this matter, he had had no negative interactions (other than a few speeding tickets) with authorities. The truck he was driving at the time of his arrest was the only truck he had driven since 2018. He explained that he purchased the truck on April 16, 2019. Prior to that, he drove the truck, full-time, from November 2018 to January 2019 when he worked for a company called Summer X.

- [24] Mr. Crawley testified that he purchased the truck, on Mr. Singh's recommendation that it was a good deal, from a company in Calgary. He said that he noticed some cosmetic differences in the cab from when he had last driven it, specifically that the trim in the bunk area was different and that an accent light had been added. He did not notice that the sleeping area was smaller. In cross-examination, he added that the truck had originally been a day cab, with no sleeper, and that the sleeping compartment was added after-market.
- [25] Mr. Crawley testified that after purchasing the truck he was undecided about whether he would operate it or resell it. When he learned through Mr. Singh that Ms. Fik was starting a trucking company, he decided to operate it and applied for the job. He began working for the company on July 19, 2019, travelling at first to some different destinations, but eventually narrowing his travel to the I-5 corridor which he liked because of the consistency of a familiar route. In December 2019, Crossroadz installed an electronic logging device, which allowed for live tracking of the truck's location.
- [26] Regarding Mr. Singh, Mr. Crawley testified that he had known him for about a decade. Their relationship was professional--focused on trucking. Mr. Singh had hired him to drive a gravel truck in Calgary and then over the years he worked for him from time to time and they remained in contact. Mr. Crawley testified that Mr. Singh helped him occasionally with his truck by taking it for servicing and repairs. He helped him in other ways too, such as occasionally loading or unloading the trailer. Mr. Crawley parked his truck in a lot rented by Crossroadz and Mr. Singh was aware of where he hid his spare set of truck keys.
- [27] Mr. Crawley testified that he was not surprised to learn of the presence of one of his fingerprints inside the wall behind the trim in the hidden compartment on the lower bunk level. He explained that shortly after he purchased the truck, he decided to investigate the lack of air conditioning in the sleeper area of the truck. In the course of doing so, he removed the panel in the lower bunk area, found the space behind it and searched it, looking for wires. He said he gave little thought to the compartment because he expected there to be space for insulation and wires. Mr. Crawley testified that he was surprised that more of his fingerprints were not found in that area. He never did repair the air conditioning, testifying that the price he was quoted was too high.
- [28] Mr. Crawley repeated that he did not know about the cocaine hidden in his truck. When asked by his counsel if he had an explanation as to when the drugs could have made their way into his truck, Mr. Crawley said that, having had this as his "constant thought" since the day of his arrest, he believed the only time it could have happened was when the trailer was being loaded in Vernon--a place Mr. Crawley described as being the "old part of Los Angeles".
- [29] Mr. Crawley gave detailed evidence about his March 14-18 trip. He said he was alone and slept inside his truck. He arrived at the warehouse in Vernon on March 16 and found it was very crowded with trucks, personal vehicles, and people.

- [30] Mr. Crawley testified that it took approximately two hours to load his trailer with the hair products. He was out of his truck during this time and not paying much attention to the cab because he was mostly about 70 feet away, making it difficult to see. He was busy during this time, supervising the loading and repairing broken and flimsy pallets with his own tools. He described the area as noisy (estimating there were hundreds of people talking loudly), such that he would not have heard a door slamming. After the trailer had been loaded, and Mr. Crawley returned to his truck, he said he did not notice that any of his personal belongings had been disturbed, nor was there any damage to any part of the interior.
- [31] Mr. Crawley was cross-examined about property his wife purchased, as well as emails (seized from the search of his electronic devices) he had sent to his sons and accountant in 2020. Ultimately, the Crown suggested to Mr. Crawley that he had structured his financial affairs to insulate his wife from illegal sources of money and that he had imported drugs to set his family up financially. Mr. Crawley denied these things.
- [32] The evidentiary portion of the trial completed on May 30, 2023. Closing submissions occurred the following day.

Submissions of Counsel

- [33] Both counsel made oral submissions focused on the sole issue the judge was to decide-- whether the Crown had proven Mr. Crawley had the requisite knowledge of the drugs in the hidden compartment of his truck.
- [34] Defence counsel began his submissions with an overview of the applicable law, by reference to a decision of Justice Winteringham, as she then was, in *R. v. Subramaniam*, 2023 BCSC 637. Describing the decision as "one of the best legal templates I've come across dealing with these two charges", counsel took the judge through it in detail, including the court's review of general principles surrounding the presumption of innocence, the burden of proof, the assessment of credibility, consideration of circumstantial evidence, the principles engaged when the accused testifies as articulated in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, the requirements for the element of knowledge, the "alternative suspect defence", and principles engaged in "blind courier" cases.
- [35] Defence counsel first argued that Mr. Crawley's evidence should be believed. He then detailed the evidence pointing to Mr. Singh as a viable alternative suspect, arguing that this should at least raise a reasonable doubt. Counsel next turned to the Crown's evidence, highlighting all that favoured a finding that the Crown had failed to meet its burden, including the fingerprints found that were not identified to Mr. Crawley. Counsel later returned to emphasize that Mr. Crawley's evidence was worthy of belief as it not only dovetailed with most of the Crown's evidence, but because he is a man of good character, something the Crown had put in issue. His counsel argued that if Mr. Crawley had any flaws, it was in trusting people like Ms. Fik and Mr. Singh too freely.

- [36] Crown counsel argued that the evidence that had been presented supported, as the only rational inference, that Mr. Crawley knew the drugs were in his truck. The Crown asked the court to reject material aspects of Mr. Crawley's evidence as incredible and nonsensical, and to conclude that Mr. Crawley's decision to smuggle drugs across the border was simply one of those "poor choices" he acknowledged making in the emails put to him in cross-examination. In support of this position, counsel spent considerable time reviewing the various pieces of circumstantial evidence, as well as the evidence that he argued made the alternative suspect and/or blind courier scenarios incapable of belief.
- [37] Defence counsel was permitted to make a liberal, and somewhat lengthy, reply. He emphasized the evidence showing that Mr. Crawley was a blind courier, and that someone like Mr. Singh had arranged to secrete the cocaine in his truck, which he unknowingly transported to the border that day. He also addressed the Crown's theory and submission that Mr. Crawley had admitted to smuggling drugs in the emails to his son. Counsel argued that there was no evidentiary correlation between the emails and the events of March 18, 2021, and they were taken out of context. He emphasized the absence of any reference to drugs, smuggling or any wrongdoing and noted that other inferences could be drawn from the emails. Counsel also argued that the Crown was "overreaching" on the evidence of Mr. Crawley's demeanour at the border and emphasized again the absence of Mr. Crawley's fingerprints on the cocaine packages and in other areas of the cab.
- [38] At the end of submissions, the judge reserved judgment and advised counsel that she would render her decision on August 21, 2023.

The Additional Written Submissions

- [39] Approximately two weeks before judgment was to be rendered, counsel for Mr. Crawley submitted 47 pages (139 paragraphs) of written submissions to be filed with the court. He did not seek leave to do so. Crown counsel objected. When the judge was advised, she stopped writing her decision and scheduled a hearing. Given the Crown's objection, she did not read the written submissions.
- [40] The hearing occurred on August 17, 2023. Defence counsel advised the judge that he felt additional submissions were necessary because, after obtaining and reviewing transcripts of the proceeding since the time of oral submissions, he found a "profound disconnect between some of the submissions of [Crown] counsel and the actual evidence taken" and "therefore deemed it not just prudent but necessary to tender written submissions supported by official transcripts". Defence counsel did not elaborate on the areas of "disconnect", but took the overall position that rejecting the new submissions would not be "viable" in that it would be "patently unfair and tantamount to a gross violation of Mr. Crawley's right to make full answer and defence".

- [41] In response to an observation by the judge that the written submissions seemed to contain reference to several additional authorities, defence counsel replied: "I was of the opinion and remain of the opinion that whatever assistance counsel could offer by way of the guiding legal principles would be welcomed by the court and my friend."
- [42] Crown counsel opposed the judge receiving the additional written submissions. He denied misstating the evidence and invited the judge to review the transcripts. Crown counsel, of the view that the defence was effectively applying to re-open the trial, provided the judge with an authority outlining the legal principles engaged by such an application. Overall, the Crown took the position that the defence had already been given the opportunity to provide full and unhurried submissions, and that this was simply an improper attempt to make full submissions for a second time.
- [43] In reasons delivered August 21, 2023, the judge determined the defence had failed to meet its "onus of reopening the case, whether exceptional or not", and declined to consider the written submissions. She would, however, review the transcripts of the proceeding, along with her notes, when considering whether the Crown had proven its case. She held that she was "in a position to determine if the Crown misstated or overstated some facts as alleged by the defence", without the written submissions. Noting that full submissions had already been made and that this was not a situation where new and relevant caselaw, or new evidence, had come to light in the intervening period, the judge agreed with the Crown that "finality in these matters is important".

Reasons for Conviction

- [44] On December 4, 2023, the judge delivered reasons for judgment, convicting Mr. Crawley of both counts, as charged.
- [45] The judge began by detailing all of the largely uncontested evidence, including all that we have summarized above, and more. She then correctly outlined the various legal principles at play and accurately described the positions of the parties. The judge next explained, in the context of all she had previously outlined, why she rejected the material parts of Mr. Crawley's evidence, and found it did not raise a reasonable doubt. She rejected his evidence for a myriad of reasons.
- [46] The judge agreed with Mr. Crawley that, if the material parts of his evidence were true, the only time the cocaine could have been placed in the hidden compartment in the cab of his truck without his knowledge was during the time the trailer was being loaded in Vernon. Accepting that Ms. Fik knew where he was through the tracking system and even assuming she told Mr. Singh or an unknown person about his location (although there was no evidence of this), the judge explained the implausibility of such a scenario by reference to several circumstances that would all "have had to fall neatly into place":

[125]

1. Mr. Singh or the unknown person would have had to know the exact location of the hidden compartment. They would have to know that the bottom compartment did not have a shelf and they would have to know the width of the hidden compartment.
2. The hair products' location in the basement of the warehouse would have had to be planned in advance. If the hair products were readily available on the loading dock, it would not have taken two hours to load the trailer and the unknown person would not have had enough time to load the cocaine into the cab.
3. The pallets that the products were on would have had to be falling apart so that Mr. Crawley went into the trailer to put them back together rather than remaining in the cab or outside the trailer where he could watch his cab. The unknown person would have had to know that Mr. Crawley was particular as to how his load was loaded and that he would become involved in ensuring it did not shift.
4. The unknown person would have had to find some way of loading 156 lbs or 71 kgs of bricks of cocaine into the cab without anyone seeing them. I find it difficult to believe the bricks of cocaine could be carried on their own as a bundle. In my view, they would have to be carried in some type of container, likely with wheels.
5. As Mr. Crawley stated, the quarters in the cab were tight. To get in the driver's side door the unknown person would have had to get past the steering wheel before going through to the back sleeper section. The photos of the passenger side show a space filled with an ice chest and other items. While not impossible, it would have taken time and they would have had to move items out of the way and then put them back exactly as they had been.
6. Once in the sleeper compartment, the unknown person would have to pop the caps off the screws holding the dark grey trim to the wall and then remove approximately 30 screws to gain access into the hidden compartment. Then they would have to individually load 64 kg bricks of cocaine into the space that is 4.5 inches wide. The bricks would have to have been almost individually loaded because of the tight space. The secret compartment in the photos appears to be completely filled with the bricks. The hidden compartment was in the upper bunk level, which would have added a degree of difficulty for the unknown person.
7. After loading the bricks, the unknown person would have to reattach the dark grey trim by screwing in the 30 screws and placing their caps over them. They would then have to leave the cab without Mr. Crawley being aware of them.
8. Mr. Crawley used his DeWalt screwdriver to fix the pallets and at some point would have had to go into the cab or access the box under the lower bunk by way of the jockey door to retrieve it once he discovered that the pallets were falling apart. This would have occurred part of the way through the two hour period of time that he says he was at the warehouse.

9. Since, as Mr. Crawley testified, he knew nothing about the drugs at all, all of the loading would have to be done without him seeing the unknown person. If he saw them unexpectedly, there would be a chance that he would report them to the authorities. Given that the cocaine had a street value of over \$3M, it would have been a costly mistake if the unknown person were to be discovered by Mr. Crawley and, in the circumstances, there was a good chance they would have been.
- [47] The judge then considered whether Mr. Singh and/or Ms. Fik were viable alternative suspects. In finding that the low evidentiary burden on the defence in this regard had not been met, the judge reasoned:
- [128] In this case, I am told only that Mr. Singh has been in trouble with the law. There are many reasons people get in trouble with the law other than being involved in drug trafficking. I cannot find that Mr. Singh had the disposition or propensity to commit the crime of drug trafficking. There is certainly no evidence that Ms. Fik had ever had any trouble with the police at all. While the connection between the alternate suspect and the offence may be inferential, the inference must be reasonable and not speculative. In this case, the only evidence I have of Mr. Singh's involvement with the cab is from 2018 and 2019, over a year before the offence date. His involvement appears to be taking the cab to be serviced.
- [129] I accept that the evidentiary burden on the defence is low when establishing some connection with the alternate suspect. However, I cannot find that the low evidentiary burden has been met.
- [130] I agree with the Crown that, applying common sense to the evidence given, it appears to me that the risk would be too great to use Mr. Crawley as a blind courier, even assuming that Ms. Fik or Mr. Singh were involved and had the knowledge attributed to them by Mr. Crawley. Taking into account all of the planning that would have had to take place for Mr. Crawley not to know that cocaine was being placed in the hidden compartment of his cab as set out above, I cannot find that Mr. Singh or Ms. Fik could have or would have been able to do so without being discovered.
- [48] The judge went on to discuss other reasons why she did not accept the material parts of Mr. Crawley's evidence. First, she found that Mr. Crawley's evidence that the cab was originally a day cab and the sleeper was an after-market addition was inconsistent with his previous evidence, and made no sense when the photograph of his truck was compared with a photograph of a day cab truck. The day cab lacked space behind the driver's seat to expand to accommodate a sleeping component, and any extension would have been evident to Mr. Crawley: para. 131.
- [49] Second, she found Mr. Crawley's explanation for the presence of his fingerprint in the lower hidden compartment made little sense and defied logic. Mr. Crawley said that he was searching the compartment for wires related to the HVAC system and that, given his activity in that area, he was surprised more of his fingerprints were not found. The judge was surprised as well, concluding that if his story was true, more of his fingerprints would have

been present in that area. She inferred that the presence of only one of his fingerprints in the hidden compartment was consistent with Mr. Crawley being "careful of leaving fingerprints" in that area, which she found to be inconsistent with his claim to know nothing about the reason for the compartment: para. 132.

[50] Third, while the judge accepted Mr. Crawley's evidence about when he purchased the truck and when he last drove it before the purchase, she found it extremely unlikely that the seller of the truck would, in that roughly three-month period, have "taken weeks to install a hidden compartment at the cost of \$60,000 to \$100,000 and then sell the cab to Mr. Crawley for \$21,000": para. 133.

[51] The judge noted other evidence tendered by the Crown, including the emails and the Robertson screwdriver, supported a finding of knowledge, but found that evidence was not determinative: para. 134. She then concluded, in the context of all she had set out, that the Crown had met its burden of proving Mr. Crawley had knowledge of the drugs, and convictions followed.

On Appeal

[52] The appellant raises three grounds of appeal. He contends the judge erred in:

- a) failing to consider his additional written submissions;
- b) permitting improper cross-examination of him by the Crown; and
- c) by inferring his culpability based on an absence of evidence.

[53] As we will explain, we would not accede to any of the grounds of appeal.

Did the judge err in declining to consider the appellant's additional written submissions?

[54] Mr. Crawley submits the judge applied the wrong test in considering his additional written submissions. He says she erroneously approached the question as though it were an application to re-open the trial, relying on *R. v. Griffith*, 2013 ONCA 510. Mr. Crawley says his application to file additional submissions properly engaged the exercise of the judge's trial management powers, relying on *R. v. Samaniego*, 2022 SCC 9 at paras. 20-23.

[55] The Crown submits that, regardless of the applicable test, the judge made no error in declining to accept Mr. Crawley's additional submissions. It says these submissions were not about addressing a "profound disconnect" between Crown counsel's closing submissions and the evidence but were in effect a new and comprehensive set of submissions, including references to another two dozen cases, none of which had been released in the interim between the end of the trial and the time of the application.

- [56] In Griffith, the Ontario Court of Appeal applied the principle that trial judges have the jurisdiction to re-open a trial in exceptional circumstances. The trial judge in that case had re-opened the trial on his own motion after conviction and entered an acquittal. On appeal, the Court affirmed his jurisdiction to re-open but granted a mistrial. The judge in this case noted this distinction and simply held that the defence had not met the onus to show the case should be reopened, "whether exceptional or not".
- [57] We agree with Mr. Crawley that this was not an application to re-open the trial. No verdict had been entered, and no evidence was sought to be adduced. This was an application that engaged the judge's discretionary trial management powers. That said, it was an unusual application given that the trial had concluded several months previously, after the parties had made full oral submissions.
- [58] We also agree with the Crown that the additional submissions went far beyond addressing the defence concern about "a disconnect" between the evidence in the transcripts and statements of Crown counsel in closing submissions. The submissions were, in effect, a complete redo of the defence closing argument. They addressed a detailed summary of the evidence and the position of the defence, a comprehensive review of the basic legal principles of the presumption of innocence, proof beyond a reasonable doubt, W.(D.), credibility and reliability, circumstantial evidence, the charges, the alternate suspect defence and the issue of a blind courier. These matters were addressed in the oral submissions. At that time, the evidence was fresh and there was no disagreement about the applicable law.
- [59] The argument portion of the additional submissions raised three main points: (a) Mr. Crawley's testimony should be believed, (b) he was a blind courier, and (c) there was an alternate suspect. It focused largely on the first point, Mr. Crawley's testimony, and set out nine points, only one of which was that the Crown "overstated its case" as to several issues, which included Mr. Crawley's preferred route (paras. 97-99), his emails (paras. 100-104), his log book (paras. 105-107), his demeanour at the border (para. 108), his fingerprints (para. 109) and the Crown's "improper" cross-examination about his documents (paras. 110-111). Importantly, most of these topics were addressed by the reply submissions of defence counsel at trial--in particular, the emails (at some length), the demeanour evidence and the fingerprints.
- [60] We see no real suggestion in the written submissions that Crown counsel had mischaracterized any evidence. The complaint was simply with the use the Crown invited the court to make of the evidence, and the inferences the Crown invited the court to draw. Even if there were misstatements, as the judge noted in her ruling on the application, she had the transcripts herself and was fully capable of reviewing them to ensure there was no "profound disconnect" between Crown submissions and the evidence. There is no indication that the judge in fact relied on any misstatements by Crown counsel in coming to her conclusions. She referred to the emails only as pointing towards Mr. Crawley's involvement in the trafficking scheme but stated clearly that this was not determinative.

[61] In short, Mr. Crawley had already been given the opportunity to make a full and liberal reply to the Crown's closing submissions. Although the written submissions could have been helpful, there was no unfairness to Mr. Crawley in the judge's decision not to accept them, and there was no miscarriage of justice.

Did the judge err in permitting certain cross-examination of the appellant?

[62] Mr. Crawley contends the Crown improperly questioned him: (a) on a matter of trial strategy, when inquiring about why he did not bring documents relating to his purchase of the truck to court; and (b) on irrelevant matters eliciting bad character evidence when inquiring about emails he wrote in 2020. He says the judge's errors in allowing these improper questions, individually or in their cumulative effect, impaired his right to a fair trial and caused a miscarriage of justice.

General legal framework

[63] As was the case in *R. v. Hart*, 2024 BCCA 181, Mr. Crawley's contention here raises two questions for determination. The first is whether the Crown's conduct was improper. The second is whether any impropriety, or improprieties, resulted in a miscarriage of justice: *Hart* at para. 19.

[64] A miscarriage of justice occurs when improper Crown conduct either prejudices an accused so as to render their trial unfair or otherwise brings the administration of justice into disrepute: *Hart* at para. 19. When ascertaining whether the impugned conduct has created a miscarriage of justice that requires appellate intervention, it is necessary to assess the appellant's concerns against the whole of the record. The analysis is "case-specific" and "requires consideration of the alleged improprieties in the context of the entire cross-examination, indeed in the environment of the entire trial": *Hart* at para. 25.

[65] In determining whether the Crown's conduct was improper, the analysis must be framed in the context of certain general legal principles. In *Hart*, Justice Voith noted the well-established principle that Crown counsel plays a dual role as advocate and "minister of justice" and must be of "absolute integrity" in exercising their role, including during cross-examination: at para. 20, citing *Boucher v. The Queen*, [1955] S.C.R. 16 at 23-24 and 26, and *R. v. Dhaliwal*, 2016 ONCA 652 at para. 30. He noted that, while the right to cross-examine "is an essential truth-seeking element of the criminal trial", there are restrictions that pertain to all witnesses, and particularly where the Crown cross-examines the accused: at paras. 21-23.

[66] Justice Voith identified two broad forms or categories of improper cross-examination of the accused by the Crown: at para. 23. The first category arises where the Crown harasses or demeans the accused, or "punish[es] the accused for invoking his or her constitutional rights": citing *R. v. Ahmed*, 2015 ONCA 751 at para. 41. The second category addresses evidentiary concerns, and arises where the Crown asks questions that "have the potential to elicit answers that are improperly prejudicial to the accused": at para. 24, citing *Ahmed* at para. 42.

[67] Mr. Crawley does not allege any impropriety in the first category. It is the second category that is engaged by Mr. Crawley's arguments on appeal.

Questioning about the absence of documents relating to Mr. Crawley's purchase of the truck

[68] Mr. Crawley argues that the judge erred by permitting Crown counsel to ask him why he did not bring documents relating to the date of purchase of his truck to court. He contends that this question impermissibly enquired into matters of trial strategy, which are protected by solicitor client privilege.

[69] Before turning to the impugned cross-examination, it is important to understand the context of these questions. Again, the only issue at trial was whether Mr. Crawley had knowledge of the cocaine. The timing of Mr. Crawley's purchase of the truck was an important factor relating to this issue. Whether he had knowledge of the hidden compartment recently installed in his truck was highly relevant to that question, especially because he denied knowledge of the compartment containing the drugs. The evidence was uncontested that the hidden compartment, a costly and time-consuming addition, had to have been added after December 30, 2018, when it had last been scanned by CBSA.

[70] In examination in chief, Mr. Crawley testified that he bought the truck on April 16, 2019, and that the last time he had driven it before his purchase was in January 2019, when he stopped working for Summer X. He further testified that he had nothing to do with the truck in that three-month period and that when he purchased it, he noticed "somebody upgraded it or did some [cosmetic] detail work" in the cab. The Crown was certainly entitled to probe the details of Mr. Crawley's evidence relating to his use and purchase of the truck.

[71] Very early in cross-examination, Crown counsel asked Mr. Crawley who sold him the truck:

Q Who -- who did you buy it from? Who owned it before you?

A I bought it from Arundal Capital Corp in Calgary.

Q So you didn't -- you didn't buy it from Paul Singh?

A Well no, I -- I had a certified cheque for Arundal Capital.

[72] Crown counsel then asked, without objection, about whether Mr. Crawley had any documentation that would show when the purchase was made:

Q And did you happen to bring any of the documentation about your purchase and the cheque, et cetera, to court just to show us when you bought the truck?

A I didn't bring any. But I know that I saw a picture somewhere of a bill of sale with that date April 16, 2019 Arundal Capital Corporation blah, blah, blah.

[73] Later in cross-examination, counsel returned to question Mr. Crawley on this topic:

Q Okay. And I just wanted to confirm that you said you might have seen a photo of it but you -- you don't have a receipt for the truck that -- when you bought it, your -- sort of your transfer papers, your registration when you -

A I don't have it here, no.

Q And you knew some of these issues about ownership and possession of the drugs were going to be an -- an issue, but you didn't -- but you didn't think to bring sort of those documents to your trial.

A I'm sorry, I don't understand your question.

Q Well, just -- I guess the first question is, you obviously appreciate these are -- are serious proceedings in your life.

A I appreciate them?

Q You -- do you -- you understand that the circumstances of this trial that there's -- there's -- there could be significant impacts on your life because of this trial.

A I'm well aware, sir. For two years I've been dealing with it.

Q Right. And -- and you have been preparing for this case in your mind for a couple years.

A Fair to say.

Q And so I'm just -- I'm just asking why you didn't bring those documents to court about when you purchased the vehicle.

CNSL P. FAGAN: I'm sorry, but I believe my friend may be getting into the realm of solicitor-client privilege. Decisions of that nature -

CNSL D. HARTNEY: I -

CNSL P. FAGAN: -- wouldn't be made by a man in Mr. Crawley's position. It would be made by a man or woman in my position.

CNSL D. HARTNEY: There's absolutely nothing improper about that question, Your Honour, and I'm not sure what the objection is.

CNSL P. FAGAN: I don't recall using the word improper.

THE COURT: No. I think if it -- if he was told not to for some reason, that would maybe impinge onto it. But the question why didn't you bring them, I suppose is a pretty innocent question. So go ahead.

A I'm sorry, are you instructing me -

THE COURT: Sorry, no, he's -- the -- Mr. Hartney's asking why didn't you bring the documents to court.

A I would answer with a question, why would I? I don't know how to answer that question.

- [74] We have underlined the questions where Mr. Crawley says the Crown was erroneously permitted to cross-examine him.
- [75] Contrary to Mr. Crawley's submissions, we do not see these questions, in the context of the issues in this case, as transgressing the rules of permissible cross-examination. The questions related to a relevant issue and did not seek to explore, or engage with, matters of trial strategy. When first asked about whether he brought documentation about the purchase to court, no objection was made. Mr. Crawley's answer did not reveal any trial strategy or suggest that such considerations might be engaged. He said "I didn't bring any [documentation]. But I know I saw a picture somewhere of a bill of sale with that date April 16, 2019 Arundal Capital Corporation". When later asked, over defence objection, why he did not bring those documents to court, Mr. Crawley's answer did not reveal any trial strategy, or suggest that such considerations might be engaged. He said "why would I? I don't know how to answer that question".
- [76] Mr. Crawley says that his counsel objected to the question on the basis that it "invited his client to breach solicitor client privilege" and that the judge, in allowing the question, "seemingly did not agree". Respectfully, counsel's concern about the question was not articulated to the trial judge nearly so clearly. Counsel framed his remarks at trial equivocally, suggesting that the question might potentially tread into impermissible areas ("I believe my friend may be getting into the realm of solicitor-client privilege"). Counsel is in the unique position to know if this question would require his client to "either breach privilege or be unresponsive", as he now suggests. If this was indeed the case, one would expect the objection to be made clearly and unequivocally.
- [77] In any event, the questioning in this case is not analogous to that found to be impermissible in the authorities relied upon by Mr. Crawley. For example, in *R. v. McNeill*, [2000] 48 O.R. (3d) 212 (C.A.), counsel for the accused led evidence from his client about a conversation he had with a significant Crown witness. Aware that defence counsel had not posed questions about this conversation to that witness (in violation of the Canada Evidence Act, R.S.C. 1985 c. C-5 and the common law), Crown counsel chose not to draw this to the attention of the trial judge in order to seek a remedy. Rather, she chose to cross-examine the accused about his counsel's failure to pose those questions to the witness. On appeal, the Crown conceded this line of questioning was improper. The Court agreed, finding the questioning was capable of leaving the jury with the impression that the appellant should be held responsible for the conduct of his lawyer: at para. 42. Nor is the present case analogous to *R. v. Bona* (2002), 157 O.A.C. 201 (C.A.), where Crown counsel cross-examined the accused on why the accused had not called his former co-accused on the charges, as he was the only witness who could confirm his testimony. On appeal, the Crown conceded this was an impermissible line of cross-examination, and the Court agreed, finding it "simply had no place in the trial": at para. 5.

- [78] We also do not view this case as at all similar to *R. v. R. (A.J.)* (1994), 74 O.A.C. 363 (C.A.) where, among a whole host of other improprieties, the Crown improperly asked the accused: (a) to explain the evidence of Crown witnesses; (b) about conversations he had with his lawyer; and (c) about whether he intended to call certain witnesses (which the Crown would know were decisions for counsel). The Court concluded that the cross-examination, "considered in its totality and in the context of the entire trial, prejudiced the appellant in his defence and significantly undermined the appearance of the fairness of the trial": at 687. Nothing of the sort occurred in this case.
- [79] While our conclusion that the Crown did not engage in any improper questioning is sufficient to dispose of this ground of appeal, we would add this: if any impropriety could be found to exist here, it did not cause any prejudice to Mr. Crawley and certainly did not result in a miscarriage of justice. The judge actually accepted Mr. Crawley's evidence about when he purchased the truck, without any corroborating documentary evidence. The judge provided comprehensive reasons for rejecting Mr. Crawley's evidence, and for finding the Crown had met its burden. While she referred to the lack of documentation about the truck purchase in her summary of the evidence, it is apparent from her reasons as a whole that neither the lack of documentation, nor the cross-examination about it, formed any part of her analysis.

Questioning on the emails

- [80] Over the objections of defence counsel, Crown counsel was permitted to cross-examine Mr. Crawley about emails he had written to his son and accountant about his financial dealings some seven to eight months before the offence. He says the judge erred in allowing the questioning, as the content of the emails was both irrelevant and elicited inadmissible bad character evidence. We disagree, on both counts.

- [81] On July 7, 2020, Mr. Crawley wrote an email to his son that read, in part:

I just sent response to your email. Please respect my position on your mother's insulation. I have removed the portion in your email where you address that and have worded it so you know but no one else will. How you deal with Liz is your business but please respect and honour my wishes to also insulate her from my choices.

You will have to be creative in your answer to honour my wishes and satisfy her and yourself. Let me know privately if you wish to discuss this issue more, I'm happy to provide you with some rationale on the phone as long as we are circumspect with detail.

- [82] That same day, Mr. Crawley also wrote to his son:

Crawley Ltd. now exists and has cash reserves of approximately 1M though only a small portion is currently in Canadian banks. Structure offshore is in preliminary stages and may require another one to two months to complete. It will have basic and "normal" characteristics which will not be written here. It will be designed with a combination of off/onshore entities for maximum tax compliance/minimizing strategies as well as protection from attack.

I am doing what I believe is best for your mother and I, and as imperfect as I am, I realize I may be making some wrong choices. But I try to do what my faith allows and let God sort me out as we go. You must do the same for your family regardless of the cost or missed quote/unquote opportunities et cetera etc. What I do for my family, you included, is my business and not really open for discussion or debate as to why or who knows what, et cetera.

Let me end by saying that the love I have for you and your family is infinite to the best of my human ability and my desire in all this is to provide for my family the best I can.

[83] On August 6, 2020, Mr. Crawley wrote to his accountant, in part:

Good morning, Mike, Anna and Ethan and I are going to put in an offer on a small farm in B.C. today or tomorrow. It is quite sudden as this property just came to our attention and it is perfect!! Should I be using one of my Alberta registered corporations, the books in your office, to make the purchase? Only Crawley Ltd. currently has a bank account. However, I will be meeting with a private lender who will take a large cash down payment and bank account may be unnecessary. I do wish privacy and protection as you know, and will be maintaining Alberta residency. I am unfamiliar with registering B.C. property. Please advise. Gerry.

[84] Mr. Crawley denied the suggestion that the reason he structured the property purchase in this way was to insulate himself from the illegal sources of money used to purchase it and explained that it was done for estate planning purposes. While he agreed with the suggestion that he was structuring his affairs in order to "set his family up", he denied that he was importing drugs to make quick, easy money to do so.

[85] Defence counsel objected to this line of cross-examination, characterizing it as irrelevant and inadmissible bad character evidence, but the judge allowed it. Crown counsel took the position that the contents of the emails were relevant to motive and knowledge of the offence, and the probative value of questioning in relation to them outweighed any prejudicial effect.

[86] Generally, all relevant evidence is admissible unless it is barred by a specific exclusionary rule. Relevant evidence is that which has "some tendency as a matter of logic and human experience to make the fact in issue for which it is advanced more likely than it would be in the absence of that evidence": R. v. T.J.F., 2024 SCC 38 at para. 74.

- [87] Underlying many exclusionary rules is the broad principle that where the prejudicial effect of admitting otherwise relevant evidence would exceed its probative value, it is inadmissible: *R. v. Johnson*, 2010 ONCA 646 at para. 82, citing *R. v. Corbett*, [1988] 1 S.C.R. 670, at 736-740 and *R. v. Potvin*, [1989] 1 S.C.R. 525, at 552.
- [88] The bad character evidence rule is an example of an exclusionary rule that rests upon this general principle. Bad character evidence is generally inadmissible because it risks triggering general propensity inferences, which are impermissible. It is a rule that also seeks to guard against a related human tendency to "punish the accused for past misconduct by finding that accused guilty of the offence charged, and to avoid deflecting the attention of the trier of fact from the main purpose of their deliberations which is the transaction charged": T.J.F. at para. 76.
- [89] Past discreditable conduct evidence is evidence of an accused's misconduct outside what is alleged in the indictment. It can be subsumed under the general category of evidence that reflects badly on the accused's character: T.J.F. at para. 75. However, not all discreditable conduct evidence is subject to the exclusionary rule. In *R. v. G.(S.G.)*, [1997] 2 S.C.R. 716, the Court identified three general exceptions under which evidence of bad character of the accused can be adduced:
- (1) where the evidence is relevant to an issue in the case
 - (2) where the accused puts her character in issue
 - (3) where the evidence is adduced incidentally to proper cross-examination of the accused on her credibility
- [Citations omitted.]
- [90] More broadly, bad character evidence, and especially discreditable conduct evidence, must go outside what is alleged in the indictment to be presumptively inadmissible. If it is covered by the indictment, the Crown can prove it "no matter how badly this may reflect on the character of the accused": T.J.F. at para. 77.
- [91] Based on these principles, it is our view that questioning Mr. Crawley about what he wrote in the emails, in the context of the issues in this case, did not transgress the rules of permissible cross-examination, and the judge made no error in allowing it. The cross examination was not a probe into Mr. Crawley's lifestyle, as was the case in *R. v. Tash*, 2013 ONCA 380 and *R. v. Rose*, (2001), 53 O.R. (3d) 417 (C.A.). The emails were not so far removed in time from the offences to render them irrelevant or without probative value. They were relevant to the issues in the trial and not subject to any exclusionary rule.

- [92] In the emails, Mr. Crawley discussed aspects of his financial situation in a circumspect manner. Cross-examination about Mr. Crawley's financial situation was relevant to whether he had a motive to import cocaine. Its purpose was not to suggest he was the type of person to have committed the offences, but rather that he was financially motivated to commit the offences and/or was structuring his financial affairs to avoid detection of his receipt of offence-related funds.
- [93] Mr. Crawley also discussed other things, related to his financial dealings, in the emails. Cross-examination about: (a) his desire to "insulate" his wife from his "choices"; (b) to "protect" his off-shore investments "from attack"; (c) his realization that he may be making "some wrong choices" in what he was doing; and (d) his desire to protect his potential liabilities in the future by putting property in his wife's name was relevant to the question of his knowledge that he was involved in the drug importation scheme. It is clear that the purpose of the cross-examination was not to suggest that Mr. Crawley was the type of person to have committed the offences.
- [94] This line of questioning did not, as Mr. Crawley argues, elicit evidence of past misconduct "woven into a speculative theory of motive". Nor did it have the impermissible effect of putting him on trial for "his lifestyle" or for "unrelated unsavoury activities in the past"; rather, it was questioning that was relevant to motive and knowledge of his involvement in the drug importation scheme. Any prejudicial effect of this evidence was outweighed by its probative value.
- [95] While not articulated as a specific ground of appeal, Mr. Crawley also submits the judge improperly used this evidence. He says the judge "agreed with the Crown's submissions on the use of this evidence of bad character" and then used it to find him guilty. There is no merit to this assertion.
- [96] On appeal, the Crown concedes, and we agree, that Crown counsel at trial overstated the utility of the evidence surrounding the emails when he argued that they were "basically a confession". However, the judge gave no effect to this overstatement. She described the Crown's submission on the emails as follows:
- [110] The Crown submits that Mr. Crawley is a man who made a poor decision. Starting with the emails he wrote his son in 2020, all of the evidence points towards the fact that he had knowledge of the drugs in the secret compartment. His resume said he was a truck driver and he and his wife owned a cleaning business. He made money from investments, but his finances suffered somewhat from the 2008 downturn. He went back to truck driving as a result. However, in his emails he suggest [sic] that he had a million dollars, offshore accounts, and wanted to purchase property in his wife's name. Property was in fact purchased in his wife's name.

- [97] Later in her reasons, in the course of summarizing the Crown evidence that supported the key finding that Mr. Crawley had knowledge of the presence of the drugs, she mentioned the emails only in passing:
- [134] The other evidence relied on by Crown to show he had knowledge such as the emails and the Robertson screwdriver also point towards his involvement in the trafficking scheme but are not determinative.
- [98] As we have already explained, the emails were relevant and capable of supporting an inference that Mr. Crawley had a financial motive to be involved in drug importation and knowingly did so. There is no suggestion in the judge's reasons that she put any undue weight on this evidence, notwithstanding Crown counsel's over-zealous characterization of it in closing submissions. The emails were one of many pieces of evidence relied on by the judge in reaching the findings of fact that she did, and we see no error in her admission of that evidence, or in her use of that evidence. Her reasons make it clear that she did not consider this evidence determinative.

Did the judge err by inferring Mr. Crawley's culpability based on an absence of evidence?

- [99] Mr. Crawley challenges the trial judge's reliance on two key facts as reasons to disbelieve his evidence: the post-factory modifications to the truck and his surprise at a lack of fingerprints on the lower bunk panel:
- [131] I am also troubled by Mr. Crawley's evidence that the cab was originally a day cab and that the sleeper was an aftermarket component. This evidence was inconsistent with his previous evidence and makes no sense having regard to the photograph of the cab compared to the photograph of the day cab. This evidence struck me as very odd. The photo of Mr. Crawley's cab is significantly different from the photo of the day cab. The day cab lacks any space behind the driver's seat in which to expand to accommodate a steeping compartment. Any extension would certainly have been evident to Mr. Crawley as after-market. From my observation, the difference is equivalent to a two door pick up versus and four door pick up.
- [132] Mr. Crawley's explanation for the one fingerprint found on the metal sheet of the dark grey trim also makes little sense and defies logic. The police found only one fingerprint on the reverse side, but he said he removed the dark grey trim and was searching for wires. He said he was surprised there were not more fingerprints. So am I. There was no reason for him to be careful of leaving fingerprints if he knew nothing about the reason for the hidden compartment.
- [100] Mr. Crawley says that when he testified that his truck was not a factory sleeper truck, he was not saying the sleeper component was added at the same time as the hidden compartment. He said the truck had the sleeper component when he first drove it in November 2018 and some cosmetic upgrades had been made to the sleeper component when he bought the truck in April 2019. There was no evidence as to whether the truck left

the factory as a day cab or sleeper cab. He submits the judge's misapprehension of this evidence was a key factor in causing her to doubt his credibility. He also contends this error was exacerbated when the judge relied on the absence of his fingerprints on the interior panel of the lower hidden compartment to infer he was careful to not leave fingerprints because he knew they were used to transport drugs.

- [101] Mr. Crawley points to the absence of his fingerprints anywhere in or around the upper compartment or on the bricks of cocaine. He says the judge's reasoning as to his knowledge came "perilously close" to reversing the burden of proof as she "seemingly" convicted him based on his inability to provide a plausible explanation for how the cocaine was placed in the truck without his knowledge. This, he contends, infers culpability from an absence of evidence.
- [102] The Crown submits Mr. Crawley has failed to establish palpable and overriding errors of fact. Crown counsel says the judge simply found the sleeper cab evidence did not make sense, and even if she misunderstood his evidence about this it played a small part in her assessment of Mr. Crawley's credibility and did not affect the result. The Crown points to the nine specific reasons provided by the trial judge explaining why she rejected Mr. Crawley's evidence, none of which included this evidence.
- [103] As for the fingerprint evidence, the Crown submits Mr. Crawley's argument relies on parsing the judge's reasons rather than considering them as a whole. It says the judge's conclusion was not based only on the absence of more fingerprints and she made no factual errors in assessing Mr. Crawley's evidence about the hidden compartment: it was his entire explanation about accessing the hidden compartment and alleging ignorance of the entire hidden compartment that made little sense.
- [104] The evidence of Mr. Crawley's knowledge was all circumstantial. It is well established that an inference of guilt based on circumstantial evidence should be the only reasonable inference to be drawn. If there are reasonable inferences other than guilt, the Crown will not meet the standard of proof beyond a reasonable doubt. Other reasonable inferences must, however, be based on logic and experience applied to the evidence or the absence of evidence, not on speculation: *R. v. Villaroman*, 2016 SCC 33 at paras. 35-37. It is also well established that the Crown cannot rely on a gap in the evidence to prove an element of the offence: *Villaroman* at para. 49.
- [105] We see no reversible error in the judge's consideration of the sleeper cab evidence. She simply found it troubling, but it played little role in her ultimate conclusion of guilt. We do have some concern about the inference the judge drew from the evidence of the one fingerprint of Mr. Crawley found on the trim of the lower bunk panel--that there was no reason for him to be careful of leaving fingerprints if he knew nothing about the reason for the hidden compartment--as this borders on the speculative. However, we do not agree with Mr. Crawley that the judge inferred his guilt based on an absence of evidence.

- [106] The judge was well aware of the absence of Mr. Crawley's fingerprints on the upper compartment and on the cocaine. There was a large body of circumstantial evidence that grounded the trial judge's conclusion of guilt, including: (a) Mr. Crawley was driving a truck he owned which had been recently modified with hidden compartments; (b) the cost to manufacture the compartments was significant; (c) Mr. Crawley had driven the truck before and after the compartments had been installed; (d) the access to the compartments involved removal of many Robertson screws that matched the drill bit in Mr. Crawley's drill; (e) placing the cocaine in the upper compartment would have been time consuming and challenging to do without the appellant knowing; and (f) the cocaine was extremely valuable, making it unlikely that someone would place it in his truck without him knowing.
- [107] In this context, the essence of the judge's reasons for disbelieving Mr. Crawley was that in all of the circumstances the risk would have been too great for someone to use him as a blind courier. This is set out in detail in her reasons, reproduced at para. 46 above. There was never a suggestion that Mr. Crawley himself placed the cocaine in the truck and it was open to the judge to conclude that the suggestion he was a "blind courier" was not a reasonable alternative inference.
- [108] Ultimately, the judge's conclusion that Mr. Crawley had knowledge was based on the totality of the circumstantial evidence and her finding of guilt was a reasonable one that was open to her on that evidence.

Disposition

[109] We would therefore dismiss the appeal.

"The Honourable Madam Justice Fisher"

"The Honourable Justice Donegan"

I AGREE:

"The Honourable Mr. Justice Abrioux"

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