
CANADA / JUDGMENT

R. v. Gausal

2017 BCSC 1194

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 1194 R. v. Gausal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Gausal,

2017 BCSC 1194

Date: 20170616

Docket: 62668-2

Registry: Chilliwack

Regina

v.

Major Singh Gausal

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

Oral Reasons for Judgment

Counsel for the Crown:

O.L. Bick

Counsel for the Accused:

J. Narwal

E. Gray

Place and Dates of Trial:

New Westminster, B.C.

October 6-7, 17-21, 24-25, 2016

January 9-13, 18-20, and

June 12-16, 2017

Place and Date of Judgment:

New Westminster, B.C.

June 16, 2017

[1] THE COURT: The accused is charged by way of indictment with two counts:

- a) importing into Canada a controlled substance, to wit, cocaine, contrary to s. 6(1) of the Controlled Drugs and Substances Act; and
- b) possession of a controlled substance, to wit, cocaine, for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.

[2] The charges arise from an inspection of the accused's tractor-trailer unit on December 3, 2012, while the accused was crossing into Canada from the United States at the border crossings at Abbotsford, B.C. ("Huntingdon") and after a more thorough inspection thereafter at the Pacific Highway Crossing.

EVIDENCE AT TRIAL

[3] At approximately 1 a.m. on December 3, 2012, the accused entered Canada from the United States at the Huntingdon border crossing for clearance and entry into Canada. He was driving a refrigerated tractor-trailer truck owned by his company, Gausal Trucking Ltd. He was alone in the vehicle.

[4] Because there were no commercial border inspectors working the graveyard shift at Huntingdon that night, the accused went inside to the building to be processed, as is routine.

[5] The accused was processed initially at the counter by a Border Services agent ("BSO Mitchell"), who asked him the standard primary questions that are asked of all travellers entering Canada, such as where he had been, how long he had been absent from Canada, and the value of the goods he had purchased, if any. The accused responded that he had left Canada three days earlier (Thursday), had travelled to California empty, and had made two pickups of produce. He stated that he had no personal goods to declare.

- [6] BSO Mitchell performed a standard indices check and telephoned the Border Operations Centre. She was advised during the call that the refrigeration unit at the front of the accused's trailer, called a reefer, was of interest to the Canada Border Services Agency ("CBSA"). BSO Mitchell decided to inspect the accused's tractor-trailer unit. She asked the accused if he was aware of all of its contents. He responded that he was. She asked him for his keys and told him she was going to search the truck and trailer. The accused complied.
- [7] BSO Mitchell was assisted in the search by BSO Salva. They began with an exterior inspection of the reefer unit. It was functioning normally and showed no signs of having been tampered with. They then inspected the undercarriage and the side walls of the trailer. This inspection, too, did not reveal anything suspicious.
- [8] They then opened the rear doors of the trailer and inspected its interior. BSO Salva testified that unusual drain holes in the flooring at the rear of the trailer, as well as sporadic newer-looking caulking between the trailer's side walls and roof, seemed familiar to him. He believed that he may have inspected the same trailer a few months earlier. He recalled that these two anomalies had prompted him, on that earlier occasion, to request permission from his superintendent to perform an offload of the trailer's contents to allow for a more thorough inspection of the trailer, but his request had been denied.
- [9] He said to BSO Mitchell, "I think I have seen this trailer before". BSO Mitchell and BSO Salva saw that the rearmost row of pallets was one level high and the remainder of the pallets in the trailer were two levels high with approximately three to five feet of space between the top of the pallets and the roof of the trailer. They saw that the strapping for one of the higher pallets in the second row from the rear had been removed and that its contents of boxes were loose and had shifted.
- [10] BSO Mitchell noticed that the caulking for the joint at the top right rear corner of the trailer looked fresh and did not match the age of the trailer. She noted, as she crawled along the top of the pallets, that this inconsistent-looking caulking continued the entire length of the trailer's interior. It looked to BSO Mitchell as though this caulking had been recently applied, although she conceded on cross-examination that it could have been because the side panelling had recently been replaced.
- [11] BSO Mitchell also agreed that wear and tear and other damage to trailers is sometimes caused by CBSA officers during their inspections. She also agreed that she did not detect any odour from the fresh-looking caulking and that she could not say whether the caulking finish was matte or shiny.
- [12] BSO Mitchell stated on cross-examination that there appeared to be a gap of 9 to 12 inches between the forward-most pallets and the front wall of the trailer.
- [13] The inspection took approximately one hour.

- [14] BSO Mitchell and BSO Salva returned to the counter and asked the accused why one of the pallets inside the trailer appeared to have been opened. The accused explained that the load had been repositioned after he had been ticketed in California for the rear axle of the trailer being overloaded and that the ticket was in the truck's glove box. The accused was not asked about the caulking.
- [15] BSO Mitchell and BSO Salva sought and obtained approval for a more thorough inspection of the trailer. Because there were no offloading capabilities at Huntingdon at that time of night, the offloading would take place at the Pacific Highway Crossing. All communication devices were removed from the cab of the tractor-trailer unit, including a cellphone, a CB radio, and its microphone.
- [16] A "pocket examination" of the accused was then performed, during which he surrendered his cellphone. The accused confirmed at this time that he was the registered owner of the tractor and trailer.
- [17] The accused was informed that his tractor-trailer unit was going to be offloaded and inspected at the Pacific Highway Crossing and that he would be escorted there by BSO Mitchell and BSO Salva in convoy, with BSO Salva leading and BSO Mitchell following.
- [18] On cross-examination, BSO Mitchell conceded that prior to making her decision to conduct a further inspection of the trailer, she had not noticed anything suspicious about the accused's demeanour or his answers to her questions of him.
- [19] The convoy left Huntingdon at approximately 3:15 a.m. and was met at the Pacific Highway Crossing at approximately 4 a.m. by BSO Adams. The accused backed the tractor-trailer unit into a warehouse loading bay as directed by BSO Adams. The accused left the cab of the tractor and entered a waiting room in the warehouse through an unlocked door that allows commercial drivers to come and go. The waiting room is separated from the warehouse proper by a wire mesh wall and a secured door.
- [20] While the trailer was being offloaded, BSO Adams spoke to the accused about his trip. The conversation went more or less as follows:

BSO Adams: Where did you go?

Accused: California.

BSO Adams: What cargo did you take to the U.S.?

Accused: I was empty.

BSO Adams: How many pickups did you make?

Accused: One on Saturday at 2:00 p.m. and one about an hour later.

BSO Adams: Did you obtain any seals?

Accused: No.

BSO Adams: Why did you break down one of the pallets?

Accused: I received a ticket for my rear axle being overloaded and had to redistribute the load.

BSO Adams: Please retrieve the ticket as well as your log book.

- [21] BSO Adams testified that a request by BSOs that commercial truck drivers produce their log books was common practice. The accused complied with BSO Adams' request and returned to the warehouse with his log book, as well as the violation ticket he had received in California for the trailer being overweight.
- [22] At approximately 5 a.m., after the trailer had been emptied of its contents of produce, BSO Mitchell, BSO Salva, and BSO Adams began inspecting the inside of the trailer. BSO Mitchell and BSO Salva again noted the inconsistent caulking on the side walls. They also noted an obvious colour disparity between the trailer's side walls and the front wall which housed the reefer's vents.
- [23] BSO Adams agreed on cross-examination that it is possible that the front wall looked newer because it was subjected to less wear and tear than the side walls. The officers also observed that some of the bolts or rivets that affix the plastic cowling bumper used to protect the front wall reefer unit, as well as to facilitate air flow throughout the trailer, were inconsistent or missing and that the bumper showed evidence of tool marks. These anomalies were an indication to BSO Mitchell and BSO Salva that there had been recent activity in the area of the front wall.
- [24] The plastic bumper was approximately five inches thick. It was unfastened and removed. Behind was a fibreglass panel that appeared newer than similar sheets along the trailer's sidewalls. There was also a bulge in this fibreglass panel, as well as what appeared to be fresh caulking along the sides of this wall.
- [25] Portions of the reefer unit that could be accessed from inside the trailer unit were dismantled and the unit was inspected visually with a fibre scope camera. Nothing of interest was found.
- [26] A power drill was then used to drill holes through the front wall. Some areas of the wall could be fully penetrated by the drill bit, but others could not. BSO Salva testified that upon extraction from some of the holes, the drill bit contained bits of insulation that was different in colour from that extracted in other holes.
- [27] At approximately 6 a.m., Superintendent McDonnell, a CBSA officer of almost 20 years of experience in the inspection of commercial trucks and trailers, started his shift. He was briefed by BSO Adams and he began to take part in the investigation.

- [28] Superintendent McDonnell also testified that the front wall appeared new to him, although he agreed in cross-examination that there may have been some indications of wear and tear on it. He noticed that there was new plastic trim between the front and side walls and new plastic rivets holding the trim in place. He testified that he noted blue styrofoam insulation between the vertical sides of the reefer unit and the wall, which he had never seen before in a reefer unit.
- [29] On cross-examination, Superintendent McDonnell conceded that he had not previously specifically mentioned this observation in either his contemporaneous notes, his will-say statement, his narrative, or during the preliminary inquiry in this matter that occurred in July 2014. However, he remained adamant that he had seen this blue styrofoam at the time of his inspection on December 3, 2012.
- [30] Superintendent McDonnell also saw that a piece of treated wood had been installed horizontally along the bottom of the reefer unit which was very unusual in his experience. He concluded that these multiple indicators warranted further investigation of the front wall area.
- [31] Superintendent McDonnell began drilling the front wall using a larger drill bit than had been used by the other BSOs. The bit hit a barrier that, in Superintendent McDonnell's experience, should not have been present. By applying additional force, the bit penetrated the barrier. Upon extraction, a white powdery substance was found on it. An icon scan of the substance confirmed that it was cocaine. The second bit used to drill a hole at another location in the front wall also produced cocaine powder.
- [32] At approximately 6:36 a.m., the accused was arrested by BSO Mitchell for smuggling narcotics into Canada. He was handcuffed, given the standard recitation of his rights and cautions from an official Charter card, and was then taken away to a nearby cell.
- [33] At 7:35 a.m., the inspection of the trailer recommenced. The front wall of the trailer was systematically dismantled by Superintendent McDonnell and BSO Mitchell, BSO Salva, and BSO Adams. The fibreglass outer panel was pried back and a panel of styrofoam insulation was revealed. This panel had a large rectangular piece that had been cut into it which was easily removed. A rectangular metal plate of approximately the same dimensions as the cut-out piece of styrofoam was affixed to the back of the removable piece of styrofoam. Removal of this panel revealed a secret compartment comprising five vertical sub-compartments below the reefer unit. A total of 23 one-kilogram bricks of cocaine were discovered in those compartments. Each of the bricks was wrapped in red plastic.
- [34] These compartments were not accessible from the exterior of the trailer. Indeed, no other means of access to the secret compartment was found: no wires, electronics, or hydraulics were found that were associated with the secret compartment.

- [35] BSO Adams conceded on cross-examination that once the secret compartment had been discovered, he did not examine the exterior underside of the trailer for access points to the secret compartment. However, Superintendent McDonnell testified that he measured and examined the trailer on December 4, 2012, including the exterior of the trailer underneath the secret compartment, and determined that no exterior means of access to the secret compartment existed.
- [36] BSO Salva and BSO Adams agreed on cross-examination that the effect of the manner in which the cocaine had been concealed was to make it virtually invisible to the untrained eye, particularly with the bumper in place.
- [37] The following documents were located and seized from the cab of the tractor:
- a) a package of documents labelled, "Gausal Trucking";
 - b) multiple bills of lading; and
 - c) a binder of vehicle registration and Gausal Trucking Ltd. corporate documents.
- [38] BSO Mitchell and BSO Salva agreed on cross-examination that no items were found either in the cab of the tractor or on the accused's person that might connect the accused to the creation of the secret compartment, such as styrofoam, glue, caulking, bolts, or any related tools, or to the packages of cocaine themselves.
- [39] The trailer remains in the possession of the CBSA and is stored at the Pacific Highway Crossing compound. It is used for training purposes.
- [40] Custody of the accused was transferred to the RCMP. The lead RCMP investigator assigned to the case was Corporal Ozaki. Corporal MacNeil was also involved in the investigation.
- [41] On December 12, 2012, Corporal Ozaki and Corporal MacNeil travelled to California and toured the two facilities from which the accused had picked up the produce he was transporting, namely Castle Rock Vineyards in Delano and Custom Produce Sales in Parlier. Each facility was a large, apparently legitimate facility and raised no concerns in the minds of the officers. Corporal Ozaki testified on cross-examination that he had been advised by Castle Rock Vineyards that its video surveillance system had not been functioning at the time the accused made his pickup there.
- [42] On January 24, 2014, Corporal Ozaki visited the Loblaws facility in Surrey, British Columbia, where the accused had been directed to unload his load of produce.
- [43] Corporal Ozaki testified on cross-examination that during his investigation, a palm print found by the RCMP on the exterior side of the metal plate that had been installed behind the fibreglass panel at the front of the accused's trailer had been determined not to belong to the accused.

- [44] Corporal Ozaki confirmed that no match of the palm print was found in the databases available to him. He also confirmed that, during his investigation, the accused's clothing was not analyzed for traces of cocaine, that no forensic analysis of the materials used to construct the secret compartment or caulking was conducted, that no steps were taken to investigate the accused's cellphone records or the shipping broker that had contracted for the accused's transportation services. In addition, no steps were taken to attempt to retrace the accused's whereabouts while he was in the United States, including where his tractor-trailer unit had been parked when not in use. He also confirmed that no steps were taken to investigate any of the employees of Castle Rock Vineyards.
- [45] Corporal Ozaki also confirmed on cross-examination that no investigation was conducted of whether anyone other than the accused had operated the tractor-trailer unit.
- [46] Corporal Ozaki testified that X-rays of the secret compartment at the front of the trailer did not detect noticeable anomalies.
- [47] Each of the BSOs and RCMP officers who testified gave his or her evidence in a forthright, objective, and credible manner. The reliability of their evidence was not shaken on cross-examination. I have no hesitation accepting their evidence in its entirety.

Staff Sergeant Darin Sheppard

- [48] Staff Sergeant Sheppard was qualified by the Crown as an expert witness regarding the quantity of cocaine typically used for personal use and the prices of cocaine in the Lower Mainland of British Columbia in 2012. He was originally asked to opine on other matters, but I ruled his opinions regarding those other matters to be inadmissible. Staff Sergeant Sheppard's qualifications and experience in illicit drug importing and trafficking investigations are extensive. I dealt at length with those qualifications and his experience in my voir dire ruling on the admissibility of his opinion evidence. I will not repeat it here. Needless to say, they are impressive and I had no hesitation qualifying him as an expert.
- [49] As a result of my ruling on the admissibility of his expert report, Staff Sergeant Sheppard's opinions as follows were admitted in evidence without challenge:

It is my opinion that a person consuming two grams of cocaine per day would be considered a heavy user of cocaine. Based on using two grams of cocaine per day, 23 kilograms would equate to a supply of 11,500 days or 31.5 years. This would supply one thousand (1,000) heavy cocaine users for eleven (11) days. I believe that the cocaine was possessed for resale due to the amount that was being imported.

Cocaine prices have increased over the last five years. In 2012, the average price for a kilogram of cocaine in the Lower Mainland ranges between \$38,000 and \$44,000. The total amount seized was 23 kilograms of powder cocaine. The total value at the kilogram level would be between \$874,000 and \$1,000,000. The 2012 price for a gram of cocaine was \$100.00. This equates to a \$2,300,000 at the gram level, with a potential profit between \$1.2 million and \$1,426,000 if purchased at the kilo

level and re-packaged and sold at the gram level. This amount or value does not take into consideration any adulterants that might be added to the cocaine, which might increase the volume of the cocaine up to 30 percent.

It is my opinion that a person would not be in possession of this cocaine unless it were held for the purpose of trafficking.

analysis

- [50] The accused did not testify. However, he admitted through his counsel that he is the person who arrived into Canada from the United States at the Huntingdon border crossing on December 3, 2012, driving a tractor with B.C. Licence Plate 05190P and pulling a trailer with B.C. Licence Plate 94746C, and who presented himself to BSO Mitchell at approximately 12:56 a.m.
- [51] The evidence shows, and I find, that the tractor-trailer unit was owned by Gausal Trucking Ltd., and that the accused was, at the time of his arrest, the sole director of that company.
- [52] The evidence is clear that 23 one-kilogram packages of cocaine were in the secret compartment that had been constructed in the front wall of the accused's trailer behind a large plastic bumper that covered most of the front wall. It is equally clear, and I find, that the accused had control over the trailer at the time the cocaine was found.
- [53] What remains to be shown before the accused can be found guilty of either offence is proof beyond a reasonable doubt that the accused had actual knowledge or was wilfully blind as to the presence of the cocaine: see *R. v. Singh*, 2011 BCSC 1702 at para. 17.
- [54] "Reasonable doubt" is doubt based on reason and common sense. It is not imaginary or frivolous doubt. Although proof beyond a reasonable doubt does not require absolute certainty, it must be logically connected to the evidence or to the lack of evidence: *R. v. Villaroman*, 2016 SCC 33 at para. 28.
- [55] The Crown's case against the accused in terms of his knowledge or wilful blindness of the presence of the cocaine is entirely circumstantial. There is no direct evidence pointing to the accused having knowledge of the presence of the cocaine or of the secret compartment or of its construction. No tools were found in his possession or control that could have been used to construct or access the compartment. There is no evidence regarding what the interior of the trailer looked like prior to the accused entering the United States.
- [56] The secret compartment could have been in existence prior to him doing so. There is no evidence suggesting that the accused alone had an opportunity to access the secret compartment. No fingerprints or any other evidence exists that ties the accused to either the cocaine or to the compartment. Indeed, the one print that was found did not belong to the accused. There is no evidence of suspicious communications or behaviour on the part of the accused, including no intercepted cellphone communications or cellphone records. There is no evidence to suggest that the route taken by the accused while he was in the United States

or the timing of his trip there was in any way unusual.

[57] The documents found in the accused's possession at the time of his arrest include the following:

- a transport confirmation from a Surrey, B.C. brokerage firm, C.S. Transport Ltd., to Gausal Trucking Ltd., directing that the loads be picked up, where and when;
- the accused's log book;
- a Customs Pre-Arrival Review system ("PARS") sheet;
- various bills of lading, and
- fuel and other receipts.

(collectively the "Routing Documents")

[58] The Routing Documents are corroborative of the Crown's case that the accused crossed the Canadian border into the United States on November 29, 2012, travelled to and arrived at Delano, California on November 30, 2012, picked up a load of grapes at Castle Rock Vineyards in Delano on December 1, 2012 approximately 17 hours after his arrival in Delano, picked up a load of produce at Custom Produce in Parlier, California a short time later, and then returned to Canada, arriving at the Huntingdon border crossing at 1 a.m. on December 3, 2012.

[59] The Crown relies on the "document in possession" exception to the hearsay rule for the admissibility of the Routing Documents as evidence of the accused's knowledge of the routing and other matters set out in them and, hence, circumstantial evidence linking the accused to the stowage of the cocaine prior to the first load being placed in the trailer.

[60] With respect to the log book, the Crown goes further and submits that, because the accused provided it to BSO Adams upon request, he is taken in law to have adopted its contents regarding routing and times as admissible evidence thereof.

[61] The Crown relies on the following passage from Phipson on Evidence, 13th ed. (1982), at para. 21-09:

Documents which are, or have been, in the possession of a party will, as we have seen, generally be admissible against him as original (circumstantial) evidence to show his knowledge of their contents, his connection with, or complicity in, the transactions to which they relate, or his state of mind with reference thereto. They will further be receivable against him as admissions (i.e. exceptions to the hearsay rule) to prove the truth of their contents if he has in any way recognized, adopted or acted upon them

[Emphasis in original]

- [62] That passage was quoted by the Nova Scotia Court of Appeal in *R. v. d'Eon*, [1988] N.S.J. No. 93 at para. 11, a case involving a charge of illegal fishing. The accused in that case, as required by the Fishery Regulations, had maintained a log of his activities. He produced the log in response to a request from a fisheries official. The log contained the only evidence of the accused's guilt. The Nova Scotia Court of Appeal held that by handing the log to the officer as requested, the accused "recognized and adopted the log as a record of his fishing trip" and concluded that its contents were admissible in evidence against him.
- [63] The document in possession rule was more recently considered in *R. v. Black*, 2014 BCCA 192. The court in that case stated at para. 38:

The documents in possession rule provides that the contents of a document found in possession of the accused may be used as circumstantial evidence of the accused's involvement in the transactions to which the documents relate.

- [64] The court in *Black* found at para. 41 that the note in question was admissible as circumstantial evidence of the accused's involvement, but not for the truth of its contents.
- [65] There is no doubt that the Routing Documents were in the possession of the accused and, hence, are admissible as circumstantial evidence of his involvement in a trip to California where the two loads of produce were loaded into his trailer and then transported by him to Canada.
- [66] However, in my view, the document in possession rule does not make the log book admissible for the truth of its contents simply because it was provided by the accused in compliance with the request of an officer.
- [67] To the extent that the decision of the Nova Scotia Court of Appeal in *d'Eon* suggests otherwise, I do not agree and decline to follow it. In my view, for the second part of the rule as articulated by Phipson to apply, there must be evidence that the accused "recognized, adopted, or acted" upon the contents of the document. Simply providing it in response to an officer's request without more is insufficient.
- [68] Here there is no evidence that the accused recognized, adopted, or acted upon the contents of the log book.
- [69] Where, as here, the case against the accused depends exclusively or largely on circumstantial evidence, the trier of fact must, in light of human experience and common sense, consider all reasonable alternative inferences from the evidence or lack of evidence, whether consistent or inconsistent with guilt, and find that an inference of guilt is the only reasonable inference that the evidence or lack of it permits: *R. v. Villaroman*, [2016] 1 S.C.R. 1000 at paras. 30, 35-37.
- [70] The fundamental question is whether the circumstantial evidence, viewed logically and in light of human experience, is such that there is no reasonable explanation other than that the accused is guilty: *Villaroman*, paras. 38-42.

- [71] There are many cases in which the accused's knowledge of the presence of the cocaine has been inferred from circumstantial evidence where there was minimal direct evidence, other than physical possession. Examples relied upon by the Crown include:
- a) *R. v. To*, 1992 CanLII 913 (BC CA), where the drugs were in a shopping bag being carried by the accused in highly suspicious circumstances;
 - b) *R. v. Dhaliwal*, 2005 BCSC 942, where the secret compartment containing the cocaine was in the cab of the tractor-trailer unit, accessible via a sheet metal door held in place with screws that could be extracted using a drill and bits that were also in the cab, together with suspicious behaviour on the part of the accused;
 - c) *R. v. Oddleifson*, 2010 MBCA 44, where the accused possessed a special magnet opening device to unlock the secret compartment, together with a large amount of cash and masking agents commonly used to disguise the odour of the drugs;
 - d) *R. v. Hoy*, 2012 ABCA 191, where the accused was returning to Calgary from an inexplicable short-turnaround trip to Vancouver where the only rational inference was that he was acting as a drug courier; and
 - e) *R. v. Dhillon*, 2013 BCSC 1081, aff'd 2015 BCCA 375, where the routing taken by the commercial trucker accused to California with no load assigned to him was unusual, irregular, unexplained, and suspicious, as was his equally suspicious part-time passenger.
- [72] In each of these cases, the Crown led evidence from which the only plausible inference that could be drawn was that the accused was guilty.
- [73] However, each case must be decided on its own facts. In a circumstantial case such as this, it is necessary to look at the whole of the admissible evidence in assessing the strength of the case against the accused: *R. v. Sekhon*, 2014 SCC 15 at para. 56.
- [74] The Crown submits that the circumstantial evidence in this case does not give rise to any reasonable inference other than that the accused is guilty.
- [75] The Crown points to the fact that the accused was unaccompanied and was driving the tractor-trailer unit that he owned through a company in respect of which he was the sole director. It submits that the modifications made to the interior of the front of the trailer were substantial, would have taken a significant amount of time to install, and would have been noticeable by the accused when he was inside of the empty trailer.
- [76] However, I note again that there is no evidence as to when the modifications were made, other than that the BSOs who observed various anomalies with some of the caulking and the colour of the front wall as compared with the side walls, and that some of the caulking appeared to be fresh. However, all of the BSOs agreed on cross-examination that there were plausible and reasonable explanations for these disparities, such as that different portions of the trailer had been subjected to varying degrees of wear and tear.

- [77] It is also noteworthy that the evidence regarding the manner in which the trailer's front wall had been installed suggests lack of care. There were several anomalies that caught the attention of the BSOs, such as missing screws and different coloured rivets. This evidence is more consistent with the wall having been constructed in haste than with considerable determination and care.
- [78] The Crown also points to the value of the cocaine found in the accused's trailer. Its wholesale value was close to \$1 million and its street value was over \$2 million. The Crown submits that it defies common sense and reason that such a large and valuable quantity of cocaine would be entrusted to anyone who did not know about it. Such an unknowing dupe would be less likely to be cautious, vigilant, and take care to avoid detection, and would be more likely to alert the authorities about anything suspicious he or she might come across. Crown submits that the risk of discovery and the resultant loss of a significant investment is too great, and the drug importer would have made sure that the courier knew about the illegal cargo, so that the courier would be careful.
- [79] Although these submissions generally exude reason and common sense, the difficulty is that they do not reflect the evidence in this case which shows that the accused was anything but careful, vigilant, and cautious. He received a ticket in the United States for having too much weight over his rear axles. As a result, he redistributed the load by opening one of the pallets. However, he took no steps to secure the contents or make the pallets look like they had not been disturbed. As a result, the contents shifted and were strewn about the rear of the trailer. This disarray is what initially piqued the interest of the BSOs when they opened the rear doors of the trailer at Huntingdon.
- [80] It is difficult to believe that anyone with knowledge of the significant quantity of cocaine in the trailer would not have taken steps to properly secure the load in order to avoid the very arousal of curiosity and interest that led to the discovery of the cocaine in this case. If the rationale of the drug importers was to avoid the use of a so-called blind courier because they might be careless, that rationale failed miserably in this case.
- [81] It is, in my view, highly significant that all of the officers who interacted with the accused prior to the discovery of the cocaine testified that the accused was cooperative throughout and did not exhibit any sign of suspicious behaviour. That evidence is inconsistent with the accused knowing that he was transporting a substantial quantity of cocaine across the border.
- [82] Finally, the Crown points to the fact that the cocaine was found in a compartment at the front of a fully-loaded trailer inaccessible from the outside, which can only mean that the cocaine was concealed in the compartment prior to the accused picking up his first load in Delano, California.

- [83] The Crown submits that the opportunities available to stow the cocaine in the compartment and reconstruct the wall in the front of it were, therefore, limited and that it is farfetched and speculative to infer that an unknown third party would have known of the accused's travel to California, that there was a secret compartment in the trailer, and had time to access it, stow the cocaine, and install a new front wall without the accused's knowledge.
- [84] In response, counsel for the accused submits that, given the apparent inattention to detail on the part of those who installed the front wall and bumper, the installation bears the hallmarks of having been installed in haste. He submits that it is reasonably plausible that the cocaine was stowed in the wall installed by a person or more likely persons during the accused's first pickup point, Castle Rock Vineyards, while the trailer was backed into one of the loading bays. The photographs taken by Corporals Ozaki and MacNeil on December 12, 2012 of that facility show a large warehouse with six contiguous loading bays typically used by commercial tractors backing their trailers in for loading.
- [85] The interior of the warehouse is open and peculiarly, in the photographs, completely empty at the time the photographs were taken. There is no evidence as to, and hence there is no way of knowing how much produce or other product was in the warehouse on December 1, 2012 when the accused picked up his first load. The facility could have been as empty as it appears in Corporal Ozaki's photographs or it could have been swarming with people with high pallets of produce and other machinery. As mentioned earlier, Corporal Ozaki testified that the facility's surveillance system was not working on that day.
- [86] Counsel for the accused submits it is reasonably plausible that employees of C.S. Transport Ltd., working with employees of Castle Rock Vineyards, had knowledge of the existence of the secret compartment in the accused's trailer, were aware of the accused's scheduled arrival time at Castle Rock Vineyards on December 1, 2012 and had been ready for and able to stow the cocaine and install the front wall and bumper relatively quickly without the accused's knowledge.
- [87] It is noteworthy that December 1, 2012 was a Saturday. The video surveillance system was not working that day. Given the well-known sophistication of the drug industry, the scenario put forward by the accused is not outside of the realm of human experience and common sense.
- [88] The Crown did not lead any evidence to demonstrate that such a scenario is implausible. It did not lead any evidence ruling out the complicity of others, either at the loading facility or the unloading facility. It could have done so by the process of elimination of both persons and opportunity. For example, by leading evidence from Castle Rock Vineyards regarding how many employees were working on the afternoon of December 1, 2012, who they were, how busy the facility was when the accused's trailer was loaded, and where the accused was at the time. In my view, such evidence was necessary in this case.

[89] While knowledge or wilful blindness on the part of the accused of the presence of cocaine in the trailer is a reasonable inference from the evidence or lack of evidence, and while it may well be that the accused probably had knowledge of the cocaine, probable guilt does not meet the criminal standard of proof. I am not satisfied beyond a reasonable doubt that knowledge or wilful blindness on the part of the accused is the only rational inference to be drawn from the proven facts.

[90] Accordingly, I find the accused not guilty on both counts.

"G.C. Weatherill J."

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