

CANADA / JUDGMENT

R. v. Greer

2020 BCSC 1878

COURT

Supreme Court of British Columbia

DECIDED

7 April 2020

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2020 BCSC 1878 R. v. Greer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Greer,

2020 BCSC 1878

Date: 20200407

Docket: 40746-2

Registry: Duncan

Regina

v.

Timothy James Greer

Before: The Honourable Mr. Justice Crabtree

(appearing by videoconference)

Oral Reasons for Judgment

Counsel for the Crown, appearing by teleconference:

T.I. McFadgen

Counsel for the Accused, appearing by teleconference:

C.L. Hodson

Place and Dates of Trial/Hearing:

Duncan, B.C.

February 4-7, 2020

February 10-14, 2020

March 6 and 27, 2020

Place and Date of Judgment:

Victoria, B.C.

April 7, 2020

[1] THE COURT: Mr. Greer appears before the court on Indictment 40746-2. He initially stood charged with the co-accused, Mr. McMillan and Ms. Bastian, of a number of offences alleged to have occurred on June 30, 2018. At the outset of the trial, prior to pleas being entered, Ms. Bastian re-elected to have her matter addressed in the Provincial Court. Mr. McMillan entered guilty pleas to two counts on the indictment, and the matter was put over in Mr. McMillan's case to arrange a date for sentencing.

[2] Mr. Greer entered pleas of not guilty to Counts 6, 7, and 8, of the Criminal Code, which read as follows:

Count 6: that on June 30, 2018, he possessed a prohibited weapon, described as a cut down Mossberg model 400G pump-action 12-gauge shotgun, without being the holder of an authorization or licence, contrary to s. 95(1) of the Criminal Code, and I will hereinafter refer to that item as the "Mossberg shotgun";

Count 7: that on the same date, Mr. Greer possessed a prohibited weapon, a ROHM model firing pistol, without being the holder of a licence, contrary to s. 91(1) of the Criminal Code, and hereinafter I will refer to that item as the "ROHM pistol"; and

Count 8: that on the same date, Mr. Greer did store a 30-30 firearm, being a Savage model 30-30 Winchester calibre rifle, in a careless manner or without reasonable precautions for the safety of others, contrary to s. 86(1) of the Criminal Code, and I will hereinafter refer to that item as the "Winchester rifle".

[3] I turn now to the circumstances. The residence where the search warrant was executed was located at 2878 Hillside Street ("the Hillside residence"), in Chemainus, B.C. It was a single-family detached home, located in a residential neighbourhood. Mr. Greer had lived there for approximately five years, leading up to this event. He purchased the home in 2016, and continued to own the home on the date the Hillside residence was searched.

[4] The Hillside residence had a main floor and a basement. On the main floor, entering from the front door, the living room was situated to the left and the kitchen to the right. In the centre of the residence was a hallway extending to the rear of the main floor, with a closet located approximately mid-way down the hallway. Heading further towards the end of the hallway, to the left was a bathroom and to the right was a second bedroom.

- [5] In the kitchen, there was a set of stairs leading to the downstairs basement, which was largely an unfinished space; however, some renovations had been undertaken to create what was described as a third bedroom. The third bedroom was a walled-in area with a door leading into it, and there was an area cordoned off by a metal shelving unit that created a sleeping area. This was referred to as the fourth bedroom. In the centre of the basement was a common area, where a patio table and chairs were located.
- [6] In the spring of 2018, Constable Babala became involved in a drug investigation in which she was assigned in an undercover capacity. She had been provided a contact number for Mr. Greer, who was the target of the investigation and believed to be involved in a dial-a-dope operation involving the sale of drugs in the Duncan area.
- [7] Constable Babala contacted the number provided to purchase "down", the street slang term for heroin mixed with fentanyl. There were several calls back and forth. Eventually, it was arranged that she would meet the person she had been communicating with and who she came to know as "Tim Greer". The arranged meeting time was on March 31, 2018, at approximately 10:30 p.m.
- [8] Constable Babala met the person identified as Mr. Greer at the 7-Eleven, on that occasion. She observed Mr. Greer arriving, driving a gold Buick LeSabre. The officer got into the vehicle, at which point the transaction was completed. She was in the vehicle for approximately four minutes, during which time she purchased a dime baggie of the substance previously described for \$40. She observed that the baggie was removed from a container in the centre console area of the vehicle, which she described as "a little pharmacy", containing what she believed to be a number of packaged illicit substances.
- [9] Upon paying for the item, the officer described that Mr. Greer put the \$40 into his wallet; and in doing so, she observed a quarter-inch stack of money in his wallet, which included one 50-dollar bill. She was unable to identify what else was located in the wallet.
- [10] On April 7, 2018, the officer received a call from the person she had met, who advised that the number she had previously used had changed. At that time, it was also set up to meet to purchase more drugs. However, this meet did not take place. The second occasion where a drug buy occurred took place on April 20, 2018, when Cst. Babala was instructed to attempt another drug buy. To do so, she contacted the number she now was to use. She made contact with a male person, and recognised his voice as the person she had previously talked to. He said that he was unable to meet her and asked her to attend a residence at 2878 Hillside Street, in Chemainus.
- [11] Constable Babala travelled to and attended the residence. She noted the Buick LeSabre in the driveway, which was the same vehicle involved in the first drug buy from Mr. Greer. The door to the residence was open slightly and a male answered. The officer noted a female in the kitchen. Mr. Greer was seen in the living room, sitting on a couch in front of a coffee table. The officer noted drug paraphernalia on the coffee table, including what she described as unused dime bags, which are small plastic baggies used for the packaging and

sale of street-level quantities of drugs, larger baggies, and a small piece of paper, which the officer said was consistent with what she described as a score sheet.

- [12] Mr. Greer prepared two small baggies of drugs by taking drugs out, weighing them, and placing them into baggies. Once prepared, the baggies were handed to Cst. Babala in exchange for \$40. She was in the residence for approximately six minutes, during which time no weapons were observed. Once the transaction was completed, she left the residence.
- [13] It should be noted, that in preparing those drugs and weighing them, Mr. Greer retrieved a set of scales to do so.
- [14] The officer was subsequently instructed to make a further drug buy on June 29, 2018. She reached out to Mr. Greer, asking if they could meet, or the person who she believed was Mr. Greer when she contacted that person's telephone. The original plan between the officer and Mr. Greer was to meet in Nanaimo, but it was subsequently suggested that she come by the house. Mr. Greer had advised over the phone that he was picking up some blow and he would call her when he was returning to the house.
- [15] The officer attended the Hillside residence at approximately 8:33 p.m. When she arrived, she noted the Buick LeSabre, without a licence plate, parked at the residence. Making her way to the front door, she was invited in. She observed a female, identified as "Amanda" and later identified as Amanda Bastian, coming out of a washroom; and a male by the name of "Dwayne" (later identified as Dwayne McMillan). Mr. Greer was not at the residence. The undercover officer went into the living room and proceeded to purchase a small quantity of heroin and methamphetamine. All three persons were in the living room while the purchase took place. Amanda prepared the order. She took a pink substance from her purse, weighed it, and put it into a small plastic bag. While waiting, the officer noted a baby monitor located on the coffee table, which displayed various areas of the yard surrounding the residence.
- [16] The officer was at the Hillside residence for approximately five minutes. While waiting for the order to be filled, she engaged in conversation with Dwayne. They discussed an antique mirror that was hanging in the living room. Based on that conversation, the officer believed that the mirror belonged to him.
- [17] The officer noted the furniture in the living room had been rearranged since the last time she had attended the residence. The officer did not observe any weapons on this occasion, while in the home.
- [18] Following the last attendance of the undercover officer at the Hillside residence on June 29, a search warrant was obtained. The warrant was executed on June 30, 2018. No issue was raised with respect to the search of the residence.

[19] Upon the police arrival and entry at the Hillside residence on June 30, 2018, they located three individuals, who were quickly taken into custody. The individuals were Mr. McMillan, who was located in the kitchen; a female person, located in the upstairs bedroom; and Ms. Bastian, who was located in one of the bedrooms downstairs in the basement. Mr. Greer was not in the home at the time the warrant was executed.

[20] The search of the Hillside residence revealed the following items relevant to the investigation that were seized:

- In the master bedroom, three long rifles were located in the interior closet. The rifle butts of each of those weapons was resting on the closet floor, with the barrels leaning against the interior wall of the closet. One of the rifles was in a rifle bag and the other two were in the open. None of the rifles were secured.
- A handgun was located in a unisex bag. The bag was hung on the doorknob on the interior side of the master bedroom door.
- A number of live 12-gauge shotgun shells, the majority of which were located on the top shelf of the master bedroom closet. Several shotgun shells were located in a dish, on top of the chest of drawers at the foot of the bed.
- In the top drawer of the dresser or chest of drawers, the police located personal identification, including: a current health care card, an expired passport, a partial social insurance card, a birth certificate, and a number of other certificates in Mr. Greer's name, together with two letters sent to Mr. Greer, two sets of score sheets, and a number of live rounds of 12-gauge shotgun shells. In a plastic container on the floor, were a number of live .22 rounds of ammunition, together with ammunition clips.
- In an armoire, there was a locked safe and a Kevlar vest. When the safe was opened, it was found to contain approximately one kilogram of caffeine.
- In the living room, there was a coffee table situated between the couch and several other chairs. On the coffee table, there were a number of drug-related items, including:
 - a) packaging materials, tools for mixing and consuming drugs, papers described as score sheets, and electronic scales;
 - b) in one of the coffee table drawers, there was an imitation handgun (a BB gun), and what was described as a score sheet; and
 - c) in one of the leather chairs, the one furthest away from the entrance to the living room, a Mossberg shotgun was found in between the chair cushion and the back of the chair. The shotgun had a live round in the chamber. The shotgun was not immediately observable to the eye as one looked into the living room. It was discovered when the officers entered the room to begin the search, positioned at the back of the leather chair in such a fashion that the shotgun was pointed down with the butt end at the top, accessible to someone sitting in the chair, reaching back and pulling it out from its storage location.

- In the second bedroom on the main floor, evidence of drug paraphernalia was noted.
- In the bedroom downstairs, subsequently identified as the room occupied by Ms. Bastian, the police located the following: two black bags, one containing pills and papers described as score sheets; and a smaller bag, in which there was a pouch containing what was described as score sheets and drug-like substances. Also located in this area, were what was referred to as dime bags and a scale.
- In the downstairs bedroom, subsequently identified as the room occupied by Mr. McMillan, police located a notebook containing a document described as score sheets, identification belonging to Mr. McMillan, and drugs.

[21] All three of the occupants were arrested and searched.

[22] I now turn to the fingerprint expert called at trial. A number of items were examined for the presence of fingerprints and DNA, in the course of the investigation of this matter. Corporal Giles was qualified to provide opinion evidence in the following areas: the detection, preservation and collection of fingerprints, friction skin evidence, and the comparison and evaluation of known fingerprints to unknown fingerprints. He also provided evidence as to the presence and identification of DNA samples obtained from the scene.

[23] Corporal Giles' expertise was not challenged. In the course of the investigation, he was provided a number of exhibits which were tested for fingerprint impressions and the presence of DNA. The corporal also obtained fingerprints from Mr. McMillan and Mr. Greer. The corporal noted a palm print taken from a page of a notebook matched the palm print of Mr. Greer. I will refer to this notebook later in these reasons. The corporal also testified that a number of unknown impressions were obtained from a number of other paper sources seized in the investigation. A DNA profile was obtained from the shotgun, which was deemed suitable to match a known sample. It was determined that neither Mr. Greer's nor Mr. McMillan's DNA matched the sample obtained from the Mossberg shotgun.

[24] A swab was taken from the trigger of the handgun located in the unisex bag found hanging on the master bedroom interior doorknob. Based on the DNA analysis conducted, it was determined the sample was female DNA of unknown origin.

[25] The Crown called a drug expert, Constable Ilioi. He was qualified without objection to provide the court with opinion evidence in the following:

- a) the use, method of packaging, and concealment of drugs;
- b) methods of distribution, methods of sale, and methods of consumption of drugs; and
- c) drug prices and jargon for cocaine, heroin, fentanyl, and methamphetamine.

[26] The officer has approximately 12 years of experience as a police officer and, for the past seven years, involvement in the investigation of offences related to the Controlled Drugs and Substances Act, S.C. 1996, c. 19. He has taken a number of relevant and related courses in

the area and has taught a number of programs relating to various aspects of drugs, drug investigation, and organised crime. His experience involves over 200 drug investigations, which involve drug use and trafficking. He has participated in the search, seizure, conducting of surveillance of drug users and residences, as well as conducting interviews with drug users and those engaged in the sale of drugs, as well as use of weapons in the drug-trafficking business.

[27] Constable Ilioi, based on his review of the evidence, opined as follows:

- a) Trafficking in drugs can be a dangerous and violent enterprise. Weapons are a routine part of the business, both for protection and enforcement.
- b) The weapons observed at the residence are ones he has commonly observed during drug searches; for example, the machete hanging behind the front door was in position, ready for quick access if required. Shotguns, particularly of the type seized during the investigation in this case, are common in drug operations. The weapon is easy to manoeuvre and discharge quickly from the hip area. The shotgun was strategically placed, in his view, in the leather chair in the living room to be at the ready.
- c) The BB gun located in the coffee table drawer is a replica of a real handgun. It is of such a quality that if the officer observed it when he was in the course of his duties, he would react as if it were real. He has seen this type of weapon used, both for protection and intimidation purposes, in drug dealings.
- d) The location of the weapon and the drug paraphernalia observed on the coffee table, and the evidence relating to drug transactions taking place in the living room was, in his view, significant. In his experience, in a drug house, the drug-trafficking business and operation is generally located in one room where that business is conducted.
- e) The officer reviewed a number of documents introduced at trial, which consisted of pages and/or notebooks that were described as score sheets. A score sheet is simply a document whereby a drug seller keeps track of drugs, drug sales, to whom drugs were sold to, for what price, or if drugs are fronted, in other words provided on credit, a record of the drug debt owed. He testified there is no standard form of score sheet, also stating that it can be as simple or as detailed as the maker of the document wishes it to be.

[28] The officer reviewed a number of pages that were located in the top drawer of the dresser, in the master bedroom. The officer opined that these pages were score sheets, or records of various drug transactions for different types of drugs trafficked in various areas of Vancouver Island. A notebook found in the drawer was also described as a score sheet. The officer pointed out a reference at p. 11 of the notebook, which records larger quantities of illicit substances. Based on the officer's experience, larger quantities of illicit substances are kept by someone who has access to larger quantities of drugs for the purpose of distribution. He opined that the score sheets contained in this information reflect someone who exercises some control in a drug operation.

- [29] Several documents were located in the room downstairs, occupied by Mr. McMillan. He described these documents as score sheets detailing drug transactions. In addition, a document described as a score sheet was also located in the downstairs room occupied by Ms. Bastian.
- [30] Based on a review of all of the evidence, it was the expert's opinion that this was a drug house used for the purpose of packaging, distribution, and sale of illicit substances. Those substances included heroin, fentanyl, heroin and fentanyl mixed, methamphetamine, and cocaine. In observing the drug paraphernalia located in the living room, including the scales, small baggies, and the tools, in his view this supported a dial-a-dope type of operation where drugs are prepared in one location and then distributed to be sold in other locations.
- [31] Finally, he opined that at such locations, weapons are prevalent. In his experience, shotguns are very common in drug-dealing operations, as are handguns. Both items are used for protection, enforcement and/or intimidation purposes.
- [32] Mr. Greer testified in his defence. Mr. Greer's testimony can be summarised as a general denial. He testified that he moved into the residence in approximately 2013, and purchased the house in 2016. He described that he became seriously addicted to drugs in the fall of 2017, and that his life was in a downward spiral at that point. His addiction had taken over. He had lost his job and defrauded a financial institution for a significant amount of money, all of which went to fuel his drug habit. This downward spiral continued into 2018, when he sold off his property, including his boat, to obtain additional funds to fuel his addiction. He testified he also rented out space in his home to obtain more cash and/or drugs from those who were renting the space.
- [33] Mr. Greer testified the house turned into a drug flophouse, over which numerous people had access for the purpose of purchasing drugs, or to use drugs. Toward the end of May and early June 2018, Mr. Greer became concerned, such that the house may be attracting too much attention and he decided to move out. He had already resigned himself to the fact that the bank had obtained judgment against him for the money he had taken from the financial institution. As a result, he was going to lose the home.
- [34] Mr. Greer testified that he would return to the residence from time to time. When he did, it was only for short periods of time. When he moved out, he had no knowledge of any weapons or ammunition located in the home, and he did not own any weapons. Subsequent to his moving out, he was unaware of any weapons brought into the home.
- [35] Mr. Greer testified he continued to own the home after he moved out, but had little contact with the property on a day-to-day basis; and had no knowledge of the weapons that were subsequently located, during the search executed on June 30, 2018.

- [36] I now move to a brief discussion of the legal framework of a criminal trial. In a criminal trial, the primary and overarching principle is the presumption of innocence. It is essential to understand that this is the most fundamental principal of our criminal justice system. A person is presumed innocent until proven guilty by the evidence presented in a court of law. It is the fundamental right of every person accused of criminal conduct.
- [37] Related to the presumption of innocence is the standard of proof required to displace that presumption. The obligation of the Crown is to establish each essential element of the charge against the accused, to a point of proof beyond a reasonable doubt. In order to obtain a conviction to a criminal offence, the Crown is required to establish the essential elements of each offence that is charged. For reasons that will become apparent shortly, the central issue and an essential element to establish is whether the Crown has established that Mr. Greer was in possession of the weapons particularized in the indictment.
- [38] Proof beyond a reasonable doubt has been described in a number of different ways. By way of comparison, in a civil trial the plaintiff need only establish their case on a balance of probabilities. To support a conviction in a criminal case, the strength of evidence must go much further and establish the Crown's case to a point of proof beyond a reasonable doubt. This is not a standard of absolute or scientific certainty, but it is a standard that approaches that degree of certainty, if one were to place it on a continuum.
- [39] The Supreme Court of Canada outlined the concept in *R. v. Lifchus*, [1997] 3 S.C.R. 320, in part, at para. 39, the Court stated that:

A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

- [40] When the court is faced with competing evidence as to what occurred, such as is in this case, the Supreme Court of Canada in the decision of *R. v. W.(D.)*, [1991] 1 S.C.R. 742 [W.(D.)] sets out a framework of analysis for assessing the evidence at trial. At para. 28, the Court noted the following:

- First, if the trier of fact believes the evidence of the accused, the accused is entitled to be acquitted.
- Second, in the event the evidence of the accused is not believed, but the trier of fact is left in a reasonable doubt by it, then the accused must be acquitted.
- Third, even if the trier of fact is not left in doubt by the evidence of the accused, the trier of fact must go on and ask, on the basis of the evidence that is accepted, whether he or she is convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

- [41] As I noted a few moments ago, the primary issue to be determined is whether Mr. Greer was in possession of the three weapons located at the Hillside residence. Mr. Greer denies he was in possession of the three weapons located at the residence on June 30, 2018.

- [42] At trial, there is no dispute with respect to a number of matters including: the identification of Mr. Greer, the three weapons are firearms within the meaning of the Criminal Code, the Mossberg shotgun and the ROHM pistol are prohibited weapons, and Mr. Greer did not have the necessary authorization or licence and/or registration certificates for either the Mossberg shotgun or the ROHM pistol.
- [43] I now turn to an assessment of the defendant's evidence.
- [44] In the event Mr. Greer's evidence is not rejected, his explanation would be a defence to the charge and he would be acquitted of the charges. The Crown submits that Mr. Greer's testimony is neither credible nor reliable, and should be rejected.
- [45] A word about credibility and reliability. In *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, the court noted that witnesses are not presumed to tell the truth. Rather, a witness's evidence is to be assessed in light of the totality of the evidence, without any presumption, save for the fundamental presumption of innocence. This involves an assessment of whether the witness's evidence is at odds with other evidence in the case, whether the witness's allegations are implausible or improbable, having regard to the surrounding circumstances. The real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions. The trier of fact must also be aware that an apparently honest, confident, or convincing witness may not necessarily be an accurate witness.
- [46] In the decision of *R. v. H.C.*, 2009 ONCA 56 of the Ontario Court of Appeal, Watt J.A. for the Court discussed the concepts of credibility and reliability, stating at para. 41:
- [41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately
- i. observe;
 - ii. recall; and
 - iii. recount
- events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence .
- [Citation omitted.]
- [47] Finally, in assessing a witness's credibility and reliability, the following comments from *R. v. Langlet*, 2013 BCSC 2274 at paras. 28 and 31, are helpful:

- [28] The accepted factors that bear on credibility include internal consistency of a witness's testimony, consistency over time, corroboration or external consistency with other evidence, any interest the witness may have in testifying including motive to lie, whether the witness is independent, the presence or absence of an oath or affirmation, and prior criminal convictions where relevant.
- [31] I note that the consistency of a witness's testimony is an important factor in an analysis of the credibility of a witness, both internally and externally. Can the witness provide the same account at different times? Can the witness provide consistent answers as he or she is asked questions about portions of their testimony or particular aspects of it? Similarly, is a witness's testimony externally consistent? Do aspects of the witness's testimony correspond with testimony of other witnesses (absent evidence of collusion) or other real evidence? Is the account provided by the witness a plausible one? Does it accord with common sense?
- [48] I turn now to an assessment of Mr. Greer's testimony. From an overall perspective, I found his testimony, that is his evidence in chief, to be a generalized account of what transpired over the course of the months leading up to the execution of the search warrant in June 2018. The account is lacking in detail. Mr. Greer was pressed on various elements and aspects of his account, in cross-examination. His responses were often supplemented by additional evidence that was implausible, inconsistent and, in some circumstances, nonsensical. It is these responses that give rise to concerns over the reliability of his evidence.
- [49] Mr. Greer's testimony is impacted by his own acknowledgment that he had difficulty recalling a number of the events. He stated that his memory was "poor" and "fuzzy" on certain aspects of his testimony. In addition, a number of his responses were prefaced by, "I think". I also found he was prepared to speculate or guess, when pressed on certain areas of his testimony during cross-examination.
- [50] I will provide some examples of the testimony, which gave rise to the concerns I have outlined above. In recounting the first drug transaction with the undercover officer, Mr. Greer testified that he "sold his last 3.5-gram amount to her". Possibly, this was offered to deflect the fact that he was selling drugs on a regular basis. His response was in contradiction to what the officer had testified to and what she observed, which she described as a small pharmacy of drugs in a container located in the centre console of the vehicle that she was in, during the first drug transaction. When this was put to Mr. Greer in cross-examination, he immediately resiled from his testimony and stated he adopted the evidence of the officer.
- [51] In the latter part of the spring before and after he moved out of the Hillside residence, Mr. Greer stated that there were a number of drug traffickers operating out of the residence. When questioned further about these persons and who they were, he was not prepared to provide the names of those selling drugs. The reason for not doing so was the fear of physical reprisal or, as he put it, "worse". In doing so, Mr. Greer was less than candid and was

prepared to shape his responses to suit his purpose, as opposed to telling the truth of what he knew. He knew who they were, but he was not prepared to give a full account to avoid possible retaliation. This suggests he is prepared to be less than forthright in an effort to avoid possible negative consequences.

- [52] When pressed further as to whether he saw them selling drugs in the house, he said he knew what they were doing but he left the room when the transaction was taking place, so he did not actually see what happened. This response is self-serving and inconsistent with the events taking place in the residence over the course of this time period.
- [53] In the latter part of the spring, Mr. Greer testified he had rented out rooms in the residence for \$500 per room. This amount was paid in drugs and/or money. When asked about the records for tracking the rents and related utility costs, his account was inconsistent, contradictory, and self-serving. He stated that he was able to keep a mental note of the transactions. When confronted with inconsistencies from his earlier testimony or contradictory records, or information from the score sheets, he modified previous answers to avoid being contradicted by the information contained in the score sheet. In my view, he was making much of it up on the spot, in an effort to deflect from the obvious contradiction arising from his previous responses during cross-examination.
- [54] On several occasions, Mr. Greer testified he was used to dealing in large sums of money, which was offered in partial response over the collection of monies necessary to reinstate the hydro. During one of these exchanges in cross-examination about the hydro being cut off and collecting monies from the various renters to pay a \$1,250 fee, he said, "I make much more than \$1,200 per day, so it's not an extraordinary amount of money to me." This is contrary to Mr. Greer's financial circumstances at the time. Twelve hundred dollars per day, equates to \$6,000 a week or \$300,000 per year. The only evidence provided by the defendant was that he worked as a mechanic prior to losing his position in the fall of 2017, where he earned approximately \$60,000 to \$70,000 per year.
- [55] Regarding the score sheets found in Mr. McMillan's room, Mr. Greer initially testified that he had never previously seen the score sheets. This is contrary to the evidence, which I accept, that his palm print was found on one of the pages of the notebook containing the score sheets. Later, when questioned about a specific reference in the score sheet and about an amount he received, he responded, "I have no recall." Later, he added a different response, saying, "I might have received that amount."
- [56] Mr. Greer's responses to questions about the score sheets and references to the transactions, and to notations specifically to Mr. Greer in those score sheets, were inconsistent and contradictory. Mr. Greer testified that in the months preceding his leaving or vacating the residence, he was desperate for drugs, to the point where he sold his \$20,000 boat for one-half its value and he defrauded the financial institution for \$21,000. He explained that \$30,000 went to fuel the drug addiction, and it was all spent in a matter of months.

- [57] When the home was searched, a large tool box was located in the residence. Mr. Greer acknowledged the tool box was his and worth \$20,000. In the throes of a drug addiction, having lost his employment in the fall and having gone through approximately \$30,000 in relatively a short period of time, it is inconsistent that he would move out of the residence leaving the most valuable asset, other than the equity in his home, in what he described as a drug flophouse.
- [58] In cross-examination, he went to provide several explanations or reasons why he left the tools, which were difficult to reconcile. In my view, leaving the toolbox was inconsistent with his self-described drug addiction and need for funds to support it.
- [59] Mr. Greer's explanation as to why he left the Hillside residence when he did is difficult to reconcile with the fact that he still owned the house, which had value or equity in it. Why not simply force everyone else out of the home and sell it, if the purpose was to generate funds to fuel his drug addiction?
- [60] When Mr. Greer left the residence, he testified he took everything dear or of value with him. He described this fit into two suitcases. He described that one was filled with clothes and the other, with shoes. The question as to how he could possibly fit all of his clothes accumulated over the course of the number of years he resided there into one suitcase, he responded, "They were big suitcases."
- [61] The explanation of his leaving, what he took with him, what he left behind and why, is improbable.
- [62] Mr. Greer has a criminal record, which comprises approximately 40 convictions between 1990 and 2018. Of those convictions, it is noted that 16 were for crimes of dishonesty, as well as for convictions for administrative offences comprising obstruction, flight from a peace officer, and breach of court order.
- [63] The Crown, relying upon *R. v. Galye*, [2019] B.C.J. No. 921 (S.C.), submits that Mr. Greer ought to be considered a career criminal and in assessing his evidence, the court should keep in mind that he "may well be capable of lying under oath about a material fact when it suits him." I am not satisfied that Mr. Greer fits within the definition of career criminal. The record indicates that there was a significant break in it, for a number of years from the time he left Alberta until 2018. That said, the criminal record impacts his credibility to some extent. However, I place less weight on this factor than the testimony and the difficulties noted therein, during the assessment of his reliability and credibility.
- [64] In summary, I find Mr. Greer's evidence to be a self-serving account, which did not withstand cross-examination. His responses would change or shift when confronted with inconsistencies. I find that he minimized his testimony in terms of his involvement in the sale of drugs at the residence, shaped his testimony, and was untruthful when stating he had not previously seen the notebook containing score sheets located in Mr. McMillan's room.

- [65] In the final analysis, I do not believe Mr. Greer's evidence that when the Hillside residence was searched at the end of June, he had no direct ties to it as he had removed himself from it in late May or early June. I also find that his evidence does not leave me with a reasonable doubt when considered in the context of all the evidence adduced at trial; and as such, I reject his evidence as to the explanation in its entirety.
- [66] This takes us to the third prong or part of *R. v. W.(D.)* which, as I outlined in the initial part of the reasons, is to determine whether the Crown has established the essential elements of the offence. The Crown submits that the evidence supports the conclusion that Mr. Greer was in constructive possession of the weapons located in the residence; and, in the alternative, he is in joint possession of those items. Mr. Greer submits that there is insufficient evidence to make either finding and further, the Crown has failed to establish the essential elements to each of the offences necessary upon which the court can find a conviction.
- [67] The relevant legal framework for analysis is found in the Criminal Code. Possession is defined in s. 4(3), which reads as follows:
- (3) For the purposes of this Act,
- (a) a person has anything in possession when he has it in his personal possession or knowingly
- (i) has it in the actual possession or custody of another person, or
- (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.
- [68] To be found in possession, a person must either have the item knowing he has it in his actual possession, or knowing he has it in the possession of another person or in a place for his benefit. Mr. Greer was not found in physical possession of any of the weapons. In order for Mr. Greer to be found in constructive possession, the court must prove that he knew of the presence of the item and had some measure of control over its location: see *R. v. Fisher*, 2005 BCCA 444 at para. 24.
- [69] In *R. v. Morelli*, 2010 SCC 8, Fish J. said at para. 17:
- [17] Constructive possession is established where the accused did not have physical custody of the object in question, but did have it "in the actual possession or custody of another person" or "in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person" (Criminal Code, s. 4(3)(a)). Constructive possession is thus complete where the accused: (1) has knowledge of the character of the object, (2) knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and (3) intends to have the object in the particular place for his "use or benefit" or that

of another person.

- [70] In *R. v. Ahmadzai*, 2012 BCCA 215, MacKenzie J.A. put it this way (at para. 27):
- [27] Thus, the question is whether, on the whole of the evidence, the trial judge could reasonably have concluded beyond a reasonable doubt that the appellant had knowledge of and some measure of control over, the weapons and marihuana found in the vehicle.
- [71] To establish joint possession, the Crown must prove that the items were in someone else's possession with his knowledge and consent, and that he had some measure of control over them.
- [72] The Crown relies on circumstantial evidence to establish knowledge and control.
- [73] Where the Crown relies on circumstantial evidence, a finding of guilt may only be established where such a finding is the only rational or reasonable conclusion to be reached from the evidence as a whole: *R. v. Cooper*, [1978] 1 S.C.R. 860.
- [74] In *R. v. Collin*, 2008 BCCA 431, the required standard of proof necessary in a circumstantial case was described by Tysoe J.A. as follows (at paras. 17-18):
- [17] There is no requirement, however, that all of the circumstantial evidence relied upon for a finding of guilt must be proven beyond a reasonable doubt. Nor is there a requirement that a certain amount of the circumstantial evidence must be proved beyond a reasonable doubt. The requirement is that all elements of the alleged offence, including the element of identity of the offender, must be proved beyond a reasonable doubt: see *R. v. Morin*, [1988] 2 S.C.R. 345 at 360-362. The applicable standard was articulated in *R. v. Khan* (1998), 129 C.C.C. (3d) 45 (B.C.C.A.), as follows:
- [9] The Crown need not prove beyond a reasonable doubt each fact which is said to support the inference of guilt. Each fact may be a link in the chain of ultimate proof. Sopinka J. made it clear in *R. v. Morin* ... that it is the jury's duty to consider the evidence as a whole and determine whether guilt has been established by the prosecution beyond a reasonable doubt.
- [18] Hence, it was not an error of law by the trial judge to consider circumstantial evidence proved on a balance of probabilities in reaching his conclusion that the whole of the evidence established the guilt of Mr. Collin beyond a reasonable doubt. This does not derogate from the principle that guilt must be proved beyond a reasonable doubt.
- [75] In *R. v. Villaroman*, 2016 SCC 33 at paras. 35-38, Cromwell J. discussed the concept of reasonable inferences:
- [35] At one time, it was said that in circumstantial cases, "conclusions alternative to the guilt of the accused must be rational conclusions based on inferences drawn from proven facts": see *R. v. McIver*, [1965] 2 O.R. 475 (C.A.), at p. 479, aff'd without discussion of this point [1966] S.C.R. 254. However, that view is no longer accepted. In assessing circumstantial evidence,

inferences consistent with innocence do not have to arise from proven facts: *R. v. Khela*, 2009 SCC 4, [2009] 1 S.C.R. 104, at para. 58; see also *R. v. Defaveri*, 2014 BCCA 370, 361 B.C.A.C. 301, at para. 10; *R. v. Bui*, 2014 ONCA 614, 14 C.R. (7th) 149, at para. 28. Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.

- [36] I agree with the respondent's position that a reasonable doubt, or theory alternative to guilt, is not rendered "speculative" by the mere fact that it arises from a lack of evidence. As stated by this Court in *Lifchus*, a reasonable doubt "is a doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence": para. 30 (emphasis added). A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.
- [37] When assessing circumstantial evidence, the trier of fact should consider "other plausible [page1020] theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt: *R. v. Comba*, [1938] O.R. 200 (C.A.), at pp. 205 and 211, per Middleton J.A., aff'd [1938] S.C.R. 396; *R. v. Baigent*, 2013 BCCA 28, 335 B.C.A.C. 11, at para. 20; *R. v. Mitchell*, [2008] QCA 394 (AustLII), at para. 35. I agree with the appellant that the Crown thus may need to negative these reasonable possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.
- [38] Of course, the line between a "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.
- [76] I now turn briefly to the position of the parties.
- [77] Mr. Greer notes that he had not been seen or observed at the house since April 20, 2018. He submits that it is too great a leap to establish his connection with the residence and thereby, his knowledge and control of the weapons, on the evidence before the court. He submits the weapons could have been brought to the residence without his knowledge. Mr. Greer points to the fact that a number of other persons were living in the home and that anyone could have placed the weapons in the location where they were found without his knowledge.

- [78] The Crown submits there is overwhelming circumstantial evidence that Mr. Greer was engaged in the drug trade, controlling an operation that was operating out of the residence. In order to participate and protect that operation, there was a cache of weapons situated in his bedroom and a shotgun in the living room where drug transactions were routinely undertaken.
- [79] Given the location of the weapons and his role, the Crown submits that it is inconceivable that Mr. Greer would not be aware of the weapons found in the residence.
- [80] As noted, the issue turns on control and knowledge.
- [81] In *R. v. Webster*, 2008 BCCA 458, Frankel J.A. described what is meant by consent and control, in relation to possession. At para. 42, he stated:
- [42] Turning to "consent and control", what must be kept in mind is that for a person to be deemed to be "in possession" of an item, he or she need not have in fact exercised power over it; all that is required is an ability to exercise some power. This is discussed in *R. v. Savory* (1996), 94 O.A.C. 318, leave refused, [1997] S.C.C.A. No. 189, upholding the conviction of a driver of a van in relation to drugs another person had concealed in the vehicle.
- [82] In *Webster* at para. 44, Frankel J.A. made reference to the following passage in *R. v. Abdel-Malek*, (1997), 90 B.C.A.C. 147 at para. 10:

Control for the purpose of constructive possession does not require that the accused did in fact exercise control over the object in question ... the Supreme Court accepted that control means power or authority over the object in question. Similarly, in *R. v. Chambers* the court held that the right to grant or withhold consent to drugs being stored in a bedroom was sufficient to constitute control. Again, control is established if there is the right to grant or withhold consent. It is not necessary that the consent in fact be granted or withheld.

[Underline emphasis added in Webster.]

- [83] Weapons were found in the Hillside residence; as stated earlier, the shotgun in the leather chair in the living room, and the handgun and three long rifles in the master bedroom. For the following reasons, I find that Mr. Greer had control over the location where the weapons were found on June 30, 2018. There are a number of factors which lead to this conclusion. Mr. Greer lived at the Hillside residence for approximately five years. The first three of which, his occupancy was by way of a rental arrangement to reside there. He subsequently purchased the home, approximately two years ago, and continued to reside there until the present time. As the owner of the residence, he could grant or refuse entry to the property. I find that he continued to occupy the residence through the spring of 2018, up to the point the search warrant was executed on June 30.
- [84] Mr. Greer acknowledged that his expensive toolset (valued at \$20,000) was located in the basement and the vehicle used to meet the undercover officer when he sold her drugs in March was parked on the property, albeit without a current licence plate.

- [85] Mr. Greer, in his testimony, acknowledged that he occupied the master bedroom when he resided in the property.
- [86] In the bedroom closet, male clothing was observed hung up in it. In the top drawer of the dresser in the master bedroom, a number of Mr. Greer's personal pieces of identification were located, organised in a black folder or wallet, including his current health care card, an expired passport; each containing the Hillside property as his residential address. There was also his social insurance card, birth certificate, and other certificates to which I previously referenced.
- [87] During his testimony, Mr. Greer produced his current driver's licence, which reflects the Hillside residence as his residential address. There were two pieces of mail that were located in the top drawer: one from Home Depot, indicating a payment date due May 29, 2018; and the other, a letter from Snap On Credit, dated May 7, 2018, requiring a payment by May 17, 2018.
- [88] A further factor supporting that Mr. Greer continued to occupy the residence on June 30, which is discussed in greater detail in the following section, is the undercover officer's contact with Mr. Greer on June 29 during a telephone exchange, in which he tells her to stop by the house to obtain the drugs that she was seeking.
- [89] Based on the foregoing factors, I conclude that Mr. Greer not only owned the Hillside property but occupied the residence and continued to occupy the master bedroom at the time the search warrant was executed. In doing so, I am satisfied that he had control over this location.
- [90] I now move to the second element of constructive possession; and whether the defendant had knowledge of the firearms located in the residence.
- [91] There is no direct evidence that Mr. Greer placed the weapons, or knew they were located in the residence. Here, the Crown submits that knowledge should be inferred from the evidence adduced that Mr. Greer was aware of and knew of the weapons; and that such knowledge extended beyond mere acquiescence, as required by the authorities previously noted. Mr. Greer was involved in the street-level sale of various types of illegal drugs, both by way of a dial-a-dope operation where he would travel to the purchaser and sell drugs, as well as sell drugs to purchasers from his home. Cst. Babala, the undercover officer, met and purchased drugs from Mr. Greer on March 31, 2018, when she met him at his vehicle at a fast food restaurant in Duncan, B.C.
- [92] The undercover officer also attended the Hillside residence on April 20, 2018, when she met Mr. Greer in the living room to make another purchase of illicit drugs. At that time, the coffee table contained a number of items that were commonly used in the drug trade, including packaging materials and a piece of paper described as a score sheet. Mr. Greer pulled out a scale and proceeded to fill the officer's order using the scale. He then packaging the substance into baggies and gave it to her, for which she provided him \$40.

[93] Not only was Mr. Greer involved in the sale of drugs, both on the street and from home, as evidenced by the undercover officer's evidence, but documents identified by the expert as score sheets were located inside the residence, in various locations, including:

- two sets of score sheets located in the top drawer of the dresser, in the master bedroom;
- score sheets from the room occupied by Mr. McMillan;
- score sheets located in the room occupied by Ms. Bastian; and
- the score sheet located on the living room coffee table.

[94] I note that most of the documentation or score sheets are dated for the period of March through the end of May, or first week of June 2018.

[95] Referring specifically to the two sets of score sheets that were seized from the top drawer of the dresser in the master bedroom, the contents of a document found in the possession of the accused may be used as circumstantial evidence of an accused's involvement in the transaction to which the documents relate. In this case, the score sheets found in the master bedroom are circumstantial evidence of Mr. Greer's involvement in the drug transactions set out in those score sheets. The first set of documents is a series of pages which are described as a client list, broken down by location: Duncan, Laketown, Crofton, Ladysmith, Chemainus; and thereafter, broken down by location by name, telephone number, dollar amount, and type of drug.

[96] The second set of score sheets located in the dresser are more transactional information. At p. 7, there is a notation on May 4, to a reference to a larger amount or quantity of drugs and pricing. The expert testified that in his experience, these records are usually kept by someone who has access to larger quantities of drugs.

[97] Another document discovered in the room occupied by Mr. McMillan was a book containing numerous pages that were described as score sheets. Mr. Greer's palm print is located on this book. The significance of a fingerprint where possession is in issue was set out in *R. v. Lepage*, [1995] 1 S.C.R. 654. In *Lepage*, a fingerprint was found on a zip-lock bag containing drugs located under a couch. The court held that the presence of the accused's fingerprint on a bag of drugs is highly probative of possession of it.

[98] Based on the circumstances in this case, the notebook was located in the residence in a room occupied by Mr. McMillan. He occupied that room with the consent of Mr. Greer. Both the fingerprint of Mr. McMillan and the palm print of Mr. Greer were located on the notebook. I find that Mr. Greer was in constructive possession or joint possession of that score sheet. A review of the score sheet entries indicate drug sales by Mr. McMillan, who was accounting for monies received and recording amounts owed for drug transactions, as well as transferring funds or paying funds to "Tim", who I find is Mr. Greer.

- [99] A review of the exhibit of the score sheet, indicates that in the 39 pages there are entries on 11 pages, containing 13 references to paying Tim various amounts of money. There are several other notations, referencing the exchange of items between Tim and Bruce, who I find to be Mr. McMillan.
- [100] These entries, together with other entries, names, quantities, and types of drugs and amounts, are evidence Mr. McMillan was selling street-level quantities of drugs to various customers; and, at varying points, paid over to Mr. Greer varying amounts of money. In addition to the score sheets, there were quantities of drugs that were located in the rooms occupied by Mr. McMillan and Ms. Bastian, when the police attended. These drugs were found to be of sufficient quality and quantity that the expert opined that they were possessed for the purpose of trafficking. This was subsequently confirmed at the commencement of the trial, when Mr. McMillan entered a guilty plea to possession for the purpose of trafficking of methamphetamine on June 30, 2018; and in Ms. Bastian traversing her matter back to the Provincial Court, for a similar purpose.
- [101] The location of illicit drugs in the rooms occupied by Mr. McMillan and Ms. Bastian, together with the score sheets, demonstrate that these individuals were actively involved in a drug operation conducted out of the Hillside residence.
- [102] I find that the score sheets demonstrate a connection of the actions of Mr. Greer and Mr. McMillan, and both were engaged in the street-level sale of drugs; and that Mr. McMillan was undertaking the sale of drugs and accounting for those sales to Mr. Greer.
- [103] The defendant submits that there is no link between what happened in the past and the items observed and seized on June 30. The undercover officer was last in the residence with Mr. Greer in April. The score sheets submitted detail of various drug activities dated primarily in April and May. On June 29, the undercover officer was instructed to make a further purchase of drugs from Mr. Greer, by her supervising officer. The undercover officer made contact with Mr. Greer by telephone the day prior to the execution of the search warrant. The officer's purpose was to purchase drugs from Mr. Greer. During a telephone conversation, they initially agreed to meet in Nanaimo to effect that purpose. Later the same day, the officer advised Mr. Greer that she was not going to drive to Nanaimo. Mr. Greer suggested that she come by the house. While there is no specific reference to the Hillside residence, the officer understood this was the location Mr. Greer was suggesting. There had been no other residence where the officer and Mr. Greer had previously met for the purchase and sale of drugs.
- [104] Mr. Greer indicated he was picking up some "blow", that term defined by the expert as slang for cocaine. Mr. Greer indicated that he would be back in an hour. The officer said she would call him back later on. The officer made several calls and texts to see if Mr. Greer could meet her. The last call was at 5:46 p.m. There was no explicit plan to meet, but the context of the discussion was that the two were arranging a time and place to meet once Mr. Greer became available at the Hillside house.

- [105] Eventually, the officer was directed to attend the Hillside residence by the supervisor. The officer went to the door, knocked and was told to come in, at which point she asked for Tim. She was told he was not there and the undercover officer explained that he told her she could pick up \$40 worth of down. A woman came to the living room and asked what she wanted. When told, that person prepared the package of illicit substance. The undercover officer had a brief conversation with the woman, advising she had been in contact with Mr. Greer, at which point the woman said he was in Nanaimo and would be back later. This corresponds to what Mr. Greer had advised the undercover officer earlier.
- [106] While waiting for the drugs to be packaged, the officer noticed the baby monitor positioned on the coffee table in the living room, which was displaying four areas of the outside of the residence. She could not say whether the images displayed were in real time or not. The officer observed drug paraphernalia, including packaging for drugs for sale and for using drugs, all situated on the coffee table. The state of the room was similar to the observation made during her April visit to the residence, except that she noted that the furniture had been rearranged since her last attendance. The officer was there about five minutes and then left after paying for the drugs.
- [107] The officer's conversation with Mr. Greer, her conversation with Ms. Bastian at the residence, and her attending the residence and purchasing illicit substances, all point to Mr. Greer being directly connected to and exercising some control over the drug activity at the residence on the evening prior to the execution of the search warrant.
- [108] The defence further submits the weapons were quickly placed in the locations they were discovered, prompted by the police entry to execute the search warrant. I find there was simply no time for this to occur, based upon the circumstances outlined by the officer who oversaw the entry to the residence on June 30, 2018.
- [109] As to the shotgun being placed in the back of the leather chair and in the master bedroom by another person without the knowledge of Mr. Greer, it is simply not plausible that this would be done without the knowledge of Mr. Greer. First, the location of a number of shotgun shells located in the master bedroom, some of which were in plain view on top of the dresser, all similar in colour and gauge to the one found in the chamber of the shotgun, negate that possibility. Second, the living room was a common area shared by a number of people where drug transactions were undertaken. Mr. Greer, in terms of having control of the residence, participated in this activity, both directly and indirectly.
- [110] Reference was made to female DNA located on the handgun in the master bedroom and to unidentified DNA obtained from the shotgun. In my view, this does not lead to a plausible alternate theory or explanation in the circumstances.

- [111] The defendant relies on several decisions in support of its position, including *R. v. Bock*, 2016 BCCA 195. On appeal, Mr. Bock's conviction was overturned on the basis that the inference he had control of the drugs and weapons was not the only reasonable inference. Similarly, *R. v. Vaters*, 2018 BCSC 1756, deals with the issue of control of the residence. I do not find these authorities to be of assistance in the determination of this matter, based upon the circumstances here.
- [112] The Crown referred to several authorities, including *R. v. Pham*, [2005] O.J. No. 5127 (Ont. C.A.) [Pham]. The Court found the defendant in constructive possession of a quantity of cocaine when that person was not in the residence at the time the search was executed. In doing so, the Court commented that even if the drugs were brought in by the person who also lived in the apartment or by someone else during the defendant's absence, the defendant would still be found in possession. The reason being, in part, the circumstantial evidence supported as the only logical inference the consistent awareness of and participation in all that occurred in her home on the part of the accused, and demonstrated much more than a quiescent or passive knowledge of the drugs, as well as an element of control over them.
- [113] The Court added at para. 25(g):
- (g) the role of the accused in the trafficking scheme strongly suggested power and authority over the disposal of the cocaine found, and an ability to withhold consent to the keeping of any drugs in [the] home .
- [114] While the issue in *Pham* was whether the defendant was in possession of cocaine, I find the reasoning applicable in this case involving weapons.
- [115] In *R. v. Bransford*, 2019 BCCA 408 [Bransford] the appellant, one of two adult occupants of a residence, was convicted of possession of drugs for the purpose of trafficking and possessing a loaded handgun. The gun was hidden behind a sink vanity faceplate in a washroom attached to the master bedroom, which she occupied with the other defendant. The gun was not visible, but hidden behind the vanity, which appeared normal to an observer.
- [116] In affirming the trial judge's decision in *Bransford*, the Court (at para. 24) referenced the trial judge's ruling where she provided helpful comments at paras. 79-80:
- [79] Nor is there simply residence to found knowledge for Ms. Bransford. A scoresheet and cash were found under her pillow. A scoresheet and cash were found in her possession on her arrest. On May 9, as I say, she was seen engaged in very short transactions consistent with trafficking. Her fingerprints were on the plastic container in the drug processing area. The drug trade paraphernalia was in various areas of the house, not hidden. These circumstances are very different from those in the authorities to which Ms. Bransford referred me. She is linked in various ways to the drug trafficking operation from this residence, and that is part of the evidence which, as a whole, satisfies me that she had

knowledge of the drugs under the counter in the laundry room, as well as the gun under the ensuite cabinet counter.

[80] Although there may be an explanation for individual pieces of evidence, I base my decision on the whole of the evidence.

[117] The circumstances described in Bransford are similar to those in the case at bar. Mr. Greer acknowledged ownership and occupancy of the residence, but that is not the sole basis on which knowledge is established. It is the links established by the evidence that do so, including:

- a) the sale of drugs by Mr. Greer, both inside and outside the residence;
- b) the link with the undercover officer the night prior to the execution of the search warrant;
- c) the fact that Mr. Greer was organising and supporting the sale of drugs by others, including Mr. McMillan;
- d) concerns over security to the residence, as evidenced by the machete, which was readily accessible at the front door and the use of the CCTV camera located in the living room observed by the officer on June 29, which was the centre of the drug activity in the residence; and
- e) the fact that Mr. Greer had weapons in his bedroom, together with a Kevlar vest and live ammunition, capable of being used in the shotgun found in the living room; as well as rounds for the Winchester long rifle, located in the closet.

[118] In this case, this evidence provides similar linkages to establish that Mr. Greer had knowledge of the weapons in both the bedroom and the living room.

[119] In conclusion, I am satisfied beyond a reasonable doubt that Mr. Greer had knowledge that the weapons were located in the residence and a degree of control over them. In other words, that he had constructive possession of those three weapons. He owned the house and was a resident of it, occupying the master bedroom in the home. He was engaged in a drug operation that involved the purchase, packaging, and resale of drugs from the residence, as well as selling drugs in the community.

[120] In his bedroom, elements of a drug operation are evident, including: the Kevlar vest for protection, caffeine (used as a cutting agent to mix with drugs), and score sheets. All of this supports he was actively involved in the drug industry.

[121] In the bedroom, there were long rifles and a handgun. The long rifles were located easily accessible in the bedroom closet, and the ammunition to the Winchester long gun was located on the floor near the bed. The handgun was located in a bag hanging from the interior bedroom door handle, situated in close proximity to the head of the bed. Shotgun shells, of the same gauge and colour as the live round in the shotgun chamber in the living room, were located in three separate locations in the bedroom.

- [122] Mr. Greer was engaged in the street-level drug activity taking place in March 2018; and in the living room of the residence, in April 2018. He directed the undercover officer to the residence the evening prior to the weapons being located. Score sheets detailing the client list and locations about the larger quantities of drugs, were found in the master bedroom; in addition to score sheets detailing his drug activity with Mr. McMillan, evidencing his involvement by supplying drugs to Mr. McMillan.
- [123] This places Mr. Greer in the midst of a drug operation, operating from the living room of his residence. The drug business is one that commonly uses weapons for protection and enforcement. A Mossberg shotgun is commonly found at drug operations, given its size and manoeuvrability. The Mossberg shotgun was in the living room, a room frequented by the defendant, located in a chair with easy access in the event that it was required.
- [124] While there may be an explanation as to some of the individual pieces of the evidence, based on the entirety of the evidence it is inconceivable that Mr. Greer would not have been aware of the weapons located in his bedroom. Further, based on the presence of the live shotgun ammunition in his bedroom, together with the circumstances that I have recounted, it is inconceivable that he would not also be aware of the shotgun located in the living room. Accordingly, I find he had knowledge and control that he was in constructive possession of the weapons. I further find that the long rifle was stored in an unsafe fashion.
- [125] In conclusion, based on all of the foregoing, I am satisfied beyond a reasonable doubt that the Crown has established the essential elements to Counts 6, 7, and 8 of the indictment.
- [126] This concludes my reasons.

"T.J. Crabtree J."

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Prepared on 26 October 2026 · Esheria