

CANADA / JUDGMENT

R. v. Griggs

2026 ONCA 135

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Griggs

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COA-23-CR-1325, COA-24-CR-0006

Judges

van Rensburg, Katherine; Roberts, Lois B.; Gomery, Sally A.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Griggs, 2026 ONCA 135

DATE: 20260226

DOCKET: COA-23-CR-1325 & COA-24-CR-0006

van Rensburg, Roberts and Gomery JJ.A.

DOCKET: COA-23-CR-1325

BETWEEN

His Majesty the King

Respondent

and

Dylan Griggs

Appellant

DOCKET: COA-24-CR-0006

AND BETWEEN

His Majesty the King

Respondent

and

Michael Bennett

Appellant

Jassi Vamadevan, for the appellant Dylan Griggs

Ravin Pillay, for the appellant Michael Bennett

Geoffrey Roy, for the respondent

Heard: October 14, 2025

On appeal from the convictions entered by Justice Fergus C. O'Donnell of the Ontario Court of Justice, on August 9, 2023.

van Rensburg J.A.:

A. Overview [1] Michael Bennett and Dylan Griggs were charged and convicted of possession of drugs for the purpose of trafficking and possession of the proceeds of crime. Mr. Bennett was sentenced to five years' imprisonment, while Mr. Griggs was sentenced to eleven years. They appeal their convictions.[1]

[2] The charges arose from the execution of search warrants for two residential addresses that were obtained under the Controlled Drugs and Substances Act, S.C. 1996, c. 19 (the "CDSA"). [2] The first address was a house located on White Oak Avenue in Niagara Falls, Ontario ("White Oak"). The second was a house on Wilkerson Street in Thorold ("Wilkerson"). Drugs, money and other items were seized at both locations. The appellants were present and were arrested when the search of White Oak was carried out.

- [3] The appellants brought a s. 8 Charter application to exclude the evidence seized in the execution of the warrants to search White Oak and Wilkerson.[3] In a preliminary motion, the trial judge concluded that neither appellant had standing to challenge the search warrants.[4] After a trial at which the evidence seized during the searches was admitted, the appellants were found guilty of two counts each of possession of drugs for the purpose of trafficking and one count each of possession of proceeds of crime exceeding \$5,000. While the charges against Mr. Bennett related to the drugs and money found in the police searches of both White Oak and Wilkerson, his convictions were only in relation to drugs and cash found in the “small bedroom” of White Oak. Mr. Griggs’s charges related only to White Oak, and he was convicted in relation to drugs and cash found in the “principal bedroom” of that house.
- [4] The appeal challenges the decision denying the appellants standing to bring the s. 8 application. The appellants argue that the trial judge erred in concluding they did not have standing, in part because of a misapplication of the law set out in *R. v. Jones*, 2017 SCC 60, [2017] 2 S.C.R. 696. They also appeal the guilty verdicts, submitting that the trial judge erred in concluding that the only reasonable inference on the evidence was that they were in possession of drugs seized at White Oak.
- [5] For the reasons that follow, I conclude that the trial judge erred in finding that the appellants lacked standing to challenge the search warrants. With respect to the second ground of appeal, I am not persuaded that the trial judge erred in concluding that the appellants were in possession of drugs at White Oak. Accordingly, the appellants are not entitled to acquittals. I would allow the appeals, set aside the convictions and direct a new trial.
- B. Facts [6] The appellants were charged with drug-related offences together with three others: Marlon Junior Austin, Lucas Jamed and Taylor Brennan. The Crown ultimately stayed the charges against Ms. Brennan. Mr. Jamed was convicted of a lesser offence, while Mr. Austin was acquitted of all charges. This summary focuses on the facts relevant to the appellants.
- [7] The appellants were charged as a result of a Niagara Region Police Service investigation that lasted about a year and culminated in the execution of search warrants at White Oak and Wilkerson on December 10, 2019. Messrs. Bennett, Griggs and Jamed, as well as Ms. Brennan, were inside White Oak at the time of the search of that address, while Mr. Austin was arrested as he entered Wilkerson. Large amounts of cocaine, crystal methamphetamine, and fentanyl were seized as a result of the searches.
- [8] The ITO for the CDSA search warrants set out details of the police surveillance of “Black Kevin” (who was identified on arrest as Mr. Bennett), Mr. Griggs and Mr. Austin between November 19 and December 10, 2019. Based on their a prior investigation and information from confidential informants, the affiant stated that the police had information about the appellants and Mr. Austin selling drugs in Niagara. Among other things, the affiant referred to observations of the appellants conducting what were believed to be drug transactions at various locations before which they attended at White Oak or Wilkerson. The affiant offered

his opinion that White Oak and Wilkerson were used by the appellants in selling drugs in the Niagara Falls area. The affiant deposed that he believed that White Oak was used as a stash house for drugs, cash and drug paraphernalia, that Mr. Bennett had been seen frequenting and staying at both houses, and that Mr. Griggs, who lived in Wasaga Beach, attended the Niagara Region to traffic drugs, while staying at White Oak.

- [9] The execution of the search warrant at White Oak led to the discovery of evidence in three primary locations.[5] In what was referred to as the “small bedroom”, the police found Mr. Bennett and Ms. Brennan asleep on an air mattress. On the floor on Ms. Brennan’s side of the air mattress, near the corner closest to the bedroom door, were crystal meth and fentanyl as well as mail addressed to Ms. Brennan. In a laundry basket near the foot of the bed, the police found more crystal meth and fentanyl, a fanny pack containing over \$8,000 and Mr. Bennett’s driver’s license and health card, and women’s clothing. In a black jacket was an envelope with \$605. A red jacket, resembling the jacket Mr. Bennett was observed wearing on December 3, was also in the room; in its pockets were a Hyundai key, a house key and a key to a safe.
- [10] When they arrived at White Oak, the police saw Mr. Griggs coming out of the principal bedroom. On the bed, they found a carry-on suitcase and a Gucci fanny pack, both of which matched what Mr. Griggs was seen carrying when he entered the house before the police entry. On a chair beside the bed was a jacket that looked like what Mr. Griggs was wearing when he entered the house. Inside a lockable metal briefcase were several marked envelopes containing various amounts of money, Mr. Griggs’s passport and post-it notes with drug-related language. On top of a dresser, together with a TV, were two post-it notes with drug-related language, a marked envelope containing additional money, keys to a BMW, a wallet containing Mr. Griggs’s driver’s license, health card and other documents and cards with his name. In a walk-in closet, the police found another post-it note with drug-related language, crystal meth, fentanyl and a digital scale on a table, which the trial judge accepted was used for drug processing. Above the table on a shelf was a clear plastic bag with loose change and a barrel key, and in a small, portable Sentry safe under the table were crystal meth and fentanyl.
- [11] The police also found fentanyl, cocaine, cash and a Bell Canada bill in Mr. Griggs’s name elsewhere in the house. According to the trial judge, police photos showed that both White Oak and Wilkerson were sparsely furnished.
- [12] The items seized in the search at Wilkerson included large amounts of crystal meth, fentanyl and cocaine; money; some receipts and other documents with Mr. Griggs’s name; and a Gucci satchel that appeared identical to the one Mr. Bennett had previously been seen with, which was found in a bedroom. There were other documents located at Wilkerson bearing the names of other people, including Mr. Austin.

C. Reasons in the Court Below 1. Reasons on Standing[6] [13] The first issue was the standing of the accused to challenge the search warrants for the two residences. In the course of oral argument, the Crown conceded that Ms. Brennan, who was the sister of the tenant of White Oak, had standing in relation to that location. The Crown stayed the charges related to Ms. Brennan before her s. 8 Charter application was argued. The Crown argued that Wilkerson was almost solely a stash house to hold drugs and receive mail and that, while White Oak was a residence used as a base for drug trafficking by the appellants and others, the appellants, at the highest, were “privileged guests”, similar to the accused in *R. v. Edwards*, [1996] 1 S.C.R. 128, and lacked standing.

- [14] The appellants relied on the Crown’s theory that was apparent in the charges against them and the ITO. They argued that it was inconsistent for the Crown to oppose their standing to challenge the search warrants when the Crown’s theory for conviction in relation to what was seized relied on the appellants having control over both addresses. In the alternative, the appellants submitted that, even if they were only temporary visitors or guests, the personal items that were found in the two residences evidenced their access and control over the properties sufficient to establish standing.
- [15] The trial judge determined that the appellants had no reasonable expectation of privacy in White Oak or Wilkerson. He concluded that none of the accused presented a case that “[came] close to establishing a reasonable expectation of privacy on a balance of probabilities.” In arriving at this conclusion, the trial judge considered the factors identified in *Edwards*. First, both Mr. Bennett and Mr. Griggs were present when the search at White Oak was carried out. Second, Mr. Bennett had been seen using a key to enter Wilkerson, but there was no evidence that either he or Mr. Griggs had keys on the date of the arrest, and the record was “effectively silent” regarding their control of the property. Third, there was no evidence that either appellant owned or leased the properties, and there was no evidence of a relationship with the lessees. Fourth, there was no record of a long history of use of either property, as the defence relied on the Crown’s disclosure and the investigation was short. Fifth, Mr. Bennett and Mr. Griggs offered no evidence that they could regulate access to the properties. Sixth, “the record [was] silent” with respect to a subjective expectation of privacy. Overall, the trial judge noted there was very little evidence to support the factors set out in *Edwards* that could have established a reasonable expectation of privacy.
- [16] The trial judge was also critical of the record relied on by the appellants on the standing issue, primarily consisting of the ITO, the location of each appellant at the time the White Oak warrant was executed and photos filed by the Crown showing items seized in each house, but, with some exceptions, without the necessary context to show where each item was found.
- [17] The trial judge acknowledged that, in accordance with the Supreme Court’s decision in *Jones*, the defence was entitled to rely on the Crown theory, but he found that this, in combination with the items seized, was not sufficient to support a finding of standing. He stated that, although the items seized may have linked the appellants with the houses, the

force of that link was “not particularly strong, especially when one keeps the standard of proof in mind.” Further, the trial judge expressed the view that the Crown disclosure relied upon by the defence to prove the Crown’s theory was quite limited, weakening its impact.

2. Reasons for Conviction[7] [18] The trial judge found Mr. Bennett guilty beyond a reasonable doubt of the possession of drugs for the purpose of trafficking and possession of the proceeds of crime in relation to what was seized from the small bedroom at White Oak. Mr. Bennett was found in the bedroom where bags of fentanyl and crystal meth were on the floor, in plain view. Additional bags of drugs were in the bottom of the laundry basket at the foot of the air mattress where he was sleeping, under a fanny pack containing his driver’s licence, his health card and over \$8,000.
- [19] The trial judge also considered the evidence tying Mr. Bennett to Wilkerson (he was seen using a key to enter the premises, his vehicle had been seen there, and a Gucci satchel identical to one Mr. Bennett was seen wearing was found inside). He concluded that, even without this evidence, the case against Mr. Bennett was proven beyond a reasonable doubt.
- [20] The trial judge rejected the defence submission that the presence of Ms. Brennan and the mail addressed to her that was found in the small bedroom undermined the Crown’s case. It did not matter whether Mr. Bennett was in sole or joint possession of the money and drugs, as he was indisputably in possession of them, particularly given that it was his bag with his identification that contained almost all the money that was seized in the room.
- [21] However, the trial judge did not accept the Crown’s argument that Mr. Bennett, as one of the three occupants of White Oak, was criminally liable in respect of all the drugs found at that location. Although the trial judge accepted that there was a trafficking scheme using White Oak, the evidence was not sufficient to support the attribution of collective responsibility for all drugs, money and offences.
- [22] The trial judge found Mr. Griggs guilty beyond a reasonable doubt of the possession of drugs for the purpose of trafficking and possession of the proceeds of crime in relation to what was seized from the primary bedroom at White Oak. Based on what was found in the bedroom (Mr. Griggs’s belongings, including his passport, and labeled envelopes containing cash), the trial judge accepted that this was Mr. Griggs’s room, and he rejected the submission that proof of knowledge and control of the bedroom did not equate to proof in relation to the drugs found in the walk-in closet. Moreover, although the safe in the closet was locked, the key was concealed, but immediately accessible, making Mr. Griggs’s possession of the substances inside it the only reasonable conclusion.
- [23] As with Mr. Bennett, the trial judge did not accept the Crown’s argument that Mr. Griggs was in possession of all the drugs and money that were seized at White Oak.
- [24] The trial judge acquitted Mr. Bennett of the offences in relation to what was found at Wilkerson. Although he accepted that Mr. Bennett knew what was inside Wilkerson, given that he had a key, that he had been to the house, and that a Gucci satchel matching the one

he had been seen with was found at Wilkerson, there was not sufficient evidence to make out possession. The totality of evidence relating to Mr. Bennett's connection with Wilkerson did not prove beyond a reasonable doubt that he had possession in law of the items at Wilkerson.

D. Issues [25] The appellants raise the following two issues on appeal:[8]

- (1) Did the trial judge err in denying the appellants standing to challenge the CDSA search warrants?
- (2) Did the trial judge err in concluding that the appellants' possession of drugs at White Oak had been proven beyond a reasonable doubt?

E. Discussion 1. The trial judge erred in not granting the appellants standing for their Charter motions [26] The appellants argue that the trial judge erred in denying them standing by applying the wrong test and by failing to properly consider the Crown's theory. The appellants contend that the trial judge failed to apply the law set out in *Jones*. In particular, while the trial judge acknowledged that an accused could rely on the Crown theory to make out a reasonable expectation of privacy, he concluded that the parts of the ITO relied on by the defence as setting out the Crown's theory were not sufficient, that the evidence in support of the appellants' expectation of privacy was weak and that the appellants had not met their burden to establish standing on a balance of probabilities.

[27] The Crown submits the trial judge was correct in finding the appellants lacked standing, after emphasizing that a reasonable expectation of privacy must be evaluated in the totality of the circumstances. The trial judge highlighted the limited record and acknowledged the relevant evidence but concluded that there was virtually no evidence from which the court could infer the right to control access, residency, temporary occupation, or any other basis on which to assert a privacy interest.

[28] I agree with the appellants that the appeal should be allowed on the issue of standing. As I will explain, in faulting the appellants for not having met their "significant" burden to establish standing, the trial judge erred in his approach to the evidence, as he did not give proper effect to the Crown's theory.

[29] The point of departure is the Supreme Court's decision in *Jones*. In that case the standing issue was whether the appellant had a reasonable expectation of privacy in text messages that he was alleged to have authored and sent. *Côté J.*[9] noted that a relatively modest evidentiary foundation is required to establish a subjective expectation of privacy, which can be presumed or inferred in the circumstances absent a claimant's testimony or admission at the voir dire: at paras. 19, 21. She concluded that "counsel for a s. 8 applicant may ask the court to assume as true for s. 8 purposes any fact that the Crown has alleged or will allege in the prosecution against him": at para. 32. It is not necessary for the accused to "tender additional evidence probative of those facts in order to make out those same elements": *Jones*, at para. 32. This is an exception to the rule that a Charter applicant bears the burden

of persuading the court that his rights or freedoms have been infringed or denied: Jones, at para. 33.

- [30] Jones was discussed and explained by this court in *R. v. Labelle*, 2019 ONCA 557, 379 C.C.C. (3d) 270. Harvison Young J.A. identified as the “overriding point of Jones” that “an accused should not be placed in the position of being forced to compromise his or her substantive defence to criminal charges in order [to] assert standing to challenge the reasonableness of a search”: at para. 24, referring to Jones, at para. 26. She also observed that the Jones approach does not create automatic standing in territorial privacy cases: “The point of Jones is that the accused can rely on the Crown theory to establish certain facts relevant to their s. 8 claim”, and “[t]he trial judge is still required to assess those facts in the ‘totality of the circumstances’ to determine whether the accused had a reasonable expectation of privacy in a particular territorial space”: at para. 31.
- [31] I will begin my analysis of this ground of appeal by identifying the Crown’s theory for the purpose of the appellants’ standing argument. I will then turn to the trial judge’s errors in dealing with the standing issue. There was some confusion in the trial judge’s description of the defence arguments on the standing issue that may well have informed his analysis. As I will explain, the trial judge erred when he failed to give proper effect to the Crown’s theory of the prosecution of the appellants, and instead, focusing on the Crown’s “privileged guest” theory, he concluded that the appellants had not provided sufficient evidence to establish standing. In this case, considering the “totality of the circumstances”, the appellants should have been granted standing.
- i. The Crown’s theory relied on by the appellants in support of standing
- [32] In this case, the appellants did not put forward their own evidence on the voir dire but relied on the Crown’s theory as disclosed in the ITO and the charges against them. They also relied on the Crown disclosure of the photographs of the items that were seized at the two addresses and their presence at White Oak when the search took place: the fact that Mr. Bennett was asleep in the small bedroom, and that Mr. Griggs was walking out of the principal bedroom as the police entered.
- [33] Although the Crown is correct that statements in an ITO are not necessarily indicative of the Crown’s theory, in this case there is no question that they were.[10] The ITO was used in support of the warrants for White Oak, Wilkerson and the vehicles alleged to have been driven by the appellants, with the targets of the investigation being “Black Kevin” (Mr. Bennett) and Mr. Griggs.
- [34] The ITO stated that, based on confidential informant information since January 2019, the appellants were selling drugs in the Niagara Region. The ITO set out details of police surveillance and cell phone tracking data in respect of the appellants’ activities. With respect to White Oak and Wilkerson, the affiant asserted that White Oak was used as a stash for drugs, cash and drug paraphernalia; that, based on the fact that the appellants were seen at either White Oak or Wilkerson before conducting drug transactions, they kept their drug

supply within these houses; that “Black Kevin” (Mr. Bennett) kept his drugs, drug paraphernalia and other items on his person, at White Oak or Wilkerson or in his vehicle; that Mr. Griggs, who resided in Wasaga Beach, attended the Niagara Region to traffic drugs, while staying at White Oak; that Mr. Griggs kept his drugs, drug paraphernalia and other items to be sought on his person, at White Oak or in his vehicle; and that “Black Kevin” (Mr. Bennett) was observed frequenting and staying at Wilkerson and White Oak, and seemed to be at White Oak at the same time as Mr. Griggs, based on the presence of Mr. Griggs’s vehicle and mobile tracking data.

- [35] It is clear from the ITO that the affiant was asserting that the appellants were jointly involved in a drug-trafficking enterprise, that they kept their drugs at White Oak and Wilkerson and that White Oak was used as a part-time residence by Mr. Griggs. These essential facts, together with the surveillance on the appellants provided the basis for the affiant’s belief that drugs would be found in the locations to be searched to support the charge that the appellants committed the offence of possession of drugs for the purpose of trafficking.
- [36] The court may also infer the Crown theory from the nature of the charges themselves: Jones, at para. 32. Here, the appellants were charged with possession for the purpose of trafficking with respect to all of the drugs and money found at White Oak, where they were arrested, and Mr. Bennett was also charged in relation to the drugs and money found at Wilkerson, although he was not present when this location was searched.
- [37] As Côté J. stated in Jones, “an accused mounting a s. 8 claim may ask the court to assume as true any fact that the Crown has alleged or will allege in the prosecution against him in lieu of tendering evidence probative of those same facts in the voir dire”: at para. 9. The facts alleged or to be alleged here in relation to White Oak were not only that this location, together with Wilkerson, was used by the appellants, who were operating a drug trafficking enterprise in the Niagara Region, as a stash house, but also that, by virtue of these facts and the appellants’ observed connections to the properties, they were in possession of the drugs and money seized. This was the Crown theory relied on by the appellants on the issue of standing at first instance and on appeal.

ii. The standing analysis where the Crown’s theory was relied upon

- [38] In my view, the trial judge misapprehended the defence arguments with respect to the relevance of the Crown’s theory to the standing issue. At para. 17, he said that Mr. Bennett’s trial counsel had argued that “the Crown’s assertion that the [appellants] had possession of the drugs means that the Crown cannot dispute [their] standing to challenge any search ... [which] amounts to an assertion that being charged with a possession offence automatically conveys standing, which is clearly not the law.” Mr. Bennett’s counsel did not argue that there would be automatic standing whenever the Crown asserted an accused’s possession of drugs, but accurately summarized and invoked the principles in Jones to rely on the Crown’s theory in relation to the prosecution. And, at para. 48 of his reasons, the trial judge observed that “the implicit or explicit assertion in informations to obtain or disclosure that a person is

using a place as a stash house is not the same as the Crown asserting or being taken to concede that that person lives in that house ... owns that house, has control of that place, has a reasonable expectation of privacy in that place, etc.” Here, the trial judge seems to have confused the defence reliance on the Crown’s theory in the prosecution with the Crown’s theory with respect to standing.

- [39] The trial judge’s confusion may have resulted from the way the issue was articulated by the trial Crown, who repeatedly referred to the “Crown’s theory” in relation to the Crown’s theory of the issue of standing, and not in relation to the theory of the prosecution. The Crown’s theory on the standing issue was that the appellants were no more than “privileged guests” of White Oak and that there was no evidence as to their control of this location. The Crown’s theory with respect to the prosecution in relation to the drugs at White Oak, however, was that the appellants’ use of this address as a stash house in their drug trafficking operation meant that they had possession of the drugs at this address. The very point of Jones is that the appellants could rely on the facts that the Crown would allege in the prosecution.
- [40] The trial judge concluded there was no evidence that would allow the court to infer the appellants had control of the properties, relationships with the properties’ lessees, historical use of the properties, the ability to regulate access to the properties, or any other basis on which to assert privacy. I agree with the appellants that in arriving at this conclusion, the trial judge applied the Edwards factors in the context of the Crown’s “privileged guest” theory, failing to give effect to the Crown’s theory with respect to the prosecution, particularly in relation to the question of their control of White Oak.
- [41] The trial judge stated, erroneously, that the record was “effectively silent” regarding the appellants’ control of the property, and that he had “no basis upon which to quantify [the appellants’] connection or control of the property other than a slim number of examples of their mere presence there.” However, the appellants’ connection to and use of White Oak, and by inference their control of this location, were evident in the Crown’s theory.
- [42] In Labelle, Harvison Young J.A. emphasized the need to determine standing based on the “totality of the circumstances”: at para. 31. In that case, the Crown’s theory that the apartment that was searched was the appellant’s apartment (which in turn would establish his reasonable expectation of privacy) conflicted with the evidence of the appellant’s girlfriend at the voir dire, denying the appellant had ever lived there. The trial judge had erred in failing to consider the Crown’s theory together with the other (contradictory) evidence. The appeal was allowed, with the issue of standing to be determined based on the correct principles, including those from Jones.
- [43] In the present case, the trial judge, referring to Labelle, correctly observed that where an accused relies on the Crown theory, the trial judge must still assess the facts in the “totality of the circumstances” to determine standing. However, in considering the totality of the circumstances and applying the factors from Edwards, the trial judge focused on the lack of

evidence that the appellants had keys to the properties on the date of the arrest, that they owned or leased the properties, that they had a relationship with the lessees, or of their long history of use of either property, thereby failing to give proper effect to the Crown's theory of the prosecution. Likewise, the trial judge's concerns about the relatively short period of surveillance of the appellants were not particularly relevant. The appellants' control of White Oak was tied to their use of this location in their drug trafficking enterprise as a stash house for their drugs.

- [44] In *Jones*, the accused did not call evidence on the voir dire but sought to rely on the Crown's theory that he was the author of inculpatory text messages on a phone registered in his spouse's name: at paras. 3-6. In *Labelle*, Harvison Young J.A. confirmed that *Jones* applies, whether or not the accused calls evidence on the voir dire and even where such evidence would negate standing: at paras. 26-27. In that case, the trial judge erred by not allowing the appellant to rely on the Crown theory that it was his apartment where the firearms were found because his girlfriend under cross-examination on the voir dire denied the appellant was living at the apartment: at paras. 5-7, 32.
- [45] More recently, in *R. v. Mohamed*, 2024 ONCA 691, 442 C.C.C. (3d) 248, this court rejected the argument on appeal that the trial judge had erred in failing to give effect to the Crown's theory articulated in an ITO that he was in possession of cocaine located in a house owned by his co-accused with whom he was in a long-time common law relationship. After the co-accused testified at the voir dire denying the common law relationship and asserting that the appellant was only a "privileged guest", at the request of the Crown, the words "long-time" and "common law" were redacted from the ITO: at paras. 13-15. This court held that in seeking standing, the appellant and his co-accused had not relied on the Crown's theory; rather, they challenged it: at para. 25. Accordingly, the trial judge, after considering all the circumstances, had not erred in rejecting the appellants' claim to a reasonable expectation of privacy: at para. 26.
- [46] In this case, unlike other cases respecting searches of residential properties where the issue was whether the accused was a privileged guest or the primary occupant, there was no question that the addresses were stash houses. They were sparsely furnished, and even if Ms. Brennan's sister held the lease to White Oak, there was nothing to suggest that it was her residence.
- [47] And, unlike the accused in *Mohamed* and *Labelle*, the appellants did not call evidence on the voir dire. As such, the Crown's theory with respect to the prosecution – that the appellants had possession and control of the contents of the two properties because they were being used by them as stash houses in their drug operation – stood uncontradicted, at least on the Charter motion. Moreover, the other evidence, including the observations referred to in the ITO of the appellants attending at White Oak and Wilkerson before conducting alleged drug transactions, the fact that the two locations were sparsely furnished, the appellants' presence at White Oak when the search was executed, and the items seized that connected the appellants to that location, was consistent with, and did not

contradict, the Crown's theory. The "totality of the circumstances" in this case supported the appellants' claim to a reasonable expectation of privacy based on their use of and control over White Oak in their drug trafficking operations.

- [48] Returning to the trial judge's analysis, in my view he erred when, at para. 48 of his reasons, he stated that it was important in analyzing standing "not to overstate the impact of the Crown's theory on the standing issue." Consistent with Jones, he should have "assume[d] as true for s. 8 purposes any fact that the Crown [had] alleged or [would] allege in the prosecution against [the appellants]." Instead, based on his assessment of the surveillance evidence set out in the ITO, the trial judge discounted the affiant's statements that the appellants had been seen frequenting and staying at both houses and conducting drug deals with continual use of the addresses. The trial judge then faulted the appellants for not meeting their evidentiary burden.
- [49] The trial judge ought to have accepted the Crown's theory as evident in the charges and the sworn statements in the ITO, and then weighed that theory together with the other evidence that was before him. The other evidence was consistent with the Crown's theory and, in particular, specific assertions made in the ITO: that White Oak and Wilkerson were being used by the appellants as stash houses in their drug trafficking activities, and that Mr. Griggs was staying at White Oak when he trafficked drugs in the Niagara Region. The use of the addresses as stash houses was apparent. Both houses contained significant amounts of cash and valuable drugs and items associated with the appellants who were present at White Oak when that address was searched. Had the trial judge properly considered the "totality of the circumstances", he would necessarily have concluded that the appellants had a reasonable expectation of privacy in both White Oak and Wilkerson sufficient for standing to challenge the warrants.
- [50] Accordingly, I would give effect to this ground of appeal.
2. The verdicts were reasonable [51] The appellants contend that the verdicts were unreasonable because their guilt was not the only reasonable inference available on all the evidence.
- [52] Mr. Bennett submits that the trial judge erred in concluding that the only reasonable inference to be drawn from the circumstantial evidence was that he was in possession of the drugs seized from the small bedroom at White Oak. Mr. Griggs makes the same argument, but with respect to the drugs seized from the principal bedroom. Each says that there was an available competing inference other than their possession of the drugs, which ought to have raised a reasonable doubt in respect of both the drug charges and the possession of the proceeds of crime charges.[11]
- [53] Where, as here, the case is largely based on circumstantial evidence, the question is "whether a trier of fact, acting judicially, could reasonably have been satisfied that the appellant's guilt was the only reasonable inference available on the evidence taken as a whole": R. v. Lights, 2020 ONCA 128, 149 O.R. (3d) 273, at para. 71. In conducting this

assessment, it is not this court's role "to retry the case or in effect to act as a 13th juror; rather the question is whether the [trier of fact] was entitled to find that the circumstantial evidence in light of human experience, when considered as a whole, and the absence of evidence could exclude all reasonable inferences other than guilt": *R. v. Anderson*, 2020 ONCA 780, at para. 30, leave to appeal refused, [2021] S.C.C.A. No. 103; see also *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at paras. 30, 36 and 69. In conducting this analysis, it is important not to take a piecemeal approach to the evidence: the question is not whether inferences other than those sought by the Crown could be drawn from individual items of evidence but whether the cumulative effect of the evidence satisfies the standard of proof required of the Crown: *R. v. Uhrig*, 2012 ONCA 470, at para. 13.

[54] I agree with the Crown that the trial judge did not err in concluding that the appellants' knowledge and control of the drugs and money was the only reasonable conclusion based on the evidence and that accordingly the verdicts were reasonable. I will deal with each appellant in turn.

i. Mr. Bennett's convictions

[55] Mr. Bennett was convicted of possession for the purpose of trafficking of fentanyl and crystal meth and possession of the proceeds of crime, all in relation to the drugs and money seized in the search of the small bedroom at White Oak. Two baggies containing fentanyl (13.5 grams and 14.9 grams) and one containing crystal meth (57.1 grams) were seized from the floor of the bedroom, while two baggies containing fentanyl (3.9 grams and 22.1 grams) and one containing crystal meth (4.4 grams), together with Mr. Bennett's fanny pack containing \$8,085, were seized from a laundry basket.

[56] Mr. Bennett contends that the reasonable competing inference from the evidence is that all of the drugs in the small bedroom at White Oak belonged to Ms. Brennan and not to him. He points to the evidence connecting the small bedroom to Ms. Brennan: she was asleep in the room when the police executed the warrant; the house was leased to her sister; and the items in the room included mail addressed to Ms. Brennan, female clothing in the laundry basket, multiple boxes of women's shoes and a hair straightener. Mr. Bennett contends that, in the absence of the surveillance evidence with respect to the appellants' prior attendances at White Oak (referred to in the ITO on the standing motion, but not in evidence at trial), there was nothing to connect him to this location or to implicate him in the possession of the drugs. And, in the absence of his connection to the drugs, it was not reasonable to conclude that the cash in his fanny pack was the proceeds of crime.

[57] Mr. Bennett also argues that the trial judge erred in stating that his knowledge and control of the drugs were supported by the presence of drugs "in plain view" in the bedroom. He says that an equally reasonable possibility was that the three baggies found on the floor could have been in Ms. Brennan's possession without Mr. Bennett's knowledge and discarded by her in the commotion in the dark after the police entered.

- [58] I would not give effect to these arguments. The evidence as a whole supported Mr. Bennett's knowledge and possession of the drugs found in the small bedroom at White Oak and, in turn, that the money contained in Mr. Bennett's fanny pack were proceeds of crime.
- [59] First, the trial judge reasonably concluded that the White Oak and Wilkerson houses were linked in a drug trafficking operation that both appellants were involved in, with White Oak as a distribution centre and Wilkerson as the processing and stash location. Both houses were sparsely furnished and were found to contain large amounts of drugs. There was evidence linking Mr. Bennett to Wilkerson: his observed entry into the house using a key, the presence of his rental car in its driveway, and a Gucci satchel identical to one Mr. Bennett was previously seen wearing was found inside. The finding that White Oak was used in a drug trafficking operation by both appellants informed the trial judge's finding that Mr. Bennett had possession and control of the drugs that were found in the small bedroom at White Oak.
- [60] Second, the trial judge concluded that Mr. Bennett's knowledge and possession of the drugs was consistent with their location in the small bedroom occupied by Mr. Bennett and Ms. Brennan, unconcealed on the floor and in a laundry basket under Mr. Bennett's fanny pack containing over \$8,000 in cash.
- [61] With respect to the drugs on the floor, Mr. Bennett asserts that the conclusion that the drugs were in plain view was based on a misapprehension of the evidence of Constable Wegelin, the officer who first entered the room, waking up Mr. Bennett and Ms. Brennan who were sleeping on an air mattress. He points to Constable Wegelin's acknowledgment under cross-examination that he could not say where the drugs were when he first entered the room, and that he had "no idea" how the bags ended up close to Ms. Brennan's feet. Mr. Bennett argues that this evidence supports his contention that the drugs might have been dropped by Ms. Brennan in the commotion without his knowledge.
- [62] This theory was advanced at trial and rejected. There was no misapprehension of Constable Wegelin's evidence by the trial judge. The officer testified that the bedroom was dark, and that Ms. Brennan and Mr. Bennett were sleeping on an air mattress when he entered, and that he had seen two baggies containing a white-purple powdery substance on the floor about a minute later, after he had handcuffed Mr. Bennett and started looking around the room. He also testified that he did not see anything get thrown around the room or moved about. The trial judge stated that although it had been suggested that the three baggies might have been displaced, he accepted the evidence of Constable Cupiraggi (who had entered the room right after Constable Wegelin) and Detective Perreault, that they observed the fentanyl and crystal meth on the floor in the same location as identified in the pre-search photos.
- [63] The trial judge was entitled to accept this evidence in finding that the drugs on the floor were in Mr. Bennett's plain view, which was consistent with his knowledge of the presence of the drugs and inconsistent with the suggestion that Ms. Brennan had concealed the drugs on her person and then intentionally or unintentionally placed them on the floor where the

police would locate them after the arrests. Moreover, there was no suggestion in the evidence that the drugs had come from somewhere else in the room during the entry and arrest, and the sparse furnishing of the bedroom negated this possibility.

- [64] The trial judge's reference to the presence of baggies of drugs in plain view on the floor of the small bedroom is a finding of fact that he was entitled to make on the evidence. And, contrary to Mr. Bennett's submission, the trial judge did not infer Mr. Bennett's knowledge of the contents of the baggies from the fact that they were in plain view. Knowledge that the baggies contained drugs followed from the trial judge's acceptance that the appellants were involved in drug trafficking using both White Oak and Wilkerson, and the juxtaposition of the more than \$8,000 in cash in Mr. Bennett's fanny pack and the quantities of valuable drugs that were in the room. As the trial judge stated, "[t]he values involved here would provide an obvious origin for the amount of money in Mr. Bennett's Gucci purse."
- [65] Finally, the trial judge considered and rejected the argument that is repeated on appeal: that Ms. Brennan could reasonably have been the person who was in possession of the drugs in the room without Mr. Bennett's knowledge. He accepted that Ms. Brennan could have been in joint possession of the drugs but concluded that, whether or not she was, Mr. Bennett was indisputably in possession of the drugs. The trial judge stated, "it was [Mr. Bennett's] bag with his identification that contained almost all of the money seized in the room." The trial judge concluded that there was no other reasonable inference based on the evidence other than that Mr. Bennett was in possession of the drugs.
- [66] I do not accept Mr. Bennett's submission that this case is "on all fours with" *Lights*, where this court concluded that it was unreasonable for the trial judge to have concluded that the appellant was in possession of drugs that were found in a duffel bag in the hallway of his apartment. In that case, the drugs were in a closed bag without any identification. The closed bag was located in a space that was equidistant from the appellant and several others who were in the living room when the search was executed. In those circumstances, there was a reasonable alternative inference that the drugs belonged to someone other than the appellant. In the present case, by contrast, some of the drugs that were located in the small bedroom were found under a bag belonging to Mr. Bennett, while the others were in clear baggies in close proximity to him and to Ms. Brennan, who were the only occupants of the room. Knowledge and control of the drugs were properly attributed to Mr. Bennett in the circumstances of this case.

ii. Mr. Griggs's convictions

- [67] Mr. Griggs was convicted of possession for the purpose of trafficking fentanyl and crystal meth with respect to the drugs found in the principal bedroom at White Oak: 14.7 grams and 15.5 grams of crystal meth and 37.8 grams of fentanyl on the drug processing table in the walk-in closet and 173.2 grams and 230 grams of crystal meth and 230.5 grams, 116.2 grams and 112.7 grams of fentanyl in a Sentry safe under the drug processing station. He submits that the trial judge erred in concluding beyond a reasonable doubt that he was in possession

of all of the drugs in the walk-in closet in the principal bedroom, including those contained in the locked safe.

- [68] Mr. Griggs submits that there was limited evidence connecting him to that location (other than that he arrived only 14 minutes before the search), that there were others in the house, and that there were no locks on the doors of the bedroom or walk-in closet containing the safe. He argues that there was no evidence he was the main or sole occupant of the bedroom. He contends that the drugs and safe would not have been immediately evident to someone who simply entered the bedroom, and that there was no evidence connecting him to the safe or that he had ever entered the walk-in closet. An equally reasonable inference was that one of the other occupants of White Oak, or anyone else, had placed either the safe or the drugs within the safe prior to Mr. Griggs's arrival and without his knowledge.
- [69] I am not persuaded that the trial judge erred in concluding that Mr. Griggs's possession of the drugs and proceeds of crime was the only reasonable inference from the evidence in this case.
- [70] First, although there was no prior surveillance of Mr. Griggs at White Oak, the evidence established his connection to that address, as well as his use and occupation of the principal bedroom that he was exiting at the time of the police entry. A Bell bill addressed to him at the White Oak address was found on the premises, and various belongings were present in the principal bedroom: Mr. Griggs's coat was on a chair and his keys and various pieces of identification were on a dresser. A suitcase and fanny pack he had carried into the house were open on the bed. A locking briefcase on the floor in the corner of the bedroom contained Mr. Griggs's passport, post-it notes with notations related to drug trafficking and various marked envelopes, containing cash and a post-it note containing a debt list.
- [71] Second, the trial judge noted that documents bearing Mr. Griggs's name were found at Wilkerson, establishing his connection to the drug processing operation at that location.
- [72] Third, most of the drugs at White Oak were found in the walk-in closet in the bedroom that Mr. Griggs occupied that the trial judge reasonably characterized as having a "drug processing station". Packages of fentanyl and crystal meth, a scale and a spoon were out in the open on a folding table. Other drugs were in a locked safe, with the key readily accessible. As the trial judge observed, "[n]o sighted person could have entered the closet and not seen these items." The trial judge concluded that it would be "entirely speculative to conclude that Mr. Griggs occupied the bedroom but not the walk-in closet accessible only by walking through the bedroom" (footnote omitted).
- [73] Finally, there is no merit to Mr. Griggs's argument on appeal that an alternate reasonable inference was that one of the other occupants of White Oak, or someone else, had placed either the safe or the drugs within the safe in the walk-in closet before his arrival and without his knowledge. "Other plausible theories' or 'other reasonable possibilities' must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation": Villaroman, at para. 37. The walk-in closet was accessible only through the

principal bedroom that contained not only personal belongings consistent with Mr. Griggs staying in that room, but also items indicative of drug dealing. I agree with the Crown that there was nothing in the circumstances of this case that could reasonably suggest that someone else had placed the drugs in the walk-in closet without Mr. Griggs's knowledge.

[74] Accordingly, the trial judge did not err in concluding that the only reasonable conclusion on the totality of the evidence was that Mr. Griggs was in possession and control of the drugs and money that were found in the principal bedroom at White Oak.

F. Conclusion and Disposition [75] For these reasons, I conclude that the trial judge erred in concluding that the appellants lacked standing in respect of their s. 8 Charter application. I would allow the appeal, set aside the convictions and order a new trial for each appellant.

Released: February 26, 2026 "K.M.v.R."

"K. van Rensburg J.A."

"I agree. L.B. Roberts J.A."

"I agree. S. Gomery J.A."

- [1] Both appellants sought leave to appeal their sentences in their notices of appeal. Mr. Griggs's sentence appeal was abandoned, and Mr. Bennett did not pursue his sentence appeal in his factum or oral argument. In the circumstances, I would therefore dismiss Mr. Bennett's sentence appeal as abandoned.
- [2] CDSA search warrants were also issued in respect of two vehicles: a 2019 Hyundai Tucson that Mr. Bennett was seen operating and a 2013 BMW, operated by Mr. Griggs.
- [3] The appellants' Charter challenge also initially applied to data from tracking and data transmission warrants for mobile phones, however the Crown notified defence counsel it would not be relying on such evidence at trial.
- [4] The decision on standing is reported at R. v. Austin, 2022 ONCJ 128.
- [5] In his standing decision, the trial judge stated that there was a general lack of context regarding specifically where items were located in the residences. However, in his reasons for conviction, with the benefit of further evidence, the trial judge made findings about where some of the items were found. In summarizing the facts, I refer to the findings made by the trial judge in his reasons for conviction. Nothing in my analysis of the standing issue turns on the more precise locations of various items connected to the appellants that were established only at trial.

- [6] This summary will address only the findings in relation to the appellants. Mr. Austin participated in the motion and was denied standing. Mr. Jamed failed to attend court and was not present when the issue of standing was argued. A warrant was issued for his arrest, and when he rejoined the proceedings, he declined the opportunity to argue the issue of standing and agreed the trial should continue in relation to himself and his co-defendants.
- [7] This summary will address only the findings in relation to the appellants. Mr. Austin, who was charged only in respect of offences alleged to have been committed at Wilkerson, was found not guilty of all charges, while Mr. Jamed was found not guilty of possession for the purpose of trafficking of fentanyl but guilty of the lesser included offence of simple possession. He was found not guilty of his two other charges.
- [8] The appellants' facts raised as a third issue whether their convictions violated the single transaction rule, but this ground was abandoned in oral argument at the hearing of the appeal.
- [9] After concluding that the courts below erred in denying Mr. Jones standing, Côté J. concluded that the alleged Charter breach was not made out: at para. 9. Abella J. dissented, but not on the issue of standing. She agreed that Mr. Jones had a reasonable expectation of privacy in his sent text messages: at para. 90.
- [10] Indeed, in submissions on standing at first instance, Crown counsel acknowledged that its theory adopted, "almost exclusively, what the police articulated in the ITO."
- [11] The argument is that the characterization of the large quantity of money as "proceeds of crime", and in turn the appellants' possession of such proceeds, would depend on their possession of the drugs.

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