

CANADA / JUDGMENT

R. v. Hellinger

2020 BCSC 2029

COURT

Supreme Court of British Columbia

DECIDED

4 December 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 2029 R. v. Hellinger

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hellinger,

2020 BCSC 2029

Date: 20201204

Docket: 39794-2

Registry: Duncan

Regina

v.

Derek Adam Edmund Hellinger

Before: The Honourable Mr. Justice Baird

Oral Reasons for Judgment

Counsel for the Crown:

B. Lansdowne

Counsel for the Accused:

C. Hodson

Place and Date of Trial:

Duncan, B.C.

February 19-21,

August 27, 2020 and

Victoria, B.C.

December 3-4, 2020

Place and Date of Judgment:

Victoria, B.C.

December 4, 2020

Introduction

[1] THE COURT: The accused, Derek Adam Edmund Hellinger, stands charged with six narcotics offences alleged to have been committed on March 21, 2018 at or near Cobble Hill, BC. In particular, he is charged with simple possession of GHB and methamphetamine, and possession of heroin, fentanyl, cocaine and MDMA for the purpose of trafficking.

EVIDENCE

- [2] The facts are reasonably straight forward. On March 21, 2018 at 2:47 p.m. Shawnigan Lake RCMP received a complaint of a motorist driving erratically on the Trans Canada Highway (TCH) near the summit of the Malahat drive between Mill Bay and Victoria, B.C. A vehicle description and license plate number were dispatched by radio to patrolling units. Specifics of the driving included speeding and passing other vehicles on the shoulder. The dispatch also specified that the subject vehicle had been reported stolen.
- [3] Cst. Richens located the subject vehicle heading southbound towards Victoria on the TCH and pulled it over. There is no dispute that the accused was the driver and sole occupant. Cst. Richens testified that the accused appeared to be "high", or intoxicated by narcotic substances. In particular, he noted the accused to be sleepy and that his speech was slow and slurred. He said that the accused was "on the nod", as if he were intoxicated by opioids.
- [4] Cst. Richens ordered the accused to get out of the vehicle. The accused complied voluntarily and without complaint. Cst. Richens arrested the accused for taking an automobile without the owner's consent. Inquiries revealed, as well, that the accused was a prohibited driver, and that he was the subject of a court order forbidding him to be found in the driver's seat of a motor vehicle without the registered owner present. He was arrested for these offences and read his rights.
- [5] The accused identified himself correctly to Cst. Richens. When asked for identification the accused said that he had none on him, but indicated that there might be some in his wallet in the car. A couple of off-duty Shawnigan Lake RCMP members happened upon the scene and stopped to assist Cst. Richens. Cst. Richens asked these colleagues to search the vehicle for the accused's wallet.

- [6] Cst. Clarkson attended to this task. On opening the driver's side door of the accused's vehicle, he noted a number of pieces of burnt tinfoil in a side compartment, indicating to him that narcotic drugs had been consumed within the vehicle. He found no wallet or identification, but while he searched for them, he noted a significant clutter of bags, clothing, containers and assorted property on the front passenger seat and foot well.
- [7] On the front passenger seat, Cst. Clarkson found a backpack and a silver attaché case that contained the various substances listed in the counts of the indictment. The drugs were in Tupperware containers, baggies of various sizes, in spit balls as well as in pill form. An inventory of the narcotics is as follows:
- 95.7 g of fentanyl,
 - 120.9 g of heroin/fentanyl,
 - 35.5 g of cocaine,
 - 0.25 g of methamphetamine,
 - 382.9 g of GHB, and
 - Ten MDMA tablets.
- [8] The search also revealed common drug trafficking accessories such as scales, packaging, and score sheets. In the rear of the vehicle there was an Apple laptop along with documentation in the accused's name, including a probation order and an appointment slip with Community Corrections, both dated February 8, 2018, and a BC Hydro bill dated September 11, 2017. Further inquiries indicated that the vehicle had not been returned to the rental agency as agreed and had been reported stolen as a result. This evidence in its totality establishes that the accused was using the vehicle and had been doing so for quite some time.
- [9] I have been given a book of photographs showing the vehicle in question at the time of the accused's arrest. It was loaded up with various bags, suitcases and personal property, including, as I have previously mentioned, a variety of items piled on the front passenger seat and foot well. The interior was cluttered to such an extent that there was only room for the driver to sit in it. The accused admits that the various substances just referred to were found as alleged, concealed in the pack and metal attaché case directly beside him on the front passenger seat. He also concedes, in respect of the heroin, fentanyl, cocaine and MDMA, that the substances were packaged in such a way, and were of sufficient quantity, to sustain the inference that they were meant to be distributed or trafficked.
- [10] The accused took the witness stand, however, and denied that the drugs were his, or that he knew they were present in the vehicle. He steadfastly maintained that the attaché case and the backpack did not belong to him, and that these items must have been placed in the vehicle by somebody else. The accused testified that he is struggling with an opioid addiction which started when he was prescribed OxyContin for pain relief after a motor

vehicle accident. Over the years he has been in and out of rehabilitative treatment facilities trying to cure himself of this addiction. He told me in February that he was presently living in such a facility called Keystone House in Surrey, B.C.

- [11] The accused testified that, in recent years, he has been living on his savings from real estate investments as well as working here and there, mostly in the construction demolition business. He has lived for most of his life in the lower mainland, but he has an adolescent son who lives with his mother in Nanaimo. Prior to March 2018, the accused was also living in Nanaimo. He wanted to be close to his son, and to be away from the negative influences of his life on the lower mainland.
- [12] Sometime before the events just described resulting in his arrest on March 21, 2018, the accused had decided to move to Victoria, B.C., where he thought that employment in his line would be more plentiful. He told me that on March 1, 2018, he gave up his Nanaimo apartment and stored his possessions in a storage facility across the TCH from the Nanaimo airport. It was his intention to keep his belongings in the storage facility until he secured a residence in Victoria.
- [13] In Victoria he had a friend named Rachel Bailey, also a drug user. He contacted her and they decided that they would get an apartment together. They found a condominium for rent on Dallas Road. Rachel Bailey's mother co-signed the lease. They were to take occupancy on March 28, 2018. In the meantime, they lived in a hotel room on Gorge Road East in Victoria, and from time to time they drove to Nanaimo to collect some of the accused's personal belongings and bring them down island. March 21, 2018, the accused told me, was one such occasion.
- [14] On the accused's narrative of evidence, he and Ms. Bailey set off up island early on the day in question. The accused had been up taking methamphetamine for most of the night. Ms. Bailey was also using drugs. According to the accused it was Ms. Bailey who drove to Nanaimo in the rental car in which the accused was later arrested. He told me that Ms. Bailey had been in possession of this vehicle for a number of months.
- [15] The accused testified that, once they arrived at the storage facility in Nanaimo, a person named Elijah Thomas showed up. The accused said that he had spoken to Mr. Thomas, whom he knew from the drug world in Vancouver, on the telephone a couple of days previously. He told Mr. Thomas that he intended to travel to Nanaimo to collect some of his stuff, but he did not tell him precisely when he was making the trip or when he would arrive. According to the accused, Mr. Thomas' attendance at the storage facility was unexpected and a matter of coincidence.
- [16] Mr. Thomas told the accused that he was staying in nearby Cobble Hill, B.C., and that he had come to the storage locker to ask the accused for a ride down to Victoria. In the midst of all of this, for reasons unexplained, the accused told me that Rachel Bailey wandered off and did not return. The accused was left at the storage locker with Elijah Thomas, and thus was confronted by a conundrum. He was a prohibited driver, so he could not drive the rental

vehicle that Rachel Bailey had left behind. For lack of a better alternative, therefore, he agreed to give Mr. Thomas a ride to Victoria, on condition that Mr. Thomas would have to drive the car.

- [17] The accused told me that there was a second unexpected arrival at the storage facility that day, in the form of a man called George, who occasionally employed the accused as a labourer. The accused told me that he did not know George's last name and communicated with him only by cell phone. How George knew that the accused would be at the storage facility on March 21, 2018, was left for me to guess. At any rate, according to the accused, George had a job that day that he needed the accused to help him with. The accused decided to go with George, leaving the rental car with Elijah Thomas.
- [18] The idea from that point, according to the accused, was that Elijah Thomas would go back to his temporary lodgings at Cobble Hill, collect whatever he needed for his trip to Victoria, and meet up with the accused later in the day once he had finished working with George.
- [19] The accused testified that he spent the latter part of the morning and some of the early afternoon with George at a highway construction site farther south on the Malahat, where, if I understood him correctly, they collected large rocks. When they were done, George returned to Victoria. For reasons not made clear, he left the accused at the side of the road near where they had been working. The accused called Elijah Thomas on his cell phone but Mr. Thomas didn't answer. Instead he called a friend named Shaun Hawke to come and pick him up. Shaun Hawke agreed to do this.
- [20] The accused went on to claim that, as he and Mr. Hawke were driving back towards Nanaimo, Mr. Thomas called the accused and said that he was now driving southbound in the rental car on the highway towards Victoria. At the accused's request, therefore, Mr. Hawke dropped him off at a lookout point just to the south of the Malahat Summit, where the accused had instructed Mr. Thomas to pick him up. The accused said that he was kept waiting there for longer than he had expected, and that when Mr. Thomas finally arrived, he entered the viewpoint parking lot via the exit.
- [21] The accused was annoyed at having been kept waiting so long, and said that, on top of this, he observed Mr. Thomas to be driving recklessly. He was going too fast; he cut across traffic to enter the lookout via the exit; and he came to an abrupt halt only inches from where the accused was standing. The accused and Mr. Thomas argued, and the upshot of it all was that the accused leapt into the car and drove off leaving Mr. Thomas behind. He turned southbound onto the TCH and within short order he was pulled over by Cst. Richens as previously described.

- [22] Just to complete the story, on June 26, 2018, three or so months after he was arrested on the Malahat, the accused attended the Shawnigan Lake RCMP detachment and collected the property that had been seized from his car, including suitcases, clothes, and assorted bags. Some of the items that he collected belonged to Rachel Bailey, he said; others he didn't recognise at all, and he theorised that they must belong to Elijah Thomas.
- [23] Amongst the items that the accused denied were his, of course, were the pack and the silver attaché case that the police located on the front passenger seat containing the illegal narcotics. And this is the main thrust of Mr. Hellinger's rather complicated narrative: quite plainly he wanted me to believe that the items in question must have been put in the car by Elijah Thomas while the accused was off working with George.

ADJOURNMENT

- [24] After the accused left the witness box, defence counsel asked for an adjournment of the trial so that he could attempt to locate the various persons whom the accused had identified in his testimony: Rachel Bailey, Elijah Thomas, George, and Mr. Hawke. This was on February 21, 2020. The continuation was scheduled for August 27, 2020. The matter could not proceed on that date because the prosecutor on the case was unwell, but Mr. Hawke attended court and was introduced to me on the record.
- [25] Defence counsel announced that he had decided not to call Mr. Hawke after all, and I excused him. I was told that Rachel Bailey had been served with a subpoena but had failed to attend court. Defence counsel advised that he had had no luck trying to locate Mr. Thomas or George. He represented that he wished to continue his attempts to secure the attendance of these witnesses.
- [26] The case was set to continue on December 3, 2020, on which date the trial proceeded with the defence calling no more evidence. On this occasion, Rachel Bailey was present in court. She was identified to me and I spoke to her briefly. Defence counsel decided not to call her, either.

DISCUSSION

- [27] The accused's narrative, I am afraid, exceeds the boundaries of my belief. I do not accept it. It does not raise a reasonable doubt in my mind. The story about the unexpected arrival at the storage facility of Elijah Thomas strikes me as totally implausible, and I would say the same thing about the improvisational appearance of the mysterious George.
- [28] In all of the circumstances, I reject the accused's testimony as an obvious and rather an embarrassing fabrication. Respecting the test in *W.(D.)*, I do not believe the accused, and his evidence raises no reasonable doubt. The facts that I do accept, meanwhile, point conclusively to guilt. The accused was pulled over operating a motor vehicle jammed with property, most of which, I find, belonged to him. I am fortified in this conclusion by the fact that, sometime later, he retrieved substantially all of the property from the Shawnigan Lake

RCMP detachment.

- [29] There is no doubt that, at the time of his arrest, the accused had control over the stolen rental vehicle and all of its contents. Documentation within the vehicle indicated that he had been operating or using it for weeks. Directly beside him on the front passenger seat, upon and around which, for emphasis, there was so much of his personal property piled up that there was no room for another person to sit, the police discovered a significant quantity of narcotic drugs. There was also a Lululemon bag in the front passenger foot well containing what appear clearly to me to be score sheets, one of which has the name "Derek" written on it.
- [30] I find beyond a reasonable doubt that the drugs belonged to the accused. They were in his possession in every sense of the legal definition of that term. He knew perfectly well that they were on the seat beside him in the front of the vehicle. It is obvious that he possessed the substances set out in counts 1, 2, 3 and 6 for the purpose of trafficking. Convictions will enter for simple possession, as alleged, on counts 4 and 5.
- [31] Having rejected the accused's evidence in its entirety, on the totality of the remaining evidence that I do accept, there is no available inference other than guilt that is not speculative or frivolous. I note once again the fact that drug trafficking accessories such as scales, packaging, and score sheets, were also found in the vehicle, and that the accused, despite his story about having worked all day long with George, appeared to be intoxicated by narcotics while the police were dealing with him.
- [32] In summary, I regret that I do not believe and I cannot accept the accused's evidence. In fact I reject it wholesale. It does not raise a reasonable doubt. On the basis of the evidence that I do accept, I find that the Crown has proved all of the legally required elements of possession, and I find the accused guilty of each and every count of the indictment.

"Baird J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/20/2020BCSC2029.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-hellinger-2020>

Prepared on 26 October 2026 · Esheria