
CANADA / JUDGMENT

R. v. Hill

2020 BCSC 2297

COURT

Supreme Court of British Columbia

DECIDED

4 September 2020

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2020 BCSC 2297 R. v. Hill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hill,

2020 BCSC 2297

Date: 20200904

Docket: 88060-2

88060-3

88060-4

Registry: Kelowna

Regina

v.

Rebecka Lynn Hill

Derek Wolfe Leeming

Before: The Honourable Associate Chief Justice H. Holmes

Oral Reasons for Judgment

Counsel for the Crown:

F. Lépine

Counsel for the Accused R.L. Hill:

B. Movassaghi

Counsel for the Accused D.W. Leeming:

J. Dosanjh

Place and Date of Trial:

Kelowna, B.C.

August 31, 2020

September 1-4, 2020

Place and Date of Judgment:

Kelowna, B.C.

September 4, 2020

- [1] THE COURT: Ms. Hill and Mr. Leeming are charged with three counts of possession for the purposes of trafficking (contrary to s. 5(2) of the Controlled Drugs and Substances Act) in relation to a large quantity of drugs found in a Ford Fusion vehicle in which they were seated in a Kelowna city park in the afternoon of October 10, 2017. The police saw nobody else in or around the vehicle.
- [2] The drugs were in a carry bag or satchel described in the evidence as a "camouflage bag." A large amount of cash (over \$2,000) was found in the same bag along with some drug paraphernalia. A drug "scoresheet" was found in another carry bag or large purse described in the evidence as a "brown Louis Vuitton style bag". Those two bags were together with a third carry bag or large purse (the "white Louis Vuitton style bag") in the footwell for the passenger seat where Ms. Hill was sitting. Mr. Leeming was sitting in the driver's seat. Some items of drug paraphernalia were found elsewhere in the vehicle; except for one very minor item, those were not, on the evidence, in plain view.
- [3] The drugs in the camouflage bag consisted of 85.31 grams of fentanyl/carfentanil, 181.24 grams of cocaine, and 87.13 grams of methamphetamine, with a total minimum value of \$12,550 based on the lowest prices through the province or \$19,800 based on prices in Kelowna.
- [4] For one or both of Ms. Hill or Mr. Leeming to be found guilty of an offence, the Crown must prove the elements of that offence beyond a reasonable doubt in relation to the particular accused person. The element in dispute, for each of the offences and each of the accused, is possession, namely, that the particular accused person knew of the drugs and had a measure of control over them. There is no dispute that, given the quantity of drugs, their possession would be for the purposes of trafficking.

- [5] Where, as in this case in relation to possession, the Crown relies on circumstantial evidence to prove an element, the element will not be proven beyond a reasonable doubt unless the only reasonable inference from the evidence as a whole is the conclusion in issue.
- [6] The Crown contends that the only reasonable inference from the evidence is that both Ms. Hill and Mr. Leeming knew what the camouflage bag contained, and exercised a measure of control over it, such that they were in possession of the drugs inside.
- [7] I am not able to agree. Equally consistent with the evidence, in my view, is that one of Ms. Hill and Mr. Leeming knew that drugs and cash were in the camouflage bag, but the other one did not. And nothing in the evidence indicates that one of the two was more likely than the other to be the person who knew. I will explain.
- [8] As I said, Ms. Hill and Mr. Leeming were each seated in the vehicle, but neither was seen driving it, and the evidence did not establish whether one of them had the keys. The police officers testified that they must have seized the keys at the scene because they likely would have needed them for the towing company. However, no evidence placed the keys with Mr. Leeming or Ms. Hill specifically, or even indicated that the keys were with one of them, as opposed to left somewhere in the vehicle.
- [9] Neither accused was seen to be carrying the bags as they approached the vehicle; the bags must therefore have been in the vehicle before Ms. Hill entered it. Ms. Hill was in the vehicle for at most 10 minutes before she was arrested. Mr. Leeming was in it for about two minutes. Each of them had been seen by the police walking toward the vehicle at different times and getting in, Ms. Hill to the passenger's side, Mr. Leeming to the driver's side.
- [10] The bag with the drugs and cash was found in very close proximity to Ms. Hill and in close proximity to Mr. Leeming. However, the drugs were not visible -- the bag was zippered shut. Indeed, the police officers did not see the drugs until Cst. Greig removed the bags from the vehicle, and opened and searched them.
- [11] Nothing (such as personal documents, handwriting, or a fingerprint) was found in either the camouflage bag that contained the drugs and cash, or the brown Louis Vuitton bag that contained the scoresheet, associating the particular bag or its contents with either Ms. Hill or Mr. Leeming.
- [12] In that regard, I cannot agree with the Crown that the fact that the "makeup" (so described by the police officer) found in the brown Louis Vuitton bag points to Ms. Hill as the person to whom that bag belonged. That the brown Louis Vuitton bag contained body glitter branded for women along with various toiletries, most of them gender-neutral, does not, in my view, make it more likely that that bag was Ms. Hill's -- far less that the camouflage bag was therefore hers as well.

- [13] I agree with Mr. Movassaghi that the fact that the brown Louis Vuitton bag was of the same brand as the white Louis Vuitton bag Ms. Hill claimed as hers does not make it more likely that the former was also hers.
- [14] There was no evidence about any type of relationship between Ms. Hill and Mr. Leeming, to indicate whether, for example, they were long-time friends or associates or, rather, relatively recent acquaintances.
- [15] As I have noted, Ms. Hill and Mr. Leeming arrived separately at the stationary vehicle, and entered it at different times. There was no evidence of either of them appearing to deal with the bags in issue, such as leaning over as though to look in the bags, or attempting to hide them in a way that might indicate knowledge of the contents.
- [16] The evidence included no indication at all of suspicious behaviour on the part of either of Ms. Hill or Mr. Leeming before or while police dealt with them.
- [17] In broad and general terms, the situation is similar to that in *R. v. Retvedt*, 2017 BCSC 2477, where the evidence did not establish beyond a reasonable doubt, in relation to one or both of the two accused, that they were in possession of the fentanyl in the vehicle in which they were travelling.
- [18] Similarly, on the evidence in this case, either Ms. Hill or Mr. Leeming could easily not have known about the drugs in the closed bag belonging to the other. Nothing in the evidence allows for a determination of which one of Ms. Hill and Mr. Leeming knew about and controlled the drugs, or, alternatively, a conclusion that both of them did.
- [19] The evidence therefore does not establish beyond a reasonable doubt, in relation to either or both of Ms. Hill and Mr. Leeming, that they knew of the drugs and had a measure of control over them.
- [20] Could you stand, please, Ms. Hill, Mr. Leeming. I find you each not guilty.

"H. Holmes, A.C.J."

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