

CANADA / JUDGMENT

R. v. Majedi

2025 BCSC 2689

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2689 R. v. Majedi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Majedi,

2025 BCSC 2689

Date: 20251215

Docket: 35061-3

Registry: Vancouver

Rex

v.

Michelle Fargol Majedi

Before: The Honourable Justice Matthews

Oral Reasons for Judgment

(on Gardiner Hearing)

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Place and Date of Trial/Hearing:

Vancouver, B.C.

October 1-3, 2025

November 20-21, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 15, 2025

- [1] These are my reasons for judgment on the Gardiner hearing. I delivered these reasons orally. I have edited them without changing the substance.

Overview

- [2] Michelle Majedi was convicted on all counts of a six-count indictment of possession for the purpose of trafficking. The conviction was entered on October 23, 2024. Ms. Majedi is now before the court for sentencing.
- [3] The Crown disputes facts set out in a presentence report and has put Ms. Majedi to the proof of them on the balance of probabilities.
- [4] The disputed facts pertain to Ms. Majedi's motivation for selling drugs. Specifically, the Crown disputes that Ms. Majedi was coerced to sell drugs because of threats made to her by her common law partner, Luis Tijerino, and his friends, some of whom Ms. Majedi believed to be members of the Redd Alert Gang. The Crown also disputes that Ms. Majedi was trafficking drugs, in part, due to her addiction to drugs.
- [5] On this application, Ms. Majedi seeks findings of fact that:
- a) she was coerced into trafficking in controlled substances on the date of offending, October 21, 2023;
 - b) she was engaged in regular drug use in the time leading up to the offence date, up until the time when it was confirmed to her that she was pregnant.

Legal principles on Gardiner Hearings

- [6] Gardiner hearings have their genesis in ss. 723-724 of the Criminal Code, R.S.C. 1985, c. C-46, which are a codification of common law principles set out in *R. v. Gardiner*, [1982] 2 S.C.R. 368 at 414, 1982 CanLII 30, and as explained in *R. v. Pahl*, 2016 BCCA 234 at para. 51, citing *R. v. Angelillo*, 2006 SCC 55 at para. 21.

- [7] These provisions and the caselaw provide that where a factual dispute arises during a sentencing hearing, an evidentiary hearing, called a Gardiner hearing, should be held so that the court can find the facts in the usual manner: Pahl at para. 53. The facts must be proved on the balance of probabilities by the party asserting them, unless it is a fact relevant to an aggravating factor, in which case the standard of proof is on the Crown beyond a reasonable doubt.
- [8] Hearsay evidence is admissible on a sentencing hearing so long as it is credible and trustworthy: Gardiner at 414.
- [9] I have considered the timing of when I should find the facts in relation to the balance of the sentencing hearing. In this case, the dispute over the evidence was identified prior to the commencement of the sentencing hearing proper.
- [10] Both the Crown and the defence assert that the issues in dispute are discrete and contained, and the factual findings will not be influenced by other undisputed evidence that will be traversed at the sentencing hearing. They have urged the Court to make the findings in advance of the commencement of the sentencing hearing proper, so that they can make focused sentencing submissions.
- [11] In my view, absent some compelling circumstances, when a dispute about facts arises during a sentencing hearing, the Court should hold the Gardiner hearing to hear the evidence, but need not make the findings of fact on the disputed evidence until the Court has heard the rest of the sentencing hearing, and can make the findings in context of the undisputed evidence and the legal arguments to which the evidence is relevant.
- [12] Indeed, this approach is desirable because, for example, in this case where credibility is an issue, the findings of facts should consider the preponderance of probabilities of the circumstances at play. Some of the undisputed facts yet to be canvassed may delineate the contours of the circumstances at play and affect how the court views the preponderance of probabilities. In some cases, the dispute over the evidence may arise during the sentencing hearing, and a Gardiner hearing commences with the evidence being led in the middle of the sentencing hearing. In such circumstances, it makes sense to make the factual findings as part of the decision on sentence and not piecemeal.
- [13] However, because the parties have urged the findings in advance to facilitate the efficiency of sentencing, and because efficiency is necessary given how long it has taken to get to sentencing, I have reluctantly acceded to the request to make the factual findings before the sentencing hearing proper.
- [14] However, I will only be making what I consider to be skeletal findings of fact, and I will not be drawing factual conclusions or inferences. I do not wish to foreclose consideration of the evidence at sentencing, as a whole, by making any findings other than those that can be made and are absolutely necessary for the parties to focus their submissions on the points in dispute.

Credibility

- [15] The Crown asserts that Ms. Majedi's evidence lacks credibility so extensively that it cannot be relied on for any of the factual findings that she seeks.
- [16] When determining whether to accept evidence of any witness, the court often considers two components: credibility, also described as veracity, and reliability, which is sometimes also described as accuracy. Veracity and reliability are related and are often referred together as credibility, although they are conceptually distinct.
- [17] Evaluating credibility and reliability involves examining the witness's evidence for the ability and opportunity to observe events, firmness of memory, whether the witness appears to be able to resist the interests at play to modify his or her recollection, comparison of the evidence to other more objective or independent evidence, whether the witness changes evidence during direct examination and cross-examination, any motive to lie, and demeanour. The trier of fact should determine whether the evidence fits within the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions: *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, affirmed 2012 BCCA 296; and *R. v. Meyers*, 2025 BCSC 1191 at para. 101.
- [18] On cross-examination, Ms. Majedi agreed with propositions that made it clear that her evidence on direct examination was not always true or accurate. For example, she testified that during the relevant timeframe, she only dealt drugs in the Downtown Eastside, but on cross-examination, she agreed she had pleaded guilty to trafficking drugs in Burnaby during that timeframe.
- [19] Ms. Majedi testified that Mr. Tijerino's friends attacked her when she lost a lot of their money. She testified that happened in August 2023 when she was pregnant and the attackers did not care that she was pregnant. While there was objective evidence that she was attacked, it was in March 2023, and she was not pregnant. For reasons I will explain, I find that she was lying about being pregnant when she was attacked.
- [20] Ms. Majedi's evidence during the Gardiner hearing was problematic about dates and timeframes. She testified many times that she was not good at dates. Her ability to remember even the dates of major events was not good. For example, during her relationship with Mr. Tijerino, she became pregnant with Mr. Tijerino's child by artificial insemination on two occasions. The first pregnancy ended in miscarriage. She was not clear about the date of the miscarriage or the date of her second pregnancy in relation to that miscarriage.
- [21] For some of the facts that underlie the factual conclusions sought, Ms. Majedi's inability to remember dates is directly relevant, because the dates are relevant to the factual findings sought. In addition, Ms. Majedi's ability to remember dates was so poor that it cast doubt on the accuracy of her evidence as a whole.

- [22] However, there was some confirmatory evidence that assisted with assessing her evidence and allows me to accept some of Ms. Majedi's evidence, as I will relate.

Factual Findings

Coercion

- [23] Coercion, also called duress, can be raised as a defence pursuant to s. 17 of the Criminal Code, or it can be a mitigating factor on sentence, proved on a balance of probabilities. There are several factors the court considers when determining whether duress is a mitigating factor, including the nature of the coercive pressure alleged, attempts to report it to authorities, avenues of escape or avoidance of the harm, and the nature of the harm the coerced person alleges they would be subjected to.
- [24] Ms. Majedi seeks a factual conclusion that she was coerced. While I understand Ms. Majedi's view that I can make a factual conclusion that she was coerced into selling drugs, I am of the view that to do so is inappropriate until I have heard all of the sentencing submissions and can engage in the holistic analysis required. I am not going to make a factual or legal conclusion on coercion at this juncture.
- [25] Ms. Majedi's relationship with Mr. Tijerino started in 2019. They started to live together a few months after their relationship began. They did not live together the whole time. They were living together when Mr. Tijerino went into custody in September 2022. The relationship persisted during the period of September 2022, when Mr. Tijerino was in custody, until September 2023, when Ms. Majedi was taken into custody following her arrest on charges different from those in this case.
- [26] When Ms. Majedi went into custody, she considered the relationship to be over.
- [27] Ms. Majedi described specific incidents of violence in which Mr. Tijerino hit her with a fist, hit her with an open hand, pushed her to the ground, choked her, sliced the back of her neck with a knife, and bear sprayed her. The knife-slicing incident occurred when Ms. Majedi prohibited Mr. Tijerino from coming to her workplace after he had come in, assaulted her, and demanded she give him the money she was holding for her employers. When she would not let him back in, he went to her house and trashed it, and when she came home, cut her with a knife.
- [28] With regard to the credibility of Ms. Majedi's evidence regarding the violence that Mr. Tijerino inflicted on her, I find that the video of the incident at Ms. Majedi's workplace, the photographs of the injuries that Ms. Majedi put in evidence, and the text communications between Ms. Majedi and Mr. Tijerino are evidence that acts as confirmatory evidence, assisting with determining that Ms. Majedi's evidence was sufficiently accurate and reliable about those events.

- [29] While none of those pieces of evidence on their own may have been sufficient, together they provide reliable confirmation that Mr. Tijerino threatened physical harm to, and inflicted physical harm on, Ms. Majedi during the course of their relationship.
- [30] I find that some of the threats and violence were in relation to Mr. Tijerino's drug trafficking business. For example, Mr. Tijerino assaulted Ms. Majedi at her workplace to force her to turn over the cash she handled for her employers, so he could use it in his drug trafficking business. In one of the messages he sent to Ms. Majedi, he told her she knew what happened to rats.
- [31] Some of the violence occurred when Ms. Majedi did not comply with Mr. Tijerino's demands. Sometimes he threatened violence when her behaviour was making him mad. I find that Mr. Tijerino's violence towards Ms. Majedi was not simply random. On some occasions it was connected to his drug trafficking and whether she complied with his demands.
- [32] In the spring of 2022, Ms. Majedi lost her job. I accept Ms. Majedi's evidence that at that time she began going downtown with Mr. Tijerino and assisted him in the drug trade, at first by holding his drugs and his money so he was not carrying it and so he did not have to give all of it to the people working for him selling drugs, because they might steal some of it. Ms. Majedi testified that she took some of the drugs for her own use without telling him.
- [33] I accept Ms. Majedi's evidence that she had a history of drug use and had been in and out of active addiction over her adult life. During her relationship with Mr. Tijerino, she was using drugs, and she testified that it progressed to almost daily use. She testified that she did not use drugs while she was in the Downtown Eastside, because she knew from her own experience that if she used in that place, she would keep using and could become homeless as she had been before. She had a personal rule that she would only use drugs at home. She would take the drugs from Mr. Tijerino's stash and use them when she went home at night. I accept this evidence.
- [34] Ms. Majedi testified that she began "sitting in the chair", meaning she was on the street selling the drugs that Mr. Tijerino supplied for sale. She testified she did so because he told her to and because she liked being around the people and talking to the people. She testified that due to her own history of drug addiction, she liked the people who were around her when she was selling drugs and felt comfortable in their company. Ms. Majedi testified that she did not feel like she had a choice but to do what Mr. Tijerino told her, because he became violent if she did not.
- [35] I find that starting in the spring of 2022, Ms. Majedi held drugs and sold drugs for Mr. Tijerino, because he told her to and because if she did not do as he instructed, he would become violent with her, because she could steal some of the drugs for her personal use, and because she liked selling drugs because it allowed her to socialize with the people in the area.

- [36] Mr. Tijerino was arrested in September 2022 and remained in custody during the timeframe up to when Ms. Majedi was arrested on these charges on August 21, 2023. Ms. Majedi was released on these charges. She was arrested again in September 2023 and at that time she went into custody.
- [37] Ms. Majedi testified that it was not until she went into custody herself that she felt she could cut her ties with Mr. Tijerino. She explained that when he was in jail and she was not, he would phone her frequently and she would always answer the phone.
- [38] Ms. Majedi testified that when Mr. Tijerino was in custody, starting in September 2022, Mr. Tijerino's friends, who Ms. Majedi described as violent gang members, came around wanting their money for drugs that they had supplied to Mr. Tijerino.
- [39] Ms. Majedi testified that Mr. Tijerino told her that she had to pay them. Ms. Majedi testified that she did what she thought she was supposed to do, which was to sell the drugs he had and give the proceeds to the Redd Alert gang members to pay off the debt and to raise money for Mr. Tijerino's bail. Ms. Majedi testified that she thought that if she did not do so, the Redd Alert gang members would come at her, and they knew where she lived and where she would be. She testified that they told her they wanted their money and if she did not give it to them, there were other ways they could get it. She testified that meant sexual things. She also referenced being attacked by the Redd Alert gang members when asked what she thought they would do if she did not sell drugs and give them money.
- [40] Ms. Majedi testified that in September 2023, she was physically attacked by two Redd Alert gang members while a third watched. She testified they attacked her because she had lost their money. She testified that she was pregnant, but they did not care. She testified about this attack in response to her counsel's question if she was afraid that she would be hurt if she did not sell drugs for Mr. Tijerino and give the money to the Redd Alert gang. She testified that police officers showed up and the attackers ran away.
- [41] The Crown advised that police records show an assault on Ms. Majedi in March 2023. Were it not for that confirmatory evidence, I would not accept that the attack happened, because Ms. Majedi's evidence was so internally flawed. Her evidence that it occurred in September 2023 would have meant that it occurred after her arrest on these charges and so could not have been a motivating factor for this offence.
- [42] Ms. Majedi is bad with dates; however, not being able to remember when a person was attacked that violently, including police involvement, calls into question all of her evidence about the event.
- [43] There is no evidence of the reason why the attackers attacked her, including that she did not testify that they gave her a reason. Accordingly, I do not accept Ms. Majedi's evidence that she was attacked because she lost Redd Alert gang money. I also do not accept that they knew she was pregnant and did not care, because she was not pregnant in March 2023. When she miscarried from her first pregnancy with Mr. Tijerino, he was not in custody, so

that must have been before September 2022. Her second pregnancy ended in March 2024 with the birth of her daughter, so she was not in the course of that pregnancy in March 2023.

- [44] I find that Ms. Majedi lied about being pregnant when she was attacked, that the attacker or attackers knew she was pregnant and did not care, because she wanted to enhance the spectre that Mr. Tijerino's gang member friends were a threat to her.
- [45] Despite this lie, on the whole of the evidence, including that she was attacked by these gang members before this offending and during the period of time she said she was selling drugs at the direction of Mr. Tijerino, with some of the proceeds going to these gang members, I find that she was afraid of these gang members, and specifically was afraid that she would be hurt if she did not sell drugs and turn some of the proceeds over to them.
- [46] Ms. Majedi did not testify that Mr. Tijerino threatened her during the time he was in custody and instructing her to sell his drugs, repay the Redd Alert gang members, and get him out of jail. However, I find that the evidence of frequent violence during their relationship when she did not follow his instructions was so entrenched by that point that Ms. Majedi had become conditioned to doing what Mr. Tijerino told her because of the violence.
- [47] I do not find that Ms. Majedi was trafficking drugs to get out of an abusive household, as she told the probation officer who wrote the presentence report. At the time of the offence, Mr. Tijerino was in prison. While I do not rule out that he was still capable of threatening Ms. Majedi and that Ms. Majedi still considered herself to be in a relationship with him, Ms. Majedi did not have a household with Mr. Tijerino in August 2023.
- [48] Her evidence that she was trafficking to pay off Mr. Tijerino's debt because she was afraid that she would be harmed by Mr. Tijerino or his friends is not the same thing as trafficking drugs to get out of a household or a relationship. I accept that the relationship was abusive and the relationship was ongoing, although Mr. Tijerino's custodial status had put a pause on the abuse. However, Ms. Majedi did not testify that she was trafficking to get out of the relationship.
- [49] So, even if the abusive relationship and the abusive household are synonyms, Ms. Majedi did not testify that she was trafficking drugs to get out of the relationship. Nevertheless, I find that Ms. Majedi sold drugs at the instruction of Mr. Tijerino, because she was afraid of him and she was afraid of the Redd Alert gang members. I make this finding even though Ms. Majedi also testified that when she spoke to Mr. Tijerino by phone, they did not talk expressly about drug selling because of fear that the calls would be monitored. However, I accept that there would be ways of communicating those instructions without using express language.
- [50] Ms. Majedi testified that she did not know how much the debt was and had never asked. She testified that the Redd Alert gang members collected money from her several times a week during the period of September 2022 to September 2023. She testified that she did not know how much they collected.

- [51] I find that by August 2023, Ms. Majedi had been paying Redd Alert gang members by selling drugs for almost a year. She did not know how much she had paid or how much Mr. Tijerino still owed them.
- [52] Ms. Majedi testified that she had savings of around \$23,000. She testified that she was not willing to use her own money to pay off Mr. Tijerino's debt. She testified she was prepared to deal drugs and risk her safety instead of using her own money to pay off someone else's debt.
- [53] I find that Ms. Majedi had other options to repay the debt and may have already repaid the debt by the time she was arrested for selling drugs on August 21, 2023.

Ms. Majedi's Drug Use in Relation to the Offending

- [54] For many months in 2022 and 2023, Ms. Majedi had been using drugs.
- [55] At the Gardiner hearing, Ms. Majedi testified that she stopped using drugs when she received confirmation that she was pregnant around the time of the offending. She could not remember when it was; however, she knew it was a few weeks after she was artificially inseminated. She could not remember when the artificial insemination took place, but thought it was in July 2023.
- [56] On cross-examination, Ms. Majedi agreed that she learned she was pregnant by July 25, 2023, and stopped using drugs at that time. I find that Ms. Majedi was not using drugs in August 2023.
- [57] At the time of her arrest on these charges, she had not been using drugs for four weeks.

Summary of Factual Findings

- [58] Ms. Majedi began selling drugs for Mr. Tijerino in the spring of 2022, because Mr. Tijerino told her to, and because if she did not do as he instructed, he would become violent with her. She also sold drugs for him because she could steal some of his drugs for her personal use, and because she liked selling drugs because it allowed her to socialize with other people in the area.
- [59] After Mr. Tijerino went to jail in 2022, Ms. Majedi sold drugs at the instruction of Mr. Tijerino, because she was afraid of him and she was afraid of the Redd Alert gang members.
- [60] Ms. Majedi was not trafficking drugs to get out of an abusive household with Mr. Tijerino or to get out of a relationship with him.
- [61] Ms. Majedi considered her relationship with Mr. Tijerino over in September 2023 when Ms. Majedi went into custody.

- [62] By August 21, 2023, Ms. Majedi had been paying Redd Alert gang members by selling drugs for almost a year. She did not know how much she had paid or how much Mr. Tijerino still owed them. Ms. Majedi had other options to repay the debt that Mr. Tijerino said he owed to his friends in the Redd Alert gang and may have already repaid the debt by the time she was arrested for selling drugs on August 21, 2023.
- [63] For many months in 2022 and 2023, Ms. Majedi had been using drugs. Her use had progressed to almost daily use. She stopped when she became aware that she was pregnant, which was by July 25, 2023. Ms. Majedi was not using drugs in August 2023. At the time of her arrest, she had not been using drugs for four weeks.

"Matthews J."

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