

CANADA / JUDGMENT

R. v. McKnight

2024 BCSC 1500

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1500 R. v. McKnight

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. McKnight,

2024 BCSC 1500

Date: 20240802

Docket: 87713-2

Registry: Nanaimo

Between:

Rex

v.

Stephen Michael McKnight

Before: The Honourable Justice E. McDonald

Oral Reasons for Judgment

Counsel for the Crown:

C.J. Gibson

Counsel for the Accused:

E. Holzman

Place and Date of Trial/Hearing:

Nanaimo, B.C.

July 23 and 29-31, 2024

Place and Date of Judgment:

Nanaimo, B.C.

August 2, 2024

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[1] These reasons for judgment were delivered as oral reasons. They have since been edited for distribution and publication.

I. Introduction

[2] Stephen Michael McKnight is charged with unlawful possession of controlled substances, namely methamphetamine, cocaine, fentanyl and MDA, for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA] and possession of a prohibited device, namely, a silencer, contrary to s. 91(2) of the Criminal Code, R.S.C. 1985, c. C-46 [Code].

[3] Part of the Crown's case was presented during the voir dire for Mr. McKnight's application to exclude evidence pursuant to s. 24(2) of the Canadian Charter of Rights and Freedoms [Charter]. As explained in my reasons on that voir dire, I determined there were beaches of Mr. McKnight's s. 8 and s. 10(b) Charter rights; however, I dismissed Mr. McKnight's application to exclude evidence. The relevant and admissible evidence from this voir dire was admitted as evidence on the trial.

- [4] At the trial, the Crown called Lindsey Beaulac, Constable Mick White, as well as the Crown's expert, Sergeant Chet Carroll. Mr. McKnight did not call any witnesses nor testify at the trial.
- [5] The Crown agrees that this is a circumstantial case and submits that Mr. McKnight's guilt is the only reasonable inference that can be drawn from the evidence: *R. v. Villaroman*, 2016 SCC 33 [Villaroman]. The defence submits that the evidence is insufficient to establish guilt and that the circumstances support other reasonable inferences other than Mr. McKnight's guilt.
- [6] The question to be answered is whether, in considering the totality of the circumstantial evidence, I can conclude that Mr. McKnight had knowledge and control over, and therefore possession of, the drugs and silencer found in the vehicle that he was seen in shortly before his arrest. To answer this question, I must decide whether there are other inferences available that raise a reasonable doubt as to his guilt.

II. Summary of the Evidence

A. General circumstances

- [7] In ruling on the s. 24(2) voir dire #1, I set out the general circumstances, the relevant and admissible parts of which I will repeat below:
- [9] On February 5, 2021, a member of the public called the police to report a male and female who were arguing in a grocery store parking lot in a vehicle described as a blue Honda Civic (the "Civic"). The person also reported that the female appeared to be in distress.
- [10] Constable Oliver testified that on February 5, 2021, he was working and he heard an alert over the police radio regarding a potential "domestic" in progress at a grocery store parking lot. This included a report that a male and female were sitting in a vehicle and the female appeared to be in distress. Constable Oliver then drove his vehicle toward the reported location.
- [12] Based on the descriptions, he thought the people might be Mr. McKnight and Ms. Rayner, both of whom he had encountered during the previous investigation involving the Mitsubishi.
- [13] Constable Oliver did not enter his vehicle into the underground parking lot of the grocery store. Instead, he parked and walked down the ramp of the lot to look for the Civic, which he located at approximately 1346.
- [14] The Civic was unoccupied, locked and sitting in a parking stall. The license plates on the vehicle were "LF381F". Constable Oliver recognized the vehicle from his previous dealings with Ms. Rayner, who was the registered owner. He also recognized the vehicle from a previous incident where Mr. McKnight had been reported to be passed out in the vehicle while holding a weapon, although the report of a weapon turned out to be incorrect.

- [15] Constable Oliver looked through the front windshield for the vehicle identification number which he then provided to dispatch. He also saw a drill and heat gun in the back seat and some drug paraphernalia on the passenger side door, although he could not recall the specific items that he saw.
- [17] Constable Oliver reported where the Civic was parked. He also removed the plates from the Civic.
- [18] Meanwhile, Corporal Shields, who was a plain clothes officer, had been observing Mr. McKnight and Ms. Rayner inside the grocery store. He let the officers who had assembled in the parkade, including Constable Oliver, know that Mr. McKnight and Ms. Rayner were leaving the grocery store and heading towards the elevator to the parkade.
- [19] Constable Oliver positioned himself close to the door from the elevator into the parkade. Directly next to him was Constable Dakhallallah, who had arrived shortly before to join the other officers in the parkade. In total, there were five police officers waiting in the parkade when Mr. McKnight and Ms. Rayner opened the door to the parkade.
- [20] As soon as Constable Oliver saw Mr. McKnight open the door, Constable Oliver told him he was under arrest. Mr. McKnight began to run away but he did not get far before he stumbled and fell face down on the ground. Constable Oliver and Constable Dakhallallah held onto him while Mr. McKnight was handcuffed.
- [21] At 1355, Constable Oliver said that he told Mr. McKnight that he was under arrest for flight from police, dangerous driving and breach of an undertaking.
- [22] Constable Oliver did a pat down on Mr. McKnight and he found a key in his pocket with an "H" on it.
- [24] Constable Oliver called a tow truck to take the Civic away. Concerned about the safety of the tow truck driver, Constable Oliver and another officer opened the Civic with the key and checked inside from the driver's side.
- [25] Meanwhile, Constable Dakhallallah was tasked with transporting Mr. McKnight back to the detachment. He left the scene to get his vehicle. When he returned, he placed Mr. McKnight into the back of his vehicle and transported him to the detachment, which was about 12 minutes away. The drive started at 2:03 p.m., and during the drive, Mr. McKnight told Constable Dakhallallah about his family, but they did not discuss anything about the investigation.
- [26] They arrived at the detachment at 2:16 p.m. at which point Constable Dakhallallah started the booking procedure, filing out paperwork and conducting a secondary search of Mr. McKnight by patting him down and checking his pockets. In this secondary search, Constable Dakhallallah found a plastic bag containing a purple rock in Mr. McKnight's front hoodie pocket. He set that item aside.

- [27] At 2:25 p.m., Constable Oliver communicated via radio that he had only arrested Mr. McKnight verbally and that Mr. McKnight needed to be "Chartered and warned". So one minute later, Constable Dakhlallah read the entire contents of his Charter card to Mr. McKnight and he arrested him for dangerous driving, fleeing and breach of an undertaking. He also recorded all of Mr. McKnight's answers in his notebook. Mr. McKnight answered the question about right to counsel by saying he wanted to talk to his lawyer and he provided the counsel's name.
- [28] At 2:31 p.m., Constable Dakhlallah placed Mr. McKnight in a private room while Constable Dakhlallah called the lawyer's office. There was no answer, so he left a message. After twenty minutes, Constable Dakhlallah informed Mr. McKnight that his lawyer had not called back. Constable Dakhlallah asked if Mr. McKnight wished to call Legal Aid but he declined, saying he wished to wait for his lawyer to call him back.
- [29] While Mr. McKnight was in the room waiting to talk with his counsel, Constable Dakhlallah tested the purple rock taken from Mr. McKnight's pocket. The test came back indicating that it contained heroin. Constable Dakhlallah placed the purple rock in an exhibit bag, before weighing, seizing and putting it in the exhibits.

B. Search of the vehicle

- [8] On February 5, 2021, Constable White executed the warrant to search the Civic and he took pictures as he conducted the search. During his testimony at trial, Constable White described that he began the search with the driver's door. On the interior of the driver's door, he located an eyeglass case. There were no photographs of the eyeglass case when it was in the driver's door, but there were photographs of the eyeglass case and the items he found inside of it.
- [9] Inside of the eyeglass case, Constable White found baggies of various sizes and colours containing methamphetamine ("meth"), fentanyl/meth, cocaine, caffeine/diphenhydramine and caffeine. Also found in the eyeglass case was a straight glass pipe and tinfoil with black residue on it.
- [10] Constable White then searched the driver's side of the Civic. On the floor of the driver's side in the area under the steering wheel, he located a black case. He took photographs of the black case on the vehicle floor and the items he found inside it. His evidence about where the case was found was unclear. At one point, he said it was found underneath the driver's seat but he also said it was found on the floor in front of the driver's seat.
- [11] Inside the black case, Constable White found baggies, paper flaps and aluminum foil containing among other things, meth and MDA, a package of unused red baggies, and drug paraphernalia, such as four glass pipes some used and some new.

- [12] Constable White then searched the centre console between the driver's and passenger's seat. In the centre console, he found three government-issued identification cards in names other than Mr. McKnight and Ms. Rayner.
- [13] When Constable White looked in the back seat, he found nothing of note. However, photographs of the back seat show that it was very cluttered and overflowing with random items.
- [14] Constable White searched the trunk of the vehicle. The trunk was also cluttered and nearly full of random items. Constable White removed a variety of items before uncovering a backpack. Inside the backpack, Constable White found a silencer along with identification that was not in the name of Mr. McKnight or Ms. Rayner.
- [15] The final place Constable White searched was the front passenger side. In the interior of the passenger door handle, he found a container holding .93 grams of meth. On the floor of the passenger side, he located a purse that contained Ms. Rayner's identification, drug pipes and a small baggie containing a brown substance.
- [16] The total quantity of drugs located in the Civic was approximately 50 grams of meth, 2.36 grams of fentanyl and 2.33 grams of cocaine.
- [17] In cross-examination, Constable White agreed that he found no scales or measuring devices, no score sheets or notebooks, no cash and no electronics, such as cell phones.

C. Admissions of Fact

- [18] The parties filed the following admissions of fact at trial:
- a) It is admitted that Mr. McKnight did not have a licence or permit to possess a silencer.
 - b) It is admitted that a silencer is a prohibited device.
 - c) It is admitted that the Honda Civic was owned by Dakota Rayner at the time of these events. That is proven through Exhibit 7.
 - d) It is admitted that Exhibit 4 - Drug Exhibit Spreadsheet - accurately sets out the quantities of drugs found, the nature and analysis of the drugs found, the weight of the drugs, and the location where they were found. This spreadsheet is admitted for the truth of its contents.
 - e) It is admitted that Stephen McKnight was arrested by RCMP officers on February 5, 2021 as he was exiting the Quality Foods and entering the underground parking garage.

D. Additional evidence at trial

- [19] In addition to Constable White, whose evidence I have already summarized, two additional witnesses testified at the trial, Ms. Lindsey Beaulac and the Crown's expert witness, Sergeant Chet Carroll. I will now summarize the relevant evidence of the other Crown witnesses.
- i. Lindsey Beaulac

- [20] Ms. Beaulac is the person who telephoned the police on February 5, 2021. On that day, Ms. Beaulac walked by the Honda Civic as she was leaving her car to go into the grocery store where she was an employee. She noticed a woman in the passenger seat of a blue Honda Civic who was crying, shaking her hands in the air and seeming to be in distress. She also saw a male in the driver's seat, whom she described as having dark hair and dark skin.
- [21] Ms. Beaulac decided to call the police from the foyer of the elevator outside of the underground parkade. While on the phone with the police dispatcher, Ms. Beaulac re-entered the parkade to get the number plate of the Civic. While passing by the Civic, she again saw a female in the passenger seat and a male in the driver's seat.
- [22] Ms. Beaulac went upstairs to a private balcony area of the grocery store above street level to have a smoke. From the balcony, she could see the street below and the entrance to the underground parkade. She then saw the Civic leaving the parkade. A few minutes later, it returned, making its way along the street and turning back into the entrance of the underground parkade. Ms. Beaulac reported all of this to the police dispatcher. Ms. Beaulac said that while the car was driving to and from the parkade, she could see a male in the driver's seat.
- [23] Ms. Beaulac saw the male and female that she had seen sitting in the Civic inside the store. She also saw the police arrest the male that she saw sitting in the Civic and in the store. She was able to see the arrest from the store's security camera display that showed the area near the elevator foyer and door into the underground parkade.
- [24] Ms. Beaulac was not asked whether the male she saw driving the Civic was the same male that she saw sitting in the driver's seat in the parkade and shopping in the store.

ii. Sergeant Chet Carroll

- [25] After conducting a voir dire on the qualification of the Crown's proposed expert, I found that Sergeant Carroll was qualified to provide an opinion on the methods of packaging, concealment, trafficking, prices, usage, drug jargon and slang with respect to meth, cocaine, fentanyl and MDA in the Vancouver Island area of British Columbia from February 2021 to present.
- [26] Sergeant Carroll has many years of experience working as a General Duty RCMP officer, now supervisor, conducting and supervising hundreds of investigations involving drug trafficking. Sergeant Carroll has attended many training courses and is a member of many working groups focussed on the investigation of, and monitoring of trends in, drug trafficking and he has extensive experience interacting with drug users and addicts.
- [27] Sergeant Carroll reviewed information about the drugs seized from the Civic and from Mr. McKnight. In his opinion, the total value of the drugs seized in February 2021 was approximately \$2,500 at the low-end, to \$6,400 at the high-end.

- [28] In his opinion, the drugs as they were found in the black case were parted out in typical-sized baggies for low-level street sale and the fact that many drugs were stored together was uncommon if they were for personal consumption, not for trafficking purposes.
- [29] He noted there was a fairly large quantity of meth found which did not point to purposes of personal consumption. Based on the quantity, he estimated the meth found in the Civic could be consumed by two heavy users in approximately 13 days.
- [30] Overall, in his opinion, the packaging and storage of the multiplicity of drugs, the quantity of the meth, the supply of unused baggies, and the silencer were consistent with the purpose of drug trafficking and he said it was not consistent with personal use because most drug users have a single preferred drug and they purchase in smaller quantities.

III. Legal Principles

- [31] The parties are in agreement as to the applicable legal principles.
- [32] The CDSA in s. 2(1), adopts the definition of "possession" set out in s. 4(3) of the Code:
- (3) For the purposes of this Act,
- (a) a person has anything in possession when he has it in his personal possession or knowingly
- (i) has it in the actual possession or custody of another person, or
- (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.
- [33] The Crown submits that Mr. McKnight had constructive possession over the drugs and silencer in the Civic. In *R. v. Wiwchar*, 2015 BCSC 973, aff'd at 2017 BCCA 9, Justice Bowden summarizes the requirements of constructive possession at paras. 41-47 including the requirements described by our Court of Appeal in the often-cited case of *R. v. Fisher*, 2005 BCCA 444:
- [41] The law regarding constructive possession is described by Smith J.A. in *R. v. Fisher*, 2005 BCCA 444, at para. 24:

As is evident from my summary of the law, neither constructive possession nor joint possession requires proof of manual handling. To establish constructive possession, it was incumbent upon the Crown to prove beyond a reasonable doubt that the appellant knew of the presence of the cocaine and that he had some measure of control over its location. To establish joint possession, the Crown was required to show that someone other than the appellant had possession of the cocaine with his knowledge and consent and that he had some measure of control over it.

[42] A more recent decision on the law relating to possession is *R. v. Tahirsylaj*, 2015 BCCA 7. The accused appealed from a conviction for unlawful production and possession of marihuana for the purpose of trafficking. He argued that he did not have any knowledge or control of the grow operation.

[43] Bennett J.A. reviewed the law relating to constructive possession and referred to the following statement in *R. v. Morelli*, 2010 SCC 8, at para. 17:

Constructive possession is established where the accused did not have physical custody of the object in question, but did have it "in the actual possession or custody of another person" or "in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person" (Criminal Code, s. 4(3)(a)). Constructive possession is thus complete where the accused: (1) has knowledge of the character of the object, (2) knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and (3) intends to have the object in the particular place for his "use or benefit" or that of another person.

[44] Bennett J.A. also cited *R. v. Pham*, (2005), 2005 CanLII 44671 (ON CA), 77 O.R. (3d) 401; *aff'd* 2006 SCC 26, where the court said, at page 406:

In order to constitute constructive possession, which is sometimes referred to as attributed possession, there must be knowledge which extends beyond mere quiescent knowledge and discloses some measure of control over the item to be possessed.

Measure of Control over Suite 1209

[45] In *R. v. Webster*, 2008 BCCA 458, Frankel J.A. described what is meant by consent and control in relation to possession, at para. 42:

Turning to "consent and control", what must be kept in mind is that for a person to be deemed to be "in possession" of an item, he or she need not have in fact exercised power over it; all that is required is an ability to exercise some power. This is discussed in *R. v. Savory* (1996), 1996 CanLII 2001 (ON CA), 94 O.A.C. 318, leave refused, (1997) S.C.C.A. No. 189, upholding the conviction of a driver of a van in relation to drugs another person had concealed in the vehicle. Savory was cited with approval by this Court in *R. v. Abdel-Malek* (1997), 1997 CanLII 3910 (BC CA), 90 B.C.A.C. 147 at para. 10.

[46] Frankel J.A. referred to the following instruction in *Abdel-Malek* which was held to be sound:

Control for the purpose of constructive possession does not require that the accused did in fact exercise control over the object in question. In *R. v. Terrence* (1980), 1980 CanLII 74 (ON CA), 47 N.R. 13; 55 C.C.C. (2d) 183 (Ont. C.A.), *aff'd* 1983 CanLII 51 (SCC), [1983] 1 S.C.R. 357; the Supreme Court accepted that control means power or authority over the object in question. Similarly, in *R. v. Chambers* (1985), 1985 CanLII 169 (ON CA), 9 O.A.C. 228, the court held that the right to grant or withhold consent to drugs being stored in a bedroom was sufficient to constitute control. Again, control is established if there is the right to grant or withhold consent. It is not necessary that the

consent in fact be granted or withheld.

[47] In *Fisher*, the Court of Appeal held that having a key to an apartment gave the appellant control over its contents although it also found control on the basis that the closing of a kitchen drawer by the appellant in attempting to hide a scale in it manifested a measure of control over the contents of the drawer.

[34] It is agreed that, except for the drugs found in Mr. McKnight's pocket, all of the evidence concerning the drugs and silencer in the Civic is circumstantial.

[35] In the appeal in *Wiwchar*, at paras. 37-39, Justice D. Smith discusses the law relating to inferences of fact when assessing circumstantial evidence, citing the test in *Villaroman* at paras. 35-38. Justice D. Smith notes, at para. 39, the critical requirement that "the alternate theory or possibility arising from the circumstantial evidence or lack of evidence, when viewed objectively, is a 'plausible' or 'reasonable' inference, other than the accused is guilty".

[36] In *R. v. Choudhury*, 2021 ONCA 560 [Choudhury], Jamal J.A. (as he then was) summarized the relevant legal principles for constructive possession as follows (at para. 19):

- Constructive possession is established when an accused does not have physical custody of an object but knowingly has it in the actual possession or custody of another person or has it in any place for their own or another's use or benefit: *Criminal Code*, s. 4(3)(a); *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at para. 17; and *R. v. Lights*, 2020 ONCA 128, 149 O.R. (3d) 273, at para. 47.
- Knowledge and control are essential elements of constructive possession, which is established when the Crown proves beyond a reasonable doubt that the accused: (i) has knowledge of the character of the object said to be possessed; (ii) knowingly puts or keeps the object in a particular place, whether or not the place belongs to or is occupied by the accused; and (iii) intends to have the object in the place for the use or benefit of the accused or another person: *Morelli*, at paras. 15, 17; *Lights*, at paras. 44, 47.
- Tenancy or occupancy of a place where an object is found does not create a presumption of possession: *Lights*, at para. 50; *R. v. Watson*, 2011 ONCA 437, at para. 13; *R. v. Lincoln*, 2012 ONCA 542, at paras. 2-3; and *R. v. Bertucci* (2002), 2002 CanLII 41779 (ON CA), 169 C.C.C. (3d) 453 (Ont. C.A.), at para. 18.
- When the Crown relies largely or wholly on circumstantial evidence to establish constructive possession, a conviction can be sustained only if the accused's knowledge and control of the impugned objects is the only reasonable inference on the facts. The trier of fact must determine whether any other proposed way of looking at the case as a whole is reasonable enough to raise a doubt about the accused's guilt, when assessed logically and in light of human experience and common sense: see *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at paras. 55-56; *Lights*, at para. 39; and *R. v. Stennett*, 2021 ONCA 258, at paras. 60-61.

- [37] In *R. v. McKay*, 2019 BCSC 2029, before referring to the test in *Villaroman*, Justice Donegan sets out the principles that apply to drawing inferences from circumstantial evidence and the different standards of proof:
- [4] It is important to keep in mind that it is only the elements of the offence that are subject to the criminal standard of proof, not individual pieces of evidence. Individual pieces of evidence can be proven on a balance of probabilities. A trier of fact, rather than examining pieces of evidence in isolation, must consider the total body of evidence and assess whether, taken as a whole, that evidence proves the elements of the offence beyond a reasonable doubt.
- [5] Our Court of Appeal discussed these different standards of proof in the context of a circumstantial evidence case in *R. v. Collin*, 2008 BCCA 431 at paras. 17-18:
- [17] There is no requirement, however, that all of the circumstantial evidence relied upon for a finding of guilt must be proven beyond a reasonable doubt. Nor is there a requirement that a certain amount of the circumstantial evidence must be proved beyond a reasonable doubt. The requirement is that all elements of the alleged offence, including the element of identity of the offender, must be proved beyond a reasonable doubt: see *R. v. Morin*, 1988 CanLII 8 (SCC), [1988] 2 S.C.R. 345 at 360-362. The applicable standard was articulated in *R. v. Khan* (1998), 1998 CanLII 4812 (BC CA), 129 C.C.C. (3d) 45 (B.C.C.A.), as follows:
- [9] The Crown need not prove beyond a reasonable doubt each fact which is said to support the inference of guilt. Each fact may be a link in the chain of ultimate proof. Sopinka J. made it clear in *R. v. Morin* that it is the jury's duty to consider the evidence as a whole and determine whether guilt has been established by the prosecution beyond a reasonable doubt.
- [18] Hence, it was not an error of law by the trial judge to consider circumstantial evidence proved on a balance of probabilities in reaching his conclusion that the whole of the evidence established the guilt of Mr. Collin beyond a reasonable doubt. This does not derogate from the principle that guilt must be proved beyond a reasonable doubt.
- [38] With these legal principles in mind, I turn to the analysis of the evidence.

IV. Analysis

- [39] In my analysis, I remind myself that I am to consider the cumulative effect of all of the evidence to decide whether the Crown has met the burden of proof: *R v. Gibson*, 2021 ONCA 530 at para. 79. If, on the whole of the evidence, there are other reasonable inferences that can be drawn other than guilt, the Crown's evidence will have failed to discharge the burden of proof. As set out in *Villaroman*, alternate interpretations or inferences must be reasonable and not just possible and such inference do not have to arise from proven facts: *Villaroman* at paras. 42 and 35.

Did Mr. McKnight possess the drugs and silencer in the vehicle?

- [40] The evidence that the Crown says establishes that Mr. McKnight had constructive possession of the drugs and silencer in the Civic consists of:
- a) The Civic key found in his pocket;
 - b) Ms. Beaulac's testimony about seeing Mr. McKnight driving the Civic shortly before his arrest;
 - c) Constable Oliver's testimony about seeing Mr. McKnight in the Civic on September 11, 2020; and
 - d) That Mr. McKnight had control over the Civic at the relevant time and that the drugs were located in the vicinity of where he had been sitting as the driver of the Civic.
- [41] The Crown also submits that the evidence about the quantity and value of the drugs, their storage and packaging are consistent with possession for the purposes of trafficking and not consistent with possession for personal consumption. The Crown also submits that possession of a weapon is consistent with Mr. McKnight being involved in drug trafficking.
- [42] The defence submits that the Crown has not established beyond a reasonable doubt that Mr. McKnight had constructive possession of the drugs or silencer because there are a number of other reasonable inferences that can be drawn from the evidence that have not been negated, including that: (1) the drugs and silencer could have been possessed by Ms. Rayner; and, (2) the drugs and silencer could have been possessed by third parties other than Ms. Rayner because the Civic was observed for less than one hour on February 5, 2021. Many items found in the Civic, such as the identification of four other individuals, plausibly suggest others had access to the Civic, especially when nothing was found in it that similarly connected Mr. McKnight to the vehicle.
- [43] Regarding Ms. Beaulac's evidence about seeing people in Civic at the relevant time, she identified Mr. McKnight as the person she saw sitting in the driver's seat when the car was parked in the parkade. She was not asked, and she did not testify that, the male she described seeing drive the Civic to and from the parkade was the same man that she had earlier seen sitting in the car. Ms. Beaulac's evidence was simply that she saw a male in the driver's seat as it drove by her. In addition, there was no evidence that Mr. McKnight was seen near or reaching into the trunk of the Civic at any point.
- [44] In my view, it is a reasonable inference to draw that Mr. McKnight was driving the vehicle. Ms. Beaulac said she saw a male and female in the parked Civic and not long after, she saw a male and female while the Civic was passing by her. There was no evidence about seeing another person in the parkade or around the Civic when she made her observations. I find it was Mr. McKnight who was sitting in the car when it was parked and in the driver's seat when Ms. Beaulac saw the vehicle drive by her.

- [45] The Crown also relies on Constable Oliver's evidence about Mr. McKnight being in the Civic during an earlier incident on September 11, 2020. The defence submits that this evidence may be hearsay because it is unclear if Constable Oliver or someone else made that observation. Constable Oliver did use the passive voice and the subject pronoun, "we" in part of his testimony describing events on September 11, 2020. However, he also testified that on September 11, 2020, "we responded, I was first on scene". In my view, this makes clear that Constable Oliver was on scene and that he has direct knowledge of Mr. McKnight being in the Civic and this is some additional evidence connecting him to the vehicle months ago, but not at the relevant time.
- [46] The Crown submits that the evidence about Mr. McKnight's ties to the Civic and the quantity and variety of drugs stored together in the black case and the eye-glass case in close proximity to the driver's seat which he had occupied, strongly supports that Mr. McKnight had knowledge and control over the drugs and silencer found in the Civic.
- [47] In the present case, there is no evidence that Mr. McKnight's fingerprints were found on anything located in the Civic and the only evidence linking him to the Civic is that he was observed in it for a short period on the day of his arrest and once months ago.
- [48] In my view, this is a situation where it is alleged that the mere access to, or presence in, the Civic for a short period of time on February 5, 2021, is the basis for the inference that Mr. McKnight was in constructive possession of the drugs.
- [49] I am aware that manual handling is not a prerequisite to a finding of possession: *R. v. Ahmadzai*, 2012 BCCA 215 at para. 26. However, I note that no identification or personal possessions linked to Mr. McKnight were located in the vehicle. In fact, many items found linked the vehicle to numerous other individuals, including Ms. Rayner. Other than the evidence about Mr. McKnight's short period of access on February 5th, and one incident many months earlier, there is no direct evidence to show he frequently accessed the vehicle or that he knew about the drugs located inside it or the silencer located in the trunk.
- [50] Regarding the silencer, Constable White testified that the backpack containing the silencer was buried under a significant layer of random items in the trunk of the Civic. The backpack contained identification for a person other than Mr. McKnight. As I already noted, there is no evidence Mr. McKnight was seen near or reaching into the trunk at the relevant time.
- [51] Again, there is no direct evidence to demonstrate that Mr. McKnight had knowledge or control of the drugs and silencer that were located inside the Civic. There is circumstantial evidence and I find that evidence is insufficient to prove beyond a reasonable doubt that Mr. McKnight had knowledge and control of the drugs and silencer. I find that the circumstantial evidence I have discussed earlier is insufficient to prove beyond a reasonable doubt that the accused had knowledge and control over the drugs and silencer located in the vehicle.

[52] There are, as defence counsel points out, other plausible theories and reasonable possibilities inconsistent with Mr. McKnight's guilt. Defence counsel also referred me to the statement of Bouck J. in *R. v. Amado*, [1996] B.C.J. No. 1943 (S.C.) at para. 33, which applies to the circumstances in the present case:

not everyone who drives or rides in a car containing concealed illegal objects necessarily knows the nature of those objects. If there is to be a conviction for possession of such objects based on knowledge of the occupants of the car, the evidence relating to their knowledge must arise above mere suspicion.

[53] When I apply logic and experience to the evidence before me, I find that there are other reasonable inferences arising from the circumstantial evidence inconsistent with Mr. McKnight's guilt.

[54] When I consider the totality of the circumstantial evidence, I find that the Crown has not established beyond a reasonable doubt that Mr. McKnight had knowledge and control with respect to the drugs and silencer located in the Civic. However, I do find that the Crown has established beyond a reasonable doubt, through direct evidence, the lesser included offence in Count 3, that Mr. McKnight possessed fentanyl on his person, namely his hoodie pocket, on February 5, 2021.

V. Conclusion

[55] Accordingly, I find as follows:

- a) For Count 1, possession of Methamphetamine, for the purpose of trafficking - I find Mr. McKnight not guilty;
- b) For Count 2, possession of Cocaine, for the purpose of trafficking - I find Mr. McKnight not guilty;
- c) For Count 3, possession of fentanyl, for the purpose of trafficking - I find Mr. McKnight not guilty; however, for the lesser included offence on this count of possession of the fentanyl that was found on his person, I find him guilty;
- d) For Count 4, possession of MDA, for the purpose of trafficking - I find Mr. McKnight not guilty; and
- e) For Count 5, possession of a prohibited device, I find Mr. McKnight not guilty.

"E. McDonald J."

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