
CANADA / JUDGMENT

R. v. Narwal

2013 BCSC 382

COURT

Supreme Court of British Columbia

DECIDED

25 February 2013

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

2013 BCSC 382 R. v. Narwal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Narwal,

2013 BCSC 382

Date: 20130225

Docket: 59668-2

Registry: Chilliwack

Regina

v.

Amritpal Singh Narwal

Before: The Honourable Mr. Justice Truscott

Oral Reasons for Judgment

Counsel for the Crown:

S.K. Steele, M.J.E. Wheeler

Counsel for the Accused:

S.E. Pinx, Q.C.

Place and Dates of Trial:

New Westminster, B.C.

October 29, 30, 31, 2012

November 1, 2, 2012

and February 8, 2013

Place and Date of Judgment:

New Westminster, B.C.

February 25, 2013

- [1] THE COURT: I have now had the benefit of receiving and reviewing the written submissions of the parties as well as their oral submissions at the hearing on February 8th, 2013. This is my decision on the matter.
- [2] Mr. Narwal is charged with one count of possessing cocaine for the purpose of trafficking and one count of unlawfully importing that cocaine.
- [3] On July 19th, 2009, at about 6:30 in the morning, the accused was stopped at the Huntingdon border crossing at the Canada/U.S. border on his way into Canada, driving a 2003 Kenworth tractor and pulling an apparently empty 1996 commercial trailer.
- [4] Canada Border Services Agency ("CBSA") Officer Brar dealt with the accused when he arrived at the Canadian border. The accused presented to CBSA Officer Brar a bill of lading from Windset Farms in Delta, B.C. for delivery of a load of red peppers to the Safeway business in Auburn, Washington.
- [5] The bill of lading indicated that the shipping date was July 18th, 2009 so that it appeared the accused was returning to Canada in the early morning hours of the day following his departure from Canada on July 18th, 2009.
- [6] The accused also showed CBSA Officer Brar his log book indicating that he had left British Columbia on the 18th and was returning on the 19th.
- [7] This was all consistent with a trip overnight from B.C. to Auburn, Washington to deliver a load of peppers. It would also be logical for the trailer to be empty on the return trip into B.C. having delivered the load of peppers.
- [8] Unbeknownst to Officer Brar, the accused had not been the driver to deliver the load of peppers to Auburn, Washington. The accused had in fact gone over the border into the United States on July 16th and had gone all the way down to Los Angeles, California with an apparently empty trailer before turning around to come back to Canada pulling the same apparently empty trailer.

- [9] The accused says he used the bill of lading from Windset Farms and created log entries to appear he was only in the U.S. one day in order not to be caught having driven more than the authorized by law number of hours on the trip without having taken the required amount of downtime as well. He says the idea for the fake bill of lading came from the person who dispatched him in the first place, Mr. Chohan.
- [10] The Crown says it is far more likely that the accused set up this deception to avoid any suspicion by CBSA Officer Brar about the accused bringing an empty trailer from Los Angeles to the border so that Officer Brar would not investigate further and find a large amount of cocaine concealed within the trailer wall.
- [11] The accused at that time was working full-time for another trucking company and part-time as a truck driver for Sandhu Express, a trucking company in Surrey, British Columbia. He was a single 27-year-old with no criminal record who says he was making \$40,000 to \$50,000 per year driving truck.
- [12] He says he had been instructed by Mr. Chohan, the dispatcher for Sandhu Express, on July 16th, 2009 to take a tractor unit from the Surrey yard and proceed over the border to a truck stop close to the border on the U.S. side in Washington State and pick up a trailer there which was empty.
- [13] He says he was instructed to then drive to the area of Los Angeles with the empty trailer to pick up a rush load for return to British Columbia.
- [14] Mr. Sandhu, the owner of Sandhu Express, says on July 16th, 2009, he had received a telephone call from a customer to bring back a rush load of produce from California. He says he instructed Mr. Chohan to find a driver and trailer for the trip down to California to pick up the load on a rush basis. He says Mr. Chohan was the one to choose the particular tractor and trailer and driver to do that.
- [15] Mr. Sandhu knew the driver would be driving down empty to California and he says that was not unusual. He says customers will pay for empty miles to go down to pick up a load and come back. I understand his evidence to be that he was speaking about this particular order.
- [16] On July 17th, Mr. Sandhu says he learned the load in California had been cancelled. He says he informed Mr. Chohan about this around noon on the 17th and told him he would try to find another load in California for the driver to bring back to Canada.
- [17] Mr. Sandhu has no documents to confirm this call to him on the 16th to pick up a load in California and no documents to confirm a call to cancel the load on the 17th. He says this was two years ago at least and if there were documents, they are now gone. He also has no memory of the details of the calls including who the customer was.
- [18] The accused left Surrey, British Columbia with the tractor unit around 2:00-3:00 p.m. on July 16th, picked up the empty trailer over the border at the truck stop, and at approximately 5:00 o'clock or 5:30 p.m. proceeded directly down I-5 highway towards California.

- [19] The trailer was unlocked when he picked it up and remained unlocked during the entire trip.
- [20] The trailer was equipped with a refrigerator unit for loads that required refrigeration. The unit was on the front of the trailer attached to the trailer with the back of the refrigerator unit being part of the front wall of the trailer. The refrigeration unit could be turned on and off from outside the trailer through a switch on the outside of the unit.
- [21] The accused says he did not concern himself with whether the refrigeration unit was operating on the way down to California because the trailer was not carrying any load down to California and there was therefore no need for the unit to be operating at that time.
- [22] His evidence is that the customer in California would decide whether refrigeration was needed for the load to go back north and what the temperature should be set at. Only then did he need to know whether the refrigeration unit was working.
- [23] He says the refrigeration unit is never checked by drivers before a trip but only at the customer's place for pickup of the load.
- [24] When it is suggested he did not check the refrigeration unit because he knew it would not work, he denies that and says he did not know it was not working. He says it is checked at the customer's place and if it does not work there, then the company is called.
- [25] He says no driver goes over all the items that are listed in the pre-trip inspection report and he never saw any other driver check refrigeration units.
- [26] The accused says he was not told by Mr. Chohan what the load was going to be to pick up in California and was not told where in or around Los Angeles that the address was for the pickup. All Mr. Chohan said was that it was near Los Angeles.
- [27] He says this was a typical way for trucking companies to operate, to only give the name of the town and then give the exact address by telephone once the driver gets near the destination. He expected to be told the exact address as he approached Los Angeles. He says he has no idea why the companies do it that way.
- [28] He was given no documents to take with him on the trip, but he says that was typical when he was dispatched over the phone as he was this time.
- [29] When he got near Los Angeles around 5:00 p.m. or 6:00 p.m. on the 17th, he contacted Mr. Chohan on his cell phone and was told that the load had been cancelled but to wait to see if another load could be found to go back north. The accused's cell phone records indicate an incoming call at 4:59 p.m. on the 17th from the vicinity of Fresno, California which the accused says was this call.
- [30] When no other load could be found to take north, he headed back northward with his empty trailer and eventually ended up back at the border before CBSA Officer Brar.

- [31] After CBSA Officer Brar interviewed the accused, he went out to look at the trailer.
- [32] Officer Brar was very diligent in his inspection. He flipped the switch outside the trailer to turn on the refrigeration unit and discovered it was not operating.
- [33] Although the trailer appeared empty, Officer Brar climbed up into it as it was unlocked and walked to the front of the trailer inside. There, he observed that washers holding screws to a metal plate to the back of the refrigeration unit appeared scratched as if the plate had been removed and replaced repeatedly.
- [34] He obtained a screwdriver and removed one or two screws and peered behind, seeing something there, and pulled out two kilos of cocaine.
- [35] He called a supervisor and the plate was completely removed disclosing that part of the interior of the refrigeration unit had been hollowed out and filled with approximately 144 kilos of cocaine.
- [36] The evidence of the drug expert, Sergeant Shepherd, is that the 2009 street value of the cocaine in Vancouver was about \$35,000 to \$38,000 per kilo for a total street value of this load of over five million dollars. His evidence is that the value in the Los Angeles area was \$25,000 to \$28,000 per kilo so the profit for anyone picking up the cocaine in Los Angeles and selling it in Vancouver could be over one million dollars.
- [37] CBSA Officer Brar said he also searched the tractor unit but found no power drill nor screwdriver nor any other tools to open the steel panel on the back of the refrigeration unit as well as no weapons of any kind.
- [38] Mr. Narwal was then arrested and subsequently charged. His evidence is that he had no knowledge the cocaine was in the trailer and no reason to suspect it was there as he only knew he was returning to British Columbia with the same empty trailer he had left with from the truck stop near the border.
- [39] It is obvious that the cocaine was not in the trailer wall when the accused picked up the trailer at the truck stop in Washington State near the border.
- [40] It would not make any sense at all for the cocaine to travel all the way down to California and then back again just to go over the border into Canada.
- [41] It does make more sense, however, that the refrigeration unit had already been hollowed out before the accused picked up the trailer at the truck stop to proceed to California because the evidence is that it takes some time, effort and expense to hollow out the unit.
- [42] Realistically, the issues appear to be when the cocaine was put in the trailer during the accused's trip down and back from California, and whether the accused was a party to the concealment of the cocaine or was wilfully blind to its presence.

- [43] The accused says he drove straight for 24 to 25 hours to California, only stopping to refuel twice and stopping at a couple of rest stops along the way for coffee and to use the facilities.
- [44] He says he had been told by Mr. Chohan it was a rush job and he had to pick up the load by the evening of the next day and he was only stopping for 15 to 20 minutes at any time. He says the company makes all the bookings, the drivers do the driving, and the drivers never question the instructions.
- [45] When Mr. Chohan told him that the load was cancelled, the accused says he was told to travel to a truck stop near Los Angeles to wait for instructions. He says he travelled about one or two hours south towards Los Angeles and waited for what he estimated was one or two hours before Mr. Chohan told him to head back to Lodi, California and wait there for further instructions.
- [46] When asked if he received the call cancelling the load around Fresno, California and then kept driving all the way to Los Angeles, he agrees and says because Mr. Chohan had said the load was cancelled but they were continuing to talk with the customer, he should stop before Los Angeles and wait at a pump.
- [47] He is questioned about driving three hours down to Los Angeles from Fresno just to turn around and drive back the same three hours once he was told to turn back. He is reminded that fuel is expensive, he would have to be paid by the mile, and he is asked if that did not seem strange to him.
- [48] He responds that he did not. He says a driver keeps driving until he gets there according to the instructions and he says drivers never get involved in company business and if the company is throwing money away that is its money and its truck and trailer and he is only paid mileage.
- [49] When it is suggested that if there was something strange going on he simply did not want to know about it, he replies that the company said they were looking for a load and they were in communication with the customer.
- [50] He says he left the Los Angeles area about 10:00 p.m. or so and he arrived at Lodi, California in the early morning hours of July 18th, 2009 where he says he went to sleep in the truck for five or six hours before he awoke in the morning.
- [51] He says he then went into the building at Lodi for a shower and to have breakfast, spending another one to one-and-a-half hours inside the truck stop.
- [52] He says he spoke to Mr. Chohan again and was told to turn back and on the way if anything became available he would let the accused know.
- [53] The accused says he spoke again to Mr. Chohan as he was proceeding north and Mr. Chohan asked him when he would be back in British Columbia.

- [54] He says Mr. Chohan told him that he wanted the truck and trailer back in B.C. as soon as possible as he wanted to send it somewhere else to pick up a load.
- [55] He did not ask any questions about that and did not think anything was untoward. Again, it was the company's truck and he questions why he would ask them anything.
- [56] The accused says he told Mr. Chohan he was already over his authorized hours and could not drive straight through to B.C. He told Mr. Chohan there was a scale ahead that he would have to go through where his hours could be checked. He had been doctoring his log book of hours through the entire trip but he did not think he could go beyond Seattle before being caught at this scale unless he stopped for sleep in the Seattle area for ten hours.
- [57] He says Mr. Chohan told him he would fax a bill of lading to him to use and he could fix up his log book to match the bill of lading and if anyone asked him at the scales, he could say he had just dropped off the load indicated on the bill of lading.
- [58] The accused says he was prepared to doctor his log book if the company told him to.
- [59] Mr. Chohan said he would fax the bill of lading to the Flying J Truck Stop at Roseburg, Oregon where the accused could pick it up.
- [60] The accused says it took him about two hours to get to Roseburg where he picked up the bill of lading for the Windset Farms delivery of peppers. He then proceeded on to Seattle where he prepared false log entries in his log book to indicate that he had taken a load of peppers over the border and into the U.S. on the 18th and was returning on the 19th.
- [61] The accused says he arrived at a rest stop past Seattle around 3:00 a.m. or 3:30 a.m. in the morning of the 19th where he took a short nap before proceeding to the Canadian border to arrive at around 6:30 a.m.
- [62] The accused readily admits that he falsified his log book and presented a false bill of lading to CBSA Officer Brar with the fake log book. He says he did it because Mr. Chohan said he wanted the truck and trailer back as soon as possible. As it was Mr. Chohan's truck and trailer and the accused only worked part-time and he wanted the work, he complied. He says he made \$1,300 to \$1,400 for this trip, being paid by the miles driven.
- [63] The accused says he had no idea that cocaine was in the trailer and was not involved at all in putting it there. He says he would never smuggle drugs as he is a hard worker and likes to make his living that way. He says he is working very hard to bring his parents over from India.
- [64] The "Frequent Fueler" card obtained in Corning, California travelling north is dated at 12:58 p.m. on July 18th and the fuel records for that fill up show a transaction time of 12:32 p.m. on July 18th which would generally match up with this time.

- [65] The Vehicle Identification Temporary Pass for the State of Oregon travelling north found in the accused's tractor had the time on it of 1:10 p.m. on July 18th. It indicates that the accused was the driver and indicates that it was validated in Salem, Oregon.
- [66] Mr. Sandhu confirms in his evidence the truckers get paid by the miles driven and may fudge their log books to show more hours driving than is authorized before they are required to rest, which is done by recording hours as rest hours when they in fact are continuing to drive.
- [67] He also confirms the accused's evidence that truckers will not necessarily do the pre-inspection of trucks and trailers but simply sign "okay" and only check such things as lights and tires and not check the refrigeration unit.
- [68] He says he did not speak to the accused directly at any time about his trip, but dealt through Mr. Chohan. He does say however that he is pretty sure that he obtained the Vehicle Identification Temporary Pass for the State of Oregon dated July 18th that authorized the accused to travel through Oregon, but he does not know if he was the one to fax the document while the accused was in transit.
- [69] He says his office calls and asks for the form from the State of Oregon which faxes it to his office and it is then filled out and faxed to the driver.
- [70] He also denies having any knowledge of the cocaine or anything to do with it.
- [71] He says he was told by Mr. Chohan that he was going to send the accused the Windset bill of lading because the accused was out of hours. This evidence confirms the accused's evidence of what Mr. Chohan told him he was going to do.
- [72] Ms. Spady, the truck expert, also says it is not uncommon for truckers to fudge their log books because if they want to make as much money as possible, they do it by staying on the road as long as they can. She also says that she is aware that smaller truck companies push their drivers to run beyond the legal limits.
- [73] She says it is important that the drivers understand it is their responsibility to take and follow instructions from the company while on the road.
- [74] She confirms some drivers will just mark their inspection reports with "okay", indicating that they have done an inspection without actually doing the inspection.
- [75] She also agrees it is much more difficult on weekends to get a load than it would be during the week.
- [76] She agrees that where a rush load in California is involved, it is not uncommon if the company supplying the truck cannot get a load to go down there, to ask the shipper to pay for its mileage and fuel costs to send an empty trailer down.

- [77] She says if the load is cancelled during the trip down, her company would hold over the driver until there is a return load to bring back to Canada.
- [78] At the same time, she also says that if she tells the driver to get back with an empty truck that is her decision as the owner and not the driver's decision.
- [79] She performed a mileage and hours calculation from Chilliwack, B.C. to Arlington, Washington of approximately two hours and 100 miles. From Arlington, Washington to Justine, California, at 16-and-a-half hours and 910 miles, from Justine, California to Corning, California of four hours and 219 miles, and from Corning, California to the Canadian border of 13-and-a-half hours and 757 miles.
- [80] Using these calculations, she determined for the round trip the total miles would be 1,987.7 miles and the required time of 36 hours.
- [81] She agrees that if the accused drove illegally non-stop to Los Angeles from Canada other than stopping for gas it would have taken him about 24 or 25 hours.
- [82] Mr. Chohan's evidence is another story. In my view, he is an unmitigated liar. He disclaims any knowledge or involvement with the accused's trip to Los Angeles at all including faxing him the Windset bill of lading which is contrary to the accused's evidence and the evidence of Mr. Sandhu.
- [83] He admits the cell phone records indicating his calls with the accused during the trip but only because a record exists. Otherwise, he claims no memory of any of the calls.
- [84] He even goes so far as to deny that he owns MBD Trucking Ltd. that owned the tractor unit and BPH Transport Inc. that owned the trailer unit even though when he was asked in a police interview what trucking company he owned, his answer was both MBD and BPH. He claims at trial he did not understand the question.
- [85] I reject his denials in their entirety.
- [86] Because the accused gave evidence, I will apply the requirements set out in *R. v. W. (D.)*, [1991] 1 S.C.R. 742.
- [87] I start with a consideration of the evidence of the accused to decide whether I believe his evidence that he had no knowledge of or involvement at all in the cocaine shipment and was not wilfully blind to its presence beyond a reasonable doubt or if I have at least a reasonable doubt about that. If I do in either case, I must acquit him. If I do not believe his evidence and I do not even have a reasonable doubt about it, I must then decide if there is other evidence sufficient to convict.
- [88] Here, the accused remained consistent in his evidence of why he went down to California empty, why he came back empty, why he tendered a false bill of lading and a log book at the Canadian border, and why he had no knowledge of nor involvement with the cocaine having been placed in the trailer he was pulling nor any suspicion about it being present.

- [89] However, the Crown submits that the accused's evidence is inherently flawed. It is submitted that there are contradictions and implausibilities contained in his evidence that should lead the Court to reject his evidence as follows:
- (a) It is submitted it is very convenient for the accused to have never been told the location for the pickup load in Los Angeles nor given any documentation in order that the existence of such a load could be verified later, such that this evidence should not be accepted.
 - (b) It is submitted that by his own admissions, the accused created false log books going down to Los Angeles and coming back from Los Angeles. It is submitted it is not true that he had to create a fake log book for the border that would line up with his gas receipts. It is submitted it is impossible that he could have created a forged log book going down to Los Angeles to line up with the gas receipt from Arlington, Washington on the 16th for \$715.55 where he filled up on the way down.
 - (c) It is submitted there was much more attention that was placed in making the trip north legal when travelling with the cocaine by obtaining on the way north the Oregon Vehicle Temporary Pass than there was when going down empty to Los Angeles for which there is no evidence of the pass being obtained such that it must have been by design to protect the cocaine on the way north.
 - (d) It is submitted the emergency getting back to Canada is an implausible story when Mr. Sandhu has confirmed his company always has other trucks available to pick up loads elsewhere.
 - (e) It is also submitted that based on Ms. Spady's calculations that by driving legally and not doctoring his log book the accused could have crossed the Canadian border a mere six hours later at 12:30 p.m. instead of at 6:30 a.m. on the 19th through doctoring his log books, and there is no evidence that this different time period arriving would have made any difference.
 - (f) It is submitted to be highly improbable that no driver would ever check the refrigeration unit before a trip when it is part of the pre-trip inspection to do so.
 - (g) It is submitted the entire story of travelling to Los Angeles without a load and then it being cancelled out and then being instructed to drive a further two or three hours south to a truck stop and then retrace his steps north to Lodi, California in order to just simply drive back to Canada empty defies credulity.
 - (h) It is submitted implausible that the accused would be ready to run all the risks of over driving and under sleeping, doctoring log books, and using a fake bill of lading simply because the company asked him to for little benefit to himself when he already had another full-time job with no pressing financial needs.
 - (i) It is submitted that this had to be a well-funded, well-organized, sophisticated operation to be able to afford such an expensive load of cocaine and the owners would have wanted a trusted driver to pick up the load.

[90] Reliance is placed on the trial judgment in R. v. Sekhon, July 19th, 2011 out of Surrey Provincial Court where it was said:

The owners of this cocaine would have invested a large amount of money and in order to ensure as best as they were able that their investment arrives in Canada, they would want trusted, reliable, individuals handling the importation of their valuable product.

- [91] It is submitted improbable that the masterminds of this operation would be content to sit on their load of cocaine with no particular plan for its transfer until such time as Mr. Chohan could find an unwitting dupe to deliver it.
- [92] It is submitted that even if this is all accepted as a realistic possibility, the question must be faced as to how these masterminds and Mr. Chohan would know for sure that the accused would not flick the switch for the refrigeration unit to find out it was not working, either on the pre-trip inspection or at any time thereafter during the trip, and then report it.
- [93] It is also submitted that the masterminds and Mr. Chohan would not know when the accused would leave his rig unguarded in a location where the cocaine would be present and where no one else could see the cocaine being loaded into the trailer wall.
- [94] Alternatively, if these submissions are not accepted, the Crown submits the accused was at least wilfully blind to the presence of cocaine, that he shut his eyes because he knew or strongly suspected that looking would fix him with actual knowledge and this is enough for a conviction.
- [95] It is my conclusion that the accused is speaking the truth when he says he had no knowledge of the presence of the cocaine in his trailer and no suspicion that it might be present or any reason to be suspicious.
- [96] My responses to the Crown's submissions of why the accused's evidence should be rejected are as follows in the order in which the submissions were made.
- [97] The accused was not responsible for supplying the documentation for the pickup of the load and the cancellation of the load. That was all the responsibility of Mr. Sandhu who took the calls for both.
- [98] Mr. Sandhu was not asked in his evidence if he sent any documents from these calls to Mr. Chohan so there is no evidence that they were even given to Mr. Chohan if they existed at all.
- [99] The accused says he was given no documentation because he was instructed for the trip by Mr. Chohan over the telephone.
- [100] It makes sense to me that in this circumstance the accused would have had no documentation for the trip, if the documentation existed in the first place.

- [101] The accused says he was not given an exact address for the pickup for the load in Los Angeles but was told that he would be given the address as he approached Los Angeles. No witness said this was abnormal including Ms. Spady in her evidence of what is normal in the trucking industry.
- [102] The accused's evidence is that Mr. Chohan told him to return the tractor and trailer as soon as possible as he had another job for him.
- [103] Mr. Sandhu says in his evidence that when Mr. Chohan told him the accused was out of hours, Mr. Chohan also told him he wanted the accused to come straight back to B.C.
- [104] Mr. Sandhu does not say in his evidence that this was unnecessary because Sandhu Express had a number of other trucks available. Instead, he says Mr. Chohan told him he was going to fax the Windset bill of lading to the accused to use at the border. Mr. Sandhu does not say that he had any objection to that.
- [105] It may be that Mr. Sandhu did not offer Mr. Chohan other of his trucks to use because as I understand his evidence all the trucks were in fact Mr. Chohan's trucks already. Perhaps for that reason Mr. Sandhu let Mr. Chohan make the decision or perhaps Mr. Sandhu was complicit in the cocaine importation along with Mr. Chohan. Either way, this is not evidence that the accused must have been complicit as well.
- [106] The accused had the Corning, California Frequent Fueler card and the Oregon Vehicle Temporary Pass with him when he was stopped at the Canadian border and did not have an Oregon Temporary Pass for the trip south.
- [107] Mr. Sandhu says he obtained the Oregon Vehicle Temporary Pass for the trip north. It is dated 1:10 p.m. on July 18th which would be on the accused's trip north.
- [108] Mr. Sandhu was not asked about an Oregon Temporary Pass going south on the 16th. There is no evidence of whether he did or not issue one and there is no evidence of who asked him to issue one going north on the 18th.
- [109] There is no evidence that the accused had any part to play in the issue of this Oregon Temporary Pass going north on the 18th. It may be a suspicious circumstance if an Oregon Temporary Pass was not used for the trip south but that suspicion must rest with Mr. Sandhu who was responsible for obtaining it and not with the accused.
- [110] The fact there is no Corning, California Frequent Fueler card for the trip south on the 16th or 17th of July, obviously means the accused did not stop there to fuel up going south.

- [111] Ms. Spady, the trucking expert, did a calculation of a return trip of 36 hours. She did her calculations by going from Canada to the locations where the accused filled up going both north and south. The most southerly place she calculated was to Justine, California which is where she says Pilot 139 was. Justine, California is approximately 270 miles north of Los Angeles so the calculation of 36 hours bears no similarity to what length of time it took for the accused on the round trip to Los Angeles.
- [112] Ms. Spady also says that if the accused drove non-stop to Los Angeles, California stopping only for gas, it would have taken him about 24 to 25 hours. This is the same estimate given by the accused. If that is so, then it would have taken the accused the same amount of time to travel back north to Canada, making a round trip about 48 to 50 hours and not 36 hours. If the accused left Surrey, B.C. around 5:00 to 5:30 p.m. on the 16th and drove 24 to 25 hours, he would arrive in Los Angeles about the time he says he did on the 17th.
- [113] Ms. Spady estimated the trip south could only be done in 24 to 25 hours by driving illegally which is what the accused says he did. So from her evidence alone, he would have also been driving illegally northward to return in the same amount of time.
- [114] I do not know if the accused is correct that no driver checks the refrigeration unit before a trip. That may be an exaggeration on his part but there is no doubt in his evidence that he did not check it before his trip. The evidence of Ms. Spady is that some drivers do mark the inspection reports with "okay" without actually doing the inspection. It is therefore possible the accused was just acting according to the norm of those truckers.
- [115] His evidence is that if the refrigeration unit is found to be not working when he gets to the pickup place in Los Angeles and the load he picks up requires refrigeration he telephones the company to report this.
- [116] As the accused did not do any inspection of the refrigeration unit prior to the trip, there is no reason to think that he would check the operation of the refrigeration unit during the trip down or back when at all times the trailer was empty and the refrigeration unit was not needed.
- [117] It does not trouble me that the accused says he had no suspicions about drugs when the load was cancelled and he was instructed to drive further south to a truck stop to wait for further instructions simply to turn around and drive north empty once again.
- [118] That would not necessarily raise any suspicion in the accused. Ms. Spady says that for a rush load from California it is not uncommon if the company supplying the truck cannot get a load to go down there to ask the shipper in Los Angeles to pay for mileage and fuel costs to send an empty trailer down. This is the evidence of Mr. Sandhu as well. In addition, she says that if she instructs the driver on the road to return with the empty trailer, she expects the driver to follow her instructions.

- [119] This is the evidence of the accused as well. If the company instructs him, he obeys. He is just the driver and he gets paid for driving the miles.
- [120] Ms. Spady also acknowledges that drivers want to make as much money as they can by staying on the road as long as they can and so they fudge their log books.
- [121] She also acknowledges that smaller truck companies push their drivers beyond the legal limits.
- [122] As far as returning with an empty load is concerned, Ms. Spady also says it is much more difficult on a weekend to find a load to come back than it is during the week and July 17th was a Friday so to hold the accused over for a load back would possibly have required him to stay on a weekend when it was much harder to find a load. This may have cost Mr. Chohan more money to put up the accused in Los Angeles for potentially no result on a weekend than it would have been for him to come back with the empty trailer.
- [123] It also does not trouble me that the accused would run the risk of over driving and under sleeping, doctoring his log books and using a fake bill of lading simply because the company asked him to do so. He was a young, single man looking to make as much money as possible by working for it and I have no doubt he would do whatever the company asked him to do in order to keep the job and make the money.
- [124] At the same time, he was already earning \$40,000 to \$50,000 per year and was doing well enough that he had no financial motive to get involved in importing drugs.
- [125] It might be improbable that the masterminds of this operation would use an innocent dupe as the driver to pick up the cocaine rather than a trusted driver with knowledge of the cocaine aboard but that does not make it impossible as Sergeant Shepherd, the drug expert, acknowledges in his evidence.
- [126] He says that there is a risk for an owner of cocaine if the driver knows of the cocaine that the driver may disappear with the load. He also says that to eliminate the risk of a knowing driver making off with a load or telling the authorities about his boss, it would be better to have a driver who did not know.
- [127] In response to the submission of Crown that this must have a well-funded, well-organized and sophisticated importation operation that would never have trusted this cocaine to an innocent driver but would have wanted only a trusted reliable driver spoken about in *R. v. Sekhon*, supra, defence counsel points out how poorly planned this operation was.
- [128] There was no dry load arranged to pick up in Los Angeles to cover the front of the trailer and its cocaine, the driver had to doctor his log book to get back to Canada as soon as possible, and had to use a false bill of lading to cover his extra hours of driving.
- [129] Defence counsel questions how sophisticated this operation was and questions why any trusted, reliable, knowing driver would ever get involved in such an operation.

- [130] I agree with defence counsel. This was no well-run, smooth operation. I look on the accused as being intelligent enough to see the folly of getting involved in this operation if he knew the cocaine was to be put in the empty trailer. I do not conclude that he was knowledgeable of the existence of the cocaine.
- [131] In addition, defence counsel submits that if the accused was complicit, why would he be so stupid as to keep the Corning, California fuel card and the Oregon Vehicle Pass with him at the border which would only show he went far beyond Auburn, Washington for which the fake bill of lading was tendered.
- [132] I do however acknowledge some concern about the accused's evidence of not checking the refrigeration unit until he gets to the customer's place of business.
- [133] Having to repair the refrigeration unit in Los Angeles to make it operable cannot be as efficient and cost effective as doing that prior to the trip in British Columbia as it would delay the return of the rush load.
- [134] However, in my view, this is not enough to support any finding of guilt on the part of the accused or any finding that it is the only reasonable inference to draw.
- [135] I conclude that whoever loaded the cocaine did it without the accused's knowledge and involvement so that the accused would not appear nervous at the border or disappear with the cocaine. In my view, this was not much risk of the accused finding the cocaine himself when he did not know about it in the first place when it was secreted within the refrigeration unit and the accused apparently had no tools to open the metal plate for access.
- [136] It may be that someone involved with the cocaine was trailing the accused and was reporting when the cocaine could be loaded into the trailer.
- [137] No matter how that was done, I am satisfied the accused was not complicit in the importation of the cocaine and was not wilfully blind to its presence in his trailer.
- [138] Any guilt of the accused must be based on that being the only reasonable inference to draw in all the circumstances.
- [139] The Crown terms the alternative theory that the accused is to be believed as a theory that requires a finding that he was stupendously gullible.
- [140] This may or may not be an apt description of the accused but I am prepared to accept the alternative reasonable inference that the accused was only an innocent dupe who was not wilfully blind to the presence of the cocaine.
- [141] I find the accused not guilty of the charges on the basis of reasonable doubt.

"The Honourable Mr. Justice Truscott"

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/13/03/2013BCSC0382.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-narwal-2013>

Prepared on 29 October 2026 · Esheria