
CANADA / JUDGMENT

R. v. Ryan

2021 BCSC 2665

COURT

Supreme Court of British Columbia

DECIDED

17 December 2021

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

2021 BCSC 2665 R. v. Ryan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Ryan,

2021 BCSC 2665

Date: 20211217

Docket: 88066

Registry: Kelowna

Regina

v.

Michael Andrew Ryan

Before: The Honourable Justice Norell

Oral Reasons for Judgment

Counsel for the Federal Crown:

D.M. Borgia

Counsel for the Defence:

J. Dosanjh

Place and Dates of Trial:

Kelowna, B.C.

October 13-15, 2021

Place and Date of Judgment:

Kelowna, B.C.

December 17, 2021

- [1] THE COURT: Mr. Michael Andrew Ryan is charged with three counts that on October 16, 2017, in Kelowna, B.C., he unlawfully possessed controlled substances, being cocaine, methamphetamine, and fentanyl, for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA].
- [2] Three Crown witnesses testified: the two police officers who attended at the scene of the arrest, Constable Kyle Hammond and Constable Tara Schneider; and an expert, Sergeant Greg Woodcox.
- [3] At about 8:00 a.m. on October 16, 2017, Cst. Hammond and Cst. Schneider responded to a complaint of two people in a school bus parked at the rear of a daycare facility. Cst. Hammond attended first, and Cst. Schneider attended soon after. Two individuals were located in the bus: Mr. Ryan and a female.
- [4] Mr. Ryan was searched incident to arrest, and 6.43 grams of cocaine, 5.62 grams of methamphetamine, 6.16 grams of fentanyl, \$780 in cash, and approximately 15 fake one-hundred-dollar bills with an Asian marking stamped on them were located on his person.
- [5] The bus was searched and a further 21.99 grams of cocaine, 12.92 grams of methamphetamine, and 9.15 grams of fentanyl were found somewhere within the bus. Other than what appear to be seven or eight small baggies of drugs (and of these, a specific weight and type of drug were not established) the evidence does not establish where the other drugs within the bus were located. Other items seized were: a small wire-bound notebook which contained "scoresheets"; a butane torch; two cell phones; and bolt cutters. Other items observed but not seized were a sharps container, blanket, tealights, and a green backpack that was beside the female.
- [6] The female was released at the scene. The female was likely searched for safety but that is the extent of the search. There is no evidence that the backpack which was located beside her was searched.
- [7] The two issues are:
 - a) Has the Crown proved beyond a reasonable doubt that Mr. Ryan was in possession of all of the controlled substances found on his person and within the bus? The more significant issue is whether the controlled substances found somewhere in the bus were in his possession; and

- b) With respect to any drugs that the Crown proves were in the possession of Mr. Ryan, has the Crown proved beyond a reasonable doubt that they were possessed for the purpose of trafficking?
- [8] With the exception of one baggie of a suspected controlled substance, which fell out of Mr. Ryan's pants as he was walking into the police detachment after arrest, samples of all of the suspected drugs seized were proved by certificate of analysis to be methamphetamine, cocaine, and fentanyl mixed with caffeine (purity not analyzed).
- [9] I will review the evidence in more detail before addressing whether the Crown has proved the charges.

Arrest scene

- [10] Cst. Hammond has now been a member of the RCMP for nine years and Cst. Schneider for 12 years.
- [11] When Cst. Hammond arrived at the scene, he saw a short school bus about 20 to 25 feet long. He approached the emergency exit door at the back of the bus, which was slightly ajar.
- [12] Inside the back of the bus was a female who was later identified. She was in the back right corner passenger side, propped up but partially lying down. She was not sleeping but appeared tired, possibly from just waking up or from drug use. There were a number of lit tea candles on the floor of the bus around her. There was also some clothing and a backpack immediately beside her, a sharps container, and some drug paraphernalia.
- [13] Two rows of seats down, on the driver's side, Cst. Hammond could see a pair of shoes sticking out into the hall of the bus and could see up to the calves. It looked like a person was lying down on the bus bench. This person was later identified as Mr. Ryan. The distance between the female and Mr. Ryan was about five feet.
- [14] Cst. Hammond told the female and Mr. Ryan that they were under arrest for mischief and to leave the bus. At first there was no response from Mr. Ryan or movement of his feet. The female blew out the tea candles and slowly tidied up, and by then Cst. Schneider had arrived, and the female exited the back of the bus, which was about waist height.
- [15] Cst. Hammond saw Cst. Schneider search the female and take her to Cst. Schneider's police vehicle. Cst. Schneider testified she would have searched the female for safety but did not recall this, nor finding anything in the search of the female. Cst. Hammond did not interact with the female again. Neither officer recalled searching the green backpack. Cst. Schneider recalled the female was very calm and Cst. Schneider thought she was a drug user.
- [16] Cst. Hammond testified that while Cst. Schneider was dealing with the female, Cst. Hammond directed Mr. Ryan to leave the bus, but did not enter the bus. Cst. Schneider then returned to the bus. Both officers testified that Mr. Ryan was fidgeting or shuffling and said he had a leg cramp and did not immediately come off the bus. Cst. Hammond estimated that Mr. Ryan was shuffling for about a minute. Neither officer could see what Mr. Ryan was

doing. Cst. Hammond could not see Mr. Ryan's hands or torso, other than the arch of Mr. Ryan's back. Neither officer saw Mr. Ryan's hands touch the ground or reach to a different row of seats at any time.

- [17] Both police officers then entered the bus and walked up to the seat where Mr. Ryan was located. Cst. Hammond told Mr. Ryan again that he was under arrest. Cst. Schneider recalled that Mr. Ryan said he needed help to get off the bus because of a leg cramp, and he was lethargic but cooperative. Cst. Schneider thought Mr. Ryan was a drug user. Cst. Hammond described Mr. Ryan as looking street entrenched, homeless and suffering from drug addiction. Cst. Hammond saw a glass drug pipe and two baggies, one with a white powdery substance and another with an off-white substance, both the size of about half of a golf ball, on the seat where Mr. Ryan had been lying.
- [18] Once Mr. Ryan was off the bus, both officers searched him incident to arrest, and found the drugs described earlier in these reasons in the pocket of Mr. Ryan's hoodie, front pant pocket, and both socks. Cst. Hammond did not recall the size or composition of the drugs from those locations. There is no evidence of how the drugs found on Mr. Ryan were packaged. The wad of what looked like paper money had a baggie of drugs inside the wad. The total cash found was \$780; some in a wallet and some elsewhere on Mr. Ryan. Cst. Hammond and Cst. Schneider put these items on one side of the ledge of the emergency exit of the bus, which Cst. Hammond used as a working table.
- [19] Cst. Hammond arrested Mr. Ryan for possession of controlled drugs for the purpose of trafficking and brought Mr. Ryan to his police car.

Location of items found in the bus

- [20] Cst. Hammond testified that he returned to the bus and that Cst. Schneider was then coming out from the bus. Cst. Hammond looked in the bus after her. Cst. Hammond saw baggies of drugs on the seat in front of Mr. Ryan and on the floor in a similar location. He did not recall the number of baggies of drugs and specifically which seat the drugs were under. He did not recall bringing the drugs from inside the bus to the back of the bus, but recalled bringing the drugs to his police car. Cst. Hammond testified that he placed the drugs he found on Mr. Ryan in one portion of the trunk of his police car and placed the drugs found in the bus on the other side of his trunk. He then transported Mr. Ryan to the police detachment.
- [21] Cst. Schneider testified that she and Cst. Hammond returned to the bus and began seizing baggies of drugs located in the bus and placed them at the rear of the bus. She thought Cst. Hammond organized the drugs by whether they were found on Mr. Ryan's person or in the bus. There was a crack pipe and baggies of drugs "strewn about" on the benches. She did not recall where they were located in the bus, other than there were some on the bench where Mr. Ryan was seated, and she thought across from him. She released the female at the scene. Cst. Schneider testified that she returned to the detachment with the items seized.

- [22] Neither officer recalled or has notes of where the other drugs in the bus were located. Both agreed that the location of the drugs is important in a drug investigation.

Photographs of the inside of the back of the bus

- [23] Cst. Schneider took all of the photographs in evidence. She testified the photos of the bus were taken after Cst. Hammond took Mr. Ryan to the detachment, which is at odds with Cst. Hammond's evidence because the photos show drugs in the bus. Cst. Schneider identified the few photographs of baggies of drugs in the bus, but other than saying they were on a bench, she did not recall which bench seat, nor could she identify the substance. She did not recall if the drugs were moved before the photographs were taken.
- [24] The photographs show that there is a space about three feet deep on the driver's side and about six feet deep on the passenger's side, at the back of the bus, the larger space possibly being a location for a wheelchair. The photographs must have been taken sometime after the search commenced, because there is a wallet, money, cellphone, and some drugs laid out on the ledge. The photographs show a blue blanket, green backpack, skateboard, two tea candles, and two cell phones on the right side. There also appears to be larger plastic shopping bags on the right but what is inside them, if anything, cannot be identified. On the left there are a sharps container, a wallet, money and a plastic bag with small plastic bags of a white substance within that bag. I can count 11 small baggies with a white substance inside that bag. Cst. Hammond testified these bags of suspected drugs were seized either from the bus or Mr. Ryan.
- [25] There is also a picture of a large butane lighter, but Cst. Hammond did not recall where that was found within the bus. The notebook with the scoresheets is not seen anywhere in the photographs located in the bus. Cst. Schneider did not recall where the notebook was found and there is no evidence of where it was located. Cst. Hammond stated that the cell phones and wallet were retrieved from Mr. Ryan and the blue blanket and green backpack were "associated to" the female.

Photographs of the seat area

- [26] Cst. Hammond identified a photograph of the seat on which Mr. Ryan was found. On the far side of that seat near the window, there is a drug pipe and two small baggies containing a white substance. Cst. Hammond did not make any notation of what drug was suspected, but he recalls one was white and one was off-white, so he suspected they were cocaine rather than heroin.
- [27] Another photograph shows a Ziploc clear plastic bag with female toiletries, which is on the floor underneath the seat in front of where Mr. Ryan was located. There is no photograph of drugs on the floor in the seat in front of where Mr. Ryan was lying.

- [28] Cst. Hammond identified a photograph of the seat in front of Mr. Ryan. He described the photograph as showing five or six smaller than golf-ball sized baggies, as well as an empty sandwich bag. There is possibly another small bag with a white substance in it near the sandwich bag, but it is difficult to tell if it is the same as what is seen in the other picture.

Photographs taken at the police station

- [29] There are 53 photographs, each showing one small baggie on the police scale as they were being weighed and logged in by Cst. Hammond and Cst. Schneider as exhibits at the police station. There is no indication on these photographs from where the drug was seized or what drug it is suspected to be, nor could Cst. Schneider identify from where the drugs were seized nor the substance.
- [30] I note here that the photographs taken at the scene of the arrest show only six to eight small baggies of drugs. Other than what is shown in the photographs of the seats of the bus and Cst. Schneider's vague evidence that the drugs were "strewn about", there is no evidence of where the other 45 to 47 baggies of drugs were located in the bus. When asked if he located any other drugs from the bus apart from what was seen in the photographs, Cst. Hammond testified that he recalled there being some drugs on the floor near these two rows of seats, and he thought it was two or three bags of similar half-golf ball size, but he "can't specifically recall" and this was "just generalization from memory".

Major exhibits flowchart

- [31] Cst. Hammond was the person who logged data into the major exhibit flowchart as he and Cst. Schneider were processing the exhibits. The exhibit flowchart identifies the 6.43 grams of cocaine, 5.62 grams of methamphetamine, and 6.16 grams of fentanyl and caffeine as "seized from person", although Cst. Schneider did not recall that at the detachment she and Cst. Hammond noted what drugs were found on Mr. Ryan and which were in the bus.
- [32] There are some inconsistencies on the flowchart. The 6.16 grams of fentanyl are described as "liquid", but the sample taken from this is described as "rock" and is stated to be a sample of "Exhibit 3" instead of "Tag 3". There is a similar inconsistency in describing the exhibit and tag number for the methamphetamine. Cst. Hammond believed that the liquid notation was an error. He did not think any liquid was seized. In my view, these are simply data entry errors. Cst. Hammond agreed these were the only drugs seized from Mr. Ryan.
- [33] The major exhibit flowchart does not identify from where in the bus the 12.92 grams of methamphetamine, 21.99 grams of cocaine, and 9.15 grams of fentanyl and caffeine were seized. Cst. Hammond testified that, similar to the drugs seized from Mr. Ryan's body, the drugs seized from within the bus were separated by suspected type and not from where in the bus they were located. For example, the 9.15 grams of fentanyl and caffeine seized from somewhere in the bus is a collective of all of the fentanyl and caffeine found in the bus. For the two small baggies found on the bench where Mr. Ryan was seated, there is nothing in the

exhibit flowchart or Cst. Hammond's notes to specify what kinds of drugs those were, because the drugs found within the bus were aggregated.

- [34] There is no evidence at all of where the notebook with scoresheets was located. No data was extracted from the two cell phones. There is no evidence where the butane lighter was located, but a photograph shows it to be on the floor of the bus near a seat bench.

Sergeant Greg Woodcox

- [35] Sgt. Woodcox has been a member of the RCMP for 25 years and is currently stationed at the Kelowna detachment. He has been involved in over 9,000 investigations of drug offences and, since 2015 he has been the officer in charge of the Community Safety Unit in Kelowna. In this capacity, he deals with 100 to 200 people per day in the downtown core of Kelowna who are afflicted with homelessness, mental health struggles, and drug addiction. He was qualified to give expert evidence with respect to methamphetamines, cocaine and fentanyl in the areas of: prices and value; methods in packaging and concealment; methods in sale and distribution; methods in rates of consumption; and jargon. He described these in evidence for each of the drugs.
- [36] Sgt. Woodcox opined that the total amount of drugs seized from Mr. Ryan's person and from within the bus was consistent with possession for the purpose of trafficking. The factors which influenced his opinion are the amount of drugs seized, that three different drugs were seized, the packaging, and the scoresheets. He also considered the cash found, and although he mentioned the two cell phones, he said that this did not influence his opinion.
- [37] With respect to the total amount, he typically does not find the amount seized in this case on people in the downtown core of Kelowna. The biggest limiting factor for people he interacts with daily is money, so they tend to purchase just enough for what they need to use. If they do have money, they could purchase in a larger amount, but it would then usually not be packaged in smaller amounts. People also do not purchase large quantities because of the risk of arrest. With respect to packaging, the three drugs were in weights in which street-level purchases are typically made for a quick and easy transaction. With respect to fentanyl, another reason people on the street may not buy a large amount is that the quality is unknown. He agreed tolerance and the quality of drugs may affect the amount purchased and used.
- [38] A total of 15.31 grams of fentanyl was seized. Typical use is 0.4 to 1.0 grams per day (0.1 grams is a "point"), so this would be a 15-day supply. Fentanyl is typically purchased a point at a time. It is usually sold on the street for 0.1 grams, 0.25 grams, and one-gram packages. At mid-level, it is generally sold as an "eight-ball" (3.5 grams) or "half-ball" (1.7 grams). In this case, there were four half-balls seized in bags and some packaged in points and quarter points. The street value of the fentanyl seized was between \$1,000 and \$1,250.

- [39] A total of 28.42 grams of cocaine was seized. Typical use is one and two grams per day, although a person bingeing may use three to four grams per day. The people he deals with usually cannot financially continue to binge, as a gram is about \$100. A common purchase is 0.5 grams or one gram of powder cocaine or, for rock cocaine, \$20 or \$40 per rock, being just enough for personal use at a time. The total amount seized would supply a regular user for 15 to 30 days with no bingeing. If the person were a heavy user of three to four grams per day, it would be less. The street value is \$1,500 to \$1,800. The cocaine was packaged individually, in 15 to 18 separate plastic bags, in 0.5 grams, grams, half-balls, and one gram weights.
- [40] A total of 18.54 grams of methamphetamine was seized. Typical use is four to 10 points a day, two grams for a heavy user, and up to three grams if bingeing, although this would not continue for an extended period because of the effects of the drug. The amount seized would last a regular user 18 to 36 days at 0.5 grams per day. Routine purchases are one or two points and sometimes a gram. The street value of the amount seized is \$1,400 to \$1,850. The methamphetamine was packaged in "spit balls" and specific weights of typical purchases.
- [41] Sgt. Woodcox testified that another exhibit that was significant and "extremely helpful" to forming his opinion was the scoresheets seized. This is a method for drug traffickers to keep a shorthand coded log of what they sell. Sgt. Woodcox interpreted several of the entries in the scoresheets, all of which were consistent with the type of drugs, prices for that drug, weight, and jargon for that drug. Sgt. Woodcox assumed that the scoresheets were located on Mr. Ryan. When asked if there were no evidence that the scoresheets were on Mr. Ryan's person, whether it would weaken his opinion, he agreed it would, but said not significantly.
- [42] Sgt. Woodcox also opined that the \$780 in cash seized was suspicious because trafficking in drugs is a cash-only business. Low-level sales are often for \$10 or \$20, so, if many twenty-dollar bills are found, this is sometimes an indicator of the types of drugs sold. He does not often see one-hundred-dollar bills. He agreed people often carry cash for innocent reasons and the amount of cash seized, relative to the other investigations he has been involved in, was not high, and especially in relation to the quantity of the drugs seized. I note here that of the \$780 seized, \$250 was in fifty and one-hundred-dollar bills and the remainder almost entirely in twenty-dollar bills.
- [43] Sgt. Woodcox noted the two cell phones seized but said even though he noted it, everyone has a cell phone so it did not influence his opinion. No data was extracted from the cell phones and there is no evidence that the cell phones were operational.
- [44] Finally, Sgt. Woodcox noted that three types of drugs were seized, rather than just one. Traffickers will try to expand their commodities to open up to a larger consumer base. Having all three drugs is not consistent with typical personal use, but he agreed that polysubstance abuse can be present and it was more prevalent in 2017. It is not uncommon to see fentanyl addicts use a stimulant when they are experiencing withdrawal. He sees fentanyl use occasionally with methamphetamine, but rarely with cocaine. The people with

whom he interacts tend to stick to one drug.

- [45] Sgt. Woodcox agreed that items consistent with drug use were located in the bus. These were the sharps container and needles, a butane torch that could be used to heat the drugs, and a methamphetamine pipe which appeared to be used.
- [46] Sgt. Woodcox also agreed that items which are often found in trafficking investigations were not located. No scales (which are found in about 75 percent of cases), weapons, or packaging material (such as spare dime bags or paper flaps), were located in the bus.
- [47] Sgt. Woodcox testified that often street-entrenched drug addicts will traffic to support their own habit. These are people who are on social assistance and, on cheque day, may buy a larger amount to "buff" it or break it down to smaller packages and sell it. However, they also may be chronic users. Sgt. Woodcox volunteered that he recently arrested a chronic user who had bought 26 grams for personal use.
- [48] Sgt. Woodcox stated that if only the 6.16 grams of fentanyl were seized and there were no other factors, that could "absolutely be a possession situation", by which I understood him to mean consistent with possession only. He testified this would be especially in the presence of personal drug-use paraphernalia. Similarly, if only 6.43 grams of the cocaine were seized, this could be consistent with personal use. Similarly, if only 5.62 grams of methamphetamine were seized, this could also be consistent with possession for personal use, unless it were broken down into separate packages. If there were four approximate 1.8 gram baggies, it would point more definitely to possession only.
- [49] Sgt. Woodcox opined that if all three drugs in these amounts were found on Mr. Ryan's person alone, it could be consistent with possession for personal use. In yet another hypothetical, he opined that if the three amounts found on Mr. Ryan were assumed and there were no scoresheets, but there was cash and personal-use paraphernalia, he agreed that this could be consistent with personal use, and volunteered "especially because there was another person in the bus". If two half-balls of cocaine were added to that assumption, it would not change his opinion.

Legal Principles

- [50] To find an accused guilty of possession for the purpose of trafficking, the Crown must prove beyond a reasonable doubt that:
- a) the substance was a controlled substance, as defined in the schedules of the CDSA;
 - b) the accused was in possession of the substance;
 - c) the accused knew the nature of the substance; and
 - d) the accused possessed the substance for the purpose of trafficking.

[51] Section 2(1) of the CDSA adopts the definition of possession set out in s. 4(3) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Possession is defined in the Code as follows:

4(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.

[52] Section 4(3) of the Code identifies three forms of possession: personal, constructive, and joint. The two forms of possession in issue in this case are personal and constructive.

[53] Crown counsel relies upon s. 4(3)(a) of the Code to establish that Mr. Ryan was in personal possession of the drugs found on his body. Personal possession requires actual physical possession, together with knowledge and control. An accused has something in his or her physical possession when it is on his or her body, such as in a clothing pocket or in something he or she is carrying: *R. v. Nazarek*, 2017 BCSC 1909 at para. 14.

[54] Crown counsel relies upon s. 4(3)(a)(ii) to establish that Mr. Ryan had constructive possession over the drugs seized from somewhere in the bus. In *R. v. Ahmadzai*, 2012 BCCA 215 at para. 26, Madam Justice MacKenzie referenced *R. v. Morelli*, 2010 SCC 8, in setting out the test for constructive possession under s. 4(3):

[26] Proof of manual handling of a prohibited item or substance is not required to prove constructive or joint possession under s. 4(3). Rather

[Delivery of reasons interrupted by crashing noise, followed by brief discussion of the noise.]

[26] Rather, to prove constructive possession, the Crown must prove beyond a reasonable doubt that the accused had knowledge of the nature of the prohibited item or substance and some measure of control over it. In *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, Fish J. for the majority said:

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.

- [55] In *R. v. Webster*, 2008 BCCA 458 at para. 42, Mr. Justice Frankel expanded on the meaning of consent and control in the context of possession. He stated that for a person to be deemed in possession of an item, it is not necessary that the person has exercised power over the item. Rather, all that is required is an ability to exercise some power. Possession does not require a propriety interest in the item: *R. v. Arason*, 1992 CanLII 1008, 78 C.C.C. (3d) 1 (B.C.C.A.).
- [56] Knowledge and control may be proved either by direct and/or circumstantial evidence. In the absence of a credible explanation, an inference of knowledge may be properly drawn from circumstantial evidence: *R. v. To*, 1992 CanLII 913, 16 B.C.A.C. 223 at paras. 38-39.
- [57] In this case, there is direct evidence of Mr. Ryan being in personal possession of the drugs found in the clothing he was wearing.
- [58] However, the evidence with respect to the drugs in the bus is entirely circumstantial. As a result, I am guided by the principles in *R. v. Villaroman*, 2016 SCC 33 [Villaroman]. When the Crown's case is based on circumstantial evidence, "an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits": Villaroman at para. 30.
- [59] The court must not examine each individual circumstance in isolation. The proper approach is to consider all the evidence together, and if considering all of the evidence there are reasonable inferences that can be drawn other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt: Villaroman at para. 35. Inferences that may be consistent with innocence do not however, have to arise on proven facts. Requiring proven facts to support explanations other than guilt "wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence": Villaroman at para. 35. A theory alternative to guilt is "not rendered "speculative" by the mere fact that it arises from a lack of evidence", as a reasonable doubt may properly be based on evidence or a lack of evidence: Villaroman at para. 36.
- [60] When assessing circumstantial evidence, the trier of fact should consider other plausible theories or reasonable possibilities that are inconsistent with guilt. However, such plausible theories or reasonable possibilities "must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation": Villaroman at para. 37. The line between "plausible theory" and "speculation" is not always easy to draw, but "the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty": Villaroman at para. 38.

- [61] Alternative inferences to guilt "must be reasonable, not just possible": Villaroman at para. 42. A reasonable doubt "cannot arise from speculation or conjecture": Villaroman at para. 50. Accordingly, the Crown may need to negative reasonable inferences other than guilt arising from circumstantial evidence, but does not need to negate "every possible conjecture, no matter how irrational or fanciful": Villaroman at para. 37.

Analysis

Did Mr. Ryan possess the drugs found on his person?

- [62] The Crown has established beyond a reasonable doubt that Mr. Ryan possessed the drugs found on his person. I do not find the data entry errors in the major exhibit flowchart raise a reasonable doubt regarding what was seized from Mr. Ryan's person.

Did Mr. Ryan possess the drugs found within the bus?

- [63] Crown counsel argues that the only reasonable conclusion is that Mr. Ryan was in possession of the drugs in the bus. Crown counsel refers to Mr. Ryan's proximity to the drugs found on the seat where he was lying and that there is no evidence of anyone else being in those seats. Crown counsel also refers to Mr. Ryan fidgeting after the officers issued the demands to leave the bus and argues the only logical conclusion is that Mr. Ryan was trying to rid himself of drugs and that he was aware they were there. Crown counsel also argues that Mr. Ryan was found with personal possession of smaller amounts of the same types of drugs found in the bus.
- [64] The Crown argues it is not reasonable to conclude that the female was in possession of the drugs because she was in the back of the bus propped up in what appeared to be her belongings, and she was not seen by the officers where Mr. Ryan was lying. Crown counsel argues that if the drugs were hers, and given their value and that she appeared to be street entrenched, it makes no sense that she would be at the back of the bus and leave the drugs near Mr. Ryan. Further, she did not appear to be startled when Cst. Hammond approached the bus.
- [65] Defence counsel argues that there are reasonable inferences other than that Mr. Ryan was in possession, which are not conjecture or speculation. Counsel argues that it is reasonable to conclude that the female was in possession of the drugs. The female was found awake on the bus. In contrast, when the police arrived and began issuing demands to Mr. Ryan, he was unresponsive with his feet sticking out. The rational inference is that he was sleeping at the time. It appeared that the female had been using drugs. There was a sharps container beside her.

- [66] Defence counsel argues that the female was in close proximity to the drugs that are identified. There was only five feet between her and Mr. Ryan and, at most three more feet to the bench seat in front of him. There is also evidence that tied the female to the seat in front of Mr. Ryan. The plastic bag seen in the photos on the bus floor appears to contain female toiletries. There is no suggestion the female abandoned the drugs. She was five feet from Mr. Ryan and about eight feet from the seat in front of Mr. Ryan.
- [67] Defence counsel argues that there is also no convincing evidence of a search of the female. There is no evidence of a search of her backpack. Cst. Schneider agreed that the backpack was the female's backpack and that she did not search it.
- [68] Defence counsel argues that despite the evidence of fidgeting, there is no evidence from the police officers that they saw Mr. Ryan reaching to another seat, or to the floor of the bus or that he tossed anything to another seat. There is nothing to tie Mr. Ryan to the seat in front of him. There was no male clothing or identification, or fingerprints on that bench seat. There is no evidence as to how long Mr. Ryan had been in the bus.
- [69] Considering the evidence as a whole, I conclude that the evidence does not establish that the only reasonable inference is that Mr. Ryan was in possession of the drugs seized from within the bus. I rely upon the following facts:
- a) There is no evidence the bus was owned or driven by Mr. Ryan or, equally, the female;
 - b) Other than the two small baggies located on the seat on which Mr. Ryan was located and the five or six small baggies in the seat in front of him, there is no evidence at all of where the other drugs were located. The photographs show there were 53 baggies seized from somewhere. The only pictures taken of drugs in the bus were of those two seats. Neither police officer has any notes or a recollection of specifically where those drugs were found. Their evidence was very vague. In the pictures showing the back of the bus and looking forward to the front, I am unable to see drugs anywhere, except the 11 small baggies that were apparently seized from somewhere in the bus, or possibly Mr. Ryan, and gathered on the ledge of the exit. The other drugs could have been hidden; they could have been under the female's belongings; or they could have been found immediately beside the female;
 - c) There is evidence suggesting that the female was near the bench in front of Mr. Ryan. There is a plastic bag containing female toiletries, for example lipstick, underneath that seat. There is nothing tying Mr. Ryan to that seat other than his proximity to it while he appears to have been sleeping. I note again there is no photograph of drugs under that seat. It is possible the drugs were taken by the female from her person and placed on the seat in front of Mr. Ryan while he was asleep;
 - d) Mr. Ryan fidgeting is just as consistent with Mr. Ryan trying to hide the drugs which were on his person, as with hiding other drugs in the bus or with fidgeting because he had a leg cramp. Further, the officers did not see Mr. Ryan put anything on the floor of the bus or on another seat;

- e) The distance between the female and the drugs where the location is known is at most eight feet and as little as five feet. Given that Mr. Ryan appears to have been sleeping and the female was awake, it is entirely possible the female would not be concerned to have the drugs immediately beside her;
 - f) While there is evidence of Mr. Ryan being in personal possession of the three types of drugs found in the bus, because the drugs were aggregated and were not identified when they were logged in as exhibits and weighed, there is no evidence of the type of packaging of the drugs that were on Mr. Ryan's person. There is no evidence if these were in point packages or larger; and
 - g) While there is no evidence the female was startled, neither is there evidence that Mr. Ryan was startled.
- [70] There are other reasonable conclusions that are inconsistent with Mr. Ryan being in possession of the drugs. For example, as defence counsel argues, that the female was in possession of the drugs.

Did Mr. Ryan possess the drugs found to be possessed by him for the purpose of trafficking?

- [71] Having concluded that Mr. Ryan was not in possession of the drugs within the bus, I must consider whether for the drugs that I do find that were in his possession, being the drugs on his person, the only reasonable inference is that Mr. Ryan was in possession of those drugs for the purpose of trafficking.

[72] The definition of traffic is set out in s. 2(1) of the CDSA:

traffic means, in respect of a substance included in any of Schedules I to V,

- (a) to sell, administer, give, transfer, transport, send or deliver the substance,
- (b) to sell an authorization to obtain the substance, or
- (c) to offer to do anything mentioned in paragraph (a) or (b),

otherwise than under the authority of the regulations.

- [73] Crown counsel relies upon Sgt. Woodcox's opinion that, considering the quantity of the drugs seized, the cost to purchase those drugs, the packaging, typical purchase and consumption patterns, and the three different drugs, that this was consistent with possession for the purpose of trafficking. The difficulty is the Crown has not proved that Mr. Ryan was in possession of that quantity of the drugs. Nor does the evidence establish how the drugs found on Mr. Ryan's person were packaged. Crown counsel acknowledges that some typical indicia of trafficking, being scales and baggies were not present, but the lack of these does not necessarily take away from Sgt. Woodcox's opinion. There were still multiple baggies of drugs. Crown counsel acknowledges that Sgt. Woodcox placed weight on the scoresheets. He assumed the scoresheets were located on Mr. Ryan's person. The Crown argues that if the scoresheets were somewhere else, then it would weaken Sgt. Woodcox's

opinion, but not significantly.

- [74] Defence counsel argues that, on the hypotheticals provided to Sgt. Woodcox, based on the amount of drugs on Mr. Ryan's person plus cash, Sgt. Woodcox opined the amounts could be consistent with personal use. Counsel acknowledges that Sgt. Woodcox's opinion is of course not determinative, and that it is the court that decides the issue on the whole of the evidence. Counsel also refers to the absence of other indicia of trafficking, such as scales and extra drug packaging. Further, no search was done of the female's backpack. He argues those items could have been in the female's backpack. Finally, counsel emphasizes that there is no evidence that the scoresheets were on or near Mr. Ryan.
- [75] Considering the evidence as a whole, I conclude that the evidence does not establish beyond a reasonable doubt that the only reasonable inference is that Mr. Ryan was in possession of the drugs on his person for the purpose of trafficking. I rely upon the following facts:
- a) There is no evidence at all of where the scoresheets were located. Again, looking at the photographs, I cannot see the notebook anywhere in the bus, other than when it was gathered at the police station. There is no evidence it was near or on Mr. Ryan's person. It could have been immediately beside the female. There is nothing tying Mr. Ryan to the scoresheets. There is no evidence that scoresheets were in Mr. Ryan's handwriting or had his fingerprints;
 - b) I acknowledge that Mr. Ryan was in possession of three different amounts of drugs. However, the packaging of the amounts seized from Mr. Ryan is not in evidence. It is not known if these were packaged in individual points or were in larger quantities;
 - c) It is possible Mr. Ryan uses all three drugs at different times or some together;
 - d) There was evidence of personal drug use in the bus. For example, the drug pipe was found on the seat where Mr. Ryan was located;
 - e) There is no evidence of other indicia of trafficking, such as scales or extra packaging material;
 - f) The female's backpack was not searched and it is possible she had scales and other indicia of trafficking in it;
 - g) The amount and denomination of money is suspicious. There was \$780 seized, and \$250 of that was in fifties and a one-hundred-dollar bill, and the remainder almost entirely in twenty-dollar bills, but suspicion alone is not adequate; and
 - h) There were two cell phones present, but there is no evidence they were operational or ringing while the officers were present.

- [76] Finally, I have considered Sgt. Woodcox's opinion regarding the hypotheticals put to him in cross-examination. The amounts, without the evidence of the scoresheets on Mr. Ryan's person and "especially with another person present", as Sgt. Woodcox volunteered, could be consistent with personal use.
- [77] Considering the totality of the evidence, I am not persuaded that the only reasonable conclusion is that Mr. Ryan was in possession of the drugs on his person for the purpose of trafficking.
- [78] Mr. Ryan, please stand.
- [79] Based on my review of the whole of the evidence, I am not satisfied beyond a reasonable doubt that the only reasonable inference is one of guilt in relation to the three charges of possession for the purposes of trafficking: for cocaine, Count 1; methamphetamine, Count 2; and fentanyl, Count 3, and I find you not guilty on those charges. However, I find you guilty on the included offences on each of those counts of possession of cocaine, methamphetamine, and fentanyl in relation to the drugs found on your person, contrary to s. 4(1) of the CDSA.
- [80] You may sit down, sir.
- "Norell J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/26/2021BCSC2665.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-ryan-2021>

Prepared on 27 October 2026 · Esheria