

CANADA / JUDGMENT

R. v. Sandhu

2025 BCSC 1329

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1329 R. v. Sandhu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sandhu,

2025 BCSC 1329

Date: 20250704

Docket: 35074

Registry: Vancouver

Rex

v.

Dilpreet Singh Sandhu

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

Counsel for the Crown:

J.R. Marin

K. Wu

Counsel for the Accused:

J. Wandler

Place and Date of Trial:

Vancouver, B.C.

April 7-11,14,15,17, 22- 25,

May 6- 9, June 2- 4,10-11, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 4, 2025

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INTRODUCTION

[1] In the early morning hours of September 2, 2021, a Jeep Cherokee was being driven down Cypress Bowl Road. It went off the road at a hairpin corner, hit a tree, and rolled. Two of the occupants, Sidhant Garg and Kulbir Singh, were killed, and another, Arshdeep Sandhu, was injured. Dilpreet Singh Sandhu is charged with impaired driving and dangerous driving causing death and bodily harm.

- [2] The events of September 1 to the early morning hours of September 2, 2021, involve a group of young men, many of whom share the same first and last names. For clarity in these reasons for judgment, I will refer to some of the witnesses by their first names or the names they go by. I do not mean any disrespect in doing so. I will further, for ease of reference, refer to the incident as occurring at night even though most of the events occurred in the early morning hours of September 2, 2021. Finally, two of the witnesses share the same last name as the accused. When I refer to Mr. Sandhu, I mean the accused.
- [3] The events leading up to the incident are not in dispute. A group of about 12 to 15 young men gathered to celebrate Sidhant Garg's 21st birthday. The party started at a house in Delta where some of the young men lived. Most gathered there shortly before midnight on September 1. They then went to the parking lot of Strawberry Hill Shopping Plaza in Surrey, where the party continued. They ate. Some drank alcohol. Some smoked marijuana. A few smoked heroin.
- [4] From the shopping centre, the men decided to go to the lookout on Cypress Mountain in West Vancouver. There the party continued. Some drank. Some smoked or ingested marijuana. A few smoked heroin.
- [5] The deadly collision occurred as the group left the Cypress lookout.
- [6] The young men were travelling in three vehicles - the Jeep Cherokee owned by Harmandeep Brar (Harman), a Jeep Wrangler owned by Sidhant Garg, and a Dodge Challenger owned by Sahijdeep Sandhu (Sahij).

ISSUES

- [7] The first issue to be decided is whether the Crown has proved beyond a reasonable doubt that Mr. Sandhu was driving the Cherokee at the time of the collision. If the answer is no, then I must acquit Mr. Sandhu of all charges. If the answer is yes, then I must go on to consider whether the Crown has proved beyond a reasonable doubt:

- 1) that Mr. Sandhu was driving while impaired;
- 2) that Mr. Sandhu was driving with a blood-alcohol level of .08 or greater, and
- 3) that Mr. Sandhu was driving dangerously,

and caused the deaths and bodily harm.

ISSUE 1: HAS THE CROWN PROVED BEYOND A REASONABLE DOUBT THAT MR. SANDHU WAS DRIVING?

- [8] Credibility and reliability of the witnesses is a significant issue. In *R. v. H.C.*, 2009 ONCA 56, Watt J.A. for the Court defined the two concepts:

[41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

i. observe;

ii. recall; and

iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514, at 526 (C.A.).

[9] Considerations in assessing a witness's credibility and reliability include internal consistency (that is, consistency throughout their evidence), consistency over time (including accounts made outside of court to police and others), corroboration or external consistency with other evidence, any interest the witness may have in testifying, including motive to lie, and whether the witness is independent.

[10] In a case such as this, the Court must try to determine who and what to believe and who and what not to believe. I can accept some, all, or none of each witness's evidence. In some cases, the issue of credibility cannot be resolved, in which case the benefit of the doubt must be resolved in favour of the accused. A reasonable doubt can arise from the evidence, a conflict in the evidence, or a lack of evidence: *R. v. Gaglardi*, 2022 BCSC 1681 at para. 48.

[11] In order to decide whether the Crown has proved that Mr. Sandhu was the driver, I must consider the evidence on this point in detail. As I do, I will address the credibility and reliability of each witness's evidence.

The Evidence

Cst. Chow

[12] Investigating officer, Cst. Jarrett Chow, arrived on the scene at approximately 4:01 a.m. He saw the overturned Cherokee in the ditch and a couple of cars parked on the same side of the road as the Cherokee. Fire and ambulance personnel were present. Firefighters were attempting to extract a person from the Cherokee. Paramedics were tending to a person on the ground. There was another body on the ground not being tended to. A group of young males were off to the side of the road; some were standing, others kneeling.

[13] At 4:14 a.m. Cst. Chow noticed a young male standing by himself. He had what the officer described as a "large hole" on the right side of his neck; "toonie size width and depth." This was Mr. Sandhu. Cst. Chow approached and asked if he was okay. When the officer asked if he was driving, Mr. Sandhu responded, "I am driving," a pause, then, "I don't remember." The officer repeated the question several times. Mr. Sandhu responded the same way each

time. According to the officer, on each occasion, during the pause, Mr. Sandhu gestured toward or looked at the collision scene.

- [14] Cst. Chow testified that he detected the odour of liquor on Mr. Sandhu's breath and body. He asked Mr. Sandhu if he had been drinking. Mr. Sandhu responded that he had had "some beer." The officer asked Mr. Sandhu if he had his driver's licence. According to the officer, Mr. Sandhu made motions as if to look for it, said that it was in the car, then started to walk toward the overturned Cherokee. Cst. Chow stopped him.
- [15] Based on Mr. Sandhu's responses and the odour of liquor, Cst. Chow testified that he formed the opinion that Mr. Sandhu had been driving the Cherokee at the time of the collision. He detained Mr. Sandhu for impaired driving causing death and impaired driving causing bodily harm.
- [16] Concerned about the neck wound, Cst. Chow accompanied Mr. Sandhu into the back of an ambulance, where he was examined by paramedic Scott Itterman. He then accompanied Mr. Sandhu by ambulance to Lion's Gate Hospital.
- [17] I have trouble with Cst. Chow's evidence for several reasons. First, his opinion that Mr. Sandhu was the driver was formed hastily, without a full consideration of the circumstances, and was based on assumptions. Mr. Sandhu's responses to the question as to whether he was driving were equivocal at best. He used the wrong tense ("I am driving") and followed that up on each occasion with "I don't remember." When questioned about the use of the wrong tense, the officer testified that he assumed that Mr. Sandhu meant that he had been driving because when he arrests people in Surrey, they use the wrong tense. And he assumed the "I don't remember" to mean that Mr. Sandhu did not remember the accident. Cst. Chow also testified that the way Mr. Sandhu was pacing back and forth, looking at the collision scene and then away, was a sign that he had been driving, as that is how he (Cst. Chow) looks when he makes a mistake.
- [18] When assessing the words spoken by the accused, Cst. Chow failed to consider Mr. Sandhu's mental state at the time. In his testimony, Cst. Chow refused to acknowledge that there was a possibility that Mr. Sandhu was in shock and therefore was confused. Instead the officer insisted that Mr. Sandhu was merely in disbelief that the collision happened and that he was responsive and capable of answering questions. That is not just contrary to the evidence of paramedic Mr. Itterman, who testified that Mr. Sandhu was in shock and was confused; it is also contrary to Cst. Chow's evidence in voir dire #1, where the officer testified that he observed signs that Mr. Sandhu was confused and was struggling to process what he was being asked. When that contradiction was put to Cst. Chow in cross-examination and he was asked whether he now agreed that Mr. Sandhu had appeared confused, Cst. Chow responded, "Sure."

- [19] This was not the only contradiction between Cst. Chow's evidence at trial and on the voir dire. At trial, Cst. Chow testified that Mr. Sandhu had an accent, but it was not thick, and that it was not difficult to understand him. On the voir dire, the officer testified that Mr. Sandhu's accent was very thick and that he was difficult to understand at first.
- [20] Finally, Cst. Chow's evidence that the odour of liquor can more easily be detected on a person in open air than in a closed space not only defies common sense, it does not fit with the evidence from Mr. Itterman, and even the police officer himself, that no odour of liquor was detected on Mr. Sandhu in the back of the ambulance.
- [21] For the reasons above, I find that there are problems with the credibility and reliability of Cst. Chow's evidence.

Arshdeep Devgun

- [22] Arshdeep Devgun was Sidhant Garg's friend. He did not know the other men well. Mr. Devgun knew Mr. Sandhu through Sidhant. Mr. Devgun had met Mr. Sandhu twice a couple of months before the night of the incident. Each meeting was "quite short," possibly 10 to 15 minutes. He testified that he would recognise Mr. Sandhu. Mr. Devgun pointed him out in court and stated that he looked slightly different - his hair is different and he thinks that he has "kind of gained weight." There was no evidence that Mr. Sandhu's appearance had changed since the incident.
- [23] Mr. Devgun testified that he had been drinking beer, smoking marijuana, and doing heroin that night. He was high when they left the lookout on Cypress Mountain. In cross-examination, he agreed that everything was a blur at the time they left Cypress and that he was feeling dizzy and disoriented.
- [24] Mr. Devgun testified that he left the Cypress lookout in the Cherokee. He was sitting with his seatbelt on, directly behind the driver's seat in the middle of three rows. Sidhant was sitting beside him. Harman was in the front passenger seat. He thinks Mr. Sandhu was driving. There were two more people in the third row - Arsh Sandhu and another man that he cannot remember.
- [25] Mr. Devgun said that when the Cherokee left the lookout, he was looking at his phone. The Cherokee overtook the Challenger, which was in front of them. It was fast and really dark. He shifted in his seat to see the speedometer. It said 100 km/h. Suddenly, there was a hairpin corner. By the time the driver applied the brakes, it was too late. The Cherokee went off the road into a ditch. It rolled and landed on its roof.
- [26] In direct examination, Mr. Devgun testified that he thinks the accused was the driver because he saw his face when he looked at the speedometer and because he saw the accused at the hospital and he had a "little bit of an injury" on his forehead. Mr. Devgun thinks the accused got that injury from the steering wheel. I pause to note that Mr. Devgun testified that he too had a "minor scratch" on his forehead.

- [27] In cross-examination, Mr. Devgun testified that he was guessing that the driver was the accused as he only got a "brief glimpse" and "only saw the back of the guy."
- [28] Mr. Devgun took a short video with his phone when the group was at the lookout. He identified a number of people in it. He also identified the car in the video as the Cherokee. A frame in the video shows a figure standing beside the driver's door of the Cherokee. It is dark out, and the video is dark and blurry. It is impossible to make out any features of the man. Mr. Devgun testified that he thinks that it is the accused but cannot be sure because the video is blurry. He said that he thinks it is the accused because of his "body structure, his physique." I pause to note that it is hard to make out either in the video.
- [29] Mr. Devgun says that he drank two beers, smoked marijuana, and used heroin that night. He smoked heroin at the Strawberry Hill Plaza and at the lookout. He testified that he was feeling dizzy and was disoriented at times. He was quite tired. He does not recall what car he was in from the house party to Strawberry Hill Plaza or from the Plaza to Cypress Mountain.
- [30] He was shown a video taken from inside a moving car. Only the right ear and the right-most portion of the right side of the driver's face is visible. Mr. Devgun testified that the car being overtaken in the video was the Dodge Challenger. He was unable to recognize the driver from the video. He does not know who took the video.
- [31] In cross-examination, Mr. Devgun testified that he saw Mr. Sandhu being led away by police at the hospital. He agreed that that strongly influenced his conclusion that Mr. Sandhu was driving. When it was put to him that Mr. Sandhu was sitting in the third row of the Cherokee when it left the lookout, Mr. Devgun responded that he did not see who was sitting where, so maybe.
- [32] I find that Mr. Devgun was trying to be truthful. By Mr. Devgun's own admission, he is only guessing that Mr. Sandhu was driving.

Arshdeep Sandhu

- [33] Arshdeep Sandhu (Arsh) is the accused's cousin. Their families lived together in India growing up.
- [34] Arsh hosted the birthday party for Sidhant. He lived in the house in Delta. Arsh testified that he had three beers at his house and was intoxicated. He claims that he has little to no memory of the night, as he was dizzy, intoxicated, and tired. Arsh said that he was in the back of the Cherokee on the way down Cypress from the lookout. He was sleeping, so he did not see anyone else in the vehicle. He heard Kulbir's voice. It sounded like it was close to him. Kulbir could have been next to him or in front of him. He has a memory gap. The next thing he remembers is waking up in the hospital. He was in the hospital for 10 days with three fractures: femur, arm, and pelvis. He had surgery on his leg. He has fully recovered.

[35] At the hospital, Arsh was interviewed by police. Arsh told police that he was sitting in the rear of the Cherokee and Harman was driving. He said that Arsh said that he does not recall talking to police at the hospital as he was "feeling dizziness because of the medications."

Harmandeep Brar

[36] Harmandeep Brar (Harman) moved away from the lower mainland shortly after the accident due to the "mental stress."

[37] It was his brand-new Jeep Cherokee that was involved in the collision. He had just purchased it about a month prior.

[38] Harman got to the party in Delta close to midnight. He did not consume any alcohol or drugs at the house. He does not recall which car he travelled in to Strawberry Hill Plaza. In the parking lot of the Plaza, they ate food, and he smoked marijuana. Harman recalls being in his car, the Cherokee, on the way to Cypress. He guesses that he was driving but says that it was a long time ago and he was high on weed, so can not be 100 percent sure. In his car were Sidhant, Akash, Mr. Sandhu, and two to three others. He can not recall who.

[39] At the lookout, he smoked some more marijuana.

[40] He recalls leaving the lookout. He testified in direct examination that he was in his car, the Cherokee, sitting in the middle row. He testified that he now recalls that Akash was beside him and Arsh was in the back row. Mr. Sandhu and "Gypsy" were in the Cherokee as well, but he is not sure where. He testified that he cannot remember who was driving.

[41] Throughout his direct evidence, Harman continually answered questions with "I cannot be 100% sure," "I was high," and "it was a long time ago." He claims that he was "having hallucinations" from drugs. He repeated several times that he is not sure of anything because of the mental trauma and because he was high that night and was hallucinating. The whole incident has faded in his memory. He just recalls "flashes." Harman defined hallucinations as misunderstanding what people are saying and doing.

[42] The Crown attempted to refresh Harman's memory with a statement he provided to police on October 27, 2021, about two months after the incident. Harman testified that he was trying to tell the truth to police and was doing his best to remember things. Harman claimed that reviewing his statement did not refresh his memory. Of most significance, he claimed that even after reviewing his statement, he was still not sure of the seating arrangement in the Cherokee or who was driving on the way from the lookout, as he was high on weed.

[43] The Crown then applied to introduce Harman's statement as past recollection recorded. In order to be successful, the Crown had to satisfy the Wigmore criteria:

- 1) the past recollection must have been recorded in some reliable way;
- 2) at the time, it must have been sufficiently fresh and vivid to be probably accurate;

- 3) the witness must be able now to assert that the record accurately represented his knowledge and recollection at the time. The usual phrase requires the witness to affirm that he "knew it to be true at the time"; and
- 4) the original record itself must be used, if it is procurable.

[44] The first and last criteria were not in issue.

[45] The video of Harman's statement to police was played in court. Harman seemingly confidently answered questions regarding the events of the night. He drew diagrams of his car showing the occupants, including who was driving, going to Cypress, and leaving the lookout, without hesitating or pausing. After he gave the statement, he compared the transcript to the audio/video recording of it and made corrections, which he provided to police. In the statement, Harman told police that the accused was driving and that he (Harman) was sitting in the front passenger seat.

[46] With respect to the third criterion, Harman testified that he was trying "to do his best to remember things" and tell the truth. It appeared that he was being careful to tell the police officer when he was less than certain about things.

[47] Regarding the final criterion, based on the video, I was satisfied that the statement was "sufficiently fresh and vivid to be probably accurate." Accordingly, I allowed Harman's statement to police into evidence as past recollection recorded.

[48] The finding of "probably accurate" was a threshold finding, made before hearing cross-examination. The question is what weight can be attributed to that statement, having regard to all of Harman's evidence.

[49] In cross-examination, Harman said that during the night, he was taking edibles as well as smoking weed. He changed the meaning of hallucinating to include seeing things that are not there and that his perception of things is distorted. He gave the example of if four guys were dancing, he might think that they were fighting. He also added that he did heroin that night and was "extremely high." He testified that he has talked to others about what happened, including that Mr. Sandhu had been taken away by police. He testified that those conversations influenced his memory of what happened, maintaining that his memory was "quite blurry." He said that he has suffered emotionally since the incident. He moved away from the Lower Mainland within 10 days of the collision to try to escape. He has been depressed. He spent the two months prior to the police interview trying to forget that night. He was using drugs and "quite a bit of alcohol."

[50] Harman testified that he has concerns about stating definitively in court who was driving because his memory about that has always been uncertain.

[51] Harman testified that at the time of the statement, he was worried that he would be held liable for the damage to his vehicle and ICBC would not cover him. He had just bought the Cherokee about a month before and owed over \$100,000. He was concerned that he would

be found liable for the collision. He believed that he had to name a driver. He testified that when he was speaking to the police, he did not want them to think that he was driving. In cross-examination, he agreed that he does not have to worry about insurance consequences now because it has been a few years.

- [52] Harman testified that he did not want to speak to police. He said that he was stressed and nervous during the interview, but he did his best to hide that from the police officer. He testified that he felt that he had to answer the police officer's questions even if he was not sure. In cross-examination, Harman said that when he was speaking to the police he was not sure who was driving, despite naming Mr. Sandhu. At the time of the statement, he knew that Mr. Sandhu had been charged. He felt pressure to name him as driver. Harman testified that his memory of who was driving has always been "very uncertain" because he was "extremely high and was hallucinating." In court, Harman maintained that he did not know who was driving even after reviewing his statement, the diagram he drew, and being warned about the consequences of lying under oath.
- [53] Harman admitted that he was not being truthful in his statement when he told police that he had not been drinking that night. He did not want the police to know he was drinking because he did not want to be held responsible for the \$100,000 debt or be charged with any offence.
- [54] I am left with concerns about the credibility and reliability of Harman's evidence. His evidence at trial conflicts with what he told the police. He admitted lying to police so he would not get into trouble. He maintains that he was impaired by drugs to the point that he was hallucinating. I agree with the Crown that Harman has an imperfect memory of the night. I disagree that he was being careless in cross-examination and was re-traumatized by having to relive the incident. I find that Harman was being untruthful with this court and in the police statement. Harman's evidence lacks credibility.

Sahijdeep Sandhu

- [55] The evidence regarding the relationship between Sahij and the accused is unclear. Sahij testified that the accused is his paternal uncle's son, but then said that they were not related. He described the accused as an acquaintance. Where he was living in September 2021 is also somewhat unclear. Sahij said that he was living in Winnipeg but was in Vancouver to buy a car. He was staying with his friends in Delta - the house where the birthday party was - and had been there for a couple of months and was working at a warehouse in the Lower Mainland.
- [56] On the night of the party, he worked until 11 p.m. There were about 10 to 15 guys at the house when he got home. He drank beer. He had only consumed alcohol once or twice in his life before. He also had a "puff" of marijuana. He described himself as "very high."

- [57] He travelled to the Plaza in his car, the Challenger. He was not driving because he had been drinking and was high. He did not want to go to Cypress Mountain as he was tired, but they needed his car. He was not asked about who was driving the Cherokee.
- [58] Overall his evidence was vague. It does not assist with respect to identifying the driver of the Cherokee.

Harjeet Sandhu

- [59] There is no evidence that Harjeet Sandhu is related to the accused or Arshdeep Sandhu. He was referred to by other witnesses as Harj.
- [60] Harj arrived at the party in Delta around 11 p.m. He only knew three or four people there, including Mr. Sandhu, Harman, and Jatan. Harman and Sidhant were his childhood friends.
- [61] He thinks that Sidhant was at the party with his friend, Mr. Sandhu. Harj did not know Mr. Sandhu. From the house party, they then went to a parking lot to eat and then went to Cypress. Harj does not remember being at the parking lot. Crown counsel asked him about the parking lot in pre-trial interviews.
- [62] Harj testified that he was completely sober. He did not consume any alcohol or drugs.
- [63] He left the Cypress lookout in the Wrangler. Yasheen Sharma was driving. Jatan Singh and Daman were also in the Wrangler. Jatan passed away in July 2024. Yasheen did not testify. Harj does not recall where he or the others were sitting. Harj testified that Mr. Sandhu, Harman, and Kulbir were in the Cherokee leaving the lookout, but he said that he was not really paying attention. He thinks Mr. Sandhu was in the Cherokee but only thinks that because he was not in the Wrangler. He said that the Cherokee left the lookout first, the Challenger second, and the Wrangler last. All of a sudden the Challenger stopped, then they stopped. The Cherokee was off the road, flipped onto its roof. Sidhant was on the road. Harj could tell he was dead. He went into shock. He sat on the side of the road and started crying.
- [64] In cross-examination, Harj testified that his memory of the event is poor. It was four years ago, and he has tried to forget about it as it is very traumatic. After the incident, Harj did not go to work for a month or two. He started drinking heavily in an effort to forget. He drinks almost every day. He also moved away from the Lower Mainland.
- [65] His evidence is of questionable reliability and is of limited assistance with respect to who was driving the Cherokee.

Damanjot Singh

- [66] Daman testified that he was tired that night and spent the time at the lookout sleeping in the Wrangler. He was in the Wrangler leaving the lookout. He said that Harjeet was driving, Jatan was in the front passenger seat, and he, Gurnoor, and Yasheen were in the back. He claims to have a clear memory of who was in the Wrangler as it left the lookout. He does not, however, recall who was in it on the way to the lookout. He further claims that he did not see who was in the other vehicles.
- [67] I note that Harjeet Sandhu testified that Yasheen was driving the Wrangler.

Paramedic Scott Itterman

- [68] Paramedic Scott Itterman attended the scene of the collision. At the request of Cst. Chow, Mr. Itterman examined Mr. Sandhu in the back of the ambulance. The police officer was present.
- [69] Mr. Itterman described Mr. Sandhu as shell-shocked, dazed, confused, and calm but in a state of confusion; "alert to who but not the events that led to what was going on." He said that Mr. Sandhu kept asking questions about what happened and if his friends were okay. He repeated them every minute or so. When Mr. Itterman asked the accused what happened, the accused said that he vaguely remembers getting into the driver's seat but does not remember anything after. He did not recall driving. Mr. Itterman testified that this was a paraphrase - not Mr. Sandhu's exact words. Mr. Itterman testified that he had serious concerns about Mr. Sandhu's mental capacity, as his ability to process and understand was, in his words, "not there." Mr. Itterman testified that Mr. Sandhu ended every answer or statement with "I don't remember."
- [70] Mr. Itterman said that Mr. Sandhu had a star shaped laceration to the right side of his neck and a small bump on his left forehead.
- [71] Mr. Itterman felt that Mr. Sandhu needed to be examined by a doctor so Mr. Itterman and his partner transported him to Lions Gate Hospital in their ambulance. Cst. Chow accompanied Mr. Sandhu.
- [72] I found Mr. Itterman to be an honest and straightforward witness; however, understandably, his notes are his memory.

Dr. Lisa Lange, ERP

- [73] Dr. Lange saw Mr. Sandhu in the emergency room at Lions Gate Hospital in the early morning hours of September 2, 2021. He was accompanied by Cst. Chow. Among other things, her notes contain the following statements:
- a. Restrained driver in rollover MVC tonight Cypress mountain; and

- b. Patient reports he lost control around a curve. Hit a tree.
- [74] Understandably, like Mr. Itterman, Dr. Lange has no independent memory of her interaction with the accused. She relies completely on her notes.
- [75] Dr. Lange testified that in getting the accused's history, she received information from several sources, including the police, paramedics, and the triage nurse. She is unable to say where the information in her notes came from. The only things she can attribute to the accused is when she writes "patient reports," but then the notes are not verbatim and are not made contemporaneously - they are made at the earliest opportunity, which, in a busy emergency room, may not be soon after. She is unable to say how long after her examination of Mr. Sandhu she made her notes.
- [76] Dr. Lange testified that she was told either by police, ambulance, or the triage nurse that Mr. Sandhu was the driver of the vehicle that was in the collision and that he had been wearing a seatbelt. She trusted that information and examined Mr. Sandhu as if he was the driver. She testified that if it is a serious collision, there is usually a seatbelt injury. She did not find any seatbelt injuries on Mr. Sandhu, but she checked for driver's side seatbelt injuries, that is, from the left shoulder to the right hip.
- [77] She conceded in cross-examination that it is possible that Mr. Sandhu said that the jeep lost control or something similar rather than I lost control.
- [78] Dr. Lange's evidence is limited by her lack of specific memory and the issues regarding her notes. It is also tainted by the fact that she examined Mr. Sandhu, believing him to be the driver. That could have affected what she understood him to be saying. In addition, Dr. Lange's scoring of the accused on the Glasgow Coma Scale was inconsistent with that of the other medical professionals. The paramedic and the triage nurse that examined Mr. Sandhu minutes before Dr. Lange noted that he was confused, but Dr. Lange testified that he was clear-thinking.
- [79] Dr. Lange's evidence is only as good as her notes. For the reasons outlined above, I find that they are not reliable. As such, I put little weight on the statements attributed to Mr. Sandhu in them.

DNA Evidence

- [80] A/Sgt. Nan Lu, then of the Integrated Forensic Identification Section, was tasked with determining who was sitting in the driver's seat at the time of the collision. On September 15, 2021, A/Sgt. Lu attended a tow yard to examine the Cherokee. She found that the airbag in the steering wheel had not deployed. Two other airbags had deployed in the driver's area. One of those airbags came down on the driver's side door, covering the window (the top airbag). It ran the length of the vehicle. The second airbag came out of the side of the driver's seat closest to the driver's door (the lower airbag). A/Sgt. Lu used sterile Exacto knives and removed the portion of the top airbag that was hanging by the driver's seat and

the entire lower airbag. She also swabbed three areas on the driver's seat on which there was a red substance that appeared to be blood and an area of apparent blood on the shattered front windshield directly in front of the steering wheel. The swabs and the airbags were sent to the forensic laboratory for DNA testing.

[81] Only the lower airbag was tested. Of the several spots on the lower airbag, one was identified as coming from the accused (the sample). The reporting scientist, Ms. Geiser, testified that:

- 1) Three other stains on the lower airbag did not yield DNA results;
- 2) The sample yielded a minute amount of DNA, 0.27 nanograms which could consist of only a handful of human cells;
- 3) She could not conclude what the DNA on the sample came from. While it tested presumptively for blood, the confirmatory test was negative. It could be from skin, saliva, perspiration, or blood.
- 4) She could not confirm whether the accused's DNA on the sample was primary (directly placed), secondary (a person's DNA is on an object and it gets transferred onto another item), or tertiary (the DNA transfers to a third object).
- 5) It is for the investigator to request that other exhibits be analyzed.

Analysis

[82] The Crown submits that the Court should have no trouble finding that Mr. Sandhu was in the Cherokee when it crashed. I agree. The issue is whether the Crown has proved beyond a reasonable doubt that he was driving.

[83] The Crown submits that the following evidence, taken as a whole, proves beyond a reasonable doubt that Mr. Sandhu was the driver:

- 1) The evidence of Akash Devgun, who testified that he "thinks" Mr. Sandhu was driving and testified that he could see his face when he looked at the speedometer;
- 2) The statement of Harman which was introduced into evidence as PRR in which he told police that the accused was driving;
- 3) The accused's "admission" to Cst. Chow "I am driving";
- 4) The accused's "admission" to the paramedic, Mr. Itterman, that he vaguely remembers getting into the driver's seat;
- 5) The accused's "admission" to Dr. Lange that he lost control around a curve and hit a tree;
- 6) The DNA evidence;
- 7) The injuries to Mr Sandhu's neck; and

- 8) The evidence of Mr. Devgun that he thinks it is the accused standing beside the driver's door in the video he took at the lookout.
- [84] The Crown argues that while the evidence taken on its own is uncertain, considered as a whole it provides proof beyond a reasonable doubt. The Crown stresses that it would be an error to consider the evidence in a piecemeal fashion. One of the cases the Crown relies on is *R. v. Blanchard*, [2022] N.J. No. 56, in which the NSCA stated the following:
- [53] It is well-established law that a Court, in a criminal case, whether a judge or jury, is to assess the evidence as a whole with a view to determining whether all of it, taken together, establishes whether the subject offence is made out beyond a reasonable doubt. This principle was explained long ago by the Supreme Court of Canada in *Coté v. The King*, [1941] S.C.J. No. 49, 77 C.C.C. 75, per Taschereau J.:

It may be, and such is very often the case, that the facts proven by the Crown, examined separately have not a very strong probative value, but all the facts put in evidence have to be considered each one in relation to the whole, and it is all of them taken together, that may constitute a proper basis for conviction.

- [54] More recently, in *Morin*, Sopinka J. also explained the principle, saying that individual pieces of evidence standing alone may not be determinative of much or anything, but when taken together with other evidence, become more meaningful, and have more or less weight or significance. When individual pieces of evidence are examined in relation to the standard of proof beyond a reasonable doubt, they are prone to being dismissed out of hand, rendering the process of weighing the evidence meaningless. The Court went on to rule that a jury is not to examine the evidence piecemeal by reference to the criminal standard, and it is serious misdirection for a judge to charge a jury to do so (*Morin*, at 358-359).
- [55] In *J.M.H.*, the Supreme Court of Canada stated that it is an error of law for a trial judge to assess the evidence piecemeal (para. 40) and confirmed that the criminal law standard of proof beyond a reasonable doubt applies to whether an offence is made out, not to individual pieces of evidence which comprise the whole (para. 31).
- [56] This does not mean that pieces of evidence cannot be carefully examined. All evidence must be examined with a view to determining its weight, if any. What it does mean is that a "case is not decided by a series of separate and exclusive judgments on each item or by asking what does that by itself prove, or does it prove guilt? That is not the process at all. It is the cumulative effect" (*Morin*, at 359).
- [57] In summary, pieces of evidence are not meant to be evaluated in isolation from each other. It is the whole of the evidence, composed of all pieces, that must be considered together, and it is that whole to which the standard of proof beyond a reasonable doubt applies.

[Emphasis added.]

- [85] While I agree with the Crown that the evidence as found must be looked at together in order to determine whether the Crown has met its burden, the first step is for the Court to assess the evidence in isolation to determine the weight, if any, that should be applied to it. Once that is done, the Court then moves on to consider all of the evidence as a whole.
- [86] The strength of the individual pieces of evidence remains a factor in the assessment of the evidence as a whole. As stated by the SCC in *R. v. Morin*, [1988] 2 SCR 345:
- [39] The concern which proponents of the two-stage process express is, that facts which are doubtful will be used to establish guilt. The answer to this concern is that a chain is only as strong as its weakest link. If facts which are essential to a finding of guilt are still doubtful notwithstanding the support of other facts, this will produce a doubt in the mind of the jury that guilt has been proved beyond a reasonable doubt.
- [87] The Crown submits that each piece of evidence of identity is cross-corroborated by other pieces of evidence. While the pieces of evidence may be doubtful when considered alone, taken together that evidence establishes proof beyond a reasonable doubt.
- [88] Mr. Sandhu responds (quoting from his written submissions) that the Crown evidence "consists of unreliable witness testimony, ambiguous and inaccurate statements, biological evidence riddled with various issues and evidence inconsistent with their case. Taken at its highest, the evidence is deficient and, when combined, is unable to establish beyond a reasonable doubt that Mr. Sandhu was driving."
- [89] The evidence that the Crown says proves that Mr. Sandhu was the driver is overstated. Plus, the Crown ignores key evidence. In reality, the Crown's case consists of evidence that is equivocal and/or unreliable.
- [90] The strongest evidence of the accused being the driver comes from Harman in his statement to police. However, the strength of that statement was undermined by his evidence at trial. At trial, Harman gave evidence different than he did in his statement. He said that he was sitting in the middle row and that he did not know who was driving. He testified that he had been drinking, smoking marijuana, consuming edibles, and using heroin and was high to the point of hallucinating. He testified that he did not tell the police officer that he had been drinking and using drugs because he was afraid that he would be charged with something or be found liable for the collision by ICBC and would be held responsible for paying off over \$100,000 for the Cherokee. He testified that he was never clear on who the driver was and that he thought he had to name one. He named the accused because he knew from friends that Mr. Sandhu had been arrested and charged.
- [91] The fact that both Harman and Mr. Devgun listed the same people as being in the Cherokee does not, in my view, make Harman's statement more credible or reliable. Nor does the fact that Mr. Devgun testified that he believed that the accused was driving. As outlined above and conceded by the Crown, Mr. Devgun's identification of the accused as the driver is uncertain at best; in fact, he called it a guess. Nor is Harman's statement to police

strengthened by Harjeet Sandhu's evidence that he saw Harman standing by the passenger-side door shortly before the vehicles left the mountain. To the contrary, Arshdeep Sandhu told police that Harman was driving.

- [92] As stated above, I find the statements repeatedly made by Mr. Sandhu to Cst. Chow ("I am driving; I don't remember") to be ambiguous and not an admission that he was driving. And for the reasons set out above, I find the notes of Mr. Itterman, the paramedic, to be inconclusive and unreliable. To add to my concerns about what was reported to have been said by Mr. Sandhu after the collision is Mr. Itterman's testimony that Mr. Sandhu was in shock and was medically incapable of providing accurate information. For the reasons mentioned above, I also find the notation of Dr. Lange attributed to the accused to be unreliable. By her own admission, Dr. Lange may have misheard or misreported the statement in her notes and may have been affected by her belief that Mr. Sandhu was the driver.
- [93] Further, I find the DNA evidence on the lower airbag to be inconclusive. Of the several stains on the lower airbag, it was the only one with human DNA. The stain in which the accused's DNA was identified was not confirmed to be blood. According to the evidence, it could have been skin or another bodily fluid such as saliva or perspiration, and it could be secondary or tertiary DNA, meaning that it could have been deposited on the lower airbag by another item. The evidence is that the Cherokee hit a tree and rolled violently, landing on its roof. We heard evidence that one of the occupants was thrown out of the Cherokee through the sunroof. Others had to crawl around to get out. To remove it from the scene, the Cherokee was rolled back over onto its tires. Photos show that items were tossed all over the vehicle - including a Sprite bottle that had landed in a position close to where the DNA was located.
- [94] In sum, I find that all of the evidence regarding the identity of the driver is unreliable and inconclusive. As the Supreme Court of Canada stated in *Morin*, quoted above, a chain of evidence is only as strong as its weakest link. In this case, I find that most, if not all, of the links are weak.

CONCLUSION

- [95] The burden is on the Crown to prove beyond a reasonable doubt that Mr. Sandhu was the driver. I find that it has failed to do so.

- [96] Stand up Mr. Sandhu. I find you not guilty of all counts.

"The Honourable Madam Justice Murray"

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