
CANADA / JUDGMENT

R. v. Serov

2015 BCSC 939

COURT

Supreme Court of British Columbia

DECIDED

30 April 2015

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2015 BCSC 939 R. v. Serov

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Serov,

2015 BCSC 939

Date: 20150430

Docket: X077721

Registry: New Westminster

Regina

v.

Mikhail Serov

Before: The Honourable Madam Justice Duncan

Oral Reasons for Judgment

Counsel for the Crown:

L. Kilgore

P. O'Neill

Counsel for the Accused:

D.H. Silverman

Place and Dates of Trial:

New Westminster, B.C.

January 19-20 & 30, 2015

Place and Date of Judgment:

New Westminster, B.C.

April 30, 2015

- [1] THE COURT: On July 4, 2013, a property manager employed by Onni Real Estate conducted a pre-arranged visit to Unit 109, 1772 Broadway in Port Coquitlam, to read the water meter. The unit was located in a commercial warehouse complex and had been leased by the accused, Mikhail (Mike) Serov, since the previous October.
- [2] Mr. Serov let the property manager into the unit. The property manager detected the smell of vegetative marihuana. He spoke with Mr. Serov about the source of the smell, saw what he believed to be equipment for a marihuana grow operation in one of two trailers within the unit, and notified police.
- [3] Police executed a search warrant that evening. Attending officers smelled the odour of fresh growing marihuana within the front business area of the unit as well as a large warehouse space at the rear of the unit. In the warehouse space were found two trailers. In one trailer, there was an electrical panel, timers, and ballasts as well as eight soil beds on wheels. The soil beds were serviced with water and growing lights with aluminum shrouds. There was a similar setup in the second trailer, but there were in addition 248 marihuana plants growing in the soil beds. The plants were 36 inches in height, healthy and in the budding stage of production.
- [4] Mr. Serov was charged with possession of marihuana for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and production of marihuana, contrary to s. 7(1) of the Act.
- [5] Defence counsel made admissions concerning the nature of the substance found by police, the number of plants, their value, and that the marihuana was for the purpose of trafficking. Defence also admitted the identity of Mr. Serov and the presence of his fingerprints on papers found in the unit.
- [6] Mr. Serov testified that he planned to import health supplements from the United States. He leased the unit in October 2012 but his plans did not come to fruition. He sublet the unit in January 2013 to a Mike Taylor who had been referred to him by Sam, a patron of the gym Mr. Serov frequented. Mike Taylor paid cash rent every month and purchased two trailers from Mr. Serov, also with cash. Mr. Serov did not tell the landlord he had sublet the unit. He was surprised the trailers were in the unit on July 4 and disavowed any knowledge of the marihuana grow operation.

- [7] In light of the extensive admissions, the trial was focussed on whether Mr. Serov had the requisite knowledge and control to be found guilty of possession for the purpose of trafficking, and whether he was involved in the production of marihuana in the warehouse. The parties approach the case as a circumstantial one.

The Property Manager's Visit

- [8] The unit leased by Mr. Serov is in a 24-unit commercial warehouse complex. The unit has about 600 square feet of office space in the front and 2,100 square feet in the warehouse. There is a wall between the front office and the warehouse that does not go all the way to the roof, and there is a mezzanine above the office.
- [9] On July 4, 2013, Jamie Fiander attended the complex to read water meters, an annual task. A day earlier, he had contacted Mr. Serov to arrange a time for access to Unit 109. Mr. Fiander arrived between 10:00 and 10:30 a.m. and knocked on the front door. There was no signage to indicate the nature of the business carried on inside.
- [10] Mr. Serov let Mr. Fiander in. Mr. Fiander saw one desk in the front office area with some paperwork and pamphlets on it, but he did not see into the two individual offices as the doors were closed. He went to the washroom and read the meter located under the sink. He noticed a smell in the unit which he described as vegetative marihuana. He is familiar with the smell from prior occasions and estimated he had smelled it "maybe 10 times."
- [11] Mr. Fiander asked Mr. Serov about the smell. Mr. Serov either told him, or suggested, that garbage was being stored in the space. Mr. Fiander asked if he could see and the two men entered the warehouse. There were two trailers parked side by side. Mr. Fiander asked what they were there for. Mr. Serov told him they were there to have work done.
- [12] The two men returned to the office area. Mr. Fiander again enquired about the smell and asked if there was marihuana being grown there. He asked if he could see what was inside the trailers. The two men went back into the warehouse. Mr. Serov opened up one of the trailers and Mr. Fiander stepped in. He saw lights hung from the ceiling and three or four boxes filled with dirt as well as an electrical panel near the back of the trailer. He believed it was a marihuana grow operation but did not see any plants. He has seen other grow operations in the past in other buildings he manages.
- [13] Mr. Fiander asked about the other trailer, but Mr. Serov told him it was locked and there was no key available. It appeared there was water and power hooked up to it.
- [14] Within the warehouse itself, Mr. Fiander saw pallets with bags of soil on them, jugs of liquid fertilizer and bags of fertilizer, as well as some garbage bags near the loading bay doors.
- [15] Mr. Fiander advised Mr. Serov they did not allow illegal marihuana grow operations. Mr. Serov replied there was no marihuana being grown.

- [16] Mr. Fiander said Mr. Serov's stories seemed to shift slightly during their time together, from garbage being stored to trailers being fixed for some friends. Upon refreshing his memory from a written statement, Mr. Fiander recalled Mr. Serov told him the trailers were for growing marihuana.
- [17] After the inspection and his conversation with Mr. Serov, Mr. Fiander left the unit. He saw Mr. Serov lock the front door, get into a white sport utility vehicle and drive away. Mr. Fiander went to several other units to read meters, and then called the Royal Canadian Mounted Police.
- [18] Mr. Fiander identified a copy of the lease between Mr. Serov and Onni Real Estate. The lease was for one year and six months from October 1, 2012 to March 31, 2014. That was calculated at \$7.00 per square foot for a total of \$19,040.00 per year or \$1,586.67 per month, plus a proportionate share of operating costs and taxes as well as utilities. Permitted use of the premises was stated in the lease to be for personal storage.
- [19] Mr. Fiander conducted a property inspection with Mr. Serov when he took over the tenancy of Unit 109. He could not recall if anyone else was present for that inspection. There were no issues noted with the unit and the two trailers Mr. Fiander saw on July 4th, 2013 were not there at the initial inspection. He recalled the previous tenant left a few things behind but was not exactly sure what. When Mr. Serov took over the unit, Mr. Fiander gave him two sets of keys for the front door which would also open the lock on the back door.
- [20] On July 18, 2013, Mr. Fiander prepared a breach notice and posted it on the door of Unit 109. He also sent a copy by registered mail to the address Mr. Serov had provided when he executed the lease. He put new locks on the door, but nobody came to pick up the new keys. Mr. Serov terminated the lease in August 2013 when his preauthorized payment to Onni was rejected for insufficient funds.
- [21] On cross-examination, Mr. Fiander agreed he did not have a key to Unit 109 and it was possible he could have given Mr. Serov a single key of possession rather than two.
- [22] When Mr. Fiander asked to see inside the second trailer, Mr. Serov said there was a lock and keys were not available, although the witness could not recall the exact words. Mr. Fiander said Mr. Serov appeared nervous but agreed he does not really know the man or his characteristics. Mr. Serov did appear to Mr. Fiander to express some concern as the inspection proceeded.
- [23] At some point, Mr. Fiander asked if marihuana was being grown and Mr. Serov said no. Subsequently, Mr. Serov admitted the trailers "were used" for the growing of marihuana. Mr. Fiander could not recall the exact words, but was very clear on Mr. Serov's use of the phrase "were used." He did not think he stated his belief that it appeared marihuana was being grown. Similarly, Mr. Serov never said marihuana was being grown. Mr. Fiander was very precise on the grammatical tense Mr. Serov used. He disagreed Mr. Serov said, "It looks like the trailers were used for the growing of marihuana." Mr. Fiander was firm that he did not

make a statement about marihuana but rather asked Mr. Serov about it.

The Search

- [24] From 1:15 p.m. on July 4, 2013, members of the Port Coquitlam RCMP had the unit under surveillance. At 7:00 p.m., a search warrant was executed. A locksmith gained entry through the front door while the metal man-door at the back of the unit was unlocked from inside by police. Nobody was present inside the unit when police executed the warrant.
- [25] In the open area at the front of the unit was an alcove containing growing chemicals. There were also three rooms, one of which contained multiple fans still in their original packaging. The warehouse contained two commercial trailers, approximately 50 feet in length. Both were unlocked at the time of police entry. They were parked parallel to each other, resting on jacks.
- [26] The first trailer, identified by police as Trailer A, was registered to Mr. Serov from October 6, 2012 to January 17, 2014. The second trailer, Trailer B, was registered to Mr. Serov from January 26, 2013 to January 25, 2014.
- [27] Trailer A was parked closest to the east wall of the unit. It had a large reefer or cooling unit on the front of it. The back portion of the trailer faced the business area of the unit. Inside the doors to the trailer there was a small compartment area used to house electrical panels, timers, and ballasts. Past this compartment was an unlocked post-factory door that led to an area where marihuana could be produced. There were eight soil beds on wheels. They were all serviced with water from a one-inch PVC pipe. Above the soil beds were growing lights with aluminum shrouds. The lights could be raised or lowered according to the intensity of light required. Two charcoal filters were attached to the air vents in the ceiling and there were three humidifiers in the trailer. It was outfitted to function as an enclosed and mobile marihuana grow operation.
- [28] Trailer B was parked closest to the west wall. The doors to Trailer B were not locked. It was outfitted in the same basic manner as Trailer A, but in the compartment with the soil beds police found 10 oscillating fans, one air conditioner, and two humidifiers as well as a carbon dioxide generator. A total of 248 marihuana plants were growing in the soil beds. They were healthy, 36 inches tall, and in the budding stage. The growth cycle for marihuana from clone to harvestable bud product is three and a-half to four months.
- [29] To maximize profit, a marihuana producer needs to take care of the plants to ensure their good health. The health of the plants affects the yield and THC content and thus the profit to be made. While there was automation in Trailer B in the form of lighting and a water/nutrient delivery system, someone would need to attend at least once per week to ensure the good health of the plants. That person would need to ensure the system was still operating with the power source, adjust the timers if necessary, refill the water/nutrient delivery system, confirm the lights were at the correct height to prevent burning, and confirm there were no signs of mould or bud infestation.

[30] Police located Mr. Serov's fingerprint impressions on a number of documents seized from the alcove area where various chemicals were stored:

- Left thumb impression in the front side of a Southern Drip Irrigation Ltd. invoice dated 03/08/13;
- Left index finger impression on the front of a Southern Drip Irrigation Invoice dated 02/18/13;
- Left thumb, left index and two left little finger impressions on both the front and back of a B.C. Hydro invoice dated February 8, 2013;
- Left index and right thumb impression on the front of a B.C. Hydro invoice dated April 19, 2013;
- Left little and left ring fingerprints on ICBC insurance papers;
- Seven fingerprints from the right and left hand on the invoice 02/18/13 from Guillevin International Co. Ltd.;
- Right little, right middle and left middle fingerprints on a return material memo from Guillevin International Co.;
- Left index fingerprint on the back of a Guillevin International Co. receipt dated 10/26/12;
- Left index fingerprint on the back of a Guillevin International Co. document dated 11/02/12;
- Right thumb print on the back side of a Rona receipt dated 01/11/12;
- Left thumb print on the back of a Princess Auto receipt dated 27/10/12;
- Left middle fingerprint on the front side of a Home Depot receipt dated 31/03/13;
- Left index fingerprint on the back side of a Home Depot receipt dated 02/02/13;

[31] Fingerprint impressions identified on a Guillevin International receipt dated 02/18/13 and on a Home Depot receipt dated 02/03/13 did not match Mr. Serov and did not result in a match in the Automated Fingerprint Identification System.

[32] The average yield of a marihuana plant ranges from one ounce to three ounces per plant. If the 248 plants in Trailer B were harvested and then sold by the pound, the value of the yield ranged from \$27,900 (based on a one-ounce yield at the lowest sale price) and \$102,300 based on a three-ounce yield per plant and the highest sale price). Valuation of the marihuana if sold by the ounce is between \$44,640 (based on a one-ounce yield per plant and a low sale price) and \$163,680 (based on a three-ounce yield and the highest sale price).

The Accused's Evidence

[33] Mr. Serov is 27 years old. He lives in Burnaby with his parents. He is employed as an independent insurance adjuster. In May 2012, he received \$25,000 as settlement for a motor vehicle accident. His parents suggested he invest the money rather than spend it.

- [34] In the summer of 2012, Mr. Serov was buying cheap cars, fixing them up and selling them on Craigslist. He attended the gym frequently to recuperate from his motor vehicle accident. People at the gym gave him the idea of importing and distributing health supplements. He contacted various suppliers in the United States to get information and learned he would need a place to receive and store large shipments. He came across an ad for commercial space and ended up leasing Unit 109, 1772 Broadway in Port Coquitlam. He felt he could use it to store cars and tools as well.
- [35] In October 2012, Mr. Serov bought a trailer listed on Craigslist for \$2,000. He thought it would be cheaper to buy a trailer than to pay a trucking company to transport his merchandise. The trailer required a commercial vehicle inspection and the refrigerator unit did not work, so it was inexpensive. Mr. Serov had the trailer delivered to the warehouse where he could work on it.
- [36] Mr. Serov did not have much spare time between work and attendance at the gym. He says he tried to develop his supplement import business but by December he had paid \$10,000 in rent and damage deposit and had not made any money. In addition, health supplement companies in the United States had increased their minimum order requirements to \$50,000. His parents suggested he try to sublet the warehouse to someone else.
- [37] It was Mr. Serov's understanding from the property manager that sublets were not permitted. He talked to people at the gym and a man he only knew as Sam suggested he might have a friend who would be interested in the warehouse.
- [38] Sam's friend, Mike Taylor, contacted Mr. Serov and they met at the warehouse. Mr. Taylor asked about the trailer that was there and offered to buy to it. He also agreed to sublease the warehouse. It was costing Mr. Serov \$2,600 a month and the men settled on \$2,500 for rent and \$4,000 for the trailer.
- [39] Mike Taylor took over the lease on January 1, 2013 and agreed to a term of one year. He paid Mr. Serov for the trailer and signed the transfer forms but Mr. Serov did not retain any executed copies. Mike Taylor did not have post-dated cheques but offered the first and last months' rent up front in cash and full price for the trailer also in cash.
- [40] Mr. Taylor said he had a trucking business and would use the space for freight forwarding. Mr. Serov had one key to the unit and gave it to Mr. Taylor when he paid the first and last months' rent. Mr. Taylor mentioned he was looking for a second trailer and asked Mr. Serov to help him find one. Mr. Serov obliged and found a newer and larger trailer than the first one on a farm in Abbotsford. Mr. Taylor did not have much more cash to offer so he asked Mr. Serov to buy it for him and he would make monthly payments. Mr. Serov paid \$4,000 for the trailer and Mr. Taylor agreed to pay him \$1,000 per month for five months for finding it and financing the purchase.

- [41] The two men contacted each other via text or telephone. The sublease arrangement worked well from Mr. Serov's perspective, but when he was contacted by the property manager about the meter reading he wanted to keep the arrangement concealed. The night before the inspection, he contacted Mike Taylor to tell him about the meter reading. He met Mr. Taylor the next morning at a Tim Hortons near the warehouse to get the key. Mr. Taylor would wait at the coffee shop for him and get the key back after the meter reading.
- [42] Mr. Serov went to the unit a little early. He noticed paperwork in the office area. He saw garbage bags and two trailers in the warehouse area. He did not think the trailers would be there.
- [43] Mr. Serov smelled something strange in the unit. He had never been around vegetative marijuana before. When Mr. Fiander asked him about the smell, he said he did not know what it was but he had seen some garbage bags and said maybe it was garbage.
- [44] They went into the warehouse at Mr. Fiander's request and Mr. Serov opened up one of the two trailers. He saw an electrical panel and bags of dirt. Mr. Fiander asked about it and Mr. Serov said he did not know. It was no grow operation that he knew of. He had once dismantled a grow operation in his job as an insurance adjuster but that was the only time he ever saw one.
- [45] They looked at the second trailer. Mr. Serov said it had a lock on it and he told Mr. Fiander he did not have keys. Mr. Fiander asked again if there was a grow operation and Mr. Serov said no. The presence of the trailers was a complete surprise to him. Mr. Fiander said little else and left. Mr. Serov did not mention he had sublet the warehouse.
- [46] Mr. Serov testified he stayed in the warehouse for a few minutes trying to figure out what was going on. He walked around, touching things. He opened a little cabinet which had jugs of chemicals in it. He picked up papers and looked at them. After a short time, he went back to Tim Hortons to give Mike Taylor the key. He asked Mr. Taylor what was going on and said it looked like a marijuana grow operation and he could not be involved. Mr. Taylor said nothing was going on; he was just storing the trailers. Mr. Serov declined Mr. Taylor's offer to see inside the second trailer saying he had to get to work. Mr. Serov returned the key to Mr. Taylor and went to work.
- [47] That evening around 8:00 p.m., Mr. Taylor called Mr. Serov yelling at him, calling him names, and accusing him of calling the police. Mr. Serov said he did not know what Mr. Taylor was talking about. Mr. Taylor said he knew where Mr. Serov lived and would come after him and his family if police found him and contacted him. The next day, Mr. Fiander called Mr. Serov and told him police found a grow operation in the unit. Mr. Serov asked his parents what to do and they said to call a lawyer.

- [48] Mr. Serov tried to contact Mike Taylor at his parents' suggestion. The man would not take his calls and then the phone number stopped working. Mr. Serov went back to the gym to see if he could find Sam, the person who put him in touch with Mr. Taylor, but Sam was not around and nobody knew where he was.
- [49] Mr. Serov said he had no idea how the dirt and electrical panel got into the trailer he looked into with Mr. Fiander. He did not put any of those items into it and he did not put anything in the second trailer which was found to contain an active grow operation. He denied knowing the trailers were being used for growing marihuana. Mr. Serov denied making an admission to Mr. Fiander about a marihuana grow operation in the warehouse. Rather, he or Mr. Fiander had suggested it could be some kind of grow operation.
- [50] Mr. Serov said he was surprised and astonished when the dirt and electrical panel were located in the first trailer. He was not expecting to find anything that was stored in there and did not know what to say because he was subletting the warehouse. Mr. Serov never had a problem receiving payments from Mike Taylor. The rent was paid up to and including July 2013.
- [51] On cross-examination, Mr. Serov said he decided to go into the vitamin business in August or September 2012. He did not get a business licence or set up a company or sole proprietorship. He did not print business cards as he did not have a business name. He was still in the process of determining minimum order requirements and none of the companies he contacted would give him exact details until it was time to order. He leased Unit 109 in October 2012 before placing any orders for vitamins. He bought the first trailer in October for transporting vitamins, again before placing orders for vitamins or progressing in his business plan. He assumed it would be cheaper than renting one when a shipment needed to be transported.
- [52] The Crown showed Mr. Serov the transfer tax form for the first trailer he purchased. The purchase price was listed as \$100.00 though he admitted he paid \$2,000 for the trailer. He said the seller was trying to save him money on tax but agreed the form was a falsehood. Mr. Serov also agreed he did not declare the profit he made on the sale of the trailers to Mike Taylor on his tax return.
- [53] Mr. Serov did not ask Onni to terminate the lease once he felt he could not afford to make payments and he did not consult the lease document itself about how to sublet the unit. He said he never read the lease in detail.
- [54] Mr. Serov confirmed he had no references from Mike Taylor apart from Sam at the gym and he had no residential address. Mr. Serov switched gyms in January or February 2013 which is the last time he saw Sam. Mr. Serov went back to the old gym in July and tried to find out Sam's last name but was unsuccessful.

- [55] Mr. Serov did not ask Mike Taylor to fill out a sublease form and had no paperwork reflecting the change in tenancy. He did not give Mike Taylor a receipt for the cash payments. Mr. Taylor did not ask about any rules for the unit; he just agreed to take it over. He would call or text and they would meet in Burnaby or at the Tim Hortons near the unit when the rent was due. Mr. Taylor finished paying for the second trailer in May. Mr. Serov did not make efforts to locate either of the two transfer forms for the trailers after he learned of the charges. He did not retain copies for the sale documents that were on triplicate carbon paper.
- [56] Mr. Serov maintained he never entered the unit between January 1, 2013 when he gave Mike Taylor the keys and July 4, 2013. He left the first trailer he sold to Mike Taylor in the unit when the sublease was arranged. He did not draft any documents about the finance agreement on the second trailer and had no receipts for money received in payment for it. Mike Taylor picked up that second trailer from the farm where Mr. Serov bought it and that is the last time he saw it. He transferred the trailer into Mr. Taylor's name right away and took it for granted Mr. Taylor would keep paying for the trailer and the rent on the warehouse though in retrospect he agreed that was foolish.
- [57] Crown counsel drew Mr. Serov's attention to a receipt dated October 26, 2012 from Guillevin International which police seized from the warehouse. The Crown suggested the signature on the receipt was his. Mr. Serov denied it was his signature and adamantly denied it even resembled his signature. The Crown showed Mr. Serov another receipt from the same business dated February 18, 2013 and suggested it was his signature. Mr. Serov again denied it was signature.
- [58] The Crown then drew Mr. Serov's attention to several Hydro bills for Unit 109 in the name of Kevin E. Clarkson. Mr. Serov said he did not know that person but understood he was the previous tenant and that is why the bills were in his name. He acknowledged the person who witnessed his signature on the lease was K. Clark, possibly Clarkson, but said he had never met that person. Mr. Serov acknowledged a December 21, 2012 Hydro bill for Unit 109 for \$638.58 which was seized from the unit and said he did not pay it and Mr. Clarkson did not contact him for payment. The Crown showed Mr. Serov other Hydro bills for amounts in excess of \$1,000 in February and April 2013, also seized from the unit, but he said he did not pay them, he never asked anyone to pay them, and nobody asked him for reimbursement. He said the amount of the bills sort of caused him concern but he really did not know how much Hydro cost in a commercial space. He did not pay for electricity for the last three months of 2012 when he used the unit and it did not occur to him to transfer the bills into his name.
- [59] The Crown asked Mr. Serov to explain how his fingerprints came to be on a variety of documents seized by police from the alcove area of the unit. He explained that he probably picked them up on the day he was there with Mr. Fiander when he was trying to figure out what was going on. They were spread out on the desk, on the ground and in one of the offices. He picked up random pieces of paper then put them back where he found them.

- [60] After Mr. Fiander left the warehouse, Mr. Serov did not think to text or phone Mike to come and explain what was going on because he had to meet him at Tim Hortons and then go to work. Mr. Serov said Mike brushed his concerns off as nothing to worry about and offered to show him what was going on. He did not seem concerned when Mr. Serov told him the landlord suspected a grow op was in the unit. Mr. Serov did not think about phoning work to say he was not coming in so he could go to the unit with Mike Taylor. Rather, he went back to work then went to the gym thinking he would go to the unit later that evening when there was no traffic.
- [61] Mr. Serov took the threats from Mike Taylor seriously. He tried to contact the man a few times for a few days after Mr. Fiander told him about the grow operation, and then the phone stopped working. He did not consider telling Mr. Fiander what had happened because he had heard nothing from Onni or the police and he was hoping it would just go away.
- [62] The Crown asked Mr. Serov why he was surprised to see the two trailers in the warehouse on July 4. Mr. Serov said he could not imagine they would both fit and he thought Mr. Taylor would be using them. The Crown suggested he was surprised to see the trailers because he expected his partners to have moved them out for the meter reading. Mr. Serov again denied having anything to do with the trailers. He denied calling anyone to tell them to move the trailers when he arranged the meter reading with Mr. Fiander. He denied telling Mr. Fiander he was fixing the trailer for his friends and he denied Mr. Fiander the trailers were being used for growing marihuana. He maintained he sold the trailers, sublet the unit, and had no knowledge of what was going on.

The Defence Submissions

- [63] Mr. Silverman's position is the circumstantial evidence in this case is insufficient to draw the conclusion, on the criminal standard, of Mr. Serov's involvement, either as a principal or party in the offences charged. Mr. Fiander saw him at the unit only twice, once at the commencement of the lease, and then on July 4, 2013. A grow operation requires regular attendance and there is an absence of evidence Mr. Serov was there attending to it.
- [64] Counsel further submitted the presence of Mr. Serov's fingerprints on papers in the warehouse is of no great significance. At most, they place him in the unit but not in the trailers where the marihuana was being grown. The papers do not prove when Mr. Serov was present in the unit or that the Crown proved what they were for. It cannot be safely concluded in Mr. Silverman's submission that Mr. Serov's signature is on two of them as there is no expert evidence to offer proof beyond a reasonable doubt.

- [65] The defence also submits any theory that Mr. Serov may have been a party to the offences is speculative. The Crown has to prove knowledge and control and that is simply not available on the evidence in this case. Mr. Serov is connected to the unit and the two trailers, but not in conjunction with any marihuana grow operation. His presence on July 4 only establishes control of the warehouse, not knowledge of what was going on in there.
- [66] As for the accused's credibility, Mr. Silverman submits he may have been a bad or naïve businessman but that does not make him an unbelievable witness. He reminds me that even if Mr. Serov is not believed, the absence of his fingerprints in the trailer area should lead to reasonable doubt.

The Crown's Submissions

- [67] The Crown's theory is that Mr. Serov was either a principal in the grow operation or a party because he provided the warehouse unit and the trailers. The Crown urges the conclusion that Mr. Serov's testimony should be rejected as it is incapable of belief and raises no reasonable doubt. Simply put, the Crown submits nothing Mr. Serov did made any business sense. He did not know anything about Sam who put him in touch with Mike Taylor and he knew very little about Mike Taylor.
- [68] Further, the Crown submits it defies credibility, logic and common sense that when Mr. Serov picked up the key from Mike Taylor before the meter reading, the latter man put no limitations on movements inside the unit. If Mike Taylor was indeed running a grow operation in the unit, his lack of concern made no sense, particularly in light of the fact that later that day, Mr. Serov was allegedly threatened by the man. Similarly, Mr. Serov's actions after returning the key made no sense. Rather than going back to the unit with Mike Taylor to find out what indeed was going on, Mr. Serov went to work and then to the gym to avoid rush hour traffic.
- [69] The Crown maintains Mr. Serov's evidence about how his fingerprints ended up on the documents in the unit were inconsistent. Initially, he said he picked up paperwork from around the office and put it on the desk. On cross-examination, he said he would pick up a piece of paper and put it down approximately where he found it. The admissions, however, clearly provide that all the paperwork bearing Mr. Serov's fingerprints were found in the alcove with the chemicals.
- [70] The Crown invites a comparison of Mr. Serov's signature on the lease for Unit 109 and the signatures on two of the seized documents. Ms. Kilgore submits the signatures match unless there is further evidence to disbelieve Mr. Serov.
- [71] Finally, the Crown submits Mr. Serov's demeanour in the witness stand was demonstrative of his untruthfulness. He had difficulty keeping his voice up at times, he slumped in his chair, and his face and neck were frequently flushed.

Analysis

- [72] In light of the fact that much of the Crown case was admitted, I will start by examining the evidence of Mr. Serov against the well-established principles in *R. v. W. (D.)*, [1991] 1 S.C.R. 742:
1. If I believe Mr. Serov's evidence, I must acquit him.
 2. If I do not believe Mr. Serov's evidence, but it leaves me with a reasonable doubt, I must acquit him.
 3. Even if I am not left with a reasonable doubt by Mr. Serov's evidence, I must consider whether, on the basis of the evidence I do accept, I am convinced beyond a reasonable doubt of his guilt.
- [73] I remind myself of two fundamental underpinnings of the criminal law. Mr. Serov entered these proceedings cloaked in the presumption of innocence and the Crown must prove his guilt beyond a reasonable doubt. Mr. Serov does not need to prove anything.
- [74] Mr. Serov's account of renting a commercial warehouse space at a cost of \$1,586.87 per month basic rent plus a proportionate share of operating costs and taxes as well as utilities and a damage deposit of \$3,554.14 for a business he had yet to commence is difficult to fathom. His purchase of a commercial trailer on the belief that it might be cheaper to buy one than to pay a trucking company to transport shipments of health supplements from the United States for a business he had yet to commence is similarly difficult to fathom. Those two decisions in isolation might be attributable to a poor or naïve businessman as suggested by Mr. Silverman, but I find Mr. Serov's evidence as a whole utterly incapable of belief.
- [75] Mr. Serov did not think he could sublet the unit under the lease but he did not read the lease or ask the property manager about his options once he decided it was costing him too much money for no return. Instead, after discussing his problem with his parents, he told people at the gym about his situation, the same place he claims he got the idea for his abandoned health supplement business. A patron of the gym, Sam, whose last name Mr. Serov did not know, put him in contact with Mike Taylor as someone who might be interested in the warehouse.
- [76] Mr. Serov had phone contact information for Mike Taylor, but no address or much detail about the business he was in. Mr. Serov did not require any paperwork from Mike Taylor to proceed with the sublease arrangement. Mr. Serov did not ask for any references yet agreed to accept cash from the man on a monthly basis for rent.
- [77] I find Mr. Serov's evidence about his purchase of the second trailer on Mike Taylor's behalf, again for cash but not all up front and again with no trace of paperwork for the trailer's transfer to Mike Taylor, is a patently false attempt to explain why a trailer still in Mr. Serov's name was full of marihuana and growing operation paraphernalia.

- [78] Mr. Serov's actions in touching papers which he found lying around when it must have been clear to him that he was present in a marihuana grow operation defy logic, reason and common sense. Rather than phoning Mike Taylor, who was waiting for him nearby, for an explanation, Mr. Serov tried to figure out what was going on by picking up random paperwork, thereby leaving his fingerprints behind. I reject this explanation for the presence of his fingerprints on the paperwork.
- [79] Some of the papers Mr. Serov says he handled were Hydro bills. Mr. Serov never paid a Hydro bill for the unit and maintained he was never asked to pay for one by any previous tenant, for example, the Kevin Clarkson whose name was on the bills. The bills for early 2013 were in excess of \$1,000 per month and it appears someone was paying them as there is a notation consistent with a credit on them. There is no evidence Mr. Serov had any agreement, let alone a conversation with Mike Taylor about whose responsibility those bills were.
- [80] It made no sense that Mike Taylor, if he was the curator of the grow operation in the warehouse, would allow Mr. Serov to let the property manager in without a warning or heads up about staying away from the trailers in the back of the warehouse. It made no sense that Mike Taylor seemed unconcerned after the water meter reading when Mr. Serov reported on what had occurred. It made no sense that Mr. Serov did not demand an explanation from Mike Taylor but took him up on his offer of a tour of the warehouse to assuage his concerns. Instead, Mr. Serov went to work and then to the gym. By that time of course, Mr. Serov said Mike Taylor was irate with him because police were at the warehouse which is surprising in light of Mr. Taylor's careful attitude that same morning when alerted to the property manager's suspicions about illegal activities in the warehouse.
- [81] The Crown urged me to find Mr. Serov's signature on the lease matched the signature on two of the invoices from Guillevin International. The significance of such a match relies on the fact that the Guillevin invoices are dated in 2013, a time when Mr. Serov claimed he sublet the warehouse to Mike Taylor and ceased to attend the premises.
- [82] While I am satisfied the jurisprudence allows for such a comparison without expert evidence in some circumstances, I decline to do so in this case largely in light of the Court of Appeal's treatment of the issue in *R. v. Anderson*, 2005 BCCA 143 but that is not the end of the matter.
- [83] What I find significant about the alleged similarity between the known signature on the lease and the unknown signatures on the Guillevin invoices is this: Mr. Serov was adamant his signature was not even remotely similar to the ones on the invoices, yet a casual observer would see obvious similarities between them. Mr. Serov's adamant denial of even the remotest similarity between the signatures is further evidence of his efforts to distance himself from anything and everything that went on at the warehouse.

- [84] In summary, I do not believe Mr. Serov's evidence and it does not leave me with a reasonable doubt.
- [85] As a postscript, I will deal with the Crown's submission about the significance of Mr. Serov's demeanour on the witness stand. Cases cannot be fairly judged solely on the basis of a witness's demeanour. People can be shy, nervous, or inarticulate. That should not affect the assessment of their credibility. I did however observe Mr. Serov's face and neck flush dramatically at various junctures, most notably when he testified in examination-in-chief about his first meeting with Mike Taylor and picking up documents in the office after Mr. Fiander's departure. Additionally, Mr. Serov's voice dropped and he slumped down in the witness stand at various points during cross-examination. Simply put, he appeared very uncomfortable with some aspects of his evidence. Even without those observations however, the content of Mr. Serov's evidence would not leave me with a reasonable doubt.

The Balance of the Evidence

- [86] I turn now to the balance of the evidence and whether or not a reasonable doubt lies there.
- [87] I found Mr. Fiander to be a careful witness. He did not strain to fill in details such as the exact words Mr. Serov used if he was uncertain. His evidence was not weakened or challenged on cross-examination in any material aspect.
- [88] I accept Mr. Serov told Mr. Fiander a variety of things during their time together. Mr. Serov first attributed the smell in the unit to garbage. He told Mr. Fiander the two trailers in the warehouse were there to be fixed for some friends. He said the second trailer was locked and there were no keys available. Mr. Fiander was not asked if he saw a locking mechanism and the second trailer was in fact unlocked when police executed the search warrant.
- [89] Mr. Fiander does not recall Mr. Serov admitting that marihuana was being grown in the trailers. Rather, Mr. Serov said the trailers were used for growing marihuana. I accept Mr. Fiander did not suggest what the trailers were used for. I accept Mr. Serov said no marihuana was being grown in the present tense, perhaps in the hope that Mr. Fiander would not think the warehouse contained an active grow operation.

The Law of Possession and Production

- [90] In *R. v. Ngo*, 2009 BCCA 301, at paras. 51 through 55, the Court of Appeal set out a number of principals related to proof of the offence of possession of marihuana for the purpose of trafficking and production of marihuana. I will summarize them as follows.
- to succeed in the prosecution of possession for the purpose of trafficking, the Crown must prove the accused has both knowledge and control of the marihuana;
 - the definition of possession in s. 4(3) of the Criminal Code is incorporated by the CDSA by virtue of s. 2(1) of that Act. Possession is not an included offence in cultivation;

- the gravamen of the offence of cultivation is active participation in the growing of prohibited plants;
- an individual may be found guilty of production as either a principal or as a party who aids or abets the principal under s. 21 of the Code;
- an accused may be found to have aided or abetted in the production of marihuana by maintaining the environment in which the marihuana is produced with the purpose or intent to assist in the crime;
- proof of the offence may be through direct or circumstantial evidence or a combination of the two;
- where the evidence is circumstantial the trier of fact must be satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference to be drawn from the facts;
- the criminal standard of proof is not applied to each individual piece of the evidence; rather, the proper approach is to consider whether all the evidence taken together, establishes the guilt of the accused and is inconsistent with any other rational conclusion;
- and finally, at para. 55 of Ngo:

[55] As to competing inferences from circumstantial evidence that might be open to a trial judge, the observation of McEachern C.J.B.C. in *R. v. To* (1992), 16 B.C.A.C. 223 at para. 41, is apposite:

It must be remembered that we are not expected to treat real life cases as a completely intellectual exercise where no conclusion can be reached if there is the slightest competing possibility. The criminal law requires a very high degree of proof, especially for inferences consistent with guilt, but it does not demand certainty. ...

- [91] Mr. Serov had control of the warehouse. He leased it and had the key on the day of the water meter inspection. The two trailers in the warehouse were registered in his name. I rejected his evidence concerning the sublease of the warehouse and the sale of the trailers to Mike Taylor. I did not have a reasonable doubt based on that evidence. Accordingly, there is no credible explanation for the presence of the marihuana in a place under Mr. Serov's control without his knowledge.
- [92] To put it another way, there is nothing apart from speculation that Mr. Serov had control of the warehouse yet was absent from it such that someone else could produce marihuana there without his knowledge. That said, I find it likely if not probable, that he was working in concert with another person or persons. Under s. 21 of the Criminal Code, he is guilty whether he is a principal or a party to the offence.
- [93] I base my finding of the likely involvement of others on the fact that Mr. Serov agreed to let Mr. Fiander in to read the meter on July 4, 2013 no doubt in the expectation that his partner or partners had moved the product out of the warehouse when alerted to the planned

attendance of the property manager. When Mr. Serov discovered the trailers had not been moved, he fabricated a variety of stories to distract Mr. Fiander from what was going on. He blamed the smell on garbage. He told Mr. Fiander the trailers were there to be fixed for friends. He claimed the second trailer was locked when no lock was visible and it was unlocked when police executed the search warrant that evening.

- [94] I find the terminology Mr. Serov used through his conversation with Mr. Fiander was designed to create the impression that no active or current grow operation was going on. He denied marihuana was "being grown" but suggested the trailers "were used" for the growing of marihuana.
- [95] In summary, there is no rational conclusion in this case other than Mr. Serov had knowledge and control over the marihuana in the unit he rented.
- [96] As noted earlier in these reasons, the offence of production of marihuana is distinct from possession for the purpose of trafficking. It requires proof of active participation in the growing of prohibited plants. Mr. Silverman argues there is an absence of evidence that Mr. Serov actively participated in the growing process because he was only seen twice by the property manager, at the commencement of the lease and on July 4, 2013.
- [97] The absence of evidence about Mr. Serov's attendance at the warehouse does not leave me with a reasonable doubt. Mr. Serov was employed and lived in Burnaby, not in Port Coquitlam where the warehouse was located. His visits may not have coincided with the property manager's presence or been remarkable enough to have been noticed.
- [98] Those considerations aside, Mr. Serov leased the unit and owned the trailers. He made the economic investment and assumed the risk of detection because his name was on the lease. Those factors are inconsistent with a finding that he was not involved with the production of marihuana which I find was the *raison d'être* for the setup in the warehouse.
- [99] In all the circumstances, I am convinced beyond a reasonable doubt that Mr. Serov's active participation in the growing operation is the only rational conclusion to be drawn from the evidence.
- [100] Mr. Serov, would you please stand? Mr. Serov, I find you guilty on both counts of the Indictment.

"Duncan J."

The Honourable Madam Justice Duncan

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