
CANADA / JUDGMENT

R. v. Steer

2016 BCSC 1639

COURT

Supreme Court of British Columbia

DECIDED

25 August 2016

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2016 BCSC 1639 R. v. Steer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Steer,

2016 BCSC 1639

Date: 20160825

Docket: 79464-2

Registry: Nanaimo

Regina

v.

Scott Stanley Matthew Steer

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

Counsel for the Crown:

A. Clarkson

Counsel for the Defence:

B. Movassaghi

Place and Date of Trial:

Nanaimo, B.C.

August 22-25, 2016

Place and Date of Judgment:

Nanaimo, B.C.

August 25, 2016

- [1] THE COURT: These are my reasons for judgment.
- [2] Mr. Steer was arrested by Department of Fisheries officers on April 10, 2016, on board the vessel Holly V while it was traversing False Narrows near Gabriola Island.
- [3] The Crown alleges Mr. Steer violated a 2013 Provincial Court order made pursuant to the Fisheries Act, R.S.C. 1985, c. F-14, that prohibited him for a period of ten years from possessing fishing gear. The Crown submits that Mr. Steer's sole occupation and operation of the vessel the Holly V, even for a short period of time, along with some other evidence, proves beyond a reasonable doubt that he was in control of the vessel and therefore possessed the fishing gear on it. Mr. Steer says the evidence falls short of proving that he controlled the vessel or possessed the fishing gear.
- [4] The order under which these charges are brought was granted on November 26, 2013 by the Provincial Court pursuant to ss. 79.1(b) and 79.2(a) and (i) of the Fisheries Act. Mr. Steer has already pled guilty in another proceeding to violating clause (b) of that order by being aboard a fishing vessel.
- [5] This trial concerns eight counts that he violated the order by possessing fishing gear, specifically (I list in the same order of the counts) a fishing rod, a crab trap hauler, ground line, grappling hook, ground line collars, crab calipers, quick release snaps, and boxes of sardines labelled "crab bait". He pleads not guilty to all eight counts.
- [6] There is no dispute that all these items were on the Holly V at the time of Mr. Steer's arrest. The dispute in this case centres on whether the evidence proves beyond a reasonable doubt that he possessed those items.
- [7] I turn to the events of April 10, 2016. Four Fisheries officials testified about the surveillance of Mr. Steer and the vessel Holly V preceding his arrest, and the seizure of items from that vessel. Most of their testimony is not controversial. The following narrative represents my finding of facts, except where I note a controversy exists about particular facts.
- [8] Fisheries Officers Jansen and Gibson observed David Andrews in the ferry lineup to Gabriola Island on April 10, 2016, at about 3:30 pm. Officer Jansen knew Mr. Andrews was an acquaintance of Mr. Steer's, who is also a person known to her. She called Fisheries Officer Rusel to report the sighting.
- [9] She and Officer Gibson decided to follow Mr. Andrews in their unmarked vehicle. He was driving a white Ford truck. After arriving on Gabriola Island, Mr. Andrews drove to Mr. Steer's home. After a short period of time, the officers observed Mr. Andrews's truck travelling to a public dock at the end of the Wharf Road, a short distance from Mr. Steer's

house. When the vehicle stopped, they parked and exited their vehicle and positioned themselves separately in a nearby wooded area such that they each had a view of the Holly V, which was anchored some 80 to 100 metres from their observation points.

- [10] The Holly V is registered to a Mr. Sprague, someone who Mr. Steer understood had worked with his father.
- [11] Mr. Steer paddled a yellow kayak to the Holly V and boarded her from the port side after throwing a white plastic bag on deck. He went into the cabin, started the engine, and then pulled up the anchor. It was not entirely clear in what order these tasks were done, but that is immaterial.
- [12] Mr. Steer handled the wheel in the cabin and manoeuvred the boat near the wharf, where Mr. Andrews boarded, and then they made their way through False Narrows. Officer Jansen said she saw Mr. Andrews on the vessel as it pulled away from the dock but no other Fisheries officers said that they saw Mr. Andrews before the arrest. Officer Jansen called Officer Rusel to report on her observations as the vessel left.
- [13] Officers O'Donnell and Rusel were accompanied by Fisheries Officer Day and two Coast Guard officials in a zodiac that left Nanaimo Harbour and gave chase to the Holly V. Once they pulled up close to the Holly V, Officer Rusel boarded the vessel after announcing his presence.
- [14] He testified that he asked Mr. Andrews if anyone else was on board and that Mr. Andrews said "no". Defence counsel objected to this evidence as being inadmissible hearsay, but not at the time it was proffered, as he should have. In any event, the evidence is not hearsay. Hearsay is an out-of-court statement offered for the truth of its contents. The Crown is not suggesting Mr. Andrew's statement is true. In fact, it is clearly false. The Crown says the evidentiary value is not the veracity of the statement but the fact that Mr. Andrews said it.
- [15] Officer Rusel searched in the cabin. He stuck his head into the doorway leading to the area below the bow, looking left and right, shining his flashlight. He then noticed, just at his feet, what turned out to be Mr. Steer's shoulder, which he tapped. He asked Mr. Steer to reveal himself, which Mr. Steer did. Mr. Steer had been crouched in a very small space. Mr. Steer was arrested and put on the zodiac in handcuffs.
- [16] Officer O'Donnell stayed on the Holly V and directed Mr. Andrews to take it back to the wharf. He testified that his impression was Mr. Andrews did not have much experience piloting a vessel the size of the Holly V. They ran into a sand bank and bumped hard into the dock. The vessel was secured overnight in Nanaimo and eventually taken to a secure facility in Sidney.

- [17] Officer Rusel testified there was a strong fish odour when he boarded the vessel. He testified that smell emanated from the main hold where there was "bloody" water and crab remnants. Officer O'Donnell said he saw what turned out to be two boxes of sardines labelled as crab bait, which are listed in Count 8, in plain view in the cabin. Because those were perishable, they were removed on April 11th and put in secure frozen storage.
- [18] The vessel was searched on April 21, 2016, and the officers described the items found on the vessel, and where those items were found, with the aid of accompanying photographs. There is no dispute that each of the items identified in Counts 3 to 8 were found on the vessel. The photographs and testimony confirms this.
- [19] There is no dispute there was a fishing rod, listed in Count 1, on the vessel, but Mr. Steer's position is that rod was not fishing gear because it had no line or reel attached. I address that dispute later in these reasons. There is no dispute that a crab hauler listed in Count 2 was physically attached to the vessel.
- [20] I turn to Mr. Steer's explanation for being on the vessel. As discussed, Mr. Steer did not contest the facts in the preceding narration, but he testified about other events. Mr. Steer says Mr. Andrews asked for assistance in traversing False Narrows because it is apparently a tricky passage. Mr. Steer said the plan was that he would navigate the vessel through False Narrows, disembark on the kayak, and then walk or drive home from the dock.
- [21] Mr. Steer's testimony was unclear and inconsistent as to why he believed Mr. Andrews was taking the vessel to Silva Bay. He says that at the dock at the end of Wharf Road, Mr. Andrews simply pointed to the vessel so Mr. Steer knew which one to board. Mr. Steer took the kayak and paddled to it.
- [22] He said the kayak was on the dock but that he did not know who it belonged to. He just used it. But he agreed the paddle he used belonged to his father. It had his father's name and phone number written on it. He offered no explanation as to how he got his father's paddle to use with a kayak, the ownership of which he had no knowledge. He did not explain why he would use and take on board a kayak that did not belong to him and which he claims he did not know the ownership of.
- [23] Mr. Steer says the kayak could not accommodate Mr. Andrews' size which is why Mr. Steer went onto the vessel (Mr. Andrews is a large man). When he came along Holly V's port side, he said his attention was fully focused on boarding without having the kayak slip from under his feet. He said that is why he did not see the crab hauler when he boarded, even though it is on the port side at the aft of the vessel. Similarly, he denies that he would have seen it after pulling anchor and walking towards the aft to get into the cabin because he was concentrating on his footing. He says the key to start the engine, visible in one of the photographs, was already on board.

- [24] Mr. Steer says that, after about 20 minutes, Mr. Andrews asked him to check the engine or something about the fuel. His testimony was vague. Later, he maintained he was checking the fuel gauge. He agreed in cross-examination it was very dark below deck and at that point he mentioned for the first time he used a flashlight that was apparently present below deck. He claims it took them 10 to 15 minutes to check the fuel gauge and, while he was doing that, the Fisheries officers boarded the vessel. He denies hearing the officers announcing their presence but says he noticed a "stampeding" on the boards above his head. He wondered what was going on.
- [25] He acknowledges that he was tapped on the shoulder and then came out from under the cabin. He acknowledged his position under the cabin was awkward but explained the space was tiny and he says he was just backing out.
- [26] Mr. Steer had an iPhone in his pants pocket and an iPhone or iPad charger in his jacket pocket. He said he does not know the passcode or telephone number of the iPhone. He said the iPhone was not his and that he simply grabbed one of six or so phones from a basket at his house because he was rushing out. He claims the phone might belong to his partner or to a friend who had not been at his place in several weeks. There was no mention in his testimony of why he would be rushing to leave the house.
- [27] Mr. Steer also had a B.C. Ferry boarding pass and a receipt for a foot passenger ticket from Nanaimo to Horseshoe Bay, timestamped 14:39 on April 10, 2016. He says Mr. Andrews handed him these papers, though he does not know why, and he says he simply put them in his jacket pocket.
- [28] Mr. Steer was questioned about a number of electronic statements apparently taken from an iPad that was seized from the vessel. The iPad did not belong to Mr. Steer. Originally, Crown counsel sought to tender that evidence on his understanding that defence counsel did not object to the authenticity and accuracy of that evidence which obviated the need for the Crown to call an expert witness to verify how the evidence was retrieved. But defence counsel raised an objection to the admissibility of the evidence based on relevance. Crown withdrew the evidence and I did not rule on its admissibility. Although there was nothing improper in Crown counsel using that material for the purposes of cross-examination, I have disabused myself of that testimony out of an abundance of caution.
- [29] I turn to the legal issue: Does the Crown have to prove knowledge?
- [30] The Fisheries Act does not contain a definition of "possession". The Crown's position is that because the Fisheries Act is not criminal legislation, the Criminal Code, R.S.C. 1985, c. C-46 definition of possession, which is also found in the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and accompanying case law does not apply. Specifically, Crown submits that it is not obliged to prove beyond a reasonable doubt that Mr. Steer had knowledge of the fishing gear on the Holly V.

- [31] I addressed this issue in a previous ruling. At the end of the Crown's case, defence counsel asked for a directed verdict of acquittal on the basis that the Crown had adduced no evidence that Mr. Steer had knowledge of the fishing gear when he boarded and operated the Holly V. That application required me to consider and decide whether the Crown had to prove knowledge as an essential element of the offences for which Mr. Steer is charged. I concluded it did not.
- [32] The Crown says it has proven Mr. Steer possessed the fishing gear because the evidence is uncontroverted that Mr. Steer operated the Holly V while he was the sole occupant, albeit for a short period of time. The Crown says Mr. Steer, being the sole occupant while operating the vessel, controlled the vessel, and along with other evidence, that proves beyond a reasonable doubt he possessed the fishing gear on it.
- [33] Mr. Steer's position is that proof he operated the vessel is not sufficient to establish he possessed the fishing gear found on it, even if he was the sole occupant, which he submits was for a very brief period of time.
- [34] Defence counsel acknowledges that, while evidence of knowledge is not necessary for a conviction, he says the lack of such evidence in this case, combined with Mr. Steer's testimony, defeats the Crown's theory of the case and demands an acquittal.
- [35] Both counsel agreed that because Mr. Steer testified, I must be mindful of the principles expressed in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, when addressing Mr. Steer's credibility and the impact any conclusions I make about that have on the ultimate verdict.
- [36] The Crown says proving possession involves two elements: proof beyond a reasonable doubt that Mr. Steer took control of the fishing gear, and that he did not exercise due diligence to avoid that possession. It says the burden of proving due diligence on a balance of probabilities is on Mr. Steer. It relies on *R. v. Pierce Fisheries Ltd.*, [1971] S.C.R. 5, which I relied on in my previous ruling to establish the Crown does not have to prove knowledge beyond a reasonable doubt.
- [37] That case also stands for the proposition that the prohibition against possession in that case is one of strict liability. The Crown says those principles apply here. The Crown refers to the facts of that case in support of its theory of guilt. Even though Pierce Fisheries had between 50,000 and 60,000 pounds of lobster at various stages of packaging at its plant, the presence of 26 undersized lobsters, contrary to the regulation, was sufficient to obtain a conviction. The court was unwilling to acquit on the basis that the employees responsible for sorting the lobsters did not "acquire the knowledge" of those 26 undersized lobsters. In other words, the company knew it had lobsters but it did not show it took steps to make sure it did not possess any undersized lobsters, and thus due diligence was not made out.
- [38] Mr. Steer submits this case is not helpful because it does not address what constitutes control for the purpose of proving possession. I agree it is not helpful on that point, but it does establish the rules of strict liability and due diligence.

- [39] Mr. Steer relies on two cases. Both are criminal cases and therefore cannot apply directly, but Mr. Steer says the analysis in them is compelling. I analyze each in turn.
- [40] The first is *R. v. York*, 2005 BCCA 74. Mr. York was convicted of possession of stolen property, but that was overturned on appeal. The Court of Appeal found that even though he exercised control over the goods for a brief period of time, he did not do so with the intention of using them in the prohibited manner.
- [41] In that case, Mr. York suspected his business partner brought a van full of stolen property onto the business's premises. When his partner refused to disclose where he bought the items, Mr. York drove the van away in order to remove it from the property. He was stopped by the police and charged with theft and possession.
- [42] Defence counsel says the following quote (relied upon by the Court of Appeal in *York*) is applicable to the facts before me. In *R. v. Christie* (1978), 41 C.C.C. (2d) 282, Chief Justice Hughes of the New Brunswick Court of Appeal relied on *R. v. Hess* (1948), 94 C.C.C. 48 (B.C.C.A.) and said (as quoted at para. 15 of *York*):

In my opinion, there can be circumstances which do not constitute possession even where there is a right of control with knowledge of the presence and character of the thing alleged to be possessed, where guilt should not be inferred, as where it appears there is no intent to exercise control over it.

- [43] Mr. Steer says there was no evidence that he boarded the vessel for the purpose of, or with the intent of, going crab fishing, although he does not have to go that far. He says there is no evidence he boarded the vessel with the intent of having control over or possession of the fishing gear. He says the Crown has therefore failed to prove beyond a reasonable doubt that he possessed the fishing gear.
- [44] That approach was rejected in *R. v. Bell*, [1993] B.C.W.L.D. 544, 18 W.C.B. (2d) 404, which is a Fisheries case, and therefore more applicable to the facts before me. In *Bell*, a fisher collected sea urchins into a bag and unknowingly caught abalone while the abalone fishery was closed. Even though the fisher did not know the abalone was in his catch, he was charged for failing to take steps to avoid that possession. The trial judge acquitted him, but that was overturned on appeal.
- [45] The Provincial Court judge stated that if the case had rested on due diligence, he would have to convict because he could not conclude that *Bell* exercised any due diligence, but the Provincial Court judge went on to acquit because he concluded the regulation which prohibited fishing for, and possession of, prohibited species required an element of positive action to be proven. He stated, as quoted at para. 9:

to offend Regulation 4.(3) (sic), an element of positive action is required in respect of the prohibited species to be proved by the Crown beyond a reasonable doubt. That is, the Crown must establish that the accused person pursued an active course directed at the prohibited species.

- [46] But Justice Melvin disagreed. He referred to *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299, and concluded that the Provincial Court judge erred in finding that the Crown was required to prove beyond a reasonable doubt not only the act of fishing, as defined by the Fisheries Act, but also that the accused person's focus and purpose was to harvest the prohibited species of fish in order to establish the *actus reus* of the offence (at paras. 10-12).
- [47] Possession is not a defined term in the Fisheries Act. So each case will turn on its particular facts and it would be imprudent for me to be guided by any absolutes as to what may or may not constitute possession. The following remarks of Justice O'Halloran from *Hess* (as quoted at para. 14 of *York*) are apt, especially because in that case the term "possession" was defined:

It is not easy to find in the decisions any clear cut statement of what constitutes possession under all circumstances without exception. It may be extremely difficult to formulate any such description or definition which is universally embracing. ...

- [48] Mr. Steer also relies on *R. v. Iturriaga*, [1993] B.C.J. No. 2901, [1994] B.C.W.L.D. 1117. The Court of Appeal allowed the accused's appeal from a conviction of possession for the purpose of trafficking cocaine and possession of marihuana on the basis that the jury's verdict was unreasonable and could not be supported by the evidence.
- [49] The facts are these. Police officers pulled over the vehicle the appellant was driving. The co-accused was seated in the passenger seat. The appellant was visibly nervous and when asked to produce his licence and registration, did not respond. As it turns out, he did not have a licence to drive. The officers searched the vehicle, found a bag of cocaine under the passenger seat, and four more bags of cocaine wrapped up in a T-shirt under the passenger seat, and a tiny amount of marihuana between the seats.
- [50] On appeal, Crown in that case argued there was evidence upon which the jury could infer both knowledge and control, and Crown referred to three things: the slowing of the vehicle and the appellant's nervousness; the drugs being found within arm's reach of the appellant; and the fact the appellant was driving the car.
- [51] The Court of Appeal held the verdict the jury delivered could not be supported by the evidence. It noted nervousness could be attributed to the simple fact of being stopped by the police. Further, the court stated the fact that the appellant was driving the car and the fact that the cocaine and marihuana were within arm's reach of the appellant in the car cannot, "without further evidence than is present here, justify a conviction. The evidence indicates that both drugs were concealed. These facts simply cannot establish beyond a reasonable doubt that the appellant had knowledge of or control over the drugs in question" (at para. 9).

- [52] The Crown's argument in that case was based on a combination of those three pieces of evidence. Defence counsel asks me to rely on Iturriaga to reject the Crown's submission that Mr. Steer's operation of the vessel could be sufficient to establish he controlled it. But I do not understand the Crown in that case, or the case before me, to suggest that the operation of a vehicle alone, in any circumstance, is sufficient to convict someone of possession.
- [53] In written and oral submissions, the Crown's position in this case is that six uncontroverted facts prove Mr. Steer had control of the vessel. In response to my question, Crown counsel confirmed that of those six factors, the two that were necessary were Mr. Steer being the sole occupant and operating the vessel by physically taking control of the wheel and moving it. However the Crown also relies on other factors which include Mr. Steer boarding the vessel, pulling the anchor, entering the wheelhouse, and the fact that the fishing gear was on board and was moved and controlled by whomsoever operated the vessel.
- [54] I do not find the Iturriaga case applicable to the facts before me because the standard against which the Court of Appeal was judging the evidence was the Crown's obligation to prove beyond a reasonable doubt both knowledge and control.
- [55] I am also not persuaded that the Court of Appeal would necessarily have come to the same conclusion if there had been no passenger in the car, which is an important distinction. The court in that case concluded that the appellant's nervousness and his being the driver of the car in which drugs were concealed within arm's reach were insufficient to establish that he had knowledge or control of the drugs. But that conclusion simply cannot be divorced from the fact that the co-accused was a passenger at the time and admitted the T-shirt that concealed the drugs belonged to him.
- [56] The next topic is, did Mr. Steer know about the fishing gear? Notwithstanding that the Crown says it is not obliged to prove Mr. Steer knew and had control of the fishing gear, it submits the evidence does establish that beyond a reasonable doubt; it says that Mr. Steer knew about the fishing gear.
- [57] This assertion rests on the principle that knowledge of the criminal standard includes recklessness and wilful blindness. The Crown submits that an accused is reckless, and therefore deemed to have knowledge, if he or she is aware of a risk that his or her conduct is prohibited, but persists despite the awareness of that risk. An accused is wilfully blind if he or she knows enough that further inquiry should be made about his or her conduct, but he or she shuts their eyes or refrains from making that inquiry. These propositions of law are not controversial.
- [58] But defence counsel's position is that because Mr. Steer testified he had no knowledge of the fishing gear and there was no other direct evidence to contradict him, I cannot convict based on the principles from W.(D.).

- [59] The W.(D.) criteria are well known. The court must acquit if it believes the accused's testimony or, even if it does not believe the accused, but has a reasonable doubt about the Crown's case. Even if the court is left in no doubt that the accused's evidence is not credible, it must be satisfied by the remainder of the evidence that is accepted that guilt has been established beyond a reasonable doubt. To that criteria, Mr. Steer adds Mr. Justice Woods's comment from *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146 (B.C.C.A.) that you must acquit if after careful consideration of all the evidence, the court is unable to decide whom to believe.
- [60] I must assess Mr. Steer's credibility. Considering the whole of the evidence, I do not believe Mr. Steer's account of why he was on the Holly V on April 10, 2016. I find most of his evidence not only implausible but inconceivable. But I still must be satisfied that the evidence which I do accept proves beyond a reasonable doubt that he possessed the fishing gear.
- [61] I will analyze the evidence in two main categories: first, control; and secondly, awareness of the fishing gear.
- [62] Mr. Steer admits he boarded the vessel, started it, pulled the anchor and manoeuvred it to the dock, and further towards False Narrows. The Crown surveillance evidence is consistent with this.
- [63] But Mr. Steer submits he was not controlling the vessel. He points to the following factors. First, he says, the vessel did not belong to him. I agree the evidence established this, but in my view lack of ownership of an item does not preclude a finding that a person could possess it. In my view, this fact has neutral impact.
- [64] He also relies on his testimony that he was on the Holly V for the abbreviated purpose of assisting Mr. Andrews navigate through False Narrows. He said while he started the vessel and pulled the anchor, Mr. Andrews was in control of the vessel. He says the plan was that he was going to disembark and use the kayak to paddle back to the dock while Mr. Andrews continued to take the Holly V to Silva Bay.
- [65] I do not find this account credible for several reasons. The most significant reason is this: If his presence on the vessel was to assist Mr. Andrews to navigate through False Narrows, why would Mr. Andrews ask Mr. Steer, just as they enter False Narrows, to go and check the engine or the fuel? Also, it makes no sense for Mr. Steer to check the gauge if he was not in charge of the vessel. I have no doubt that Mr. Steer's explanation is false.
- [66] I find as a fact Mr. Steer was not checking the fuel gauge. Several portions of his own testimony contradict his story. He testified he did not use his headlamp when going below deck in a dark confined space to look for fuel gauges on a vessel he claims he had not operated and was not familiar with. That simply makes no sense.
- [67] His excuse was that he did not want to have loose clothing on him because of the fans and belts operating there. His headlamp was found in his jacket pocket. He could easily have taken off his jacket and put on the headlamp. In fact, when he was arrested, he was not

wearing his jacket so the concern about loose clothing would not have arisen. The evidence was consistent that the jacket was put on him after arrest. He claimed to use a flashlight but that was only after he agreed in cross-examination that the space was dark so he would have needed some source of light to see the fuel gauge.

- [68] I find the evidence clearly proves Mr. Steer was attempting to hide when he went below deck. The curious thing about this testimony is why he denied this because he admitted he knew at the time he was violating the court order simply by being on the vessel, a charge he has now pled guilty to. Therefore, by his own testimony, he had a plausible explanation to explain hiding below the deck just before being boarded. The fact he did not rely on that explanation is consistent with him being neither a truthful nor reliable witness.
- [69] He was also vague and contradicted himself on why he thought Mr. Andrews was taking the Holly V to Silva Bay. He maintained that his common-law partner and Mr. Andrews had discussions about that journey. First, he said Mr. Andrews was going to Silva Bay to tow another vessel (owned by his partner) back. When faced with the fact that the Holly V did not obviously have towing equipment, he then offered an explanation that perhaps the Holly V was going to the shipyard, but he was also vague about that. But even that testimony would be inconsistent with his firm testimony that his partner and Mr. Andrews discussed the plans. He could not answer why his partner would be involved in a discussion about a vessel that neither she, he nor Mr. Andrews owned that was going to a shipyard presumably for repair. He could not answer why Mr. Andrews would be using the vessel because Mr. Andrews did not own it. It strains credulity that Mr. Steer was on board the Holly V simply to assist Mr. Andrews when neither he nor Mr. Steer owned it.
- [70] Mr. Steer denied that a receipt dated April 10, 2016 found in his jacket was for food or snacks he had in the white bag that he threw on board. He said he had poutine in the bag. I find it inconceivable to believe anyone would toss a bag containing poutine anywhere if they actually wanted to consume it, for the obvious reason the gravy would spill, even if in a box. Also, there was no evidence as to how it is Mr. Steer got a box of poutine; this is significant because he testified he rushed out of his home.
- [71] I find Mr. Steer was not truthful about what was in the bag. Again this is curious because it is not immediately clear why an admission that he had snacks in that white bag could hurt his case. I find he was deliberately untruthful for the sake of denying anything the Crown was putting to him.
- [72] I have no doubt, based on all of the evidence, that Mr. Steer's account of why he was on the vessel is not credible. Based on the whole of the evidence I find that Mr. Steer was on the Holly V for the purpose of operating it and I find he had control of the vessel.

- [73] I now turn to the fishing gear. I make the following findings and inferences based on the evidence I heard, which I find supports the conclusion that Mr. Steer knew the Holly V had fishing gear on it, and that he failed to exercise due diligence to ensure he did not possess fishing gear.
- [74] The evidence was uncontroverted that the Holly V is plainly a fishing vessel equipped with a gill net drum and hydraulic crab hauler. Both are physically attached to the vessel. Fishing gear was found in all parts of the Holly V, including in the main hold, in both side compartments, and in the cabin. I find it virtually impossible that someone, even a layperson, could glance at that vessel and not know immediately it is a fishing vessel of some sort. Mr. Steer admitted as such, although he claimed it was a gill netter when he first saw it.
- [75] I find the hydraulic crab hauler was in plain sight on the port side where Mr. Steer boarded the vessel. It defies logic, common sense, and the photographic evidence to have any doubt that the crab hauler was in plain sight. Mr. Steer admits he boarded the vessel on the port side, but claims he did not see the hauler. That is simply inconceivable and I have no doubt that statement is not true. I find he knew the Holly V had a crab hauler attached to it.
- [76] I find the fishing rod was in plain sight. Mr. Steer says the rod on the Holly V was not a "fishing rod" or, at the very least, not fishing gear. Defence counsel argued the spirit of the Provincial Court order was that Mr. Steer not be in possession of equipment which he could immediately use to fish, and therefore he cannot be convicted on Count 1. The evidence was uncontroverted that, as it was found, the fishing rod on the Holly V could not be used to fish. It had no line or reel attached to it.
- [77] But the rod did have a cork handle that swivelled and eyes through which one could put a fishing line. I heard testimony that if a person walked into a sporting goods store and asked for a fishing rod, you would get something with the same characteristics. I also heard that it is common for fishing rods to be sold without line or reels attached. They are sold separately. That evidence was not contradicted.
- [78] The order does not qualify fishing gear. It does the opposite. It prohibits Mr. Steer from possessing fishing gear "of any kind". This is an inclusive, not exclusive, phrase. On the facts before me, I am satisfied beyond a reasonable doubt the fishing rod was fishing gear.
- [79] Mr. Steer also says he did not notice the fishing rod. Again I find this defies logic. He testified he was an experienced fisher who had been fishing since he was four or five years old. There is no evidence to suggest visibility was limited on April 10th. It is simply not credible for Mr. Steer to suggest he could board the vessel, walk back to the cabin from the aft after pulling the anchor, and not see the fishing rod. I am satisfied beyond a reasonable doubt he saw the fishing rod.

- [80] Crown argues the fact that the crab crates and whiteboard with set numbers (of crab traps) written on it were in plain sight and that supports the finding that Mr. Steer was wilfully blind or reckless as to the presence of fishing gear on the Holly V. Mr. Steer was not charged for being in possession of crab crates or the whiteboard set numbers. I heard testimony on how those items are related to crab fishing, even if they were not put forward as fishing gear.
- [81] I do not agree the whiteboard was in plain sight. I did hear testimony as to the possible meaning and significance of what was written on the whiteboard as it relates to crab fishing but I am not persuaded the presence of that writing is probative as to whether Mr. Steer ought to or did know there was fishing gear on the vessel.
- [82] I agree the modified milk crates were in plain sight if one is standing above or on level with the vessel's deck. The evidence was clear that the modifications on the crates are used in crab fishing.
- [83] Defence counsel says because Mr. Steer entered from the port side and went to the bow, not aft, I should infer that he did not see the crates. I do have a doubt whether Mr. Steer actually saw those crates because he boarded from a kayak and would have been below the level of them until he got up and he did not immediately walk towards the aft where they were. It would be very difficult to see the crates unless one is on or above the deck.
- [84] The Crown argues, however, even if the items were not in plain sight, and clearly some were not because they were in holds or, as with the crates, it is not proven that Mr. Steer saw them, I should find Mr. Steer must have known there was a risk fishing gear, including all the items particularized on the Indictment, were on board and he nevertheless decided to take the risk of taking control of the vessel without checking if doing so would place him in violation of the court order. The Crown points out the inference is reasonable based on all the evidence but also because Mr. Steer confirmed he had owned a commercial crab fishing vessel and had engaged in commercial crab fishing.
- [85] I agree with the Crown's submission. Mr. Steer has extensive familiarity with fishing, including crab fishing, by his own account. I am satisfied beyond a reasonable doubt that he knew he was boarding a fishing vessel that had a crab hauler on it. I find that he knew there was a strong probability that other crab fishing gear would be on the vessel. I find that he failed to take steps to ensure the vessel did not have other fishing gear such that, if he operated the vessel, he would be violating the court order.
- [86] He claims he was not thinking about the prohibition for possessing fishing gear in the court order. On its own, that proves he did not exercise due diligence. But I do not find his statement to be credible. He admitted he was aware at the time he was prohibited from being on a fishing vessel. To suggest he turned his mind to that but it somehow slipped his mind that he was also prohibited from possessing fishing gear is not believable. Fishing gear was all over the vessel and it is inconceivable an experienced fisher like Mr. Steer would not see, or would be unaware, or could not reasonably have expected fishing gear to be on that vessel.

- [87] I find the Crown has proven beyond a reasonable doubt that Mr. Steer had control of the Holly V and had actual knowledge or was wilfully blind to the fact that each of the items listed on the Indictment was on the Holly V.
- [88] I conclude the Crown has proven beyond a reasonable doubt that Mr. Steer possessed fishing gear in each of the eight counts listed on the Indictment.
- [89] I find Mr. Steer made no effort to exercise due diligence to avoid his contravention of the court order.
- [90] Therefore I convict Mr. Steer on all eight counts.

"Sharma J."

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