

CANADA / JUDGMENT

R. v. Taylor

2025 BCSC 487

COURT

Supreme Court of British Columbia

DECIDED

18 February 2025

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2025 BCSC 487 R. v. Taylor

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Taylor,

2025 BCSC 487

Date: 20250218

Docket: 87668-2

Registry: Nanaimo

Rex

v.

Scott MacDonald Taylor

Before: The Honourable Mr. Justice Crossin

Oral Reasons for Judgment

Counsel for the Crown:

C. Gibson

Counsel for the Accused:

B. Movassaghi

Place and Dates of Trial:

Nanaimo, B.C.

January 27-28, 30-31 &

February 3-4, 2025

Place and Date of Judgment:

Nanaimo, B.C.

February 18, 2025

Introduction

- [1] The accused is charged on a seven count indictment alleging offences that he possessed a variety of drugs for the purpose of trafficking, and, as well, unlawfully possessed a firearm and ammunition.
- [2] The offences all arise from a single event, namely; the search of a residence at 515 Nichol Street in Nanaimo ("the residence") in the early morning hours of June 4, 2020. The search revealed various drugs, in various places in the residence. Counts 1-5 in the indictment reflect the different locations the drugs were discovered. The Crown has indicated it will be staying count 5 of the indictment. Counts 6 and 7 relate to the firearm and ammunition located in the residence.
- [3] The investigation in this matter began as an investigation of a suspected drug dealer; Mr. Stephen Johnson. It is unclear on the evidence precisely when the investigation began, but on May 8, 2020 Mr. Johnson was observed selling methamphetamine to a female person somewhere in the Nanaimo area.
- [4] Again, the evidence is somewhat vague, but it appears, at some point following this transaction, the Nanaimo RCMP began targeting Mr. Johnson in an investigation. The detail of this investigation before the court is the evidence of certain surveillance carried out by the RCMP.
- [5] When the surveillance began is unknown, but the evidence before the court commences with surveillance on May 26, 2020. It also appears, by implication, that the investigators had come to the view that the base of operations of Mr. Johnson was 515 Nichol Street.
- [6] It is during the period of surveillance between May 26, 2020 and June 4, 2020, that the accused, along with numerous other persons, are also seen in and about the residence from time to time. It is sometime during this timeframe that Mr. Taylor was also identified as a target, along with two others. There is no evidence of any conduct or activity of Mr. Taylor, at the residence or otherwise, prior to May 26, 2020.
- [7] The evidence concerning Mr. Johnson's relationship with the residence mainly consists of the surveillance evidence. Mr. Taylor, who testified in the trial, also provided some evidence in this regard. Similarly, the relationship of Mr. Taylor and others to the residence is also to be derived from the surveillance evidence and the evidence of Mr. Taylor.

- [8] There is no evidence relating to the ownership or legal control concerning the residence. There is no evidence of any lease or tenancy arrangements with the owner or otherwise. There is little evidence concerning the residence and the persons coming and going from the residence prior to May 26, 2020.
- [9] The RCMP executed a search warrant and entered 515 Nichol Street at approximately 6:00 a.m. on June 4, 2020. Shortly prior to the execution of the search warrant Mr. Johnson was arrested after leaving the residence.
- [10] Seven members of the RCMP Vancouver Island Emergency Response Team congregated at the front entrance. Sergeant Minkley gained entrance to the residence by breaking a window located to the side of the door, after the RCMP failed to ram open the front door. It was discovered that the front door was equipped with a dead man bar on the inside of the door that frustrated the attempt to enter. Sgt. Minkley exploded a flash grenade in the premises before entering through a window.
- [11] At the same time, four other members of the ERT team, lead by Corporal Creed, had accessed the property through a metal gate, via the back alleyway, and set up their presence in the yard at the back of the house. They were tasked with entering and securing the lower floor/basement living area; as well as holding the property in the rear.
- [12] Upon breaking the window and gaining entry to the premises, Sgt. Minkley observed a female run from the upstairs living room; through the kitchen, towards the back of the house. He observed no other persons in the residence.
- [13] More or less at the same time, two members of the ERT team accompanying Cpl. Creed, had entered the premises through the ground level back door and arrested a female occupant. Almost coincidentally the accused was observed exiting the back door of the upper level of the residence onto the balcony; and while clad in his underwear, jumping off the balcony, and landing on an old washing machine in the backyard of the residence. He was promptly arrested.
- [14] Soon on the heels of the accused was a female, identified as Jenna Evans, also exiting the upper-rear door onto the upper balcony. Ms. Evans was directed to descend to the backyard from the balcony with the use of a set of exterior stairs. This she did and was also promptly arrested.
- [15] There was little controversy concerning the evidence making up the Crown's case. The evidence of surveillance is made up of the surveillance reports prepared by the RCMP. These reports were admitted by agreement. The reports were not challenged by the defence; nor were they addressed or amplified in viva voce evidence by the police.
- [16] There is no challenge to the search. There is no challenge to the nature of the drugs located; the amounts of those drug; nor where in the residence they were located. The same can be said in relation to the firearm and ammunition.

- [17] The Crown led expert opinion evidence from Sgt. Carroll concerning various aspects of drug trafficking. There was no issue concerning his qualifications to provide such evidence; and there was little challenge from the defence concerning the evidence he offered. It is not contested Mr. Stephen Johnson was trafficking in drugs and using 515 Nichol Street as a base of operations.
- [18] The real issue in the case is the role and conduct of Mr. Taylor as it relates to the drug trafficking and Mr. Johnson. In particular, the issue is whether the Crown has proven beyond a reasonable doubt whether Mr. Taylor on June 4, 2025 possessed the drugs found in the residence for the purpose of trafficking. Alternatively, whether Mr. Taylor aided Mr. Johnson in his drug trafficking activities. It is a similar issue in relation to Counts 6 and 7; namely whether Mr. Taylor possessed the firearm and ammunition. There is no evidence Mr. Taylor participated in any alleged drug transactions.
- [19] Mr. Taylor testified. The evidence of Mr. Taylor focused on these issues. Mr. Taylor denied possessing the drugs and denied possessing the firearm and ammunition. He denied aiding Mr. Johnson in his enterprise.

The Evidence

- [20] Constable Kathleen Devoe provided evidence concerning the items seized from 515 Nichol Street. Constable Devoe was tasked as the exhibit person. In the course of those duties she took photos and tracked the seizure and analysis of exhibits.
- [21] In this area there is not a great deal of controversy; in fact much of the evidence was crystallized by way of admissions of fact.
- [22] The main focus of the evidence was directed at various items; where they were found; and the fact that substances found were ultimately analyzed as one or the other, or a combination of, fentanyl, carfentanil, crystal methamphetamine and caffeine. The items seized also consisted of documentary material found in the house associated with a variety of persons, including the accused. Finally, the evidence revealed the location of the seizure of the firearm and ammunition that are the subject matter of Counts 6 and 7 in the indictment.
- [23] Constable Devoe testified she began her day on June 4, 2020 at approximately 5:00 a.m. by attending at the scene of the arrest of Mr. Steven Johnson. Mr. Johnson was arrested in the area of 515 Nichol Street. Constable Devoe then attended at 515 Nichol Street to commence her duties.

- [24] The residence is on a sloped property; descending towards the back of the property. The residence faces west. The residence consists of an upper floor that is more or less ground-level at the front door entrance. The upper floor consists of roughly five separate spaces, although what Constable Devoe described as a living room area to the right of the front door entrance; and the area described as the dining room, to the left of the entrance, is essentially one room.
- [25] The space due north of the dining room area consists of a bedroom and what Constable Devoe has described as a spare room. The kitchen area is east, towards the back of the house. The bathroom is also located at the back of the residence in the northeast corner of the residence. The exit to an upper balcony is through a door in the kitchen area.
- [26] The downstairs also has an entrance at ground level from the backyard. The lower level, or basement, contains a large room on the south side that Constable Devoe characterized as a basement suite. The north side of the basement is made up of a crawlspace. The west side contains a hot water tank and utility room. There is no internal connection between the upper and lower floors.
- [27] The photographs taken by Constable Devoe and her team make clear that the person or persons that resided in the residence did not have the need or apparent desire for an orderly household. There was excessive clutter throughout the residence. Within, above, and below the clutter the police found, seized, and analyzed the items tendered in support the allegations.
- [28] There were a number of small scales containing residue of some combination of drugs in issue. One such scale was found on a shelf in the kitchen. One found at the bottom of a dresser drawer in the basement, and one on a coffee table in the basement. As well, a scale was found downstairs near a sink; and upstairs a scale was found under the living room couch and also in and around the living room coffee table.
- [29] There was drug paraphernalia, consistent with the ingestion of drugs, particularly methamphetamine, throughout the residence. There are a number of baggies; some containing residue, and some not, found throughout the residence. Some were in plain sight; some were buried in the clutter; some in various containers. Aside from residue the amounts located in the baggies or containers that were seized was relatively small. The weight, with two notable exceptions, varied between .06 grams to 3.9 grams. Two bags contained 7.0 grams. In addition approximate 36 grams were found in two baggies. The baggies were inside a container. The container was underneath the coffee table in the living room on a shelf that was affixed underneath the surface of the coffee table.
- [30] There were at least six cellphones identified and/or seized in the residence. There is no evidence whether any forensic examination took place; nor any evidence as to who owned or used the phones.

- [31] The police seized documentation in various places in the residence; which documentation was associated with various persons including the accused. Certain documentation was found downstairs which documentation was associated with Mr. Johnson, the person arrested earlier in the day. And there was signage with the name "Ballz". Constable Devoe testified this was the street name of Mr. Johnson. There is also identified a hat that is associated with Mr. Johnson.
- [32] There is documentation associated with a person named Michael Dubinsky.
- [33] Under the lid of a coffee table downstairs was a box containing various items. One such item was an envelope apparently addressed to the accused at number 15 - 3326 Rock City Road, Nanaimo, BC. It is dated in 2017. In addition an empty prescription bottle was found in the box which prescription was made out to Scott Taylor. The photograph taken by the police does not capture the date of the prescription being filled.
- [34] The driver's license of an unidentified woman was found upstairs in the area of the coffee table. The Constable Devoe testified the woman was not associated to the residence on that day. There was a good deal of clutter on and around the coffee table in the living room, including mail addressed to the accused at the Rock City Road address. There are no dates revealed.
- [35] A black bag found under the couch in the living room was seized. This bag contained material associated to the accused; including banking documents and a wallet containing the accused's bankcard and other identification all relating to the Rock City Road address. The bag also contained approximately \$5,000 in cash. It did not contain drugs, drug paraphernalia, or residue.
- [36] In addition, the documentary material found in the living room was associated with a person named Colby Kristianson.
- [37] The firearm that is the subject matter of Count 6 was found inside a bag that was in a closed drawer; one of a set of drawers; in a dresser in the upstairs bedroom. The ammunition, the subject matter of Count 7, was found in a black bag which bag was resting on a chair in the living room.
- [38] There was also documents associated with Mr. Taylor found in a drawer in what has been referenced as the spare room off the bedroom.
- [39] There is no evidence of the accused's fingerprints on any items seized or at all.
- [40] A linchpin to the Crown's case is the submission that drugs were located in the living room area on June 4, 2020 where Mr. Taylor was sleeping that morning; and that Mr. Taylor exerted a measure of control over the residence; based primarily on the submission he could come and go from the residence at will; and control the comings and goings of other persons in and out of the residence.

- [41] The Crown says these inferences are clearly available from the surveillance evidence. Consequently I now outline that evidence.

The Surveillance Evidence

- [42] The surveillance evidence on May 26, 2020 is reported as commencing at approximately 5:00 p.m. and extending to approximately 10:00 p.m.; although the first observation of any person at the residence is Mr. Johnson at approximately 6:00 p.m.
- [43] Mr. Johnson is observed on the property; leaving the property; and engaging in a short meeting with someone inside a vehicle away from the property; and then returning to the property. These observations of Mr. Johnson take place between approximately 6:00 p.m. and 8:00 p.m. There are no observations of Mr. Johnson after 8:00 p.m.
- [44] During this timeframe however a Mazda vehicle is observed parked in the rear yard of the property. It is determined it is a vehicle owned by Davida Lamb. Later in the evening, an unknown female person is seen at the Mazda and driving away off the property. Also observed in the backyard area of the residence was a Jeep vehicle registered to an Alexander Vallar. In addition, during this period of time, an unidentified male is observed exiting the residence and driving away in the Jeep.
- [45] Still later in the evening, at approximate 9:00 p.m., an unknown Caucasian female is seen walking onto the property, traversing through the backyard of the property and towards the residence. The surveillance report does not disclose her entry, or otherwise, into the residence.
- [46] Similarly, on this evening, another unknown person approximately 40 minutes later, again walks onto the backyard of the property from the alleyway towards the residence. Again, the surveillance report does not disclose where this person went.
- [47] There is, on this day, no evidence of Mr. Taylor at the residence; only evidence of a number of other individuals in and about the residence.
- [48] On May 27, 2020 the timeframe of the surveillance is from approximately 5:20 p.m. to 10:00 p.m. About 5:30 p.m., Mr. Taylor is seen on the back deck of the residence with an unknown female (white overalls). They are observed on the deck for a few minutes and then both re-enter the residence. When and how Mr. Taylor had arrived at the residence that day is unknown.
- [49] Mr. Johnson is observed in the early portion of the surveillance leaving the property on a bicycle; returning within a few minutes, and re-entering the residence through the door off the upper deck. Within some minutes, Mr. Johnson is seen with an unknown female on the deck. Mr. Johnson then is observed leaving the deck via the back stairs. Where he goes is not revealed. However, within minutes, he is seen again departing the property on a bicycle. These observations of Mr. Johnson occur between 5:40 p.m. and 6:07 p.m.

- [50] In around the same time, at 6:05 p.m. an unknown male, wearing a blue backpack (blue backpack male) walks onto the property, up to the upper deck, and into the residence.
- [51] It is then observed that an unknown female appears on the back deck. The blue backpack male exits the residence and leaves the property.
- [52] In and around the same time, an unknown female with black hair is also seen on the back balcony and then re-entering the residence (black hair female). The black hair female then leaves the residence, meets someone in a red Dodge pickup, and returns to the residence with something in a grocery bag.
- [53] At approximately 6:19 p.m. Mr. Taylor and Colby Kristianson are seen on the balcony. In addition, yet another unknown male (blue shirt) has come onto the property and all three go into the residence. At about 6:25 p.m., Mr. Johnson returns on his bicycle. Mr. Johnson is seen shortly thereafter cutting the grass in the backyard. At the same time an unknown male is seen on the front yard of the residence. Black hair female is seen leaving the residence.
- [54] At about 7:15 p.m. Mr. Johnson is observed again leaving the residence and walking to a local liquor store. There was no evidence concerning the surrounding area of the residence but it gleaned from the surveillance evidence that the liquor store is a short distance away from the residence. Mr. Johnson is observed meeting and speaking with persons in a vehicle in the area of the liquor store.
- [55] Mr. Johnson is next seen moving metal fence posts in the backyard of the residence.
- [56] Finally, between approximately 9:45 p.m. and 10:00 p.m., Mr. Taylor and Ms. Kristianson are again seen on the back deck.
- [57] The surveillance on May 28 is from approximately 5:45 p.m. to near 10:00 p.m.
- [58] In the first half an hour or so it is observed two unidentified females (blonde hair and red bandana) entering the property at different times and then leaving the property. On this evening at least two other females are observed walking onto the property and red bandana is seen re-entering the property. Mr. Johnson is observed at approximately 8:40 p.m. on the back deck. He is observed then leaving the property. He is tracked for a period of time and surveillance ends at 9:48 p.m. There are no observations of Mr. Taylor.
- [59] The surveillance on May 29, 2020 is again between approximately 5:00 p.m. and 10:20 p.m.
- [60] Initially, a person identified as Kevin Lackie is seen on the back deck at 5:07 p.m. He is observed walking back into the residence. An unknown female is then observed rummaging through a red truck that is parked on the property. The unknown female is then observed walking back into the residence.
- [61] A few minutes later Mr. Lackie is seen speaking with Mr. Taylor on the back deck. A few minutes after that, Mr. Taylor is seen sweeping the back deck. A female in a red plaid shirt is observed in the backyard, and a few minutes later, being handed Ziploc bag boxes by Mr.

Taylor while they are standing on the back balcony. She then re-enters the residence. Some minutes later Mr. Taylor re-enters the residence. A few minutes after that, Mr. Lackie, who had apparently left the residence, returns and enters the residence. In and around the same time, the female in red plaid, having left the residence, returns and enters the residence.

- [62] Mr. Johnson, Mr. Lackie, Mr. Taylor, and the female in red plaid are seen outside the residence between approximately 6:15 p.m. and 7:00 p.m. In and around 7:00 p.m. Mr. Johnson is mowing the lawn.
- [63] There is the following entry in the surveillance report at 7:00 p.m.: "two males out the front door. Both males then back inside. Taylor closed screen door at the front and secured it with something".
- [64] The next observation is approximately two minutes later when Mr. Lackie, having retrieved a ladder from Mr. Johnson, exits out through the front door and Mr. Taylor and Mr. Lackie are seen at the front of the house. Mr. Taylor is trying to start a chainsaw and both are using a leaf blower. Mr. Taylor and Mr. Lackie then go back into the residence and exit again having found a drill.
- [65] While this is unfolding Mr. Johnson leaves the residence towards the liquor store. Mr. Johnson is observed coming out of the liquor store and dropping a five dollar bill and a black bag, possibly a wallet. Mr. Johnson picks up the five dollar bill but leaves the black bag. He then returns to the residence. The police seized the black bag dropped by Mr. Johnson. It is a small black pouch and inside the pouch is a clear baggie containing 14 blue pills and a white patch that says militia.
- [66] At about 8:00 p.m. Mr. Johnson and Mr. Lackie are seen on the back deck counting 20s and 50s. Mr. Johnson takes the cash.
- [67] At 9:09 p.m. Mr. Taylor is seen going into the residence from the deck. At approximately 9:30 p.m. a black Fusion vehicle pulls into the back area of the residence. Mr. Johnson greets a male and female associated with the black Fusion and the three head up to the deck. Mr. Taylor is on the back deck. All enter the residence.
- [68] Mr. Johnson is then seen exiting the residence down the back stairs and observed thereafter with the same male and female making some kind of rearrangements in the black Fusion. There are no observations of when and how Mr. Taylor arrived at the residence, nor when, if at all, he left the residence this day.
- [69] That said, over the next few days, from the evening of May 29, 2020 to June 2, 2020 no surveillance evidence was tendered. No explanation was offered as to why surveillance was halted; and/or why no surveillance evidence during this timeframe was proffered. There is no evidence tendered by the Crown concerning Mr. Taylor's attendance or otherwise at the residence during this period of time; or indeed no evidence concerning Mr. Taylor's activities at all during this period of time.

- [70] The surveillance evidence re-commences on June 2, 2020. The evidence in this regard covers an earlier timeframe; namely between approximately 1:00 p.m. and 7:30 p.m.
- [71] These observations, generally, mirror the observations of the earlier surveillance; namely a number of individuals, including Mr. Johnson and Mr. Taylor moving in and out of the property and residence throughout the day.
- [72] The surveillance evidence begins with the observation of an unknown indigenous female exiting the lower level of the residence and then re-entering the residence. The evidence next notes an observation of an unknown male (blue baseball hat) arriving in a vehicle, parking in the backyard area and entering residence.
- [73] The next observation is yet another unknown male (short dark crew cut) opening and closing the front door of the residence.
- [74] At approximately 1:30 p.m. Mr. Johnson is seen entering the residence off the back deck, and a few minutes later exiting the residence into the backyard.
- [75] About 1:45 p.m., blue baseball hat who apparently was last seen under the deck, is observed exiting the residence from the upper deck entrance. The surveillance does not reveal where blue baseball hat went; but the next observation generally was about 15 minutes later where blue baseball hat is observed on the deck and going down the stairs to the backyard.
- [76] Blue baseball hat and Mr. Johnson are seen in the backyard; soon to be joined by yet another unknown female. Approximately one minute later Mr. Johnson is seen exiting the front door of the residence and walking down Nichol Street. There is no evidence how Mr. Johnson made his way from the backyard; into the residence, and out the front door in that one minute timeframe.
- [77] Some minutes later, Mr. Johnson arrives in a vehicle in the backyard. He is seated in the passenger's seat. The vehicle picked up an unidentified female from the backyard of the residence.
- [78] It is at approximately 2:30 p.m. Mr. Taylor is seen on the deck with blue baseball hat. Both enter the residence. Just before 3:00 p.m., blue baseball hat is seen in the backyard speaking with another unidentified male (long hair); and thereafter blue baseball hat re-entered the residence through the upper deck. About a minute later blue baseball hat waved long hair into the residence.
- [79] The next observation is long hair, with another unidentified male, at the location of a vehicle parked in the backyard and then leaving in the vehicle after about 10 minutes.
- [80] The next series of observations occurred between approximate 3:30 p.m. and 4:00 p.m. that afternoon.

- [81] The female in the red bandana is seen entering the property; proceeding to an area underneath the deck area; and then at some point returning to the alleyway. In and around this time Mr. Johnson arrives in a vehicle; and exits with an unidentified female. Mr. Johnson is carrying a black backpack and enters the property. An unidentified male then parks a vehicle in the backyard. Blue baseball hat is also in the yard at that point and there is another observation of an unidentified male and an unidentified female entering a vehicle on the property and leaving. It is not apparent where the unidentified male and unidentified female were before approaching the vehicle.
- [82] In any event, at approximately 4:00 p.m. Mr. Taylor is seen on the back deck and then almost immediately re-enters the residence.
- [83] In and around this time Mr. Johnson is seen exiting the yard and walking towards the liquor store parking lot.
- [84] At approximately 4:30 p.m. Mr. Johnson is observed returning to the residence; meeting up with male in the blue baseball hat, and both enter the residence. Mr. Johnson is then seen exiting the residence into the yard. Male with the blue baseball hat then left the property in a vehicle. Mr. Johnson is seen leaving the property on foot while speaking on a cell phone.
- [85] The next observation is that of Mr. Johnson returning to the property; proceeding under the deck area; and then leaving the property again. Mr. Johnson is observed meeting a person in a truck and returning on foot to the residence. Mr. Taylor is seen again on the back deck holding a black gym bag. Some minutes later Mr. Taylor is seen opening the door of a vehicle that is parked on the property. At about the same time another unknown female (on crutches) arrived in a vehicle and stopped in the backyard area. She is seen in the backyard area, at the same time as Mr. Taylor.
- [86] At approximately 5:03 p.m. Mr. Johnson exits the yard; meets someone in a vehicle; the vehicle then departs and Mr. Johnson returns to the residence. Mr. Taylor is still in the backyard.
- [87] At 5:10 p.m. Mr. Taylor and another unidentified female (blue hoodie) are on the deck throwing what appears to be laundry down to Mr. Johnson in the backyard. Mr. Taylor then departs some minutes later in a red Range Rover with blue hoodie. Mr. Taylor then is tracked to the drive-through area of the local Dairy Queen. This is at 5:21 p.m.
- [88] Mr. Johnson is seen in and out of the residence around this time and ultimately leaving the property and walking to the Dairy Queen.
- [89] Mr. Johnson is then observed at the Dairy Queen approaching an Escalade vehicle in the parking lot and departing in the Escalade having entered into the backseat area.
- [90] There is no other observation of the red Range Rover until about 6:00 p.m. when the note states "the Range Rover made a left turn onto Milton Street".

- [91] There is a note in the surveillance report that in the opinion of Constable Devoe she believes that Mr. Johnson's entering into the Escalade was to facilitate a drug transaction. Mr. Johnson is then observed exiting the Escalade and is last seen walking south.
- [92] The surveillance team followed the red Range Rover (presumably from the Dairy Queen) and observed the Range Rover "nosed into a closed gate" at 779 Howard Avenue.
- [93] The surveillance evidence then informs that it was determined the license plate number on the Range Rover was linked to Mr. Taylor, however the plate was not linked nor matched to the vehicle.
- [94] In any event, an unidentified female at 779 Howard Avenue then opened the gate and the Range Rover was let into the driveway at 6:07 p.m.
- [95] The next observation is at approximately 6:30 p.m. It is observed that an unidentified male and female arrived at the Nichol Street residence in a red Honda. This couple used a key or a combination to open the gate to enter the backyard. This couple then exited the vehicle and proceeded to the residence although the surveillance does not indicate where they went. Approximately 20 minutes later, another unidentified male is seen entering the property through a hole in the fence, and he, as well, went to the area underneath the deck. Again there is no note as to where he then went.
- [96] At approximately 7:00 p.m. the unidentified female with a black hoodie was seen in the driveway at 779 Howard Street. She walked north and then into what is described as the bushes or a path. Sometime later she emerged and spoke with Mr. Taylor 'across the street'. It is unclear on this note exactly where persons were and what they were doing. There was no viva voce evidence amplifying any of the notes regarding surveillance. In any event, Mr. Taylor is then observed walking back onto the Howard Street property. In and around the same time the couple in the red Honda are observed walking off the Nichol Street property. There is no note of any observations from the time of their arrival until the time of their departure.
- [97] Mr. Johnson is then seen, with another unknown male, leaving the residence on foot at 7:01 p.m. This concludes the evidence of this day.
- [98] The surveillance on June 3, 2020, the day prior to the execution of the search warrant, took place between 8:00 a.m. and approximately 12:30 p.m.
- [99] The Range Rover was parked in the back lot and around this time an unknown person described as a First Nation female was seen on the back deck. At approximately 11:00 a.m. Mr. Taylor and the same female are seen on the back deck. Mr. Taylor is in his underwear. The unknown female then went down the outside stairs; came back up the stairs; and entered the residence with Mr. Taylor.

- [100] Around noon, an unidentified male wearing a red hat enters the property; and traverses to the area underneath the deck; then exits the property and quickly meets up with a driver of a red car that is in the alley. The vehicle departs and the male with the red hat comes back onto the property. In and around the same time, Mr. Johnson exits the residence from the lower area and goes up the stairs into the residence. He is then seen exiting the residence, going down the stairs and he and the male in the red hat go underneath the deck again. The male in the red hat then leaves the property and is observed at some point apparently consuming drugs.
- [101] On June 4, 2020 between approximate 5:00 a.m. and 6:00 a.m. Mr. Johnson is observed entering the property via the backyard, and a minute or so later observed leaving the property carrying a black satchel bag walking northbound in the alley. He returned to the property shortly carrying a flower pot and was seen going under the deck. Approximately 10 minutes later he re-emerged and drove off the property in a blue Taurus vehicle. He parked the blue Taurus on Halliburton Street and walked back towards the residence. At approximate 5:55 a.m. Mr. Johnson was arrested while walking south on Gillespie Street.

Evidence of Constable Fudge

- [102] Cst. Fudge provided evidence of utterances made by the accused following his arrest. A short voir dire determined the utterances to be voluntary. The accused did not submit otherwise.
- [103] Cst. Fudge testified that a short while after Mr. Taylor was arrested for possession for the purpose of trafficking on June 4, he was lodged in the cells at the Nanaimo RCMP detachment. Constable Fudge of the RCMP attended the cells to formally arrest Mr. Taylor concerning the firearm found in the residence. Constable Fudge approached Mr. Taylor and began a discussion by announcing that they had found a firearm in the house. Before the constable could go on with the formalities of the arrest, Mr. Taylor exclaimed "What! You found it?" Constable Fudge was clear this is what Mr. Taylor said. Immediately following that exclamation, Mr. Taylor and Constable Fudge then spoke over one another. Constable Fudge testified that while he was attempting to provide Mr. Taylor with his Charter warnings, Mr. Taylor said words 'along the lines of' "a friend of mine had brought it over. I couldn't find it in the house". Or as Crown counsel submits "my buddy told me he brought it over but I couldn't find it".

The Evidence of Sergeant Chet Carroll

- [104] Sgt. Carroll was qualified as an expert in the area of drug trafficking. In particular, in the area of the methods of purchasing and concealing drugs, pricing, usage, drug jargon and slang with respect of fentanyl and other drugs the subject matter in the indictment. These qualifications all in relation to drug trafficking in the Vancouver Island area from June 2020 to the present.

- [105] The evidence of Sgt. Carroll was not particularly contentious. Consequently I will provide an overview.
- [106] Sgt. Carroll explained how "buff" was used to cut or dilute drugs. Caffeine is an example of buff.
- [107] Sgt. Carroll testified concerning aspects of personal use.
- [108] He testified, perhaps to the obvious, that the amount a person might consume for personal use varies from person to person. What you are used to, and the state of addiction, informs the amount one can or may consume on a daily basis.
- [109] In 2020 Sgt. Carroll testified that personal usage could be 2 g per day. In relation to fentanyl and methamphetamine. The jargon for 1 g is "one point". A "ball" or "eight ball" is 3.5 g. The cost of a gram, in 2020, although this was unclear, was \$100-\$150.
- [110] He testified that drugs are often mixed in a bowl or some kind of blender. This is the usual requirement for drug trafficking; but it is also possible someone can use these items to mix drugs for their own consumption.
- [111] The kind of scales found in the residence are frequently used to weigh drugs for street-level trafficking, although it is not unheard of for a user to possess a scale for their own purposes.
- [112] Sgt. Carroll testified that a residence that contains drugs might have fortified entrances to protect the residents from persons that might want to steal the drugs; and, the presence of weapons of one sort or another is not uncommon for the same purpose. This would include the firearm found in the bag, in the drawer, in the upstairs bedroom Mr. Taylor identified as Mr. Johnson's bedroom.
- [113] Sgt. Carroll testified to the presence and use of score sheets for trafficking purposes. This evidence was in relation an alleged scoresheet found in a notebook in a bag in the residence.
- [114] Sgt. Carroll stated that many of the smaller amounts found; for instance 2.07 g, 2.02 g, 3.9 g, .19 g, 1.2 g; and the various scattered drug use paraphernalia found in and around the living room and throughout the residence, were consistent with personal use. Sgt. Carroll testified that the amount of 7 g located would unlikely to be shared but conceded half of that might be for personal use.
- [115] The larger amounts found were amounts consistent with possession for the purpose of trafficking. He testified that the cash found in Mr. Taylor's bag, wrapped in elastic bands, was consistent with being available to purchase drugs, by traffickers, from their suppliers. He did add however that the cash also appears to have been withdrawn from Mr. Taylor's TD bank account.

- [116] He testified that users attending the residence to purchase drugs could stay and consume the drug in the residence. In this event, typically those consumers would be in the residence for 10 minutes, but also testified that they could be in the residence for longer depending on the circumstances and for other reasons.
- [117] Sgt. Carroll offered his opinion that the drugs found in the residence, that he identified is consistent with drug trafficking; coupled with the other items found in the house consistent with being used for drug trafficking, were amounts inconsistent with personal use.

The Evidence of Mr. Taylor

- [118] Mr. Taylor testified he has been a long-time drug addict. His drugs of choice over the years have been fentanyl and its derivatives, and crystal methamphetamine. He is currently 48 years of age. He has spent a total of 12 years of his life incarcerated for various offences. He is currently residing at the Vancouver Island Therapeutic Community and has done so since being released from prison in December 2024 after serving his latest term of imprisonment for property related offences. He testified that much of his adult life has been informed by a continuous cycle of addiction, recovery, and relapse. This general background is not contested.
- [119] In the spring of 2020 the accused was residing, with his then girlfriend Colby Kristianson, at a residence on Rock City Road in Nanaimo. The accused testified that he had relapsed and was once again using fentanyl and methamphetamine. Mr. Taylor stated that his primary but not exclusive dealer in the area was Mr. Johnson.
- [120] His resumed drug use ultimately caused a fracture in his relationship with Ms. Kristianson and as he testified, "she kicked me out", in approximately May 2020.
- [121] He testified he was homeless. For a time he resided in an area of Nanaimo referred to as tent city. He stayed at persons places. He had funds however generated from disability payments; the John Howard Society; and from selling wood. This enterprise generated up to selling 3-5 cords of wood a week at \$500 per cord. There was no evidence as to his profit in this regard. He had a bank account. He had few possessions.
- [122] In any event, he testified during the relevant time, in relation to the indictment, he was consuming an "eight ball" over the course of a day, and, in addition a certain amount of methamphetamine.
- [123] He testified 515 Nichol Street was a "flophouse"; a "trap house"; a "party house". He testified Mr. Johnson would permit him to stay at the residence from time to time after he was ejected by Ms. Kristianson. He stated, in turn, he would perform odd tasks around the property from time to time. He testified he had a backpack with his possessions including cash. He testified his bank records will track his financial circumstances. He had no clothes at the residence. He testified Mr. Johnson allowed him from time to time to "crash on the couch". When, and how often, this occurred was not pursued.

- [124] Mr. Taylor was not asked about his particular knowledge of the various persons currently residing at the residence; nor about any other persons that were observed coming and going. He testified that many people would come to the house to buy and consume drugs. He was not asked whether he had any information about the ownership of the house or the arrangements of any residency.
- [125] He confirmed he had stayed the night of June 3-4, 2020. In this regard he agreed his space was in fact the couch in the living room. He testified that the residence was Mr. Johnson's base of operations regarding his drug trafficking. Mr. Taylor testified that when he was at the residence it was to purchase and use drugs and to sometimes sleep. He testified others would be in and around the residence for the same purpose.
- [126] He denied selling drugs or helping Mr. Johnson in any way to sell drugs. When he was at the residence "he minded his own business" and stayed out of the business of Mr. Johnson. He testified that Ms. Kristianson had dropped off some of his mail that was found at the Rock City address. This mail was on the coffee table in the living room. He confirmed he also had a photograph and an empty prescription bottle in a drawer in the lower portion of the house and as well some personal documentation in around the bedroom area.
- [127] He stated that everyone coming and going into the residence used drugs.
- [128] He testified he knew certain drugs were on the premises but he did not know certain other drugs were on the premises. He testified he had no involvement, control or otherwise, over the drugs or the people coming and going from the residence.
- [129] He was asked whether he had unrestricted access to the residence when he went there. He testified he went there to buy his drugs so "I guess I could come and go as I pleased"; and he also confirmed that there were times when he was in the residence when he was the only person in the upstairs area. When and under what circumstances this occurred was not explored.
- [130] Mr. Taylor testified concerning various items and drugs located in the residence.
- [131] The evidence of Mr. Taylor is probably best understood in relation to the particular drugs as those drugs relate to the particular counts.
- [132] Mr. Taylor was asked about two bags found underneath the couch in the living room. One bag contained his personal items; some banking documents; approximately \$5,000 in cash and his wallet. Mr. Taylor confirmed it was his bag and that he had placed it under the couch. This is described as the black Swiss bag.
- [133] The police also seized another bag, described as a Mountain Co-op bag, from under the couch beside the Swiss bag. The Mountain Co-op bag contained items, not associated with Mr. Taylor, but containing a notebook inside the bag that appeared to, in turn, contain score sheets. Mr. Taylor testified there were numerous bags in and about the residence (and I pause here to say that the photographs make it clear that this residence looked like a bomb

went off in a second-hand store). He testified that the Mountain Co-op bag was not his. He was asked if he recognized the writing in the notebook. He did not recognize the writing. He was asked if he had seen Mr. Johnson with the notebook. He stated he had seen Mr. Johnson with "lots of books".

- [134] Drugs and drug paraphernalia used for the consumption of drugs were found in and around the coffee table; as well as many other places throughout the residence. Mr. Taylor was questioned concerning a black "Oplex" bag found on the floor against the base of the coffee table. Inside a side pocket of this bag were found three Ziploc bags containing 2.05 g of methamphetamine (in one bag); and 7 g of fentanyl, carfentanil and caffeine in the other two bags. These are the drugs that make up, in part, Count 1.
- [135] Mr. Taylor testified that the bags did not belong to him; nor did he know who the Oplex bag belonged to. He was not asked if he knew the bags contained drugs.
- [136] Mr. Taylor was asked about a small white container found on top of the coffee table containing a residue measuring 0.06 g of fentanyl, carfentanil and caffeine. This item, as I understand it, is also alleged to be part of the particulars of Count 1.
- [137] This item was found in the midst of a good deal of clutter on top of the table. He was also asked about the drug paraphernalia. I have no note as to whether he was asked about his knowledge of the residue in the container.
- [138] The top of the coffee table also displayed, in the clutter, a small plastic container with a blue top. Inside the container it was a Ziploc bag containing 2.07 g of fentanyl, carfentanil and caffeine. These drugs are said, as well, to make up Count 1. Again, I have no note that Mr. Taylor was asked concerning his knowledge of what was in this container.
- [139] The coffee table in the living room was referred to as having two levels. That is, a second shelf below the top of the coffee table. A container was seized from the second level of the coffee table that contained two Ziploc bags inside the container. One bag containing 36.62 g of fentanyl, caffeine and carfentanil. This is an aspect of Count 1. The second bag contained a 2.02 g of heroin, ketamine, and fennel. This bag is the subject matter of Count 3.
- [140] Mr. Taylor testified he did not ever recall seeing the container in the residence.
- [141] The subject matter of Count 2 concerns a white container found in the kitchen cupboard and it contained 3.9 g of fentanyl, xylazine and caffeine.
- [142] Count 4 encompasses drugs found in the upstairs bedroom and on the living room coffee table. One aspect of Count 4 is a baggie containing 1.2 g of fentanyl and methamphetamine found amongst items on the night table beside the bed described as Mr. Johnson's bedroom. The other quantity of drugs was found, again, on the second level of the coffee table in the living room, that consisted of a baggie containing .19 g of fentanyl, methamphetamine and caffeine.

- [143] Mr. Taylor was not asked in particular about these drugs.
- [144] In addition, generally Mr. Taylor testified that everyone coming and going consumed drugs in the house. He testified that he would on occasion mix his own drugs in the kitchen using a "bullet". He testified there were many scales throughout the house. He testified Mr. Johnson would sometimes use a scale to weigh drugs that he, Mr. Taylor, was purchasing from Mr. Johnson.
- [145] Mr. Taylor was asked if he ever saw Mr. Johnson otherwise using the scales. He testified that when he, Mr. Taylor, would go to the house he did not pay attention to what Mr. Johnson was doing. "I minded my own business; I was not involved in his business".
- [146] Mr. Taylor provided evidence concerning Counts 6 and 7. Mr. Taylor testified that the first time he had ever seen the firearm in issue (Count 6) and the ammunition in issue (Count 7) was when he saw the photos prepared for the trial. He denied having any knowledge of the location or the existence of the firearm and the ammunition.
- [147] It was pointed out that inside the bag that contained the ammunition, or at least inside a side pocket of the bag was found a ring. The ring had the inscription "in Glock we trust". Mr. Taylor admitted that he had a tattoo that has the same language.
- [148] The Crown pressed Mr. Taylor that he owned the ring found in the bag with the ammunition. He denied owning the ring. He testified it is a common ring among his cohort and he did not know who owned the ring.
- [149] He was also questioned on what the Crown viewed as the inculpatory nature of his statement to Constable Fudge.
- [150] He testified that he could not agree he said the words "to the effect", or "along the lines of", as testified to by Constable Fudge. In any event he stated in his mind when he uttered the words he was thinking that what the police were referring to was a soft gun found in the house. This was found on the bedroom floor.

Analysis

The Legal Principles

- [151] The law in relation to possession is to be found in s. 4(3) of the Criminal Code, R.S.C. 1985, c. C-46 and it reads as follows:

4

(3) For the purposes of this Act,

- (a) a person has anything in possession when he has it in his personal possession or knowingly
- (i) has it in the actual possession or custody of another person, or

(ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and

(b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

[152] Section 4(3) thus establishes three forms of culpable possession: personal possession, constructive possession, and joint possession. Constructive possession is relevant here. To establish that the accused constructively possessed the items, both a knowledge and control element must be satisfied: *R. v. Morelli*, 2010 SCC 8 at para. 15 [Morelli].

[153] In *Morelli*, the Supreme Court set out the elements of knowledge and control as they relate to constructive possession at para. 17, as follows:

Constructive possession is thus complete where the accused: (1) has knowledge of the character of the object, (2) knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and (3) intends to have the object in the particular place for his "use or benefit" or that of another person.

[154] Both knowledge and control are relevant here.

[155] Our Court of Appeal considered the knowledge element in *R. v. Tahirsylaj*, 2015 BCCA 7 at para. 26, citing with approval *R. v. Pham* (2005), 77 O.R. (3d) 401 at 406-407 as follows:

[26] In *R. v. Pham* (2005), 77 O.R. (3d) 401 at 406-407 (C.A.), 203 C.C.C. (3d) 326, aff'd 2006 SCC 26, [2006] 1 S.C.R. 940, the majority referred to the basic principles that govern the law of constructive possession:

In order to constitute constructive possession, which is sometimes referred to as attributed possession, there must be knowledge which extends beyond mere quiescent knowledge and discloses some measure of control over the item to be possessed. See *R. v. Caldwell* (1972), 7 C.C.C. (2d) 285, [1972] 5 W.W.R. 150 (Alta. S.C. (A.D.)); *R. v. Grey* (1996), 28 O.R. (3d) 417, [1996] O.J. No. 1106 (C.A.) [emphasis added].

The onus is on the Crown to prove beyond a reasonable doubt, all of the essential elements of the offence of possession. This can be accomplished by direct evidence or may be inferred from circumstantial evidence. In *R. v. Chambers*, supra, at p. 448 C.C.C., Martin J.A. noted that the court may draw "appropriate inferences from evidence that a prohibited drug is found in a room under the control of an accused and where there is also evidence from which an inference may properly be drawn that the accused was aware of the presence of the drug".

[156] In other words, the court is entitled to draw inferences from evidence that a prohibited drug is found in a room, or space, or a place, under some measure of control by an accused; and entitled to draw inferences that the accused was aware of the presence of the drug.

- [157] It is the accused's right to grant or withhold consent to the space or the drug being stored in the space that may give the accused the necessary measure of control over the drug essential to constitute consent pursuant to s. 3(4)(b).
- [158] Knowledge can also be found on the basis of wilful blindness. The law in relation to wilful blindness is set out succinctly by Justice MacNaughton in *R. v. Vaters*, 2018 BCSC 1756 at para. 23:
- [23] The requisite element of knowledge may also be established if the accused is "wilfully blind" to the nature of the substance, that is, if he or she knows enough that further inquiry ought to be made, but wilfully shuts his or her eyes or refrains from making the inquiry. In *R. v. Briscoe*, 2010 SCC 13, Charron J. explained wilful blindness as follows:
- [21] Wilful blindness does not define the mens rea required for particular offences. Rather, it can substitute for actual knowledge whenever knowledge is a component of the mens rea. The doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries. See *Sansregret v. The Queen*, 1985 CanLII 79 (SCC), [1985] 1 S.C.R. 570, and *R. v. Jorgensen*, 1995 CanLII 85 (SCC), [1995] 4 S.C.R. 55. As Sopinka J. succinctly put it in *Jorgensen* (at para. 103), "[a] finding of wilful blindness involves an affirmative answer to the question: Did the accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge?"
- [22] Courts and commentators have consistently emphasized that wilful blindness is distinct from recklessness. The emphasis bears repeating. As the Court explained in *Sansregret* (at p. 584):
- ... while recklessness involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it, while in wilful blindness it is justified by the accused's fault in deliberately failing to inquire when he knows there is reason for inquiry. [Emphasis added.]
- [159] In addition, the case for the Crown rests on the theory that the accused aided the trafficking activity of Mr. Johnson's.
- [160] Liability for aiding or abetting is found in the definition of "parties" to an offence under s. 21(1) of the Criminal Code:

Parties to offence

21 (1) Every one is a party to an offence who

- (a) actually commits it;

- (b) does or omits to do anything for the purpose of aiding any person to commit it; or
- (c) abets any person in committing it.

- [161] The Criminal Code makes no distinction between principal offenders (s. 21(1)(a)) and those who aid or abet under ss. 21(1)(b) and (c) in determining criminal liability: *R. v. Briscoe*, 2010 SCC 33 [Briscoe]. However, the actus reus and mens rea for aiding and abetting are different than the principal offence.
- [162] The actus reus of aiding and abetting is "doing (or, in some circumstances, omitting to do) something that assists or encourages the perpetrator to commit the offence.": *Briscoe* at para. 14. Although aiding and abetting are commonly spoken of together, they are distinct concepts and criminal liability may follow from one, or both. Generally speaking, aiding within the meaning of s. 21(1)(b) consists of helping the actor to commit the principle offence. Abetting means "encouraging, instigating, promoting or procuring the crime to be committed": *Briscoe* at para. 14, citing *R. v. Greyeyes*, [1997] 2 S.C.R. 825 at para. 26.
- [163] To satisfy the actus reus, the Crown must show a connection between the offence and the acts of aiding and abetting, though the connection need not be causative: *R. v. Dooley*, 2009 ONCA 910 at para. 123.
- [164] Further, liability for aiders and abettors is broader than liability for principal offenders. It is unnecessary for the Crown to point to an instance of aiding and abetting a specific transaction. It is sufficient that the Crown demonstrate that the accused assisted or encouraged the trafficking operation as a whole: *R. v. Rai*, 2019 BCCA 377 at paras. 85-87; *R. v. Alcantara*, 2015 ABCA at paras. 13-15.
- [165] The mens rea of aiding or abetting follows from the language under s.21(1)(b) that the person must have rendered assistance "for the purpose of" aiding the principal offender: *Briscoe* at para. 15. This leads to two components: both intent and knowledge. For intent, the Crown must prove that the accused intended to assist or encourage the principal offender: *Briscoe* at paras. 16-17. Under the knowledge element, the Crown must prove that the accused knew the principal offender would commit the offence. The accused need not know precisely how the principal will commit the offence: *Briscoe* at para. 17. Wilful blindness on the accused's part is sufficient to establish knowledge (*Briscoe* at paras. 21-22), though recklessness is not: *R. v. Roach* (2004), 192 C.C.C. (3d) 557 at para. 29 (Ont. CA).
- [166] Mere presence at the scene of a crime and knowledge that a crime is occurring is not enough to demonstrate that the accused aided or abetted the principal offence: *R. v. Dunlop*, [1979] 2 S.C.R. 881 at 891 [Dunlop]. There must be something more to ground liability - the accused must act (or fail to act) in a way that encourages commission of the offence: *Dunlop* at 891; *R. v. Nyuon*, 2014 ABCA 130; *R. v. C.P.*, 2014 BCSC 2570.

- [167] Here, the Crown submits the evidence supports a finding beyond a reasonable doubt that Mr. Taylor assisted the trafficking operation as a whole by providing security or a physical presence protecting the residence and the drugs in the residence, when Mr. Johnson was not in the residence and out going about his business.
- [168] The case for the Crown rests on largely circumstantial evidence.
- [169] When assessing circumstantial evidence the leading authority remains *R. v. Villaroman*, 2016 SCC 33.
- [170] The Court has helpfully set out the guidelines and parameters of this assessment as follows:
- [37] When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt: *R. v. Comba*, [1938] O.R. 200 (C.A.), at pp. 205 and 211, per Middleton J.A., aff'd [1938] S.C.R. 396; *R. v. Baigent*, 2013 BCCA 28, 335 B.C.A.C. 11, at para. 20; *R. v. Mitchell*, [2008] QCA 394 (AustLII), at para. 35. I agree with the appellant that the Crown thus may need to negative these reasonable possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.
- [38] Of course, the line between a "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.
- [39] I have found two particularly useful statements of this principle.
- [40] The first is from an old Australian case, *Martin v. Osborne* (1936), 55 C.L.R. 367 (H.C.), at p. 375:

In the inculcation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed. [Emphasis added.]

- [41] While this language is not appropriate for a jury instruction, I find the idea expressed in this passage -- that to justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative -- a helpful way of describing the line between plausible theories and speculation.

- [42] The second is from *R. v. Dipnarine*, 2014 ABCA 328, 584 A.R. 138, at paras. 22 and 24-25. The court stated that "[c]ircumstantial evidence does not have to totally exclude other conceivable inferences"; that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.
- [43] Where the line is to be drawn between speculation and reasonable inferences in a particular case cannot be described with greater clarity than it is in these passages.
- [171] The Crown of course relies on proof of constructive possession. The Crown points to a number of authorities as examples of factual circumstances that have given rise to a finding of constructive possession. In this regard the Crown submits the case of *R. v. Fisher*, 2005 BCCA 444 is of particular assistance to the Crown as the Crown says it reflects the same, or much the same, circumstances as the circumstances at bar. The findings of fact however are critical.
- [172] In *Fisher* the police arrived at an apartment. The accused answered the door. No one else was in the apartment. He was not a registered tenant at the apartment; the registered tenants were two friends of the accused; the girlfriend of the accused, and her roommate.
- [173] The court found however that the accused had a key to the apartment. He had unrestricted access to the apartment and was free to come and go at any time whether the tenants were there or not. The accused visited the apartment often and slept overnight about three nights a week. The accused had been in the apartment alone for several hours prior to the police attendance.
- [174] Upon the police attendance in *Fisher* the accused was observed going into the kitchen; picking up a black scale covered in white powder, and putting the scale in a top drawer under the counter and then closing the drawer. The police observed white powder left on the counter; a measuring cup and a calculator; all covered in white powder. In the drawer the police found, next to the black scale, a plastic bag that later determined to contain 29.1 g of cocaine or approximately 1 ounce.
- [175] The judge rejected certain exculpatory evidence provided by the girlfriend of the accused and her roommate.
- [176] Following a review of the law of constructive possession, the Court of Appeal reaffirmed that "to establish constructive possession, it [is] incumbent upon the Crown to prove beyond a reasonable doubt that the [accused] knew of the presence of the cocaine and that he had some measure of control over its location". And further, "to establish joint possession, the Crown [is] required to show that someone other than the [accused] had possession of the cocaine with [the accused's] knowledge and consent and [the accused] some measure of control over it".

- [177] In Fisher, there was some evidence the cocaine belonged to the roommate, however no finding was made in this regard. The court below found that the accused knew cocaine was in the drawer or was wilfully blind in that regard. The Court of Appeal upheld findings below that the accused had the requisite measure of control over the cocaine.
- [178] In accordance with the findings of fact the Court of Appeal concluded that the key gave the accused control over the contents of the apartment, including the cocaine. The Court of Appeal focussed on the finding that the accused could grant or refuse to grant his consent to entry to the apartment by everyone except the tenants. The appellant was alone in the apartment for several hours. Upon the police arrival the accused quickly hid the scale in the very drawer that housed the cocaine. This manifested a measure of control over the contents of the drawer, so observed the court.
- [179] The Crown in the case at bar relies on the fact the drugs in issue, or at least a good majority of the drugs making up the drug counts, were found in and around the vicinity of the space referred to as the living room.
- [180] In this regard there may have been an inference available that upon the execution of the warrant the accused was in and about the living room area. There is no need for an inference at this stage, so submits the Crown. The Crown states Mr. Taylor's evidence is to be accepted, and a finding made, that he was sleeping on the couch in the living room that evening. The Crown says this ought to lead to a conclusion the accused had knowledge and control of those drugs and thus was in possession of them.
- [181] Alternatively, the Crown states that if Mr. Taylor did not have knowledge of the drugs, he was willfully blind as to the presence of the subject drugs while exercising the requisite measure of control or authority over the drugs.
- [182] In particular the Crown says that the fentanyl on the upper floor and particularly the fentanyl found in the kitchen and living room, were there with the knowledge of the accused. The Crown says that the accused had a measure of control over the upstairs of the residence. He could come and go as he pleased. He had the ability to control who came and went from the residence. He was present in the house at the time when Mr. Johnson was not. Some drugs and paraphernalia were in plain view in that area.
- [183] The Crown takes the same position regarding the firearm and ammunition.
- [184] Alternatively the Crown submits Mr. Taylor is guilty of aiding Mr. Johnson in the offence of possession for the purpose of trafficking as "his presence in the living room where the majority of drugs were found, along with weapons, aided Mr. Johnson by the accused having a presence in the residence to protect his drugs from 'drug rips' while he (Mr. Johnson) was out."
- [185] For the reasons that follow I find the Crown has failed to prove beyond a reasonable doubt that Mr. Taylor was in possession of the drugs and other items in issue.

- [186] While I conclude there is evidence that raises a good deal of suspicion; if not probability of guilt, in my view, on the whole of the evidence proof beyond a reasonable doubt falls short.
- [187] There is no question the evidence supports the conclusion the accused was associated with the residence. He was seen in and about the residence. Certain personal documents were found in the residence. On his own evidence, that the Crown urges me to accept, Mr. Taylor frequented the residence to purchase his drugs. On occasion, with the permission of Mr. Johnson, he was allowed to 'crash' at the residence; and in so doing, he testified it was the couch in the living room he used as his crash site. I accept this evidence.
- [188] There is however, little or no evidence at what times he crashed at the residence other than the evening in question. Mr. Taylor testified that the personal papers found in the residence were present with the permission of Mr. Johnson, and had been transferred there by himself and Ms. Kristianson. When these papers were taken to the residence, and under what particular circumstances, was not explored.
- [189] On the occasions Mr. Taylor is seen going into the upstairs portion of the residence; there is no evidence concerning the location of the subject drugs.
- [190] There is evidence that while in the residence Mr. Taylor could freely move in and out of the residence through the back entry door.
- [191] That said, there is overwhelming evidence that many persons, over the course of the surveillance period, moved not only freely on and off the property but as well, in and out of the scene without any apparent constraint. The fact is the residence resembled more Grand Central Station than exhibiting any of the usual indicia of a private residence.
- [192] Mr. Taylor appeared to be in no different position than a host of individuals coming and going from the property. This significantly dilutes the availability of an inference that Mr. Taylor had some measure of control over the residence. The fact is, with respect, there is no evidence Mr. Taylor had any ability or authority to control who came and went from the residence.
- [193] There is no evidence Mr. Taylor had any legal right relating to the residence. The Crown did not suggest otherwise. Indeed, there is no evidence concerning what person or persons had any legal relationship with the property.
- [194] There were no witnesses called by the Crown, for instance neighbours, any of the variety of persons seen coming and going from the property; some of whom were identified by the RCMP; to provide evidence about who lived at the residence, under what circumstances, and the state of affairs in the residence, as it might relate to Mr. Taylor leading up to the execution of the warrant.
- [195] There is no evidence of fingerprints or DNA on any of the drugs, paraphernalia, scales, weapons, or the like. The only evidence concerning the dynamics of inside the residence is that of the evidence coming from Mr. Taylor.

- [196] Mr. Taylor confirmed what the surveillance evidence revealed; that is, many persons coming and going from the residence; perhaps for a variety of purposes but certainly, for some, to purchase drugs. Mr. Taylor confirmed that he had crashed in the living room that evening. He denied owning the drugs in issue and there is little evidence to indicate he knew that the various containers containing the drugs. I cannot say I accept outright the evidence of the accused concerning his knowledge of the presence of the drugs. I do say that on the whole of the evidence, including the evidence of the accused, it does not provide a safe evidentiary foundation to conclude he knew of the presence of the subject drugs on the day in question. In my view a finding of wilful blindness is also not available on the evidence.
- [197] In any event the evidence does not allow for the inference the accused had any measure of control over the residence or the drugs, much less the control required for the purpose of finding possession.
- [198] Certainly overall, the evidence of the Crown, coupled with the evidence of the accused, creates a reasonable doubt in relation to a finding of possession in relation to the drugs the subject matter of the counts before me.
- [199] I have come to the same conclusion concerning Counts 6 and 7 for essentially the same reasoning that relates to Counts 1-4.
- [200] The weapon in issue was found inside a bag. The bag was inside a closed drawer in a chest of drawers in what was described as Mr. Johnson's bedroom.
- [201] The ammunition was found in a bag, which bag was situated on a chair in the area described as the living room.
- [202] Mr. Taylor has denied any knowledge of these items. There is some evidence he had some knowledge that a firearm may be somewhere on the premises. This is gleaned from his statement led by the Crown.
- [203] In my view the statement gives rise to both inculpatory and somewhat exculpatory conclusions. Certainly one interpretation is that Mr. Taylor, at some point, was told, or in any event believed, a friend had brought a firearm to the residence. At some point, Mr. Taylor had looked for it but could not find it. At what point these events occurred in relation to the events of the evening is not in evidence. The statement, in my view, does not impress Mr. Taylor with knowledge or wilful blindness, or a measure of control for that matter, concerning the firearm in issue at the time he is alleged to have possessed the firearm. The whole of the evidence is simply too vague and uncertain to come to the conclusion the Crown invites.

- [204] I come to the same finding concerning the ammunition. The evidence does not allow for an inference Mr. Taylor had the requisite knowledge and control and/or authority concerning the residence or the items in the residence, to find he possessed those items in issue. I agree with the Crown that if the ring as described is linked to the accused it could in turn strengthen the prospect of a finding that Mr. Taylor possessed the bag and/or the contents of the bag.
- [205] The accused has denied it is his ring. Whether it is a common item of jewellery among the cohort frequenting the residence is unknown. The fact is I am unable to reject this evidence. I am left with a reasonable doubt concerning Count 7.
- [206] Finally the evidence does not support the Crown theory of party liability. I accept the evidence reveals Mr. Taylor being present in the residence at times when Mr. Johnson was absent from the residence. It must be observed however that it cannot be said he was the only person present in the residence at those times. In any event, the invitation to find in those circumstances Mr. Taylor intended to aid the drug trafficking activity of Mr. Johnson by protecting the product of Mr. Johnson in Mr. Johnson's absence, is, with the greatest of respect, rank speculation. It simply has no sufficient evidentiary foundation.
- [207] I find the accused not guilty on all counts.

"Crossin J."

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