
CANADA / JUDGMENT

R. v. Wolski

2016 BCSC 604

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 604 R. v. Wolski

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wolski,

2016 BCSC 604

Date: 20160330

Docket: 40520

Registry: Port Alberni

Regina

v.

David Rafael Wolski

Before: The Honourable Mr. Justice Jenkins

Oral Reasons for Judgment

Counsel for the Crown:

O. Bick

Counsel for Mr. Wolski:

J. McCormick

Place and Date of Trial:

Port Alberni, B.C.

October 13 and 14, 2015

Place and Date of Judgment:

Nanaimo, B.C.

March 30, 2016

- [1] The accused stands charged with production of marihuana contrary to s. 7(1) and possession of marihuana for the purpose of trafficking contrary to s. 5(2), both under the Controlled Drugs and Substances Act, S.C. 1996, c. 19. Respecting the charge of production, the principal issue is whether or not the accused was involved in the production of marihuana as a party to the production under s. 21 of the Criminal Code, R.S.C. 1985, c. C-46. Respecting the latter charge, the central issue is whether or not the accused was in possession and control of the large marihuana grow operation located on Beaver Creek Road near Port Alberni, B.C. ("the Property") in or about June of 2012. A total of 2,511 marihuana plants, 2,452 plants in the vegetative state and 59 so-called "mother" plants, were located in four greenhouses.
- [2] The Crown submits that Mr. Wolski was a principal operator of the grow operation who would be expected to visit the grow operation from time to time and to provide supplies to those actively involved in the cultivation of marihuana. The Crown further submits that Mr. Wolski was but one of possibly several principal operators involved in the grow operation who exercised control and had possession of the grow operation.
- [3] The evidence presented by the Crown was almost exclusively evidence of surveillance of the site of the grow operation by several members of the RCMP, the coming and going of the accused to the site and surveillance of the accused purchasing products which were allegedly delivered to those actively cultivating the marihuana.
- [4] In March of 2012, a team of RCMP officers began surveillance on the Property known as 7475 Beaver Creek Road which is a mainly wooded property with some open areas consisting of approximately 15 acres. The surveillance operation continued until June 6, 2012, when several officers involved in the surveillance executed a search warrant of the Property and at another location at 686 Village Way in Qualicum Beach, BC where the subjects of the surveillance had been seen.
- [5] Several admissions were made pursuant to s. 655 of the Criminal Code which included:
 - a) The identification of the accused as the person arrested in connection with these charges at the Property was admitted, however, the defence did not admit that one of the persons depicted on the surveillance photographs was the accused;
 - b) The admission of an aerial photograph of the Property as Exhibit 2 which contained an accurate depiction of the Property and the area surrounding the Property as it appeared in the spring of 2012. The photograph includes the location of four greenhouses found on the Property, a residence and a shed as well as the driveway off of Beaver Creek Road;

- c) Exhibit 3 at trial contained photographs accurately depicting the Property and its contents as they appeared on June 6, 2012;
- d) Exhibit 4 was a booklet of photographs which are accurate depictions of a portion of the Property and people on the Property on May 12, 2012;
- e) The plants growing in the greenhouses on June 6, 2012 were cannabis (marihuana) plants;
- f) Admission 6 was as follows:

Whoever possessed the cannabis (marihuana) plants found at the Property on June 6, 2012 possessed them for the purpose of trafficking. The plants were being grown from clones using the "mother" plants in Greenhouse 4 and were all viable female plants that would be expected to produce usable marihuana bud. The plants present at the Property could reasonably be expected to produce at least 450 pounds of bud in total, to be sold for approximately \$1,600 per pound. This is a gross figure that does not account for the costs of production.

- g) Admission 7 was as follows:

The cannabis (marihuana) plants found at the Property on June 6, 2012 were all grown initially under fluorescent lights in the shed and then, once rooted, moved to the greenhouses. In the greenhouses they were grown using natural light, exposure to which could be controlled by covering and uncovering the greenhouses. This method of growing cannabis (marihuana) requires daily attention by the grower or growers in order to control light and water, and to protect against pests and disease. It results in one crop per year, with a single labour-intensive harvest at the end of the summer.

- h) Finally, admission 8 read:

Five fingerprint impressions found within the grow operation - three on bulbs from the shed, one on a fan from greenhouse 3, and one on a Pepsi can from greenhouse 1 - were compared to the accused's known fingerprints. None matched.

[6] Five RCMP officers involved in the surveillance of the Property testified at trial. Several hundred photographs taken by the officers were entered into evidence which included photographs of persons identified in the Crown's evidence as the accused entering and leaving through a locked gate at the driveway entrance. The photographs included images of several other persons who also frequented the Property during the period of surveillance, both on the site of the grow operation and coming and going through the driveway gate. In my summary of the evidence I will review evidence of the Crown relating to the accused having possession and control of the grow operation as well as production of the marihuana. I will also review submissions by the defence which summarize the evidence to be consistent with the accused not being in possession and control of the grow operation or involved in the production of the marihuana.

[7] The defence has admitted the accused had knowledge of the grow operation.

[8] No evidence was called by the defence.

Surveillance of the Accused

[9] Various officers of the RCMP conducted surveillance of the accused and the Property on 26 days between March 19, 2012, and June 6, 2012, the date the warrant was executed and the accused, among others, were arrested at the site.

[10] The occasions when Mr. Wolski was identified by the surveillance team in connection with the grow operation and his involvement are as follows:

- a) April 30, 2012 - During the morning of April 30, 2012, Reserve Cst. Bouchard was advised by a member of his team that a black 1992 Toyota pickup truck BC license DS 4643 or DS 4343, which had previously been observed at 686 Village Way, Qualicum Beach, BC, was being driven by Mr. Wolski and leaving the Qualicum Beach address. Reserve Cst. Bouchard was asked to go to the Property to see if the black pickup truck arrived at that location. At 11:15 hours Reserve Cst. Bouchard was located near the entrance to the Property and noticed that truck arrive and drive into the Property. He testified he could not see the license number from his location but that the Toyota truck, which he had previously seen in surveillance in the Qualicum Beach area, was unique.

Cst. Matthew Kerr of the RCMP had later positioned himself across from the driveway to the Property and was tasked to call members of the surveillance team regarding any vehicles going in and out of the Property. At 1:26 p.m. he saw a black Toyota pickup, described as single cab, "lifted", "jacked up, loud muffler", leave and drive south on Beaver Creek Road towards Port Alberni. He was then picked up by the surveillance team. He drove to Qualicum Beach and parked near 686 Village Way, an address then believed to be associated with Mr. Wolski. Cst. Kerr then saw a person he identified as Mr. Wolski shovelling dirt out of the same black Toyota truck. Photos taken by Cst. Kerr of Mr. Wolski shoveling dirt from the truck were included in Ex. 6 at trial. 686 Village Way in Qualicum Beach was later confirmed as the residence of Mr. Wolski.

- b) May 7, 2012 - Cst. Jason Ebert was part of the surveillance team on May 7, 2012, and observed a black Toyota pickup truck, leave the Property at noon. Cst. Ebert testified he had seen the vehicle a number of times while on surveillance. It proceeded south towards Port Alberni. Cst. Ebert followed the truck to a shopping complex off Johnston Road. At 12:15 p.m. he saw the same truck, license DS 4643, in front of the Lordco store in the shopping complex and took photos of the truck. At 12:22 p.m. a male exited the store and walked to the truck. Cst. Ebert believed the person to be Mr. Wolski. He observed Mr. Wolski, with some items in hand, get into the truck. Several photos of the truck and Mr. Wolski were included in Ex. 5 at Tab 1.

Cst. Ebert soon saw the truck "repositioned" at 12:25 p.m. in front of a Walmart garden centre, where he observed Mr. Wolski load at least two large white bales into the back of the pickup. He observed the bales, according to his experience, to be large bales of potting mix or peat moss. The white plastic bales were stated to be rectangular and approximately 2 feet x 2 feet x 1 foot in

dimension. He then saw the truck depart and go to a Dollarama store in the same centre, from which it soon left and returned to the Property at 12:52 p.m. The truck pulled up to the gate at the Property. Cst. Ebert saw no other person in or around the Toyota truck on that day.

Mr. Wolski was seen leaving the Property at 1:35 p.m. driving a silver Honda CRV registered to his wife.

- c) May 16, 2012 - Cst. Ebert first conducted surveillance from across Beaver Creek Road from the entrance. At 10:36 a.m. he observed a white Honda Civic arrive at the gate; Mr. Wolski exited the passenger side of the vehicle and opened the gate which allowed the Honda to drive through. He then locked the gate behind the Honda. Photos of this observation are at Tab 2 of Ex. 5. Later Mr. Wolski appeared at the gate driving the Honda at 11:33 a.m., and was recorded opening the gate and exiting the Property. After the Honda left, an unknown male from the Property was seen wiping the gate. Cst. Ebert left and followed Mr. Wolski to a No Frills grocery store in Port Alberni. Mr. Wolski was observed going into the store at 11:56 a.m. He then re-appeared exiting the store at 12:12 p.m., carrying yellow grocery bags, and entered the Honda once again. Mr. Wolski was then observed stopping at two liquor stores in Port Alberni, the latter in the vicinity of Beaver Creek Road. Cst. Ebert then lost sight of the Honda and returned back to observe the entrance to the Property where the Honda arrived at 1:00 p.m. with Mr. Wolski driving. Mr. Wolski exited the car, opened the gate and then drove onto the Property.

On the gate was a plastic wrapped cable secured with a padlock.

Also on May 16, 2012, Cst. Kerr, acting with a general warrant that permitted access to the property, entered the Property with Cst. McCue and walked around a large portion of the Property. Cst. Ebert ended up in an area in the trees near the greenhouses which were later found to contain the grow operation. He testified that he could hear two foreign voices near the house located in the vicinity of the greenhouses and saw two males near the residence, one who has been identified by the nickname "track suit" or "Adidas" and the other by the nickname "no sleeves". While in the bush near the south end of greenhouse #2 he saw Mr. Wolski, wearing a green t-shirt walk into greenhouse #1 at 10:44 a.m. Cst. Kerr did not later see Mr. Wolski exit greenhouse #1 however, he testified he did see Mr. Wolski with "no sleeves" and "track suit" four minutes later near the entrance to greenhouse #3. He continued to testify that two minutes later, a fourth person joined those three persons in the same area.

Later Cst. Kerr saw Mr. Wolski enter greenhouse #3 at 11:02 a.m. and come back out very quickly at 11:04 a.m. He later saw Mr. Wolski exiting the shed. Cst. Kerr then left the area.

Cpl. Steve McHugh, who accompanied Cst. Kerr in executing the warrant on the Property on May 16, testified regarding several photographs taken by him while executing the warrant. He commenced taking photos at 9:15 a.m. His first photo was of the south end of greenhouses #1 and #2 (Ex. 7) which revealed not only the greenhouses but a ladder outside and between the greenhouses and two white plastic bales with distinctive writing or colouring on them. Cst. McHugh identified a stack of pots and bales of "peat moss or soil" in the white bales. At 9:16 a.m.

he took photos of what he understood to be marihuana clones outside greenhouse #3. (pp. 5-6). A pile of dirt nearby appeared to have come from pots which had been emptied. At 10:30 a.m. Cpl. McHugh took a photo of the inside of greenhouse #4, which was empty. At 10:45 a.m. he saw two unknown males tending the plants inside greenhouse #1 but could not identify those persons. Greenhouse #1 had 1,000 non-budding plants about 1 ft. high. Mr. Wolski was not identified by Cpl. McHugh at the site of the grow operation.

- d) May 17, 2012 - Cst. Ebert testified that he was on surveillance watching the front gate most of the day. Cst. Ebert testified that at 1:35 p.m. Mr. Wolski was seen approaching the gate from within, i.e. he was exiting the Property and was photographed by Cst. Ebert. Mr. Wolski was seen driving a silver Ford car known to be registered to Mr. Jerzi Wolski, the father of the accused. David Wolski was driving and was seen opening and closing the gate before departing south down Beaver Creek Road.
- e) June 6, 2012 - Cst. Bouchard testified that he was at the gate to the Property at approximately 10:40 a.m. and was told by Cst. Ebert by radio to access and open the gate for the RCMP team who were to be executing the search warrant of the Property. He opened the chain lock with bolt cutters and within three minutes a white Honda with four people in the car approached the gate from Beaver Creek Road. After identifying himself as a police officer he asked the driver for identification which he obtained and which identified the driver as David Wolski. Cst. Bouchard then arrested Mr. Wolski by which time the other members of the team arrived to assist in executing the search warrant. Cst. Bouchard had recognized David Wolski from surveillance in Qualicum Beach and had seen him in the black Toyota pickup truck. Cst. Bouchard searched Mr. Wolski and the Honda vehicle he was driving. In the trunk of the Honda he found a 107L bale of professional dirt mix which he identified in photos 142 to 144 of Ex. 3 at trial. Cst. Bouchard also arrested the three other persons found in the white Honda, noting that at least two of them spoke Polish.

Cst. Bouchard subsequently described activities in dismantling the grow operation in the four greenhouses and other buildings at the Property.

On cross-examination he testified that his search of Mr. Wolski did not reveal a key to the gate lock on the person of Mr. Wolski. He also agreed registration records indicated the white Honda was owned by Mr. Wolski's brother and the black Toyota truck was owned by "track suit". He further agreed there were several tomato plants found in front of greenhouse #3 and that while on surveillance over time saw several persons come and go from the property.

Cpl. Ebert also testified concerning execution of the warrant on June 6. He arrived at the gate shortly after Cst. Bouchard had detained the occupants of the white Honda including David Wolski who he recognized from previous surveillance. Cpl. Ebert then searched the Property, found and arrested "Darius" who also spoke Polish and was found to have a key on his person which opened the gate lock. He added that the bale of professional mix soil found in the trunk of the white Honda was similar to the bales previously loaded into the back of the black Toyota pickup by David Wolski at the Walmart garden centre and similar to further white bales found at

the entrance to one of the greenhouses (Ex. 7, pp. 2-4). The white bale found in the trunk of the white Honda on June 6 was very similar in colouring on the bales found near one of the greenhouses, i.e. a medium blue colouring over parts of the white bale.

On cross-examination Cpl. Ebert was questioned as to the several different persons other than Mr. Wolski who had been seen during surveillance of the Property. He agreed the surveillance carried out at the Property identified several persons on the property between late March and June 6, 2012. He further admitted that the white bales seen near the entrance to one of the greenhouses could have been bales of soil or peat moss and that peat moss would not normally be found at a grow operation. Cpl. Ebert also agreed that David Wolski was neither the owner of the Property nor the BC Hydro subscriber for the Property.

Cpl. Ebert also agreed in summary on cross-examination that David Wolski had only been seen on or coming and going from the Property on April 30, May 7, 16, 17 and June 6 and on redirect examination agreed surveillance of the Property had been carried out on 26 days.

Law Relating to Possession and Production

[11] In *R. v. Ngo*, 2009 BCCA 301, the court discussed the proof required of the Crown to succeed in a prosecution for the production and possession of marihuana for the purpose of trafficking and stated, commencing at para. 51:

[51] To succeed in a prosecution for the offence of possession of marihuana for the purpose of trafficking, the Crown must prove that an accused has both knowledge and control of the marihuana. The definition of "possession" in s. 4(3) of the Criminal Code is incorporated into the CDSA by s. 2(1) of that Act. Section 4(3) of the Criminal Code identified three forms of possession and under each form in the definition, knowledge and control are the key elements: *R. v. Vu* (S.V.), 2002 BCCA 659 at para. 17, 179 B.C.A.C. 262; Bauer at para. 23 .

See also *R. v. He*, 2008 BCCA 418 at para. 19 per Bauman J.A. (as he then was).

[12] Crown more specifically relies on "constructive" or "joint possession" as defined in s. 4(3)(a) (ii) and (b) of the Criminal Code. In *R. v. Pham* (2005), 77 O.R. (3d) 401 at 406-407, 203 C.C.C. (3d) 326 (C.A.), 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), 1972 ALTASCAD 33, 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.).

In order to constitute joint possession pursuant to s. 4(3)(b) of the Code there must be knowledge, consent, and a measure of control on the part of the person deemed to be in possession. See *R. v. Terrence*, [1983] 1 S.C.R. 357, 147 D.L.R. (3d) 724; *R. v. Williams* (1998), 40 O.R. (3d) 301, [1998] O.J. No. 2246 (C.A.); *R. v. Barreau*, [1991] B.C.J. No. 3878, 19 W.A.C. 290 (C.A.); and *R. v. Chambers*, [1985] O.J. No. 143, 20 C.C.C. (3d) 440 (C.A.).

[13] With respect to the relationship between possession and production, and the elements of the latter offence, the court in *Ngo* states:

[52] As previously noted, in *Powell*, *Esson J.A.* held that possession is not an included offence in cultivation, and that the gravamen of the offence of cultivation is active participation in the growing of prohibited plants. See also *Vu* (S.V.), at para. 27.

[14] Addressing aiding or abetting in the context of production, the court continues:

However, an individual may be found guilty of production as either a principal, or as a party to aid or abet the principal: *Hubble*, at paras. 10, 15; Criminal Code s. 21. In a grow op case, an accused may be found to have aided or abetted in the production of marihuana by maintaining the environment in which the marihuana is produced, with the purpose or intent to assist in the crime.

[15] Also in *Ngo*, the court referred to inferences to be drawn from circumstantial evidence, saying::

[54] In considering whether the circumstantial evidence supports an inference of guilt beyond a reasonable doubt, the trier of fact must not examine each individual circumstance in isolation. Instead, the proper approach is to consider whether all the evidence, taken together, establishes the guilt of the accused and is inconsistent with any other rational conclusion:

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

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

[16] In this case, there were several people involved in one or more ways with the grow operation. "Track suit" (also known as "Adidas") and "no sleeves", whose real names are Dariusz Jachymek and Wacław Szeder respectively, were directly involved in the production of the marihuana. At least one of those persons lived in the residence on the Property, quite possibly both. Others, including David Wolski's brother Sebastian, Sebastian's father-in-law Antoni Pietka, and Mr. Szeder's brother, were all seen on the Property during surveillance. Almost all of those persons seen on the Property were of Polish heritage and many were

related. Those persons were seen on the Property on more than one occasion and in the midst of four greenhouses which contained over 2,400 marihuana plants. It is only logical that all of those persons seen on the Property during surveillance knew each other and were all aware of the grow operation. For example, on May 16, 2012, Cst. Kerr witnessed David Wolski speaking with "track suit" and "no sleeves" outside greenhouse #3 only to be joined by a fourth person. Shortly before that discussion David Wolski was seen going into greenhouse #1 and standing near greenhouse #3. Each of those persons may have had varying roles in the grow operation, whether by directly tending to the crop or participating in some other manner.

- [17] So several people were involved in the grow operation in this case. In the decision of *R. v. Rong*, 2010 BCCA 165, Mr. Justice Mackenzie was dealing with a case of a grow operation in which the trial judge had found the accused to have been residing on the property where the grow operation was maintained, unlike this case where Mr. Wolski was not residing on the Property. Nonetheless, the Provincial Court Judge's finding below, as it was affirmed in the Court of Appeal by Mr. Justice Mackenzie, is equally applicable to the case before me:
- [8] Was the defendant involved in the production of marihuana? Did he have knowledge of the substance there and some degree of control over it together sufficient to constitute possession? That four other people were associated with the property, namely Mr. Mai, Ms. Fan, and two others named Mike and David, does not affect my assessment of the defendant's involvement in what is often called the grow-show.
- [9] Juries, it has been said, and therefore judges, must not leave their common sense on the courthouse steps. I therefore find the defendant guilty of both counts.

Likely several of those found on the Property in *Rong* and others beside Mr. Wolski in the case at bar could have been found guilty of one or both charges. The multiplicity of possible defendants, i.e. that others were involved, does not take away from the possible guilt of one of them.

Did Mr. Wolski have Knowledge and Control of the Grow Operation?

- [18] It is undisputed that Mr. Wolski had knowledge of the grow operation. Looking to factors which may indicate control, it is clear that Mr. Wolski was able, on multiple occasions, to to open and close the gate at the entrance to the Property. From the testimony of Cst. Bouchard and Cpl. Ebert and others, Mr. Wolski typically drove up to the gate and made motions that appeared to unlock the padlock on the chain at the gate. It is also apparent that Mr. Wolski was acquainted with or related to several of the other persons seen upon the Property and that he generally had unimpeded access to the grow operation. Mr. Wolski was observed on the Property freely going into greenhouse #1 and conversing with three others outside the entrance to greenhouse #3 on May 16, 2012.
- [19] It is also apparent from all of the evidence that others may well have had free access to the Property, as during surveillance other persons had also been observed entering and leaving by the locked gate.

- [20] The defence submits that when Mr. Wolski and others approached the gate on June 6, 2012, and were arrested, Mr. Wolski was not found to have had a key to the gate on his person which would detract from Mr. Wolski having control of the grow operation. I do not consider the lack of a key on Mr. Wolski's part to be significant. Mr. Wolski had been able to freely enter through and exit by the gate on prior occasions without being admitted by others. Further, he was approaching the Property to enter and was with three other persons who may or may not have been involved in the grow operation; however, common sense dictates that Mr. Wolski was not bringing others to the site of a large grow operation without knowing those persons would soon become aware of the same. The only logical conclusion as to why he was bringing others, apparently not yet involved in the grow operation, would be to introduce those persons to assist or in some manner become involved in the grow operation.
- [21] On occasions when he was seen at the Property, he often remained for between one to two hours. It is noted that other than the four greenhouses the only other structures on the site were a shed and a small house. The Property was primarily wooded with some open grassy areas. From a review of all of the photographs taken during surveillance, the grow operation was the dominant and valuable feature of the Property. There was no other apparent reason to be on the Property other than be involved in, assist with and support the production of marihuana.
- [22] Considering all of the above, it is clear Mr. Wolski had authority over the premises, the exclusive purpose of which was to support the operation. He had unrestricted access to the Property (including the power to bring people onto it), the greenhouses, and the plants grown. He exercised this power on several occasions. From this finding and my review of the cases, I have determined beyond a reasonable doubt Mr. Wolski had both knowledge and a measure of control over the drugs at issue.

Did Mr. Wolski Actively Participate or Aid or Abet the Production of Marihuana at the Grow Operation?

- [23] The evidence of active participation by Mr. Wolski in the production of marihuana includes:
- a) He was seen on site entering two of the greenhouses and had also been seen exiting from the shed on his own. Evidence provided by the officers of the manner the operation would have been managed and the growth cycle of the plants suggest Mr. Wolski's entry into the shed and Greenhouse #1 coincided with times there would have been plants inside. However, he was not seen actively working, such as watering, applying fertilizer or otherwise tending to the crop, which would have likely involved one of the RCMP officers also entering a greenhouse. Free access to the marihuana crop with the crop being the only apparent reason for persons being on the Property would lead to a likelihood that Mr. Wolski was participating in the production;

- b) Mr. Wolski was found to have a bale of professional dirt mix in the trunk of the Honda he was driving on June 6. That bale was described by the officers as very similar to the two bales Mr. Wolski was seen loading into the black Toyota pickup on May 7 and those bales identified in the photos taken by Cpl. Ebert located near the entrances to the greenhouses. In addition to being white bales with blue areas, the bale in the trunk of the Honda clearly contained soil.
- c) Mr. Wolski was seen driving or present as a passenger in a vehicle which either entered or left the Property on April 30, May 7, May 16, May 17 and June 6, 2012. On those occasions he was seen to be driving or a passenger in four different vehicles owned by his wife, his brother, his father, and one of the regular workers of the operation. The latter vehicle is particularly relevant as it was used to run errands for the benefit of the grow operation. Further, Mr. Wolski's use of the four vehicles including instances where he arrived in one vehicle and later departed in a different vehicle, which would appear to be an attempt to not attract attention to any one vehicle coming and going to and from the Property.
- [24] The defence firstly refers to the evidence of two of the officers who stated the bales appeared to contain either soil or peat moss and that as there was no need as of June for more soil, that this was a one-time annual crop that just needed to mature by the fall before harvesting. In reply, the bales were most likely containing soil as was in the trunk of the Honda, especially considering the similar designs noted by Csts. Ebert and Jones and the confirmation of similar bags before Greenhouse #2 on May 16. Regarding the need for soil, what is apparent is that the soil was purchased for use on the Property which primarily was a grow operation, with, possibly some tomato plants. It is quite possible that soil was being accumulated for future use. Regardless, the only reasonable inference to be drawn in the circumstances is that the soil was brought for the growing operation.
- [25] It is accepted Mr. Wolski knew of the operation. Though apparently not intended for the current growth cycle, I find Mr. Wolski took the soil onto the property for the purpose of assisting with the overall operation and ultimately the production of future plants, and he was thus a party to the offence under s. 21(1)(b) of the Criminal Code.
- [26] The Crown has submitted that Mr. Wolski was either the "principal operator" or was a "principal operator" among others in this grow operation. Based upon all of the evidence before me, I am unable to conclude that Mr. Wolski was a principal in this operation. Suspicion that he may have been a principal operator of this grow operation is not sufficient to make such a finding. Attending the Property irregularly, bringing others to the Property, running errands for supplies and otherwise spending time on the Property containing a large grow operation does not necessarily mean Mr. Wolski was the driving force, or a driving force and a principal of the grow operation.

Conclusion

- [27] Mr. Wolski could you please stand?

[28] In summary, Crown has proven both that Mr. Wolski unlawfully possessed marihuana for the purpose of trafficking under s. 5(2) of the Controlled Drugs and Substances Act, and that he aided the production and cultivation of that marihuana under s. 7(1) of the same Act pursuant to s. 21(1)(b) of the Criminal Code. I therefore you guilty on both counts as charged in the indictment.

"Jenkins J."

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