

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Mr. Justice Marc M. Monnin
Mr. Justice James G. Edmond

BETWEEN:

<i>HIS MAJESTY THE KING</i>)	<i>M. P. Cook</i>
)	<i>for the Appellant</i>
<i>Respondent</i>)	
)	<i>M. T. Sinclair and</i>
)	<i>B. C. Johnson</i>
<i>- and -</i>)	<i>for the Respondent</i>
)	
)	<i>Appeal heard:</i>
<i>JASON SHAWN MILLER</i>)	<i>September 13, 2024</i>
)	
<i>(Accused) Appellant</i>)	<i>Judgment delivered:</i>
)	<i>May 15, 2025</i>

BEARD JA

I. THE ISSUES

[1] The accused is appealing his convictions for unlawful possession of methamphetamine (meth) for the purpose of trafficking under section 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c 19, and unlawful possession of property obtained by crime not exceeding \$5,000 under section 354(1)(a) of the *Criminal Code*, RSC 1985, c C-46. He indicated at the appeal hearing that he was no longer pursuing his sentence appeal.

[2] The issues on appeal are:

- (i) did the trial judge err in finding that the search and seizure of the meth were reasonable under section 8 of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*]?
- (ii) did the trial judge err in finding that the accused possessed the drugs for the purpose of trafficking?

II. BACKGROUND

[3] At the appeal hearing, the accused acknowledged that the facts were not at issue. Below is a brief summary, with more details to follow, as needed.

[4] In July 2021, Constable Andrew Stevenson (Cst. Stevenson) and Constable Brian Herman (Cst. Herman) were members of the Winnipeg Police Service Guns and Gangs Unit (the GGU). On the evening of July 17, 2021, they were out in a police vehicle when Cst. Stevenson received a phone call at 8:00 p.m. from a confidential informant (the CI) that Jason Miller (the accused), who was 35 and affiliated with the Bloods street gang (the Bloods), was actively trafficking meth in Winnipeg and that he would be in Unicity taxi No. 045 with licence plate HYG 401 (the taxi), at a location on Redwood Avenue near Parr Street (the location) within fifteen to thirty minutes (the CI information).

[5] The CI had been a registered informant with the Winnipeg Police Service for approximately two years prior to this call and, throughout that

time, Cst. Stevenson had worked with the CI and had been the CI's handler. During that time, the CI had provided information to him on ten to fifteen occasions. Approximately five arrests or seizures had resulted from those of the leads that the police had the time and resources to pursue, and Cst. Stevenson had never received false information from the CI. Thus, Cst. Stevenson was in a position to testify as to the CI's reliability.

[6] Further, to Cst. Stevenson's knowledge, the CI was quite familiar with drugs and was very active in Winnipeg's drug subculture, in particular with respect to meth. Cst. Stevenson testified that the CI's motivation for providing information to him was monetary, but the CI would only be paid for information that led to an arrest or seizure. The CI would not be paid for any false information.

[7] In addition, Cst. Stevenson was familiar with the accused's name, having been involved with him on three prior occasions: in 2010, 2018 and 2019. Constable Stevenson knew that the accused was associated with the Bloods and that the 2019 involvement related to the accused being arrested on Alfred Avenue in Winnipeg for trafficking in meth.

[8] Constable Stevenson immediately radioed to other members of the GGU who were also working on that shift to be on the lookout for the taxi and the accused at the location, with instructions that he could be placed under arrest.

[9] At approximately 8:30 p.m., another unit of the GGU located the taxi at the location. The officers stopped the taxi and removed and arrested the accused. They conducted a search and found \$995 in cash in the accused's satchel, 112.86 grams of bulk meth in a Ziploc-style baggie in the front

waistband of the accused's shorts and two cellphones in the front pocket of his shorts.

[10] Very shortly after, Csts. Stevenson and Herman arrived at the location identified by the CI, where they found the officers with the accused and the taxi matching the description provided by the CI. They took control of the accused and the seized items.

[11] The accused pled not guilty. He made an application to have the seized items excluded from evidence under section 24(2) of the *Charter*, arguing that his arrest was arbitrary and breached his rights under section 9 of the *Charter* and that the search was unreasonable and breached his rights under section 8 of the *Charter*. The accused now acknowledges that the police were not acting arbitrarily.

[12] The trial judge found that the accused's *Charter* rights had not been breached and that, in any event, he would not have excluded the seized items as evidence.

[13] The trial continued, with the Crown calling a police expert witness to give evidence on the issue of possession for the purpose of trafficking. The trial judge accepted that expert evidence and convicted the accused of both possession of meth for the purpose of trafficking and possession of the property obtained by crime under \$5,000.

III. GROUND 1—UNREASONABLE SEARCH

Standard of Review

[14] On the appeal of a finding of a breach under the *Charter*, questions of fact are reviewed on the standard of palpable and overriding error, while questions of law are reviewed on the standard of correctness. The application of the legal principles to the facts to determine whether the facts satisfy the correct test are reviewed on the standard of correctness. Thus, the question of whether the facts, as found by the trial judge, constitute a breach of the *Charter* is reviewed on the correctness standard. (See *R v Farrah (D)*, 2011 MBCA 49 at para 7, which has been adopted in many cases, including *R v Wahabi*, 2024 MBCA 70 at para 123; *R v Chartrand*, 2023 NSCA 43 at para 43; see also *R v Steadman*, 2021 ABCA 332 at para 49.)

The Parties' Positions

[15] The parties are not arguing that the trial judge applied the wrong legal principles. This ground is based on the narrow issue of whether the trial judge erred in finding that the evidence was sufficient to support his finding that the grounds to arrest, which were based on CI information, were objectively reasonable.

[16] The trial judge found, and the parties agree, that the information provided by the CI must be compelling, credible and corroborated to constitute reasonable grounds to arrest.

[17] The accused stated, at the appeal hearing, that he was not taking issue with the trial judge's finding that the CI information was both

compelling and credible. His position was that the trial judge erred in finding that the information was adequately corroborated because the police took no steps to do so before acting on it. He argued that, without adequate corroboration, the evidence does not support a finding that the grounds for arrest were objectively reasonable.

[18] The Crown's position is that the factors for weighing CI information are not to be looked at separately, but, rather, together and in the context of all of the circumstances. It argues that, when the evidence is looked at in totality, it is sufficient to support a finding that the grounds to arrest were objectively reasonable.

The Trial Judge's Reasons

[19] On the issue of the corroboration of the CI information, the trial judge stated:

I would characterize the information as corroborated by the prior dealings between the CI and [Cst.] Stevenson. The CI never having [been] found to provide false information, had never been subject to a criminal record for perjury. The case law talks about neutral corroboration. The specifics herein are far from neutral.

...

The officers involved, first, had to find a specific taxi in the vicinity of Redwood and Parr, which it turns out they were able to do. The tip did not provide where [the accused] was coming from only where he would be within 15 to 30 minutes, and this is precisely what occurred.

...

I agree there was no visible hand-off of methamphetamine, but I find in this case there did not need to be. This tip was so specific as to location and time. Having found the subjective elements were present, what did the officers do objectively? The officers arrived at [the] scene, found a Unicity taxi with the same identifier and licence plate as was given to them.

If any of these circumstances were different, such as the taxi bore a different licence number, it had a different taxi identifier, it was from a different company, defence counsel's submission would be appropriate. Objectively what matters here is the facts match the CI's tip.

Having found the warrantless search grounded in reasonableness and objectively confirmed, I find the arrest was reasonable and that the results of the search were incident to arrest. And those are confirmed by the evidence of the officers and Exhibit 4 and the finding of the methamphetamine in the pants of the accused.

The Law

[20] It is a principle of the common law and under section 8 of the *Charter* that a person may be searched as an incident of a lawful arrest (see, for example, *R v Golden*, 2001 SCC 83 at para 49; *R v Caslake*, 1998 CanLII 838 at paras 10–30 (SCC); *R v Stillman*, 1997 CanLII 384 (SCC)).

[21] An arrest will be lawful if it meets the requirements of section 495(1) of the *Criminal Code*, the relevant parts being:

**Arrest without warrant by
peace officer**

495 (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence[.]

**Arrestation sans mandat
par un agent de la paix**

495 (1) Un agent de la paix peut arrêter sans mandat :

a) une personne qui a commis un acte criminel ou qui, d'après ce qu'il croit pour des motifs raisonnables, a commis ou est sur le point de commettre un acte criminel[.]

[22] Justice Cory explained this provision (then section 450(1) of the *Criminal Code*) in *R v Storrey*, [1990] 1 SCR 241 at 250-51, 1990 CanLII 125 (SCC):

In summary then, the *Criminal Code* requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically they are not required to establish a *prima facie* case for conviction before making the arrest.

[23] The criterion of reasonable and probable grounds (sometimes referred to as reasonable grounds) essential to a lawful arrest without warrant also arises in relation to the granting of a search warrant and an arrest warrant. In each case, it is interpreted and applied in the same manner (see *R v Simon*, 2020 NSCA 25 at para 14; *R v Parsley*, 2016 NLCA 51 at para 10; *R v Caissey*, 2007 ABCA 380 at para 20; *Goodine v R*, 2006 NBCA 109 at para 23; *R v Debot* (1986), 30 CCC (3d) 207 at 218-19, 1986 CanLII 113 (ONCA)).

[24] Where, as in this case, more than one officer is involved in an arrest, questions arise as to who has to have the reasonable and probable grounds, and at what point in time. Here, the arresting unit was acting on both the direction from Cst. Stevenson to arrest the accused and their observations when they located and stopped a taxi with the same identifiers as provided by Cst. Stevenson.

[25] The jurisprudence is clear that:

- (i) the objective assessment of reasonable and probable grounds “is based on the totality of the circumstances known to the officer at the time of the arrest” (*R v Tim*, 2022 SCC 12 at para 24; see also *R v Clayton*, 2007 SCC 32 at para 48);
- (ii) an arresting officer can rely on information received from another officer to arrest an accused, provided that the other officer had reasonable and probable grounds when he directed the arrest (see *R v Beaver*, 2022 SCC 54 at para 72(8));
- (iii) where there are a number of officers involved in an arrest, the lawfulness of the arrest should be based on the collective knowledge of the police, as a group, at the time of the arrest, as communicated to the arresting officer, and not just the knowledge of the officer who made the arrest (see *R v Protz*, 2020 SKCA 115 at para 40; *R v Chapman*, 2020 SKCA 11 at para 58; the concurring reasons of Slatter JA in *R v Ha*, 2018 ABCA 233 at para 80; *R v Quilop*, 2017 ABCA 70 at para 20; *R v Labelle*, 2016 ONCA 110 at para 11); and
- (iv) to emphasize, the determination of the existence of reasonable and probable grounds is based on the whole of the information known to the police at the time of arrest, but does not include information obtained following the arrest (see *Beaver* at para 72(7); *Quilop* at para 29; Steve Coughlan & Glen Luther, *Essentials of Canadian Law: Detention and Arrest*, 3rd ed (Toronto: Irwin Law, 2024) ch 2 at 107-8).

[26] As explained in Coughlan, “reasonable [and probable] grounds are ‘transferable’ between officers. This is more than saying that an officer can rely on hearsay; rather, the point is that more than one officer can act provided that one officer has reasonable [and probable] grounds” (at 107).

[27] Even where an officer is relying on reasonable and probable grounds known to another officer, the focal point is the time of the interaction with an accused. Thus, the officer can rely on both the reasonable and probable grounds of another officer and additional information that the officer obtains right up until the time of the interaction with the accused (see *R v Desilva*, 2022 ONCA 879 at para 60; *R v Lichtenwald*, 2020 SKCA 70 at paras 38, 44-45; *Clayton* at para 48).

[28] Where the police base their reasonable and probable grounds on information received from a CI, the Supreme Court of Canada provided direction on how that evidence is to be weighed in *R v Debot*, [1989] 2 SCR 1140, 1989 CanLII 13 (SCC) [*Debot* (SCC)] and in *R v Garofoli*, [1990] 2 SCR 1421. In *Garofoli*, Sopinka J, for the majority, stated at 1456-57:

(i) Hearsay statements of an informant can provide reasonable and probable grounds to justify a search. However, evidence of a tip from an informer, by itself, is insufficient to establish reasonable and probable grounds.

(ii) The reliability of the tip is to be assessed by recourse to “the totality of the circumstances”. There is no formulaic test as to what this entails. Rather, the court must look to a variety of factors including:

- (a) the degree of detail of the “tip”;
- (b) the informer’s source of knowledge;

- (c) the indicia of the informer's reliability such as past performance or confirmation from other investigative sources.

(iii) The results of the search cannot, *ex post facto*, provide evidence of reliability of the information.

[29] Justice Sopinka's statement that "evidence of a tip from an informer, by itself, is insufficient to establish reasonable and probable grounds" (*ibid* at 1456) was explained by Beveridge JA, for the Court, in *R v Wallace*, 2016 NSCA 79, who said, "[i]t is a mere conclusionary statement by an informer that, without more, cannot satisfy reasonable grounds" (at para 33). The "more" that is required for a tip to constitute reasonable grounds is provided by "the totality of the circumstances" (*ibid*), including the factors that Sopinka J set out in *Garofoli*.

[30] In *Debot (SCC)*, Wilson J described these factors as (i) was the information compelling; (ii) was the source credible; and (iii) was the information corroborated (see 1168).

[31] Coughlan explains that whether a tip is compelling relates to the quality of the information and the amount of detail included; generally, more detail increases its compellability, as does the provision of information that is not publicly known (see 119-20). Credibility relates to the CI personally and whether they are trustworthy, including their history of giving information and the motive for doing so (see *ibid* at 121). It also relates to whether the disclosure is reliable (see *ibid*).

[32] Coughlan explains the corroboration requirement as follows (*ibid* at 122):

Whether the tip has been corroborated is the most complex question because it is hard to lay down any very precise rules. The police need not confirm every detail in an informer's tip, but there must be enough corroborative evidence "to remove the possibility of innocent coincidence." A greater amount of corroborative evidence is required where the tip does not provide enough details to preclude the possibility of innocent coincidence or where the informer's credibility cannot be assessed.

The most difficult situation is when there is no corroboration of criminal aspects of the tip.

[footnotes omitted]

[33] In *Parsley*, Hoegg JA addressed the application of the corroboration factor at para 17 as follows:

. . . [T]here is no legal requirement that confidential source information be independently corroborated in whole or in part. Where the informant is a confidential source of "known identity" and "proven reliability", the need for independent corroboration of the information is less important and not required as a rule of law (*R. v. Al-Amiri*, 2015 NLCA 37, 368 Nfld. & P.E.I.R. 146 and *R. v. Beauregard* (1999), 136 C.C.C. (3d) 80 (Que. C.A.) at 82-83).

[34] In *Debot (SCC)*, Wilson J explained the assessment of the totality of the circumstances as follows (the majority disagreed with Wilson J's decision on two points not relevant to this issue) at 1172:

In my opinion, it should not be necessary for the police to confirm each detail in an informant's tip so long as the sequence of events actually observed conforms sufficiently to the anticipated pattern to remove the possibility of innocent coincidence. As I noted earlier, however, the level of verification required may be higher

where the police rely on an informant whose credibility cannot be assessed or where fewer details are provided and the risk of innocent coincidence is greater.

[35] Justice Wilson also stated that the three factors do not form separate tests; rather, the standard of reasonableness is determined on the totality of the circumstances, so that “[w]eaknesses in one area may, to some extent, be compensated by strengths in the other two” (*ibid* at 1168).

[36] In a similar vein, Hoegg JA, in *Parsley*, adopted the findings in *R v Burke*, 2011 NBCA 51, regarding the application of the three factors, as described in *Garofoli*. Justice Hoegg stated that there is a “need for flexibility in considering the factors and cautioned against elevating one factor to the status of an essential prerequisite to the existence of reasonable grounds when considering the ‘totality of the circumstances’” (*Parsley* at para 16).

[37] In *R v Hillgardener*, 2010 ABCA 80, the Court stated that “**Debot** accepts that precision and accuracy of precise details surrounding the matter together with a history of proven reliability can constitute reasonable and probable grounds” (at para 26).

[38] Further, it is clear from the jurisprudence that corroboration does not require that the police confirm the criminal aspects of the CI information or the offence itself (see *R v Caissey*, 2008 SCC 65 at para 2; see also *R v Al-Amiri*, 2015 NLCA 37 at para 29; *Hillgardener* at para 27).

Analysis

[39] The accused argues that he was arrested because one CI said that he would be in a particular taxi heading to a particular address, and that was not

sufficient evidence to constitute reasonable and probable grounds to stop the taxi and make an arrest. He points out that the police did not see him doing anything suspicious, they did no investigation, did not get either a search warrant or an arrest warrant, and there was no evidence that drugs were in plain view, that the accused was acting nervous, had difficulty answering questions or looked to be hiding something. Further, he notes that, while the accused had two cellphones, there were no incoming calls to indicate drug transactions.

[40] At the appeal hearing, the accused argued that the police were required to take further steps to corroborate the CI information, as are often done, before proceeding to arrest him. He stated that this could include surveillance of the accused after the officers found the taxi, waiting until the accused arrived at his destination to see what happened and getting a search warrant for that location, and detaining the accused and getting a search warrant for his cellphones and the taxi. His position was that these steps could have provided evidence to corroborate the CI information.

[41] As stated in *Hillgardener*, “[t]he issue in this appeal is not whether the officer could have done more but whether the trial judge erred in law in applying the *Debot* test to what the officer knew and did” (at para 22).

[42] Thus, the question in this case should not be whether the arresting officer could have done more to corroborate the CI information, but whether the CI information, considered in the context of all of the circumstances, was sufficient to establish that the grounds for a warrantless arrest were objectively reasonable.

[43] The first question is whether there was any corroboration of the CI information.

[44] As the trial judge noted, that information was corroborated in all important respects by the arresting officers. The CI information was that Unicity taxi No. 045 with licence plate HYG 401, would be at a specific location, on Redwood Avenue and Parr Street within fifteen to thirty minutes after the phone call at 8:00 p.m. The arresting officers found that taxi at that location at 8:30 p.m. Thus, the what, when and where corresponded exactly with the CI information.

[45] Further, the CI information was that a specific adult male would be in the taxi. While there was no evidence as to whether the arresting officers knew the accused, the evidence was that there was an adult male in the taxi when it was stopped.

[46] Thus, in my view, the circumstances of the arrest corroborate the details of the CI information.

[47] The accused agrees that the CI information was both compelling and credible; however, as the three factors are to be weighed together, it is important to consider the strength of each.

[48] In relation to how compelling the CI information was, in my view, it was very detailed and specific, and the details did not consist of public information. It is very unlikely that an innocent male would have been in that specific taxi, at that specific location and at that specific time. In my view, the CI information was very compelling.

[49] In relation to reliability and credibility, the CI information did not come from an anonymous or untried source, but from a source known to Cst. Stevenson. The CI was not only known to Cst. Stevenson, but Cst. Stevenson had been the CI's handler for two years. Cst. Stevenson was familiar with the CI's involvement in the drug subculture and had received approximately ten to fifteen tips from the CI, and none of those that were followed through had been false. Further, the CI's motivation was monetary, not personal, in that the CI had an agreement with the Winnipeg Police Service that paid for any information that led to an arrest or seizure. There was no motivation to provide false information, as the CI would not be paid for it.

[50] Further, the CI named the accused as the person who was trafficking in meth. Cst. Stevenson had three past involvements with the accused: one of them was when he and a partner transported him to the police station in 2019, following his arrest for trafficking in meth. This knowledge added to the reliability and credibility of the CI information that the accused was trafficking in meth.

[51] In my view, the CI was very reliable and credible.

[52] Considering all of the circumstances, in my view, the trial judge did not err in concluding that the evidence was sufficient to support a finding that the grounds for arrest were objectively reasonable and, therefore, lawful, that the search that was incident to that arrest was reasonable and that there was no breach of the accused's rights under section 8 of the *Charter*.

IV. GROUND 2—TRAFFICKING

[53] As both parties have acknowledged, the conviction for trafficking is based on the circumstantial evidence of Constable Chris Walstra (Cst. Walstra). He was called as an expert witness by the Crown to testify on various aspects of the distribution and sale of meth and the role of cash in the drug trade. The accused accepted Cst. Walstra's expertise in these areas, as did the trial judge.

Standard of Review

[54] Justice Cromwell, for the Court, explained the principles and the standard of review in a circumstantial evidence case in *R v Villaroman*, 2016 SCC 33 at paras 55-56, which I will summarize.

[55] “A verdict is reasonable if it is one that a properly instructed jury acting judicially could reasonably have rendered” (*ibid* at para 55, citing with approval *R v Biniaris*, 2000 SCC 15). On appeal, an appellate court is to re-examine and, to some extent, reweigh and consider the effect of the evidence (see *R v Yebes*, 1987 CanLII 17 at para 25 (SCC)). Where a conviction is based on circumstantial evidence, the question is whether the trier of fact, acting judicially, could be satisfied that an accused's guilt is the only reasonable conclusion available on the totality of the evidence.

[56] In *Villaroman*, Cromwell J adopted the summary of the underlying principles set out by the Alberta Court of Appeal in *R v Dipnarine*, 2014 ABCA 328 at para 22, stating at para 56:

The court noted that “[c]ircumstantial evidence does not have to totally exclude other conceivable inferences” and that a verdict is

not unreasonable simply because “the alternatives do not raise a doubt” in the jury’s mind. Most importantly, “[i]t is still fundamentally for the trier [of] fact to decide if any proposed alternative way of looking at the case is reasonable enough to raise a doubt.”

[57] In the present case, the real question would be whether it was reasonable for the trial judge to be satisfied that the accused’s possession of the meth was for the purpose of trafficking (see *Villaroman* at para 57).

The Trial Judge’s Reasons

[58] After setting out the underlying facts, the trial judge analyzed Cst. Walstra’s evidence, noting that the accused had accepted his expertise. The trial judge summarized Cst. Walstra’s evidence and reviewed the principles to be applied to the determination of guilt based on circumstantial evidence, with which the accused takes no issue. The trial judge then considered the inferences that the accused was putting forward, which he noted to be that the accused possessed the meth for personal use, that he may have purchased it at a reduced price and that the cash was from a paycheque.

[59] The trial judge found, relying on Cst. Walstra’s evidence, that the quantity of meth was 300 times what an end-user would use and that carrying that much cash and meth was high risk because it would make the accused too enticing as a target for other members of the drug world. He also found that the suggestion that the accused bought that amount because there was a sale discount was incredible, unreasonable and contrary to Cst. Walstra’s evidence. Finally, he found the suggestion that the cash was from a paycheque to be conjecture and that the meth and cash were directly related.

[60] The trial judge addressed the list of circumstances commonly acknowledged to often accompany trafficking (see para 64 herein), which were not present in this case. He stated that the question before him was whether the Crown had proven guilt beyond a reasonable doubt based on the evidence at this trial and the inferences that could be drawn from it, not on a checklist of other circumstances.

[61] The trial judge accepted Cst. Walstra's testimony that the amount of meth was for trafficker-to-trafficker sales and not for street-level users because he found it to be credible and reliable, based on Cst. Walstra's agreed expertise and his manner of testifying. He further noted that Cst. Walstra agreed that the inferences suggested by the accused were possible, but he did not accept them as applying here, given the amount of meth at issue.

[62] The trial judge concluded by stating that, applying the principles in *Villaroman*, based on "the inference [he did] accept as being the only reasonable inference in the particular circumstances of this case, having found the inference suggested by defence to be unreasonable . . ., [he] convict[ed] [the accused] of both counts".

The Parties' Positions

[63] The accused admitted in an agreed statement of facts that the meth was in his possession, and he agrees that the amount of meth at issue was more than a standard simple user would normally possess. He argues, however, that there was insufficient evidence to support Cst. Walstra's opinion that he had possession of the drugs for the purpose of trafficking, as opposed to simple possession as a user.

[64] The accused's principal argument is that the many other usual indicia of trafficking were not present—like a constantly ringing phone, suspicious transactions, nervous behaviour, a large amount of cash, weapons, and trafficking paraphernalia like scoresheets, scales and baggies. He states that quantity, alone, is not sufficient to establish trafficking and that the lack of any indicia of trafficking other than the amount of meth should have raised a reasonable doubt and resulted in a conviction for only simple possession.

[65] Finally, the accused relies on *R v Ahmed*, 2018 MBQB 133, which he says was substantially based on the opinion of an expert witness, to support his position that more than the opinion of an expert and a quantity of drugs is required to establish trafficking beyond a reasonable doubt.

[66] The Crown's position is that the trial judge correctly assessed the totality of the evidence at trial and his finding of guilt was reasonable in the circumstances. It argues that, for a trial judge to acquit, other proposed inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in the light of common sense. It states that the trial judge applied the correct law, he took care to go through the many inferences that the accused put forth, and he found them to be "truly speculation, supposition, and conjecture", thus rejecting them. It says that he applied common sense in finding the accused guilty of possession for the purpose of trafficking, and he did not err in doing so.

Analysis

[67] Dealing first with *Ahmed*, the accused in that case argued that the Crown had not proven its case due to, among other things, an absence of evidence of the usual indicia of trafficking and that expert evidence must not

be allowed to usurp the role of a trier of fact. That was not, however, the full defence, or even the main argument.

[68] In fact, while the trial judge in that case commented on those issues and found the accused not guilty of both possession and trafficking, that finding was not based on those issues; it was based on significantly different facts that are not present in the present case.

[69] In *Ahmed*, three of the four people who were in the car when the police arrested the accused testified at the trial, including the accused. They were consistent in saying that the accused did not know that the drugs were in the pocket of the jacket, which, they said, was not his and which he had put on after getting into the car. While there was a large quantity of drugs found in the pocket, the two defence witnesses testified that one of them had bought the drugs before they picked up the accused. They stated that the drugs were for their own personal use at a party later that night, after they dropped off the accused.

[70] The trial judge in *Ahmed* found that, while she did not believe the accused, the testimony, as a whole, established a plausible alternative to the accused having possession of the drugs and trafficking them. Thus, she based her decision to acquit on the testimony of the witnesses, not on the absence of evidence of the usual indicia of trafficking or an improper reliance on the expert evidence.

[71] In the present case, the trial judge found that the accused's arguments that the drugs were on sale and that the cash was from a paycheque were completely speculative and without any factual basis. In fact, the accused neither led evidence nor pointed to any evidence that was before the

Court, or a lack of evidence, that would support those arguments. In my view, the trial judge's finding that these inferences were speculative and unreasonable is supported by the record and he did not err in finding them to be unreasonable and rejecting them.

[72] The only evidence that the trial judge had regarding the purpose of the accused's possession of the drugs was that of Cst. Walstra, being that even though the indicia of trafficking to which the accused referred were not present, Cst. Walstra was still of the view that the accused's possession was for the purpose of trafficking, not for his personal use.

[73] The trial judge did not simply accept Cst. Walstra's evidence; he analyzed it and gave reasons for accepting it. He noted that the amount of meth was 300 times what an end-user would use, that the risk of carrying that amount of drugs and money was too high and, therefore not realistic, as it would make the carrier a target for other members of the drug world, and that the accused had a large amount of drugs together with a large amount of cash.

[74] As noted earlier, the trial judge rejected the innocent explanation that the cash was from a paycheque as being unreasonable and speculative. In my view, the trial judge's acceptance of Cst. Walstra's evidence that the accused had possession of the drugs for the purpose of trafficking was supported by the record and was reasonable.

[75] I am of the view that the trial judge did not err in finding the inferences put forward by the accused were unreasonable, and that it was reasonable for him to be satisfied that the accused had possession of the meth for the purpose of trafficking and not simply for his personal use.

V. CONCLUSION

[76] For the above reasons, I would dismiss both grounds of appeal and the appeal in its entirety.

Beard JA

I agree: Monnin JA

I agree: Edmond JA
