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(Brandon Centre)
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COURT OF KING'S BENCH OF MANITOBA
(GENERAL DIVISION)

BETWEEN:	)	Appearances/Counsel
	)	
HIS MAJESTY THE KING,	)	JANNA HYMAN
	)	For the Crown
and	)	
	)	
BABALJIT SINGH, MANDEEP SINGH DEOL,	)	ANDREW SYNYSHYN For the Accused (Singh)
Accused.	)	
	)	ANTHONY DAWSON
	)	For the Accused (Deol)
	)	
	)	JUDGMENT DELIVERED:
	)	JANUARY 13, 2023

LEVEN J.

SUMMARY

[1] The two co-accused were charged with possession of over a million dollars worth of fentanyl and Methylenedioxyamphetamine ("MDA") for the purposes of trafficking. When their rented van was pulled over on the highway, on July 28, 2020, Mr. Mandeep

Deol ("Deol") was the driver and Mr. Babaljit Singh ("Singh") was the passenger. (Unless indicated otherwise, all dates are in 2020.)

[2] The drugs were in two big hockey bags in the rear section of the van. Deol had rented the van in Toronto on Thursday, July 23. The van drove almost around-the-clock to Vancouver and then almost immediately turned around and headed back quickly to Toronto. Deol chose not to testify. Singh testified that he had no knowledge that there were any illegal drugs in the van.

[3] The Crown's expert witness testified about typical behaviour for drug couriers in Canada. In some ways, the behaviour of the co-accused was typical, and in some ways it was atypical.

[4] For the reasons explained below, I find Deol guilty as charged, and I find Singh not guilty.

FACTS

[5] This is not a comprehensive recitation of all evidence and argument tendered; it is a concise summary of certain important matters.

[6] At the trial, the parties agreed on a number of facts.

[7] After a *voir dire*, in a preliminary decision (2022 MBQB 24), I ruled that the drugs were admissible. In the *voir dire*, the arresting police officer testified that he witnessed the van speeding. It was going east on the Trans Canada Highway. When the officer pulled the van over, there was an open bottle of whiskey in plain view in the back seat. The passenger had no valid driver's licence. The drugs (about 50 kg of MDA and about 26 kg of fentanyl) were found in two large hockey bags in the rear section of the van.

There was one small bag of MDA under one of the hockey bags. Otherwise, all the drugs were in the two hockey bags.

[8] At the trial, the Crown called expert evidence about Canadian drug trafficking and Canadian drug couriers in general. It is common for couriers to work in pairs, and it is common to use rented vehicles. It is common for drugs to be picked up in the Vancouver area and to be driven to other Canadian locations. It is common for drug syndicates to choose couriers who will not call undue attention to themselves. It is common for couriers to move drugs as fast as possible (e.g. by having two drivers take turns driving, so that the vehicle does not have to stop except for gas and incidentals). It is unlikely that a courier would be a non-Canadian without a valid Visa. It is preferable that couriers speak English and/or French.

[9] The Crown's evidence against both co-accused was circumstantial in nature.

[10] The van rental contract showed that Deol rented the van in Toronto on Thursday, July 23, and was supposed to return it to Toronto on Wednesday, July 29.

[11] Gas receipts found in the van showed that it travelled from Toronto to Vancouver and then back towards Toronto. As noted, it was pulled over heading eastbound on the Trans Canada Highway near Brandon, on July 28. It was speeding and there was open liquor in plain view in the back seat. At trial, Singh said it was his liquor. Almost all of the gas receipts showed cash payments.

[12] In their agreed facts, using the gas receipts and Google maps, the parties constructed an approximate schedule of the van's movements. The van drove from

Toronto to Vancouver in about 45.95 hours, then drove from Vancouver to Brandon in about 21.25 hours.

[13] When the van was pulled over, Deol had a valid driver's licence on his person, but Singh did not. The arresting officer said that both men appeared nervous.

[14] The fentanyl seized was worth roughly one million dollars or more. The MDA seized was worth roughly half a million dollars.

[15] Deol's smart phone was seized. It showed that Deol had sent text messages to one or more persons during the trip in question. None of the messages explicitly mentioned illegal drugs or used code words that obviously suggested drugs. Some messages mentioned money. Some messages showed the progress of the van during its trip. One message instructed Deol to meet a person named "Happy" at a location in Burnaby on July 26 at 2:00 p.m.

[16] When arrested, Deol had $200 in his wallet.

[17] Singh testified at trial. He has a Grade 10 education and his English is poor. He was born in India and lived in Italy before coming to Canada. He lived in the Toronto area for about two years and never travelled outside of the Toronto area. He did not know how far Vancouver was from Toronto. Deol was his cousin. Deol had never lied to him.

[18] Singh worked Monday through Thursday. His job was important to him.

[19] Deol asked Singh if he wanted to go with him (Deol) on a drive to Vancouver. Deol would pay for gas and food. Deol said something about asking someone in Vancouver about a job. Deol told Singh the trip would take 3-4 days. Singh agreed to go.

[20] Deol picked Singh up on July 23. Singh had to work on July 27. He thought Deol would get him back to Toronto for July 27.

[21] Singh's Canadian Visa expired before July 2020. When the co-accused were pulled over by the police, Singh said he was nervous because of his expired Visa.

[22] During the trip, Deol always paid for gas. When they stopped at gas stations, Singh went into the stations to buy food and/or use the washroom.

[23] They sometimes stopped at fast food restaurants and went into the restaurants to eat (rather than using drive-throughs). Singh sometimes napped in the van. Deol sometimes stopped the van and napped for about an hour.

[24] They never stayed in hotels. Singh assumed that was in order to save money.

[25] Singh was concerned about time and sometimes asked Deol when they would get to Vancouver. Deol would answer "another two hours" or "another four hours". He was inaccurate.

[26] In Vancouver, Deol left Singh at a gas station and said he would park the van. Deol left and came back after about 10-15 minutes. He said it took some time to find parking. Then the two walked to the van and got into it.

[27] Deol told Singh that he had talked to his Vancouver contact on the phone and that they could now return to Toronto. They did no sightseeing.

[28] By the morning of July 27, Singh realized that he would have to miss some work. He phoned his boss to tell him.

[29] Singh said he never knew that there were drugs in the van. He never looked in the rearmost area where the hockey bags were. He never suspected Deol of doing anything illegal.

ARGUMENT

[30] The Crown argued that the circumstantial evidence was enough to prove both accused guilty beyond a reasonable doubt. At the very least, both co-accused were willfully blind. When the van was pulled over, both co-accused and the drugs were in the van. Deol was the driver and the van was rented in his name.

[31] In some ways, the van and the trip fit the typical pattern of a drug courier trip, as outlined by the Crown's expert witness. The van was rented. The van travelled to and from Vancouver. The trip was rapid, with no nights spent in hotels, or other long pauses.

[32] The Crown submitted that Singh was not at all credible. The story he told was very odd in many ways. The trip was obviously not a typical pleasure or sightseeing trip. Yet, according to his evidence, Singh asked Deol no probing questions at all about the odd nature of the trip. When Deol began asking how much longer it would take to reach Vancouver, and Deol kept providing inaccurate answers, Singh (if he can be believed) asked no probing questions.

[33] If Singh can be believed, when Deol said he talked to his Vancouver contact person by telephone and they could now go back to Toronto, Singh again asked no probing questions. That too, is odd. It is possible to phone Vancouver from Toronto without having to drive all the way there.

[34] The Crown submitted that either Singh had actual knowledge of the drugs, or he was willfully blind as to their existence. In the alternative, Singh was a party to the offence under section 21 of the ***Criminal Code***.

[35] Both defence counsel argued that some aspects of the trip did not fit the typical pattern outlined by the Crown's expert witness. The only evidence before the court was that Singh never drove. This does not fit the "two-drivers" pattern. The van did not obey all traffic laws (it was speeding and open liquor was visible in the van.) Singh spoke little English and had an expired Visa.

[36] Both counsel pointed out that the Crown had no DNA or fingerprint evidence. There was no evidence that either Deol or Singh were carrying large amounts of cash.

[37] Singh's counsel pointed that Singh had a Grade 10 education and poor English. Deol was his cousin, and Singh said Deol had never lied to him. Singh testified that Deol was alone with the van for a period of time in Vancouver. Using the ***Villaroman*** analysis (see paragraph 44), a plausible theory was that Deol knew about the drugs, but Singh did not.

[38] No one disputed that the huge quantity of illegal drugs was sufficient to make the offence possession for the purposes of trafficking, rather than simple possession.

CRIMINAL CODE

[39] Section 21 of the ***Criminal Code***, RSC 1985, c C-46 (the ***Code***) says:

> **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.

> **Common intention**
> (2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

Controlled Drugs and Substances Act

[40] Section 5 of the ***Controlled Drugs and Substances Act***, SC 1996, c. 19 (the ***CDSA***) says:

> **Trafficking in substance**
> **5 (1)** No person shall traffic in a substance included in Schedule I, II, III, IV or V or in any substance represented or held out by that person to be such a substance.
>
> **Possession for purpose of trafficking**
> **(2)** No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, IV or V.

CASE LAW

[41] ***R. v. W.(D.),*** [1991] 1 SCR 742 ["***W.(D.)***"] was a sexual assault trial in which the accused testified. The court outlined a useful approach for analyzing the credibility of an accused and the principle of reasonable doubt. At page 758, the majority set out the framework for instructing a jury:

> First, if you believe the evidence of the accused, obviously you must acquit.
>
> Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.
>
> Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[42] Later cases have elaborated upon ***W.(D). R. v. Menow***, 2013 MBCA 72 was also a sexual assault case involving a ***W.(D.)*** analysis. At the appeal stage, the accused

argued that the trial judge had erred by considering the evidence of the complainant and of a witness in concluding that the accused was not credible. At paragraph 23, the appeal court observed:

> … To assess the evidence of the accused in a vacuum ignores the fact that the whole purpose of the trial is to determine whether or not he accused is guilty…It is impossible for an accused's evidence to be considered without a factual or contextual backdrop for the charge itself. …

[43] In ***R. v. Vuradin***, [2013] 2 SCR 639, the court considered the ***W.(D.)*** framework. At paragraph 21, the court pointed out:

> … The order in which a trial judge makes credibility findings of witnesses is inconsequential as long as the principle of reasonable doubt remains the central consideration. …

[44] In ***R v Villaroman***, 2016 SCC 33 ("***Villaroman***"), the court explained the modern principles for analyzing circumstantial evidence. At paragraph 35, the court observed:

> … The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.

[45] At paragraph 37, the court added:

> … When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt…the Crown 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." …

[46] At paragraph 38, the court further added:

> 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.

[47] At paragraphs 20-27, ***R v Johnston***, 2021 MBQB 144, included a concise summary of ***Villaroman*** and other case law on circumstantial evidence. At paragraph 23, the court quoted with approval from ***Dunlop and Sylvester v. The Queen***, [1979] 2 SCR 881 ("***Dunlop***"). In ***Dunlop***, at page 898, the majority observed:

> Mere presence at the scene of the crime is not sufficient to ground culpability. Something more is needed: encouragement of the principal offender; an act which facilitates the commission of the offence, such as keeping watch or enticing the victim away, or an act which tends to prevent or hinder interference with accomplishment of the criminal act, such as preventing the intended victim from escaping or being ready to assist the prime culprit.

[48] In ***Dunlop***, at page 898, the majority added: "A person is not guilty merely because he is present at the scene of a crime and does nothing to prevent it…"

[49] ***R. v. Lola***, 2020 SKCA 103, was a case involving cocaine trafficking and circumstantial evidence. The accused was found driving a vehicle with no passengers. A large quantity of cocaine was found in the vehicle, hidden in a console, and the accused had access to the drugs. There was other circumstantial evidence against the accused. The accused was not the registered owner of the vehicle. There was evidence that the owner and the accused knew each other. The accused did not testify, but did argue that it was possible that the owner put the drugs in the vehicle and the accused did not know about the drugs. The accused was convicted. At paragraph 47, the appeal court observed:

> Although it was impossible to exclude entirely Mr. Lola's alternative suspect theory, that fact did not make the theory plausible or reasonable. In light of the circumstantial evidence before him, the trial judge dismissed Ms. Moon's or any other person's involvement as speculative. It was open for him to draw that line between speculation and plausible theory and reasonable possibility.

[50] ***R. v. Oddleifson (J.N.),*** 2010 MBCA 44, leave denied at 2010 CanLII 62503 (SCC) ("***Oddleifson***"), dealt with circumstantial evidence. There was strong circumstantial evidence that the accused possessed illegal drugs, and the accused was ultimately convicted. At paragraph 26, the court explained that the Crown's case "cried out for an explanation". The accused chose not to testify, which was his right. However, his choice, "carried the risk of not providing the trial judge with the necessary evidentiary foundation which, if accepted, could have precluded the inference of [drug] possession from being drawn."

[51] In ***R. v. Terrence***, [1983] 1 S.C.R. 357 ("***Terrence***"), at page 364, the court observed that, "a constituent and essential element of possession under s. 3(4)(b) of the *Criminal Code* is a measure of control on the part of the person deemed to be in possession…"

[52] ***R. v. Miller***, 1984 CanLII 637 (BC CA) ("***Miller***") was about importing marijuana by boat. After the drug boat entered Canadian waters, a number of men helped transfer the drugs to shore in the middle of the night. The boat was called the Toernyn. The court considered both conspiracy and aiding-and-abetting (now section 21(1) of the ***Code***). At paragraph 94, the court concluded:

> … The agreement of members of the shore party to join in the unloading, knowing as they must have known, the nature of the cargo and its origin from outside Canada, would make the members of the shore party members of the conspiracy. They may not have been parties to the conspiracy agreement when it was first made but they must have become parties to the unfulfilled conspiracy agreement before the Toernyn crossed the international boundary, and before the night-time unloading occurred, and they must have participated in the unloading or aided and abetted it. …

[53] At paragraph 101, the court added:

> …all of the members of the shore party, even if they were there only as cooks, carpenters or seamen, were there to carry out their respective tasks in relation to unloading the Toernyn and caching the marijuana. They did those tasks, whatever they were, in the middle of the night; and they aided the person or persons in possession of the marijuana to acquire and hold that possession, and, by their presence and actions, they abetted that person or those persons in that possession.

[54] In ***R. v. Pavalaki***, 2014 BCCA 491 ("***Pavalaki***"), the accused was arrested after a marijuana grow operation was discovered in a building behind the house in which he lived. He was charged and convicted of producing marijuana. He was acquitted of possession for the purpose of trafficking. There was no evidence that he knew anything about the planting or the eventual harvesting and sale of the marijuana. He admitted that he noticed the odor of raw marijuana outdoors, which caused him to be suspicious. An acquaintance persuaded him to live on site. The acquaintance also persuaded him to put the hydro and cable bills in his own name (even though he would be reimbursed for hydro and cable). There were security cameras connected to monitors in an unlocked room. The accused claimed he never entered that room. There was no evidence that the accused had access to the locked outbuildings in which the marijuana was grown. The Crown argued that the accused was providing a cover for the grow operation.

[55] At paragraph 20, the appeal court explained that the trial court found that the accused was "watching over the entire property with knowledge of the grow operation and that he was doing so, at least in part, with the intention to assist others in the production of the plants".

[56] The conviction for being a party to the production of marijuana was upheld.

[57] ***R. v. Sekhon***, 2014 SCC 15 ("***Sekhon***") was an unusual case about drug couriers and expert witnesses. The accused was convicted of importing cocaine and possession for the purpose of trafficking. He drove a pickup truck across the border, and the cocaine was hidden in a concealed compartment. The accused claimed he did not know the drugs were present. There was abundant circumstantial evidence against the accused. Among other things, there was a fob that opened the compartment. The fob was on a chain with the truck keys. At the border, the accused removed the fob from the chain before giving the chain to the border officer. The Crown called an expert witness who was properly qualified as an expert on drug couriers. Among other things, the expert testified that he had never seen a "blind courier" (one who did not know he was transporting drugs). The trial judge briefly mentioned this testimony along with the abundant evidence of the accused's guilt. The court found that the testimony about blind couriers was inadmissible, but the majority found that the conviction could be "saved" because of the other evidence.

[58] At paragraph 20, the court quoted the exchange in question. The expert testified he had been involved in about 1,000 cocaine importing investigations. He testified he had never personally encountered a case in which the person importing the cocaine did not know about the drug.

[59] At paragraph 49, the majority observed:

> …the Impugned Testimony was of no probative value in determining whether [the accused] knew about the cocaine in the hidden compartment. **It is trite to say that a fundamental tenet of our criminal justice system is that the guilt of an accused cannot be determined by reference to the guilt of other, unrelated accused persons.** Moreover, the Impugned Testimony was not necessary because determining whether [the accused] knew about the drugs is

> not beyond the knowledge and experience of the judge, and it is certainly not a matter that is technical or scientific in nature.
>
> [**emphasis added**]

[60] At paragraph 50, the majority added: "The lack of relevance or probative value is…sufficient to justify the exclusion of the Impugned Testimony."

[61] The Crown relied on ***R. v. Stewart***, 2020 ABCA 252 ("***Stewart***"), for the general principle that, when the charge is possession of an illegal drug, it is no defence to argue that the accused thought it was a *different* illegal drug (see paragraphs 20, 23 and 31). Defence counsel agreed with this general legal principle.

[62] ***R. v. Briscoe,*** 2010 SCC 13 ("***Briscoe***"), nicely summarized the concept of willful blindness. At paragraph 21, the court observed:

> 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?"

[63] At paragraph 24, the court compared willful blindness to "deliberate ignorance".

[64] ***R. v. Downey,*** 2017 ONCA 789 quoted from ***Briscoe*** with approval at paragraph 5. The accused smuggled three guns into Canada in a vehicle. The guns were hidden and the accused claimed she did not know about them. She claimed that she thought she was only bringing $4,000 cash into Canada. She did admit that her conscience was telling her that she was doing something wrong. She was found to be willfully blind, and

convicted. The trial judge commented that "she made a conscious decision not to become infused with knowledge that she believed would make her culpable".

[65] Counsel referred to other cases, and I have carefully considered all of them.

DECISION

Deol

[66] As noted above, I find that Deol is guilty as charged. There is no dispute about several crucial facts. Deol rented the van; his name was the only name on the rental contract; Deol was driving the van when it was pulled over; Singh testified that Deol was the only one who drove the van, and there was no evidence to the contrary; the drugs were in the van when it was pulled over; and there is no dispute about the nature or quantity of the drugs. The huge quantity meant that the offence was not simple possession.

[67] Nor is there any real dispute about the timing of the van's mad dash from Toronto to Vancouver and then back towards Toronto. We know the arrest was made near Brandon, Manitoba on July 28 (with the van headed eastbound). The van rental contract showed that it was rented in Toronto on July 23.

[68] Singh's uncontradicted evidence was that the van drove directly from Toronto to Vancouver, and then almost immediately back towards Toronto. Singh's uncontradicted evidence was that Singh and Deol never stayed in hotels. Singh sometimes napped while Deol drove. Deol sometimes stopped and napped in the van for about an hour. As the driver, Deol controlled the pace of the trip.

[69] The gas receipts and Google maps show that the trip was very rapid.

[70] Singh's uncontradicted evidence was that, although Singh was never alone with the van, Deol was alone with it for a period of time in Vancouver.

[71] These facts constitute abundant circumstantial evidence of Deol's guilt.

[72] Short of a confession, and/or fingerprint/DNA evidence, it is hard to imagine how the Crown might have had a stronger case against Deol. The police never checked for prints or DNA, so this sort of evidence did not exist.

[73] Looking to ***Villaroman*** and the circumstantial evidence cases, was there a plausible theory (not consistent with Deol's guilt) about how the drugs got into the van? Deol's counsel suggested none, nor can I think of one.

[74] It is common ground that the drugs were extremely valuable. It is not even remotely plausible that some unknown person put them in the van for some inexplicable reason before Deol rented the van, and that Deol never noticed the drugs during the entire trip.

[75] Singh testified that Deol took naps in the van during the trip. The naps lasted about an hour. It is not even remotely plausible that some unknown person put the drugs in the van (and left them there) for some reason while Deol was napping.

[76] Singh testified that, when the van stopped for gas, he sometimes went into the gas station to buy food or use the washroom. Deol obviously must have used the washroom several times during the trip. Although Singh wasn't explicitly asked about this, it is conceivable that both Singh and Deol left the van to use a washroom at the same time. However, even if they did, it is not even remotely plausible that some

unknown person at a gas station put the drugs in the van for some reason, while Deol was briefly using a washroom.

[77] If the van had been pulled over because of an anonymous tip, perhaps a creative argument could be contemplated that some unnamed person put the drugs in the van in order to frame one or both accused, for some reason. That would frankly be far-fetched. In any event, it is academic, because the van was pulled over for speeding.

[78] In short, to use a ***Villaroman*** analysis, the evidence does not support any plausible theory that is inconsistent with Deol's guilt.

[79] Deol's counsel argued that, when he was arrested, Deol was not carrying a large quantity of cash. I suppose that, if he had been carrying a big wad of cash, that would have strengthened the Crown's case even further. However, the absence of a big wad of cash, in and of itself, does not amount to a reasonable doubt about guilt.

[80] Deol's counsel pointed out that, in some respects, Deol did not fit the profile of a typical drug courier articulated by the Crown's expert witness. As per ***Sekhon***, I have some misgivings about the weight of the expert evidence. In ***Sekhon,*** expert evidence about drug courier patterns was ruled *inadmissible*. It is just a matter of common sense that, in respect of any offence, some offenders are atypical. In other words, it is possible to be both atypical and guilty, and it is possible to be typical and not guilty.

[81] I note the undisputed principle, articulated in ***Stewart*** and other cases, that the Crown did <u>not</u> have to prove that Deol knew that the illegal drugs were specifically fentanyl and MDA. He just had to know that he had illegal drugs of some kind.

[82] The abundant circumstantial evidence against Deol, to use the phrase from ***Oddleifson***, "cried out for an explanation". Deol chose not to call any evidence, which was his legal right. However, in the complete absence of any exculpatory evidence, there was nothing left but the Crown's abundant circumstantial evidence of guilt.

Singh

[83] The evidence against Singh was also circumstantial. He was in the same van as Deol during the journey in question. He willingly agreed to participate (at least to be a passenger) in the trip from Toronto to Vancouver and back.

[84] It is common ground that possession requires both knowledge and control. The essence of Singh's defence was that he had no knowledge about the drugs. He portrayed himself as an extremely unsophisticated man who knew and trusted Deol. He testified that Deol, his cousin, had never lied to him. Singh said he had never explored Canada before so, when he left Toronto, he did not know how far away Vancouver was. He testified that he could not name the provinces between Ontario and British Columbia, in order.

[85] The Crown correctly pointed out how odd Singh's story was. Singh testified that Deol told him that he (Deol) wanted to go to Vancouver to explore a job opportunity. Singh worked, and he wanted to be back in Toronto in time for his next shift. As the trip went on, Singh asked Deol when they would reach Vancouver. Deol kept saying things like, "a few more hours". These assurances proved to be incorrect.

[86] When they finally reached Vancouver, Deol left Singh for a short time. When Deol returned, he told Singh that he spoke to his contact by phone, and that there was no job

opportunity after all. They then immediately began driving back to Toronto. They did no sightseeing at all.

[87] I agree with the Crown that Singh's story is very odd. Even if Singh implicitly trusted Deol at the start of the trip, by the time they reached Vancouver, Singh must have realized that Deol had not given him accurate information about how long the trip would take.

[88] Furthermore, if Deol really told Singh that the purpose of the trip was to see someone in person about a job opportunity, it would seem odd that the only contact they made was by telephone. They have telephones in Toronto. Why couldn't Deol have remained in Toronto and spoken to his Vancouver contact by telephone? If Singh was being honest about what happened, Deol's story must have struck Singh as odd.

[89] I agree with the Crown that many elements of Singh's story are peculiar. The Crown's theory was that Singh had actual knowledge about the presence of the drugs. Again, the Crown does *not* have to prove that Singh knew that the drugs were fentanyl and MDA, as opposed to some other illegal drugs. The Crown's theory is one plausible theory.

[90] However, as per ***Villaroman***, when the evidence is circumstantial, the court must try to determine whether there exists a plausible theory inconsistent with guilt. I conclude that such a theory does exist. It is perfectly plausible that Deol knew about the drugs, and Singh did not.

[91] Furthermore, as Singh testified, a ***W.(D.)*** analysis is in order. Referring to the first leg of the ***W.(D.)*** analysis, I did not believe Singh. As he was testifying through an

interpreter, determining credibility was difficult. He did not actually contradict himself or evade questioning. However, the substance of his answers raises some suspicions.

[92] I did find him credible on one point. He testified that he was in Canada on an expired Visa and that, as a result, he was nervous when the police pulled the van over. That assertion is perfectly logical.

[93] I must consider Singh's entire version of events. I agree with the Crown that his version is odd. Most people in Singh's position would have made at least some advance attempts to find out something about the trip from Toronto to Vancouver. Singh had a job, and said he did not want to miss work. Most people in his position would have made some effort to find out roughly how long it takes to drive from Toronto to Vancouver and back. The information is very simple to obtain on the internet, in more than one language.

[94] If nothing else, Singh's version of events was "fishy". To be blunt, I did not believe him.

[95] The second step of the ***W.(D.)*** analysis is whether Singh's evidence raised a reasonable doubt about his guilt. I conclude that it did. The uncontradicted evidence was that he has a Grade 10 education; that his English is poor; that Deol is his cousin; that Deol had never lied to him; and that he had never travelled in Canada outside of the Toronto area.

[96] It is perfectly plausible that Singh's version of events, though odd, was actually true. Singh might have been less sophisticated and more naïve than average. He might have been foolish to put so much trust in his cousin. If nothing else, by the time Saturday

night rolled around and they still had not reached Vancouver, Singh might have been foolish not to have started asking Deol more pointed questions. When Deol said he talked to his Vancouver contact by phone and now they could go back to Toronto, Singh might have been foolish not to have asked Deol some follow-up questions.

[97] However, being unsophisticated, naïve and foolish is not a crime. It is perfectly plausible that Singh had no knowledge of the drugs (and therefore, no possession).

[98] If possession for the purpose of trafficking were a tort, and if the Crown were suing Singh in tort, and the Crown only had to prove its case on a balance of probabilities, I might have concluded that the Crown managed to do that. It might be more likely than not that Singh was at least willfully blind as to the presence of the drugs in the van.

[99] However, the Crown must prove its case beyond a reasonable doubt. Singh's testimony did raise that reasonable doubt. The defence theory that Singh was unsophisticated, naïve and foolish is one plausible theory. Therefore, I have no choice but to find Singh not guilty.

[100] In the event that I have erred, I will continue to the third leg of the ***W.(D.)*** analysis. I conclude that the evidence as a whole did raise a reasonable doubt as to Singh's guilt.

[101] The Crown's expert evidence, on balance, was a neutral factor. Even if the evidence had any weight, the bottom line was that the trip in question was partly typical of a drug courier trip, and partly atypical.

[102] Singh spoke almost no English; he had no valid driver's licence; he had an expired Visa; and he saw nothing wrong with keeping open liquor in plain view in a motor vehicle.

[103] As I said, the theory that Singh was unsophisticated, naïve and foolish is one plausible theory. Under this theory, it is perfectly plausible that Deol simply wanted Singh's companionship on the trip. Perhaps it gave Deol some comfort to know that Singh was in the van during Deol's naps. Under this scenario, Deol chose to keep Singh ignorant of the true purpose of the trip. Deol knew that his cousin was both trusting and naïve, and he concluded that he could successfully deceive Singh.

[104] Looking at the third ***W.(D.)*** factor, the evidence as a whole raised a reasonable doubt as to Singh's guilt.

[105] In short, a perfectly plausible theory exists under which Deol had knowledge of the drugs in the van, and Singh did not.

[106] For these reasons, I find Deol guilty as charged, and I find that the Crown has not proven Singh guilty beyond a reasonable doubt.

[107] I thank counsel for agreeing to various agreed facts, and for their courteous conduct.

_____ J.