

Citation: ☀

Date: ☀
File No: 87723-1
Registry: Nanaimo

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

GGG

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE B. HARVEY**

Counsel for the Crown:	M. Wheeler and D. Singhal
Counsel for the Accused:	P. Fagan, Q.C.
Place of Hearing:	Nanaimo, B.C.
Dates of Hearing:	June 14, 15, 16, 17 and June 21, 22, 24, 2022
Date of Judgment:	June 29, 2022

1. Introduction

[1] The accused GGG is before this Court charged on Counts 1-3 on an Indictment, namely Nanaimo Court File 87723-1. The charges summarized are as follows:

Count 1: Importation of cocaine on or about November 6, 2019, at or near Surrey, British Columbia, contrary to section 6(1) of the *Controlled Drugs and Substances Act*;

Count 2: Possession of cocaine for the purpose of trafficking from November 6-7, 2019, at or near Surrey, British Columbia, contrary to section 5(2) of the *Controlled Drugs and Substances Act*; and

Count 3: Trafficking in cocaine on or about November 7, 2019 at or near Surrey, British Columbia, contrary to section 5(1) of the *Controlled Drugs and Substances Act*;

[2] The accused previously elected Trial by Provincial Court Judge and entered pleas of not guilty on all three (3) Counts before me on the commencement date of this Trial through his legal counsel. Six (6) days of Trial were heard in this matter; it commenced initially on June 14th. The evidence in this Trial on the aforementioned charges completed on June 22nd with closing submissions on June 24, 2022.

[3] The Crown called several witnesses in its case against the accused. In addition, there were twenty (20) Exhibits tendered during this Trial. Those included, amongst other things, three (3) Agreed Statements of Fact filed pursuant to section 655 of the *Criminal Code*.

[4] At the conclusion of the evidentiary portion of this Trial, the accused elected not to call any other evidence. The Court then received both written submissions as well as heard fulsome and focussed oral submissions of both the Crown and the Defence which was accompanied with some seven (7) case law authorities. Attached and referenced in Appendix "A" of these reasons are the cases that were provided to the Court for ease of reference. Whilst not all of those cases will be referenced in these reasons, they each have been fully canvassed by this Court.

2. Issues

[5] With respect to Counts 1-3, has the Crown proven beyond a reasonable doubt:

- (i) That this accused brought cocaine across the border into Canada on November 6, 2019?
- (ii) That this accused then transferred that cocaine to Gerhard GAF on November 7, 2019?

[6] Before I get to the ultimate decision on each Count, I will briefly summarize the evidence this Court has heard and received by way of Exhibits in this Trial.

Notwithstanding that a particular witness or their evidence is not referenced in these reasons, I nevertheless have carefully reviewed their individual evidence for the purpose of my decision on each Count in this case.

3. Witness testimony tendered during the Trial

[7] The Crown called the following nineteen (19) witnesses in its case against this accused:

1. Baldev Samra, a civilian employee of Shergill Transport Ltd. out of Surrey, B.C.;
2. David Mak, a civilian Rogers Communications employee;
3. Cst. Mathew Kerr;
4. Cst. Matthew Jenkins;
5. Cst. Elton Wong;
6. Cst. Zack Kotilla;
7. Cst. Heather Brown;
8. Cst Daniel Cathro;
9. Reserve Cst. John Bentham;
10. Cst. David Birchett;
11. Cst. Brian Finlay;
12. Retired Cst. Neal Dinnen;
13. Cst. Jason Ebert;
14. Cpl. Matthew Meijer;
15. Cpl. Jeff Scott;

16. Cpl. Robert Fletcher.

[8] In addition, the Crown called the following three (3) experts:

1. Dr. Julie Barnett, a chemist with the National Forensic Laboratory as an expert in forensic chemistry regarding the examination, analysis and identification of unknown chemical substances and materials;
2. Staff Sgt. Michael Hinsperger, from the Waterloo Regional Police Service as an expert on economics and business of commercial trans-border trucking; and
3. Retired Detective Patrick Murphy, formerly of the Organized Crime Agency of B.C., as an expert on the use, price and packaging of cocaine, the distribution of cocaine, including distribution chains, primary source regions/countries, primary importation and exportation routes and points of entry into British Columbia, Canada.

In addition, he was also declared an expert in the structure, hierarchy, and customs associated with the exportation/importation of illicit drugs and drug trafficking organizations, and the methods used in furtherance of such operations/organizations.

[9] The Crown then closed its case against this accused.

[10] The accused then elected to call no further evidence in his own Defence.

4. Trial evidence summary

[11] Further to Exhibits 1, 5 and 13 (the Agreed Statements of Fact) filed in this case, there were several facts admitted and which was borne out by several witnesses who testified in this Trial.

[12] In 2018, the Federal Serious and Organized Crime Unit of the R.C.M.P. initiated an investigation named "E-Pictography" in relation to the suspected importation into Canada and trafficking of cocaine activities of an individual in the Nanaimo area. As a result of that investigation, on October 2, 2018 investigators observed that individual meet with GAF at a restaurant in Qualicum Beach, B.C. As a consequence, GAF became an investigative target of the police.

[13] On February 27, 2019 investigators observed GAF meet with the accused GGG in this case, in Tsawwassen, B.C. As a result, the accused became a target of the

investigation. At all relevant times during this police investigation the accused was employed as a commercial truck driver.

[14] Between January 1, 2019 and November 7, 2019, GGG was, at all times, the owner of a white 2009 Peterbilt tractor (hereinafter referred to as the “**Peterbilt**”).

[15] It was admitted that GGG was the person arrested by retired R.C.M.P. Cst. Jay Bentham in Surrey, B.C. on November 7, 2019. It was also admitted that GGG was the driver of the Peterbilt tractor during border crossings into Canada on nineteen (19) occasions in 2019, and is the only person who drove the Peterbilt.

[16] GGG was accurately identified by R.C.M.P. investigators during surveillance in connection with “Project E-Pictography” on the following twelve (12) dates:

- (i) February 27, 2019;
- (ii) March 12, 2019;
- (iii) March 25, 2019;
- (iv) March 27, 2019;
- (v) April 29, 2019;
- (vi) May 29, 2019;
- (vii) May 30, 2019;
- (viii) June 27, 2019;
- (ix) July 31, 2019;
- (x) August 2, 2019;
- (xi) November 6, 2019; and
- (xii) November 7, 2019.

[17] Between February 27, 2019 and November 7, 2019, GGGG used two (2) storage garages in Surrey, British Columbia, to store the Peterbilt when he was not driving it:

1. #2 – **Storage Garage #1** - parked the Peterbilt in Storage Garage 1 in Surrey, B.C. from April 17, 2014 to April 30, 2019. Storage Garage 1 was leased under a business name Sea to Sky Seafood Ltd., which paid monthly rent of \$1200 and which terminated the lease agreement in April 2019; and
2. **Storage Garage 2**” - GGG leased Storage Garage 2 starting in April 2019. GGG leased Storage Garage 2 in his own name on a one (1) year lease beginning

April 1, 2019 and paid rent of \$2940 per month for each of the months of April, May, June, July, August, September, October and November of 2019.

[18] It was also admitted that at all relevant times, GGG's primary residence was located at Kelowna, B.C. It was further admitted that all relevant times, GGG's secondary work-related residence was a rented condominium located at Langley, B.C. (hereinafter referred to as the "**Langley Condo**") for which he paid \$1424 monthly rent.

[19] GGG was the registered owner of a black GMC Sierra pickup truck (hereinafter referred to as the "**Sierra**") during the period from January 1, 2019 to November 8, 2019.

[20] GAF was the registered owner of a green Ford F500 sedan (hereinafter referred to as the "**Ford 500**") from January 1, 2019 to November 8, 2019.

[21] Between January 1, 2019 and November 6, 2019, GGG made a total of nineteen (19) round trips across the border from Canada to the United States of America. For each trip, GGG operated the Peterbilt across the Pacific Highway Commercial Truck Crossing in Surrey, British Columbia. On each entry, GGG presented his Canadian passport as proof of identification.

[22] On each of these trips to the U.S. and back into Canada it was documented by the Canada Border Services Agency in a document entitled "Commercial importation manifest data related GGG (1973-10-04) & BC LP #21391P" (the "Commercial Importation Data").

[23] In 2019 GGG had employment as a truck driver for Shergill Transport Ltd. (hereinafter referred to as "**Shergill**"). Shergill's business was operated from an office space and parking lot located at 12320 Old Yale Road in Surrey, B.C.

[24] Shergill used the *Omnitracs* system to manage its fleet of trucks and drivers. When GGG was working, he was required to log into the *Omnitracs* system installed in the Peterbilt. The driver logs of January 16, 2019 to July 16, 2019 and May 12, 2019 to November 12, 2019 were made a separate Exhibit (#2) in this Trial.

[25] Between January 16, 2019 and November 7, 2019, the Peterbilt traveled 20,457km almost exclusively on the nineteen (19) roundtrips made from Canada to the United States. During that same period of time, the Peterbilt traveled a total of 102km on trips not contained in the driver logs.

[26] According to the business records of Shergill, GGG received a grand total of \$1074.73 for the ten (10) months of work between January 1, 2019 and November 1, 2019. This amount is net of deductions for insurance and expenses.

[27] During the period of his employment with Shergill, GGG was the only driver working for the company who did not park and store his truck in the company's parking lot, which was free of cost to the company's drivers.

[28] Moreover, during the period of his employment with Shergill, GGG was the only driver working for the company who requested deliveries along specific routes and on specific days of the week. This included short haul trips anywhere in Canada or the U.S.

[29] Between February 27, 2019 and November 7, 2019, investigators conducted intermittent physical surveillance of both GAF and GGG. The surveillance evidence tendered in this Trial showed that they interacted together on the following eight (8) dates in 2019:

- (i) **February 27, 2019:** At 1:37pm R.C.M.P. surveillance observed GAF and GGG meet at the Tsawwassen Mills Shopping Center. GAF was driving the Ram and picked GGG up. Together the two attended a nearby restaurant, where they stayed for almost an hour, before parting ways at 2:33pm. GAF later left the mainland and took a ferry back to Nanaimo sometime after 7:45pm;
- (ii) **March 12, 2019:** GAF drove the Ram onto a ferry departing Duke Point, Nanaimo, at 10:15am. The ferry arrived in Tsawwassen at 12:25pm and he drove the Ram directly to Storage Garage 1 where he met with GGG at 1:15pm. The two spent time in the Storage Garage, attended a Lordco Auto Parts store and also visited a Home Depot store before returning to Storage Garage 1 at 3:48pm. GAF departed Storage Garage 1 at 5:28pm and drove directly to the Tsawwassen ferry terminal where he boarded an 8:15pm ferry to Duke Point, Nanaimo;
- (iii) **March 25, 2019:** GAF traveled directly from his home in Nanoose Bay to the Duke Point ferry terminal where he boarded a 10am ferry to Tsawwassen. He

arrived in Tsawwassen at 12:24pm and immediately met a man with whom he had lunch in a restaurant. GAF then drove to Grace Road in Surrey, in the area of Storage Garage 1. He arrived there at 3:25pm. GGG was already present, in the cab of the Peterbilt, which was parked at the side of the road. GGG got out of the Peterbilt and entered GAF's Ford 500 and they briefly drove around the block before returning to the Peterbilt. The two then drove in tandem to Storage Garage 1, where they arrived at 3:57pm. GGG entered the Storage Garage through a side door and then opened the bay door. GAF then backed the Ford 500 into the garage. The two remained inside the garage for 1.5 hours at which time they were both seen leaving the garage and driving their respective vehicles to a nearby Burger King. They were then observed in the Burger King parking lot where GGG was seen moving a black tote with the yellow lid and a heavy looking red metal item in the bed of the Sierra. After arranging the items in the bed of the truck they departed, GGG driving east and GAF driving directly to the Tsawwassen ferry terminal where he boarded an 8:00pm ferry to Duke Point en route to his residence;

- (iv) **March 27, 2019:** GAF traveled in the Ford 500 on the 3:15pm ferry from Duke Point, Nanaimo to Tsawwassen. He arrived at the Tsawwassen ferry terminal at 5:20pm. He stayed parked in the Ford 500 in a parking lot at the terminal until he drove out of the lot at 6:00pm. He then drove to an A&W restaurant where he arrived at 6:06pm. He ate alone at the A&W and then left the restaurant at 6:27pm. He then drove the Ford 500 directly to a Starbucks coffee shop in Surrey where he arrived at approximately 6:50pm. GGG arrived shortly thereafter, at 6:53pm. Surveillance observed the two have a brief conversation, before getting into their separate vehicles and heading to a dead end at Span Road, where they appeared to engage in further conversation. They parted ways at 7:03pm. GAF drove back to the ferry terminal, arriving at 7:35pm where he entered the lineup for the ferry to Nanaimo;
- (v) **April 29, 2019:** GAF driving the Ram, travelled on the 12:45pm ferry from Duke Point, Nanaimo to Tsawwassen, where he arrived at approximately 2:45pm. He then drove to a Home Depot parking lot on 110th Avenue in Surrey. GGG arrived shortly thereafter driving the Sierra. GGG entered into the Ram, remaining for a few minutes, before exiting. GGG then re-entered the Sierra and the two drove their respective vehicles, to Storage Garage 1 where they parked, exited their trucks and entered the Storage Garage. GAF was carrying a shoulder bag. After approximately 45 minutes he exited the storage garage carrying the same bag. GGG followed him out. The two then entered their respective vehicles and drove to a pub where they stayed for approximately one hour before they exited and entered their respective vehicles. GAF then drove directly to the Tsawwassen ferry terminal and boarded an 8:15pm ferry to Duke Point;
- (vi) **May 30, 2019:** GGG attended at Storage Garage 2, arriving at 7:40am. GGG was observed driving the Peterbilt to ATR Truck Repair in Delta before returning to Storage Garage 2 as the passenger in a pickup truck. At 12:28pm

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- GGG was seen sitting in the Sierra in the parking lot of a Cineplex theater. He remained there until 1:25pm when GAF drove the Ram into the Cineplex parking lot and parked next to GGG and the Sierra. GGG then exited the Sierra and entered the passenger side of the Ram. At 1:27pm GGG exited the Ram with a small black item comparable in size to a camera case. They then attended the restaurant, and eventually, the two parted ways at 3:17pm;
- (vii) **July 31, 2019:** GGG drove the Sierra from the Langley Condo to Storage Garage 2, arriving at approximately 8:56am. At 10:24am GGG exited the bay door of Storage Garage 2, entered the Sierra and backed it into the garage. GAF arrived at the same time and drove the Ford 500 directly into the bay door of Storage Garage 2. GGG then closed the bay door. After nine (9) minutes, the bay door opened and GAF drove the Ford 500 directly to the ferry terminal in Tsawwassen.
- (viii) **November 7, 2019:** GAF took a 7:45am ferry from Duke Point, Nanaimo to Tsawwassen and then drove the Ford 500 directly to Storage Garage 2. At 9:21am GGG arrived at Storage Garage 2. He exited the Sierra, entered the entry door to the storage garage and opened the bay door the garage. He then backed the Sierra into the bay door, and closed the bay door. He remained inside the storage garage for the next 40 minutes. At 10am GGG drove the Sierra out of the garage, exited the Sierra, closed the bay door, re-entered the Sierra and drove to a gas station. GAF drove the Ford 500 to Storage Garage 2, arriving at 10:15am. He backed the Ford 500 up to the bay door and parked the car. He then sat waiting in the driver seat. At 10:25am GGG arrived back at Storage Garage 2, driving the Sierra. He parked in front of the entry door, exited the Sierra, opened the entry door using a key and entered the door. He then opened the bay door from inside the garage. He immediately backed the Ford 500 into the bay door, which closed behind him. At 10:35am the bay door opened and GAF drove the Ford 500 out of Storage Garage 2. He was ordered to stop the car by investigators and did so. He was then directed to exit the Ford 500. He did so, at which time R.C.M.P. Cst. Dinnen formally arrested him for drug offences. GAF was transported to the Surrey RCMP detachment, where he was placed into a holding cell. The Ford 500 was seized by investigators and towed to a secure storage bay at the Surrey R.C.M.P. detachment.

GGG was arrested by retired RCMP Cst. Bentham at 10:36am, also for drug offences. GGG was searched at the scene and transported to Surrey R.C.M.P. detachment by R.C.M.P. Cst. Brown, where he was placed in a holding cell.

[30] All Police officers had some involvement, at varying degrees, often wearing different “hats” at various times during the investigation. As a result of the R.C.M.P. investigation against the accused GGG, police observed the aforementioned meetings by way of surveillance over an approximate eight (8) plus month period. Of the fourteen

(14) police witnesses, several of them were not asked any questions in cross-examination by the Defence. Only Cst. Kerr, Cst. Kotilla, Cst. Brown, Retired Cst. Dinnen, Cst. Ebert, Cpl. Meijer, Cpl. Scott & Cpl. Fletcher were cross-examined, most of which was done extremely efficiently with few questions posed as the Defence saw fit.

[31] Cst. Wong was designated as the ultimate Exhibit Officer and testified as to the weight of the hollowed-out or empty battery casings. He estimated their weight to be between 25 to 30 pounds each whereas a typical battery for commercial vehicle weighs at least one hundred (100) pounds.

[32] As part of Exhibit 4 there was a re-enactment played at some length depicting five (5) kilograms of cocaine placed in each battery casing seized from GGG's Sierra. The re-enactment video is some sixteen (16) minutes and forty-seven (47) seconds long. Cst. Wong noted there appeared to be some faint scratches on the base of the battery compartment of the Peterbilt where the two (2) middle batteries were located. He was able to take photos which were not particularly of assistance.

[33] Under cross-examination, Cst. Wong testified that when the Peterbilt was first seized he looked into the battery compartment; there were four (4) fully functional batteries. He agreed that at no time during the investigation were there hollowed-out batteries located inside the Peterbilt. He further agreed that hollowed-out batteries were never observed at any time in the Peterbilt in this investigation. He also agreed that in all covert entries to the storage garage and the Langley condo, the police found absolutely nothing or of any indicia of unlawful activity.

[34] On November 7, 2019 Cst. Wong further testified that he saw the accused GGG put things in the back seat of the Sierra. Later on that vehicle was thoroughly searched and there was nothing unlawful found in those bags by the police. In less than an hour search of the Langley Condo, he did not locate anything of an unlawful nature or indicative of any illegal activity. Moreover, a laptop was seized and minimal to nothing of value was located to suggest involvement in unlawful activity of any kind.

[35] Cst. Wong also testified that inside the Ford 500 a person could not see a hidden compartment, nor can one see it outside the vehicle. Cst. Heather Brown confirmed the same fact also in cross-examination.

[36] Cst. Wong also testified in finding a receipt inside of one of the plastic re-usable shopping bags. That receipt was seized and ultimately investigative steps were undertaken as to who was responsible for that receipt. By way of admission later on in the evidence it was determined that receipt, dated October 31, 2019, was issued to GAF for the purchase of some bread at Fairway Market, here in Nanaimo.

[37] Cst. Kerr also testified that during all of the searches of the properties in the name of GGG yielded nothing by way of the nature of drug trafficking nor any indicia of illegal activity. Moreover, the garbage can in one of the storage garages was searched which contained nothing to suggest unlawful activity; that officer also confirmed that the Peterbilt was exhaustively searched on November 8, 2019 and that the police did not locate, seize or otherwise find anything of an illegal activity attributable to the accused GGG.

[38] Most other officers testified in accordance with the summaries of the surveillance on the eight (8) aforementioned dates concerning interactions observed between GAF and GGG.

5. Search of co-accused upon arrest

[39] On November 7, 2019 he had four (4) cell phones in his possession when arrested, his personal iPhone as well as three (3) other phones registered in another name.

6. Search of GGG upon arrest

[40] On November 7, 2019 GGG had two (2) cell phones in his possession when arrested, his personal iPhone as well as a Doro phone with a SIM card also registered to another name.

7. Release of both GGG and Co-accusd

[41] At approximately 8:34am on November 8, 2019 both the accused were released from Surrey R.C.M.P. custody and separate taxis were called for each of them. However, GGG was released shortly before GAF and he waited in the taxi until he was released. GAF joined GGG in that same taxi when both accused were observed to depart the Surrey R.C.M.P detachment. Ultimately, the taxi departed dropping GGG off at the YVR domestic airport terminal in Richmond at 10:00am, and GAF at the Sea Air terminal at 10:45am.

8. Search of the Ford 500, hidden compartment and cocaine

[42] On November 8, 2019, investigators executed a warrant to search the Ford 500. They found a large aftermarket hidden compartment between the back seat and the false wall in the trunk. The hidden compartment contained two (2) re-usable grocery bags, each of which contained five (5) individually wrapped bricks of cocaine. Each of the ten (10) bricks contained between 1,116 and 1,145 grams of 78% pure cocaine. The total weight of the cocaine was 11.3 kilograms.

[43] The bricks of cocaine were packaged within multiple layers. The loose cocaine was first wrapped in plastic wrap (similar to cellophane), then duct tape, wax and carbon paper and finally placed within a vacuum-sealed bag. The hidden compartment was not visible from either the trunk or passenger compartment of the Ford 500. Access to the hidden compartment could be obtained by engaging in electronic remote control, which released a locking mechanism and allowed the back seat to be collapsed. At some point prior to R.C.M.P. seizure of the Ford 500, the mechanism to access the compartment was damaged and did not function at the time of GAF arrest. However, investigators were still able to gain access to the compartment by pulling on a tab on the rear seat to open it manually.

[44] In the centre console of the Ford 500 investigators found two (2) remote controls which communicated with the mechanism that opened the compartment. A black satchel-style bag was found on the floor behind the front passenger seat of the Ford 500. It contained an Apple iPhone and a black ZTE model Z432 cell phone.

9. Search of GGG's GMC Sierra

[45] On November 8, 2019 Constables Wong and Brown searched the Sierra in a secure bay at Surrey R.C.M.P. headquarters. Cst. Brown located a black plastic storage tote in the bed of the truck. The tote contained two (2) red metal "Surrette" brand hollowed-out battery casings. The battery casings were seized. GGG's iPhone was located in the centre console of the Sierra. Four (4) luggage bags were found in the back seat of the Sierra, each containing, amongst other things, miscellaneous personal items, toiletries and clothing.

10. Search of Co-Accused's residence

[46] On November 8, 2019 investigators searched his residence at approximately 11:18am. Investigators found the following items:

- (i) A Ziploc bag containing 53.8 grams of cocaine with the purity of 85% located in a locked tool cabinet;
- (ii) a Ziploc bag containing 5.2 grams of cocaine with the purity of 14%, located in the same locked tool cabinet;
- (iii) Three (3) other Ziploc bags with trace amounts of cocaine within them, also located in the locked tool cabinet;
- (iv) A digital scale and an electronic money-counting machine on shelves in the garage;
- (v) A vacuum sealer, located in the tote in the garage;
- (vi) \$3150.00 in cash in a wall safe in the garage; and
- (vii) Sixteen (16) CHATR brand SIM cards, which were located in the coffee table drawer in the living room of the residence.

11. Search of GGG's Langley Condo

[47] On November 8, 2019 Constables Wong and Brown searched the Langley Condo commencing at 11:28am. Investigators did not observe or seize any items on offence-related items from the Condo in evidence.

12. Expert evidence tendered by the Crown

(i) Dr. Julie Barnett

[48] Dr. Barnett was sent two (2) "Surrette" brand battery casings along with two (2) plastic vacuum sealed bags that allegedly had some sort of white smear on them. As such, Cst. Elton Wong of the R.C.M.P. requested analysis of the items for any unknown substances. Dr. Barnett's qualifications were not contested to give expert opinion evidence. However, it was her first ever case in her lengthy career to have tested batteries of any sort for the presence of any chemical or unknown compound(s).

[49] Dr. Barnett found that by using a specialized microscope she was eventually able to establish minute quantities of lead hydroxycarbonate as well as lead carbonate on both the packaging of the two (2) bags which had contained bricks of cocaine and the interior of the battery casings. Her analysis and testimony included, amongst other things, the following:

- (1) The interior lining of the battery casings consists of lead metal plates;
- (2) Concerns about toxicity limit lead applications in general. However, uses of lead include, without an exhaustive list things such as storage batteries, radiation shielding, cable covering, ammunition, piping, tank linings and solder.
- (3) Lead will undergo atmospheric corrosion when exposed to moisture. When this corrosion occurs, it leads to the formation of lead carbonate and lead hydroxycarbonate.
- (4) The first plastic bag had led hydroxycarbonate on it and may have had a small amount of lead carbonate on it.
- (5) One area of the second plastic bag had lead carbonate and lead hydroxycarbonate on it, while another area had lead hydroxycarbonate on it.
- (6) The lead panels of both battery casings contained lead hydroxycarbonate and might have contain small amounts of lead carbonate.
- (7) Lead acid batteries are sealed units. Lead hydroxycarbonate and lead carbonate are not bi-products typical of the reaction that occurs in lead acid

batteries. The chemical reaction that takes place in lead acid batteries creates lead sulfate.

- (8) On her initial examination, with her extensively trained eye, she could not locate any white smears or residue on any of the vacuum-sealed bags. She then examined the bags microscopically for the presence of any white smears and or residues and again none was found until the use of a higher resolution microscope with better lighting revealed the small areas in question.
- (9) In cross-examination Dr. Barnett also confirmed that in order to facilitate part of her analysis, she peeled back part of the battery casings to expose the lead panels for testing. She did so without knowledge of or consent of any of the investigators.
- (10) Dr. Barnett also testified that she located a number of items, namely six (6) small white, translucent pieces of plastic or dried glue like material. She collected these in a petri dish and noticed they were soft and waxy in texture. Ultimately, they were tested as a different chemical compound or composition.
- (11) Further, in cross-examination she agreed that the automotive industry uses over one (1) million tonnes of lead every year. As well, Dr. Barnett agreed that lead is pervasively used in hospital settings, cell phone towers and other engineering applications.

(ii) Michael Hinsperger

[50] Staff Sgt. Hinsperger has not only extensive police experience, but testified of his very lengthy experience as a commercial truck driver. His testimony included, amongst other things, that the trucking business is very difficult to maintain a living. He testified as to owner-operators, such as his own brother, often find it difficult to make ends meet, and unless one is careful, with very little profit margin.

[51] He also testified as to the various categories that commercial truck drivers are required to log on a daily basis depending on the distance travelled in both Canada and the U.S. They include off-duty time, sleeper-berth time, driving (when physically behind the wheel), and on-duty driving time. In addition he testified as to the requirements for maximum periods of travel on any one day. In Canada it is thirteen (13) hours of driving time whilst in the U.S. it is eleven (11) hours.

[52] One of the electronic logging devices (or E.L.D.'s) that is in use across Canada and the U.S. is *Omnitracs*. During his testimony, a portion of his report was tendered and filed as Exhibit 19 in this Trial. Page 9 of that report was a graph highlighting the

breakdown of commercial vehicle operational cost per mile. Staff Sgt. Hinsperger also went over in some detail the breakdown of each item and diesel fuel, by far (44%), traditionally led the way. To get an idea of fuel efficiency, older trucks average between 5 to 8 miles per gallon (mpg) while newer ones can attain upwards of 10 miles per gallon.

[53] Staff Sgt. Hinsperger was not cross-examined by the Defence.

(iii) Retired Detective Murphy

[54] A brief summary of the opinion evidence of Retired Detective Murphy was as follows:

- (i) Canada is not a source country for cocaine and that cocaine must be brought into Canada from a source market in Central or South America, often by way of the United States.
- (ii) The I-5 interstate highway that runs from south to north from the United States-Mexico border in Southern California up to the United States-Canada border in Washington State, is a well-documented and well-used corridor for transporting cocaine into Canada.
- (iii) The cocaine was packaged in a manner consistent with wholesale, supply level kilograms of cocaine destined for the Canadian market.
- (iv) An established, well-connected and sophisticated network of parties who trust one another would be required to bring ten (10) kilograms of cocaine into Canada from the United States.
- (v) The cocaine was worth between \$400,000 and \$600,000 in Canada in 2019.

[55] He further testified the average price for a kilogram of cocaine in Canada in 2019 was between \$40,000 - \$60,000. However, in 2019 if sold in grams in Canada, the value the cocaine would have been roughly \$80 per gram. Based on his experience in dealing with drug handlers, a person would expect to receive approximately \$500 per kilogram for transporting cocaine.

[56] During his examination-in-chief by the Crown, Retired Detective Murphy was asked about whether, during his extensive police career, spanning close to thirty-four (34) years, whether he ever heard of a car or truck battery being used to conceal drugs. His answer was he could not think of one. As a follow-up question to that answer he

was asked if he had ever heard of that in his police career. His answer was he can't recall.

[57] He also testified about it being common to expect certain things when drug seizures occur such as scales, cash counters, packaging and other drug-related paraphernalia.

[58] Retired Detective Murphy was not cross-examined by the Defence.

13. Other issues not in dispute

[59] This accused does not dispute that the elements of identity, date, jurisdiction, the nature of the substance (cocaine) and that, whoever possessed the cocaine did so for the purpose of trafficking, all of which have been admitted as proven beyond a reasonable doubt. Also continuity of all relevant Exhibits were admitted by the Defence.

14. The Law and reasonable doubt

[60] It must be remembered that the accused is presumed to be innocent of each individual charge until, and unless, all of the essential elements of each offence have been proven by the Crown beyond a reasonable doubt.

[61] The accused need not prove anything. The onus rests on the Crown throughout to prove this accused's guilt beyond a reasonable doubt on each and every Count, namely importation of cocaine, possession of cocaine for the purpose of trafficking and trafficking in cocaine referenced at the commencement of these reasons.

[62] The case that the Crown called against this accused was, by its nature, circumstantial. When the Crown's case is circumstantial in relation to one or all elements of an alleged offence, the question to be determined is whether, on the totality of the evidence, taking into account gaps in the Crown's case, the only reasonable inference is the guilt of the accused. (See: *R. v. Villaroman*, 2016 SCC 33 at paras. 30-36).

[63] Thus, while importation, knowledge and control can be proven by circumstantial evidence, they must be the only reasonable inference on the totality of the evidence, assessed logically and in light of human experience and common sense. However, an alternative inference must be reasonable, not just possible; it must be “plausible” and “based on logic and experience applied to the evidence or the absence of evidence”, and cannot be based on speculation or conjecture: (See: *R. v. Villaroman*, supra at para. 37 and *R. v. Peal*, supra at paras 102-104).

[64] Ultimately, as noted per Cromwell J. in *R. v. Villaroman*, supra at para. 38, the question to be answered 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.”

15. The Offences

(i) Count 1: Importation of Cocaine

[65] Section 6 of the *Controlled Drugs and Substances Act* states in part as follows:

(1) Except as authorized under the regulations, no person shall import into Canada or export from Canada a substance included in Schedule I ...

[66] The *mens rea* for importing requires proof of actual knowledge or willful blindness as to the presence of the controlled substance or willful blindness as to its presence. With respect to the *actus reus*, “import” means to bring into the country or cause to be brought into the country. (See *R. v. Peal*, 2017, BCSC 623 at paras 107 & 108 and *R. v. Rai*, 2011 BCCA 341 at paras. 19-20).

[67] Thus, importation can be proven on the basis of circumstantial evidence; it is not necessary that an accused be caught crossing the border with contraband to ground a conviction. (See *R. v. Rai*, supra). Moreover, the after-the-fact conduct of an accused can afford cogent evidence of their involvement in the importation of drugs. (See *R. v. Henarch*, 2017 BCCA 7 at para. 46 and *R. v. Rai* at para. 23).

(ii) Count 2: Possession of Cocaine for the purpose of trafficking

[68] Section 5(2) of the *Controlled Drugs and Substances Act* states in part as follows:

No person shall, for the purpose of trafficking, possess a substance including in Schedule I ...

[69] In relation to possession, that is firstly defined in Section 2 of the *Controlled Drugs and Substances Act* states as follows:

“possession” means possession within the meaning of subsection 4(3) of the *Criminal Code*.

[70] To that end, section 4(3) of the *Criminal Code* defines possession. It states as follows:

(2) For the purposes of this Act,

(a) a person has anything in possession when he has it in his personal possession or knowingly

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

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

[71] In *R. v. Fisher, 2005 BCCA 444* at paras. 19-24, it can be gleaned that the elements common to all forms of possession are knowledge of the nature of the thing possessed and a measure of control over it.

(iii) **Count 3: Trafficking in Cocaine**

[72] Section 5 of the *Controlled Drugs and Substances Act* states in part as follows:

(1) No person shall traffic in a substance included in Schedule I ... or in any substance represented or held out by that person to be such a substance.

[73] In relation to traffic, that is defined in Section 2 of the *Controlled Drugs and Substances Act* which states as follows:

“traffic” means, in respect of a substance included any of Schedules I to IV,

- (a) to sell, administer, give, transfer, transport, send or deliver the substance,
- (b) to sell an authorization to obtain the substance, or
- (c) to offer to do anything mentioned in paragraph (a) or (b), otherwise than under the authority of the regulations.

[74] It is well-known that the gravamen of the offence of trafficking in a controlled substance is comprised of possession and the intention or purpose of physically making a controlled substance available to another person. (See *R. v. Taylor*, 1974 CanLII 1452 (BCCA). In the case of an actual physical transfer, the offence is complete when a person gives or delivers a controlled substance to another person. (See: *R. v. Larson* (1972), 6 C.C.C. (2d) 145 (BCCA).

16. Summary Positions of the Crown and Defence

(1) The Crown

[75] The Crown argued that, when the totality of the evidence is considered in this case, there can be no reasonable doubt that GGG brought the cocaine into Canada, from the United States, on November 6, 2019, and that he did so with the intention of trafficking it, and did in fact traffic it to GAF, on November 7, 2019.

[76] To that end, the Crown argued as follows:

- (i) That both accused were engaged in a focused, well organized and well executed scheme to import cocaine into Canada; and

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- (ii) That GGG's role in that scheme is not limited to the physical importation of the cocaine, but included the planning, building and maintenance of sophisticated infrastructure designed to facilitate that importation.

[77] The Crown further argued that even if it has failed to prove that GGG imported the cocaine into Canada on November 6, 2019, there is still ample circumstantial evidence proving, beyond a reasonable doubt, that he possessed the cocaine on November 7, 2019 and trafficked it to GAF on that date.

[78] To further bolster the Crown's argument against this accused, it was argued there were five (5) overarching facts that were established in this case that lead to the inescapable inference of guilt. They are as follows:

- (1) GGG's trucking practices defy logic and resulted in significant financial loss;
- (2) Both accused had a special relationship they wanted to kept secret;
- (3) Their relationship centered around GGG's trans-border trucking;
- (4) The cocaine in the Ford 500 came from GGG; and
- (5) The cocaine was imported by GGG.

[79] The Crown went through each and every one of those five (5) facts arguing, amongst other things, that GGG was a very poor businessman and made very little money between January and November, 2019 considering the evidence established that GGG made nineteen (19) roundtrips to the U.S. Moreover, the Crown tended evidence, which was admitted by the Defence, that there was significant cost to rent Storage Garage 2 as well as the Langley Condo.

[80] Significantly, GGG never sought any payment from Shergill Trucking in 2019 despite having made the afore-mentioned trips for the company over the course of some eleven (11) months.

[81] Additionally, the Crown argued that GAF often travelled from Vancouver Island to Surrey and back, by ferry, for the sole purpose of meeting GGG, often in one of the Storage Garages, sometimes for mere minutes. Moreover, his trips were close in time to GGG's return from a trucking trip to the U.S. On the last two (2) meetings, namely July

31, 2019 and November 7, 2019 the meetings were nine (9) and ten (10) minutes in length respectively.

[82] Furthermore, both accused utilized or had in their possession burner cell phones used almost exclusively to communicate with one another. Both were also in possession of new burner phone/Sim cards at the time of their arrest.

[83] In terms of the cocaine in the Ford 500 coming from GGG, the Crown argued that the GAF's Ford 500 contained a sophisticated hidden compartment with the cocaine inside of it when the two parted ways. Moreover, the battery casings were in the bed of GGG's GMC Sierra at the time of his arrest, mere minutes after meeting with GAF.

[84] The Crown also argued that there was expert testimony from Dr. Barnett which indicated that the interior lining of the battery casings consisted of lead metal plates. The first plastic storage bag containing cocaine had lead hydroxycarbonate on it and may have had a small amount of lead carbonate on. On one area of the second plastic bag it had lead carbonate and lead hydroxycarbonate on it, while another area had lead hydroxycarbonate on it. Also, the lead panels of the battery casings contained lead hydroxycarbonate and might have contain small amounts of lead carbonate.

[85] Thus, on consideration of the totality of the evidence in this case, the Crown argued that the direction of travel of the cocaine must have been from GGG to GAF. The battery casings were directly related to the Peterbilt and, like the Peterbilt, were within the exclusive control of GGG. The Crown therefore argued that in that ten (10) minutes inside the storage garage before GAF left, the cocaine was hidden in the compartment of his Ford 500. The Crown also argued, which was admitted by the Defence, that GGG entered Canada on November 6, 2019 at the Pacific Highway commercial truck crossing and was driving the Peterbilt when he did so, delivering a load of tires from the U.S. into Canada.

[86] Finally, when this Court considers the opinion evidence of Staff Sgt. Hinsperger on long-distance trucking practices and costs, in addition to Retired Detective Murphy's evidence on cocaine pathways into Canada utilizing the I-5 corridor, coupled with that of

Dr. Barnett regarding lead components found on two (2) of the plastic bags as well as the interior wall chemical compounds of the battery casings it must, when applying logic and common sense, only result in one conclusion. That is, GGG must have brought the ten (10) bricks of cocaine into Canada on November 6, 2019 utilizing the empty battery casings for their transportation from the U.S. into Canada and that he transferred the said cocaine to GAF inside Storage Garage 2, on November 7, 2019 just prior to when he drove out of Storage Garage 2 and both accused were then arrested.

[87] Therefore, in summary, the Crown urged this Court to render verdicts of guilty against the accused GGG on all three (3) Counts.

(2) The Defence

[88] The Defence argued there is a dearth of evidence during an eight (8) month period against this accused, GGG. The Court had no statements of this accused that was involved in any unlawful activity. The Court had no evidence of any communication from him that he was involved in unlawful activity. Nothing gleaned from all searches showed any indicia whatsoever of unlawful activity.

[89] Repeated covert entries over an extended period of time failed to yield a scintilla of evidence that he was engaged in any unlawful conduct. An extensive search of the Peterbilt and the trailer that was conducted with U.S. authorities on October 10, 2019 found nothing.

[90] Moreover, an extensive search of GAF's possessions failed to link any indication of any criminality between him and GGG. To that end, the sole occupant, driver and registered owner of the Ford 500 was GAF. It had a relatively sophisticated compartment which was not visible inside or outside the vehicle. The two (2) fobs that were in that vehicle were in his sole possession. The two (2) re-usable grocery bags, which matched his carrying bread a week prior, belonged to him. It was GAF's hidden compartment and his cocaine. The Defence therefore argued the only reasonable inference was the guilt of GAF, not this accused GGG.

[91] The Defence further argued that the only reasonable inference on the evidence is that GGG had nothing to do with the hidden compartment in the Ford 500 vehicle.

[92] As regarding Mr. Samra's evidence, the Defence argued there were security concerns about where the Peterbilt was parked. Moreover, the accused only requested overnight runs anywhere in Canada or the U.S. The Defence conceded the accused didn't make much money. However, GGG didn't appear to care. Therefore, Mr. Samra's evidence was of limited probative value.

[93] Moreover, Staff Sergeant Hinsperger's evidence offered limited assistance to the Court. The Staff Sgt. particularly noted that his own brother barely makes a living as an owner-operator but, nevertheless, despite them being not always the most comfortable ride, some people still enjoy driving big trucks. Thus, there is more to the occupation than the making of money.

[94] Moreover, with respect to David Mak's evidence, the Defence argued that there is limited probative value of the cellular phone records of these transmissions for the following reasons:

- (i) We don't know who activated the phones;
- (ii) We don't know who received the transmissions;
- (iii) We don't know what was communicated by those transmissions; and
- (iv) We don't know of any oral or written communications occurred on any of those communications.

[95] The investigation of the accused GGG was on February 2, 2019 to November 7, 2019: some eight (8) months and eleven (11) days, or two hundred and fifty-three (253) days. The Court has heard testimony to only eleven (11) of those days out of two hundred and fifty-three (253). From these eleven (11) days it can only be inferred that:

- (i) GGG and GAF were acquainted with one another;
- (ii) They had been in the company of one another on limited number of occasions of aforementioned 8 months, 11 days;
- (iii) That they had lunch a couple of restaurants and went on some walks; and
- (iv) GAF had been at the Storage Garages on five (5) occasions.

[96] However, what the surveillance didn't tell us, or what can be inferred is:

- (i) The nature of the relationship between GGG and GAF;
- (ii) The nature of their communications; and
- (iii) What Mr. GGG was doing for the other eight (8) months?

[97] In relation to the batteries, the Defence argued that was an interesting theory of the Crown but with no evidence to support it in that:

- (i) There is no evidence that hollowed-out batteries seized from GGG were ever north or south of the Canada/USA border;
- (ii) Nothing suspicious was located on any covert searches of the Peterbilt;
- (iii) Nothing of consequence was found on October 10, 2019 of the U.S. search of the Peterbilt;
- (iv) On takedown day, November 7, 2019, a search of the Peterbilt revealed the presence of four (4) fully functional batteries. Any scratching on any aluminum tray the battery compartment should be expected given the batteries were extremely heavy; and
- (v) Both batteries were double-swabbed for the presence of cocaine and that was a complete absence of any cocaine or any other controlled substance.

[98] The testimony of retired Detective Patrick Murphy, who was the only witness called and qualified in the realm of cocaine trafficking, summarized the following:

- (i) After the arrest of GGG and GAF the investigation centered in on the two (2) batteries that were seized by the Police;
- (ii) In his experience as a veteran drug officer, when asked if he had ever heard of car or truck batteries being used to conceal drugs, he couldn't think of one occasion where that ever took place; and
- (iii) When asked if he had ever heard of that (method of concealment) his answer was he cannot recall.

[99] Thus, in the absence of expert evidence as to the correlation between trafficking cocaine and hollowed-out batteries, the Defence argued that this Court cannot make such a correlation, or that one exists on the evidence.

[100] Dr. Barnett's testimony, taking at the very best, indicated that there was a substance on two (2) bags, which included that of hydroxycarbonate and perhaps or

maybe lead carbonate was of limited probative value and that her evidence was problematic for the Crown for the following reasons:

- (i) This was the first time in any professional capacity she has been asked to test lead acid batteries;
- (ii) There was a microscopic presence of lead on the plastic food saver bags which required its existence by use of a high quality microscope;
- (iii) During cross-examination she testified she found six (6) small items in paper bag number one (1). She analyzed those which were inconsistent with battery test results; and
- (iv) Further, in cross-examination, she also testified that the black siding plastic bottom of one of the batteries was analyzed in order to determine a white fluffy substance; that substance was inconsistent with anything on the plastic bag, and importantly, the testing methods involved her having to remove or peel back part of the walls of the battery casing because she thought it would afford a more suitable area for sampling. However, from an evidentiary perspective, the Defence argued this was a really bad idea.

[101] Further to Dr. Barnett's findings in that regard, the Defence argued as Canada and the U.S. are not a source country of cocaine, one may therefore imagine how many hands, conveyances or vehicles transported that cocaine until it was in GAF's hidden compartment.

[102] Thus, in summary, the theory the Crown was contingent upon convincing this Court of layer upon layer of speculation. The Defence conceded there is some evidence that gives rise to a suspicion, but that when one considers the doctrine of proof beyond reasonable doubt, the overriding presumption this case is that there is a remarkable dearth of evidence against this accused and that there can only be one verdict appropriate on all three (3) Counts, namely, not guilty.

17. Analysis

[103] Whilst I am keenly aware of the test to be applied in order for this accused to be found guilty of any Count with which he is charged, I bear in mind that the Crown only has to prove individual pieces of evidence in a circumstantial case on a balance of probabilities. However, on the totality of the evidence, there must be no other reasonable or rational inference other than the accused's guilt.

[104] That being said, I recognize proof beyond a reasonable doubt is not proof beyond certainty. However, as per the Supreme Court of Canada in *R. v. Starr*, (2000) 2 S.C.R. 144 at para 242, it is worth noting the often well-quoted paragraph:

“In my view, an effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than proof on a balance of probabilities. As stated in *Lifchus*, a trial judge is required to explain that something less than absolute certainty is required, and that something more than probable guilt is required, in order for the jury to convict. Both of these alternative standards are fairly and easily comprehensible. It will be of great assistance for a jury if the trial judge situates the reasonable doubt standard appropriately between these two standards. The additional instructions to the jury set out in *Lifchus* as to the meaning an appropriate manner of determining the existence of a reasonable doubt serve to define the space between absolute certainty and proof beyond a reasonable doubt. In this regard, I am in agreement with Twaddle J.A. in the court below, when he said, at p. 177:

If standards of proof were marked on a measure, proof “beyond reasonable doubt” would lie much closer to “absolute certainty” than to “a balance of probabilities”. Just as a judge has a duty to instruct the jury that absolute certainty is not required, he or she has a duty, in my view, to instruct the jury that the criminal standard is more than a probability. The words he or she uses to convey this idea are of no significance, but the idea itself must be conveyed.
...

[105] The Crown’s theory in the case at bar is that this accused, GGG, imported cocaine into Canada on November 6, 2019 then supplied cocaine to GAF inside Storage Garage 2 in Surrey just prior to the police take-down on November 7, 2019 once GAF exited the said Storage Garage 2. Their meeting was brief, a mere (ten) 10 minutes.

[106] I am mindful of the telecommunication records between numbers associated to GGG and GAF, including use of “burner” cell phones rather than their own personal cell phones. I am also extremely mindful that this accused and GAF met in Surrey on a number of occasions, often hours or within days, when GGG had made a return cross-border trip back into Canada from the U.S. as a commercial truck driver. Additionally, I am also mindful of the decrease in the overall time periods both they spent together as per the surveillance, especially the latter meetings, including when both were arrested

on November 7, 2019. Initially, as was apparent in the evidence, the earlier meetings between GGG and GAF varied in duration and were often lengthier. However, as the investigation moved along, the police noted that the meetings were much shorter in nature, including the ten (10) minute meeting on November 7, 2019.

[107] Moreover, I am also keenly aware of the travel times for GAF to travel by ferry via the Duke Point terminal in Nanaimo to Tsawwassen on the Lower Mainland and the drive from Tsawwassen to the Storage Garages in Surrey and to the area close to GGS's Langley Condo.

[108] Furthermore, I have also carefully considered the two items seized in the back of this accused's GMC Sierra truck located inside a tote by Cst. Heather Scott. One of those was filed as an Exhibit in this Trial (Exhibit 9) and depicts a hollowed-out large Surrrette brand battery casing. The Crown strenuously argued that five (5) kilogram bricks of cocaine fit inside each battery casing. Ultimately, once searched by the R.C.M.P investigators the following day, they found two (2) re-usable shopping bags which each contained five (5) kilograms of cocaine found in hidden compartment of Mr. GAF's Ford 500 after GAF exited the bay door from Storage Garage 2 with only one (1) other person present, namely this accused, Mr. GGG. A receipt in one (1) of those bags is attributable only to GAF.

[109] I bear in mind the legal test set out in regarding a circumstantial case such as the case at bar. That being said, this Court nevertheless must come to a conclusion that no other reasonable or rational inference is available on the evidence. However, and with the greatest of respect to the Crown, I cannot conclude that guilt is the only logical conclusion on each Count. In the end, after a careful review of the evidence that I have both heard and seen in this case, coupled with very articulate submissions of the Crown in this case, and despite my suspicions about the accused's conduct and observations made by investigators over a number of months, I agree with the Defence position. That is, I find that the evidence in this case as it relates all Counts against this accused is insufficient and is not otherwise indicative of only a guilty verdict on each Count. Put simply, the Crown has not discharged the necessary burden of proof beyond a

reasonable doubt in this case. There are a number of reasons why this conclusion has been reached. Without any particular order of importance, those reasons include the following:

- 1) There were several covert entries executed pursuant to search warrants for Storage Garage 2 linked to this accused. Those covert entries also included a close inspection of both the inside and outside of the Peterbilt tractor-trailer associated to this accused. There was also a covert entry search into this accused's condominium in Langley, B.C. prior to his arrest, also pursuant to a search warrant previously authorized. On all of those aforementioned searches, nothing of any significance was located or attributed to any of the offences for which this accused is charged. The same holds true for searches at both Storage Garage 2 and the Langley Condo after GGG's arrest. Moreover, the Crown's witnesses agreed that there was no evidence found whatsoever of any illegal activity on any of those searches, at any time.
- 2) On October 10, 2019 this accused's Peterbilt tractor-trailer was the subject of an extensive search by U.S. Customs and Homeland Security on the U.S. side of the Canadian border which yielded no evidence against him. Cst. Ebert was waiting on the Canadian side of the United States/Canadian border and briefly saw the tractor-trailer come to the border northbound on Highway 15 to 8th Avenue where it turned left and where he lost sight of it.
- 3) Notwithstanding two (2) hollowed-out battery casings found in a tote box underneath a tonneau cover in this accused's GMC Sierra pickup truck bed, there was no evidence of an illegal nature found on this accused or inside his Storage Garage on the date of his arrest.
- 4) At no point in time was the accused found with empty battery casings crossing the Canada/United States border, on any date. Moreover, on November 7, 2019 there were four (4) fully functional operating batteries located inside the Peterbilt when seized by the R.C.M.P.
- 5) It is noted on the re-enactment video at the Commercial truck crossing on the Canadian side of the U.S. border that it took significant time to load the hollowed out battery casings and load and re-install the two (2) middle batteries into the Peterbilt. It is also important that tools were obviously required to do so by the tow truck driver. However, at no time upon the arrest of either GGG or GAF were there any tools found, particularly upon this accused in his Storage Garage, in his GMC Sierra nor in his Langley Condo when searched.
- 6) In my view, there has been no compelling evidence that the aforementioned battery casings had, at any time, contained cocaine. To that end, I reiterate Retired Detective Murphy's evidence that he had never heard of any such apparatus used to transport cocaine into Canada during his extensive police career. Additionally, the fact that there was a minuscule amount of lead found on two (2) of the food saver bags, in and of itself, compared to the battery casing walls which had thin layers peeled back by Dr. Barnett does not assist the Crown,

especially when Dr. Barnett removed a thin layer of lining of a battery casing prior to testing same, without any authorization to do so by the investigators.

- 7) Moreover, on January 31, 2020 the police took two (2) swabs from the inside of each of the battery casings seized from the bed of the Sierra on November 8, 2019. The police sent those swabs to the Health Canada Laboratory to determine if cocaine was present. Results of the analysis by a duly qualified analyst at Health Canada conducted on February 10, 2020 revealed that all four (4) swabs were negative for the presence of cocaine or any other substance within the meaning of the *Controlled Drugs and Substances Act*.
- 8) Also of significance is that two (2) of the ten (10) bricks of cocaine seized by the police on November 8, 2019 from a large aftermarket hidden compartment in the Ford 500 were tested for the presence of fingerprint impressions. The results of those tests were positive. Fingerprint impressions were located on the inner wrapping of both bags. Fingerprint comparison checks confirmed that those fingerprint impressions did not belong to GGG. Ultimately, the police were unable to identify the source/identity of the fingerprint impressions.
- 9) It goes without stating the obvious that there is no evidence which could shed any light as to what may have taken place inside Storage Garage 2 other than it was a short meeting between GAF and GGG. However, it is clear on the evidence of Cst. Brown that the hidden compartment in GAF's vehicle was not visible from either the exterior or interior of the Ford 500. Moreover, there is no fingerprint evidence of GGG on any of the fobs linked to that hidden compartment nor on any part of the hidden compartment, let alone on the two (2) re-useable shopping bags, which belonged to GAF. Further, to that end, no gloves were found, disposable or otherwise, or were seized in any of the aforementioned locations listed in #1 above attributable to this accused GGG.
- 10) As to the number of communications and cell phones, it is clear there is no conclusive evidence as to who may have been speaking or using the relevant phones, or what was said, if anything, nor the nature of the communication. Further in this regard it was GAF who was in possession of multiple phones and when his residence was searched there were multiple CHATR brand SIM cards seized.
- 11) Being a poor businessman, in of itself, is not indicative of guilt. Many people clearly struggle to make a living, or operate at a loss, as was stated by Staff Sgt. Hinsperger. Whilst it is somewhat bizarre that this accused never collected any pay from Shergill for his commercial truck driving services in 2019, there is no other evidence whether this accused was bothered by his lack of work. Moreover, any personal preference as to where the accused GGG wanted to drive the Peterbilt, nor where he wished to store his Peterbilt is once again, in of itself, I find be inconsequential to the ultimate result on each Count.
- 12) It is my view, that on the totality of the evidence, the only person who possessed cocaine in any location, either prior to or on November 7, 2019, including during or after the arrest of GAF and GGG, was GAF. Moreover, expected drug paraphernalia items were found in GAF's residence, which included amongst

other things, a digital scale, a vacuum sealer and an electronic money counter, let alone over two (2) ounces of cocaine coupled with \$3150 in cash in a wall safe in his garage. However, at no time was anything of an illegal substance, or often expected drug paraphernalia as referenced by Retired Detective Murphy, found on, or connected to, this accused GGG.

18. Disposition

[110] Thus, I find that the Crown has not satisfied this Court that the only reasonable or rational inference, on a consideration all of the evidence, is that of guilt on any Count. For the aforementioned reasons articulated, I find there are other reasonable or rational inferences other than this accused's guilt.

[111] Accordingly, Mr. GGG, I find you not guilty on all Counts on Nanaimo Court Information 87723-1. You are free to leave sir.

[112] Lastly, I wish to offer my sincere appreciation to the level of cooperation and professionalism displayed by all counsel on this case. Your combined efforts were most impressive and assisted this Court greatly in my deliberation and decision in this case.

By the Court

The Honourable Judge B. Harvey

Appendix "A"

Crown case authorities:

1. *R. v. Rai*, 2011 BCCA 341;
2. *R. v. Henareh*, 2017 BCCA 7;
3. *R. v. Peal*, 2017, BCSC 623;
4. *R. v. Fisher*, 2005 BCCA 444;
5. *R. v. Villaroman*, 2016 SCC 33; and

6. *R. v. Collin*, 2008 BCCA 431

Defence case authority:

1. *R. v. Starr*, 2000 SCC 40