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CITATION: R. v. Sidhu and Singh, 2024 ONSC 6545
COURT FILE NO.: CR-21-5258
DATE: 20241124

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
)	
HIS MAJESTY THE KING)	R. Visca, for the Crown
)	
– and –)	
)	J. Santarossa, for Sukhdeep Singh Sidhu
Sukhdeep Singh Sidhu and)	
Inderjeet Singh)	K. Marley, for Inderjeet Singh
)	
Accused)	
)	
)	HEARD: August 9, 2023, October 23, 24,
)	26, and 27, 2023, November 14 and 15,
)	2023, December 4,5,6,7, and 8, 2023,
)	March 11 and 12, 2024, August 1, 2024
)	and September 16, 2024

REASONS FOR JUDGMENT

KING J.

INTRODUCTION AND OVERVIEW

- [1] The accused, Sukhdeep Singh Sidhu (“Mr. Sidhu”) and Inderjeet Singh (“Mr. Singh”), are each charged with one count of unlawfully importing cocaine into Canada, contrary to s. 6(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (“CDSA”), and one count of possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the CDSA.
- [2] On March 17, 2020, Canada Border Service Agency (“CBSA”) officers discovered approximately 31 kilograms of cocaine concealed in a shipment of citrus fruit being driven in tandem by the two accused persons across the Canada/U.S. border at the Ambassador Bridge in Windsor, Ontario.
- [3] The cocaine was comprised of 31 bricks, each weighing approximately 1 kilogram. They were found in three boxes loaded on a pallet in the near middle area of the refrigerated

trailer being hauled by both accused who were employed by a Brampton trucking business called Himalya Express Inc (“Himalya Express”).

- [4] There is no issue that the substance found in the boxes was cocaine and that it was being imported into Canada. The issue to be determined is whether the two accused individuals had knowledge and control of the cocaine in the trailer and whether they were therefore, at law, in possession of the contraband for the purposes of the CDSA.
- [5] The trailer load of citrus fruit consisted of 19 pallets, comprised of four shipments loaded onto the refrigerated trailer at three different locations in central California.
- [6] It is the position of the Crown that the offences have been proved against both accused beyond a reasonable doubt. The Crown submits that sometime after their arrival in California to deliver shipments of frozen baked goods, the two accused came into possession of the cocaine. At some point during the period between the time they picked up the shipments of citrus fruit for the return trip, and before a seal was placed on the trailer doors, they concealed the three boxes containing the cocaine at the rear of one of the pallets of citrus fruit.
- [7] The prosecution relies on circumstantial evidence as proof of the knowledge of the accused truck drivers. Reliance on circumstantial evidence to prove a person’s mental state, including knowledge, is not unusual. As Culliton J.A. stated in *R. v. Larier*, [1960] S.J. No. 116 (C.A.), at p. 312:

Knowledge, like intent, is a state of mind. It cannot, generally speaking, be proved as a fact but can only be inferred from facts which are proved.

- [8] As the case against the accused individuals consists of circumstantial evidence, it is well settled that, in order for a conviction to ensue, the guilt of each accused must be the only rational inference to be drawn from the evidence. The existence of other rational inferences need only raise a reasonable doubt. There is no onus on the accused to prove an alternate theory. Inferences must be grounded in evidence and logically linked to the underlying facts. They must not be too remote or speculative. Finally, it is the cumulative weight of the evidence that must be considered in determining whether the guilt of each accused has been proved beyond a reasonable doubt.
- [9] I note that on a charge of importing, the Crown has the burden of proving that the accused had the requisite mental intent to commit the act. In order to prove possession, the Crown must prove two distinct elements: knowledge and control. Constructive possession may be established where the accused does not, in fact, exercise control over the object in question, but has power or authority over the object. The right to grant or withhold consent to drugs being stored is sufficient for constructive possession to be established. As the cocaine was in the refrigerated trailer being hauled by the two accused individuals, this case will rise or fall on the issue of knowledge. That is, has the Crown proven beyond a reasonable doubt, that either, or both, of the accused truck drivers knew the cocaine was in their trailer as they crossed the international border into Canada?

- [10] Counsel for both Mr. Sidhu and Mr. Singh submit that on the evidence in this case the court should have reasonable doubt that their respective clients had knowledge of the cocaine in the trailer. Accordingly, the charges should be dismissed as the Crown has not proven control and knowledge beyond a reasonable doubt.
- [11] Accordingly, it will be necessary for the court to look to the evidence adduced at trial to determine whether or not the Crown has proven control and knowledge beyond a reasonable doubt.

EVIDENCE

- [12] Evidence was taken at trial over nine days: October 26 and 27, November 13 and 14, and December 4-8, 2023. Submissions were held over two further days, March 11 and 12, 2024. A further two days were required on August 1, 2024 and September 16, 2024 as I had questions that needed to be addressed regarding some evidence that had not been addressed by any of the counsel relating to Shipment #3.

Exhibits

- [13] Sixteen exhibits were entered:

Exhibit No. 1 – Volume 1 binder is comprised of 40 tabs containing photographs, documents and records. These are referred to as Exhibits 1-1 to 1-40(b) respectively.

Exhibit No. 2 – Volume 2 binder is comprised of 36 photographs, bills of lading and other documents. They are referred to as Exhibits 2-1 to 2-36 respectively.

(Where there is more than one photograph, document or record in a tab, they are additionally identified with a letter.)

Exhibit No. 3 – Recochem windshield wiper fluid box.

Exhibit No. 4 – Security driver checklist.

Exhibit No. 5 – Bill of lading for C&S Wholesale Groceries #1.

Exhibit No. 6 – Bill of lading for C&S Wholesale Groceries #2.

Exhibit No. 7 – CAT scale invoice #1.

Exhibit No. 8 – Delivery condition report and exit pass.

Exhibit No. 9 – Straight bill of lading for exempt commodities.

Exhibit No. 10 – Blue binder containing trip reports.

Exhibit No. 10a – Trip report for Trailer #4023.

Exhibit No. 10b – Trip report for Trailer #4015.

Exhibit No. 11 – Recochem Turbo Power Windshield Washer Fluid container with fluid.

Exhibit No. 12 – Tape dispenser with tape.

Exhibit No. 13 – Officer Pruyn’s drawing of tractor interior and quadrant grid.

Exhibit No. 14 – CAT scale invoice #2.

Exhibit No. 15 – Picture of box marked “B”.

Exhibit No. 16 – Agreed Statement of Facts.

Witnesses

- [14] The court heard from several CBSA witnesses, all called by the Crown. As well, the Crown called Mr. Hanaman Suruj from the firm, Recochem Inc. (“Rechochem”), as a witness. Mr. Suruj was the Blending Manager for this company that manufacturers and sells, *inter alia*, windshield wiper fluid.
- [15] Mr. Sidhu elected to testify. Mr. Singh did not testify.

Time Notations

- [16] I note as a preliminary matter that the accused individuals used a logbook system in the truck that registered all times as Eastern Standard Time (“EST”). Accordingly, when Mr. Sidhu gave evidence, he related many times of events in EST, even for events which occurred in California. I take notice that California is on Pacific Standard Time (“PST”), three hours behind EST. However, many of the documents entered into evidence appear to have times recorded locally, meaning some will be in PST. I have attempted to specify the appropriate times where relevant to the narrative.
- [17] I also note from the outset that different words were often used in the testimony to describe similar items or events. Unless the context specifically requires otherwise, there is no discernable difference in meaning with respect to the use of words such as, but not limited to: tractor/truck, trailer/reefer, and shipment/load. There were also different words used to describe the cartons or boxes containing the citrus fruit. That parlance will be explained later in this decision.

The Trip to and from California

i) Background of the Two Accused Persons

- [18] Sukhdeep Singh Sidhu was a landed immigrant to Canada at the time of the alleged offences. He came to Canada in February of 2017. He listened to the evidence and testified with the use of Punjabi interpreters.
- [19] It is not disputed that Inderjeet Singh was also in Canada as a landed immigrant. While Mr. Singh commenced the trial proceedings in English, he eventually began hearing the testimony and submissions through the use of Punjabi interpreters.

ii) Work History

- [20] Both accused individuals were qualified truck drivers. At the time of the alleged offences, they were both employed by a Brampton, Ontario based carrier known as Himalya Express Inc.
- [21] Mr. Sidhu has worked as a truck driver since January, 2019. He started as a local “city” driver with Green Line Transportation Inc. in Brampton, Ontario. He then worked as a long-haul driver for Roadstar Trucking. He had been working as a long-haul driver with Himalya Express since May 2019. He drove trucks owned by Himalya Express back and forth between Ontario and the United States.
- [22] Prior to March 17, 2020, he had performed truck driving services both as a solo driver and in tandem. As a tandem driver, he and Mr. Singh had driven together in 2019 for Himalya.
- [23] The trip from March 9, 2020 to March 17, 2020 was, however, the first time they had driven together in this particular tractor.

iii) Duties of the Drivers

- [24] The evidence of Mr. Sidhu was that his English language skills were not as proficient as those of Mr. Singh. For that reason, when they crossed the border into the United States on March 9, 2020 and returned into Windsor, Ontario on March 17, 2020, Mr. Singh was behind the wheel of the tractor.
- [25] As well, for this same language reason, only Mr. Singh dealt with personnel at the various delivery and pick-up locations. This assertion is supported by the fact that Mr. Singh’s signature is on the bills of lading for the citrus fruit they picked up to deliver to Canada.
- [26] Another area of responsibility was the overseeing of the shipments being loaded onto the refrigerated trailer. Mr. Sidhu testified that he never watched or monitored the loading of any of the four shipments of citrus fruit that were picked up. Also, he was unable to advise if Mr. Singh monitored any of the four shipments that were loaded.

iv) The Trip (Overview)

- [27] Mr. Sidhu and Mr. Singh were dispatched to deliver a load to California, USA from Brampton. Specifically, on this outbound trip, the accused individuals were hauling frozen baked goods being shipped by Give And Go Prepared Foods Corp. on Finch Avenue in Toronto, Ontario.
- [28] There were two consignees. They were C & S Wholesale Grocers in Stockton, California and Superstore Industries, located in nearby Lathrop, California.
- [29] Stockton and Lathrop, California are municipalities located east of the cities of San Francisco and Oakland, California.
- [30] This outbound trip commenced on the evening of March 8, 2020 when they departed together from 252 Clarence Street in Brampton, between 21:00 – 22:00 hours EST.
- [31] The return trip involved picking up shipments of citrus fruit in central California for delivery to Brampton.

v) The Tractor

- [32] The accused were operating Himalya Tractor #820 (Exhibit 1-1-a) (Exhibit 1-1) (*Note:* The tractor number is noted erroneously on the driver checklist (Exhibit #4) as #802).
- [33] The tractor was equipped with driver and passenger seats. There was also a lower and upper sleeping bunk situated in the rear of the cab behind the seats. There were three larger storage areas in the tractor. There was a centrally located storage space situated behind the passenger seats and under the lower bunk. There were also two side spaces – one on each side of the tractor. Those spaces could be accessed from the exterior of the tractor using a key.

vi) The Trailer

- [34] The accused were hauling a 53-foot-long refrigerated trailer (reefer) also marked with the Himalya Express logo (Exhibit 1-1-a). The trailer number was 4023.
- [35] The refrigeration unit was situated on the front upper exterior of the trailer. When the tractor and trailer were coupled, the refrigeration unit would be situated closest to the tractor. This is confirmed in photograph Exhibit 1-20 as the refrigeration unit is visible at the front of the interior of the trailer.
- [36] I will refer to the portion of the trailer that couples to the tractor to be the front (or head) of the trailer.
- [37] The trailer contained no windows or other visible points of entry other than the rear doors.

vii) The Outbound Load

- [38] Bill of Lading Packlist PL-394352 references 847 cases of frozen baked goods on 10 pallets to be delivered to C & S Wholesale Grocers (C & S) in Stockton, California (Exhibit #5).
- [39] Bill of Lading Packlist PL-393903 contained 420 cases of frozen baked goods on five pallets which were also being shipped to C & S in Stockton (Exhibit #6).
- [40] These two bills referenced the first shipments scheduled to be delivered.
- [41] Bill of Lading Packlist PL-394342 referenced 1,242 cases of baked goods on 15 pallets to be delivered to Superstore Industries in Lathrop, California (Exhibit #2-16). This was scheduled to be the second delivery.

viii) The Outbound Trip

- [42] Various records seized from the tractor and the testimony of Mr. Sidhu indicate that Mr. Singh drove the vehicle from Brampton. The vehicle crossed the international border via the Ambassador Bridge in Detroit, Michigan at 4:25 a.m. on March 9, 2020.
- [43] The vehicle next stopped in Monroe, Michigan. This location is approximately a one-hour drive southwest of Detroit, Michigan. Exhibit 1-7 is a copy of a receipt from Love's Country Store in Monroe, Michigan dated March 9, 2020, at 8:59 a.m. (Exhibit 2-20). At that time, the accused individuals utilized a paid weigh scale that showed a weight of 66,580 lbs.
- [44] Mr. Sidhu commenced driving at this point. He drove the vehicle to Greenup, Illinois. At Love's Store #688 in Greenup, they purchased a combined total of \$598.13 of diesel and reefer fuel for the trailer (Exhibit 2-21).
- [45] Mr. Singh then drove from Greenup to a location in Oklahoma.
- [46] Mr. Sidhu drove from Oklahoma to Albuquerque, New Mexico. At Love's Store #614 in Albuquerque, they purchased a total of \$516.52 of diesel and reefer fuel (Exhibit 2-5). That receipt is dated March 10, 2020, but no time is indicated.
- [47] Mr. Singh took over the driving in Albuquerque until they arrived at Barstow, California.
- [48] Mr. Sidhu then drove from Barstow, California to Stockton, California, the location of their first scheduled delivery.

ix) Delivery of the Outbound Shipments in Stockton and Lathrop, California

- [49] According to Mr. Sidhu's testimony, he and Mr. Singh arrived at their first scheduled delivery stop in Stockton, California at 09:00 EST on March 11, 2020. That time was two-and one-half hours later than scheduled.

- [50] As a result of being late, they were advised by C & S Wholesale that as they had missed their delivery window they would have to wait. That wait time was extended significantly. After four to five hours passed without being able to deliver their first two shipments, the two accused individuals spent overnight in Ripon, California. That is a town located a short way southeast of Stockton.
- [51] On March 12, 2020, they delivered their shipment #3 to Superstore Industries in Lathrop, California. This was the reverse order in which they were originally scheduled to deliver the goods.
- [52] Next, they then returned to Ripon where they re-fueled and waited for dispatch to give them information as to the Stockton delivery.
- [53] Sometime in the early morning of March 14, 2020, Mr. Sidhu and Mr. Singh were able to deliver shipments #1 and #2 at C & S Wholesale in Stockton (Exhibits 2-17 and 2-18). This completed the outbound portion of their trip.

x) The Return Trip to Canada (In-bound)

- [54] The accused individuals departed Stockton for their first pick-up. Exhibit 2-25 shows that their first pick-up location was in Reedley, California at 13:50 PST on March 14, 2020. Reedley is situated approximately 150 miles Southeast of Stockton. I note that it is generally along the route that a vehicle would take if it was returning east through Barstow, California. That is a location they had stopped at for fuel on the way to Stockton.
- [55] While it was contested for a portion of the cross-examination of Mr. Sidhu, in submissions, it is not disputed that Mr. Sidhu and Mr. Singh picked up four shipments of citrus fruit from three shippers at three separate locations.

xi) Loading the Refrigerated Trailer

- [56] The first product loaded was placed at the front or head of the trailer.
- [57] From the documentary evidence, photographs taken by CBSA officials, and the testimony of Mr. Sidhu, the return trip to Canada occurred as set out below.
- [58] It is noted that the 19 pallets were identified by the CBSA placing orange numbered cones on each pallet as the trailer was searched. The 19 pallets contained cartons of citrus fruit loaded on to the trailer.
- [59] I note that the individual cartons of citrus fruit are referred to as “cartons”, “crates”, “cases”, “boxes”, “CTNS” and “Fullcart” in the documents and testimony. Those terms are to be treated interchangeably in this decision unless I specifically reference otherwise.
- [60] In reviewing the evidence, I have considered the testimony of Mr. Sidhu, the various photographs of the inside of the trailer as it was inspected by the CBSA officer, and the information contained in the Bills of Lading.

[61] I also note that from the photographs, a full pallet would hold 54 cartons. There would be six rows consisting of nine cartons stacked on a pallet. Once six rows of cartons were stacked, the pallet would be considered fully loaded and the entire stack of cartons would be shrink-wrapped to stabilize the pallet and prevent the cartons from shifting or falling off the pallet.

Shipment #1

[62] The shipper for Shipment #1 was Fruition Sales located in Reedley, California. This is shown by the Bill of Lading that is Exhibit 2-25. There were three pallets of limes located at the front of the trailer. Pallet 19 was loaded in the centre at the front of the trailer (Exhibit 1-20). Pallets 17 and 18 were loaded side by side, left to right respectively (Exhibit 1-19). The Bill of Lading for this shipment shows 162 cartons of limes. That is explained by three pallets, each containing 54 cartons.

Shipment #2

[63] I start by noting that Shipment #2 was loaded in Porterville, California. That location is approximately a one-hour drive south of Reedley, California.

[64] The shipper for this load was Porterville Citrus Inc. It would appear that while the shipment originated in Strathmore, California, it was delivered to their facility in Porterville to be consolidated with another Porterville Citrus Inc. shipment. Shipment #2 was comprised of six (6) pallets of citrus fruit loaded at Porterville, California on the afternoon of on March 14, 2020. This shipment is referenced at Exhibit 2-26. That invoice shows 324 cartons. That is, there are six pallets each containing 54 cartons of lemons (4 pallets) and oranges (2 pallets).

[65] From the packaging observed on the photos, it appears that pallet 16 was loaded in the center of the trailer (Exhibit 1-18). Pallets 14 and 15 were loaded beside each other from left to right as one looks to the front of the trailer from the rear (Exhibit 1-17). Pallets 12 and 13 were loaded beside each other from left to right (Exhibit 1-16). Finally, pallet 11 was loaded to the right side of the trailer (Exhibit 1-15).

Shipment #3

[66] The shipper for this five (5) pallet shipment was also Porterville Citrus Inc. It was also loaded at Porterville, California on the afternoon of March 14, 2020 following Shipment #2.

[67] From the packaging observed in the photos, pallet 10 was loaded to the left of pallet 11 from Shipment #2 (Exhibit 1-15). Pallets 8 and 9 were loaded beside each other with 8 on the left (Exhibit 1-14). Pallets 6 and 7 were then loaded beside each other with pallet 6 on the left-hand side (Exhibit 1-8).

- [68] Pallet 6 is of particular evidentiary significance. It was at the rear of this pallet that the three boxes of cocaine were located on inspection by the CBSA.
- [69] From the various photos taken by the CBSA as the trailer was unloaded, it can be ascertained that pallets 10, 9, 8 and 7 were fully loaded. Each of these pallets was comprised of 54 cartons of oranges and was shrink-wrapped. For example, from the photo at Exhibit 1-8, it is observed that pallet 7 was fully loaded.
- [70] However, it is also clear that pallet 6 was not fully loaded. More specifically, it is readily apparent that the top two rows of pallet 6 were not full with nine cartons each.
- [71] Exhibit 1-11 depicts pallet 6 after it was unloaded from the trailer by the CBSA. From this photo, it can be ascertained that several cartons from the highest and second highest layers were not present. There are three other boxes not marked as citrus fruit located in that area. These are the three boxes in which the 31 packages of cocaine were situated.
- [72] A review of Exhibit 1-27 explains this configuration. If all five pallets were full, this shipment would have totalled 270 cartons. That calculation is made by multiplying five pallets by 54 cases or cartons. However, the invoice for this shipment shows that it contained only 260 cartons.
- [73] A notation on the invoice states:

SPECIAL INSTRUCTIONS

PCI0 TO DEL. 324 CTNS ORG TO PCI-PORTER* VCPG
CONSOLIDATE TO PCI PORTERVILLE SHORT 10 CASES OF 80 SK.
MIN LOADED ALL AVAILABLE THEIR POSITION

In other words, the invoice notes that the load is short ten cartons as they “loaded all available.”

- [74] The invoice for these five pallets references “80 MT. WHITNEY CENTR SK MINNEOLA”.
- [75] The pictures of pallet 6 show the carton marked “MT. WHITNEY.”
- [76] There is a marking “MINN” which I have concluded is short for “MINNEOLA”.
- [77] As well, it is observable that the shrink-wrapping on pallet 6 was secured in a way that angled downward to account for the fact that there were not 54 cartons on the pallet.
- [78] The time of departure for Shipments #2 and #3 from Porterville is listed as 19:06 PST on March 14, 2020.
- [79] It is noted that after completion of Shipment #3, the configuration of the pallets was such that pallet 6 (on the left) and pallet 7 (on the right) would have been at the rear of the trailer,

as it then was. There is no evidence to suggest that this configuration would not have remained in place until the final shipment (#4) containing five pallets was loaded onto the trailer.

Shipment #4

- [80] The shipper for this five (5) pallet load (containing 270 cartons) was Visalia Citrus Packing Group in Woodlake, California. I start referencing this shipment by noting that Woodlake, California is located approximately 35 minutes of driving south of Porterville, California. Based on the departure time from Porterville at 19:06 PST, the vehicle being operated by the two accused would have arrived at Woodlake at approximately 19:45 or 19:50 PST.
- [81] From the packaging observed in the photos, pallets #4 and #5 were located beside each other (Exhibit 1-6). Pallet #3 was loaded in the center of the trailer (Exhibit 1-5(b)). Pallets 1 and 2 were loaded beside each other, also left to right (Exhibit 1-5(a)).
- [82] There was no other commercial freight loaded on this trailer.
- [83] Exhibit 2-28 shows the time out for this load as 20:23 PST on March 14, 2020.
- [84] Given these estimates of time, it would appear that the subject vehicle would have been at Woodlake, California for no more that 30 to 35 minutes.

xii) Strapping

- [85] It is normal practice that once freight on pallets is loaded onto a trailer, strapping is used to prevent the individual cartons of product or the actual pallets of freight from shifting or otherwise becoming unstable. The evidence discloses that the trailer used in this matter was equipped with the necessary strapping.
- [86] The normal practice would be to strap the first shipment when loaded to keep it secure as the vehicle begins travelling. The strapping would then be resituated at the rear at the end of each shipment being loaded at the most rear portion of the load. In this manner, it is observable in the photographic evidence taken by the CBSA (Exhibits 1-2 and 1-5) when the trailer was examined in Windsor that the strapping was affixed to pallets 1 and 2 at the rear of the load.

xiii) Use of a Seal

- [87] It is standard in the trucking business that shippers use numbered, wire-based seals to secure the trailer doors on loads.
- [88] There are numerous purposes for using such seals.
- [89] Firstly, they restrict access to the trailer by unwelcome third parties. Once a trailer has a seal placed and the number recorded, the driver or, as in this case, the drivers, have protection against the interior of the trailer being breached.

- [90] A properly affixed seal can only be removed with a suitable wire cutter. Furthermore, if an unauthorized person breaks into the trailer, the destruction of the seal provides proof for the drivers that the load has been tampered with on inspection.
- [91] As well, when crossing the international border, it is understood that the trailer must contain a seal. The seal provides the same level of comfort to both the CBSA officials and the driver that the load has not been tampered with following loading.
- [92] The normal protocol for the use of a seal would be for the operators to place a seal on the trailer after the shipment has been fully loaded. If the operator notifies their employer (or customer in certain instances) of the seal number, both parties are protected in the event there is an issue with the load.
- [93] It is noted that on the outbound load, the frozen baked goods that were being delivered were in a trailer that had a seal placed on it from departure.
- xiv) Woodland, California to Detroit, Michigan
- [94] At 20:59 PST the vehicle was at Tulare, California. The logbook indicated this was midnight EST, or 9:00 p.m. PST. Mr. Singh was the driver. Tulare is located a short distance southwest of Woodlake, California, the location of the last pick up. Exhibits 2-4 and 2-29 show that they had the vehicle weighed at 77,220 pounds.
- [95] Mr. Singh continued driving from Tulare to Barstow, California. From there, Mr. Sidhu operated the vehicle to Kingman, Arizona. Exhibits 1-26, 1-27 and 2-33 show that they purchased \$568.43 of diesel and reefer fuel in Kingman.
- [96] Mr. Sidhu continued driving to somewhere in New Mexico that was not noted in the logbook. Mr. Singh then commenced driving.
- [97] Somewhere in Oklahoma, Mr. Sidhu stated Mr. Singh stopped to ask if Mr. Sidhu could drive as they were two and one-half hours behind schedule.
- [98] Mr. Sidhu then drove from that point to a Love's Station in Rolla, Missouri. Exhibit 2-34 shows they purchased \$518.20 of diesel and reefer fuel.
- [99] Mr. Sidhu continued driving until they were somewhere in Illinois. Mr. Singh then drove the balance of the trip to Windsor.
- [100] Along the way, at a Love's Station near Detroit, Michigan, Mr. Sidhu testified they stopped, and he put a seal on the trailer for the first time.
- [101] Mr. Singh continued driving at this point. The next stop was at the Ambassador Bridge in Windsor where the vehicle was eventually diverted for inspection and searched. It was at this point the cocaine was discovered.

- [102] The cocaine was discovered in three boxes. Two of the boxes were Home Depot boxes. The third box was made to hold containers of windshield wiper fluid made by a Brampton based company called Recochem Inc.
- [103] Mr. Hanaman Suruj was the Blending Manager for this company. He testified that the box was designed to hold cartons of their Turbo Power Windshield Wiper Fluid. He explained that this product and the boxes are made in Canada and are for sale only in Canada. He gave some detailed evidence explaining the coding on the box (Exhibit 3) and a partial container of the Turbo Power Windshield Wiper Fluid (Exhibit 11). From the coding, it would appear the box and wiper fluid were manufactured at almost the same time. While the exact times did not exactly align, I am satisfied that Exhibit 3 was a Recochem box made in Canada to hold containers of their Turbo Power product, and that product is not sold in the United States.

EVIDENCE OF MR. SIDHU

[104] As indicated, Mr. Sidhu testified in this matter in his own defence.

[105] I will review his evidence in detail and conduct a *W.(D.)* analysis.

i. General Comments Regarding the Sharing of Duties

[106] Mr. Sidhu stated that his level of English comprehension and understanding was limited. He also stated that Mr. Singh had a better understanding of English. For this reason, whenever they crossed the border, or dealt with shippers and/or receivers, Mr. Singh handled those duties.

ii. Specific Actions on the Return Trip to Canada

[107] Both he and Mr. Singh drove the tractor, taking turns. Mr. Singh began driving at Woodlake, California. Mr. Sidhu took over at Barstow, California and drove to a stop in Kingman, Arizona and then onto somewhere in New Mexico. Mr. Singh drove to Rolla, Missouri and Mr. Sidhu drove from Rolla to somewhere in Illinois. Then, Mr. Singh drove to the border in Windsor, Ontario.

[108] At no time when the trailer was being loaded with any of the four shipments did Mr. Sidhu watch any of the loading process.

[109] At no point on the return trip did Mr. Sidhu affix or fasten strapping to the load.

[110] At no point did Mr. Sidhu check to see if the strapping was affixed after they received load #1 in Reedley, California before they travelled to Porterville, California to pick up loads #2 and #3. This is a distance of approximately 50 miles.

[111] At no point did Mr. Sidhu check to see if the strapping was affixed after they received loads #2 and #3 in Porterville, California before travelling to pick up shipment #4 in Woodlake, California. This is a distance of approximately 30 miles.

[112] At no point following the loading of shipment #4 in Woodlake, California did Mr. Sidhu check to see if the load was strapped. At no point did Mr. Sidhu testify that Mr. Singh ever affixed strapping or did he observe Mr. Singh inspect the trailer to ascertain if the load had been strapped.

iii. Confusion About Shipments #2 and #3

[113] In his testimony, Mr. Sidhu insisted that both shipments #2 and #3 were loaded at the facility in Porterville, California.

[114] In cross-examination, Crown counsel spent considerable time suggesting that the load of 324 boxes on six pallets (Load #2) was loaded at a fourth location. Exhibit 2-26 indicates that shipment was from Strathmore, California.

[115] What Mr. Visca missed, however, was a notation on the Bill that the shipment was to be delivered to Porterville for consolidation with shipment #2.

[116] It was also noted by Mr. Sidhu on page 2 of the Bill of Lading that the load had been transported to Porterville by a person named "Fidel". Fidel was not called as a witness.

[117] In the end, the Crown acknowledged that Mr. Sidhu's testimony in this respect was correct.

iv. The Seal

[118] On the evidence of Mr. Sidhu, he stated that even though the last load of citrus fruit was placed on the trailer on March 14, 2020 in Woodbridge, California, neither he nor Mr. Singh affixed a seal to the trailer until March 17, 2020, in Michigan, at the last stop before the vehicle crossed back into Canada. According to Mr. Sidhu, he affixed the seal.

[119] He had an explanation for not affixing the seal once the last of the pallets was loaded onto the trailer in California. He indicated that he previously was docked pay for a load by his employer when a load he was transporting shifted during travel and some product was damaged. By not sealing the trailer, either he or Mr. Singh could freely enter the trailer, if necessary, without having to remove the seal and reposition the freight to avoid the load shifting and therefore avoid them being docked pay if there was damage.

[120] He acknowledged that by not sealing the trailer, there was nothing to prevent someone from physically opening the trailer doors while the vehicle was stopped by simply lifting the rear latch to which the seal can be attached and opening the doors to the trailer.

[121] He did not testify that either he or Mr. Singh checked inside the trailer to see if the load had shifted at any time while en route from Woodlake, California to Windsor, Ontario.

[122] As indicated, Mr. Sidhu eventually put a seal on the trailer when the vehicle was stopped at a Love Station in Michigan on March 17, 2020.

- [123] The seal that was on the trailer when it was opened by the CBSA contained the number C06213 (Exhibit 2-1(a) and 2-1(b)).
- [124] As well, there were various seals located in the tractor of the vehicle. Exhibits 2-2(a), (b) and (c) depict unused red seals that were removed on inspection by the CBSA.
- [125] Mr. Sidhu testified that he checked the seal he affixed to the trailer to the paperwork sharing the seal number as prepared by Mr. Singh.
- [126] There were two flattened Sunkist boxes located by CBSA officer in the centre storage unit of the tractor. The markings on those boxes do not match up with any of the product being shipped. Mr. Sidhu testified they would use these empty boxes if they had to crouch under the tractor or trailer for any reason as protection from substances on the ground.
- [127] In cross-examination, it was suggested, and Mr. Sidhu agreed, that they both had access to a seal cutter on the tractor (Exhibit 1-37) and (Exhibit 2-10).
- [128] He agreed that the cocaine found in the trailer would have remained in an unsealed trailer from whenever it was put there until he put the seal on in Michigan.
- [129] He stated he did not know if the cocaine was there or not but stated the seal was placed on at the Love Station in Michigan.
- [130] Mr. Sidhu testified that Mr. Singh put the number of the seal on the border crossing paperwork.
- [131] The following exchange then occurred:

Q. Mr. Sidhu, you said in your evidence that you matched the seal with the border papers and put the seal on. Do you remember telling us that on Monday?

A. I wanted to talk about it yesterday as because the – the conversation of questioning went in a different direction. I accept my mistake that I misspoke on that day by mistake because the border crossing paper does not bear the seal number, the truck unit number, truck licence plate, and trailer unit number, trailer licence plate, both team drivers' names, and the product contained or being transported is returned over there, and a number which is available to us as border entry number is returned on that.

And on top of that, Himalya Express, the name of my company, was written. When I acknowledged the – something about seal on that date, some companies – when we hauled the load from California, America, some companies provide a seal along with the paperwork. Bill of Lading, seal number had the same as the number on the seal itself. I got confused in – with that thing in mind. I apologize that on that day I misspoke.

v. The Recochem Washer Fluid Box

- [132] Mr. Sidhu testified that approximately three weeks before the trip that resulted in these charges, he began using the Recochem box (Exhibit #3) to hold garbage in the tractor. The box fit between the driver seat and passenger seat but was closer to the passenger seat.
- [133] Sometime between their arrival in Stockton, California and their final delivery of baked goods delayed to March 14, 2020, Mr. Sidhu noticed that the glue on the bottom of that box was coming off.
- [134] He taped the bottom of the box to make it more secure. He used tape from the tape dispenser seized by the CBSA from the tractor (Exhibit #12).
- [135] He does not know if Mr. Singh was present when this taping occurred.
- [136] He did not tape the top of the box.
- [137] He did not tape the box to put drugs in it.
- [138] He did not place a seal on the trailer after the final shipment of citrus fruit was loaded on the truck in California.
- [139] At no point on the return trip did he notice that the box he was using for garbage and that he taped in California was missing from the tractor. That was his explanation for how his fingerprint was innocently on the tape.

vi. Time Away from the Tractor and Trailer

- [140] Mr. Sidhu testified that whenever the vehicle was stopped for fueling, food, resting or washroom breaks and both accused individuals were out of the tractor at the same time, it was always locked. As well, throughout the trip, they were only separated from each other when the vehicle was stopped and while they used the washroom or showered. Otherwise, when the vehicle was stopped, they were together eating or were together when outside the tractor.
- [141] At each of the three locations from which they picked up citrus fruit, it was Mr. Singh who went into the shipping office and dealt with the shippers. Whenever this occurred, Mr. Sidhu stayed in the tractor. He made no observations of the shippers loading the reefer, no observations of the placement of any of the 19 pallets, no observations of the pallets on the trailer, nor the placement of any strapping.

The Search of the Tractor and Trailer by CBSA Officers

- [142] There is no dispute that on inspection of the trailer being operated by the two accused individuals that there were three boxes in the refrigerated trailer containing 31 bricks of cocaine weighing 1 kg each. As well, it is not disputed that the accused individuals picked up four loads of citrus fruit from three locations.

- [143] I will start my review of this evidence by reviewing the evidence and information obtained and provided by the CBSA officers who conducted the secondary inspection.
- [144] Officer Ciota has been a CBSA employee since 2007.
- [145] On March 17, 2020, he was involved in conducting a secondary inspection of the relevant trailer being hauled by the two accused. He did this at the CBSA facility on Industrial Drive in Windsor. Officer Ciota was accompanied by Officers Beaumont and Pruyron at this time.
- [146] He commenced the inspection at 5:15 a.m.
- [147] The trailer had been backed up close to the loading dock #10.
- [148] He cut the seal on the trailer (Exhibit 2-1). The truck was shut off and the accused both went to the waiting room. He made a note that the seal was C06213. He was aware from the paperwork of the nature of the shipment.
- [149] Exhibit 1-2 is a photograph taken with the seal removed and the rear doors to Trailer #4023 open. The picture depicts cartons of citrus fruit stacked on pallets. The boxes on the pallet are shrink-wrapped together to secure them. They are stacked on pallets located side by side, with a few exceptions.
- [150] There was a strapping located across the two visible pallets.
- [151] The pallets were loaded with the sides of two boxes facing the back of the trailer and one box facing the side. In this configuration, there were nine boxes per layer. Above that were five additional levels of boxes. Accordingly, a fully loaded pallet contained 54 boxes or cartons of citrus fruit.
- [152] All of the cartons on each pallet were fully shrink-wrapped with one significant exception that was referenced with respect to pallet #6.
- [153] The picture at Exhibit 2-1 also indicated that a step ladder was put on the floor of the trailer by the Officer. This ladder was used by Officer Ciota to perform a task he described as "crawl the load."
- [154] The Officer would use the step ladder to get to the top of the loads and then crawl along the space between the top of the boxes and the roof of the trailer to work his way from the rear to the front of the trailer.
- [155] It is noted that the pallets were loaded on the trailer in a certain configuration. This is apparent from photographs taken when the trailer was examined.
- [156] The loading also conformed to the order that the pallets were configured on the trailer.

[157] From the rear of the trailer to the front, the following was observed and noted with numbered orange pylons:

Two pallets (Pallet #1 and #2)

One pallet (centered) (Pallet #3)

Two pallets (Pallet #4 and #5)

Two pallets (Pallet #6 and #7)

Two pallets (Pallet #8 and #9)

Two pallets (Pallet #10 and #11)

Two pallets (Pallet #12 and #13)

Two pallets (Pallet #14 and #15)

One pallet (centered) (Pallet #16)

Two pallets (Pallet #17 and #18)

One pallet (centered) (Pallet #19).

[158] These pallets would be loaded in the reverse order of the numbering from the front of the trailer nearest the tractor to the rear. That is, pallet #19 would be the first loaded and pallets #1 and #2 would be the last loaded.

[159] It is noted from the photographs in Exhibit 1 of the following:

1. Given the six-carton height of the pallets, there was not sufficient room for an adult person to stand on top of the boxes from the top of the pallet to the roof of the trailer.
2. There was only room for an adult to crouch (or lay) on top of the freight and to crawl the load from the back to front of the trailer.
3. Where pallets were loaded side by side, such as pallets 1 and 2, 4 and 5, 6 and 7, and so on, there was not sufficient room on either the side of the pallets, or in between them, for any person to fit or pass. More specifically, from a review of Exhibit 1-2, there was an inch or two of space between pallets 1 and 2, at most. As well, there was no more than six inches of space between the pallets and the walls of the trailer.
4. For the three pallets loaded singly in the middle of the trailer (i.e., pallets 3, 16 and 19), there would be sufficient room for a person to stand on either side of the pallet (see Exhibits 1-18 and 1-20).

[160] A review of the Bills of Lading demonstrates the configuration of the pallets as loaded on the trailer. The shipper for load #1 was Fruition Sales located in Reedley, California. There were three pallets of limes (162 boxes) located at the front of the trailer. Pallet 19 was loaded in the centre of the trailer, and pallets 17 and 18 were loaded side by side (Exhibit 2-25).

The Cocaine

[161] There were three boxes containing a total of 31 – 1 kilogram bricks of cocaine in the trailer.

[162] The cocaine has a value of \$55,000 per kilogram when sold in that manner. That would total \$1,705,000. If broken down and sold on the street, each kilogram is worth \$100,000 of \$3.1 million in total.

[163] Two of the boxes were branded “Home Depot”. The third box (Exhibit 3) was labelled as containing 4 x 3.78 of Turbo WWAA Antigal Pour or Lave-Glace as indicated earlier.

[164] The box was used by Recochem to hold containers of 3.78 litres of Turbo Power Windshield Washer Fluid (Exhibit 11).

[165] This box contained several bricks of cocaine.

[166] Notably, there was clear packing tape affixed to the top and the bottom of the box. On investigation, a single fingerprint of Mr. Sidhu was detected on the tape situated on the bottom. That evidence is not disputed by Mr. Sidhu, although as indicated he provided the court with an explanation for how that box with tape affixed to the bottom with his fingerprint was discovered in the back of the sealed trailer.

[167] There was a dispensing roll of clear tape of the same colour and shape as the tape on the Recochem box that contained Mr. Sidhu’s fingerprint (Exhibit 12) located in the tractor.

[168] The tractor also contained a set of wire cutters capable of cutting a truck seal (Exhibit 2-10).

ADMISSIONS

[169] The parties filed a written Agreed Statement of Facts (“ASF”)(Exhibit #16). I will refer to these admissions as required in the course of my analysis of the evidence and the law. In pertinent part, the following facts are agreed:

Admission Re: (1) Fingerprint of Sidhu, and (2) piece of tape on box matching tape on tape dispenser

[170] A fingerprint that was identified to Mr. Sidhu was found on the clear packing tape of one of the boxes containing cocaine – the box that had contained windshield wiper fluid (“the box” (Trial Exhibit #3)). At the time of testing, the tape was slightly detached from the box in this area, and the fingerprint that was identified to Mr. Sidhu’s left index finger

(identified as R36) was found on the edge of the sticky side of the tape, the side facing the box. Mr. Sidhu's fingerprint was located on a piece of tape that secured the bottom of the box. (See photo with green box and arrow, Trial Exhibit #1 (38) i.e. Volume 1; Tab 38)).

- [171] Among the items seized from the cab was packing tape with a dispenser (Trial Exhibit #12). A piece of tape attached to the box (not the piece of tape with Mr. Sidhu's fingerprint) and the tape ending from the roll of tape in the dispenser were at one time, one continuous piece of tape. The end of the tape on the box that matched the end of the tape from the dispenser secured the top of the box. The end of the tape on the box that matched the end of the tape in the dispenser is identified on the box with a yellow sticker arrow and scale (See photo, Trial Exhibit #1 (38) i.e. volume 1; Tab 38).
- [172] 35 other finger impressions were located on (1) various plastic wrappings used to package the cocaine; and (2) a Sunkist cardboard box. Mr. Sidhu is excluded as the source for the other fingerprint impressions.

POSITION OF THE PARTIES

Defence

1. Mr. Sidhu

- [173] The Crown has not proven the case against Mr. Sidhu beyond a reasonable doubt.
- [174] As this is a circumstantial case, in order to convict, the court must be satisfied on the evidence as a whole that the guilt of Mr. Sidhu is the only reasonable conclusion available. In *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at para. 30, the court stated as follows:

It follows that in a case in which proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence, it will generally be helpful to the jury to be cautioned about too readily drawing inferences of guilt. No particular language is required. Telling the jury that an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits will often be a succinct and accurate way of helping the jury to guard against the risk of "filling in the blanks" by too quickly overlooking reasonable alternative inferences. It may be helpful to illustrate the concern about jumping to conclusions with an example. If we look out the window and see that the road is wet, we may jump to the conclusion that it has been raining. But we may then notice that the sidewalks are dry or that there is a loud noise coming from the distance that could be street-cleaning equipment, and re-evaluate our premature conclusion. The observation that the road is wet, on its own, does not exclude other reasonable explanations than that it has been raining. The inferences that may be drawn from this observation must be considered in light of all of the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

- [175] Any inferences must be drawn properly and cannot be based on speculation.
- [176] Counsel emphasized that the trailer would be noisy with the refrigeration unit operating. It was noted that the Sunkist boxes discovered in the central storage compartment did not match the boxes used for any of the loads of citrus being hauled in this instance.
- [177] Counsel noted that the Recochem windshield wiper fluid and the Recochem box found with the cocaine with Mr. Sidhu's fingerprint on it were made in Canada. However, she emphasized that based on the time stamps on the box and the wiper fluid container, they were made at slightly different times.
- [178] Mr. Sidhu testified in his own defence, and his counsel asserts he was a credible witness, notwithstanding that he had some language issues.
- [179] He has an innocent explanation for his fingerprint being on the tape on the box containing some of the cocaine and he should be believed. Counsel submitted someone other than him, including possibly Mr. Singh (who had equal access to the tractor), could have used the box to store the cocaine and place it at the back of pallet #6 without Mr. Sidhu knowing.
- [180] It is a reasonable inference that Mr. Singh could have put the box in the trailer with the cocaine.
- [181] It is also a reasonable inference that a third party took the box from the tractor, put cocaine inside it, and placed the box with the two Home Depot boxes on pallet #6.
- [182] Because there are other reasonable inferences, the court cannot conclude that the only reasonable inference is that Mr. Sidhu placed the cocaine in the trailer.
- [183] Counsel stressed that there was no evidence called by the Crown with respect to the loading of the trailer at Reedley, Porterville or Westlake, California. Furthermore, there was no evidence provided by anyone from Himalya Express.
- [184] Counsel explained away the inconsistencies in the evidence of Mr. Sidhu regarding his statement in examination-in-chief and in cross-examination by Mr. Marley (for Mr. Singh) that it was four years later when he testified, and he just corrected an error. On an objective review, this does not reduce his credibility.

2. Mr. Singh

- [185] Mr. Marley, counsel for Mr. Singh, relies on the submissions made by Mr. Sidhu.
- [186] Additionally, his counsel notes that there is no eyewitness evidence or any other evidence directly linking Mr. Singh to the boxes of cocaine. There is also no evidence of anyone involved in the loading of the four shipments of citrus fruit in California. As well, he notes, there was no testimony from anyone at Himalya Express.

- [187] He suggests there is a strong inference that someone in the Toronto area knew what was going on and was waiting for the cocaine to arrive once it cleared the border.
- [188] The inference that persons in Porterville knew about the shipment of cocaine was not dispelled by the prosecution.
- [189] The court should accept the evidence regarding the time when the seal was placed on the trailer. Beyond that, the Crown cannot prove that either Mr. Singh (or Mr. Sidhu, for that matter), had knowledge and control of the cocaine.
- [190] Mr. Marley noted that by looking at the loaded trailer from the ground, a person could not see the boxes of cocaine. There is no evidence that Mr. Singh had knowledge of the cocaine and, as a result, he did not have control. It would be dangerous for the court to draw the inferences necessary to convict.

Prosecution

- [191] The Crown has established on the evidence that the two accused had both control and knowledge of the cocaine in the trailer.
- [192] Control in this case is straightforward as the cocaine was contained in a trailer that was sealed and was being transported by the two accused.
- [193] The court can infer knowledge from the circumstantial evidence. It should do so in this case.
- [194] Having said that, to establish guilt on the circumstantial evidence in this case, the court must be satisfied on the evidence that guilt is the only reasonable conclusion available: see *Villaroman*.
- [195] To that extent, an alternative inference sufficient to give rise to reasonable doubt must be reasonable and not just possible.
- [196] In conducting a *W.(D.)* analysis, the court must assess all three prongs of the analysis along with all of the other evidence presented at trial.
- [197] In this case, the court should not be left in a reasonable doubt by the evidence of Mr. Sidhu because it cannot be reconciled with the entirety of the evidence.
- [198] Accordingly, Mr. Sidhu's evidence that he did not know about the cocaine and that he taped the Petrochem box to better its use as a garbage container rather than be fortified to hold cocaine, must be examined in the context of the totality of the evidence.
- [199] While some of Mr. Sidhu's evidence is acceptable, the overarching feature of that evidence is that it was mostly verified by documentary evidence contained in the tractor (such as logbooks, Love's receipts and weigh-scale tickets) and items found in the tractor (i.e., tape dispenser, seal cutter and seals).

- [200] It can also be accepted that Mr. Singh did the communicating with officials because of his superior English language skills, and that they always locked the trailer.
- [201] However, when considered on the totality of the evidence, Mr. Sidhu's assertion that he had no knowledge of the cocaine fails when considered in light of all of the evidence. More specifically, his evidence that he taped the bottom of the Petrochem box for garbage purposes rather than tape it to hold cocaine does not make sense on the totality of the evidence in this case.
- [202] As well, if someone other than Mr. Sidhu converted Exhibit 3 after Mr. Sidhu taped the bottom in and around Stockton, California, that such person would then locate and substitute use another box to store garbage in the tractor is implausible.
- [203] Furthermore, that someone would deliver two Home Depot boxes with cocaine to the trailer and then excrete a third box from the tractor to load it with cocaine is even more implausible.
- [204] The testimony with respect to strapping the load at each stage of the pick-ups was also implausible.
- [205] For all these reasons the Crown has been able to establish on the totality of the evidence that the only reasonable conclusion is that Mr. Sidhu took the Rechochem box from the tractor and taped it for reinforcement to hold several kilos of cocaine and then either placed the three boxes at the back of Pallet #6 or worked in conjunction with Mr. Singh and possibly others in this endeavour. In either instance he clearly had knowledge that there was cocaine in the trailer when it entered into Canada.

LEGAL PRINCIPLES

Importation

- [206] The essential elements of the crime of importing a controlled substance, contrary to s. 6(1) of the *CDSA*, the controlled substance in this case being cocaine, are as follows:
1. the accused imported cocaine, a controlled substance, into Canada;
 2. the accused knew the substance was cocaine; and
 3. the accused intended to import the cocaine into Canada.

Possession for the Purpose of Trafficking

- [207] The essential elements of the crime of possession of a controlled substance for the purpose of trafficking, contrary to s. 5(2) of the *CDSA*, the controlled substance in this case being cocaine, are as follows:
1. the accused possessed cocaine, a controlled substance;

2. the accused knew the substance was cocaine; and
3. the accused possessed the cocaine for the purpose of trafficking in it.

Possession

[208] Pursuant to s. 2(1) of the *CDSA*, possession is defined as “mean[ing] possession within the meaning of subsection 4(3) of the *Criminal Code*.” Subsection 4(3) of the *Criminal Code*, R.S.C., 1985, c. C-46, provides, in pertinent part as follows:

(3) For 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

[209] In crimes of unlawful possession, the Crown may prove the required knowledge element by circumstantial evidence: see *R. v. Pham* (2005), 77 O.R. (3d) 401 (C.A.), aff’d 2006 SCC 26, [2006] 1 S.C.R. 940. The trier of fact must be satisfied, beyond a reasonable doubt, that the only rational or reasonable inference that can be drawn from the circumstantial evidence is guilt; the mere existence of any rational or reasonable inference other than guilt drawn from the circumstantial evidence is sufficient to raise a reasonable doubt: see *R. v. Griffin*, 2009 SCC 28, [2009] 2 S.C.R. 42, at paras. 33-34 as follows:

“The inferences that may be drawn ... must be considered in light of all of the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense”: *Villaroman*, at para. 30.

[210] Other inferences need not arise from proven facts but “must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation”: *Villaroman*, at para. 37. This assessment standard applies to the total body of evidence and not to individual pieces of evidence: see *R. v. Al-Kazragy*, 2018 ONCA 40, [2018] O.J. No. 573, at para. 27.

For the Purpose of Trafficking

[211] The enhanced mental element for this crime relates to the purpose of the possession of the controlled substance; the possession must be for the purpose of trafficking.

[212] “Traffic” is defined in s. 2(1) of the *CDSA* and includes “to sell, ... give, transfer, transport, send or deliver the substance”.

Presumption of Innocence and Reasonable Doubt

- [213] Both accused entered pleas of not guilty. They are presumed in law to be innocent of the charge. This presumption is a cornerstone of our criminal justice system. This presumption of innocence stays with the accused individuals throughout their trial and can only be defeated if and when Crown counsel satisfies me by the heaviest burden known in law, beyond a reasonable doubt, that either Mr. Sidhu, Mr. Singh, or both are guilty of either or both of the charges.
- [214] This heavy burden of proof never shifts; it is always on the Crown. The Crown brought the charges against these individuals; they must prove the allegations. The accused do not have to prove anything; they do not have to present evidence; they do not have to testify. It is the Crown who must prove every essential element beyond a reasonable doubt before I can find Mr. Sidhu and/or Mr. Singh guilty of any crime.
- [215] A reasonable doubt is not an imaginary, far-fetched, or frivolous doubt. It is not a doubt based on sympathy for or prejudice against anyone involved in this trial. It is a doubt based on reason and common sense. It is a doubt that logically arises from the evidence or the lack thereof.
- [216] It is not enough for me to believe that either accused is probably or likely guilty. In those circumstances, I must find either or both of the accused individuals, as the case may be, not guilty, because Crown counsel would have failed to satisfy me of their guilt beyond a reasonable doubt. Proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt.
- [217] However, I must also remember that it is nearly impossible to prove anything to an absolute certainty. Crown counsel is not required to do so. Absolute certainty is a standard of proof that is impossibly high. However, having said that, proof beyond a reasonable doubt is closer to proof to an absolute certainty than it is to proof on a balance of probabilities.
- [218] When an accused elects to testify on his own behalf, as Mr. Sidhu did in his trial, I must assess the evidence in accordance with the well-known principles from *R. v. W.(D.)*, [1991] 1 S.C.R. 742, as follows:
- (i) if I believe Mr. Sidhu's evidence that he had no knowledge of the presence of cocaine in his trailer, I must acquit him;
 - (ii) even if I do not believe the evidence of Mr. Sidhu, but I am left in a reasonable doubt by his evidence as to any of essential elements of the crimes charged, including knowledge of the cocaine, I must acquit him;
 - (iii) even if I do not believe Mr. Sidhu's evidence and am not left in a reasonable doubt by his evidence, then I must consider whether, on the basis of all the evidence which I do accept, I am convinced beyond a reasonable doubt of all of the essential elements of the crimes charged, including knowledge. Only then can I convict Mr. Sidhu. It is a very high burden indeed.

Credibility and Reliability

- [219] Credibility and reliability are not identical concepts. Credibility refers to the honesty of a witness. Reliability refers to the accuracy of a witness's evidence. A witness may be honest but wrong. I must consider both the credibility and reliability of each witness.
- [220] Where there are significant inconsistencies or contradictions within a witness's testimony, or when considered against conflicting evidence in the case, I must carefully assess the evidence before concluding that guilt has been established.
- [221] Demeanour evidence alone cannot suffice to make a finding of guilt.
- [222] To the extent a credibility or reliability assessment demands a search for confirmatory evidence for the testimony of a witness, such evidence need not directly confirm the witness's evidence in every respect – the evidence should, however, be capable of restoring the trier's faith in the witness's account.

Assessment of the Evidence

- [223] To make my decision on the issues of credibility and reliability overall, I must consider carefully, and with an open mind, all the evidence presented during the trial. It will be up to me to decide how much or little I believe and rely upon the testimony of any witness. I may believe some, none, or all of it.
- [224] I must and will use my common sense in deciding whether people know what they are talking about and whether they are telling the truth. There is no magic formula for deciding how much or how little of a witness's testimony to believe or how much to rely on it in deciding this case.

W.(D.) ANALYSIS

The Evidence of Sukhdeep Singh Sidhu

- [225] Mr. Sidhu testified through sworn Punjabi interpreters. I listened carefully to what he had to say and how he said it.
- [226] Much of his evidence of the issue of knowledge gave me great concern.

1. Background

- [227] At the time of his testimony, Mr. Sidhu was 35 years old. At the time of his arrest, he was 32 years old.
- [228] Mr. Sidhu is a citizen of India and a permanent resident of Canada.

2. Narrative

[229] The evidence of Mr. Sidhu was marked by his version of the events. I start by noting that he stated that because of language issues with English, he had no dealings with the officers on entry to the United States or on the return to Canada. He also had no dealings with the individuals at the two places where the outbound shipments were delivered, or the individuals at the three locations where the four inbound shipments were loaded.

[230] I will start my analysis of the Crown's case against Mr. Sidhu by noting that in a number of critical respects, I was troubled by the inconsistencies and illogical suggestions made by Mr. Sidhu in his testimony.

a. Distribution of Duties

[231] In summary of Mr. Sidhu's evidence, his duties on the trip consisted of him:

- i. Driving the truck, and
- ii. He affixed the seal # C06213 in Michigan.

[232] He might have fueled up the tractor and/or reefer trailer motor at the various Love Stations *en route*. That is it.

[233] It is undisputed that Mr. Singh's duties consisted of the following:

- i. Driving,
- ii. Dealing with border officials on arrival in Detroit on the outbound load and in Windsor,
- iii. Dealing with the personnel at the two consignees for the bakery products on the outbound load.
- iv. Dealing with the personnel at the three locations where they picked up citrus fruit for the return trip.

[234] If Mr. Sidhu's evidence is accepted, Mr. Singh would have also been responsible for the following duties:

- i. Observing the baked goods be unloaded in Lathrop and Stockton, California to ensure there was no damage caused by the consignees.
- ii. At each of the three pick up locations, observing the shippers load the pallets of citrus fruit to ensure they were not damaged and were not loaded on the trailer improperly.
- iii. Watching the shippers load the trailer to ensure no contraband was put on the trailer.

- iv. Checking the product being loaded to ensure it matched the bills of lading.
- v. Checking to ensure the pallets were loaded properly to minimize the risk of the citrus fruit shifting.
- vi. Attaching the strapping and or checking to ensure the strapping had been done properly after the following:
 - a) The three pallets were loaded at Reedley;
 - b) The 11 pallets were loaded at Porterville; and,
 - c) The five pallets were loaded at Westlake.

[235] I find this seismically imbalanced work balance to be unlikely.

b. The Seals

[236] Mr. Sidhu's evidence regarding the timing and use of the seal on the trailer is, quite frankly, absurd and I reject same. On the one hand, he claimed there was a valid reason to leave the load unsealed, being so that he and/or Mr. Singh could enter the trailer while en route if needed if the load had shifted.

[237] That is, he and Mr. Singh made a rational decision not to seal the trailer once the final shipment was loaded in Woodlake, California. This was done so they could check the load on the return trip and move the pallets and/or cartons, if necessary, to avoid freight being damaged by shifting. That was done because they could be docked pay for damaged product if the pallets shifted en route Mr. Sidhu testified this had happened to him before.

[238] I do not accept this explanation.

[239] Firstly, by leaving the trailer unsealed while driving from Central California to Michigan, he and Mr. Singh were leaving their trailer vulnerable to easy entry by a third party. This could have resulted in a relatively unobstructed possibility of a theft of product, or the placement of illegal items (such as cocaine) in the trailer.

[240] In his testimony, he stated that he and Mr. Singh whenever they stopped and were away from the trailer, the trailer was always locked. Other than when they showered or used the washroom, they were together. However, by not placing a seal on the trailer, they left the trailer vulnerable throughout the trip to Canada. That is illogical and I do not accept it.

[241] I find it incomprehensible that the two drivers would have exposed themselves to such risks for the sole purpose of ensuring they could enter the trailer without having to break a seal to adjust the loads in the event of shifting. The risks associated by having product easily stolen or third parties placing contraband on the trailer without having to even break the seal far outweighs the risks of shifting associated with having pallets loaded with heavy citrus product. This decision is not only irrational, it is with respect, unbelievable.

[242] The implausibility of the explanation for why the trailer was not sealed is compounded by these additional factors:

1. Despite being so concerned that he (or they) might get docked pay if the load shifted, Mr. Sidhu testified that at no point did he himself make any effort to observe any of the shipments being loaded to ensure that the pallets were being loaded properly on the trailer to minimize the risk of shifting.
2. Mr. Sidhu made no effort to watch the citrus product being loaded on the trailer to ensure they received all of the product they were shipping. Had they been short shipped this could easily have resulted in docked pay.
3. Furthermore, Mr. Sidhu took no steps himself to strap the load after shipment #1 was loaded at Reedley, California. Nor did he ensure that Mr. Singh strapped the load. It would only seem logical that the risk of pallets shifting (or even toppling) would be highest on the drive from Reedley to Porterville when the trailer was barely loaded.

[243] In fact, Mr. Sidhu amazingly testified that he was not concerned about that possibility because it was only a “short drive”. That suggestion, is, with respect, absurd and I reject same.

[244] This inattention to the strapping was repeated after shipments #2 and #3 were loaded and they travelled to Woodlake, California.

[245] Again, I make similar observations regarding the risk of shifting on the drive from Porterville, California to Woodlake, California.

[246] Furthermore, on Mr. Sidhu’s testimony, he took no steps to strap the load or ensure it had been properly strapped by Mr. Singh at any time through to the inspection of the trailer by CBSA officers in Windsor, Ontario.

[247] In summary, I completely reject Mr. Sidhu’s evidence that they left the trailer unsealed to make entry to the trailer easier and protect against the calamity of some product being damaged during the trip without taking a single prudent step to watch the trailer loaded at any stop or strapping the load, or overseeing the pallets being strapped at each location. That evidence is in direct contradiction to his stated reason for not sealing the trailer. I reject it outright.

[248] Not only does that explanation run counter to his concern of being able to respond to the load shifting, but it also defies logic to suggest that as a driver, he would be travelling over the road without ensuring that the load was secured.

[249] I find it incomprehensible that for someone who expressed such hyper-sensibility to the financial fallout of the load shifting, Mr. Sidhu acted irresponsibly and negligently by not doing the things that would secure the load and prevent damage or theft occurring.

[250] It is a non-sensical suggestion. However, it was necessary for Mr. Sidhu to distance himself from being at or near the trailer that was discovered holding a box of cocaine containing his fingerprint.

b) The Recochem Box Containing Cocaine

[251] I reject the evidence of Mr. Sidhu regarding the Recochem box containing his fingerprint on the tape affixed to the bottom.

[252] I do not accept that he would have been aware with any specificity that this otherwise anonymous box was being used as a garbage box in the trailer.

[253] Even on his own evidence, he was using the box to hold garbage being accumulated in the tractor. As it was being used to hold empty cups, small bottles, and wrappers, there would be no logical reason to fortify the bottom of the box for the type of refuse that was purportedly being placed in the box. That someone might want to fortify such a box is non-sensical.

[254] Furthermore, there was no intrinsic value in using that particular box to use as a garbage container. If the box was so unstable it could not hold small, light pieces of garbage, it could have been easily replaced. It is illogical to suggest that the box needed to be fortified for that purpose.

[255] On the other hand, that someone might want to fortify such a box to hold packages of cocaine, is, on the other hand, plausible.

[256] I reject his evidence that someone other than him must have removed the box and used it to place kilos of cocaine in same. This would have had to occur from around the time Shipment #3 was being loaded at Porterville. In his own testimony, only he or Mr. Singh had access to the tractor because they were either both in the tractor, or together when stopped with the tractor locked, with one significant exception.

[257] That exception is explained on the cross-examination of Mr. Sidhu by Mr. Marley, counsel for Mr. Singh.

[258] I note the following exchange occurred with respect to the general topic of the differences between the ability of the two accused individuals to speak English:

Q. When the truck went across the border into the United States, Mr. Singh was driving?

A. Yes.

Q. And when Mr. Singh – I'm sorry. And when the vehicle was coming back into Canada on the 17th of March, Mr. Singh was driving?

A. Yes.

- Q. The reason was simple: Mr. Singh spoke English better than you did?
- A. Yes.
- Q. And you expected that the border officials, either in the U.S. or Canada, would speak English?
- A. Yes.
- Q. Similarly, when you were in California dropping off your load, Mr. Singh went into the warehouse in order to present the papers and speak with the individual?
- A. Yes.
- Q. Again, because he spoke English better than you did?
- A. Yes.
- Q. When you picked up the citrus fruit from the three different locations –
- A. Yes.
- Q. -- Mr. Singh went in and presented the paperwork or received the paperwork, and spoke with the people at the warehouses?
- A. Yes.
- Q. Again, for the same reason?
- A. Yes.
- Q. Each of the times that Mr. Singh left the tractor to go into the warehouse, you remained in the trailer – I'm sorry – you remained in the tractor by yourself?
- A. Yes.
- Q. So when the first load of lemons or limes were being put on the truck, you were with the truck by yourself?
- A. Yes.
- Q. When the second load of lemons or limes was being put on the trailer, you were with the truck by yourself?
- A. Yes, I was sitting in the truck, as well as I walked around while the trailer was being loaded and returned back to the truck.

Q. And when the third load was being picked up, the oranges, Mr. Singh went in the warehouse and you were there with the truck?

A. Yes.

[259] This evidence is significant because it establishes that by Mr. Sidhu's admission:

1. Mr. Sidhu was always in the tractor or near the tractor when it was being loaded with the citrus fruit; and
2. There were times while the citrus fruit was being loaded that Mr. Singh was away from the trailer.

[260] On his own testimony, he was in the tractor or near the tractor or trailer during the times it was being loaded.

[261] I reject the suggestion that someone other than Mr. Sidhu replaced any garbage in the box and then loaded the cocaine in that box and then placed it in the trailer at the rear of pallet #6. I also reject the suggestion by Mr. Sidhu that the same person then went to the trouble of finding another box, placing a plastic bag inside same and placing it unnoticed to Mr. Sidhu in the tractor.

[262] There would be absolutely no reason for anyone to have taken Exhibit 3 from the tractor and use it surreptitiously to load it with cocaine and then, incredibly, locate another box to use as a substitute garbage box in the tractor complete with a plastic bag inside the box. There would have been no reason for that to occur. That is, nothing would be achieved by leaving the tractor without a garbage box. Nothing.

[263] Furthermore, there was no reason to conceal the removal of the Recochem box from the tractor in any event.

[264] In sum, and taking all of the evidence in this matter into account:

1. I do not believe Mr. Sidhu's evidence that he had no knowledge of the presence of cocaine in his trailer as set out in *W.(D.)* Step #1; and
2. Even though I do not believe Mr. Sidhu's evidence, I am also not left in a reasonable doubt by his evidence that he had no knowledge of the presence of cocaine in his trailer (*W.(D.)* Step #2).

[265] That is on a *W.(D.)* Step 1 analysis, I do not believe the evidence of the accused on all of these material points. Step 1 does not satisfy me that since I believe the accused, I must acquit.

[266] I also do not accept that Step 2 of *W.(D.)* has application. That is, I am not left in the situation where even though I do not believe the evidence of the accused I am still left with a reasonable doubt.

[267] However, that is not the end of the analysis. A rejection of the evidence of Mr. Sidhu does not automatically result in a conviction or proof of the Crown's case. To do so would reverse the *onus* of proof. The *onus* remains on the Crown to satisfy the court pursuant to *W.(D.) Step #3* and establish that the evidence supports a finding of guilt beyond a reasonable doubt.

[268] Even if I do not believe Mr. Sidhu's evidence and am not left in a reasonable doubt by his evidence, then I must consider whether, on the basis of all of the evidence which I do accept, I am convinced beyond a reasonable doubt of all of the essential elements of the crimes charged, including knowledge. Only then can I convict Mr. Sidhu. It is a very high burden indeed.

I will now conduct a *W.(D.) Step 3* analysis with respect to Mr. Sidhu.

Step # 3

[269] I must start by asking, if, on the totality of the evidence, am I satisfied beyond a reasonable doubt that Mr. Sidhu had knowledge that the cocaine was in the trailer?

[270] Given the principle referenced in *Villaroman*, the question is more specifically posited as whether the Crown has proven on the totality of the evidence which the court accepts, that the only reasonable conclusion available is that Mr. Sidhu knew the boxes of cocaine were in the trailer?

[271] The issue to be resolved is knowledge. I will now review the evidence, including the lack of evidence, to determine what reasonable inferences may be drawn.

1. Exclusive Control

[272] It is noted that 31 bricks of cocaine collectively weighing almost 31 kilograms were found in three boxes in a trailer being hauled by Mr. Sidhu and Mr. Singh when it crossed the border into Canada. Mr. Singh was the driver of the truck when it crossed the border. At that time, Mr. Singh was exclusively in control of the truck, the trailer, and the contents of the trailer including the cocaine. Mr. Sidhu was a passenger.

2. Value of Cocaine

[273] The accused were transporting a multi-million-dollar load of cocaine. The cocaine was in three boxes placed at the back of a pallet of citrus fruit located about 1/3 of the way into the trailer from the back.

[274] The method of loading each of the 19 pallets of citrus fruit is significant to a determination of this case. Given the size of the pallets, no more than two pallets could be loaded side by side.

[275] As depicted in the photographs in Exhibit 1, when two pallets were loaded side-by-side there was only a few inches between the boxes of citrus fruit and the wall of the trailer.

[276] The first pallets loaded (#17-19) (Shipment #1) were located at the head of the refrigerated trailer, closest to the tractor when the trailer is hooked up.

[277] When the CBSA officers examined the trailer on March 17, 2020, they identified each pallet with a number starting at the rear of the trailer with the last pallets loaded. The numbering also went from left to right. Accordingly, pallet #1 was at the left rear of the trailer and pallet #2 was located at the right rear of the trailer. The numbering from the rear of the trailer went as follows to the row containing the boxes of cocaine:

Shipment #4 (Visalia Citrus Packing Group – Woodlake, CA)

1st Row: #1 and #2

2nd Row: #3

3rd Row: #4 and #5

Shipment #3 (Porterville Citrus Inc. – Porterville, CA))

4th Row: #6 and #7

[278] The three boxes containing the cocaine were placed on the back of pallet #6. There were no loose citrus fruit cartons in the trailer.

[279] CBSA photographs at Exhibits 1-3 and 1-5 show the boxes containing the cocaine on top of pallet #6. However, the boxes of the cocaine were found on the back of the pallet, not on top. The officer moved the boxes before taking the photograph. That pallet was located on the left in the 4th row from the rear doors of the trailer. The only pallets located closer to the rear of the trailer on inspection were pallets #1-#5. They were all part of shipment #4 and were loaded at Woodlake, California.

FACTUAL FINDINGS

[280] I start by assessing what is known about the loading of the trailer of four shipments at three locations.

[281] I have concluded that the earliest the three boxes of cocaine could have been placed at the back of the less than full pallet #6 was as or after that pallet was loaded onto the trailer with shipment #3.

[282] That shipment #3 was comprised of pallets 6, 7, 8, 9 and 10. Pallets 8, 9 and 10 were situated behind pallets 6 and 7. It is obvious that the boxes of cocaine could not have been placed on pallet 6 until it was loaded.

[283] The Bill of Lading for shipment #3 (Ex. 1-27) provides that there were ten cartons missing from shipment #3. It is clear from the photographs that of the five pallets that comprised shipment #3, only pallet #6 is less than full.

[284] On the evidence of Mr. Sidhu, at no time while shipment #2 (pallets 11-16) and shipment #3 (pallets 6-10) were being loaded at Porterville was the tractor left unoccupied and unlocked.

[285] For Mr. Sidhu's innocent explanation regarding his fingerprint to be accepted, the court would have to make the following findings of fact:

- i. Someone other than Mr. Sidhu had access to the tractor during the time the accused were at Porterville, even though it was either occupied or locked at all times.
- ii. Since the evidence of Mr. Sidhu is that either he and/or Mr. Singh were in the tractor or it was otherwise locked, only Mr. Singh would have had access to the interior of the tractor at Porterville other than Mr. Sidhu.

[286] That means that only Mr. Sidhu or Mr. Singh could have taken the Recochem box from the tractor at Porterville.

[287] Since Mr. Singh was the person dealing with the paperwork, for him to have used this box to load cocaine into same and place it in the trailer, he would have had to do the following:

- i. Dealing with the paperwork and the shipper.
- ii. Remove the Recochem box from the tractor without detection by Mr. Sidhu.
- iii. Either fill Exhibit #3 with cocaine or give the box to a third party to fill with cocaine.
- iv. Either place the three boxes of cocaine at the back of Pallet 6 or act in concert discretely with someone else to do so without detection by Mr. Sidhu.
- v. Locate an alternate garbage box and surreptitiously place it with a plastic bag into the tractor without detection by Mr. Sidhu.
- vi. Ensure that Mr. Sidhu did not strap the load or check the load before they departed for Woodlake, California.
- vii. Agree with Mr. Sidhu not to seal the trailer all the way to Michigan to be able to enter the trailer without breaking a seal.

[288] I note parenthetically that not sealing the trailer would do nothing to secure the load. It only made access to the trailer easier.

[289] Not strapping the load at each point of loading put the freight at risk of shifting.

[290] The most significant evidence in this respect is photograph Exhibit 1-8. That photo depicts what the rear of the trailer would have looked like when the two accused departed Porterville. Had the three cocaine boxes been loaded in Porterville by someone other than

Mr. Sidhu or Mr. Singh, they would have been readily apparent to anyone observing the rear of the trailer at that time.

[291] The obviousness of that conclusion is even more clear if Mr. Sidhu and/or Mr. Singh or both of them had checked and/or strapped the front of pallets # 6 and #7.

[292] This is where the following evidence of Mr. Sidhu is relevant as he was clear that:

- i. He did not check the trailer while any of the pallets were being loaded.
- ii. He did not examine the trailer while it was being loaded to ensure that the pallets were loaded properly to minimize the risk of shifting.
- iii. He did not strap the load or check to ensure that the load had been strapped.

[293] Had anyone else, be it Mr. Singh or a third party, somehow managed to excrete the Recochem box from the tractor, fill it with packages of cocaine and place them at the back of pallet #6, Mr. Sidhu would have easily detected the contraband had he done any of the aforementioned tasks.

[294] He denies doing these tasks because if he admitted that, it places him in a position to either place the boxes of cocaine himself (or assist someone else) on pallet #6, or notice the cocaine if it had somehow been placed there by someone else.

[295] I have concluded that the reason Mr. Sidhu testified that he did none of those things was to distance himself, albeit illogically from the placement of the boxes of cocaine in the trailer and specifically on pallet #6.

[296] As well, from the time shipments #2 and #3 were loaded in Porterville to the time pallets 4 and 5 from shipment #4 were loaded in Woodlake, with pallets 6 and 7 closest to the back of the trailer, those two pallets were easily accessible without impediment.

[297] I reject the possibility that someone other than Mr. Sidhu hid the three boxes of cocaine onto the back of pallet #6 once pallets 1 to 5 were loaded at Woodlake.

[298] There is no evidence that the tractor was left unattended while the two accused were at Woodlake where they picked up shipment #4.

[299] Given that the tractor was never left unattended at either Porterville (shipments 2 and 3) or Woodlake (shipment 4), it would not have been possible for a third party to enter the tractor and remove the Recochem box before loading it with the packages of cocaine and placing the same with two other boxes at the back of pallet #6.

[300] The three boxes of cocaine could only have been added to the tractor without the requirement to remove or navigate any of the pallets loaded at Woodlake between the completion of the loading of shipment #3 in Porterville and the commencement of the loading of shipment #4 in Woodlake.

- [301] It is not a rational explanation to suggest that if one or more third parties placed the cocaine in the trailer, they would have brought two loaded Home Depot boxes and other loose packages of cocaine to the truck. Such a person, or persons, would then have had to find a way to remove the Recochem box from the tractor without detection by either Mr. Sidhu and/or Mr. Singh. They would then have had to load the box with cocaine and stash it on the trailer after load #3 was placed on the truck again without detection.
- [302] That suggestion is with respect, illogical and I do not consider it a rational or reasonable inference. A person or persons in that situation would have placed (or dropped) the three boxes of cocaine on the floor of the trailer on either side of Pallet #3 which was alone in the middle of the trailer.
- [303] Exhibit 1-8 accurately depicts the inference that Mr. Sidhu knew the cocaine was in the trailer. It shows the boxes of cocaine visible when the loading of Shipment #3 was complete. Had someone placed the cocaine there it would have been readily detected by either Mr. Sidhu or Mr. Singh before they departed, examined or strapped the load.
- [304] All of these factors lead me to conclude that third party agents did not place the three boxes of cocaine on the trailer without detection or awareness by either or both accused.
- [305] As well, it would have been irresponsible and therefore unlikely that third party agents would secretly place such a valuable quantity of cocaine onto Pallet #6 to have Mr. Singh and Sidhu act as blind couriers on the evidence in this case.
- [306] That unlikelihood is further compounded by the fact that the window of time to place the three boxes on pallet #6 while in the process of removing the Recochem box from the tractor was incredibly tight.
- [307] It is even more unlikely that third party agents could have placed the boxes of cocaine on the trailer after pallets 1 – 5 were loaded. That would have required someone to climb the load over pallets #1 and #2, and beside #3 and over 4 and 5 to place the three heavy boxes on pallet #6. That would have had to occur without detection by either Mr. Sidhu or Mr. Singh.
- [308] Even in the unlikely event that a third party gained access to the trailer after it was fully loaded, it is highly unlikely that such those persons would have climbed the load to place the boxes at the back of Pallet #6 when they could have been better hidden in the space behind Pallet #3.
- [309] For all of these reasons, I have concluded that it was not a rational or reasonable inference on the evidence that for a third party to have secreted the Recochem box from the tractor after pallet #6 was loaded and have placed it with the two Home Depot boxes on the trailer.

CONCLUSION

- [310] On the totality of the evidence with respect to Mr. Sidhu, I have concluded that the only rational inference to be drawn from the evidence is as follows:

1. Mr. Sidhu used a roll of tape contained in the tractor that he and Mr. Singh were driving to secure the bottom of a Recochem Wiper Fluid box made in Canada in order to reinforce said box to sufficiently hold heavier objects.
2. During that taping process, a single fingerprint of Mr. Sidhu adhered to a piece of that tape.
3. That box was then used by Mr. Sidhu (and possibly Mr. Singh and/or others) to hold several kilograms of cocaine and was placed on the back of Pallet #6 on a load of 19 pallets of citrus fruit being delivered by Mr. Sidhu and Mr. Singh from central California to Canada.

[311] I conclude, after considering all of the evidence, including dismissing Mr. Sidhu's attempts to provide an innocent explanation for the box with this fingerprint on the tape and containing cocaine being found in the sealed trailer. that the only reasonable inference is that Mr. Sidhu had knowledge of the cocaine in the trailer when he crossed the border into Canada. Therefore, I am convinced, beyond a reasonable doubt, of the guilt of Mr. Sidhu on both charges.

[312] In sum, and for the foregoing reasons, I find Sukhdeep Singh Sidhu guilty as to Counts 1 and 2 of the Indictment.

Case Against Mr. Singh

[313] From the outset, there is a significant difference in the evidence regarding Mr. Singh from Mr. Sidhu.

[314] That is, there is an absence of his fingerprint situated anywhere, including, but not limited to, the Recochem box.

[315] The Crown submits that it has still proven its case against Mr. Singh beyond a reasonable doubt.

[316] The Crown starts by asserting that absence of Mr. Singh's fingerprint is not in and of itself indicative of an absence of Mr. Singh's knowledge.

[317] While that statement may be true, it is not sufficient for the Crown to establish that the only rational inference is that Mr. Singh had knowledge of the boxes of cocaine in the trailer because of the other similarities in the evidence.

[318] In this respect, the Crown submits that the three boxes contained 31 kilograms of cocaine. Those items are not "easy to hide or transfer without being noticed". Based on this, the Crown submits that it is unlikely that Mr. Sidhu or Mr. Singh could have accomplished a transfer of the boxes of cocaine without the other noticing.

[319] The Crown submits the case of knowledge can also be made against Mr. Singh and cited a variety of factors, as follows:

1. Both Mr. Sidhu and Mr. Singh exercised direct control over the tractor and trailer from March 8, 2020 to March 17, 2020. From this level of control, knowledge can be inferred.
2. Both drivers were responsible for access to the tractor and trailer.
3. Both were responsible for the contents of the load up to the point the trailer was sealed.
4. Both would have had responsibility for ensuring the citrus fruit being loaded matched the invoices Mr. Singh signed for at each location of the shipper.
5. They were together in California from March 12, 2020 to March 14, 2020 when they began loading for the return trip. This time gave them ample opportunity to meet and pick up the cocaine.
6. It is highly unlikely, if not impossible, on an evaluation of the evidence to conclude there was a reasonable likelihood that a third party placed the cocaine on the trailer.
7. There were other boxes available in the tractor available to be used by either Mr. Singh and/or Mr. Sidhu, including an empty box from the outbound shipment of the frozen baked goods.
8. Given that there were over 30 kilograms of cocaine in three boxes, it is unlikely they could have been hidden or transferred by Mr. Sidhu to the trailer without detection.
9. Throughout the entire journey from the evening of March 8, 2020 to March 17, 2020, Mr. Sidhu and Mr. Singh were constantly together – other than brief periods when they were stopped and were either showering or using the washroom.
10. Neither Mr. Sidhu or Mr. Singh recorded the seal number on the paperwork. Neither of them notified anyone of the seal number.
11. They both had access to the steel cutter in the tractor.
12. They both had access to the Recochem box in the tractor.
13. They both had access to the tape used on the Recochem box that contained Mr. Sidhu's fingerprint.
14. Had the cocaine been loaded onto Pallet #6 while the trailer was being loaded at Porterville, it would have been visible to both Mr. Sidhu (as already addressed) or Mr. Singh.

[320] Based on all of this evidence, the Crown submits that the court can infer that the only reasonable conclusion is that Mr. Singh was also aware that there was cocaine in the trailer.

[321] With respect, I disagree.

[322] I cannot conclude that the only reasonable conclusion is that they both acted in concert and the only reasonable inference is that Mr. Singh also knew that there was cocaine on the trailer a I have concluded with respect to Mr. Sidhu. That is:

1. Is it possible or likely that Mr. Singh was aware? Yes.
2. Is it probable that Mr. Singh was aware? Yes.
3. On the totality of the evidence, is there evidence that could reasonably support an inference of guilt as prescribed in *Villoraman*? Yes.

[323] It is clear on the evidence that Mr. Singh was the person who dealt with the shippers because of his superior English skills. That is borne out not only by the testimony of Mr. Sidhu, but the fact that only Mr. Singh's signature was on any of the various shipping papers. Accordingly, it is possible that given Mr. Singh was away from the truck at the various pick-up points, Mr. Sidhu could have placed the cocaine on the pallet #6 of the load without the knowledge of Mr. Singh or otherwise given some to a third party.

[324] In this respect, I return to the cross-examination of Mr. Sidhu by Mr. Marley where he established the following:

- i. Mr. Singh had superior English skills.
- ii. As a result, Mr. Singh dealt with all border officials and those persons working at the shipping and receiving locations.
- iii. When the citrus shipments were being loaded, Mr. Singh was inside dealing with the paperwork.
- iv. He himself (Mr. Sidhu) remained either in the tractor or near the trailer by himself.

[325] To be clear, I am not saying that this happened. Rather I have simply concluded that on the totality of the evidence that Mr. Singh acted in conjunction with Mr. Sidhu is not the only reasonable inference I can make as prescribed in *Villoraman*.

[326] That is the measure that the Supreme Court of Canada has placed on me as the trier of fact in a circumstantial case such as this.

[327] For that reason, both charges as against Mr. Singh are dismissed.

[328] Mr. Sidhu, please stand:

1. I find you guilty of unlawfully importing cocaine into Canada contrary to s. 6(1) of the *Controlled Drugs and Substances Act*.
2. I also find you guilty of possession of cocaine for the purposes of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*.

[329] Mr. Singh, please stand:

1. The two counts against you are dismissed.



George W. King
Justice

Released orally: October 17, 2024

Released in writing: November 24, 2024

CITATION: R. v. Sidhu and Singh, 2024 ONSC 6545
COURT FILE NO.: CR-21-5309

ONTARIO

SUPERIOR COURT OF JUSTICE

HIS MAJESTY THE KING

– and –

Sukhdeep Singh Sidhu and Inderjeet Singh

REASONS FOR JUDGMENT

King J.

Released Orally: October 17, 2024

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