

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. LeBlanc*, 2019 NSSC 43

Date: 2019-02-08

Docket: CRAT No. 475651

Registry: Antigonish

Between:

Her Majesty the Queen

v.

Coty Weston Warren LeBlanc, Michael Charles Benoit

Judge: The Honourable Justice Peter P. Rosinski

Heard: September 10, October 9, 2018, January 7, and 11, 2019, in Antigonish, Nova Scotia

Counsel: Wayne MacMillan for the Crown
Colin Strapps for Coty LeBlanc
Daniel MacIsaac for Michael Benoit

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Judge: The Honourable Justice Peter P. Rosinski

Heard: September 10, October 9, 2018, January 7 and 11, 2019, in Halifax, Nova Scotia

Written Decision: February 8, 2019

Subject: Possession for the purpose of trafficking cocaine - Section 5(2) CDSA.

Summary: Mr. Benoit is the father of Jayda Benoit, who is the domestic partner of Mr. LeBlanc. In the summer and fall of 2017 they all lived together in a small apartment having two bedrooms and a nursery room. Pursuant to a search warrant police found the apartment awash in mid-level drug trafficking materials, several safes containing thousands of dollars each, and nine

chunks, totaling 210 grams of cocaine. Mr. Benoit and LeBlanc were charged with possession of cocaine for the purpose of trafficking.

Issues: Has the Crown prove beyond a reasonable doubt that one or both of them are guilty as charged?

Result: Both found guilty as charged.

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By the Court:

Introduction

[1] Messrs. LeBlanc and Benoit are jointly charged that they on or about November 4, 2017, at or near Antigonish, Nova Scotia, did possess a substance included in Schedule I, to wit, cocaine, for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act (CDSA)*.

[2] I find them both guilty as charged. These are my reasons.

The search

[3] Since June, and specifically on November 4, 2017, Messrs. LeBlanc and Benoit occupied the downstairs apartment at 162 Hawthorne Street, Antigonish Nova Scotia. The only other person habitually resident there was Jayda Benoit. She is Mr. Benoit's adult daughter and the domestic partner of Mr. LeBlanc. She was pregnant with their child, and gave birth on December 24, 2017.

[4] A warrant to search those premises was issued, and according to its terms permitted the RCMP Antigonish Detachment members to enter and search the residence for evidence of trafficking in cocaine.¹

[5] At 8:20 p.m. on November 4, 2017, officers entered those premises and conducted a search. Only Mr. Benoit and his son Keegan were home. Mr. LeBlanc and Jayda Benoit were located in New Glasgow, Nova Scotia exiting the Highland Square Mall at approximately 9:00 p.m., when Mr. LeBlanc was arrested for trafficking in cocaine.

[6] Cpl. David Lane was qualified as an expert "in cocaine for the following areas: methods used to avoid police detection, trafficking methods, drug distribution chain, drug hierarchy, pricing, packaging, jargon, cash currency obtained in the drug trade, drug drops, drug houses, drug runners, stash houses, locations for drug deals and packaging methods". Unless I state otherwise, I accept his opinion evidence herein. In summary, he concluded, based on his review of the premises, and the contents of the premises, including what items were found and where, (without considering the statements of Mr. Benoit and LeBlanc), that they

¹ A helpful summary of some of the applicable principles regarding "possession" can be found in Chief Judge Williams decision *R. v. Roberts and Williams*, 2018 NSPC 54.

are consistent with a mid-level cocaine trafficking operation, with a component of street level sales. I agree this has been established beyond a reasonable doubt.

Mr. Benoit's bedroom

[7] The search revealed, *inter alia*, unground or hard cocaine weighing 210 grams (Exhibit 18). Its estimated street value was \$16,800-\$21,000. A cutting agent (likely benzocaine) had also been found at the premises.² Benzocaine had been mixed with cocaine (according to the Certificate of Analyst Exhibit 18 B), resulting in a total weight of 210 grams.

[8] The cocaine was found in 9 green baggies (Exhibit 17) inside a plastic shopping bag which was in a lockbox (which was not made an exhibit) on the floor beside the bed in Mr. Benoit's bedroom (photo 4) in the so-called "bedroom number 1" shown in the sketch Exhibit 29 (see also photo 18).³

[9] Separately found in the lockbox were: a debt list or customer list reference of what I am satisfied were cocaine sales, with dollar amounts thereon approximating \$2800 (Exhibit 20); eight \$20 bills totaling \$160 (shown in photo 20).

[10] A digital scale was also found on the dresser in his room (Exhibit 4 – photo 1) which tested positive for cocaine and tetrahydrocannabinol (Exhibit 28); a second digital scale was found on the floor near the closet (Exhibit 6) which also tested positive for cocaine and tetrahydrocannabinol (Exhibit 28).

[11] A second safe was found on a chair in his bedroom (not introduced into evidence – but see photo 5). Mr. Benoit testified without elaboration that it had been "left by somebody".

[12] A number of baggies were also found in his bedroom dresser (photo 3).

[13] 24 pink pills found inside a safe on the floor in bedroom number 1 (Exhibit 19; photo 18) which were analysed to be clonazepam (Exhibit 19B).

²In Mr. LeBlanc's bedroom, three bags of similar white powder were found: Exhibits 9, 15 and 33. The first two were found about the desk in Mr. LeBlanc's room; the third was found in the safe by the bed and analysed – it is benzocaine and acetaminophen.

³The same kind of baggies are visible in the dresser drawer in Mr. Benoit's bedroom (photo 3), and in the heavy duty safe beside the bed in Mr. LeBlanc's bedroom (see photo 17, and ones with dollar amounts written thereon – Exhibit 23 and photo 21).

Coty LeBlanc and Jayda's Benoit's bedroom and the nursery

[14] In the remaining so-called “bedroom number 2” and nursery room, which I am satisfied are properly characterized as primarily occupied by and under the control of Mr. LeBlanc and Jayda Benoit, the following were found:

1. A Sentry safe lockable metal box (photo 6) located in the crib in the nursery containing \$2445 cash (Exhibit 7) and a paper with handwritten references to dollar amounts thereon, (Exhibit 7B; photo 13);
2. A Sentry safe lockable metal box located under the bed in bedroom number 2 (Exhibit 11; photo 16) containing \$2383.10 cash (Exhibit 31) and an accounting, with dollar references thereon entitled “Jayda’s money” (which interestingly has a starting balance of \$1775, at one point an interim balance of \$1775, and an ending balance of \$1775);
3. An operational digital scale (Exhibit 8; photo 14) seized from the desk. The scale had residue of cocaine, tetrahydrocannabinol and cannabinal thereon (Exhibit 28);
4. A so-called “cutting agent” in a Ziploc bag (Exhibit 9; photo 8) seized from the desk;
5. Four plastic dime bags (Exhibit 10) seized from the desk;
6. Empty baggies with white powder residue which was not analysed (Exhibit 14) seized from the third dresser drawer;
7. A 6-gram baggie containing white powdered substance which was not analysed located on the desk (Exhibit 15; photo 12);
8. A heavy duty Sentry safe lockable metal box (photos 9 and 17) seen beside the bed containing plastic baggies having dollar amounts written on them such as “\$2255 [and] \$5375”, \$1300 and “only \$1300”, and “H” \$270 (Exhibit 23; photo 21) - as well as unmarked clear sandwich bags (Exhibit 25) and one baggie containing white powder (Exhibit 33; photo 22) which was analysed and found to be benzocaine and acetaminophen (Exhibit 33 A). Also found in that safe were an envelope addressed from Coty LeBlanc to Jayda Benoit while she was living in Stellarton, Nova Scotia (Exhibit 24; photo 23) ; and a key ring (photo 25, with the tag “my dad my hero” attached to what

appear to be two lockbox keys, and a larger (possibly a residence) key.

The police statements of Messrs. LeBlanc and Benoit

[15] Both Messrs. LeBlanc and Benoit gave videotaped statements to the police. These were both found to be properly admissible in evidence.

*Mr. LeBlanc's statement*⁴

[16] He confirms, which the evidence otherwise overwhelmingly establishes, that he lives at 162 Hawthorne Street with Jayda Benoit and Mr. Benoit; and that they have been living there together since the time of Jayda's birthday on June 3, 2017. He also states that Liam Benoit, Keegan Benoit's younger brother lived there during the summer until approximately October 1, 2017.

[17] He says that the (\$2445) cash from the lockbox in the crib "would be mine" (page 95(8) preliminary inquiry transcript). He goes on to say of the other two safes in his bedroom, "one is Jayda's and one we just bought it in case we needed an actual [inaudible]... safe purposes" (page 95(12) preliminary inquiry transcript).

[18] He also stated:

Question... But it still doesn't explain the volume of cash. Yeah... I never like never ever had her keys, I never go in her safes,... So I don't really know what's going on... I mean for myself, I know that I've always been good to save money... like if I was to ballpark it, I would say like maybe a little over 500 [dollars in total that he would have saved]" at pages 95(1) and 96 – 98, preliminary inquiry transcript.

[19] He was asked:

[... If we searched your bedroom would we find any cocaine in your bedroom?] there was none in mine... [Would we find any cocaine?] Well, that's what I can't – no I can't tell that, you know the big [inaudible] of the room, but I know that I did not place any quantity of coke in -within my bedroom. I can say that." (at page 107 preliminary inquiry transcript).

[20] He is asked:

Question – So it seems to me like you are casting the blame on other people that live in the apartment and you're trying to say you had no idea that this was happening like I – that's what I'm gleaning from what you told me here today.

⁴I appreciate that the contents thereof are only evidence as against Mr. LeBlanc, since he did not testify and adopt any portion thereof.

And that you were late in the game to even becoming aware that this was happening under your own roof, is a fair estimation of what you told me so far?

Answer – well, to a degree, yes, I ...

(Page 116 – preliminary inquiry transcript).

[21] He admits that he quit working approximately a month ago (October 4, 2017) and that he had been working at the Dairy Queen full time since around the time of his release from parole in early April 2017, and was recently living off money he had saved [\$1500 approximately] and money his aunt and mother gave him– and he was on social assistance as well (pages 88 – 90 preliminary inquiry transcript). He says that Jayda is on social assistance (pages 92 and 178 preliminary inquiry transcript), which I accept.⁵

[22] In summary, overall his statement is exculpatory, and he tends to suggest that any drugs in the premises were not his. I generally reject the exculpatory aspects of his statement, which are self-serving, evasive, and not credible given all the physical evidence found, and the credible evidence that I accept from other sources. I conclude his statement, even when considered in combination with the other evidence presented, and the absence of evidence, does not raise a reasonable doubt in my mind that he is guilty as charged.⁶

Mr. Benoit's statement

[23] To be clear, I recognize that Mr. Benoit's statement is only capable of being evidence as against him, and not against Mr. LeBlanc, unless Mr. Benoit adopts any portion thereof as his testimony at trial.

[24] He admits to consuming perhaps 2 grams of cocaine per month (pages 238 (10) and 225(7) preliminary inquiry-transcript). He claims he did not sell cocaine or know anything specifically about Mr. LeBlanc's selling of cocaine, although he did generally know Mr. LeBlanc was selling cocaine (page 239(10) preliminary inquiry transcript).

[25] He said he's only known about Mr. LeBlanc's trafficking for sure in "the last three weeks" (pages 226(18)-227(6) preliminary inquiry transcript).

⁵ Mr. Benoit confirms this in his statement, p. 229(1) – preliminary inquiry transcript.

⁶ However, I do accept some of his statements - for example, I accept his evidence that Mr. Benoit did not have a cell phone, but that he and Jayda both did (pages 202(10)- 203 (12) preliminary inquiry transcript).

[26] However, he concedes that a search upon his arrest revealed that he had 2 grams of cocaine in a baggy in his shirt pocket. He suggests that it had been given to him by Mr. LeBlanc (page 238(6) preliminary inquiry transcript). Below, I note that I accept his testimony in this respect.⁷

[27] He claims that when the police opened his safe, was the first time he had ever seen cocaine in the apartment (page 246(12) preliminary inquiry transcript). He says that Jayda asked for the key and accessed the safe herself, so he was not aware what she placed in the safe on November 4, 2017 – pages 230(10) – 234(12) preliminary inquiry transcript.

Mr. Benoit's testimony⁸

[28] Mr. Benoit is 50 years old, and presently lives with his son Keegan in Antigonish.

[29] He testified that he lived at 162 Hawthorne Street continuously with his daughter Jayda, and Mr. LeBlanc since the first week of June until at least November 4, 2017. He paid approximately half the rent. His own income was limited to a disability pension of approximate \$1300 per month. For the year preceding June 2017, he had lived with his daughter Jayda in the New Glasgow/Stellarton area. Mr. LeBlanc was released on parole in April 2017. Mr. LeBlanc worked at the Dairy Queen for approximately three months in total between June and November 2017. The only persons living at 162 Hawthorne Street were Mr. Benoit, his daughter and Mr. LeBlanc. At all material times, Keegan Benoit lived with his mother Suzanne Benoit elsewhere in Antigonish.

[30] *Regarding the cocaine that was found in the safe in his bedroom, he says it belongs to Mr. LeBlanc, and that it was given to him when Jayda and Coty went to New Glasgow on November 4, 2017 shortly before the police raid that day. He says that, of the items found in his safe by the police, only the methadone was his.*

⁷ Although I reference the preliminary inquiry transcript for convenience, I appreciate that the best evidence is the videotaped statements of Mr. Benoit and Mr. LeBlanc.

⁸ Mr. Benoit's status as an accused herein may entail him having an interest in shifting any responsibility for criminal liability exclusively to Mr. LeBlanc, so that he is not convicted-e.g. see Justice Watt's comments in *R. v. Vassel*, 2018 ONCA 721 at paras.157-161. In the case at Bar, I find this is something to keep in mind, but overall it is "an unhelpful factor" to consider in the assessment of the evidence.

[31] During the search of the residence, he was found by police to have a small bag containing perhaps 2 grams of cocaine in it on his person which he said in his statement Mr. LeBlanc “gave me”

[32] He says that he received the safe in his bedroom (on the floor) from Jayda and Mr. LeBlanc in September 2017, because they were not using it, and Mr. Benoit thought he could use it to lock up his methadone medication.⁹

[33] He testified that, on November 3, 2017, the only item in that safe was his medication, and on November 4, 2017, as Jayda and Mr. LeBlanc were headed to New Glasgow to do some shopping, *while he was in the bathroom he was asked by Jayda, if he could place a yellow plastic shopping bag with contents in the safe in his room until they returned.* She passed him the bag, he accepted it, and placed it into his lockbox without examining its contents.

[34] Although he suggested in his testimony that the bag which he did not open “might’ve been marijuana”, he did concede in cross-examination that he knew “they were dealing drugs” and that he “possibly” turned a blind eye to the fact that there was cocaine in the bag since he had acknowledged that he knew Coty was trafficking in cocaine. He took the bag from his daughter because he wanted to “reduce her stress” given the state of her pregnancy.

[35] He also conceded in cross-examination that when he put the bag into the safe, the other items discovered there by the police on November 4, 2017, including the money, the debt list, and the clonazepam pills, *were already in there.* He claimed those pills were Jayda’s, and they had been put in there within the last 24 hours. He also testified without further elaboration that the safe shown in photo 5 found on the chair in his bedroom, had been “left by somebody”. Nor did he offer an explanation for the presence of the \$160 cash and the “scoresheet” also found therein by police.

[36] I accept his testimony that he was well aware that Mr. LeBlanc was trafficking cocaine while they were living together, and since as early as a month after they moved in together. He testified that some days as many as 20 people

⁹The safes identified as exhibits 7 and 11, found in the nursery and Mr. LeBlanc’s bedroom appear identical to each other – however, the heavy duty safe beside the bed in Mr. LeBlanc’s bedroom seen in photos 9 and 17 appears identical to the one on the floor in Mr. Benoit’s bedroom, shown in photo 4, which was not entered into evidence. In his statement Mr. Benoit admits he had the key for the safe in his room in his pocket, which I accept. However, he also incredibly claimed: “but I didn’t know this big bag [the yellow shopping bag containing the cocaine] was in there.” – Page 231 preliminary inquiry transcript. Only in his testimony did he admit that he knew the yellow plastic shopping bag was in his safe, and that he had placed it there.

came for drugs, which transactions took place behind closed doors. He also claims that Mr. LeBlanc was in his bedroom “many times... for drug dealings”, and that he allowed this in order to reduce his daughter’s stress level because she was expecting a baby. I do not accept this testimony – there is no credible evidence to support this other than his self-serving testimony – moreover there is no reason why Mr. LeBlanc would be hiding his drug trafficking from Jayda. She was aware of his record for trafficking in cocaine and shared the rooms in which drugs, drug paraphernalia, and drugs sales money were found. The safe beside their bed contained a key ring which I am satisfied was hers – “my dad my hero”.¹⁰ I accept the credible evidence presented to the effect that continuous drug transactions took place between Mr. LeBlanc and customers in the apartment from not long after they moved to the apartment at 162 Hawthorne Street. I do accept Mr. Benoit’s testimony that it was Jayda who handed him the yellow plastic shopping bag containing the 210 grams of cocaine, as *they* were intending to leave the apartment for New Glasgow. They trusted Mr. Benoit to keep safe the 210 grams of cocaine.

[37] He agreed that the apartment was so small (estimated by Cpl. Meisner to be 900 ft.² in total) that each of the occupants were well aware of the other occupants’ rooms and contents – “I could come and go as I please”.

[38] He suggested that he only used marijuana. However, he conceded in cross-examination that he did have a small cocaine baggie on his person when he was arrested, and that he “did use a bit of cocaine” in spite of medical advice he was given that cocaine and methadone should not be mixed. He said he had only started using cocaine since his daughter met Mr. LeBlanc. I accept Mr. Benoit’s evidence that he used only minimal amounts of cocaine, and occasionally. However, I generally reject the exculpatory portions of his statement and testimony, which are self-serving, evasive, and not credible given all the physical evidence found, and the credible evidence that I accept. I conclude his statement, even when considered in combination with the other evidence presented, including his testimony, and the absence of evidence, does not raise a reasonable doubt in my mind that he is guilty as charged.

Keegan Benoit’s testimony

[39] He is 23 years of age, unemployed, and lives with his father, Michael Benoit.

¹⁰ It also contained cocaine trafficking related items – see photos 9, 17, 21 and 22.

[40] When asked the general question in direct examination, what does he know of the circumstances on November 4, 2017 at 162 Hawthorne Street?, he responded spontaneously that he was in the apartment “when it happened”. He immediately thereafter elaborates that he had been hanging out for a while with his father, when at approximately 3:40 PM Jayda, Mr. LeBlanc and his younger brother Liam were on their way out of the apartment to go shopping in New Glasgow. Jayda through the closed door asked Mr. Benoit, who was in the bathroom, to take a small yellow shopping bag with contents which was “double knotted” at the top so that the contents could not be seen.¹¹ The door opened briefly, and she passed the shopping bag to Mr. Benoit.

[41] Once the police arrived to conduct the search, he was asked to leave the premises, and did so.

[42] In cross-examination by the Crown, he conceded that he regularly went there to visit his dad, particularly in the month before November 4, 2017.

[43] He agreed that he had free rein to walk about the place, and did so, although they spent most of their time on the couch in the living room. His visits were usually for one and a half to two hours each time.

[44] He testified that very frequently when visiting, he did see unusual numbers of people come by for short visits. He did not really see what those people were doing, as it was none of his business, and they would generally visit with Mr. LeBlanc behind closed doors. He says he never recalled anyone going into his father’s room. He considered it “none of my business”, although he conceded that he had to assume there was drug trafficking taking place because there was no other reason for such a large number of people coming in and out of the premises for short visits. He confirmed some of the people were friends of his who might’ve stayed longer to hang out with him while he was there. I accept this testimony.

[45] Although he did notice an unusual number of safe boxes in the apartment, he never saw their contents. He claims he did not see any drug paraphernalia (such as digital scales) in the apartment nor did he see anyone using drugs in the apartment.

[46] He suggested that Mr. LeBlanc, Jayda and Liam (who is presently 16 years old) left for New Glasgow about 45 minutes before the police raid (which reliable police evidence suggests commenced at 8:20 p.m. until approximately 10:00 p.m.).

¹¹I question his credibility in this respect. There was no reason to have taken special note of the details of knotting of the bag, or whether its contents could be seen.

[47] In cross-examination, he elaborated that his sister Jayda specifically asked her father to hurry-up, and take a bag and put it into his safe until they got back from New Glasgow.

[48] Mr. Strapps, on behalf of Mr. LeBlanc, also cross-examined him.

[49] He confirmed to him that it was Jayda who asked Mr. Benoit to take the yellow shopping bag from her while he was in the bathroom, to his bedroom and place it in his safe.¹²

[50] He also elicited from Keegan that in the last 2 to 3 days before he testified, he had been speaking to his sister on Facebook messenger, and that when she inquired about what he would be saying to the court, Keegan had lied to her about what his intended testimony was going to be. He did not tell her that he would have to implicate her. However, he was an emphatic that what he had said in court was “100% true”. He claimed he was having a severe anxiety attack when he was messaging Jayda, and did not want to tell her that he would be implicating her in his testimony.

[51] In response to my questions, he confirmed that his brother Liam had only come to the residence 15 to 20 minutes before Jayda, Mr. LeBlanc and Liam left for New Glasgow; and that Exhibit 29 was an accurate diagram.

[52] Overall, I generally found his testimony to be credible.

The expert opinion evidence of Cpl. David Lane

[53] Cpl. Lane was qualified “in cocaine for the following areas: methods used to avoid police detection, trafficking methods, drug distribution chain, drug hierarchy, pricing, packaging, jargon, cash currency obtained in the drug trade, drug drops, drug houses, drug runners, stash houses, locations for drug deals and packaging methods.”

[54] In his opinion, based on a review of the premises, and the contents of the premises, including what items were found and where, (without considering the statements of Mr. Benoit and LeBlanc), they are consistent with a mid-level

¹² While I have considered the role played by Jayda in this trafficking enterprise, I am satisfied she likely was also involved, but given her pregnancy, and the lack of evidence, *inter alia*, that she directly participated in sales transactions, her involvement does not create a reasonable doubt that Messrs. Benoit and LeBlanc were also involved, and more specifically that Mr. LeBlanc was the leader.

cocaine trafficking operation, with a component of street level sales. I agree this has been established beyond a reasonable doubt.

[55] He bases his opinion that this is a mid-level trafficker situation, *inter alia*, on the following:

1. Possession of an amount of cocaine between 100 to 200 grams (street value of \$16,800-\$21,000);
2. The overall large amount of cash (over \$5000);
3. That the cash was maintained in multiple cash boxes, and in a retail-like manner – see photos 13 and 16; and that it was bundled (in his opinion) in a way characterizing its source or intended use – for repurchase of more drugs;
4. That the bills included large numbers of \$20 and \$50 bills (the latter of which are not common in street level trafficking);
5. The number of digital scales found (three of which were tested and revealed trace residue of tetrahydrocannabinol and cocaine);
6. The size of baggies – the size of baggie tends to match the amount of drugs being sold in each baggie, and therefore larger bags suggest use by mid-level traffickers, while small bags suggest use by street-level traffickers – and in this case we see both;
7. The cocaine seized is in larger chunks, and there is a presence of cutting agent or benzocaine/acetaminophen in the premises;
8. The sheer number of baggies found, and being found near drugs;
9. The dollar amounts handwritten on plastic baggies (\$2255 and \$5375, \$1300, \$270) shown in photo 21/Exhibit 23;
10. The size of the chunks seen in photo 19 would not be sold by street level traffickers to customers, but rather by mid-level traffickers to street-level traffickers;
11. The sheer number of lockboxes and safes found, for persons who have limited incomes (Mr. Benoit on disability pension; Jayda and Mr. LeBlanc on social assistance);
12. The presence of (what I infer more likely than not are) multiple bags of powdered benzocaine;

13. The presence of what could be “score sheets” - which may also be customer lists and amounts as well as overall sales amounts – see Exhibits 7B, 11 B and 20;
14. In relation to Exhibit 20, he finds this particularly to be consistent with a sales/debt list of a trafficker and notes that several of the apparent sales involving 3.5, 7, 7.5, 10 and 12.5 g amounts are all greater than expected for personal-use situation (which are usually in the amounts of .5 to 1 g per transaction – bearing in mind that the retail street-level sale prices would be from \$80-\$100 per gram).

[56] He suggested the greater number of factors consistent with trafficking, and mid-level trafficking, the greater the likelihood that premises are being used to traffic cocaine in those suggested scenarios.

[57] I accept his opinion. The constellation of drug trafficking indicia, which I am satisfied have persisted in these small premises for at least one month before November 4, 2017, satisfies me that the entire premises were being used to traffic cocaine, and all the residents, namely Mr. Benoit, Mr. LeBlanc and Jayda Benoit, were knowingly involved in the trafficking enterprise.

Why I conclude that both Messrs. Benoit and LeBlanc are guilty as charged

[58] There is no direct evidence of trafficking in cocaine, such as actual transactions. Keegan Benoit corroborates salient portions of Mr. Benoit’s testimony vis-à-vis Mr. LeBlanc. While Mr. Benoit says he “knew” that Mr. LeBlanc was trafficking in cocaine, and I accept that he was accurate in this observation, he provided no specific individual transaction details. Therefore, effectively I am being asked to infer that Messrs. Benoit and LeBlanc were knowingly in possession of cocaine, for the purpose of trafficking cocaine.¹³ Consequently, I must consider the legal principles governing whether there is proof beyond a reasonable doubt of the essential elements in relation to each of Messrs. Benoit and LeBlanc, particularly whether they were in possession of cocaine for the purpose of trafficking.

¹³ I also bear in mind that the definition of “traffic” in Section 2 of the *Controlled Drugs and Substances Act*, includes :(a) “to sell, administer, give, transfer, transport, send or deliver the substance... or to offer to do anything mentioned in paragraph (a)...”.

[59] I am satisfied beyond a reasonable doubt that Messrs. Benoit and LeBlanc were both in possession of 210 grams of cocaine. Were they also in possession thereof for the purpose of trafficking? Yes, they were.

[60] I recently considered these principles in *R. v. Murphy*, 2018 NSSC 310:

31 Having made these preliminary factual findings, I will go on to assess whether in all the circumstances there is proof beyond a reasonable doubt that Mr. Murphy had possession of the crack cocaine for the purpose of trafficking. I do not have direct evidence regarding that essential element of the possession for the purpose of trafficking offence. Therefore, I must examine the indirect or circumstantial evidence in the case.

32 Justice Cromwell has recently canvassed the jurisprudence on circumstantial evidence, and synthesized its principles in *R. v. Villaroman*, 2016 SCC 33.

33 These are helpfully summarized recently in *R. v. Delege*, 2018 BCCA 200 by Justice Newbury:

28 In *Villaroman*, the Supreme Court of Canada emphasized that it was for the trial judge to decide whether the evidence against the appellant in that case, considered in light of human experience and the evidence as a whole (including the absence of evidence), excluded all reasonable inferences other than guilt. It was not for the Court of Appeal to raise "purely speculative possibilities" in order to fill in "gaps" in the Crown's evidence. (At paras. 69 -- 70.) As we stated in *Robinson*:

In circumstantial cases, *as in non-circumstantial cases*, the appellate court may not interfere if the verdict is one that a properly instructed jury could reasonably have rendered. (*Yebe*, at 186.) It is generally the task of the finder of fact to draw the line between reasonable doubt and speculation. (*Villaroman*, at para. 71.) It is not open to a court of appeal to conceive of inferences or explanations that are not reasonable possibilities; nor to attempt to revive evidence or inferences that the trial judge reasonably rejected... If an appellant is to succeed, an inference other than guilt must be "reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense." (*Villaroman*, at para. 36.) [*Robinson*, at para. 38; emphasis by underlining added.]

In *Robinson*, the appellant had raised other possibilities to explain his conduct, but the trial judge did not accept his explanation of discrepancies between his testimony and other evidence, including video evidence. Similarly, in *R. v. Grover*, 2007 SCC 51, the trial judge had rejected the accused's testimony. The Supreme Court of Canada agreed with the Court of Appeal that it was not open to "acquit the respondent on the basis of speculation about a possible

explanation of his conduct that was flatly contradicted by his own testimony." (At para. 3.)

29 In the case at bar, the appellant did not testify. However, the trial judge did consider "other possibilities" consistent with innocence. He found them to be highly unlikely at best. Considering the whole of the evidence, he then concluded that the Crown had proven that the appellant had assisted in the establishment of the grow operation, in possession of the marihuana for purposes of trafficking, and in the theft of the electricity. The question for us on the appeal is whether the trial judge, acting judicially, could reasonably be satisfied that the appellant's guilt was the only reasonable inference available on the totality of the evidence. In my view, while this case is close to the line, it does not meet the standard for an unreasonable verdict. Applying *Villaroman*, it cannot be said that the trial judge's conclusion, assessed logically and "in light of human experience", was one that a properly instructed jury could not reasonably have rendered on the whole of the evidence.

34 Counsel for Mr. Murphy implores the Court that although the circumstances here may make his client superficially look like a street-level crack cocaine trafficker, I must find him not guilty because although superficially the whole of the evidence may be consistent with guilt, it is not also inconsistent with any other (innocent) conclusion.

35 To decide this issue, reference is best had to Justice Cromwell's own words in *Villaroman*:

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

...

...a reasonable doubt "is a doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence": para. 30 (emphasis added). A certain gap in the evidence may result in inferences other than guilt. *But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.*

...

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

...

I agree with the appellant that the Crown thus may need to negative these *reasonable* possibilities, but certainly does not need to "negative every

possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

38 Of course, the line between a "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

39 I have found two particularly useful statements of this principle.

40 The first is from an old Australian case, *Martin v. Osborne* (1936), 55 C.L.R. 367 (H.C.), at p. 375:

In the inculcation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed. [Emphasis added.]

41 While this language is not appropriate for a jury instruction, I find the idea expressed in this passage - that to justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative - a helpful way of describing the line between plausible theories and speculation.

42 The second is from *R. v. Dipnarine*, 2014 ABCA 328, 584 A.R. 138, at paras. 22 and 24-25. The court stated that "**[c]ircumstantial evidence does not have to totally exclude other conceivable inferences"; that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.**

43 Where the line is to be drawn between speculation and reasonable inferences in a particular case cannot be described with greater clarity than it is in these passages.

36 I bear in mind that not all possible indicia of possession for the purpose of trafficking are present in the circumstances. For example, there is no direct evidence of actual drug transactions involving Mr. Murphy.

37 Nevertheless, I am satisfied beyond a reasonable doubt that he had possession of this crack cocaine for the purpose of trafficking. Regarding the line between speculation and reasonable inferences, I conclude that while there is circumstantial evidence that could support an inference that Mr. Murphy was a crack cocaine user, when Mr. Murphy suggests that the evidence is consistent with his having possession of these 17 chunks of crack cocaine not for the purpose of trafficking, although they are of weights commonly expected for that

purpose, packaged and located on his person as "ready for sale" on a "handoff" based transaction, and a "scoresheet" is also found on his person, his is not a reasonable inference; and I can think of no other reasonably possible inference based on the evidence, or the absence of evidence, other than guilt.

[My emphasis added]

Conclusion

[61] On the whole of the evidence that I accept, and bearing in mind the absence of evidence, I am satisfied beyond a reasonable doubt that on November 4, 2017 at 162 Hawthorne Street, Antigonish, Nova Scotia, Messrs. Benoit and LeBlanc knowingly were in possession of cocaine, for the purpose of trafficking in cocaine.¹⁴

[62] I am so satisfied in relation to both Messrs. LeBlanc and Benoit as principal offenders.

[63] Mr. Benoit's counsel suggested that *if* he was guilty of possession of cocaine, it was not for the purpose of trafficking; and at most he could be seen to be a party to (aiding or abetting) Mr. LeBlanc in trafficking cocaine by merely knowingly accepting and storing safely the cocaine in his own safe.

[64] By his own admission, in taking the 210 grams of cocaine for safekeeping Mr. Benoit could be properly found a party to Mr. LeBlanc's trafficking in cocaine. Beyond that however, the search of Mr. Benoit's bedroom and the other credible evidence drives my conclusion that the Crown has proven, beyond a reasonable doubt, that he had possession of cocaine for the purpose of trafficking as a principal.

[65] *Inter alia*, Mr. Benoit was entrusted by Jayda and Mr. LeBlanc with approximately \$20,000 in cocaine. Given the short interval that they were going to be absent, and the facts that they had their own identical heavy duty safe in which to store the cocaine, and that they did not give him any of the nearly \$5000 in cash to put in his safe, suggests the transfer to him was more than merely for safekeeping. Beyond that, and more cogently, the digital scales found on the dresser in his room (Exhibit 4) and a second one found on the floor near the closet

¹⁴To be clear, I have considered and applied the court's comments regarding "reasonable doubt" as set out in *R. v. D.W.*, [1991] 1 SCR 742, and its progeny, in relation to my analysis of the charges against both Messrs. Benoit and LeBlanc.

(Exhibit 6) *both* tested positive for cocaine and tetrahydrocannabinol.¹⁵ The 210 grams of cocaine was found in nine green (at the top) baggies – identical to those visible in Mr. Benoit’s dresser drawer (photo 3) and to those found in the heavy duty safe in Mr. LeBlanc’s bedroom, containing handwritten amounts thereon of “\$2255 and \$5375” and \$1300 and \$270 (Exhibits 23,25/photos 9,17, 21 and 22). Also present in his own safe, was what I am satisfied was a sales/debt “scoresheet”, which Mr. Benoit did not credibly suggest was written by, or put there, by anyone else. Nor did he credibly disavow the presence of the second safe found on the chair in his bedroom.

[66] In his statement, Mr. LeBlanc admitted the \$2445 cash in the nursery crib safe was his – that is an amount similar to those written on the baggies in the safe beside his bed. He offered no credible evidence to account for such a large amount of “savings” – in his statement he suggested he might have saved \$500. Benzocaine, baggies, cash, and cocaine residue on digital scales were found scattered around Mr. LeBlanc’s bedroom.

[67] I am satisfied that Mr. LeBlanc was the driving force behind the cocaine trafficking operation, and that Mr. Benoit played a lesser role.¹⁶

[68] In short, I am satisfied beyond a reasonable doubt that both Messrs. Benoit and LeBlanc had possession of the 210 grams of cocaine, for the purpose of trafficking. I find there is no other reasonably possible inference based on the evidence I accept, or the absence of evidence, other than guilt.

¹⁵ The operational digital scale (Exhibit 8; photo 14) seized from the desk in Mr. LeBlanc’s bedroom also tested positive for residue of cocaine, tetrahydrocannabinol, and cannabinol (Exhibit 28); and the heavy duty safe found beside Mr. LeBlanc’s bed (photos 9,17 and 21 – Exhibit 23) contained: plastic baggies having dollar amounts written on them including “\$2255 and \$5375”, \$1300 and \$270; as well as a baggie containing white powder found to be benzocaine and acetaminophen (Exhibit 33 and 33A; photo 22).

¹⁶ This conclusion of Mr. LeBlanc’s more significant and dominant role in the trafficking enterprise is consistent with Mr. Benoit’s statement (which I accept) that it was Mr. LeBlanc who gave him 2 grams of cocaine. If Mr. Benoit was dominant or an equal partner, he could have easily just taken 2 grams for himself. I conclude it is also unlikely that Mr. Benoit was the leader, given that he did not have a cell phone of his own, and I infer from his receipt of a disability pension and his observable physical presence throughout the court proceedings, that at the material times he was a significantly frail individual in contrast to Mr. LeBlanc who was young and appeared physically able. Similarly, Jayda was approximately 7 to 8 months pregnant around the material times, and I infer it is unlikely that she conducted drug sales at the apartment in October- November, 2017. Moreover, noticed during the search in Mr. LeBlanc’s area of the apartment, and not contested by Mr. LeBlanc in his statement, were a number of expensive technological items, such as iPads, iPhones, TVs, and a PlayStation 4, and that Mr. LeBlanc was driving a Honda CRV, suggest there was more money available than could be accounted for by their social assistance receipts and disability pension receipts. While Mr. LeBlanc suggested in his statement that he was receiving money from his aunt, his mother, and perhaps even his grandmother, no evidence other than his self-serving statements to this effect was provided, and I reject this suggested explanation for the cash monies that were found in the apartment.

[69] Both stand convicted.

Rosinski, J.