

**SUPREME COURT OF NOVA SCOTIA**

Citation: R. v. Sampson, 2009 NSSC 133

Date: 20090420  
Docket: CR. No. 301011  
Registry: Halifax

Between:

**Her Majesty the Queen**

-and-

**Victor John Sampson and Chantelle Lynn Anderson**

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**Decision**

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**Judge:** The Honourable Justice Robert W. Wright

**Heard:** April 15, 16,17 and 20, 2009 in Halifax, Nova Scotia

**Oral Decision:** April 20, 2009

**Written Decision:** May 5, 2009

**Counsel:** Crown - Tim McLaughlin  
Defence for Victor Sampson - J. Patrick L. Atherton  
Defence for Chantelle Anderson - Peter Nolen

Wright J. (Orally)

[1] Both accused stand charged that on or about June 6, 2007 at or near Halifax, Regional Municipality of Halifax, Province of Nova Scotia, they did unlawfully have in their possession for the purpose of trafficking, cocaine, a substance included in Schedule I of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and did thereby commit an offence contrary to s. 5(2) of the said *Act*.

[2] Section 5(2) of the *Act* provides that “No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III or IV”. Cocaine is a substance included in Schedule I.

[3] In order to secure a conviction for this offence against either accused under the indictment, the onus is on the Crown to prove each of its following elements beyond a reasonable doubt:

- (1) that the accused was in *possession* of the substance of cocaine;
- (2) that the accused *knew* that the substance was cocaine, and
- (3) that the accused had possession of cocaine for the *purpose* of trafficking in it.

[4] Counsel have otherwise acknowledged that the other elements of the identity of the accused, jurisdiction, and time and place of the alleged offence are not in issue.

[5] There are two basic principles fundamental to every criminal trial. They are the requirement of a standard of proof beyond a reasonable doubt and the presumption of innocence. The burden is on the Crown to prove each essential element of an offence beyond a reasonable doubt . That burden never shifts to the

accused.

[6] The presumption of innocence remains with an accused throughout the trial. It is only displaced if, after considering all the evidence, the court is satisfied beyond a reasonable doubt that the accused is guilty. This presumption means that the accused is considered to be, that is presumed to be, innocent. Accused persons have no obligation to prove that they are not guilty, nor have they any obligation to explain the evidence presented by the Crown. The law presumes an accused to be innocent, that is, not guilty, until the court, having considered all of the evidence, is satisfied that the Crown has proven each and every one of the elements of the offence charged beyond a reasonable doubt.

[7] This standard of proof beyond a reasonable doubt denotes a very high threshold for the Crown to meet. It is not sufficient that, on the balance of probabilities, the accused may have, or even is likely to have, committed the offence. The offence must be proved beyond a reasonable doubt. That does not mean the Crown must prove guilt of the offence with absolute certainty which would in most cases be a virtually impossible high standard to meet. But it must be with near certainty; that is to say, closer to the standard of absolute certainty than to a mere balance of probabilities. Reasonable doubt is based on reason and common sense. It is a doubt which logically arises from the evidence.

[8] The requirement for proof beyond a reasonable doubt extends to each element of the offence charged. If the Crown fails to prove, beyond a reasonable doubt, any one or more of the elements of the charge, then the accused must be

acquitted.

[9] If, at the conclusion of the trial, there is a reasonable doubt on any essential element of the offence, then the law requires that the benefit of that doubt must be given to the accused who must be found not guilty.

[10] If I am going to draw any inferences against the accused, it must be the only reasonable inference open upon the proven facts.

[11] Conversely, if the Crown succeeds in proving each of the essential elements of the offence beyond a reasonable doubt, the presumption of innocence is displaced and the Court is required to convict.

[12] The fact situation in this case arises from the execution of a s.11 search warrant authorizing the entry and search of the apartment unit rented by the accused Victor Sampson located on Creighton Street in Halifax, Nova Scotia. Acting under the warrant, a police entry and search team forcibly entered that apartment at about 11:20 p.m. on June 6, 2007. There they found the two accused in bed together in the main bedroom with the TV on.

[13] After securing the two accused, the police members began their search of the apartment. Two areas produced results. First, in the closet of the main bedroom, police searched a brown jacket found hanging there. Hidden in the lining, accessed through a hole in the pocket, was a bulk amount of 9.66 grams of cocaine in a plastic bag. Also found on the closet shelving were:

- small quantities of other drugs including mushrooms, valium and dilaudid;
- a birth certificate for Victor Sampson;
- a lease of the apartment in the name of Victor Carvery (a name the police knew the accused Victor Sampson to have gone by from a previous unrelated investigation); and
- a digital scale with white residue on it (although that residue was never tested).

[14] Elsewhere in the main bedroom, the police found and seized a bag of marijuana, a partially consumed joint and a cell phone.

[15] The other location where drug paraphernalia was found was the bathroom.

There, the police found:

- digital scales with a white residue that tested positive for cocaine;
- white crumbs which tested positive for cocaine;
- a roll of tinfoil;
- plastic bags in the 2"x3" size and a variety of three kinds of larger sandwich bags.

[16] All of the above items were seized and entered in evidence at trial.

Continuity of these exhibits was acknowledged by both defence counsel.

[17] Counsel generally agree that the central issue in this case is that of possession, which is the first of the three elements of this offence that I enumerated earlier. The first question, simply put, is whether the Crown has proven beyond a reasonable doubt that the accused, Victor Sampson and Chantelle Anderson, or either one of them, was in possession of the cocaine found in the apartment.

[18] Possession is a defined term under s.4(3) of the Criminal Code. It reads:

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

(i) has it in the actual possession or custody of another person, or

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

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

[19] In short, possession can be in three possible forms:

(1) actual or personal possession;

(2) constructive or attributed possession; and

(3) joint possession.

[20] The Crown here relies on both constructive possession and joint possession.

[21] Dealing first with constructive possession, a person who knowingly has a substance in some place, or in the possession of some other person for the use or benefit of him/herself, has that substance in his/her possession, provided that he/she has some degree or element of control over that substance. Knowingly means that the accused is aware of the possession or custody of the substance by another, or in another place, and is not acting through ignorance, mistake or accident.

[22] As for joint possession, there are circumstances in which more than one

person can have possession of a substance at the same time. Where any one of two (or more) persons, with the knowledge and agreement of the other (s), has a substance in his/her possession or custody, both of them are in possession of that substance, provided that he/she has some control over it. Knowledge and agreement by the other who is not in actual possession of the substance is essential. Mere indifference is not enough.

[23] Bearing these principles in mind, I now turn to the question of whether the Crown has proven beyond a reasonable doubt that the cocaine seized by the police was in the possession of the accused Victor Sampson as alleged.

[24] The defence, presented through the testimony of Joseph DeWolfe, is that the cocaine found in the apartment belonged to Mr. DeWolfe, not Mr. Sampson, in circumstances where Mr. Sampson would have no knowledge or control over it. Mr. DeWolfe would have the court believe that on June 6, 2007 he was doing a paint job at Victor Sampson's apartment, the very day of the police raid; that he bought 10 grams of crack cocaine that same day from an unnamed dealer and took it back to the apartment because he likes to smoke crack cocaine while he paints; that his crack pipe happened to break that day; that he then hid the cocaine in the pocket of a jacket which, parenthetically, was pushed all the way through a hole in the pocket up into the lining; that he later started drinking which led to an alcohol blackout; that when he woke up the next morning, he realized he'd forgotten to take his cocaine with him; and that having heard the accused was busted for possession of his drugs, he is now coming forward to take the rap because of his "propers", meaning respect for Mr. Sampson.

[25] A court can always accept all, some or none of the testimony of any witness. In Mr. DeWolfe's case, I emphatically accept none of it.

[26] It should first be noted that Mr. DeWolfe has a lengthy criminal record dating back to 1985 involving several convictions for crimes of dishonesty and mischief. He has been a crack addict for 35 years, beginning at age 13, which undoubtedly has been a significant factor behind his criminal record. That record, given its length and nature, is an undermining factor to his credibility.

[27] Quite apart from that, however, the story told by Mr. DeWolfe smacks of total fabrication. It defies belief, both in its content and its delivery. It is an explanation with far too many coincidences and of far too much convenience to have any plausibility. Beyond that, it was brought out in cross-examination that Mr. DeWolfe recently appeared as a defence witness in the trial of his sister-in-law where he similarly testified that the drugs found by the police in that case were his and had been left behind at her house. I am obviously in no position to comment on Mr. DeWolfe's credibility in that case, but suffice it to say that the similar explanation given in this case has certainly worn thin. Indeed, it is totally lacking in credibility and is rejected by the court in its entirety.

[28] The accused himself did not testify and that is his right to remain silent. No inference of guilt can be taken from the exercise of that fundamental right. The court cannot use the silence of the accused against him in building the case for guilt. However, the defence theory here is then left to rest entirely on the testimony of Mr. DeWolfe, which for the reasons just given, has been completely



rejected.

[29] The question then becomes whether the Crown, based on the evidence it has presented, has proven beyond a reasonable doubt that the cocaine seized here was in the possession of Mr. Sampson.

[30] The evidence shows that the cocaine was found in the lining of a jacket hanging in the closet of the main bedroom (the only bedroom in apparent use) of the apartment leased by Mr. Sampson. The clothing and men's toiletries found in the apartment further demonstrate that he lived there. True, the cocaine was found inside a jacket which does not appear to fit him, but having examined it, I infer that the cocaine was deliberately hidden in the lining of that jacket as it was found. Moreover, the scales with cocaine residue and the packaging materials found in the bathroom is highly indicative that the occupant of the apartment (which I am satisfied was Mr. Sampson), had knowledge and control of the bulk amount of cocaine found in that residence.

[31] I am accordingly satisfied beyond a reasonable doubt that Mr. Sampson had knowledge and control of the 9.66 grams of cocaine found in his apartment and thereby had constructive or attributed possession of it.

[32] I am also satisfied beyond a reasonable doubt from the certificates filed that the substance found in Mr. Sampson's apartment was cocaine and that the accused

Victor Sampson knew that the substance was cocaine. That Mr. Sampson knew that the substance was cocaine is an inescapable inference to be drawn from the physical evidence found in his apartment.

[33] That brings me to the third element of the offence charged, which is whether the Crown has proven beyond a reasonable doubt that Mr. Sampson was in possession of cocaine for the purpose of trafficking.

[34] To “traffic”, as defined in s.2(1) of the *Controlled Drugs and Substances Act*, means to sell, administer, give, transfer, transport, send or deliver something to someone, or to offer to do so.

[35] To “sell” includes to offer or expose for sale, to have a thing in your possession for sale, and to distribute.

[36] This element of purpose requires a finding as to the accused’s state of mind or intentions while in possession of a controlled substance, that is to say, what he had the substance for and what he intended to do with it.

[37] The Crown does not have to prove that Mr. Sampson actually sold, delivered or otherwise made the cocaine available to other persons. What the Crown does have to prove beyond a reasonable doubt is that Mr. Sampson had the cocaine for the purpose of making it available in some manner to others, within the meaning of the foregoing statutory definitions.

[38] In the absence of any direct evidence of the intentions of the accused, as is the case here, the court must determine whether there is sufficient physical evidence to support the inference of an intent to traffic. There is no exhaustive list of facts from which an inference of an intent to traffic can be drawn. The court must look at the totality of the evidence. Here, the physical evidence consists of :

- (a) a bulk amount of 9.66 grams of cocaine;
- (b) two digital scales, one of which tested positive for cocaine residue (the other was untested);
- (c) crumbs of cocaine found nearby one of the scales;
- (d) tinfoil packaging;
- (e) four packages of plastic bags, one size of which measured 2"x3";
- (f) other illicit drugs found in the apartment indicating a variety of product for sale;
- (g) a cell phone.

[39] It is also noteworthy that one set of scales, the crumbs of cocaine, and the packaging materials were found in the bathroom and not in an area of food preparation or storage.

[40] On the basis of this physical evidence, the opinion of Corporal Scott Manning, the RCMP expert witness on the local drug trade called by the Crown, was that the accused Victor Sampson was engaged in the lower street level of the business. He recognized that other common indicia of drug trafficking were absent insofar as the police found neither cash, nor scoresheets, nor packaged product.

[41] He testified, however, that it was not uncommon for these items not to be found where a lower street level dealer was involved. Since the fronting of product at that level was unlikely, he was not surprised that no scoresheets were found. He further added that the extent of what the police find in such a situation is

dependent, of course, on the timing of the raid in relation to the dealer's business routine. He emphasized that what was found here was:

(a) 9.66 grams of cocaine, having a resale street value of about \$960 if broken down into 48 "20 rocks" or 24 "40 rocks" or some combination thereof;

(b) the means of weighing it (the type of scales found being consistent with those typically used at the street level, and one set having tested positive for cocaine residue); and

(c) the means of packaging for resale, tinfoil being typically used most commonly at this level, (as well as 2"x3" plastic bags).

[42] I accept the opinion evidence of Corporal Manning that the foregoing evidence supports the inference of an intention to traffic on the part of Mr. Sampson. The evidence is not consistent with the drawing of an inference that Mr. Sampson's possession of this cocaine was for personal use only. I am satisfied therefore that the Crown has proven beyond a reasonable doubt that Mr. Sampson had possession of the cocaine found in his apartment for the purpose of trafficking in it.

[43] The Crown having thus proven beyond a reasonable doubt all of the elements of the offence of possession for the purpose of trafficking, I find the accused Victor Sampson guilty as charged. A conviction will be entered accordingly.

[44] I turn now to the disposition of the charge against the accused Chantelle Anderson, who likewise did not testify at trial.

[45] As recited earlier, the first element of the offence charged which the Crown is required to prove beyond a reasonable doubt is that Ms. Anderson was in possession of the substance of cocaine. Since she was not found to be in actual or personal possession of the cocaine when the search warrant was executed, the Crown must necessarily rely on the doctrines of constructive possession or joint possession, the principles of which I have already reviewed.

[46] The cocaine was found in the lining of a puffy brown winter jacket hanging in the closet of the main bedroom of Mr. Sampson's apartment. The jacket appears to be a ladies jacket, although that is by no means certain from its design. Even if it is a ladies jacket, however, there is no indication whatsoever of its ownership. Crown counsel candidly admitted that he can't say it was Ms. Anderson's jacket in which the cocaine was found.

[47] Beyond that, there is no evidence from which the court can find, by inference or otherwise, that Ms. Anderson was a resident of that apartment. On the contrary, there is no evidence of there having been found any clothing belonging to her, other than that which she had been wearing, which was found either on the bed or the floor. Moreover, only men's toiletries were found in the apartment. The lease of the apartment was in the name of Mr. Sampson only. The fact of the matter is that the only established link between Ms. Anderson and the cocaine was her mere presence in the apartment at the time the search warrant was executed.

[48] This fact situation does not support a finding, or the drawing of an inference, that Ms. Anderson had knowledge of the cocaine hidden in the lining of the jacket ,

that she had any control over it, or that it was for her use or benefit. Constructive possession has not been established beyond a reasonable doubt.

[49] Neither does the fact situation support a finding, or the drawing of an inference, that the requisite knowledge and consent on the part of Ms. Anderson, which are essential to the doctrine of joint possession, have been proven beyond a reasonable doubt.

[50] In short, I find that the Crown has been unable to prove beyond a reasonable doubt that the accused Chantelle Anderson was in possession of the substance of cocaine as alleged in the indictment.

[51] I also find that the Crown has been unable to prove beyond a reasonable doubt that Ms. Anderson was a party to the offence committed by Mr. Sampson as an aider or abettor. There is no evidence that she did something or said something that either helped or encouraged Mr. Sampson to commit the offence of possession of cocaine for the purpose of trafficking.

[52] The accused Chantelle Anderson is accordingly found not guilty of the offence alleged in the indictment and she is hereby discharged.

J.