SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. White*, 2024 NSSC 136

Date: 20240517
Docket: CRH No. 528922
Registry: Halifax

Between:

His Majesty the King

v.

Nathaniel Dominic White

DECISION

Judge: The Honourable Justice Peter P. Rosinski

Heard: March 25, 26, April 26, 2024 in Halifax, Nova Scotia

Counsel: Colin Strapps for the Crown
Nicholaus Fitch for Nathaniel White

By the Court:

1 - Introduction

[1] In the early afternoon of August 27, 2020, Halifax Regional Police ("***HRP***") were called to a motor vehicle accident.

[2] They discovered a four-door Volkswagen Jetta R model with three occupants: Mariam Al Husseini and two brothers, **Nathaniel and Decoda White**.

[3] Police searched the vehicle. It was crammed with suitcases, bags and the like.

[4] Among those, police found three bags of particular interest:

- a **Puma** black backpack in the rear driver's side of the VW Jetta R passenger compartment. The bag had indicia of being Decoda White's bag - Decoda's DNA was found on a loaded .357 Magnum Taurus handgun, his personal cheques were therein, and he was personally present in and around the vehicle when police arrived on August 27, 2020;

- an **Air Jordan** black backpack inside and at the very back of the trunk, against the passenger side back seat which was accessible through a 60/40 split from the passenger compartment. It contained both cocaine and cannabis, as well as a loaded Smith & Wesson .32 calibre handgun, and Mr. White's multiple identification, commercial and banking cards; and

- a black/lime green interior zippered bag ("**the lime green bag**") found in the trunk. The lime green bag contained cocaine in the glass jar, two working digital scales, and what I conclude is a "cutting agent" commonly used by traffickers to mix with unadulterated cocaine, to increase their profits.

[5] Nathaniel White ("***Mr. White***") stood trial before me on a 23 count Indictment, attached hereto as Appendix 1.1

[6] Mr. White testified that the Air Jordan bag containing the Smith & Wesson .32 calibre handgun was his, although he denied knowledge of the presence of the handgun or drugs therein or in the lime green bag.2

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[1] At some point after August 27, 2020, Decoda White passed away.

[2] In my deliberation herein, especially since Mr. White testified, I have applied the so-called *R. v. W.D.* ([1991] 1 S.C.R. 742) instruction. Because this is also a circumstantial evidence case, I have applied the principles in *R. v. Villaroman* 2016 SCC 33, [2016] 1 S.C.R. 1000 per Cromwell, J. I have recently considered this issue in *R. v. Carvery*, 2024 NSSC 105, see particularly the paras. 166 – 169 and 188; see also *R. v. Pontigo*, 2024 ONCA 348.

[7] In summary, I am satisfied beyond a reasonable doubt that he had possession of all the contents of the Air Jordan bag and the lime green bag.

[8] I find him guilty of counts:

1 [re Cocaine],
2 [re Cannabis],
3 [re Cannabis],
4 [re Cannabis],
6 [re the Smith and Wesson .32 Calibre handgun],
8 [re the Smith and Wesson],
10 [re Smith and Wesson],
12 [re Smith and Wesson],
14 [re Smith and Wesson],
16 [re Smith and Wesson],
18 [re Smith and Wesson],
20 [re Smith and Wesson],
22 [re "fail to keep the peace"3], and
23 [re Smith and Wesson]

[9] I find him not guilty of counts:

5 [the $2900 seized from the Air Jordan bag - in relation to which the Crown stated it was "not seeking a conviction"],4
7 [re Taurus .357 magnum handgun],
9 [re Taurus handgun],
11 [re Taurus handgun],
13 [re Taurus handgun],
15 [re Taurus handgun],
17 [re Taurus handgun],
19 [re Taurus handgun], and
21 [re Taurus handgun].

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[3] The Crown stated that, regarding the breach of probation for "failing to keep the peace and be of good behaviour", are as a matter of its discretion, it seeks no conviction on that offence. Having proceeded to trial on that charge, I believe the appropriate process, and I interpret the Crown's position herein, is one that sees the Court record on the Indictment that a stay of proceedings has been entered by the Crown on count 22 as of April 26, 2024.

[4] I am not satisfied beyond a reasonable doubt that the money was "obtained" by the commission of the cocaine/ cannabis trafficking offences; however, I am satisfied more likely than not that it was – I reject Mr. White's claim that he earned it working as a drywaller. I also wish to point out that this is a "straight summary" offence for which there is no right of election (absolute jurisdiction Provincial Court) unless, as I conclude, Mr. White intended to and did consent to its inclusion in the Indictment pursuant to s.574(2) of the *Criminal Code*.

[10] I am not satisfied beyond a reasonable doubt that Nathaniel White was in "possession" of the Taurus handgun, although I am satisfied more likely than not, he was aware of it being in Decoda White's Puma bag.

[11] The Crown, with I believe the concurrence of Mr. White's counsel, has taken position that the following "found guilty" counts in the Indictment should be stayed by the Court as a result of the application of the *R v. Kienapple* principle [1975] 1 SCR 729.

[12] Therefore, in light of a conviction upon:

- count 2, the convictions on counts **3** and **4** are stayed;
- count 20, the conviction on count **23** is stayed.

[13] Let me explain why I have entered guilty findings in relation to these offences.

2 - The Agreed Statement of Facts – s. 655 *Criminal Code*

[14] Justice Beveridge commented on these agreements in two cases. He stated for the Court:

> 1. in *R. v. Falconer*, 2016 NSCA 22:
>
> [45] **Once tendered, formal admissions under s. 655 of the *Criminal Code* are conclusive for the trier of fact**. Subject to relief being granted from the consequence of the admission, the fact admitted is conclusively established. **It is not open to challenge**.
>
> [My bolding added]
>
> 2. in *R. v. Herritt*, 2019 NSCA 92:
>
> [72] Appellant's trial counsel, unhappy with the process, negotiated a plea resolution for two very serious criminal charges. The appellant's trial counsel formally admitted on behalf of the appellant:
>
> 1. Mr. Herritt possessed a backpack that contained 67.8 grams of cocaine and score sheets.
>
> 2. The cell phone located on Mr. Herritt was his personal phone and contained text messages indicative of recent cocaine trafficking.
>
> 3. The 67.8 grams of cocaine was in Mr. Herritt's possession on May 31, 2017, for the purpose of trafficking.

[73] Although counsel did not mention s. 655 of the *Criminal Code*, the admissions set out in the Agreed Statement of Facts and marked as a trial exhibit, must have been tendered pursuant to that statutory authority.

[74] I say this because the common law does not permit an accused charged with a felony (in modern parlance, an indictable offence) to make admissions at or during their trial other than to plead guilty (see: *R. v. Castellani*, 1969 CanLII 57 (SCC), [1970] S.C.R. 310; *R. v. Falconer*, 2016 NSCA 22). Neither is there such a thing as a plea of *nolo contendere* (I am unwilling or I do not wish to contend) in Canadian criminal procedure (see: *R. v. G. (D.M.)*, 2011 ONCA 343; *R. v. R.P.*, 2013 ONCA 53 at para. 38 *et seq.*).

[75] But Canada's *Criminal Code* has, since its inception (S.C. 1892, c. 29, s. 690), permitted an accused to make admissions.

[76] **The section is now numbered s. 655**. It provides:

> 655. Where an accused is on trial for an indictable offence, **he or his counsel may admit any fact alleged against him for the purpose of dispensing with proof thereof**.

[77] The appellant through his counsel admitted not just facts that would permit a finding of guilt, but formally admitted the commission of the offence. **Formal admissions under s. 655 of the *Criminal Code* are conclusive for the trier of fact**. Subject to relief being granted from the consequence of the admission, the fact admitted is conclusively established. It is not open to challenge.

[78] The legal consequences of formal and informal admissions in civil and criminal cases were helpfully reviewed by Hill J. in *R. v. Baksh* (2005), 2005 CanLII 24918 (ON SC), 199 C.C.C. (3d) 201. He wrote:

> 84 An admission validly made in the context of s. 655 of the *Code* is an acknowledgement that some fact alleged by the prosecution is true. Such an admission dispenses with proof of that fact by testimony or ordinary exhibit and the accused is not entitled to set up competing contradictory evidence in an attempt to disprove the judicial or formal admission. In other words, **the formal admission is conclusive of the admitted fact.** Assuming that parties in a criminal trial, as occurred in the earlier trial, can agree to waive the necessity of testimonial proof on certain matters in issue by jointly tendering an agreed statement of facts going beyond the narrow scope of s. 655 of the *Code*, such a statement, in my view, also amounts to a solemn, formal or judicial admission and is conclusive against contradiction by both parties.
>
> 85 Though the weight of a declaration or admission will vary with the circumstances, its weight "will, no doubt, be greater if against interest at the

> time, than the contrary", and the weight to be afforded an admission generally "increases with the knowledge and deliberation of the speaker, or the solemnity of the occasion on which it was made": *Phipson on Evidence*, at pp. 709, 712-3.
>
> 86 As well, in the civil context, formal admissions, for example, "an agreed statement of facts filed at the trial", is considered conclusive in the original proceeding as described in *The Law of Evidence* (2nd ed.), Sopinka et al., at para. § 19.1:
>
> > A formal admission in civil proceedings is a concession made by a party to the proceedings that a certain fact or issue is not in dispute. Formal admissions made for the purpose of dispensing with proof at trial are conclusive as to the matters admitted. As to these matters, other evidence is precluded as being irrelevant but, if such evidence is adduced, the court is bound to act on the admission even if the evidence contradicts it. A formal admission should be distinguished from an informal admission. The latter is admitted into evidence as an exception to the hearsay rule and does not bind the party making it, if it is overcome by other evidence. (footnotes omitted)
> >
> > See also Wigmore, at §1064.
>
> [79] After a thorough canvass of American, English and Canadian authorities, Justice Hill ruled that the formal agreed statement of facts tendered in an earlier aborted trial was admissible as ordinary admissions in the re-trial[1].
>
> [80] In my view, the admissions made by the appellant here were conclusive in these criminal proceedings. They were not informal admissions. They were set out in an exhibit and not qualified in any way. Recall what appellant's trial counsel said about them:
>
> > My Lord, indicate [*sic*] on behalf of the Defence, I've received full disclosure, have full opportunity to review it with Mr. Herritt, and I've also – I received that statement of facts, was able to email it to Mr. Herritt yesterday who was able to review it as worded by the Crown. **Mr. Herritt admits those underlying facts, invites Your Lordship to convict him on the offence under Section 5(2) of the *Controlled Drugs and Substances Act*.**
>
> [81] The admissions, obviating the need for a trial, and the appellant's remorse were cited by appellant's trial counsel as mitigating factors in support of the trial judge's acceptance of the jointly recommended sentence.
>
> [My bolding added]

[15] The Agreed Statement of Facts in the case of Mr. White are:

1. The events giving rise to the alleged offences occurred in the Province of Nova Scotia.

2. The nature of the substances seized, per their respective certificates of analysis, are as alleged by the Crown.

3. Photos of the alleged firearms and ammunition will suffice for proof of those items without submitting the actual items into evidence.

4. DNA testing was performed on two items seized by police in this case. One firearm, a .32 Smith and Wesson, tested positive for DNA of an unknown male (neither Decoda nor Nathaniel White). The other firearm, a Taurus handgun, tested positive for the DNA of Decoda White.

5. The expertise of Sgt. Curtis Kuchta in the following areas of cocaine and illicit marijuana trades: distribution, tools of the trade, jargon, usage amounts, methods of sale, multicommodity traffickers, pricing, packaging and trade hierarchy.

[16] Because admissions are conclusive of the facts contained therein, courts are entitled to presume that a great amount of thought and care has preceded their final drafting.[5]

[17] The admission that, after DNA testing was performed on the .32 Smith & Wesson handgun, it "tested positive for DNA of an unknown male (neither Decoda nor Nathaniel White)", suggests the conclusive fact to be drawn therefrom is that Mr. White's DNA was <u>not</u> found on the Smith & Wesson handgun.[6]

[18] However, merely because it contained the DNA of an unknown male, and not Nathaniel White's DNA, does not preclude a conclusion beyond a reasonable doubt that Nathaniel White did have possession thereof on August 27, 2020.

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[5] It is also noteworthy that both counsel were involved in the previous appeal – 2022 NSCA 61.

[6] Without deciding, as it was not raised by counsel, I do wonder whether this "admission" by Mr. White falls within the wording "any fact alleged against him" or it is better characterized as a common law admission *R. v. Rudder,* 2023 ONCA 864 at paras. 45-46.

[19] There is no expert opinion evidence regarding the likelihood of transmission of DNA from a human being (in this case - Nathaniel White) to the surfaces of that handgun, had he handled it.7

[20] Strictly speaking, Mr. White's testimony was not that he did not handle/possess the Smith & Wesson handgun - it was that he was unaware of its presence.

3 - The Evidence at Trial

i - The three occupants of the car were living out of the car

[21] Mr. White himself testified that he, his brother, Decoda, and Mariam Al Husseini (whose car Mr. White said it was) had previously been residing in an apartment in Bedford, but once evicted therefrom, they lived in hotels, until they could no longer stay there, leaving them living in a four-door VW Jetta R edition for approximately the last month before August 27, 2020.8

[22] When police arrived at approximately 1:14 pm that day, all three of them were present in the area of the car.

[23] The officers on scene saw where the car was parked. It was reported as having been involved in the collision.

[24] The evidence satisfies me that effectively the car was serving as the home for the three occupants. Moreover, Mr. White admitted to this being the case for the previous several weeks.

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[7] Nor does the factual admission as drafted, account for other reasonable possibilities such as Mr. White having worn gloves (one from the Puma bag is seen in photo 49), that he could have wiped down the handgun (a hand towel was found in the bag beside the Smith & Wesson handgun), or otherwise cleansed it of any potential DNA that might have been deposited thereon. I bear I mind that after testing by police, no fingerprints were found on either handgun.

[8] Mr. White testified that his brother Decoda had the opportunity to drive the vehicle by himself during the relevant time periods, and thereby had the opportunity to be alone in the vehicle. He did not testify that Decoda was trafficking in drugs, or that they were all or partly his. In all the circumstances here, I put little weight on that evidence. It was a very generalized statement, and also has to be seen in contrast to Mr. White's testimony that all three of them had been living out of the car for the last month before August 27, 2020. I have also concluded it more likely than not that: only Decoda White possessed the Puma bag and the Taurus handgun, and that at all relevant times, Mr. White was aware of the Taurus handgun being in that bag. Mr. White also testified that it was "Mariam's car" and she was driving it on August 27, 2020. There is no evidence that she was in "possession" of the Puma bag, the Air Jordan bag, or the lime green bag. On the evidence presented I am satisfied it is more likely than not, that Mariam did not have possession of the Puma bag, the Air Jordan bag, or the lime green bag.

[25] Shortly thereafter, police searched the vehicle.

ii - The search of the car – Mr. White had possession of all the contents of the Air Jordan bag and the lime green bag

[26] Police received a tip that there were firearms in the car.9

[27] The search revealed, in particular, 2 backpacks: one bearing the Puma brand logo, and the other bearing the Air Jordan brand logo.

[28] Mr. White in his own evidence admitted that the Air Jordan bag was his, although he claimed to be unaware on August 27, 2020, of the firearm, ammunition, and drugs therein.

A - The Smith & Wesson handgun and bullets

[29] In the Air Jordan bag police found, *inter alia*:

- a loaded Smith and Wesson .32 calibre handgun;
- $2,900 cash, being – 12 - $100 bills and 34 - $50 bills [Mr. White testified in direct examination that these were monies from his work as a drywaller. However, in cross-examination he agreed he was not aware of the cash and firearm being in the Air Jordan bag.];
- a baggie containing an additional 5 bullets capable of being discharged from the Smith & Wesson handgun, and one 12-gauge shotgun shell by itself;
- a Smith and Wesson HRT survival knife; and
- a wallet containing:
    - Mr. White's expired (2019) Nova Scotia driver's license; two Nova Scotia Identification Cards for Mr. White expiring in 2020 and in 2025;

[9] At the first trial the trial judge excluded certain evidence, however on appeal the evidence was admitted – 2022 NSCA 61. In *R. v. Carvery*, 2024 NSSC 105 I independently had occasion to reference *R. v. White*, 2022 NSCA 61. To be clear, for purposes of deciding this case I have completely ignored any factual references therein.

- two Nova Scotia Health Cards for Mr. White expiring in 2018 and 2022;

- a Credit Union bank card for Mr. White valid to August 2024;

- a Capital One MasterCard for Mr. White valid until December 2024;

- a CIBC Visa/debit card for Mr. White valid until June 2023;

- a Scotia Bank Visa/debit card for Mr. White valid until July 2022; and

- a gold star member Costco Wholesale card.

[30] The gist of Mr. White's testimony was to the effect that on August 27, 2020, he was surprised to see his wallet, the Smith & Wesson handgun (and presumably bullets) and drugs in his Air Jordan bag.10

[31] Mr. White's testimony, including that he had not seen his wallet since one week earlier (and inferentially that he had not looked into the bag in the intervening week, and that someone must have placed the handgun, drugs and his wallet there without his knowledge) when he had used it to rent the jet ski, is not credible, nor does his testimony, including the presence of evidence or absence of evidence otherwise, raise a reasonable doubt about his guilt.11

[32] Regarding Mr. White being in possession of the Smith & Wesson handgun, as I stated earlier, I am satisfied it is more likely than not that the Puma bag contained only items belonging to Decoda, and specifically the Taurus handgun was his.

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[10] Mr. White's counsel asked questions and made arguments about the importance of the precise location of the wallet therein. It was suggested that the police search of the bag jumbled its location in the bag and that its original position therein had some significance. However, I find that to be somewhat of a "red herring". Mr. White admitted in his testimony that the Air Jordan bag was his, as was the wallet, although he was unaware how it had gotten back into the Air Jordan bag.

[11] He testified that, he and Decoda rented jet skis approximately a week earlier at the Halifax waterfront and they had a collision, and he noticed it was missing "on the way back to the hotel" that day, after which he did not see his wallet again until he unexpectedly became aware of it when police found it in his Air Jordan bag on August 27, 2020. At several points in his testimony, which observations I do not rely upon in assessing Mr. White's credibility, I did observe him smirking inappropriately when giving his answers. These could give one the impression that he did not take his obligation to testify honestly and to the best of his ability seriously.

[33] I find it unlikely that the Smith & Wesson handgun was Decoda's. There is nothing in the evidence that ties it to him. Not even Mr. White says it was Decoda's.

[34] I am satisfied beyond a reasonable doubt that Mr. White "possessed" everything that was in the Air Jordan bag. I specifically find that he handled each of those items in the Air Jordan bag.12

B - The drugs and paraphernalia found in the Air Jordan bag and the lime green bag

[35] No drugs or cash were found in the Puma bag.

[36] Also found inside the Air Jordan bag were the cannabis products seen in photos 14 – 19 (Ex. 21) of the bag's interior.

[37] The cannabis products were likely found on the top of everything else inside the bag. Underneath those, police found the handgun and wallet of Mr. White. The $2,900 cash was in a outside top pocket of that bag.

[38] Specifically, I am further satisfied beyond a reasonable doubt that Mr. White possessed and handled each of the following items which were found in the **Air Jordan bag**:

(a) the bag containing cannabis and cannabis resin, including nine bags of cannabis, namely,

- bag one – 15.3 g;
- bag two – 15.3 g;
- bag three – 15.3 g;
- bag four – 17.1 g;
- bag five – 15.3 g;
- bag six – 15.3 g;
- bag seven – 15.1 g;
- bag eight – 15.3 g; and

[12] Regarding whether the Crown has established that Mr. White had "possession" of any items discovered by the HRP officers search of the VW Jetta, *inter alia*, I keep in mind my statutory and jurisprudential references made in: *R. v. Carvery*, 2024 NSSC 105, regarding cocaine. The "possession" and "distribution" of cannabis is referenced in s. 2 of the *Cannabis Act*, S.C. 2018, c.16.

- bag nine – 15.3 g.[13]

(b) loose cannabis 7.3 g;

(c) 6 g of "Shatter" (cannabis resin) which Sgt. Kuchta testified contained a high potency tetrahydrocannabinol content;

(d) 11 g of cannabis in a plastic container with a green lid;

(e) the glass container therein containing eight bags of cocaine:[14]

- bag one - 8.3 g;
- bag two -three baggies containing respectively 1.0 g, .9 g and .6 g;
- bag three - .9 g;
- bag four - 1 g;
- bag five - 1 g;
- bag six - 1 g;
- bag seven - .9 g; and
- bag eight - .9 g.

[39] I am satisfied that, more likely than not, **the lime green bag** was found in the trunk area of the car, and I am further satisfied beyond a reasonable doubt that Mr. White was in possession of the lime green bag, and that he handled:

(a) the bag containing an unknown white powder [which I accept according to the expert opinion evidence of Sgt. Kuchta was for purposes of being a "cutting agent" to reduce the purity of the cocaine being sold on a retail basis];

(b) the glass container containing small amounts of cocaine (photos 15-18 at Ex. 21);

(c) working digital scales [both which showed traces of white powder which I am satisfied more likely than not was cocaine].[15]

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[13] I appreciate that the weight measurements included the bag in issue.

[14] The Air Jordan bag contained: the glass jar contained baggies of cocaine - one larger bag, two "dime" baggies which were in another baggie, and six "dime" baggies (see for example photo 13 of Ex. 21).

[15] The lime green bag also contained from a zippered pocket: multiple retail sized "dime" baggies packaging, bearing Louis Vuitton and Batman logos (photos 15 – 20 at Ex. 21, and the two working digital scales).

[40] The police did not sample each bag of alleged cocaine. Limited samples of the white powder alleged by the Crown to be cocaine were tested to ensure that each of those bags contained some amount of cocaine/cannabis as the case may be.

- 1 Bag (#8) was sampled from the 9 bags of alleged cannabis.
- 2 bags were sampled from the 8 bags of alleged cocaine in the glass container.

[41] The associated certificates of analysis confirm in each case that the alleged sampled cannabis was in fact cannabis, and the alleged sampled cocaine contained cocaine.

[42] Mr. Fitch argued that unless every baggie of alleged cannabis and cocaine were tested, there will necessarily remain a reasonable doubt about whether the untested bags contain any cannabis and cocaine respectively.

[43] I am satisfied beyond a reasonable doubt, based on the totality of circumstances here, that the only reasonable inference is that all the alleged cocaine and cannabis seized is in fact cocaine and cannabis respectively.16

iii - <u>Conclusion</u>

[44] I conclude beyond a reasonable doubt that Mr. White was in possession of:

1. in total 146.6 g (bagged weights) plus 7.3 g loose cannabis marijuana, as well as 6 g of cannabis resin;
2. in total: 17.5 g of cocaine (bagged weights/purity unknown);
3. 267 g of "cutting agent" powder; and
4. The small amounts of cocaine in the glass jar inside the lime green bag.

4 - Having found Mr. White in simple possession of the cocaine and cannabis, has the Crown proved he was in possession for the purpose of trafficking cocaine/sale or distribution of cannabis?

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[16] I appreciate that the purity of the cocaine content of the powder in each separate baggie may vary.

[45] When Mr. White was arrested, he was found to have $180 cash in his shorts' pockets (2 - $50 bills and 4 - $20 bills) as well as two Toronto Dominion Bank cheques from his brother Decoda, made payable to him in the amount of $50 each.

[46] He also had a cell phone and two Comfort Inn hotel swipe cards.

[47] He had debit and credit cards from four different financial institutions, likely linked to separate accounts, in the Air Jordan bag - yet he also had therein as well $2,900 cash in large denominations – $50 and $100 bills.

[48] Sgt. Curtis Kuchta was qualified as an expert in relation to the following areas of cocaine and illicit marijuana trades: distribution, tools of the trade, jargon, usage amounts, methods of sale, multi-commodity traffickers, pricing, packaging and trade hierarchy.

[49] I found Sgt. Kuchta's evidence to be credible and deserving of considerable weight.

[50] I accept Sgt. Kuchta's testimony that retail (so-called "petty") drug trafficking, which is how he characterized the circumstances here, is generally transacted using cash.

[51] I am further satisfied beyond a reasonable doubt that Mr. White had possession of the cocaine and cannabis for the purpose of trafficking/sale and distribution respectively.

[52] I conclude this based upon the totality of circumstances, including following indicia of trafficking:

1. the presence of two illegal loaded handguns, which Sgt. Kuchta stated are stronger indicators of drug trafficking, and which neither Mr. White or his brother Decoda were legally entitled to possess;

2. two digital scales in working condition, with what I am satisfied more likely than not is cocaine residue thereon;

3. the presence of a substantial amount of "cutting agent" – 267 g;

4. retail drug trafficking packaging – small baggies for small amounts of cocaine;

5. distinctive labelling seen at photos 19-20 - Louis Vuitton and Batman (Ex. 21);

6. that the lime green bag contained: cocaine, packaging, cutting agent, and two digital scales all in one place (I accept Sgt. Kuchta's evidence that mere users of cocaine would not have any need for: one, much less two, digital scales; or any cutting agent, much less 267 g worth; or small baggies, much less designer label baggies; one loaded handgun, much less two);

7. 146.6 g of pre-packaged cannabis bagged into an average of 15 g each – see photos 5 - 12 Ex. 21. Mere users of cannabis would not have any need for such individualized packaging;

8. it is common to see multi-commodity (cannabis/cocaine) retail traffickers, because it increases their customer base;

9. Sgt. Kuchta did not find that the large denominations of cash on their own, were a significant factor that would suggest drug trafficking, however the total amount of cash is a significant factor. I note that he did say that cash is typically the manner of transaction for petty drug trafficking and given the purchase price per 1 g ($80 – $100) such cash totals would equate to 30 individual 1 gram cocaine sales.

[53] I am further satisfied that the cash found in the Air Jordan bag supplements the grounds otherwise sufficient on their own, to lead to a conclusion beyond a reasonable doubt that the cannabis and cocaine were possessed by Mr. White for the purpose of sales/distribution or trafficking respectively.

[54] Sgt. Kuchta testified that cocaine is usually sold at the petty drug trafficking level in 1 g amounts, and costs between $80 - $100, with the typical personal user buying between 1 to 3.5 grams - however 1 g is the most common quantity purchased by street users.

[55] If the 17.5 g of cocaine had been sold in bulk, it would potentially be sold for $850 in total which equates to $48.50 per gram. Thus, there is a profit motivation to sell in smaller amounts.

[56] I also note that Mr. White at no time testified that he, his brother, or Mariam Al Husseini were themselves consumers of cocaine or cannabis, and that the cocaine and cannabis were intended for their personal consumption.

Conclusion

[57] I am satisfied beyond a reasonable doubt that:

1. Mr. White possessed everything that was in the Air Jordan backpack (including Smith & Wesson handgun and ammunition) and the lime green bag;

2. he was in possession of the cocaine and cannabis for the purpose of trafficking/sales and distribution;

3. that he is guilty of each of the offences I have earlier referred to.

Rosinski, J.

Appendix "1"

CANADA
PROVINCE OF NOVA SCOTIA
REGIONAL MUNICIPALITY OF HALIFAX

IN THE SUPREME COURT OF NOVA SCOTIA

HIS MAJESTY THE KING

against

NATHANIEL DOMINIC WHITE

INDICTMENT

NATHANIEL DOMINIC WHITE of 85 Metropolitan Avenue, Lower Sackville, Nova Scotia B4C 3H3, stands charged:

1. **THAT** on or about 27 August 2020, at or near Halifax, Nova Scotia, Province of Nova Scotia, he did unlawfully have possession of Cocaine (benzoylmethylecgonine), 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 Section 5(2) of the said **Act;**

2. **AND FURTHER** that he at the same time and place aforesaid, did possess cannabis for the purpose of distributing it contrary to Section 9(2) of the *Cannabis Act*;

3. **AND FURTHER** that he at the same time and place aforesaid, did possess cannabis for the purpose of selling it contrary to Section 10(2) of the *Cannabis Act*;

4. **AND FURTHER** that he at the same time and place aforesaid, did possess, produce, sell, distribute or import anything with the intention that it will be used to produce, sell or distribute illicit cannabis, contrary to Section 13(1) of the *Cannabis Act*;

5. **AND FURTHER** that he at the same time and place aforesaid, did have in his possession a sum of money of a value not exceeding $5,000 knowing that all of the property was obtained by the commission in Canada of an offence punishable by indictment contrary to Section 354(1)(a) of the *Criminal Code*;

6. **AND FURTHER** that he at the same time and place aforesaid, did possess a firearm, to wit a handgun, without being the holder of a license under which he may possess it, and in the case of a prohibited firearm or restricted firearm without being the holder of a registration certificate for the firearm, contrary to Section 91(1) of the *Criminal Code*;

7. **AND FURTHER** that he at the same time and place aforesaid, did possess a firearm, to wit a handgun, without being the holder of a license under which he may possess it, and in the case of a prohibited firearm or restricted firearm without being the holder of a registration certificate for the firearm, contrary to Section 91(1) of the *Criminal Code*;

8. **AND FURTHER** that he at the same time and place aforesaid, did possess a firearm, to wit a handgun, knowing that he was not the holder of a license under which he may possess it, and in the case of a prohibited firearm or a restricted firearm without being the holder of a registration certificate for the firearm, contrary to Section 92(1) of the *Criminal Code*;

9. **AND FURTHER** that he at the same time and place aforesaid, did possess a firearm, to wit a handgun, knowing that he was not the holder of a license under which he may possess it, and in the case of a prohibited firearm or a restricted firearm without being the holder of a registration certificate for the firearm, contrary to Section 92(1) of the *Criminal Code*;

10. **AND FURTHER** that he at the same time and place aforesaid, was an occupant of a motor vehicle in which he knew that there was at that time a weapon or firearm to wit a handgun, contrary to Section 94(1) of the *Criminal Code*;

11. **AND FURTHER** that he at the same time and place aforesaid, was an occupant of a motor vehicle in which he knew that there was at that time a weapon or firearm to wit a handgun, contrary to Section 94(1) of the *Criminal Code*;

12. **AND FURTHER** that he at the same time and place aforesaid, without lawful excuse use, carry, handle, ship, transport or store a firearm, to wit a handgun, in a careless manner or without reasonable precaution for the safety of other persons, contrary to Section 86(1) of the *Criminal Code*;

13. **AND FURTHER** that he at the same time and place aforesaid, without lawful excuse use, carry, handle, ship, transport or store a firearm, to wit a handgun, in a careless manner or without reasonable precaution for the safety of other persons, contrary to Section 86(1) of the *Criminal Code*;

14. **AND FURTHER** that he at the same time and place aforesaid, without lawful excuse store, carry, handle, ship or transport a prohibited or restricted firearm without a locking device, thereby contravening s. 7 of the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations, contrary to Section 86(2) of the *Criminal Code*;

15. **AND FURTHER** that he at the same time and place aforesaid, without lawful excuse store, carry, handle, ship or transport a prohibited or restricted firearm without a locking device, thereby contravening s. 7 of the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations, contrary to Section 86(2) of the *Criminal Code*;

16. **AND FURTHER** that he at the same time and place aforesaid, did possess a prohibited or restricted firearm, to wit a handgun, together with readily accessible ammunition capable of being discharged in said firearm, without being the holder of an authorization or licence under which he may possess the firearm in that place, and the registration certificate for the firearm, contrary to Section 95(1) of the *Criminal Code*;

17. **AND FURTHER** that he at the same time and place aforesaid, did possess a prohibited or restricted firearm, to wit a handgun, together with readily accessible ammunition capable of being discharged in said firearm, without being the holder of an authorization or licence under which he may possess the firearm in that place, and the registration certificate for the firearm, contrary to Section 95(1) of the *Criminal Code*;

18. **AND FURTHER** that he at the same time and place aforesaid, did have in his possession a weapon or imitation of a weapon, to wit a handgun, for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to Section 88(1) of the *Criminal Code*;

19. **AND FURTHER** that he at the same time and place aforesaid, did have in his possession a weapon or imitation of a weapon, to wit a handgun, for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to Section 88(1) of the *Criminal Code*;

20. **AND FURTHER** that he at the same time and place aforesaid, did have in his possession a firearm, to wit a handgun, while he was prohibited from doing so, by an Order of Probation pursuant to section 731 of the *Criminal Code* dated at Halifax, Nova Scotia on the 10th day of October 2019, contrary to Section 117.01(1) of the *Criminal Code*;

21. **AND FURTHER** that he at the same time and place aforesaid, did have in his possession a firearm, to wit a handgun, while he was prohibited from doing so, by an Order of Probation pursuant to section 731 of the *Criminal Code* dated at Halifax, Nova Scotia on the 10th day of October 2019, contrary to Section 117.01(1) of the *Criminal Code*;

22. **AND FURTHER** that he at the same time and place aforesaid, while bound by a Probation Order issued on the 10th day of October 2019 did wilfully fail without reasonable excuse to comply with such order, to wit, "keep the peace and be of good behaviour," contrary to Section 733.1(1)(a) of the *Criminal Code*;

23. **AND FURTHER** that he at the same time and place aforesaid, while bound by a Probation Order issued on the 10th day of October 2019 did wilfully fail without reasonable excuse to comply with such order, to wit, "NOT TO OWN, POSSESS OR CARRY A WEAPON, AMMUNITION OR EXPLOSIVE SUBSTANCE," contrary to Section 733.1(1)(a) of the *Criminal Code*.

DATED this 6th day of November, 2023, at Halifax, Regional Municipality of Halifax, Province of Nova Scotia.

Agent of the Attorney General of Canada

(Une traduction en français des détails de ce document peut être obtenue sur demande.)