

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-v-

GARY JAMES GATTIE AND LIBAN MOHAMOOD MOHAMMED

Transcript of the Reasons for Judgment delivered by the Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 21st day of February, 2020.

APPEARANCES:

B. Green:	Counsel for the Crown
P. Harte:	Counsel for Gary James Gattie
A. Ouellette:	Counsel for Liban Mohamood Mohammed (via teleconference)

Charges under s. 354(1)(a) of the *Criminal Code*
and s. 5(2) of the *Controlled Drugs and Substances Act*.

INDEX

PAGE

RULINGS, REASONS

Reasons for judgment

1

1 **FRIDAY, FEBRUARY 21, 2020**

2 THE COURT: Gary James Gattie and Liban

3 Mohamood Mohammed are jointly charged with two
4 charges; possession of property obtained by crime
5 contrary to section 354(1)(a) of the *Criminal Code* and
6 possession of cocaine for the purpose of trafficking
7 contrary to section 5(2) of the *Controlled Drugs and*
8 *Substances Act*.

9 On September 8th, 2017, the RCMP executed a
10 search warrant at apartment 307, 4920 54th Avenue in
11 Yellowknife. The RCMP were looking for drugs and
12 evidence of drug trafficking. The tenant of the
13 apartment was Gary Gattie. When the police executed
14 the warrant, Liban Mohammed was located in the
15 apartment and was placed under arrest. Mr. Gattie
16 was located elsewhere and arrested a short time later.

17 Inside the residence, the police found two safes
18 in an upstairs bedroom. Inside one safe, two bags of
19 cocaine and \$52,325 in cash were located. A bag of
20 cocaine was also located on a table in the upstairs
21 bedroom.

22 The trial was held before me on June 17th to
23 19th, 2019, and December 3rd, 2019. The Crown
24 called seven witnesses; Constable John Keefe,
25 Corporal Douglas Melville, Constable Jeremy Bigger,
26 Corporal Benjamin Fage, Sergeant Sebastien Ruel and
27 Constable Bryan Martell. Neither accused presented

1 evidence in the trial. There were a number of exhibits
2 which were entered into evidence, including agreed
3 statements of facts, photographs, surveillance reports,
4 DVD videos, banking records and cellphone extraction
5 reports.

6 As there was a dispute about the admissibility of
7 some evidence, the trial was conducted as a blended
8 *voir dire* and trial. At the conclusion of the evidence, I
9 ruled orally on the disputed evidence and determined
10 that it was admissible. That evidence was the
11 photograph of a CIBC banking receipt located in the
12 upstairs bedroom, photograph 25 in Exhibit 4, and
13 Exhibit 8, an agreed statement of facts regarding Mr.
14 Mohammed's status as a parolee at the time of the
15 events. As I have already made my ruling, I do not
16 intend to further address the admissibility of that
17 evidence in this decision.

18
19 The Crown and Defence Positions:

20
21 There are a number of things which were not in
22 issue in this trial; the identity of the accused, the date
23 and place of events, that cocaine was found inside the
24 residence, that the cocaine was consistent with
25 possession for the purpose of trafficking, that the
26 money found inside the residence was proceeds of
27 crime. None of these were argued before me.

1 What is in issue is whether the cocaine and the
2 money located in the upstairs bedroom was in the
3 possession of either accused. The Crown's position is
4 that Mr. Gattie's apartment was being used as a stash
5 house to store drugs by Mr. Mohammed. The drug
6 transactions were conducted at the nearby Victorian
7 Suites by Mr. Mohammed and possibly others.

8 The Crown argued that Mr. Gattie must have
9 known about the drug trafficking operation out of his
10 apartment. The Crown argued that both Mr. Gattie and
11 Mr. Mohammed were in possession of the drugs and
12 money found in the apartment.

13 The Crown called Sergeant Ruel as an expert
14 witness who testified that the cocaine was consistent
15 with possession for the purpose of trafficking and that
16 his opinion was that apartment 307 was being used as
17 a stash house for a drug trafficking operation. He also
18 testified that, in his opinion, the cash was proceeds
19 from the sale of cocaine.

20 Mr. Gattie's position is that Mr. Gattie did not
21 have a key to the locked upstairs bedroom and there is
22 no evidence that he had any control over anything in
23 the locked bedroom. Mr. Gattie's fingerprint which was
24 found only puts him in contact with a safe that does not
25 have any drugs or money in it, and there are a number
26 of innocent explanations for how Mr. Gattie's fingerprint
27 could have gotten on the outside of the safe. Mr.

1 Gattie's position is that there is no evidence that he had
2 knowledge or control over the contents of the safe in
3 the upstairs bedroom.

4 Mr. Mohammed's position is that Mr.
5 Mohammed had no key and no access to the locked
6 bedroom. There is no evidence that he was staying at
7 the apartment or had access to the locked bedroom
8 and there is no direct link between Mr. Mohammed and
9 the drugs or money and it is not a reasonable inference
10 to conclude that he had knowledge or control over
11 those items.

12 I want to begin by stating two very important
13 principles that must always be kept in mind in a criminal
14 trial. The first is the presumption of innocence. The
15 accused are considered innocent throughout the case.
16 The presumption of innocence means that the burden
17 of proof is on the Crown and always remains on the
18 Crown to prove the guilt of each accused. Mr. Gattie
19 and Mr. Mohammed are not required to prove anything
20 or to explain anything.

21 The second principle is the requirement for proof
22 beyond a reasonable doubt. This is a high standard of
23 proof. It is more than probable or likely guilt. At the
24 same time, it is not proof to an absolute certainty.

25 A reasonable doubt is not an imaginary, far-
26 fetched or frivolous doubt. It is not a doubt based on
27 sympathy or prejudice. Instead, it is a doubt based on

1 reason and common sense. It is a doubt that comes
2 logically from the evidence or that comes from the
3 absence of evidence.

4 If, after considering all of the evidence and the
5 lack of evidence for each count and for each accused I
6 am sure that the accused committed the offence
7 charged, then I would be satisfied beyond a reasonable
8 doubt and must find that accused guilty of that offence.
9 If I am not sure and I have a doubt, I must find him not
10 guilty of that offence.

11 In order to find Mr. Mohammed or Mr. Gattie
12 guilty of possession for the purpose of trafficking, the
13 Crown must prove each of the essential elements of
14 the offence beyond a reasonable doubt. So first, that
15 the substance was a controlled substance, in this case,
16 cocaine. Second, that Gary Gattie or Liban
17 Mohammed was in possession of the substance.
18 Third, that Gary Gattie or Liban Mohammed knew the
19 nature of the substance, and fourth, that Gary Gattie or
20 Liban Mohammed possessed the substance for the
21 purpose of trafficking.

22 In order to find Mr. Gattie or Mr. Mohammed
23 guilty of possession of property obtained by crime, the
24 Crown must prove beyond a reasonable doubt that the
25 accused was in possession of the money, that the
26 money was proceeds of crime, and that the accused
27 knew that the money was the proceeds of crime.

1 The defence does not contest that the
2 possession of the cocaine located in the safe would be
3 for the purpose of trafficking or that the cash located in
4 the safe was proceeds of crime. Sergeant Ruel was
5 qualified to give opinion evidence on whether the drugs
6 located in the apartment would have been possessed
7 for the purpose of trafficking. He was also of the
8 opinion that the money would have been the result of
9 the sale of cocaine.

10 I have considered the evidence and Sergeant
11 Ruel's opinion on these points and I am satisfied that
12 the cocaine seized would be possessed for the purpose
13 of trafficking and the money seized was proceeds of
14 crime. It is a significant amount of cocaine in two
15 packages, locked in a safe, packaged along with over
16 \$50,000 in cash. The amount of cocaine is well in
17 excess of what even a heavy user of cocaine would
18 have had on hand. There was a box of sandwich
19 baggies and a digital scale in the locked bedroom as
20 well which is indicative of packaging cocaine for sale.

21 There was also a cellphone located in a jacket in
22 the bedroom which had texts which were consistent
23 with the sale of drugs. All of this is indicative of
24 possession of the cocaine for the purpose of trafficking,
25 and I think it is also safe to say that whoever possessed
26 the cocaine and money and stored it in a locked safe in
27 a locked bedroom would have had knowledge of the

1 nature of the substance as cocaine or an illegal drug.

2 The real issue in this trial based upon the
3 admissions and the arguments made by counsel for
4 both offences is whether Gary Gattie or Liban
5 Mohammed was in possession of the cocaine and the
6 money seized by the police. If one or both of Mr. Gattie
7 or Mr. Mohammed was in possession of the cocaine,
8 then that person necessarily was also in possession of
9 the money and vice versa. So I will address the issue
10 of possession for the cocaine and the money at the
11 same time for each accused.

12 Possession is defined in the *Criminal Code* in
13 section 4(3) which reads:

14 (3) For the purposes of this *Act*,
15 (a), a person has anything in possession when
16 he has it in his personal possession or
17 knowingly:

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

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

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

1 all of them.

2 A person can be in personal, constructive or joint
3 possession of something. To prove possession, the
4 Crown must prove beyond a reasonable doubt both
5 knowledge and control by the accused of the cocaine
6 or the money. This can be done by direct and/or
7 circumstantial evidence. The Court must consider the
8 evidence as a whole and consider the totality of the
9 evidence.

10 Personal possession is where someone has
11 physical control of something, for example, something
12 in their jacket pocket. What is required is that an
13 accused person is aware that they have physical
14 custody of the substance and must be aware of it, of
15 what it is. Both elements also require control, and that
16 is the *R v Morelli*, 2010 SCC 8 at paragraph 16.

17 Constructive possession is where a person
18 knowingly has a substance in the actual possession of
19 somebody else or in some place for the use or benefit
20 of himself or somebody else, provided that he has
21 some measure of control over the substance.

22 Constructive possession has been established where
23 an accused has knowledge of the character of the
24 object, knowingly puts or keeps the object in a
25 particular place, whether or not that place belongs to
26 him, and intends to have the object in the particular
27 place for his use or benefit or that of another person.

1 *Morelli*, paragraph 17.

2 "Knowingly" means that the person is aware of
3 the possession or custody of the substance by another,
4 or in another place, and does not act through
5 ignorance, mistake or accident. There must be
6 knowledge which is more than quiescent knowledge,
7 and the accused must have some measure of control
8 over the substance. *R v Pham*, [2005] O.J. No. 5127,
9 (C.A.) at paragraph 15.

10 With respect to possession in a residence, the
11 law regarding possession was summarized as follows
12 in "Drug Offences in Canada", 4th edition at 4:100.60:

13 Where a person occupies a room, apartment or
14 house, a trier of fact may be entitled to infer that
15 the occupant was aware of the presence of and
16 had a measure of control over drugs found
17 within those premises. Just how strong that
18 inference is, and whether it should be drawn at
19 all, depends very much on the full factual matrix
20 before the Court....

21 Whether and to what extent any particular
22 accused can be tied to drugs found in residential
23 premises will depend on a range of factors,
24 including: whether the accused lived there or
25 regularly stayed over; whether others lived there
26 or stayed over, and the frequency; clothing and
27 other indicia of living arrangements; who paid

1 the rent or mortgage; in whose name are the
2 various utility accounts; frequency of attendance
3 based on surveillance; and relationship between
4 individuals appearing to live in the premises.
5 This is not, of course, an exhaustive list. For
6 example, knowledge and control over openly
7 visible drugs can and often will be inferred where
8 the accused are the only ones living in the
9 premises. [Citations omitted]

10 Control is also required for constructive
11 possession. The Crown must prove that an accused
12 had the ability to exercise some power, some measure
13 of control, over the item in issue, and it is not necessary
14 for the Crown to prove that such power was, in fact,
15 exercised. *R v Wu*, 2010 BCCA 589, paragraph 20.

16 There can also be joint possession where two or
17 more persons are in joint possession of a substance.
18 When any one of two or more persons with the
19 knowledge and agreement of the others has a
20 substance in his possession, all of them are in
21 possession of that substance, provided that they have
22 some measure of control over the substance.
23 However, mere indifference or doing nothing does not
24 constitute consent. Knowledge and control are thus
25 elements of all types of possession.

26 In this case, there was also circumstantial
27 evidence. The case of *R v Villaroman*, 2016 SCC 33

1 considered circumstantial evidence. A verdict of guilty
2 based upon circumstantial evidence cannot be reached
3 unless the trier of fact is satisfied beyond a reasonable
4 doubt that guilt is the only reasonable inference to be
5 drawn from the whole of the evidence.

6 In deciding whether the only reasonable
7 inference is that the accused is guilty, the trier of fact
8 must consider whether there are other reasonable
9 inferences or reasonable possibilities that are
10 inconsistent with guilt. If there are reasonable
11 inferences other than guilt, the Crown's evidence does
12 not meet the standard of proof beyond a reasonable
13 doubt.

14 In *Villaroman* at paragraph 36, Justice Cromwell
15 stated:

16 A certain gap in the evidence may result in
17 inferences other than guilt. But those inferences
18 must be reasonable given the evidence and the
19 absence of evidence, assessed logically, and in
20 light of human experience and common sense.

21 Other reasonable possibilities must be based on
22 logic and experience applied to the evidence or the lack
23 of evidence, and not on speculation. *Villaroman*,
24 paragraph 37.

25 The Alberta Court of Appeal in *R v Dipnarine*,
26 2014 ABCA 328 at paragraph 24, which was cited with
27 approval in *Villaroman*, held that "Alternative inferences

1 must be reasonable and rational, not just possible." A
2 trier of fact cannot base a decision on irrational or
3 unreasonable inferences.

4 Turning now to the evidence, the investigation,
5 the RCMP began surveillance of apartment 307, 4920
6 54th Avenue on August 31st, 2017. They surveilled the
7 apartment on August 31st, September 1st, 2nd, 5th and
8 8th, 2017.

9 On August 31st, 2017, the officers on
10 surveillance observed an unknown black male leaving
11 Executive Suites and walking to Victorian Suites about
12 two blocks away. On September 1st, 2017, at
13 approximately 6:22 p.m., an officer observed Liban
14 Mohammed exiting Executive Suites and leaving in a
15 taxi to Victorian Suites apartment building. On
16 September 2nd, 2017, at approximately 6:55 p.m., an
17 officer observed Gary Gattie come out of apartment
18 307, walk down the stairs to the main entrance of
19 Executive Suites. There, a cab pulled up and a woman
20 got out. Mr. Gattie paid for the cab and he and the
21 woman then entered apartment 307.

22 On September 5th, 2017, the RCMP simulated a
23 traffic stop outside of Executive Suites. The purpose of
24 the traffic stop was to see if the occupants of apartment
25 307 would come to a window overlooking the street and
26 if they could determine who was inside the apartment.
27 The traffic stop was staged with lights and sirens to

1 draw the attention of the occupants.

2 Constable Melville observed Gary Gattie at the
3 window of the apartment. There was a second
4 individual at the window shortly after who appeared to
5 be holding up the blind of the window, but Constable
6 Melville testified he could not identify who that person
7 was.

8 Constable Martell testified that he observed
9 Gary Gattie moving the curtain and looking at the traffic
10 stop for several seconds. Then a second person lifted
11 a different part of the curtain and this person was
12 observed by Constable Martell who described this
13 person as a black male wearing a white T-shirt. That
14 person then went away, and according to Constable
15 Martell, Mr. Gattie took the curtain and began to look
16 out the window again.

17 Constable Martell testified that the photographs
18 and the video taken of the surveillance during the traffic
19 stop did not clearly show the unknown black male that
20 he saw as he was looking through binoculars. This
21 person was not subsequently identified by the RCMP.

22 On September 8th, 2017, the RCMP conducted
23 surveillance again at Executive Suites. Constable
24 Melville observed an unknown male exit the building
25 and enter a cab and depart the location. A short time
26 later, Liban Mohammed arrived in a cab. Liban
27 Mohammed entered the Executive Suites building and

1 then departed a short time later wearing a different
2 shirt. He got into the same cab which Constable
3 Melville believed waited for him. Liban Mohammed
4 departed and then came back again with what
5 appeared to be food containers and plastic bags. He
6 went back into Executive Suites.

7 The RCMP entered apartment 307 at Executive
8 Suites at approximately 4:30 p.m. on September 8th,
9 2017 to execute the search warrant. They announced
10 "Police search warrant." They entered -- they were not
11 let into the apartment and they had to enter the
12 apartment using a battering ram as the door was
13 locked. It took a minute or two to enter the apartment
14 as they could not initially breach the door.

15 When the RCMP entered the apartment, there
16 was one male present. He was observed coming out of
17 the bedroom on the main floor. That male identified
18 himself as Hakim Ahmed but was later determined to
19 be the accused, Liban Mohammed. He was arrested
20 for possession for the purpose of trafficking at 4:36 p.m.
21 and provided his *Charter* rights and the police warning.

22 A bank deposit slip was located in Mr.
23 Mohammed's right front pocket. The bank deposit slip
24 showed a deposit of \$1,600 to an account ending in
25 3291 on September 8th, 2017 at 3:41 p.m.

26 Prior to the search of the apartment, Corporal
27 Melville took a pre-search video. In the video, the

1 screen of the downstairs bedroom window is torn and
2 flapping. In the surveillance video taken on September
3 5th, 2017 during the simulated traffic stop, the screen
4 on the window did not appear to be torn or flapping.
5 The officers thought that Mr. Mohammed might have
6 thrown something out of the window. The police
7 searched the area below the window but were not able
8 to locate anything.

9 During the search of the apartment, an iPhone
10 was located on the ottoman in the living room. Mail
11 was located in the apartment addressed to Gary Gattie
12 and bearing the address of the apartment. In the
13 downstairs bedroom, Gary Gattie's passport was
14 located in a box addressed to Mr. Gattie at the
15 apartment's address.

16 In the bathroom on top of the cabinet two digital
17 scales and a cigarette package which contained a pipe
18 were located. There were also takeout food containers
19 located in the apartment with a receipt which coincided
20 with the officer's observations of Mr. Mohammed
21 leaving and returning with what appeared to be food
22 containers that day. The open food containers were on
23 the ottoman beside the iPhone.

24 Also located in the living room were some corner
25 baggies and white residue. The upstairs bedroom door
26 was locked. The police gained entry to the bedroom by
27 kicking in the door.

1 In an upstairs bedroom, two safes were located.
2 Inside a large Honeywell safe, Corporal Melville found
3 two bags of crack cocaine weighing 239 grams and
4 54.1 grams and \$52,325 in cash. A smaller Garrison
5 safe was empty.

6 The safes were later tested for fingerprints. A
7 fingerprint of Luqman Abdulkarim was located on the
8 inside of the larger safe and a fingerprint of the
9 accused, Gary Gattie, was found on the outside of the
10 smaller safe. The fingerprint of Gary Gattie on the
11 outside of the smaller safe was consistent with lifting or
12 carrying the safe. The fingerprint analysis is not able to
13 determine when any of the fingerprints might have
14 been left on the safes.

15 On the floor of the bedroom was a white plastic
16 shopping bag, a knife, multiple Ziploc bags, coffee
17 grounds and duct tape wrapping. The grounds were all
18 over the carpet. Inside the white plastic shopping bag
19 was a prescription label for Luqman Abdulkarim. On
20 the floor, there was a boarding pass dated September
21 1st, 2017 for Luqman Abdulkarim to travel from
22 Edmonton to Yellowknife. A Samsung cellphone was
23 located on the floor; inside the closet in the bedroom, a
24 box of Ziploc sandwich bags with a black digital scale
25 inside the box with white residue on it.

26 Inside the bedroom, a blue suitcase was located
27 which had the Ontario driver's licence of Kamal

1 Mohamood. A Blackberry cellphone was also located
2 in the pocket of the luggage. A CIBC receipt was
3 located in the blue luggage in the upstairs bedroom. It
4 shows a deposit of \$2,000 to an account ending in
5 3291 on August 31st, 2017, at 4:54 p.m.

6 An itinerary was also located in the bedroom for
7 Farah Zakariya for a trip from Yellowknife to Calgary on
8 April 23rd, 2017, and another for Kamal Mohamood
9 flying from Yellowknife to Calgary on July 30th, 2017.

10 There was also another boarding pass for Luqman
11 Abdulkarim travelling from Edmonton to Calgary on
12 July 4th, 2017. There was another boarding pass for
13 Omar Farah travelling from Calgary to Yellowknife
14 dated February 12th, 2017.

15 There was also a drug and alcohol testing card
16 bearing the name Bilal Mohammed Abdullahi dated
17 May 19th, 2017. It was located in a black Eddie Bauer
18 suitcase in the bedroom.

19 On the bedside table, a wallet was located with
20 the Alberta driver's licence and other identification of
21 Luqman Abdulkarim. Beside the wallet was a small
22 bag of cocaine weighing 1.4 grams.

23 Hanging on the wall in the upstairs bedroom was
24 a black parka which contained keys, a receipt for a
25 flight, an LG flip-phone in the inside pocket, and an
26 Apple iPhone in the outside left pocket of the parka.
27 The electronic ticket receipt was for Omar Farah for a

1 flight from Calgary to Yellowknife on February 12th,
2 2017. The keys were for the front door of the
3 apartment. No keys were located for the locked
4 bedroom door.

5 Gary Gattie was arrested by Constable Bryan
6 Martell at the downtown subway on September 8th,
7 2017, at approximately 5:10 p.m. for possession for the
8 purpose of trafficking and possession of the proceeds
9 of crime. He was given his *Charter* rights and the
10 police warning. Following this, Constable Martell
11 testified that Gary Gattie said that he wanted to discuss
12 things, and Constable Martell told him to wait until the
13 police station and after he had talked to a lawyer.

14 Constable Martell then testified that Gary Gattie
15 asked if others had been arrested. Constable Martell
16 told Mr. Gattie that a search warrant had been
17 executed at his apartment and one person arrested
18 there. When he was arrested, Gary Gattie had a
19 Blackberry cellphone and an iPhone on his person.
20 There was a bundle of \$20 bills in his left breast pocket,
21 \$5 bills in his right front jeans pocket, and \$20 bills in a
22 wallet in his backpack. In total, Mr. Gattie had \$520
23 and \$70 in cash. He also had a set of keys in his
24 pocket, including a key with the number 5307.

25 As part of the investigation, the police obtained a
26 production order on November 3rd, 2017, for several
27 bank records. Photographs taken at the CIBC branch

1 in Yellowknife on August 31st, 2017, at approximately
2 4:53 p.m. show Liban Mohammed wearing what
3 appears to be the same sweatshirt and pants as worn
4 in the surveillance photos taken on September 8th,
5 2017, when he was photographed leaving Executive
6 Suites and getting into a cab.

7 The CIBC photographs taken on August 31st,
8 2017, depict Liban Mohammed entering the bank at a
9 bank teller, appearing to deposit cash, and then leaving
10 the bank. There are also photographs from the CIBC
11 branch in Yellowknife on September 8th, 2017 at 3:41
12 p.m. showing Liban Mohammed again appearing to
13 wear the same outfit as on August 31st, 2017. The
14 photographs depict him entering the bank, again
15 appearing to deposit cash at a bank teller, and then
16 leaving the bank.

17 The bank records of Faduma Ali, whose bank
18 account ends in 3291, were obtained and shows that a
19 deposit of \$2,000 was made to her account on August
20 31st, 2017 at the Yellowknife Banking Centre of CIBC.
21 They also show that another deposit was made on
22 September 8th, 2017 of \$1,600 at the Yellowknife
23 Banking Centre.

24 These amounts, dates and times coincide with
25 the bank receipts which were seized by the police on
26 September 8th, 2017, at apartment 307 of Executive
27 Suites. The August 31st, 2017 CIBC receipt was

1 seized from inside the locked bedroom inside the blue
2 luggage, and the September 8th, 2017 CIBC receipt
3 was located in Mr. Mohammed's pocket on his arrest.

4 Three of the phones seized from apartment 307
5 were searched. The LG flip-phone found inside the
6 pocket of the parka in the upstairs bedroom (PE-61), an
7 Apple iPhone found in the outside left pocket of the
8 parka in the upstairs bedroom (PE-60), and the Apple
9 iPhone found on the ottoman in the living room (PE-70).

10 From a review of the extraction report of PE-70, I
11 conclude that the iPhone on the ottoman belongs to
12 Liban Mohammed. There are text messages in the
13 phone that refer to Liban. There are many, many text
14 message exchanges over a significant period of time
15 between Liban and someone who has been entered as
16 a contact as Faduma, and from that exchange it is
17 apparent that they were in a relationship and later
18 married.

19 Sergeant Sebastien Ruel was called by the
20 Crown and qualified as an expert in the production,
21 manner and methods of use, packaging, distribution
22 and placing of cocaine, the language and paraphernalia
23 associated with users and traffickers of cocaine and
24 drug jargon in general. Sergeant Ruel testified that
25 crack cocaine sells for \$80 for half a gram in
26 Yellowknife. His opinion was that the crack cocaine
27 seized in this case would have a street value of

1 approximately \$46,000.

2 Sergeant Ruel's opinion was that a drug user
3 would not be in possession of 293 grams of crack
4 cocaine and \$52,325 in cash for personal use. A
5 person would possess that quantity of crack cocaine to
6 traffic in cocaine and make a profit.

7 Sergeant Ruel viewed the packaging that was
8 found on the floor in the upstairs bedroom and was of
9 the view that it was consistent with how drug traffickers
10 transport cocaine or other drugs. In his opinion, the
11 packaging he viewed would hold a kilo of powder
12 cocaine. Sergeant Ruel also testified that the sandwich
13 bags and digital scales are often used by drug
14 traffickers to weigh and package cocaine for sale and
15 would be consistent with drug trafficking activity.

16 Sergeant Ruel viewed some of the texts,
17 extracts of text messages, from the LG cellphone and
18 was of the opinion that many of the text exchanges
19 were consistent with trafficking in drugs. Sergeant Ruel
20 testified that drug traffickers would probably use a stash
21 location to hide the drugs. If a person used an
22 apartment to stash the drugs, then access to the
23 apartment would be limited because the trafficker would
24 not want a lot of people to be seen at that location.

25 Sergeant Ruel's opinion was that apartment 307
26 at Executive Suites was being used as a stash house.
27 Sergeant Ruel testified that he would expect that Liban

1 Mohammed's role, based on the evidence, would be
2 that of the head of the operation in Yellowknife. With
3 respect to Gary Gattie's knowledge of what Mr.
4 Mohammed was doing, Sergeant Ruel's opinion was
5 that he would expect that Mr. Gattie would be aware.

6 When asked why he would not expect Mr.
7 Mohammed to keep this hidden from Mr. Gattie,
8 Sergeant Ruel stated:

9 Well, first you've seen -- like outside the upstairs
10 bedroom which was locked, you see trace of
11 consumption of drugs like the scales in the
12 bathroom, the pipe. But also on the table in the
13 living room there was baggies and white powder
14 traces. That is a good sign. But also the -- let's
15 say Mr. Mohammed was about to -- was leaving
16 the area, the apartment, he has to trust the
17 person who is there to make sure he doesn't get
18 robbed. But also, if he does not tell Mr. Gattie,
19 there's strong chances that Mr. Gattie will see
20 the suspicious transaction, the suspicious in's
21 and out's, and then he would maybe contact the
22 police and become maybe a police source or --

23 Defence counsel has pointed out that the
24 baggies and the white powder traces were not readily
25 apparent on the living room table. It was during the
26 search that they were located and placed on the living
27 room table, then photographed.

1 It is not clear from the evidence where those
2 items were located in the residence, although
3 presumably it was in the living room as the officers
4 placed the items on the living room table once they
5 were found, but they were not visible in the pre-search
6 video as being on the living room table. So I cannot
7 conclude that those items would have been readily
8 visible to an occupant of the residence. There is simply
9 no evidence to support that conclusion.

10 Sergeant Ruel also acknowledged that based on
11 a review of the surveillance reports of Executive Suites
12 that there were no suspicious comings and goings at
13 Executive Suites and that the activity, the suspicious
14 activity, was actually at Victorian Suites.

15 Dealing first with Mr. Gattie, the Crown has
16 argued that there are three categories of evidence
17 which implicate Gary Gattie and lead to the conclusion
18 that he must have known that there was a drug
19 trafficking operation operating out of his apartment.
20 These categories are:

- 21 1) Mr. Gattie's utterance on arrest;
- 22 2) his fingerprint on the safe in the locked
23 upstairs bedroom; and
- 24 3) his apartment and the inferences that can be
25 drawn from that and what is found in the apartment.

26 Dealing with the utterance on arrest, Constable
27 Martell testified that when he arrested Mr. Gattie after

1 he had given him his *Charter* rights and the police
2 warning, Mr. Gattie had said that he wanted to discuss
3 things, and Constable Martell told him to wait until they
4 were at the police station and after he had spoken to a
5 lawyer as Mr. Gattie had indicated he wished to speak
6 to a lawyer. Following this, Constable Martell testified
7 that Gary Gattie then asked him, "if others had been
8 arrested".

9 During the trial, Constable Martell was cross-
10 examined about whether Gary Gattie had asked "if
11 others" or "if the others" had been arrested. Constable
12 Martell admitted that he was not sure exactly how Mr.
13 Gattie had phrased the question.

14 Defence counsel took issue with Constable
15 Martell failing to disclose the details of this conversation
16 prior to trial. Constable Martell testified that he had
17 noted the other's remark in his notebook and he was
18 not trying to capture the conversation verbatim as Mr.
19 Gattie had invoked his right to speak to counsel.

20 In the circumstances, I am not satisfied that this
21 a disclosure issue. Constable Martell noted the
22 comment in his notebook, and I do not think the specific
23 phrasing is relevant whether it was "if others" or "if the
24 others" was used. The implication is that, once he was
25 arrested, Gary Gattie was asked about other people
26 being arrested.

27 The Crown argues that this comment, however it

1 was phrased, is indicative of Mr. Gattie's knowledge of
2 the drug trafficking operation. While Mr. Gattie may
3 have asked about others being arrested because he
4 had knowledge of the drug trafficking operation, I do not
5 think that is the only inference that can be drawn from
6 his question.

7 It is apparent from the search of apartment 307
8 that someone else, maybe more than one person, was
9 occupying the residence along with Mr. Gattie. The
10 locked upstairs bedroom had two suitcases and had
11 items like driver's licences and boarding passes with
12 the names of multiple people.

13 Liban Mohammed was seen coming and going
14 from the Executive Suites building during the
15 surveillance. It is plausible that when Mr. Gattie was
16 arrested, he was asking about who else was arrested
17 because there was more than one person occupying
18 apartment 307. It does not necessarily follow that he
19 had knowledge of what was in the safe in the locked
20 bedroom. In my view, the comment is equivocal.

21 Mr. Gattie's fingerprint was found on the outside
22 of the empty safe found in the upstairs bedroom. The
23 placement of the fingerprint was consistent with
24 someone lifting or carrying the safe. While this shows
25 that Mr. Gattie may have carried the safe into the
26 bedroom, there is no evidence about when that might
27 have occurred. There was also no evidence that he

1 touched the safe while it was in the bedroom.

2 His fingerprint was placed on the safe at an
3 unknown time and it is not known where the safe was
4 when that happened. Also, his fingerprint was found on
5 the outside of a safe that did not have anything in it.
6 There is no evidence that the cocaine or cash were
7 ever in that safe. Even if Mr. Gattie assisted someone
8 in moving the safe into the bedroom, it does not mean
9 that he was aware of the contents of that safe or any
10 other safe.

11 It is clear that Mr. Gattie lived in apartment 307.
12 There was mail addressed to him at that address, his
13 passport was in the apartment and there were plaques
14 on the wall with his name on them, and when he was
15 arrested, he had a set of keys with the number 307 on
16 them. During the simulated traffic stop on September
17 5th, 2017, Mr. Gattie came to the window of apartment
18 307 and was observed by the police officers. He was
19 also observed during the surveillance when he came
20 out to pay for the cab. He is also clearly visible in the
21 photographs taken by the officer at the time of the
22 simulated traffic stop.

23 I am also satisfied that Mr. Gattie occupied the
24 downstairs bedroom in the apartment. During the
25 search of the apartment, it was apparent that the
26 downstairs bedroom was being occupied. In the
27 downstairs bedroom, Mr. Gattie's passport was found in

1 a box addressed to Mr. Gattie at the apartment's
2 address and the bedroom had items in it which
3 suggested it was being occupied.

4 Where a person occupies an apartment, an
5 inference may be drawn that the person was aware of
6 the presence of and had a measure of control over
7 drugs found within those premises. Whether that
8 inference can be drawn or the strength of that inference
9 will depend on the circumstances of each case.

10 The surveillance in this case showed Gary
11 Gattie entering and leaving Executive Suites and Liban
12 Mohammed also entering and leaving Executive Suites.
13 However, there are no suspicious in's and out's, to use
14 the terminology of Sergeant Ruel. So it is not apparent
15 that the activity at Executive Suites was such that it can
16 be inferred that Mr. Gattie would have been aware that
17 there was a drug trafficking operation associated with
18 apartment 307.

19 Within the apartment downstairs, the Crown has
20 referred to indicia of drug use. There are scales in the
21 bathroom found on top of the medicine cabinet. The
22 scales do not appear to be the type of scales that you
23 would use to weigh food, and their location would be an
24 odd choice to store a food scale, and they are located
25 along with the cigarette pack which has a pipe inside.
26 There is no evidence about whether the scales worked.

27 There are also the baggies, pipe and white

1 residue located in the living room area. The
2 photographs depict a cigarette pack, a piece of pipe,
3 remnants of baggies and white residue on the living
4 room coffee table.

5 It is not clear where these items were located as
6 they were not present on the coffee table when the
7 pre-search video was taken. The white residue was
8 not tested, so we do not know that it is cocaine.
9 However, the white residue, being located by empty
10 baggies and a piece of pipe, it is a reasonable
11 inference that the residue is cocaine.

12 In any event, these items could have been Mr.
13 Gattie's or they could have been left in the apartment
14 by another person. It could have been Mr. Mohammed
15 as he was present in the apartment when the police
16 arrived, or another person who was occupying the
17 upstairs bedroom.

18 Constable Martell testified that he saw an
19 unidentified black male come to the window during the
20 simulated traffic stop. It could have been this person.
21 Because we do not know where these items were
22 located, it cannot be established that Mr. Gattie would
23 have been aware that these items were in his
24 apartment or that drug activity was occurring in his
25 apartment.

26 Before I move on to the next point, I want to
27 address the issue of the unidentified black male that

1 Constable Martell testified that he saw at the window of
2 apartment 307 during the simulated traffic stop. A lot
3 was made of this during the trial. Constable Martell is
4 the only officer who observed this person during the
5 traffic stop, and counsel for Mr. Gattie has asserted that
6 Constable Martell has made this evidence up.

7 It is a serious allegation. This is based upon a
8 review of the video and photographs taken during the
9 surveillance. Defence counsel screenshot a portion of
10 the video and enlarged it and lightened it to
11 demonstrate that the person in the window appeared to
12 be Mr. Gattie and that only Mr. Gattie was visible in the
13 window.

14 I have reviewed the surveillance video and the
15 photographs and I am not prepared to conclude that
16 Constable Martell fabricated this evidence. While
17 clearly Mr. Gattie is seen in the window during the
18 traffic stop, it is not impossible that someone else was
19 at the window. It was a bright, sunny day, and the
20 officers were looking into a darker window and the
21 video and the photographs are not clear.

22 The police have never conclusively identified
23 who this person might have been and have not alleged
24 that it was, for example, Liban Mohammed. In any
25 event, I do not see how the presence of an unidentified
26 black male in apartment 307 has any real significance
27 to the guilt or innocence of Gary Gattie. It may be that

1 having other unidentified individuals observed in Mr.
2 Gattie's apartment is actually to Mr. Gattie's benefit, as
3 that widens the pool of individuals who might have
4 been responsible for the contents of the upstairs
5 bedroom.

6 Sergeant Ruel testified that his opinion was that
7 apartment 307 was being used as a stash house for a
8 drug trafficking operation. First he stated that Gary
9 Gattie would have been aware of the operation
10 because of the suspicious comings and goings to the
11 apartment. He later said that the drug trafficker would
12 need to have a location where they can limit access to
13 and where they can trust other individuals will not rob
14 them or report them to the police.

15 The problem with this is there are no suspicious
16 comings and goings to apartment 307, and it is
17 inconsistent that there would be suspicious comings
18 and goings, yet it would also be a location where the
19 drug trafficker would want to limit access to, to keep
20 their stash hidden or secure from others. If apartment
21 307 was being used as a stash house, I would expect
22 that the drug trafficker would need to trust Gary Gattie
23 for the reasons stated by Sergeant Ruel. The individual
24 would need to be trusted not to steal the drugs and
25 cash and trusted not to report the activity to the police
26 or to expose the drugs and cash to being stolen by
27 others. It would be a great risk to use the location as a

1 stash house without being sure of the cooperation of
2 other occupants of the residence.

3 While the bedroom door was locked and no key
4 was found by the police to the bedroom, I do not place
5 much weight on that. It is not apparent that a key was
6 needed to open the door. Some interior doors of
7 residences can lock without the necessity of having a
8 key for the door. For example, a bathroom door can
9 sometimes lock by pushing the doorknob in. There is
10 no key to the door, but access can be obtained by
11 using a bobby pin or other similar device.

12 I have reviewed the videotape of the pre and
13 post search videos and the doorknob is visible in one of
14 the videos but it cannot be determined whether a key
15 was required to open the door. Constable Bigger
16 testified that he gained access to the bedroom by
17 kicking in the door and he did so in one kick. I expect
18 that if Mr. Gattie or Mr. Mohammed wanted to access
19 the upstairs bedroom, they could have done so with or
20 without a key without much difficulty.

21 The locked bedroom door is an indicia that the
22 drug trafficker was taking precautions within the
23 apartment to limit access to the drugs and cash. The
24 cocaine and cash were stored in a safe in a locked
25 bedroom that appeared to be used by individuals other
26 than Mr. Gattie. Within the bedroom, it was apparent
27 that someone had opened a package in the bedroom

1 using a knife and leaving empty Ziploc bags and coffee
2 grounds all over the carpet.

3 Sergeant Ruel testified that the packaging was
4 consistent with cocaine being packaged for transport. If
5 the person is not concerned about Mr. Gattie or others
6 knowing about the contents of the package, then why
7 wouldn't they have opened the package in the kitchen
8 or the bathroom, rather than leaving a mess on the floor
9 of the bedroom.

10 When I consider all of this evidence, I strongly
11 suspect that Mr. Gattie would have had knowledge of
12 what was going on in his apartment and the cocaine
13 and money being stored in a safe in the upstairs
14 bedroom, but I do not think that this is an inescapable
15 conclusion. Overall, I think it is very likely that Mr.
16 Gattie was involved in this drug trafficking operation,
17 but the evidence does not satisfy me beyond a
18 reasonable doubt.

19 Turning to Liban Mohammed, for Mr.
20 Mohammed, the Crown has also argued that there are
21 three categories of evidence which implicate him and
22 lead to the conclusion that he was in possession of the
23 cocaine and money located in the upstairs bedroom.

24 These categories are:

- 25 1) the police surveillance;
- 26 2) evidence of consciousness of guilt, which is
27 more properly termed "post-offence"

1 conduct"; and

2 3) the bank receipts and other documents

3 located in the bedroom.

4 The police began surveillance on Executive
5 Suites on August 31st, 2017. They conducted
6 surveillance on August 31st, September 1st, 2nd, 5th
7 and 8th. Liban Mohammed was seen exiting Executive
8 Suites on September 1st, 2017. On September 8th,
9 2017, Liban Mohammed entered Executive Suites and
10 then departed a few minutes later wearing a different
11 shirt. He then left in a cab before returning to Executive
12 Suites again with what appeared to be takeout
13 containers and plastic bags.

14 While the surveillance establishes a connection
15 between Liban Mohammed and the Executive Suites
16 building, the police are not able to observe what
17 apartment Mr. Mohammed is entering or exiting. When
18 the police enter apartment 307 to execute the search
19 warrant, Mr. Mohammed is in the apartment alone. Mr.
20 Mohammed does not have a key to the apartment, but
21 clearly he is able to access the apartment on his own.
22 He returns to the apartment to change clothes before
23 leaving and returning again. When the police enter that
24 apartment, it is apparent that he had been eating his
25 lunch in the apartment. And as I will get to, the
26 documents located in the apartment also establish a
27 connection between Liban Mohammed and apartment

1 307.

2 Turning to the post-offence conduct, when
3 arrested, Liban Mohammed identified himself as Hakim
4 Ahmed to the police. He was later determined to be
5 Liban Mohammed. Mr. Mohammed providing a false
6 name to the police is not necessarily indicative of guilt
7 because he was also on parole, and one of the
8 conditions of his parole was that he was to reside in
9 Calgary and he did not have permission from his parole
10 officer to be in Yellowknife.

11 While this behaviour is suspicious, his actions in
12 providing a false name and violating his parole do not
13 necessarily mean that he was involved in drug
14 trafficking. There is a reasonable alternative
15 explanation. Mr. Mohammed's actions could also be
16 indicative of not wanting the police to find out he was
17 violating his parole and Mr. Mohammed could have
18 been in Yellowknife or any other community without
19 permission of his parole officer for another reason other
20 than drug trafficking. In the circumstances, I do not
21 give any weight to Mr. Mohammed providing a false
22 name or that he was violating his parole.

23 The two bank deposit receipts from CIBC
24 establish a connection between Liban Mohammed and
25 the upstairs bedroom. One bank receipt is located in
26 his right front pocket on arrest, and the other bank
27 receipt is found in the upstairs bedroom.

1 Constable Bigger testified that the receipt was
2 found in the purple suitcase. Corporal Melville, when
3 testifying, called it a blue suitcase. The photos depict a
4 sort of blueish/purple colour to the suitcase. I am
5 satisfied that they are referring to the same suitcase as
6 the evidence was that there were two suitcases in the
7 bedroom; a black Eddie Bauer suitcase and the blue or
8 purple suitcase.

9 The bank records obtained through the
10 production order establish that it was Liban Mohammed
11 who deposited the money into the bank account on
12 August 31st, 2017, and September 8th, 2017. As I
13 stated, in the photographs, Liban Mohammed is clearly
14 identifiable. It looks like Liban Mohammed entering and
15 leaving the bank on each occasion and at the bank
16 teller. He is wearing the same clothing, a hoodie and
17 trackpants, that he is observed to be wearing in the
18 surveillance photographs taken on September 8th,
19 2017.

20 The August 31st CIBC receipt was located in the
21 blue suitcase which, while no one inventoried its
22 complete contents, the officers testified that it contained
23 clothing. Liban Mohammed obviously changed his
24 clothing on September 8th, 2017 when he came back
25 to Executive Suites before leaving in a different hoodie.
26 The implication is that he returned to apartment 307
27 and changed his clothing.

1 Since the CIBC receipt was in the blue suitcase,
2 one of the possibilities is that Liban Mohammed
3 entered the upstairs bedroom and changed his
4 clothing, accessing the blue suitcase. It is possible that
5 he had clothing in other areas of the apartment,
6 although the evidence of the officers was that it
7 appeared that Gary Gattie occupied the downstairs
8 bedroom.

9 Another connection is that the CIBC receipts,
10 the one located on Liban Mohammed and the one
11 located in the blue luggage, were for deposits to the
12 account of Faduma Ali. The iPhone that was located
13 on the ottoman by the food that Liban Mohammed was
14 apparently eating when the police knocked on the door,
15 had many text messages between Faduma and Liban
16 who were in a relationship and later married.

17 There are text messages between Faduma and
18 Liban that discuss bank deposits which coincide with
19 deposits being made according to the CIBC banking
20 records which were obtained for Faduma Ali's account.
21 The logical inference is that Liban Mohammed was
22 sending money to his spouse, Faduma Ali, by
23 depositing it in her CIBC bank account. Depositing
24 money in a spouse's bank account is not indicative of
25 criminal activity, however, the relevance is that it further
26 buttresses the connection between Liban Mohammed
27 and the CIBC bank receipt located in the blue luggage

1 in the locked upstairs bedroom.

2 There were other documents that were located
3 in the upstairs bedroom. Kamal Mohamood's driver's
4 licence was located there, and Kamal Mohamood's
5 name appears on Liban Mohammed's cellphone
6 several times.

7 The name of Bilal Mohammed Abdullahi
8 appears on a card dated May 19th, 2017, which was
9 found in the upstairs bedroom. Liban Mohammed
10 texted Faduma on more than one occasion asking her
11 to email money to Billy, and provided the email address
12 bilalmo613@gmail.com. Ms. Ali's bank records show
13 that she then sent money to Bilal Abdullahi.

14 The name of Omar Farah was located on an
15 airline ticket in the upstairs bedroom. Omar Farah's
16 name also appears on Liban Mohammed's phone. A
17 flight itinerary in the name of Zakariya Farah was found
18 in the upstairs bedroom. Text exchanges between
19 Liban Mohammed and Faduma show him asking her to
20 buy him an airline ticket using the name Zakariya
21 Farah.

22 Many of these documents are dated in the
23 weeks or even months prior to September 2017. It is
24 not clear that any of these individuals were ever in the
25 upstairs bedroom, however, the relevance of these
26 documents is they establish a connection between
27 Liban Mohammed and the bedroom. The idea that

1 coincidentally there would be multiple connections
2 between the names on documents located in the
3 upstairs bedroom and Liban Mohammed's phone
4 strains credulity.

5 The evidence suggests that Liban Mohammed
6 had access to the upstairs bedroom over a period of
7 time. The implication is that whoever had access to the
8 upstairs bedroom would also have had knowledge of
9 the contents of the safe and control over the safe. The
10 empty packaging and coffee grounds on the floor in the
11 bedroom are consistent with a package containing a
12 significant amount of cocaine according to Sergeant
13 Ruel's evidence.

14 The locked bedroom door suggests that the
15 occupant of the room wanted to keep the items in the
16 bedroom secure, and placing the cocaine and cash in
17 the safe also suggests that what needed to be secured
18 in the room was the cocaine and the cash. The LG
19 flip-phone located in the jacket hanging in the bedroom
20 had text messages which were consistent with
21 trafficking in drugs. The locked bedroom and a failure
22 to find the key is a factor to consider, but I do not view it
23 as determinative. As I mentioned, it is not clear that the
24 door required a key and Mr. Mohammed had time when
25 the police were trying to enter the apartment to lock the
26 door and hide or dispose of the key to the bedroom. As
27 I mentioned, it took a couple of minutes for the police to

1 gain access to the apartment.

2 In my view, the surveillance shows a connection
3 between Liban Mohammed and Executive Suites. Mr.
4 Mohammed had returned to the apartment and
5 changed his clothes. Liban Mohammed was found in
6 apartment 307 alone when the police entered and was
7 eating lunch. The documents that are located in the
8 upstairs bedroom and on Liban Mohammed when he is
9 arrested demonstrate a connection. The banking
10 records and the contents of Liban Mohammed's
11 cellphone further strengthen the conclusion that Liban
12 Mohammed was one of the people occupying the
13 upstairs bedroom.

14 Based on all of the evidence, I am satisfied
15 beyond a reasonable doubt that Liban Mohammed was
16 occupying the upstairs bedroom and had knowledge
17 and control over the cocaine and cash located in the
18 safe. Therefore, for the reasons stated, I find the
19 accused, Gary James Gattie not guilty of both counts,
20 and I find the accused, Liban Mohamood Mohammed
21 guilty of both counts. So there will be an acquittal
22 entered for Mr. Gattie and convictions will be entered
23 for Mr. Mohammed.

24

25 **(PROCEEDINGS ADJOURNED TO JUNE 8, 2020,**
26 **YELLOWKNIFE, NWT)**

27

1 **CERTIFICATE OF TRANSCRIPT**

2 Neesons, the undersigned, hereby certify that the foregoing
3 pages are a complete and accurate transcript of the
4 proceedings transcribed from the audio recording to the best
5 of our skill and ability. Judicial amendments have been
6 applied to this transcript.

7
8 Dated at the City of Toronto, in the Province of Ontario, this
9 25th day of Mach, 2020.

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Kim Neeson

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Principal

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