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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

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ANTHONY QUIROZ-RAMIREZ

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R E A S O N S F O R J U D G M E N T

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BEFORE THE HONOURABLE JUSTICE A. GHOSH

On September 15, 2016

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at NEWMARKET, Ontario

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APPEARANCES:

M. Guirguis for C. Shirtliff-Hinds

Counsel for
the Federal Crown

Information No. 14 08457-01
14 08458-01
15 03470-01
15 03471-01

J. Goldlist

Counsel for Anthony Quiroz-Ramirez

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ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

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LEGEND

[sic] - Indicates preceding word has been reproduced *verbatim* and is not a typographical error, but is a spoken error

(ph) - Indicates preceding word has been spelled *phonetically* as it was spoken and is not a typographical error

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THURSDAY, SEPTEMBER 15, 2016

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R E A S O N S F O R J U D G M E N T

GHOSH, J. (Orally):

Introduction and Overview

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Anthony Quiroz-Ramirez stands charged, contrary to the *Controlled Drugs and Substances Act*, with four counts of possession for the purpose of trafficking, contrary to section 5(2); simple possession, contrary to section 4; and possession of proceeds of crime, contrary to section 354 of the *Criminal Code*.

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On November 19th, 2014 a joint services drug enforcement investigation was completed by the Guns and Gangs Units of the Toronto and York Regional Police Services. At least two of the targets of the investigation were the accused and his brother Byron Quiroz-Ramirez, and they were both arrested at a traffic stop.

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A search warrant was obtained and executed that same day at Unit 1104 at 9255 Jane Street in Vaughan. Police located and seized a substantial amount of powder and crack cocaine, some funds and other tools of the drug trafficking trade. Documents bearing the name "Anthony Quiroz-Ramirez" were also

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seized.

This condo unit was by all accounts a "stash house" for drug traffickers. It is not in dispute that whoever possessed the drugs and related items did so for the purposes of trafficking in controlled substances.

The only issue that requires determination at this trial whether or not the Crown has proven possession beyond a reasonable doubt.

Summary of the Evidence

An "Agreed statement of fact and a book of documents" were received in evidence. During the execution of the search warrant on November 19th, 2014 at Unit 1104, at 9255 Jane Street in Vaughan, police located and seized 1,671 grams of cocaine, 145 grams of crack cocaine, 2,208 grams of an alleged cutting agent called Phenacetin, 2 grams of cannabis marihuana, 3 scales, 2 grinders, 1 bong, a bundle of 6,000 dollars in Canadian currency, a separate amount of Canadian currency of 220 dollars, and a press device that is commonly used to press cocaine.

Several officers involved in the execution of the search warrant testified. All of the drugs were concealed from view. The packaged

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5 cocaine was located in a zippered blue retail bag with a dryer sheet placed over the packed cocaine. This bag was located behind a stacked washer and dryer in a small closet-sized laundry room. A long strand of hair was also located in this bag.

10 Several documents bearing the accused's name, such as bills, Canada Revenue Agency documents, expired passports and a birth certificate, were located and seized from the condo unit. These documents were all located 15 in one of two places, between the mattress and box spring in the bedroom or in a shoebox found in the main hallway closet. None of he documents were current to the calendar year of 20 2014.

25 In one of the drawers in the family room police seized a medical document for the name, "Anthony Pham," P-H-A-M. The police believed that this was the name of one of the accused's children.

30 A displayed photograph was located and seized from the bedroom that displayed 21 males standing for a group photo. Anthony and Byron Quiroz-Ramirez were amongst them. The condo unit appeared to be lived-in and all of the officers involved in the execution of the

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warrant only seemed to recall male clothing present in the unit.

On the date of the search warrant, surveillance officers stopped a vehicle driven by Byron Quiroz-Ramirez who was found in possession of at least nine grams of cocaine. Anthony Quiroz-Ramirez was the front seat passenger and was found in possession of a key fob to the common areas of the condo building at 9255 Jane Street, as well as a key to Unit 1104. He was carrying with him a driver's licence that displayed a residential address of 42 Arctic Fox Crescent in Brampton.

Deana Savic of the building property management company testified. The company kept access logs demonstrating when key fobs associated with each unit were used to gain entry to the "restricted access" common areas of the building. Virtually each day between October 25th to November 19th, 2015 a key fob associated with Unit 1104 was used, often multiple times, to access areas of the building.

On November 19th there was a single log entry for a Unit 1104 fob for the "main door" at 1:37 p.m. It was agreed that there were at least three key fobs in circulation for Unit

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1104, and no confirmation that any were issued to Mr. Anthony Quiroz-Ramirez. There is also no evidence confirming which fob was used for any particular access log entry.

The condo unit was owned by three brothers bearing the last name "Parkhani". There is some evidence in the form of an unsigned lease agreement that the unit was leased, at the time of the warrant execution, to a person by the name of "Chastity Jackson." It is agreed that there is no police surveillance or forensic evidence physically placing Anthony Quiroz-Ramirez inside of the unit.

Detective Constable Matthew Clarke from the Guns and Gangs Unit of the Toronto Police Service testified to conducting surveillance at the building located at 9255 Jane Street. He reviewed security footage related to access fob swipes and associated entry points. While the Crown did not pursue a *Leaney* application permitting the substantive use of the officer's purported identification of the accused, I accept that the officer observed a male fitting the accused's description walking in the common areas of the building in the days leading up to the arrest. The officer learned that there were three separate key fobs for Unit 1104 and that it was unclear as

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to who any of them were registered to or possessed by.

The Crown closed its case. The defence called no evidence.

Analysis

As stated at the outset, the only issue that requires resolution at this trial is whether or not Mr. Anthony Quiroz-Ramirez constructively possessed the drugs and the money in question.

Section 4(3) of the *Criminal Code* defines possession and reads,

- (a) a person has anything in possession when he has it in his personal possession or knowingly
 - (i) has it in the actual possession or custody of another person, or
 - (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them."

To prove possession the Crown must establish beyond a reasonable doubt that the accused had both "knowledge" and "control" over the items

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in question.

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Counsel for the Crown and the defence have helpfully submitted several cases that discuss constructive possession in a variety of circumstances. It is agreed that each case turns on its own facts, and I find that none of the submitted cases are factually analogous to the case at bar.

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There is no direct evidence of possession here and the case relies entirely on inferences to be drawn from circumstantial evidence. Appellate courts have directed that, in order to satisfy the burden of proof, the Crown in such cases must establish the inference of guilt as the only reasonable inference from the primary facts.

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Accordingly, I make the following observations and findings of fact:

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a) All of the drugs and tools of the drug trade were hidden from view in the condominium units. b) The street value of the seized drugs would have been approximately 60,000 dollars in bulk, with a potential profit yield of over 73,000 dollars if sold at gram level. c) The presence of scales, a press commonly used for cocaine, and a common cutting agent

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for cocaine all support that the bulk cocaine seized was for the purpose of trafficking.

d) Documents bearing the name and/or likeness of the accused were seized from the condo unit. These documents were located in either a shoebox in the hallway closet or between a mattress and a box spring in the bedroom.

None of the documents were current as of the year 2014. e) The clothing located from the unit appeared to mostly belong to one or more adult males. f) A strand of long, unidentified hair was located in the bag containing the cocaine.

g) During the traffic stop on the date the search warrant was executed the accused was a passenger in the vehicle and found in possession of a key fob for the common areas of the target building, and in possession of a key to the unit where the drugs were found. The brother of the accused, Byron Quiroz-Ramirez, was driving the vehicle and found in possession of at least nine grams of cocaine.

There is certainly some evidence linking Anthony Quiroz-Ramirez to the condominium unit where a large amount of drugs were found. This is confirmed with his possession on arrest of a key to the unit and a fob for the building. The building access logs support that one or more fobs associated with the

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5 target unit was used regularly and almost
daily leading up to the execution of the
warrant. The documents bearing his name and/
or likeness also strongly support that, at a
minimum, Mr. Anthony Quiroz-Ramirez would have
had access to the unit. There is also a
10 common sense inference available that no one
would leave that large amount of drugs
unattended, lending some support for the
Crown's submission that Anthony Quiroz-Ramirez
must have known of its presence within the
15 unit.

I remind myself, however, that in
circumstantial cases involving constructive
possession, guilt must be the only reasonable
20 inference available on the facts.

I must consider the evidence supporting the
accused's connection to the unit, along with
evidence linking others to the unit as well.
25 There is some evidence of a tenancy agreement
current to the date of the warrant execution
between the Parkhani brothers and a person
named "Chastity Jackson." A long strand of
hair was found in the bag containing the
30 cocaine, and the accused's head was shaved at
the relevant time. All of the drugs were
hidden from view, supportive of the defence
submission that an occasional attendee of the

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unit would have no knowledge of the presence of any contraband.

Byron Quiroz-Ramirez was also a target of this investigation and was indeed charged with the same offences arising out of the items seized from this condo unit. Byron is captured in the same group photo seized from the unit. He is observed in his vehicle on the building property on multiple occasions proximate in time to the warrant execution, and he is found in possession of at least nine grams of cocaine. The Crown understandably did not resist the suggestion that this amount of the drug would have grounded a charge of possession for the purpose of trafficking.

There is no evidence before me that Anthony Quiroz-Ramirez was observed to engage in any drug trafficking activity such as a hand-to-hand drug transaction. There is no surveillance or forensic evidence before me supporting that the accused was ever inside the unit or even on the same floor of the unit, Detective Constable Clarke's testimony notwithstanding.

The evidence of the building access logs is diluted in its impact given the existence of at least three key fobs associated with the

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5 unit and the inability to discern which fob was used for any particular access recorded. While the accused was found in possession of a unit key and a building fob, there was no documentary support that he was permitted to occupy the unit as either a lessee or a sub-letter.

10 Appellate courts have cautioned that even the confirmed regular occupancy of a unit without more, may not establish knowledge and control of illicit items concealed within. The documents seized with the accused's name must be assessed qualitatively for their currency in order to ground the submission that occupancy is supportive of knowledge and control. None of the documents bearing the name Anthony Quiroz-Ramirez were current to 15 the calendar year of 2014 and any document capable of expiry had been expired at least ten months before the warrant was executed. Further, none of the documents seized reflecting the accused's name displayed "9255 Jane Street" as the listed address, and upon 20 arrest the driver's licence found in the accused's name displayed an address of 42 Arctic Fox Crescent in Brampton.

25 Drug dealers are secretive and surveillance-conscious. They mask their tracks and often 30

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take extraordinary steps to subvert police investigations. I am suspicious of Anthony Quiroz-Ramirez. There is some support that the accused and his brother are high end cocaine traffickers who use this condo unit as a stash house, and I am confident the police know more than they can say. However, I must apply the law to the evidence before me, bearing in mind the presumption of innocence and the reasonable doubt standard.

Considering all of the evidence I am left in a state of reasonable doubt that Anthony Quiroz-Ramirez was in possession of any of the items that were the subject matter of any of these charges. Having failed to establish that essential element of each of the offences, there will be an acquittal on all counts.

FORM 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

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I, Vickie Hall-Dewey, certify that this document (excerpt) is a true and accurate transcript of the recording of R. v. Quiroz-Ramirez, in the Ontario Court of Justice held at 50 Eagle Street West, Newmarket, Ontario taken from Recording No. 4911 303 20160915 091635 6 GHOSHAMI.dcr, which has been certified in Form 1.

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Date

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