In the Court of Appeal of Alberta

Citation: R v Carter, 2026 ABCA 377

Date: 20261124
Docket: 2601-0041A
Registry: Calgary

Between:

His Majesty the King

Respondent

- and -

David Carter

Appellant

The Court:

The Honourable Justice Bernette Ho
The Honourable Justice Anne Kirker
The Honourable Justice William T. de Wit

Memorandum of Judgment

Appeal from the Conviction by
The Honourable Justice S. Mah
Convicted on the 8th day of August, 2025
(Docket: 240022319P1)

Memorandum of Judgment

The Court:

Introduction

[1] Mr. Carter appeals his conviction for two counts of possession for the purpose of trafficking. He admitted his possession, knowledge, and control of the drugs seized while he was an inmate at the Drumheller Institution. The central issue at trial was whether he possessed the drugs for personal use or for the purpose of trafficking. Considering the totality of the evidence, the trial judge was satisfied "the Crown [had] proven beyond a reasonable doubt that the [appellant] possessed methamphetamine and fentanyl for the purposes of trafficking." The appellant argues that the trial judge misapplied *R v W(D)*, [1991] 1 SCR 742, 1991 CanLII 93, and erred in her treatment of circumstantial evidence in reaching this conclusion. We disagree. The appeal is dismissed for the following reasons.

Background

[2] An agreed statement of facts established the following. On November 9, 2023, the appellant was involved in an assault with another inmate, after which a sniffer dog detected an odour from his body. Corrections staff searched the appellant and located a "shank" or jail-made stabbing weapon. The appellant was then placed in a dry cell for observation. He began to vomit. Corrections staff inquired as to whether he had introduced something into his body, but he did not initially provide any information. He continued to vomit and Health Canada staff attended. At that point, the appellant disclosed that he had inserted drugs into his rectum. He was transported to hospital due to signs of an overdose. Hospital staff located and extracted three packages from the appellant's anal cavity. The packages contained 12.88 grams of methamphetamine, 1.08 grams of fentanyl consisting of 16 individually wrapped packages, two tablets of buprenorphine, and less than one gram of cannabis.

[3] The appellant further admitted through the agreed statement of facts that he had knowledge and control over the seized drugs. The "true matter being litigated" was therefore "the nature of the possession; namely, simple possession versus possession for the purpose of trafficking of the methamphetamine and/or the fentanyl."

[4] The Crown called one witness – an RCMP corporal who was qualified as an expert in:

> [t]he extent of drug use in Drumheller Institution; introduction of drugs in the Drumheller Institution; manner of packaging of drugs in the Drumheller Institution; manner of distribution as it relates to fentanyl, as well as its consumption, pricing, practises, and habits of fentanyl traffickers and users in the Drumheller Institution; the manner of distribution as it relates to methamphetamine, as well as its consumption, pricing, practises, and habits of methamphetamine traffickers and user[s] in [the] Drumheller Institution.

[5] The expert explained that inmates typically consume less fentanyl and methamphetamine than someone outside an institution because they want to avoid detection and the more obvious signs and symptoms of drug use. The 12.88 grams of methamphetamine seized from the appellant was equivalent to a 26-day supply and was "quite a large amount of drugs to have inside an institution". The 1.08 grams of fentanyl, subdivided into 16 packages, could have been an 8-day or 16-day supply. The expert further noted that generally someone would not use fentanyl and methamphetamine at the same time given the differences in their effects. The expert opined that the appellant possessed the fentanyl and methamphetamine for trafficking and not personal use because the quantity of methamphetamine seized was quite high for an institutional setting, the fentanyl was pre-packaged into quantities for distribution, and a weapon and other drugs were located on the appellant. The expert was of the view that the buprenorphine pills and cannabis were for personal use given the small quantities of each substance and the lack of subdivision.

[6] The appellant testified. He said that at the time of the incident, he was having problems with another inmate and issues between them were escalating. He anticipated a potential altercation and the possibility of being sent to segregation as a result. He said he "purchased some fentanyl and some meth, and ...already had a little bit of weed" and put the drugs in his rectum. The appellant further testified that he used drugs daily at the institution's safe consumption site and the seized drugs were for personal use. He did not share them with anyone or attempt to sell them. The appellant also testified that when he purchased the fentanyl, it was already subdivided into the 16 packages.

[7] On cross-examination, the appellant explained that in a situation where there were no drugs available for purchase in the institution, he would simply wait until there were some. He confirmed he used both methamphetamine and fentanyl despite their differing effects. He said he bought methamphetamine to counteract the fentanyl because if an inmate is "found passed out and unresponsive" from fentanyl use "then everybody gets searched". He obtained the fentanyl at issue on the morning of the altercation and purchased the methamphetamine a couple of days before. The appellant confirmed that he did not "intend to assault" the other inmate "to be sent to segregation" but there was "the possibility that this could happen". In answer to Crown counsel's

question about how he knew to conceal the drugs in his rectum if he did not plan the assault or to go to segregation, the appellant explained there can be random searches or altercations so "if you have a large amount of drugs, you always have a secret of keeping it in the rectum". The appellant further advised that the quantity of seized drugs was at least one week's supply. After the assault with the other inmate, the appellant was sent to a maximum-security facility, which he did not expect. He thought, at worse, he would be sent to segregation for "a couple of days".

Reasons for Conviction

[8] The trial judge understood that the issue before her was the appellant's "intention to traffic." She noted that "traffic" means "to sell, administer, give, transfer, transport, send, or deliver something to someone", and that the Crown did not have to prove the appellant "actually sold, delivered, distributed, or otherwise made the drug available to other persons."

[9] The trial judge cautioned herself on the Crown's burden to prove its case beyond a reasonable doubt and the correct approach to assessing credibility, referencing *W(D)*; *R v Ryon*, 2019 ABCA 36; *R v Achuil*, 2019 ABCA 299, leave to appeal to SCC dismissed, 39149 (1 October 2020); and David M Paciocco, "Doubt about Doubt: Coping with R. v W. (D.) and Credibility Assessment" (2017) 22 Can Crim L Rev 31.

[10] After framing her credibility assessment in the context of the case before her, the trial judge reviewed the appellant's evidence and concluded it was unbelievable. She found it was nonsensical that the appellant would possess for personal use what he acknowledged was a large quantity of drugs. Doing so left him susceptible to suspicion, detection, and discovery by corrections staff in circumstances where there was a mere possibility of having an altercation with another inmate and being sent to segregation. The trial judge further noted that the appellant testified to possessing more than a week's worth of drugs but anticipated only spending a few days in segregation if an altercation ensued, meaning it would have been unnecessary to possess such large quantities of fentanyl and methamphetamine for personal use alone and, again, put him at an increased risk of detection by corrections staff or other inmates. The trial judge also found that the evidence did not support the appellant being a heavy drug user immediately before the incident, which otherwise may have explained the large quantities of drugs being in his possession for personal use. The appellant's evidence "taken alone or together with all the other evidence" did not leave the trial judge in reasonable doubt.

[11] The trial judge accepted the evidence of the Crown's expert, finding her to be credible and reliable.

[12] After considering the totality of the evidence, the trial judge concluded the Crown had proven beyond a reasonable doubt that the appellant possessed the methamphetamine and fentanyl for the purpose of trafficking. The quantity, value and presentation of the drugs seized from the appellant's rectum was consistent with the intent to traffic, and there was no "logical or plausible alternative for the presence of the drugs in the form of 16 individual packages of fentanyl and a large amount of methamphetamine to create a reasonable doubt."

Discussion

[13] The appellant raises four grounds of appeal. He contends the trial judge:

(a) erred in law by misapplying *W(D)* and reasonable doubt;

(b) erred in law in her treatment of circumstantial evidence, and alternatively rendered an unreasonable verdict, by finding a trafficking purpose when the evidence and absence of evidence left open a reasonable inference of personal use;

(c) erred in law, and alternatively rendered an unreasonable verdict, by treating the appellant's concealment and delayed disclosure of the drugs as probative of a trafficking purpose when that same conduct was equally consistent with personal use; and,

(d) rendered an unreasonable verdict or gave materially flawed reasons by failing to grapple with the appellant's personal use theory.

[14] At the core of the appellant's appeal is a challenge to the trial judge's treatment of the evidence and her reasoning in relation to the personal use theory advanced by the appellant. In considering these arguments, it is important to remember that it is not this Court's role to reassess witness credibility, make new findings of fact, reweigh the evidence, draw different inferences, and render a decision it might have rendered if it was in the trial court's position: *R v Bourgeois*, 2017 ABCA 32 at para 11, aff'd 2017 SCC 49.

[15] With respect to the appellant's first ground of appeal, the trial judge explained the law on reasonable doubt and assessing credibility under *W(D)* and correctly applied it to the evidence before her. The trial judge did not believe the appellant's testimony, was not left with any reasonable doubt by it, and based on the whole of the evidence she did accept, was satisfied the Crown had met its burden to prove the appellant was guilty of possession for the purpose of trafficking. This was not a case where the trial judge's mere rejection of the appellant's evidence formed the basis for conviction. During oral submissions, the appellant further contended that the trial judge misapprehended several pieces of evidence. This allegation, as argued, amounts to a

request that this Court reconsider the evidence and make its own findings of fact. There is no merit to the first ground of appeal.

[16] Turning to the appellant's second ground of appeal and the issue of circumstantial evidence, we can discern from the trial judge's reasons that, consistent with the guidance in *R v Villaroman*, 2016 SCC 33, she was of the view that the alternate inference of personal use was not a reasonable one given the evidence and absence of evidence, assessed logically, and in light of human experience and common sense. It is clear she was satisfied that the only reasonable conclusion available on the evidence as a whole was that the appellant was guilty of possession for the purpose of trafficking. Further, "it is fundamentally for the trier of fact to draw the line in each case that separates reasonable doubt from speculation. The trier of fact's assessment can be set aside only where it is unreasonable": *Villaroman* at para 71, referring to *R v Dipnarine*, 2014 ABCA 328. Not every trier of fact would inevitably have reached the same conclusion the trial judge did, but her finding that there was no plausible alternative to trafficking was a reasonable one, grounded in the evidence: *Villaroman* at para 69; *R v Letourneau*, 2025 ABCA 230 at para 49. We are not persuaded the trial judge made any reviewable error in her consideration and treatment of the circumstantial evidence and the appellant's personal use theory.

[17] The appellant further submits that in finding him guilty of possession for the purpose of trafficking, the trial judge placed too much weight on the fact that he initially denied having drugs in his body. The appellant says that his concealment and delayed disclosure of the drugs is consistent with both trafficking and personal use in an institutional setting. Although the trial judge noted that the appellant "did not volunteer he had drugs in his body when first asked" and he "continued to withhold information to the health care providers", this was one of many pieces of evidence she considered. A trial judge's weighing of the evidence is owed deference on appeal: *R v Tailfeathers*, 2026 ABCA 175 at para 18. In any event, we do not accept the appellant's suggestion that the trial judge treated this evidence as resolving "the decisive mental-state issue". As the Crown rightfully points out, she relied on it to assess the consistency of the appellant's testimony regarding the frequency of his drug use. It was not relied upon as definitive evidence that the appellant was in possession of the fentanyl and methamphetamine for the purpose of trafficking.

[18] While perhaps implicit in our earlier discussion, there is no merit to the appellant's contention that the trial judge failed to grapple with his personal use theory. She clearly understood, in light of the agreed statement of facts, that the issue squarely before her was whether the appellant was in possession of the fentanyl and methamphetamine for personal use or for the purpose of trafficking. Upon careful review of the reasons and the record, it cannot be said that she failed to meaningfully address this live issue and the appellant's personal use theory.

[19] The appellant has failed to establish that the verdict was unreasonable.

Conclusion

[20] The appeal is dismissed.

Appeal heard on November 12, 2026

Memorandum filed at Calgary, Alberta
this 24th day of November, 2026

Ho J.A.

Kirker J.A.

de Wit J.A.

Appearances:

S.D. Hedley
for the Respondent

J.R. Fernandes
for the Appellant