COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Immel, 2025 ONCA 353
DATE: 20250506
DOCKET: COA-24-CR-0939

Fairburn A.C.J.O., Gomery and Dawe JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Jason Immel

Appellant

Dan Stein, for the appellant

Maria Gaspar, for the respondent

Heard and released orally: May 2, 2025

On appeal from the convictions entered by Justice Colette D. Good of the Ontario Court of Justice on May 18, 2023, and the sentence imposed on September 12, 2023.

REASONS FOR DECISION

[1] On August 31, 2022, after a several-day long police investigation, the appellant was arrested seated in a parked car with another man. He had a scale on his lap and small quantities of fentanyl both on and near him. A much larger quantity of fentanyl was found in a compartment under the rear seat.

[2] The appellant was charged with possessing a controlled substance for the purpose of trafficking, and possession of proceeds of crime. He did not dispute that he had knowledge of and control over the fentanyl found in the front of the car, and was thus guilty of at least simple possession. The main disputed issue at trial was whether he also possessed the larger quantity of fentanyl found hidden under the rear seat.

[3] The issue of possession hinged on the element of knowledge. The trial judge concluded that the Crown had proved that the appellant knew about the fentanyl hidden under the rear seat. She accordingly found him guilty as charged, and sentenced him to 8 years' imprisonment, less credit for time in pre-sentence custody. He appeals against his conviction and sentence.

[4] On his conviction appeal, the appellant challenges the trial judge's inference-drawing process, arguing that her reasons disclose multiple errors. The trial judge relied on five main circumstantial factors to infer that the appellant must have known about the drugs hidden under the rear seat. The appellant takes issue with the trial judge's reliance on these factors, arguing that she either misapprehended or placed undue weight on some of the underlying evidence, and engaged in conjecture.

[5] We do not agree. Although the police could not always identify who was driving the car while they had it under surveillance, they regularly saw it parked in

places where they also observed the appellant, including outside his residence. The inference that he was the primary user of the vehicle was readily available on the evidence as a whole. The trial judge was also entitled to conclude that another drug dealer was unlikely to leave such a large quantity of fentanyl in a car that he or she did not control, without the appellant's knowledge: see, e.g., *R. v. Bains*, 2015 ONCA 677, 127 O.R. (3d) 545, at para. 173, leave to appeal refused [2015] S.C.C.A. No. 478. While the appellant correctly notes that this inference is permissive rather than mandatory, the trial judge did not err by choosing to draw this inference and to rely on it.

[6] The trial judge was also entitled to attach significance to the similar appearance and composition of the pink fentanyl found in different areas of the car, and to the appellant's possession of a scale and a large quantity of cash, and the evidence that multiple cell phones were found in the car. While none of this evidence was necessarily conclusive when viewed in isolation, the force of circumstantial evidence comes from its combined effect.

[7] To the extent that the trial judge may have misapprehended or misstated some details of the police surveillance evidence, any such errors were not material. The other factors she cited were more than ample, in combination, to support her conclusion.

[8] On the sentence appeal, the Crown requested an 8-year sentence and the appellant proposed a 7-year sentence, both less pre-trial custody. The trial judge imposed an 8-year sentence. We are not persuaded that the trial judge made any error in principle that would permit us to interfere with her exercise of her sentencing discretion. Whether this was considered "commercial" or "wholesale" trafficking, the appellant was found to have been trafficking a very large quantity of fentanyl. We see no error in the trial judge's treatment of the Gladue report. It was open to her to find that this was a crime of greed, and the sentence she imposed was not demonstrably unfit.

[9] However, the trial judge imposed concurrent sentences of 8 years' imprisonment, less credit for pre-sentence custody, on both the fentanyl charge and the charge of possessing proceeds of crime. This latter charge particularized the alleged proceeds of crime as $1,195 in Canadian currency. The statutory maximum sentence for possession of proceeds of crime with a value of $5,000 or less is two years' imprisonment: see *Criminal Code,* R.S.C. 1985, c. C-46, ss. 354 and 355(b)(i). Counsel agree that in these circumstances, it would be appropriate to vary the sentence on the possession of proceeds of crime count to two years' imprisonment, concurrent to the appellant's sentence on the fentanyl count.

[10] The conviction appeal is accordingly dismissed. Leave to appeal sentence is granted, and the sentence appeal is allowed to the extent of reducing the appellant's sentence on Count 3 to two years' imprisonment. His sentence of 7

years and 51 days on Count 1 remains unchanged, as does his global sentence, and in all other respects the sentence appeal is dismissed.

"Fairburn A.C.J.O."
"S. Gomery J.A."
"J. Dawe J.A."