

*Case Name:*  
**R. v. Dehal**

**Between**  
**Regina, and**  
**Jagtar Singh Dehal**

[2015] B.C.J. No. 3016

2015 BCSC 2583

Docket: X077696

Registry: New Westminster

British Columbia Supreme Court  
New Westminster, British Columbia

**M.B. Blok J.**

Heard: April 20-24 and 27, 2015.

Oral judgment: June 24, 2015.

(87 paras.)

**Counsel:**

Counsel for the Crown: M. Loda, T. Warren.

Counsel for the Accused: B. Mohan.

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**Oral Reasons for Judgment**

**1** M.B. BLOK J. (orally):-- I am about to give oral reasons in this matter. As with all oral reasons, should a transcript be ordered at a later date, I reserve the right to edit the transcript to make minor corrections and to otherwise tidy it up but, of course, without changing any of the underlying reasoning or the ultimate result.

## **I. Introduction**

2 Jagtar Singh Dehal is charged with possession of ketamine for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, .S.C. 1996, c. 19. The Crown has established that Mr. Dehal possessed ketamine, but the issue is whether the Crown has proven that he had the requisite knowledge of the substance. Mr. Dehal maintains that he was an unwitting participant in an illicit drug enterprise and that he was duped into removing the ketamine from its hiding place because the real criminals needed his handyman skills.

## **II. Evidence**

### **A. Overview**

3 On May 25, 2012 officers of the Canada Border Services Agency ("CBSA") intercepted an item of air cargo at Vancouver International Airport that had arrived on a commercial flight originating in India. The cargo in question was a wooden crate containing a roller conveyor unit.

4 CBSA officers disassembled the roller conveyor unit at their airport facility and they discovered, inside each of the unit's nine rollers, approximately two and a half kilograms of ketamine contained within long plastic bags. The total amount of ketamine was 23.15 kilograms.

5 RCMP Sergeant Scott Rintoul, who was qualified as a drug trafficking expert, testified that the quantity of ketamine that was intercepted had a value of \$115,000, using the lower end of the price range, if sold by the kilogram, \$404,500 if sold by the ounce, and \$1.15 million if sold in single doses of 100 milligrams each.

6 The investigation was turned over the RCMP, who arranged what is known as a "controlled delivery" with respect to the shipment. The contents of the ketamine bags were replaced with bags of a placebo substance, with the exception of one roller in which was placed a 2.9 gram sample of ketamine together with the placebo. A tracking device and alarm were also installed in that roller. The roller conveyor unit was then reassembled, returned to its crate and the crate returned to the carrier for release to the consignee.

7 RCMP officers carried out 24-hour surveillance on the shipment from the time it was returned to the carrier.

8 At mid-afternoon on May 31, 2012 a white delivery van or cube van arrived at the carrier's cargo pickup location and retrieved the crate. The shipment was subsequently moved to four separate locations between May 31, 2012 and June 3, 2012, as follows:

- a) the delivery van transported the crate to a location on 69A Avenue in Surrey, B.C. At around 9:30 p.m. on May 31 several males moved the crate or its contents from the delivery van to a GMC Sierra pickup truck;

- b) the GMC Sierra truck then proceeded to a strip mall on 128th Street in Surrey, where it parked and three males exited. The GMC Sierra remained parked for nearly an hour and a half. At around 11:00 p.m. on May 31, a Honda Civic bearing B.C. licence plate number 414 [XXX] entered the parking lot of the strip mall and dropped off a passenger. That passenger then met another male at the GMC Sierra and both persons then got in that truck. Both the GMC Sierra and the Honda Civic then departed, in opposite directions;
- c) The GMC Sierra travelled to an alley behind a particular address on East 36th Avenue in Vancouver, arriving just before midnight on May 31. On its journey to that location, the GMC Sierra made a number of unusual manoeuvres that surveillance officers concluded were consistent with counter-surveillance measures;
- d) the shipment stayed at the East 36th Avenue location for about 48 hours. It was again on the move shortly before midnight on June 2-3, 2012. Surveillance officers determined that the shipment was being moved in a Honda Civic bearing the 414 [XXX] licence plates, that is, the same Honda Civic that was seen at the Surrey strip mall in the evening of May 31, 2012. The Honda Civic, which was registered in the name of Mr. Dehal's wife and which was being driven by Mr. Dehal, travelled to Mr. Dehal's residence on 64th Avenue in Surrey.

**9** At or near 1:59 a.m. on June 3, the alarm was triggered, meaning that the roller containing the alarm had been at least partly dismantled. RCMP officers, who were in surveillance positions, were quickly on scene. Mr. Dehal was arrested outside an outbuilding at the residence.

**10** The nine rollers of the roller conveyor unit, which by now had been removed from their metal frame, were found in the outbuilding. Three of the rollers had been disassembled and the ketamine bags removed. The other six were intact.

## **B. Other Crown Evidence**

**11** The Crown called as witnesses two CBSA officers and nine RCMP officers. Some of the evidence of these officers was unnecessary, as it turned out, because Mr. Dehal elected to give evidence as part of the defence case. For example, in his testimony Mr. Dehal admitted he was the driver of the Honda Civic both on May 31, 2012, when that car was seen at the 128th Street strip mall, and on June 2 and 3, 2012, when the Honda Civic travelled from East Vancouver to Mr.

Dehal's home in Surrey.

**12** The following is a summary of some of the other significant evidence:

- a) Border Services Officer ("BSO") John Mawhinney said the crate was very heavy. He estimated the rollers alone weighed 25 to 30 pounds apiece. RCMP Constable Ricky Deschesnes estimated the weight of each roller at 10 to 20 pounds;
- b) BSO Mawhinney said the crate, which photographs show was square, was four feet across and two feet deep. The crate contained a roller conveyor unit plus two trestle legs;
- c) BSO Balinder West said it took about an hour and a half to get all the rollers off the frame, although this included some time spent taking photographs;
- d) Cst. Deschesnes said that the tracking alarm is not audible, although someone finding the alarm unit would see that something was not right;
- e) a wire relating to the alarm was found on the floor of the outbuilding after the arrest;
- f) the consignee of the shipment was Canon Enterprises Ltd. ("Canon Enterprises"). The police identified a man named Sahota as owning or being associated with Canon Enterprises, and a woman named Dirienzo was shown in the Provincial Companies Registry as being the sole director of that company. The police understood Dirienzo to be Sahota's girlfriend. In police briefings, Sahota was identified as Target #1 and Dirienzo was identified as Target #2;
- g) Constable Kristen Mouland said that the focus of the investigation was not on the named targets but on the shipment itself. He also said that the East 36th Avenue address was Sahota's residence;
- h) as mentioned earlier, Cst. Deschesnes said that when he was following the

GMC Sierra it made a number of movements he concluded were for counter-surveillance purposes. These included turning into a parking lot, a gas station and side roads, and then doing U-turns to go back out. Constable Anthony Muench and Constable Robert Fay gave similar evidence;

- i) Both Cst. Muench and Cst. Fay testified that motion of the shipment was detected at 2338 hours or 11:38 p.m. on June 2, 2012;
- j) Cst. Fay followed the Honda Civic in the early hours of June 3, 2012, after being notified that the shipment was on the move. Cst. Fay first saw the Civic going southbound on 130th Street in Surrey. He said that the Civic seemed to be doing "heat-checking" or counter-surveillance manoeuvres, perhaps half a dozen of them in about a five-minute span, in and around 64th Avenue and 128th Street. He said the manoeuvres, which he described as "strange", consisted of multiple small turns down side streets;
- k) Cst. Fay followed the Honda Civic to the alley behind Mr. Dehal's residence on 64th Avenue;
- l) Cst. Muench was in another police vehicle and was dropped off. On foot, Cst. Muench located the Honda Civic parked in a driveway. Earlier in the surveillance he had seen the driver of the Honda Civic because that car had passed in front of his vehicle at an intersection. In the driveway behind the 64th Avenue residence he saw, beside the parked Honda Civic, a person he believed to be the same person he had earlier seen driving the Honda Civic. That person was on a cell phone;
- m) Cst. Fay also confirmed the presence of the Honda Civic in a parking area at the Dehal residence by going to that location on foot;
- n) at approximately 2:00 a.m., Cst. Fay was notified that the tracking alarm had activated and the team was instructed to move in. Cst. Fay said he arrived at the residence 20 seconds later. On arrival, he saw Mr. Dehal about 10 feet from the door of the outbuilding and walking away from it;

- o) there were several vehicles parked in the parking area of Mr. Dehal's residence in the time just prior to his arrest. The Honda Civic was parked right next to the outbuilding or shed, and it had been backed in so that its trunk was close to the door of the outbuilding;
- p) a Toyota Prius was also parked in the parking area. That car was registered to Mr. Dehal. In a subsequent search of the Prius, Cst. Deschesnes located \$3,170 in cash; and
- q) several of the RCMP officers agreed in cross-examination that they were unaware of any link between Mr. Dehal and the targets Sahota and Dirienzo, or with Canon Enterprises, the customs broker or the air carrier.

### **C. The Outbuilding**

**13** The outbuilding is a shed or a workshop with dimensions of about 10' x 10' or 10' x 12'. Mr. Dehal testified that it was built in 2005 or 2006. The entrance door faces the house, which is to the south, and there are windows on both the north and west sides of the building. The windows have bars on the insides. The windows were also covered with cardboard, with only a few inches left uncovered near the window tops.

**14** Inside the building there were some cupboards and shelving and there were various tools, boxes and containers on the floor, including 14 jerry cans. Photographs show seven rollers on the floor. Cst. Deschesnes said that the roller closest to the door was the roller with the alarm in it. The photographs also show two rollers, which Cst. Deschesnes said were empty, standing on end against the east side wall and next to a small cupboard unit on the floor.

**15** There were two or three cardboard boxes stacked near the entrance. Photographs show that on top of the uppermost box there are two crowbars and a hammer-shaped tool, together with what appears to be three of the end bearings from the rollers, which some of the police officers also referred to as "O-rings". Two of the end bearings are stacked one on top of the other.

### **D. Sergeant Scott Rintoul**

**16** As noted earlier, Sgt. Rintoul was qualified as an expert entitled to give opinion evidence on the use, price, packaging, distribution and international movement of ketamine.

**17** Sgt. Rintoul said that ketamine is not produced in Canada. China and India are the world suppliers. It is not likely that a large shipment, "large" being over 20 kilograms, would stay in the Vancouver area, as the market for it is not big enough. It is probable the shipment would be moved

back east.

**18** The trafficking hierarchy for ketamine is no different than that for any other drug. There is a hierarchy, and only those in the upper echelon know the scope of the operation; those below know only what they need to know. The organization is spread as widely as possible, with different aspects of trafficking done at different locations.

**19** Steps taken to ensure security include the maintaining of secrecy and the separation of functions. Where illicit drugs are moved by vehicle, the steps taken to ensure security may include anti-tracking measures, using legitimate carriers for shipment pickup, moving the drugs from location to location, and adopting counter-surveillance manoeuvres to see if there is anyone following the shipment. Steps to ensure secure communications might include using direct, person to person, communication, using cell phones, although texts leave a track, and using third parties to relay messages.

**20** Sgt. Rintoul described the hiding of the drugs in a shipment of a roller conveyor unit as a "somewhat sophisticated" trafficking method.

**21** In cross-examination, Sgt. Rintoul acknowledged that heroin and cocaine have a far more negative effect on society than ketamine, but he said that ketamine is still not benign and is a problem in society because, for example, it renders people vulnerable to sexual assault.

### **E. Jagtar Singh Dehal**

**22** Mr. Dehal spent some time describing his background. He was born in India and came to Canada in 1987. He did not finish high school in India. In Canada, he has done janitorial work, worked at foundries, fixed appliances and built cedar fences and outdoor furniture. Currently he is not employed because of injuries suffered in a car accident. Before his injury he did handyman work and appliance service calls, on a cash basis, in addition to his regular janitorial work.

**23** Mr. Dehal lives with his wife, her mother and their adult daughter. He had a son, but the son passed away in 2007. His son had muscular dystrophy and was in a wheelchair. On his deathbed, his son extracted a promise from Mr. Dehal that he "would not do anything wrong in this world". Mr. Dehal had a drinking problem at the time and he quit drinking as a result of his promise.

**24** Mr. Dehal has a workshop at the rear of his residence. He does his handyman work there. There are two windows, but he covered these with cardboard. He has now closed off one of the windows due to an attempted break-in. It was not clear on the evidence when that break-in occurred.

**25** There are three cars in the family. The Honda Civic is his wife's car. The Toyota Prius is his car. He keeps tools for his work in the Prius, and he sometimes keeps mail, money and his wallet in the car as well. He said they use whatever car is around.

**26** Mr. Dehal said he typically keeps \$1,500 in cash on hand, either on his person or in his car. Sometimes he has to buy parts for his appliance service calls and so he uses the money for that.

**27** Mr. Dehal said that he became involved with the rollers through a man named Dodd. He met Mr. Dodd at a recovery house sometime prior to 2007. Mr. Dodd was his roommate there. Mr. Dodd spoke Punjabi, as Mr. Dehal does. In the course of their conversations, Mr. Dehal told Mr. Dodd of his foundry work which, among other things, involved melting metal in a 1,400 degree furnace.

**28** After they left the recovery house Mr. Dehal and Mr. Dodd maintained a friendship. One day Mr. Dodd came by and noticed all the cars in Mr. Dehal's driveway. Mr. Dodd asked Mr. Dehal if he needed cheap gas. Mr. Dehal asked Mr. Dodd where he got the cheap gas. Mr. Dodd said, and this is a quote from Mr. Dehal's evidence, "You don't have to worry about that. You don't have any concern with that. Don't think about that. I'll bring you cheap gas". He added, "I don't want to put you in any trouble because you are my friend". Then Mr. Dodd told him, "the native people, they don't pay tax either".

**29** Two or three days later Mr. Dodd arrived with 10 jerry cans filled with gas. This continued through several more deliveries, but after that Mr. Dodd did not use jerry cans any more as he had installed a large tank in his van. Mr. Dodd continued to make gas deliveries, selling the gas to Mr. Dehal at a substantial discount from the retail price.

**30** When asked in his direct examination if it crossed his mind the gas might be stolen, Mr. Dehal said he asked Mr. Dodd a number of times where he picked up this gas, and Mr. Dodd said, "I have no intention to put you in any trouble".

**31** At the time of one gas delivery Mr. Dodd asked Mr. Dehal if he was interested in handyman work, specifically, work involving cutting metal. Mr. Dodd said when the metal was cut, he would sell it. He promised Mr. Dehal free gas or payment of \$250 or \$300. Mr. Dehal said "okay". Mr. Dodd then said he would let Mr. Dehal know if they needed to cut it.

**32** One day in late May 2012 Mr. Dodd asked Mr. Dehal for a ride. Mr. Dehal considered this odd as Mr. Dodd had never asked for a ride before. Mr. Dehal dropped off Mr. Dodd at a strip mall on 128th Street and then went straight home.

**33** The next day Mr. Dodd phoned Mr. Dehal and discussed the metal cutting job. Mr. Dehal said Mr. Dodd told him he, that is Mr. Dehal, could either go to Vancouver to cut it or Mr. Dehal could bring it to Mr. Dehal's house and cut it there. Mr. Dehal replied that either place was okay. Mr. Dodd then said, or perhaps later said, that Mr. Dehal would have to pick it up. He told Mr. Dehal that the item to be cut was in an alley between East 35th Avenue and East 36th Avenue, and it was covered with a carpet. Later in his testimony, Mr. Dehal admitted he thought the metal was stolen.

[INTERRUPTION BY INTERPRETER.]

**34** Mr. Dehal went to the address he was given, driving his wife's Honda Civic. He saw that the item was a roller conveyor unit, and on the stand he confirmed that what he saw was depicted in Exhibit 3, Photograph 19. Later he said that the "railings" also had legs that were very heavy. I note here that the legs are shown in Exhibit 3, Photograph 11.

**35** Mr. Dehal concluded that the roller conveyor unit was too heavy to pick up so he removed the rollers from the frame with tools he brought. He reasoned that he would take the rollers and then return the next day, on his way to or from work, to take the legs. He arrived back home at midnight or shortly thereafter and put the rollers in his workshop.

**36** Mr. Dehal said he went to bed, but could not sleep. He decided to get up and do the work right then. He went to the workshop and picked up one of the rollers. Earlier, he had asked Mr. Dodd how he was to cut the pieces and Mr. Dodd replied, "Once you cut it, you will know". He noticed that there were bearings on each end of the rollers. He said bearings are "very expensive" and can be sold, so he removed one end bearing using a bar. He saw something inside. His first thought was that there might be water or other liquid inside to control the roller's speed. He then saw that there was a plastic bag, which he pulled out. It was a very long plastic bag, filled with a substance that looked like fine granulated sugar. He said he got "so surprised" because Mr. Dodd had told him to cut it. He put the bag and roller to one side and decided to open the next one "to see what happened". He removed an end bearing on another roller and the same thing was coming out of the roller. He said he was "kind of shocked, he was my friend, he wouldn't do this to me", referring to Mr. Dodd. He was confused but thought he would open a third roller, and there he found wiring and a little bag. He testified, "So I felt very bad and thought my friend probably defrauded me. I am not that kind of person. I thought he was pushing me into drugs".

**37** Mr. Dehal added that when he opened the third roller, he thought it might be a bomb. In cross-examination he said he did not know if it was a missile or a bomb.

**38** Mr. Dehal left the rollers and exited the workshop. He walked over towards the house, then stood there and smoked a cigarette for a few minutes. He said "it was a little bit pouring rain". That is when the police came.

**39** After his arrest Mr. Dehal tried to call Mr. Dodd a couple of times, but he did not answer. Mr. Dehal knew that Mr. Dodd lived in a particular apartment but he did not have access to the building and he did not know which floor Mr. Dodd was on. Sometime later Mr. Dehal heard that Mr. Dodd was in an accident in his van, which had blown up because of the gas he was carrying. Mr. Dehal heard that Mr. Dodd died in that accident.

**40** Mr. Dehal denied knowing anything about the drugs and said he has never dealt with drugs. He said he always keeps in mind his promise to his late son that he would never do anything like this and he kept his promise. He realizes now that he was used.

[DISCUSSION RE CONTINUING AVAILABILITY OF THE COURTROOM.]

**41** In cross-examination, Mr. Dehal said:

- a) Mr. Dodd never told him what his own employment was, other than mentioning his family had a retail business and he used to do deliveries for that business;
- b) in their neighbourhood, there have been lots of incidents of theft;
- c) during an attempted break-in at Mr. Dehal's workshop someone loosened the security lights so they did not work. He fixed them afterward. He acknowledged, however, that pictures taken on the day of the arrest showed that there were no light bulbs in the security light fixtures;
- d) he suffered a workplace injury in 2011 and injured his foot. He was treated in hospital but the pain persisted. This led to surgery at St. Paul's Hospital. On his way back to St. Paul's Hospital to have the stitches removed he was involved in a car accident. He has not worked since;
- e) after a break in his cross-examination, Mr. Dehal corrected the dates of his workplace accident and car accident. He said the workplace accident happened after his arrest on June 3, 2012, and the car accident happened in 2013;
- f) he did not report on his tax returns any income he received from his service calls or handyman work, including income from that sort of work earned after his son's death;
- g) the gas he bought from Mr. Dodd was 30 to 40 cents less than the retail price. He did not ask if the gas was stolen or not. He did not think in those terms because Mr. Dodd was his friend and "maybe Mr. Dodd bought the gas over the border". Mr. Dodd told him "I don't want to create trouble for you", but in cross-examination Mr. Dehal was unable to say how it would cause him trouble;
- h) to cut the metal, he would need a saw, a torch or a grinder. There was a grinder in the cupboard in the workshop. He had a saw and a torch in the

garage of the residence. He did not get these out because he was thinking he would cut the rollers the following day, but he could not sleep, so he went out to the workshop to look at the rollers. He then saw the bearings and thought he would remove them;

- i) when Mr. Dodd gave him the directions to pick up the metal, he did so in person, at Mr. Dehal's home. Mr. Dehal told Mr. Dodd he should do it himself as Mr. Dodd was a handyman too, but Mr. Dodd said his skills were more with wood;
- j) Mr. Dodd gave him directions where to go and said the metal would be outside. He suggested that Mr. Dehal pick up the metal "today or tomorrow". Mr. Dehal did not know in advance that he would have to disassemble the unit. He keeps tools in his own car but he also had tools with him while driving his wife's Honda Civic, because he always takes his tools;
- k) when he arrived at the location it was dark. The metal was lying outside. He decided to disassemble the roller conveyor unit. It took him half an hour to get the rollers off using an Allen key and a hammer. He then covered up the frame and left it where it was;
- l) he has a prescription for sleeping pills called Zopiclone, as he has problems with sleep. He had those pills available that night. He chose to go back to his workshop instead of taking a sleeping pill, because he had to get up at 4:00 a.m. to go to work; and
- m) after he emptied the first two rollers, he stacked them in an upright position against a cupboard in the workshop.

## **F. Other Defence Witnesses**

*Michael Yu*

**42** Michael Yu, a personal injury lawyer, confirmed that he acted for Mr. Dehal in a claim arising out of a car accident that occurred on September 3, 2013. In the course of that claim Mr. Yu had to

take into account Mr. Dehal's pre-existing injury to his foot that occurred in November 2012.

*Gurdev Singh Dehal*

**43** Mr. Dehal's father, Gurdev Singh Dehal, whom I will call Mr. Dehal Sr., testified that in late May or early June 2012, his son asked him for \$2,000 to help him pay his mortgage. Mr. Dehal Sr. paid his son \$2,000 in cash. His son later repaid that amount, though in cross-examination he said his son repaid just some of it.

**44** In cross-examination, Mr. Dehal Sr. said that his son borrowed smaller sums at times but these too were repaid. At the time his son asked him for \$2,000, his son was not working full-time and needed his help because he did not have income.

*Kiran Dehal*

**45** Kiran Dehal is Mr. Dehal's 21 year old daughter. She lives at home with her mother, father and grandmother. Her brother passed away in 2006 when he was 15 years old. He suffered from muscular dystrophy.

**46** Ms. Dehal is a licensed practical nurse and she works at a long-term care facility. She contributes to household expenses up to \$2,000 to \$3,000 each month. However, she was not contributing to the household finances at the time of her father's arrest. Her mother does not work as she is on disability. Her father is not working either due to workplace and car injuries, although his claim finished this year and he is now looking for work. The family also gets rent from two suites in the home, and sometimes her grandmother and grandfather help out financially as well.

**47** Her father's janitorial work hours were 5:00 a.m. to 2:30 p.m. He would then do two to four hours of handyman work.

**48** Ms. Dehal confirmed that her father had a friend named Dodd who used to come to their home. He came with a gasoline truck every two or three weeks and would sell them discount gas. They filled up their cars and jerry cans.

**49** Ms. Dehal was shocked by her father's arrest. She said, knowing the morals and values he had taught her he would not possess illicit drugs on purpose.

**50** In cross-examination Ms. Dehal was asked where she thought Mr. Dodd's gas came from and she said she did not know. Her grandfather used to have a gas station, yet they could not get cheap gas from him, not as cheap as Mr. Dodd's. She said she did not suspect that the gas was stolen.

**51** Ms. Dehal said Mr. Dodd and her father were old friends. Mr. Dodd had been around as long as she could remember. When they were just friends sometimes Mr. Dodd would ask her father for money. Later, when he had gas to sell, he would come around every two or three weeks.

52 Ms. Dehal agreed she would do anything for her father.

### **III. Positions of Crown and Defence**

#### **A. Crown**

53 The Crown submits that Mr. Dehal's story is incredible and ought to be rejected. Crown gave several examples of his lack of credibility on various matters, including his assertion that he was of high moral character while being the willing receiver of stolen gasoline and metal, his changing testimony on the dates of his workplace accident and car accident, and his evasiveness on other points.

54 Crown notes that Mr. Dehal's evidence of standing and smoking in the rain was inconsistent with the observations of the first officer on scene, Cst. Fay.

55 Crown submits that Mr. Dehal's evidence about the core events was also not capable of belief, because much of it did not make sense and was internally inconsistent.

56 Crown refers to Sgt. Rintoul's expert evidence that, for security reasons, traffickers will move a shipment multiple times, and different locations are used to unwrap, store, package and disseminate the drugs. The organization is spread widely, with a separation of functions, in order to insulate the product and confine or isolate the members who are at risk. This, Crown says, is what happened here.

57 Crown submits that Mr. Dehal's evidence ought not to be believed, it does not raise a reasonable doubt, and on the remaining body of evidence, the Court ought to be satisfied that the only conclusion reasonably available is that Mr. Dehal knew about the drugs inside the rollers.

#### **B. Defence**

58 Defence counsel submits that Mr. Dehal is a mere handyman, not a drug dealer, and was an unwitting participant. Counsel said the issue here is whether the Crown has met its heavy burden of showing Mr. Dehal had the requisite knowledge of the substance he possessed.

59 Defence counsel emphasizes that the approach to be used here is that set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, 63 C.C.C. (3d) 397.

60 Counsel notes that the Crown led no evidence connecting Mr. Dehal to any of the supposed traffickers, to the consignee, the air carrier or customs broker, or to the GMC Sierra. The only connections to Mr. Dehal are: (1) giving a ride to Mr. Dodd to the 128th strip mall where the GMC Sierra was parked; (2) taking the rollers from East Vancouver to Surrey; and (3) opening the rollers.

61 Counsel noted that Mr. Dehal was cooperative when arrested. He was confused about the dates of his work injury and car accident, but he clarified these of his own accord and the corrected

dates were confirmed by his personal injury lawyer.

**62** Counsel said that a central question, not explained by the Crown, is why would Mr. Dehal bring the rollers, and the attendant danger, to his own home?

#### **IV. Discussion**

##### **A. General Principles**

**63** The Crown must establish, beyond a reasonable doubt, that Mr. Dehal had actual, physical control over the rollers containing the ketamine and that he knew the rollers contained a prohibited drug. I note that actual, physical control over the rollers has been established here and this was not disputed by the defence.

**64** The Crown need not establish that Mr. Dehal knew the substance was ketamine, as it is sufficient that the Crown establishes that Mr. Dehal knew the roller contained a prohibited drug: *R. v. To* (1992), 16 B.C.A.C. 223, at paras. 16 and 17.

**65** In this case the Crown seeks to prove knowledge on the part of Mr. Dehal by means of an inference drawn from circumstantial evidence. Before I find Mr. Dehal guilty I must be satisfied that knowledge on his part is the only reasonable or rational inference to be drawn from the proven facts.

**66** The other main legal principle that must guide my analysis is the principle from *R. v. W.(D.)*, as augmented by our Court of Appeal in *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146. These cases establish the proper approach to be taken in cases turning on credibility where the accused has testified. That approach is articulated in the following suggested jury charge:

- a) First, if you believe the testimony of the accused that he did not commit the offence charged, you must acquit;
- b) Second, if you do not believe the testimony of the accused, but you are left in reasonable doubt by it, you must acquit;
- c) Third, if after careful consideration of all of the evidence, you are unable to decide whom to believe, you must acquit; and
- d) Fourth, even if you are not left in doubt by the testimony of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

## **B. Mr. Dehal's Credibility**

**67** Mr. Dehal made much of his high moral values and of his promise to his late son that he would never do anything that was wrong. The evidence at trial largely contradicted his self-portrayal. He willingly received gasoline that on any reasonable view had to be stolen or at least illicit in some fashion. On his own evidence he was willing to assist a metal thief or a receiver of stolen goods in breaking down some stolen metal, and he was willing to skulk about in a dark alley in the middle of the night to do so. These matters make his assertion of high moral character ring hollow. His credibility suffered as a result.

**68** I reach this conclusion even without having to rely on Mr. Dehal's evidence that he did not declare for income tax purposes any of the cash income he received. Compared to the other activities just mentioned, under-reporting income for tax purposes, being relatively common, as distressing as that is to say, provides less of a contrast between the moral values Mr. Dehal professed and his actual behaviour. It *should* not, but it does.

**69** Crown argued that Mr. Dehal also lied to police about not speaking or understanding English because it is apparent that in fact he has a working knowledge of the language. While Mr. Dehal's statement to police was not entirely true, it was not entirely false either, and he was concerned about fully understanding and expressing himself in English when he was obviously in very great jeopardy. Given the circumstances I conclude that his statement to police about not speaking English did not necessarily contradict his claim of high moral character or in itself cast doubt on his overall credibility.

**70** Mr. Dehal's credibility did not fare well in some other respects, however. He was evasive in answering questions about unreported income and about his gasoline purchases and where he thought the gas came from. On his own evidence, his gas supplier, Dodd, was very coy with him about the source of the gas, declining to say where he got it from, and telling him "I don't want to put you in any trouble". Days later, Mr. Dodd made his first gasoline delivery by way of 10 jerry cans. From these circumstances I have no doubt that Mr. Dehal knew or suspected the gasoline was illicitly obtained. He would not concede that, however, and he was very evasive on the subject. This reflected very poorly on his credibility.

**71** The Crown submitted that Mr. Dehal covered the windows of the workshop and had non-functioning exterior lights because it suited him to have the building "cloaked in darkness" while unpacking the drugs from the rollers in the middle of the night. Mr. Dehal testified that he had fixed the security lights on the workshop, but the photographs taken on the day of the arrest showed that there were no bulbs in the fixtures. This, too, did not reflect well on Mr. Dehal's credibility.

**72** Crown argued that Mr. Dehal's credibility suffered a serious setback when, in the middle of his cross-examination, he corrected the dates of his workplace injury and car accident to a much

later time. Crown noted that the dates initially given were inconsistent with his testimony that he had to get up early to go to work, such that he would be able to get the rest of the metal on his way to or from work, because those dates would have meant that he was not working at that time. Crown says Mr. Dehal had to correct the dates to maintain a consistent story.

**73** The personal injury lawyer established that the workplace injury took place in 2012, after Mr. Dehal's arrest on the current charge, and that his car accident happened in 2013.

**74** While it is difficult to know what to make of the change in Mr. Dehal's evidence on this point -- and here I would add that the car accident was relatively recent so it is a little hard to believe Mr. Dehal could have thought it occurred as far back as 2011 -- I conclude that it may well have been an unthinking misstatement, as Mr. Dehal himself said it was, and so I do not draw any adverse credibility conclusions as a result of that matter alone.

**75** There are, however, other problems with his credibility, as I outlined earlier.

### **C. Analysis**

**76** Most of the surrounding facts were not disputed and I accept that they have been proven by the Crown. I also accept the opinion evidence of Sgt. Rintoul. The focus of this case was not so much on factual disputes as it was on both the inferences that ought to be drawn from the facts and on the testimony of Mr. Dehal.

**77** As to certain of the disputed facts, I find the Crown has proven that in the early hours of June 3, 2012 the Honda Civic, which was being driven by Mr. Dehal from the Vancouver location near East 36th Avenue to Mr. Dehal's house on 64th Avenue in Surrey, performed a number of unusual manoeuvres, as described by Cst. Fay. He described, and I accept, that the Honda Civic made multiple small turns down side streets, perhaps six of them in a five-minute span, in the area around 64th Avenue and 128th Street in Surrey.

**78** I also accept the evidence of Cst. Fay, and find as a fact, that when Cst. Fay first saw Mr. Dehal after the alarm had been activated, Mr. Dehal was about 10 feet from the door of the outbuilding or workshop, closer to the workshop than to the house, and Mr. Dehal was walking away from the workshop. I reject Mr. Dehal's evidence that just before Cst. Fay's arrival he was standing much nearer the house, smoking a cigarette, and that it was raining.

**79** I address some of the other factual issues as follows:

- a) I am unable to conclude that Mr. Dehal covered the workshop windows with cardboard in order to better carry out activities related to drugs, though it would certainly aid this activity. I accept it is possible that this was done to deter theft, as suggested by the defence, though I will also say that if the cardboard was put on the windows due to concerns about

break-ins this is inconsistent with leaving light bulbs out of the exterior light fixtures and inconsistent as well with leaving a wallet, tools, and over \$3,000 in cash in the Prius parked nearby;

- b) the potentially damaging evidence about the large amount of cash located in the Prius was largely neutralized by the evidence of Mr. Dehal Sr., who said he gave his son \$2,000 in cash to help him pay his mortgage, due to his son's insufficient income. However, this evidence also served to highlight that Mr. Dehal was in need of money, and a fair bit of it at that;
- c) Mr. Dehal's version of events is that he was enlisted to cut some stolen metal. He arrived at the alleyway behind East 36th Avenue and found the roller unit. It was too heavy to pick up, so he disassembled it and drove off with only the nine rollers, intending to return the next day to retrieve the heavy leg pieces. However, the evidence generally and the photographs in particular show that there were also some other pieces that were part of the roller conveyor unit, those being the two side pieces and two smaller cross members. These were of similar length and size as the rollers themselves. Even if the two trestle leg pieces were too large and heavy to take there and then, there does not seem to be any reason why Mr. Dehal would not take away all of the metal of the roller unit at that time, if indeed it was stolen metal that he was after;
- d) in his direct examination Mr. Dehal said that, after returning home with the rollers he went to bed but could not sleep. He said, "So I thought maybe I could do the work now". Metal cutting, he said, would be done by means of a saw, a torch, or a grinder. A saw and a torch were in the garage of the house, and a grinder was stored in a cupboard in the workshop, but Mr. Dehal did not retrieve any of those tools. When the absence of suitable tools was put to him in cross-examination, his evidence changed somewhat because he then said "I went just to look at them", "them" being the rollers, and he decided to take the bearings out because they were valuable. This change in Mr. Dehal's evidence is another matter that undermines his credibility. Also, assuming Mr. Dehal's first version is the correct one, that he thought maybe he would do the work now, Mr. Dehal's failure to retrieve any metal cutting tools tends to point to the conclusion that his real intention was not to cut the metal, but was to do something else with the rollers;

- e) Mr. Dehal said that when he opened the third roller, he thought it might be a bomb, or perhaps a missile, because of the presence of wiring and a little bag, the latter no doubt being the alarm and tracking device. Although he exited the workshop at that point he still stayed close by and, according to his version of events, he smoked a cigarette for a few minutes. It is very difficult to believe he would have stayed so close to the workshop and not warned the occupants of his house if he truly believed he might have opened an explosive device; and
- f) two empty rollers were neatly placed against a wall and cupboard located sufficiently away from the area of the work that Mr. Dehal agreed he had to walk over to it in order to place the rollers. All three of the end bearings removed from the three empty rollers were placed on top of a cardboard box, where tools were also resting, and one of those end bearings was neatly placed on top of another of the end bearings. The tidy placement of these items seems inconsistent with Mr. Dehal's testimony that as he was dismantling the rollers and removing the bags of drugs, he was "shocked", "surprised" and unable to believe that Mr. Dodd would do that to him.

**80** I turn now to the more central question of Mr. Dehal's explanation for his involvement with the rollers. Mr. Dehal said that Mr. Dodd asked him to cut up some metal that Mr. Dodd wanted to sell. Mr. Dodd did not give Mr. Dehal any guidance about how to cut the metal, other than to say "Once you cut it, you will know". Thus, according to this version of events, Mr. Dodd, a drug trafficker, arranged for metal rollers containing drugs worth between \$115,000 and \$1.15 million to be placed into the hands of an innocent handyman so that the rollers could be cut up as the handyman saw fit. According to Mr. Dehal, the cutting of the rollers could be done using a saw, a torch, or a grinder. Each of these methods would carry with it a risk that the cutting would go right into the bags of ketamine and result in the loss or destruction of some or all of the drugs. There would also be the risk that on discovery of the drugs, Mr. Dehal, if truly unaware of the rollers' contents, would: (1) call the police, and if he did so he would be able to readily identify the person who directed him to the rollers; or (2) dispose of or discard the drugs. I am unable to accept that a person involved with trafficking such a valuable drug shipment would put that shipment, and himself, at such great risk.

**81** For all of those reasons, including my earlier assessment of some of the factual issues as well as my assessment of the credibility of Mr. Dehal, I do not believe the version of events given by Mr. Dehal and I am not left with a reasonable doubt as a result of his testimony.

**82** This leaves me to consider whether, on the evidence I do accept, I am convinced beyond a reasonable doubt that Mr. Dehal knew there were drugs in the rollers. The evidence establishes that Mr. Dehal was in need of money, as evidenced by the fact that he had to borrow \$2,000 from his

father in order to pay his mortgage. This establishes a motive to do something that might be perceived by some to be out of character for him. The evidence also shows that shortly before midnight on June 2-3, 2012 Mr. Dehal attended at a back alley behind East 36th Avenue and dismantled the roller conveyor unit, taking only those parts (the rollers) that contained the drug bags. He transported the rollers to a workshop behind his home in Surrey, and as he approached his neighbourhood he carried out a number of unusual manoeuvres, the only purpose for which, I conclude, was to counter any surveillance taking place. Those manoeuvres were similar to those carried out by the GMC Sierra pickup truck on its May 31 journey from the 128th Street strip mall to the alley behind East 36th Avenue. These counter-surveillance manoeuvres weigh heavily against Mr. Dehal. While it might be argued that counter-surveillance manoeuvres might also be used for other criminal activity, such as possessing stolen property, I find it unlikely that such hypervigilance would be used for that sort of lesser crime involving, as it does, much less risk.

**83** On Mr. Dehal's arrival at his house, he parked his car in such a way that the trunk of the car was as close as possible to the door of the workshop. Although the workshop had exterior light fixtures on the south and west sides, there were no bulbs in the fixtures. The two windows of the workshop were covered with cardboard. Mr. Dehal put all nine rollers in the workshop. He had no cutting tools immediately at hand. He proceeded to remove an end bearing on each of three rollers, which enabled him to remove long bags containing placebo substance that had the appearance of illicit drugs. Two of the empty rollers were placed neatly against a wall and cupboard, and the three end bearings were placed on top of a group of boxes, with two bearings stacked together, in a tidy fashion that I conclude is inconsistent with Mr. Dehal's assertion that he was shocked and surprised and thinking his friend had defrauded him, and is more consistent with an unhurried, methodical dismantling of the rollers by someone unsurprised by their contents. The third roller contained a sample of ketamine, as well as an alarm and tracking unit and associated wires. Only on seeing the tracking unit and wires did Mr. Dehal cease his dismantling of the rollers, again suggesting that he was not at all surprised by the drug bags he had already found. The removal of the end bearing on the third roller triggered the alarm, and police were on scene within moments. When the first officer arrived on the scene Mr. Dehal was outside the workshop, closer to the workshop than to the house, and walking away from the workshop.

**84** For the reasons discussed earlier, in the circumstances of this case I do not accept that a drug trafficker or traffickers would entrust a highly valuable drug shipment to an unwitting person, whether to avail themselves of his handyman skills or otherwise, because the risk to the drug shipment, and to one of the traffickers in particular, would be too great. The situation compels the conclusion that Mr. Dehal was a knowing participant.

**85** Upon a consideration of all of the evidence and of the facts as I have found them, summarized earlier, I conclude that the only reasonable or rational inference to be drawn from the proven facts is that Mr. Dehal was aware that there were drugs in the rollers.

**86** I therefore find that the Crown has proven knowledge and possession on the part of Mr. Dehal.

Given the quantity of drugs involved, and based on Sgt. Rintoul's evidence that such a quantity would likely be destined elsewhere, I am satisfied that Mr. Dehal's possession of the ketamine was for the purpose of trafficking.

**D. Conclusion**

**87** In the result, I find Mr. Dehal guilty of possessing ketamine for the purposes of trafficking, as charged in the indictment. Those conclude my reasons.

M.B. BLOK J.