

2012 ABPC 90
Alberta Provincial Court

R. v. Janchevsky

2012 CarswellAlta 678, 2012 ABPC 90, [2012] A.W.L.D. 4046, [2012] A.J. No. 382, 100 W.C.B. (2d) 275

Her Majesty the Queen and Nicholas Viktor Janchevsky

George J. Gaschler Prov. J.

Judgment: April 4, 2012

Docket: Calgary 110397023P10101-0104

Counsel: Anita Szabo, Q.C., for Crown
Tyson Dahlem, for Accused

Subject: Criminal; Evidence

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Criminal law --- Narcotic and drug control — Offences — Possession for purpose of trafficking — Controlled Drugs and Substances Act — Miscellaneous

Accused charged with four counts of possession of controlled substances for purpose of trafficking — Police executed search warrant and found drugs and cash in apartment where accused was present — Accused's passport, birth certificate, and record of employment were on night table in bedroom where drugs were found — Accused testified that he knew drugs were in bedroom, but that he was not owner, nor was he in possession of drugs — Accused testified he purchased drugs from owners on daily basis for personal use and that he stayed on mattress in living room — Accused found not guilty — There was no evidence that accused had any power of consent to prevent other people from coming to apartment nor to prevent other people from using apartment for purposes as they chose — There was no direct evidence that accused occupied bedroom or that he even went into it — There was no evidence that accused was involved in drug trafficking as runner, doorman, custodian, or bookkeeper, and no evidence that he aided or abetted same in any way — Accused's documents located on night stand could not alone be basis for inference that accused had degree of control of contraband found concealed in bedroom — Accused's denial was not refuted by evidence, and his evidence raised reasonable doubt that he had necessary element of control over substances and cash found in bedroom — While accused had knowledge that drugs for trafficking were kept in bedroom, there was no evidence that he had more than quiescent knowledge.

Table of Authorities

Cases considered by *George J. Gaschler Prov. J.*:

R. v. Cooper (1977), 37 C.R.N.S. 1, 74 D.L.R. (3d) 731, 1977 CarswellOnt 484F, [1978] 1 S.C.R. 860, 14 N.R. 181, 34 C.C.C. (2d) 18, 1977 CarswellOnt 10 (S.C.C.) — considered

R. v. Escoffery (1996), 47 C.R. (4th) 40, (sub nom. *R. v. Grey*) 89 O.A.C. 394, (sub nom. *R. v. Grey*) 28 O.R. (3d) 417, 1996 CarswellOnt 935 (Ont. C.A.) — considered

R. v. Nguyen (2010), 2010 CarswellAlta 827, 2010 ABCA 145, (sub nom. *R. v. Ta*) 495 W.A.C. 168, (sub nom. *R. v. Ta*) 487 A.R. 168 (Alta. C.A.) — followed

R. v. Pham (2005), 2005 CarswellOnt 6940, 77 O.R. (3d) 401, 204 O.A.C. 299, 203 C.C.C. (3d) 326, 36 C.R. (6th) 200 (Ont. C.A.) — followed

R. v. Pham (2006), 2006 SCC 26, 2006 CarswellOnt 3765, 2006 CarswellOnt 3766, 267 D.L.R. (4th) 599, 209 C.C.C. (3d) 351, 349 N.R. 387, [2006] 1 S.C.R. 940, 37 C.R. (6th) 240, 213 O.A.C. 399 (S.C.C.) — referred to

R. v. Thompson (2010), 2010 CarswellOnt 3650, 2010 ONSC 2997 (Ont. S.C.J.) — considered

R. v. W. (D.) (1991), 1991 CarswellOnt 1015, 3 C.R. (4th) 302, 63 C.C.C. (3d) 397, 122 N.R. 277, 46 O.A.C. 352, [1991] 1 S.C.R. 742, 1991 CarswellOnt 80 (S.C.C.) — followed

Statutes considered:

Controlled Drugs and Substances Act, S.C. 1996, c. 19
s. 5(2) — pursuant to

Criminal Code, R.S.C. 1985, c. C-46
s. 4(3) — considered

George J. Gaschler Prov. J.:

Charges

1 Nicholas Viktor Janchevsky is charged with four counts of possession for the purpose of trafficking under s.5(2) of the *Controlled Drugs and Substances Act*; namely cocaine, psilocybin, ecstasy and ketamine, plus one count of possession of property namely \$1,370.00 Canadian dollars knowing that the same was derived from the commission in Canada of an indictable offence. These charges arose at Banff, Alberta on the 20th day of June, 2009.

Facts

2 The controlled substances and cash were all found in Bedroom #1 at [...] Moose Street, Banff, Alberta. Upon execution of a search warrant at that location Janchevsky was found in the apartment.

3 Janchevsky gave evidence in his defence. He testified that he knew controlled substances were in Bedroom #1, but that he was not the owner, nor was he in possession of those substances. He stated the names of the owners. He stated that he made purchases from the owners and that he was a user at the time on a full day, every day basis, he further stated that he had been staying on a mattress in the living room.

4 The Defence argument is that on *R. v. W. (D.)*, [1991] 1 S.C.R. 742 (S.C.C.) analysis, I should believe the accused or alternatively on the accused's evidence I should have a reasonable doubt.

5 The Crowns submission is that none of the evidence of the accused is credible and does not raise any reasonable doubt. In particular, circumstantial evidence and reasonable inferences from proven facts and application of the law of possession to the facts demonstrate guilt beyond a reasonable doubt.

6 It is agreed that substances found in Bedroom #1 were analyzed and found to be ketamine, psilocybin, cocaine, ecstasy and methamphetamine.

7 The Crown's first witness was Constable Mathieu Belliard. Constable Belliard, together with Constable Fitzpatrick, acting on information from a confidential informant that a large amount of cocaine would be found at [...] Moose Street, Banff, Alberta, obtained a search warrant for the said address.

8 The warrant was executed at 12:30 a.m. on June 20, 2009. One Phillip McKinley opened the door to the apartment. A young woman was found sitting on a bed in Bedroom #2. Janchevsky was found laying on the floor. However, Constable Belliard did not say where in the apartment Janchevsky was actually found.

9 All three persons were arrested and searched. A large number of photographs were taken of all the rooms in the apartment and entered as exhibits. Constable Belliard reviewed the photographs and provided some explanation of what was shown in each.

10 By way of overview, all of the rooms in the apartment were cluttered and in extreme disarray. Clothing and shoes were scattered throughout. The kitchen counters and cupboards were in disarray with food, dirty dishes, paper containers, bottles, packages and garbage. The living room floor was dirty, with many dvd containers, many loose poker chips and small plastic baggies scattered on the floor, together with shoes and clothing.

11 Amid the clutter in the kitchen and livingroom was abundant evidence consistent with the handling and consumption of drugs including, residue on counters and drawers, rolled up paper cylinders, measuring spoons with apparent residue, hash pipes, and many small baggies, designed to hold small quantities.

12 Constable Belliard's attention was focused on Bedroom #1. Numerous photographs were provided and like the remainder of the apartment, Bedroom #1 was strewn with garbage and the clutter of many kinds of items. There were piles of clothes on the unmade bed, on the floor and on the floor of the open closet.

13 The furnishings of Bedroom #1 consisted of a bed, two white dressers made up of drawers, and a night table with an upper drawer and a lower open space.

14 An Agreed Statement of Facts was entered. Quantities of substances analyzed as stated in the Agreed Statement of Facts were found in Bedroom #1:

Inside a drawer in the night table:

- 1) a plastic bag with powder - found to be crack cocaine.
- 2) Canadian Currency mostly 20's equaling \$1,370.
- 3) an electronic scale 4) measuring spoons and cups with white powder residue

Inside white dresser #1:

- 1) in the second drawer - under clothing - three chunks brown substance - found to be hashish as well as tinfoil packages containing psilocybin, and bags of small pills MDA or ecstasy 100's.

Under the Mattress:

- 1) a baggie with 2 small pills

In the closet:

- 1) in a backpack, a piece of paper identified as a score sheet documenting sales, quantities, persons' names, numbers and calculations.

15 Found in Bedroom #2, which was the bedroom where on entry to the apartment to execute the search warrant the young woman was located, the following was found:

- 1) 9 grams marijuana in her purse
- 2) scales in a drawer
- 3) white powder residue found on a desk in the room together with a rolled up \$10 bill.
- 4) a cell phone, that rang frequently during the search, and identified as the young woman's was examined and text messages were reviewed, which indicated in jargon that weed and mushrooms were available.

16 In addition to the three persons found in the apartment, there was evidence of other persons in some degree of association with the apartment.

2 Following is a list of the items, the locations where the items were found and the persons to whom the evidence appears to be linked.

- 1) Found on the open shelf area of the night table in Bedroom #1 were the Canadian Passport of the accused, Nicholas Viktor Janchevsky, as well as a Record of Employment in his name, and his Birth Certificate.
- 2) Found on the top of the night stand in Bedroom #1 was a cell phone identified belonging to Neil Hatherall. Also on top of the night stand was a pay stub issued to a Shawn Martin.
- 3) Also found in Bedroom #1 was a cardboard box with Neil Hatherall's name on it.
- 4) In the closed drawer of the night table with the bag of crack cocaine and cash was a Mountain Equipment Co-op Card in the name of Neil Hatherall.
- 5) The backpack found in the closed in Bedroom #1 was identified by Constable Belliard as belonging to Colin Traquir.
- 6) In the livingroom on the floor beside the couch was Janchevsky's cell phone, on the coffee table was found Janchevsky's Banff Centre Gym card.
- 7) On the fridge was a First Aid card in the name of Colin Traquir, on top of the fridge were bank records in the name of Colin Traquir. Also on the fridge was another document in the name of Neil Hatherall.
- 8) In the kitchen a rent receipt was found dated October 21, 2008 issued to someone named Dowling.

3 Under cross-examination Constable Belliard advised of the following:

- 1) The primary targets of the search were Colin Traquir and Neil Hatherall.
- 2) Constable Belliard expected to find Colin Traquir and Neil Hatherall at the apartment.
- 3) Janchevsky was an unknown before finding him in the apartment.
- 4) Four names were on the rental agreement for the apartment:
 - Colin Traquir
 - Neil Hatherall
 - and two females

5) There was nothing in Bedroom #1 besides the Passport, Birth Certificate and Record of Employment that connected with Janchevsky.

4 Corporal Michael Badder was qualified by agreement as an expert witness to provide evidence with respect to purchasing, consumption, pricing methods, distribution and trafficking and personal consumption of controlled substances.

5 Corporal Badder testified that the document found in the backpack in the closet of Bedroom #1 was consistent with a scoresheet business record of drug sales. The name Diego was found on the scoresheet beside the numbers 200 crossed out, 68 crossed out, and the number 55.

6 Corporal Badder testified that on the cell phone belonging to Janchevsky he located a text from a Diego at 7:33 p.m. that same night.

7 Corporal Badder testified that the street value of all the controlled substances seized was approximately \$15,000.00. He further testified that the quantity and value was inconsistent with possession for personal use. He also testified that the scales, measuring instruments and small plastic bags were all consistent with a trafficking operation.

8 Corporal Badder further testified that the cell phone belonging to Neil Hatherall appeared not to have been used since April. In cross-examination he admitted the call history could have been cleared.

9 Corporal Badder testified that based upon what was obvious just in the livingroom and kitchen, anyone living in the apartment must have known trafficking in controlled substances was going on. Also, based on the location of where Janchevsky's passport, Birth Certificate and Record of Employment were found in Bedroom #1, Corporal Badder believed that Janchevsky occupied Bedroom #1.

Law of Possession

10 In *R. v. Pham* (2005), 77 O.R. (3d) 401 (Ont. C.A.) which was upheld by the Supreme Court of Canada [see [2006] 1 S.C.R. 940 (S.C.C.)], paras. 14 to 16 provides the interpretation of s.4(3) of the *Criminal Code* - definition of possession, that I must apply:

[14] Section 4(3) of the Code creates three types of possession:

- (i) personal possession as outlined in s. 4(3)(a);
- (ii) constructive possession as set out in s. 4(3)(a)(k) and s. 4(3)(a)(ii); and
- (iii) joint possession as defined in s. 4(3)(b).

[15] In order to constitute constructive possession, which is sometimes referred to as attributed possession, there must be knowledge which extends beyond mere quiescent knowledge and discloses some measure of control over the item to be possessed. See *R. v. Cladwell* (1972), 7 C.C.C. (2d) 285, [1972] 5 W.W.R. 150 (Alta. S.C. (A.D.)); *R. v. Grey* (1996), 28 O.R. (3d) 417, [1996] O.J. No. 1106 (C.A.).

11 The issue in this case is whether the Crown has proven Janchevsky was in possession of the controlled substances found in the night table drawer and dresser drawers in Bedroom #1. I am satisfied that if Janchevsky is proven to be in possession, that his possession is for the purpose of trafficking.

12 The narrow issue is whether the Crown has proven that Janchevsky had "some measure of control over the item to be possessed."

13 Janchevsky admitted to knowing that there was both cocaine and ketamine in Bedroom #1. He stated that Bedroom #1 was occupied by either and/or both of Colin Traquir and Neil Hatherall. Janchevsky stated he did not occupy Bedroom #1, that he

was staying on the mattress in the living room and that at the time he was heavily addicted to ketamine. He stated he purchased both ketamine and cocaine from Colin Traquir who went into Bedroom #1 and came back from the bedroom with the drugs.

14 Janchevsky stated that he knew Colin Traquir and Neil Hatherall were selling drugs and that they were selling from Bedroom #1. He stated that Bedroom #1 was a closed door, and only Colin and Neil went in. He stated that when Colin was home lots of people were in and out of the apartment. He stated he did not sell for Colin or Neil; that he was a buyer and a user. He stated that the other male found in the apartment - Phil McKinley was an errand boy for Colin, and he believed Neil Hatherall was an errand boy for Colin. Janchevsky stated that he paid Colin money for drugs and rent; that he lived on a mattress in the livingroom; that he consumed drugs every day and that he was high when the police came with the search warrant.

15 Janchevsky acknowledged that the police found his Passport, Birth Certificate and Record of Employment in Bedroom #1. He said that he didn't know how they got there, but he could not deny that he might have put them there. He stated that all the while he was staying at the apartment he was in a drug haze and he didn't know where anything was.

16 Janchevsky acknowledged that there was drug residue and paraphernalia found in the kitchen and livingroom. He said that he and others, as well, consumed drugs in those rooms.

17 The Crown submitted that Janchevsky's denial of any degree of control over the drugs in Bedroom #1, ought not be believed; that Janchevsky's Passport, Birth Certificate and Record of Employment are such important personal documents, that the same being found in Bedroom #1 proves that Janchevsky was the occupant of the bedroom.

18 Alternatively the Crown submits that Janchevsky put those important personal documents in Bedroom #1, which demonstrates that he did access the bedroom. In either case, it is submitted Janchevsky had knowledge and by occupancy or access the necessary degree of control over the drugs found in Bedroom #1.

34 Defence argued that Janchevsky's personal documents were found on an open shelf of the night table; Janchevsky or anyone could have placed the personal documents on the open shelf without encountering the drugs or cash in the closed drawer.

Case Law Summary

35 The elements of possession including knowledge and control may be inferred from circumstantial evidence.

36 The weight of evidence required in drawing such inferences is set out in *R. v. Cooper* (1977), [1978] 1 S.C.R. 860 (S.C.C.) at p. 881. There the court stated:

It is enough if it is made plain to the members of the jury that before basing a verdict of guilty on circumstantial evidence they must be satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference to be drawn from the proven facts.

37 Both Crown and Defence have provided possession cases involving inferences drawn from circumstantial evidence.

Crown Submissions

38 *R. v. Nguyen* (2010), 487 A.R. 168, [2010] A.J. No. 494 (Alta. C.A.) is an appeal by Ta claiming that the circumstantial evidence was capable of several inferences not all consistent with guilt of possession for purpose. On execution of a search warrant on an apartment occupied by Nguyen and Miao, quantities of contraband were found.

39 Ta was in a relationship with Miao. Evidence disclosed that he arrived at the apartment at 3:30 a.m. and let himself in. Ta's passport and a parking ticket was found in the apartment. Personal and household bills belonging to Ta and Miao were found intermingled in a drawer. On consideration of this evidence the trial judge held that Ta lived in the apartment. Ta was held to be in constructive possession of marijuana on a shelf in the livingroom and in the refrigerator; also of cocaine in the freezer and in the kitchen cupboard and as well as guns and ammunition in the kitchen cupboard.

40 The inference that supported these findings was that Ta was a resident of the apartment and would have had knowledge and control of these items that were obvious. Also given weight in drawing the inference of possession - knowledge and control - was evidence that Ta was involved in the drug trade which evidence indicated where and how Ta conducted his business and included surveillance information. Of note is that the trial judge did not extend the inference to include a finding of possession of contraband in a duffle bag in a guest bedroom.

41 In *R. v. Pham*, *supra*, as a result of a search of an apartment, Pham (a female) and Nguyen (a male) were charged on possession of cocaine for the purpose of trafficking. Following a trial at which Pham did not testify she was found guilty. The Crown's case rested on constructive or joint possession.

42 Pham occupied an apartment for a short time before Nguyen moved in. There was no evidence of actual possession by Pham, and Pham was not present when the apartment was searched and cocaine was found. It was submitted by Pham that Nguyen was trafficking and that all the drugs and money found belonged to him alone. However evidence from a neighbour demonstrated that people regularly came to the apartment for short visits and cash was exchanged. Pham was seen to be present and opened the door admitting short duration visitors on two occasions. This evidence was supported by police surveillance.

43 During the search two pouches were found together beside the bathroom sink. One black pouch, in full view but closed, contained individually wrapped cocaine. The second pouch, pink in colour, also in full view, was open containing makeup and \$165.00 in \$20 bills.

44 It was held that the only reasonable inference from this evidence was that Pham was aware of and participated in drug trafficking. It was held that the evidence supported more than a quiescent or passive knowledge of the drugs but as well demonstrated an element of control over them.

Defence Submissions

45 Authorities submitted by Defence included *R. v. Escoffery* (1996), 89 O.A.C. 394 (Ont. C.A.) (*sub nom R. v. Grey*). Information from a confidential informant that crack cocaine would be found at Escoffery's apartment and that a male known as Shine had been seen at that apartment converting powder cocaine to crack led to a search warrant and search of the apartment. Crack cocaine was found hidden in Escoffery's bedroom: 21.03 grams hidden in a cassette player on a dresser, and .12 grams hidden under a flower arrangement on a bedside table.

46 The appeal was brought by Grey who was Escoffery's boyfriend, and who was convicted of possession for the purpose at trial. Grey stayed at Escoffery's apartment three to four times per week. In a drawer of the bedroom dresser were found men's clothes and \$240.00 cash. Both men's and women's clothing were found in the bedroom closet. On a shelf in the closet a black pouch was found containing a set of scales and personal papers in Grey's name. Grey testified that he had no knowledge of the crack cocaine, that the black pouch was his and the scale found inside was used in his work at a restaurant; further he was not known as and was not Shine.

47 The trial judge found Grey to be in joint possession of the cocaine with Escoffery but failed to state the evidence he relied upon to make the findings.

48 The Ontario Court of appeal reversed the conviction and stated at paras. 16 and 22:

16 There was no direct evidence of the appellant's knowledge. The Crown did not have a witness who could state affirmatively that the appellant knew about the cocaine. Also, the drugs seized by the police were not in plain view — they were hidden. To find that the appellant had possession of the cocaine, the trial judge had to infer knowledge from the circumstantial evidence. The case against the appellant rested principally on his regular occupancy of Ms. Escoffery's apartment and on the presence of his clothing and other belongings in the bedroom where the crack cocaine was found. The question is whether the trial judge was entitled to infer knowledge from this evidence. In my opinion, he was not.

...

22 I would not prescribe a firm rule for inferring knowledge from occupancy: *R. v. LePage* (1995), 36 C.R. (4th) 145 (S.C.C.). In the present case no other evidence connected the appellant to the drugs, there was no direct evidence of knowledge, the drugs were hidden, the apartment was rented by the co-accused, other persons frequented the apartment, and the appellant was not a permanent occupant. The circumstantial evidence does not therefore support a finding that the appellant had knowledge of the crack cocaine. Accordingly, the finding that the Crown had proved possession was unreasonable.

49 Defence further submitted the case of *R. v. Thompson*, [2010] O.J. No. 2266 (Ont. S.C.J.). In that case a search warrant was executed upon a house. There were four residents of the house including the two accused. Drugs were found in three separate locations in the house: 14.5 grams of powder cocaine were found in a leather camera case in an upstairs bedroom. On top of a dresser in that same room was found a set of scales in plain view and a small bag of marijuana. On the ground floor 16 grams of hashish and a small amount of marijuana were found in a cookie jar located on the dining room table. The accuseds were common-law husband and wife who lived on the ground floor but had access to the whole house.

50 The issue there was whether the Crown had proven possession *i.e.* knowledge and control. The evidence was entirely circumstantial. It was held that mere passive acquiescence cannot amount to control. At para. 33 the Court stated:

33 ... Some active steps such as encouraging helping or directing are necessary to establish the "power or authority" of a principal offender ... or to establish aiding and abetting by a party pursuant to s.21 of the *Criminal Code*.

51 On a review of authorities the Court held that a inference of control could be drawn from circumstantial evidence, however, mere responsibility for a room in which drugs were found will not be sufficient. Some further evidence will be required, including for example the power to withhold consent from another person to keep contraband on the premises.

Analysis

52 Janchevsky gave evidence referred to and summarized herein. I must consider his evidence according to the rule in *R. v. W. (D.)*, *supra*. The position of the Crown is that Janchevsky's evidence of denial of any measure of control over the controlled substances is not credible nor does his evidence raise a reasonable doubt. Rather, on the basis of reasonable inferences to be drawn, the Crown has proven Janchevsky had knowledge and control.

53 Knowledge that contraband was kept in Bedroom #1 was admitted by Janchevsky. Knowledge that the contraband was kept in Bedroom #1 for the purpose of trafficking is also admitted. It is from that source that Janchevsky made his purchases.

54 Janchevsky testified that he had moved to Banff from Ontario; that in a state of severe drug addiction and unemployment he made temporary accommodation where possible. The last of these accommodations was at the apartment on Moose Street where he slept on a mattress in the livingroom.

55 It was at this apartment that he was able to purchase cocaine and ketamine. It was at this apartment that he indulged in his addiction. He testified that Colin Trekane and Neil Hatherall were drug traffickers and that they operated out of Bedroom #1. He was present in the apartment when the police executed the search warrant.

56 Are Janchevsky's claims and denial of any measure of control refuted by inferences to be reasonably drawn from the facts?

57 Applying the principles from the several cases considered to the facts of this case I find:

1. Of the three people present when the search warrant was executed the evidence was that Phillip McKinley was a visitor, the young woman might have been staying in Bedroom #2 and Janchevsky was sleeping on a mattress in the livingroom.

2. There was no evidence that the premises were under control of any of these occupants.

3. There were four persons' names on the lease including Colin Traquir and Neil Hatherall, who were the actual suspects identified by the informant and whom the police intended to apprehend.
4. Janchevsky had been staying at the apartment a few weeks and paid rent to Colin and purchased drugs for his consumption from Traquir and from Hatherall.
5. Many people came and went from the apartment, and many people consumed drugs at the apartment.
6. There is no evidence that Janchevsky had any power of consent to prevent other people from coming to the apartment nor to prevent other people from using the apartment for purposes as they chose.
7. The contraband in Bedroom #1 was not in plain view.
8. There is no direct evidence that Janchevsky occupied Bedroom #1, or that he even went into it. There was no evidence that his clothing was kept there or found there. There was no evidence of fingerprints.
9. There was evidence supporting Janchevsky's claim that he did not occupy Bedroom #1. There was a mattress in the living room. Beside that mattress was Janchevsky's electric, plugged into the wall alarm clock.
10. There is no evidence that Janchevsky was involved in drug trafficking. Nor is there evidence that he was a participant in drug trafficking either as a runner, doorman, custodian or bookkeeper and no evidence that he aided or abetted the same in any way.

58 The Crown submitted the only reasonable inference to be drawn from Janchevsky's Passport, Birth Certificate and Record of Employment being found in Bedroom #1 is that Janchevsky had possession, namely knowledge and control, of the contraband also found in that room.

59 I find that Janchevsky's documents located in the open portion of the night stand cannot alone be the basis for an inference that Janchevsky had a degree of control of contraband found concealed in that room. Nor do I draw such an inference from the name Diego being found on a scoresheet found in the backpack in the closet in that room together with the name 'Diego' appearing in the call history of Janchevsky's cell phone.

60 Janchevsky's denial is not refuted by the evidence. I find that Janchevsky's evidence raises a reasonable doubt, that he had the necessary element of control over the substances and cash found in Bedroom #1. While he had knowledge that drugs for trafficking were kept in Bedroom #1, there is no evidence that he had more than quiescent knowledge.

Conclusion

61 Based on the evidence before me, I therefore find Nicholas Viktor Janchevsky not guilty.