Citation: *R. v. Salas-Hernandez,* 2025 YKTC 39

Date: 20250626
Docket: 24-08573
24-08573A
24-08573B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Wyant

REX

v.

JULIA SALAS-HERNANDEZ, CAPITAL TOWING,
and CANADIAN TIRE

Appearances:

Kathryn Laurie	Counsel for the Crown
Luke Faught (by videoconference)	Counsel for Capital Towing
Julia Salas-Hernandez (by videoconference)	Appearing on her own behalf
No one	Appearing for Canadian Tire

This decision was delivered from the Bench in the form of Oral Reasons. The Reasons have since been edited without changing the substance.

REASONS FOR JUDGMENT

[1] WYANT T.C.J. (Oral): Robert Service said in the poem *The Creation of Sam McGee* that, “There are strange things done in the midnight sun.”

[2] This case before me today fits that description and shows that, indeed, truth can sometimes be stranger than fiction. Given the passage of time, the lack of some information is unfortunate, and filling in the blanks has made this case more curious and

difficult — and interesting, since it delves into the old adage of whether it really is "finders keepers, losers weepers."

[3] On May 16, 2003, two United States citizens (Abel Gonzalez, who I will refer to now as A.G., and his wife, who is present, Julia Salas-Hernandez, who I will now refer to as J.S.-H.) were travelling southbound on the Alaska Highway near Whitehorse, Yukon, when the vehicle that A.G. was operating with J.S.-H. as his passenger, left the road and rolled several times. The Royal Canadian Mounted Police ("RCMP") concluded that the accident was a result of speed and alcohol consumption. The vehicle that they were driving, a Jeep Cherokee, was significantly damaged in the accident, it appears, and the roof had to be cut open to extricate the occupants.

[4] Both A.G. and J.S.-H. had left their home in California weeks earlier and had travelled up through the northern United States into British Columbia and Yukon, in Canada, in order to visit a cousin of A.G.'s in Alaska. They stayed there about two or three weeks and were on their return trip home when the accident occurred.

[5] A.G. was killed, apparently instantly, in the rollover, while his wife, J.S.-H., was seriously injured. J.S.-H. became visibly distraught in court when she recalled the accident and waking up next to her dead husband in the wreck of the vehicle. There is no question that this was a tragic and traumatic event for her.

[6] J.S.-H. was initially taken to the hospital in Whitehorse, but then evacuated by helicopter to Seattle, Washington, due to the extent of her serious injuries. J.S.-H. reports that her left leg was amputated above the knee, and that her other leg was surgically reconstructed using veins from her lost leg and the insertion of many pins.

She reports, even now — some 22 years later — suffering from pain in her surviving leg, and is in need of knee re-reconstruction. Her injuries were critical and serious. J.S.-H. reports she was in a coma for a period of time and spent two to three months in hospital recuperating. She suffered significant upper body injuries in the accident. J.S.-H. reports — not surprisingly given the serious nature of her injuries — that she still suffers physically as a result of the accident today.

[7] J.S.-H. reports that, after she was released from hospital in Seattle, she was in pretty bad shape so she did not return to her home in California but, rather, stayed with a friend in Bellevue, Washington for a while before moving into a house in Shoreline, Washington, where she remained for 14 years before eventually returning to California, where she is now.

[8] Her return to California, she says, was spurred on by the development of osteoporosis and an inability to deal with the cold weather in Washington. At present, she resides in California with a daughter and is without a home but is awaiting housing of her own in California.

[9] The vehicle A.G. was operating was purchased several months — maybe seven or eight — prior to the accident by A.G. in California. Of significance is that the vehicle was a used one when purchased. The vehicle seems to have been registered to A.G. He left no will, but J.S.-H. reports, which I accept, that she inherited his estate.

[10] After the accident, the RCMP called a local towing company, Capital Towing, to attend the scene and remove the vehicle from the ditch, which they did. They took it to their storage compound and, as I understand it, the vehicle may still remain there today.

[11] In October 2003, the local Whitehorse, Yukon Canadian Tire store contacted Capital Towing, as they were looking for a motor to install in a client vehicle, and the motor from the wrecked Jeep was a fit. The owner of Capital Towing, Doug O'Connor, who I will refer to now as D.O., agreed to sell the engine for $1,200 CAD. The engine was removed by an employee of Capital Towing and delivered to Canadian Tire pursuant to that agreement.

[12] On November 6, 2003 — a few days later — a mechanic at Canadian Tire began to do a motor swap when he noticed something shiny and floating inside the manifold of the motor. Upon examination, he located a bundle wrapped in foil. Upon opening it, he found a stack of American money inside, which was later totalled to be $41,400 USD. The police were called, and the RCMP took possession of the money in order to initiate an investigation as to whether these funds were proceeds of crime.

[13] Later that month, D.O. inquired of the RCMP about making a claim for the found money. There is no evidence that efforts were made at that time to locate and speak to J.S.-H. and inform her about the find or to speak to her about its origins.

[14] What happened from here is somewhat lost in history. Pursuant to the *Criminal Code* of Canada, the RCMP sought and obtained detention orders for the seized money.

[15] On November 3, 2003, February 6, 2004, and August 5, 2004, all six-month orders for detention were consecutively made, and one started the day the previous one expired. However, the August 5, 2004, order expired on February 5, 2005.

[16] Nothing happened again until June 29, 2006, when the RCMP sought and obtained yet another detention order for six months, valid until December 29, 2006. At that point, it appears everyone in the RCMP forgot about the money for a substantial number of years, and no further orders of detention, as required, were sought or authorized.

[17] At the time of the seizure, the $41,400 USD seized from the motor was worth $53,590.29 CAD, and is still the amount held this day by the Seized Property Management Directorate, which is where the RCMP deposited the money. In real terms, that $41,400 USD would be worth well over $70,000 USD today or the equivalent of about $98,000 CAD. Had this money been invested in the 22 years since it was seized, the value would probably be close to a quarter million dollars in CAD right now based on interest rates over the past 20+ years. But I digress.

[18] The *Criminal Code* of Canada is clear that detention orders must be sought from judicial officers and granted in order for articles to remain seized. Why this sum of money was simply forgotten about for so many years is inexcusable and inexplicable, but it was.

[19] Since the end of 2006, there has been no lawful detention of this money and the Crown concedes that the investigation as to whether the funds were proceeds of crime ended long ago and that there is no evidence upon which such a determination could be made which could then result in the money being forfeited to the Crown. No criminal charges have or will be laid in relation to the money. The money then has been held inappropriately and without proper authorization for far too many years.

[20] This case lay dormant for another significant number of years, from 2006 until 2019, when a reserve constable with the RCMP located and contacted J.S.-H. in the United States, and asked if there was anything that had not been returned to her. She said there was nothing she could remember. Subsequent attempts by the reserve constable to contact J.S.-H. were unsuccessful.

[21] It seems apparent that no one specifically mentioned the money to J.S.-H. at that time. If true, why it was not specifically mentioned is a mystery and, in my opinion, wrong.

[22] Further, why the RCMP did not bring this matter to the Court's attention in 2019, given the lack of judicial authorization for its continuing detention, is puzzling, to put it as kindly as I can.

[23] Again, the money sat for another five years, until July 2024, when Cst. Julia Mahoney of the RCMP contacted J.S.-H. and specifically asked her about the money. That is the first evidence we have that J.S.-H. was actually ever told specifically about the money. J.S.-H. said she had no knowledge of the hidden money.

[24] Cst. Mahoney is to be complimented for investigating this matter and initiating its resolution in the court.

[25] For the sake of completeness, in addition to the money seized, three other articles were also seized and remain unlawfully detained. They include a card and envelope, a $2 U.S. bill, and a purple notebook. Those items were seized by the RCMP

during a further search of the vehicle on November 6, 2003. All parties agree that those three items can be returned to J.S.-H., and I so order.

[26] The sole item in dispute, then, is the $41,400 USD cash found in the manifold of the engine of the Jeep. The Crown has now initiated this application for return or forfeiture of things seized, pursuant to ss. 490(6) and 490(9) of the *Criminal Code of Canada*.

[27] Section 490(9) of the *Criminal Code* provides that:

> Subject to this or any other Act of Parliament, if
>
> ...
>
> (b) a justice ...
>
> is satisfied that the periods of detention provided for or ordered under subsections (1) to (3) in respect of anything seized have expired and proceedings have not been instituted in which the thing detained may be required ... [they] shall
>
> (c) if possession of it by the person from whom it was seized is lawful, order it to be returned to that person, or
>
> (d) if possession of it by the person from whom it was seized is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order it to be returned to the lawful owner or to the person who is lawfully entitled to [that] possession,
>
> and may, if possession of it by the person from whom it was seized is unlawful, or if it was seized when it was not in the possession of any person, and the lawful owner or person who is lawfully entitled to its possession is not known, order it to be forfeited to [His] Majesty, to be disposed of as the Attorney General directs, or otherwise dealt with in accordance [to] law.

[28] These are the parties in this matter: the Crown; Canadian Tire; Capital Towing; and Julia Salas-Hernadez.

[29] This is the position of the parties.

The Crown

[30] Simply put, the Crown says if the Court can determine the rightful owner of the money, it should be returned to that person. The Crown takes no position as to who that person might be. In the alternative, if the Court determines none of the respondents are the rightful owners, it should be forfeited to the Crown.

Canadian Tire

[31] Though served, Canadian Tire did not respond and did not appear, and therefore has taken no position.

[32] Capital Towing suggests that means they are not exerting any claim. Nonetheless, even in their absence, the legitimacy of the ownership of the money must be considered by the Court.

[33] I find it noteworthy that Canadian Tire itself was served but that the mechanic who discovered the money and reported it to his boss, who subsequently alerted the RCMP, was not served. I will consider his claim, regardless.

Capital Towing

[34] In short, they claim that the ownership of the vehicle had passed to them by the time the money was discovered due to the passage of time and the amount of storage fees owed. As a result, the money found in the vehicle also then belonged to them. They claim the vehicle, and therefore the money in it, had been abandoned by J.S.-H. and that their claim had been consistent, as D.O. laid claim to the money as early as November 2003. They say that, although the engine had passed to Canadian Tire as a result of the contract to purchase it, once the money was found, Canadian Tire returned the engine and did not pay the money agreed on the contract for it and, therefore, while temporary possession had passed, ownership of the engine and the found money, never passed to Canadian Tire.

[35] Additionally, they say that the mechanic from Canadian Tire was acting as an agent for Capital Towing during this process.

Julia Salas-Hernandez

[36] J.S.-H., although acknowledging she knows nothing about the origin of the money, asks for the money to be returned to her.

[37] Capital Towing says it was in lawful possession of the money at the time it was discovered. It argues it came into possession of the Jeep as a bailee and when J.S.-H. abandoned her interest, ownership in the Jeep had passed to Capital Towing. As a result, it was open then for Capital Towing, by the fall of 2003, to sell the Jeep or any of its parts. Further, lawful possession and ownership of the engine never passed to

Canadian Tire because the engine was returned, the contract for it therefore cancelled, and Canadian Tire never paid Capital Towing for the engine. Further, Capital Towing notes it informed the RCMP of its interest in the money within 19 days of its discovery by the Canadian Tire mechanic in 2003.

[38] In support of its argument, Capital Towing filed an excerpt on bailment from *Ziff's Principles of Property Law*, Eighth Edition, and a number of cases, all of which the Court has read and considered.

[39] The first thing the Court will note is that counsel for Capital Towing and counsel for the Crown have not made any reference to the relevant legislation in the Yukon but, rather, have relied on textbooks on the principles of property law and general case law, including a United States case.

[40] The *Garage Keepers Lien Act*, RSY 2002, c. 99 of Yukon in conjunction with the *Personal Property Security Act*, RSY 2002, c. 169 — both, I might note, passed before these series of events started — outlines the process to be followed.

[41] In such a circumstance, a garage keeper — and Capital Towing is such — could have and should have filed a lien on the vehicle in question and moved to sell the vehicle at a public auction after giving notice in the *Yukon Gazette* of the intended sale. Proceeds of such a sale can be used to offset the cost of the lien holder but also take into account other claims.

[42] So, in effect, ownership of the vehicle in question never did pass to Capital Towing. Yes, they had an interest in the vehicle to be sure, because of the money

owed for storage, and could seek to satisfy that interest by sale, but just because they had the fortune to be the company that was called by the RCMP to clean up the accident scene and then store the vehicle does not mean that ownership of the vehicle passes to them automatically after a period of time simply because of owed storage fees. They had an interest in the value of the vehicle but was in interest only, and others — such as the owner — would also have an interest.

[43] On that basis alone, the claim of Capital Towing that at the time of the discovery of the money they owned the vehicle and therefore the money, must fail even if the value of the vehicle which could have been realized in the sale would have been less than the accrued storage costs to Capital Towing.

[44] Further, Capital Towing's argument would fail even in the absence of such legislation. Capital Towing says J.S.-H. abandoned the vehicle and therefore relinquished ownership over it and, by extension, the money in the vehicle. It is true that it appears that Capital Towing received only one inquiry about the vehicle from someone they described as unknown sometime in 2003, after the accident. There is speculation in the material that it was J.S.-H.'s son George because Capital Towing's phone number had been given to him, but we do not know that to be a fact. There is no certain indication who that person was and there was no follow-up by them, nor of any arrangement made by any person to pay for the vehicle's storage costs or its repatriation to the United States, presumably because of the effort and cost to do so was much more than the car was worth. No insurance company made contact either.

[45] Let us put this all into perspective. J.S.-H. was critically injured in the accident in May 2003. Her car was totalled. Her husband died. She lost a leg. It appears she was in a coma for a period of time. She was flown out of the Yukon. She was in hospital for two or three months in the United States and suffered painful injuries that still plague her today. She was not a resident of Yukon and appears to have no ties to Yukon. There is indication in the affidavit supporting the applications for detention that the RCMP were going to seek assistance from U.S. authorities to contact J.S.-H., but there is no indication what, if anything, was done. In fact, the affidavits justifying those 490 extension orders all mention that efforts will be made through U.S. authorities, but there is nothing to indicate anything was done. The wording in each and every application for extension is similar.

[46] J.S.-H., in my opinion, would have been easily traceable either through the hospital in Washington state or after her release from hospital. J.S.-H. says no one contacted her. It is not as if J.S.-H. was sitting in Whitehorse for 20 years doing nothing. I have a sneaking suspicion that efforts to contact J.S.-H. simply fell through the cracks.

[47] There is indication that the Yukon Public Trustee and Guardian (“PGT”) was involved to some extent on behalf of J.S.-H. back in 2003. But when the money was found, there is no indication that D.O. or anyone else, knowing that PGT — and specifically one named person from PGT — was involved, then returned the call to the Trustee or to that named person to tell them about the money. D.O. in his sworn affidavit, says that sometime between May and September 2003, a named person from PGT contacted Capital Towing to retrieve personal items, likely luggage, from the Jeep,

and that was facilitated, and the property was returned through a third person who was likely then known to PGT at that time and known to J.S.-H. Yet there is no indication in that affidavit, once the money was found, that D.O. reciprocated that contact with PGT, nor any indication the RCMP did either.

[48] Now, there is no positive obligation on D.O. to do so but it could lead one to conclude that all steps that could have been made to contact J.S.-H. were not taken. D.O. had recent contact with PGT and, in fairness, someone from Capital Towing should have contacted them in return once the money was found or advised the RCMP to do so. Yet, there is no evidence this was done at all.

[49] I am not imputing any ulterior motives here, but it could have been done — and failure to do so may have contributed to the excessive passage of time, which is one of the arguments upon which the claim of abandonment made by Capital Towing is made. Maybe such an attempt would have proved to be unfruitful, but we will never know. At least there appears to have been a contact that was known back in 2003, however based on the evidence before me, it was not followed up by anyone.

[50] Further, it cannot be said that J.S.-H. abandoned the money when she knew nothing about it for over 20 years. D.O. did not know about the money either until it was found and he was told. Even if I were to find that the vehicle was abandoned, it does not inevitably lead to the conclusion that the money was abandoned. You cannot abandon what you do not know about. It is true that from the moment it was told to her she exerted a consistent ownership claim. That is exactly what D.O. did. When he

found out about the money in 2003 that he previously did not know about, he made a claim. It is no different with J.S.-H. As soon as she found out, she made a claim.

[51] Finally, even if I find that J.S.-H. was deemed to have abandoned the vehicle in question, abandonment of one's interest in a vehicle does not lead inevitably to the conclusion that ownership, as opposed to interest, automatically passes to Capital Towing, nor can it lead to the conclusion that personal contents, known or unknown, were also abandoned.

[52] It is clear to the Court that there is a significant difference between the vehicle itself — and, therefore, the laws and rules regarding its salvage — and personal property that is clearly not part and parcel of the integrity of the vehicle, nor essential to its core function. The money in question is a separate chattel. It is personal property. It does not belong to the vehicle.

[53] Even if the Court were to accept the claim of D.O. that the vehicle, by November 2003 was his, that does not mean the money is his. Personal property, such as a diamond ring or a piece of luggage, as we have seen, or a love letter or cash, things that do not belong to the vehicle and are not essential to its integrity as a vehicle do not pass with the vehicle whether their presence in that vehicle is known or unknown by the owner of that piece of personal property or chattel.

[54] Let us say the money in question had been in a numbered Swiss bank account at the time when A.G. died and that his wife knew nothing about it. He never told her. Let us say 20 years later, the Swiss bank contacts A.G.'s beneficiary. To her surprise, she finds out about the money. It cannot be said that her lack of knowledge and passage of

time combined means that she abandoned any claim which would then deprive her of the right to the money if she were the lawful heir at the time he died.

[55] There is no difference in the case before me. As his heir, J.S.-H. inherited everything her husband owned and owed. She inherited the car and all its storage costs and obligations, and would have had an interest in its sale, although I doubt that she would have received anything, given the storage costs in relation to the value of the vehicle. She inherited his debts and his assets, known and unknown. At the moment A.G. passed away tragically at the side of the Alaska Highway, J.S.-H. inherited the car and separately inherited the money. Ownership passed right then, and no passage of time could ever change that — and no lack of knowledge changes that fact either.

[56] This case is quite different in its factual underpinnings to the two cases cited by Mr. Faught. In *Canada (Attorney General) v. Brock*, 1993 CanLII 640 (BCCA), a car was stopped by the police and the driver, Mr. Brock, consented to a search where a large amount of money was found. Mr. Brock was surprised and said it was not his money. He changed his mind the next day on behalf of “unnamed off-shore investors.”

[57] That case can be clearly distinguished from the case at bar. In that case, Mr. Brock admitted the next day that he knew the money was in the vehicle and lied about it, and the Court found he was not in sole possession of the vehicle. That case is not remotely close to the facts of our case, but the case is important for the comment from the British Columbia Court of Appeal that possession of a chattel does not necessarily import acquisition of its contents. It depends, as the British Columbia Court

of Appeal said, on the circumstances of the case as they said quoting Justice LeBel in the *Grafstein v. Holme & Freeman,* [1958] O.R. 296 (O.N.C.A.), case at para. 48.

[58] That is quite true, as I have stated. The British Columbia Court of Appeal left the door open in that case for the rightful owners of the money to come forward and establish ownership, just as the case here before me. They just found, in that case, that Mr. Brock was not the rightful owner.

[59] The United States case of *Chappell*, which involved the seizure of $82,000, more or less, *Jefferey Chappell, et al. v. United States of America*, 119 F. Supp. 2d 1013 (W.D. Mo. 2000), also differs in its facts and comes from a jurisdiction whose case law has developed quite differently than in Canada, and is not binding on the Court. In that case, police stopped and seized a vehicle. Upon further inspection, money wrapped in foil that smelled like drugs was found secreted in the battery case. The car and money were seized. The owners abandoned an application to get the car and money, and eventually the government sold the car at auction. The new owner had fuel trouble, took it to a mechanic, where more bundles of money were found in the fuel tank. The Court ruled that the money was abandoned by its original owner and gave the money to the new innocent buyer of the vehicle.

[60] Counsel for Capital Towing says this supports his argument, but I disagree. There is clear indication in that case that the Court found that the original owners were drug traffickers. That is not the case before me.

[61] Further, there was a clear finding of the Court of abandonment in that case, which also distinguishes it from the case before me.

[62] Finally, in a sense, ironically, that case, *Chappell*, could be used to support the claim of J.S.-H. She, like Mr. Chapell, took possession and ownership of a car without the knowledge of the secreted money. Using that logic, that would support her claim to the money.

[63] Finally, as to Mr. Faught's contention that to establish possession, a party must show that control and the intent to possess must be concurrent, and that J.S.-H. had neither, I simply point out that if this principle were applicable in this case — which I find it does not — it would equally disqualify Capital Towing from the money, since they, too, did not have control and intention to possess the money concurrently at any time. Capital Towing's knowledge of the money and possession of it never matched up. By the time they knew about it, the RCMP were in actual possession of the money, and the Court cannot impute possession to Capital Towing.

[64] As for Canadian Tire and the particular mechanic who found the money, they would have had a better claim than Capital Towing based on the "finders keepers" law. Essentially, if you find property and the lawful owner cannot be determined and it is not seized as criminal property, you get to keep the property. Possession of the engine and an interest in its ownership had passed to Canadian Tire when Capital Towing delivered the engine. Canadian Tire found the money. They were not acting as an agent for Capital Towing, as Mr. Faught suggested.

[65] The fact that they later returned the engine and did not pay for it is immaterial. If I were to conclude otherwise, it would lead to the absurdity of saying that Canadian Tire would have only had to pay $1,200 CAD to Capital Towing to get $41,400 USD cash.

Possession had passed at the time the money was found, and at the time the money was found, Capital Towing did not have possession of it and possession cannot be inferred or reverted to them after the fact just because the engine was returned without payment.

[66] For all we know, the engine was returned because the money in the manifold left it in such a condition that Canadian Tire could not use it, or they might have determined it was now worth far less than the contracted value, or maybe Canadian Tire took the view that they really did not want to have anything to do with the potentially tainted money. It does not really matter.

[67] Ordinarily, and all things being equal, Canadian Tire and/or the mechanic that found the money would have had a better claim than Capital Towing for the money unless the rightful owner could be found — and in this case, the Court finds the rightful owner has been found. In any event, it is clear that Canadian Tire and its employees never expressed an interest in the money, and there may be good and noble reasons for that.

[68] There is an interesting and relevant and similar case to the one before me in Canadian law which was not cited by counsel before me — it took place in Stratford, Ontario — *Weitzner v. Herman*, [2000] O.T.C. 193 (Sup. Ct.), a decision of the Ontario Superior Court.

[69] Jean and Harry Weitzner lived in a house together for 38 years until he died. Jean inherited his estate. Jean continued to live in the house for another few years and then sold the house to Wilbert and Jean Herman. The Hermans hired someone to

demolish the house. During the demolition, a fire extinguisher was found inside the house and inside the fire extinguisher, they found $130,000 with bills that all predated Harry's death. No one knew about the hidden money.

[70] The Hermans told Jean they found a small amount of money. They did not tell her that it was $130,000 and paid her $4,000. But when the truth came out, a judge ruled it all belonged to Jean. The contractor who demolished the building and found the money claimed salvage rights, like Canadian Tire in our case. They did not get it. The Herman's claim "finder's keepers" and said Jean abandoned the contents of the house, all of which they got upon the transfer of the sale — and they did not get it.

[71] Jean got the money, claiming she had inherited the money from her husband even if she did not know about it and passing the deed to the house did not mean the cash was passed. She had not abandoned what she did not know about. The case, while factually different, is eerily close to the one before me in the application of its principles — and it is a Canadian case. In our case, the car in question is like Jean's house.

[72] As I said, when A.G. died, all of his possessions passed, on the side of the highway, to his heir, his wife, J.S.-H., including the money — even if she did not know about it. It passed as surely as his luggage did, and every other bit of personal property he owned. Her knowledge or lack of knowledge of all of his chattels is immaterial. The only thing that can deprive her of the money is if the Court is satisfied it was the result of a crime and is therefore proceeds of crime.

[73] Now, it is clearly obvious that the amount of money and the secret location of the money would lead any right-thinking person to conclude it was money from crime — and likely from an illicit drug transaction. There is no legitimate reason I can think of to secrete this large amount of money in the manifold of an engine. There are a host of probable scenarios. One is that the deceased, A.G., placed or caused the money to be placed in the engine.

[74] A.G. and his wife drove all the way from California to Alaska in May purportedly to see a cousin. It is equally plausible that A.G. was delivering drugs or engaged in some other illegal activity and he arranged to have the proceeds of the illegal activity stuffed in the engine to avoid questions at both the United States and Canadian borders. I have a healthy suspicion that that is what occurred. It is also possible this was done with the knowledge of J.S.-H., even though she denies it, or her husband was acting alone. We will never know, and the RCMP were never able to determine this, but no one stuffs money in an engine like this just for the heck of it.

[75] If this had been a new vehicle, I would have inescapably drawn the conclusion that A.G., acting with or without the knowledge of J.S.-H., placed or caused to be placed this money in the engine, given the almost exclusive opportunity and control to do so. In such a situation, I would not be inclined to return the money to J.S.-H. and would order it forfeited to the Crown.

[76] However, this is a used car, and that is key to me. Although it is speculative at best, it is within the realm of possibilities that A.G. unwittingly bought a drug car when he purchased this used car in California — ironically, much as Mr. Chappell did in the

United States case filed by Mr. Faught — and that he and his wife were unaware of what lurked in the engine manifold. That possibility alone allows me to find that I cannot be certain that A.G., or A.G. with J.S.-H., was engaged in illegal activity. As such, the money in the car belonged to A.G., and when he died, its ownership transferred to J.S.-H. and must be returned to J.S.-H.

[77] I therefore order that all of the articles that are subject of this application be returned to J.S.-H.

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WYANT T.C.J.