

CANADA / JUDGMENT

R. v. Aronson

2024 BCSC 2674

COURT

Supreme Court of British Columbia

DECIDED

17 December 2024

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2024 BCSC 2674 R. v. Aronson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Aronson,

2024 BCSC 2674

Date: 20241217

Docket: 99686-2

Registry: Kelowna

Rex

v.

John Michael Aronson

Corrected Judgment: The text of the judgment was corrected
on the face page on January 20, 2026.

Before: The Honourable Justice Hardwick

Oral Reasons for Judgment

Counsel for the Crown:

N.J. Lerfold

Counsel for the Accused:

M.S. Lowe

(as Agent for J. Watt)

Place and Date of Trial:

Kelowna, B.C.

December 3-5, 2024

Place and Date of Judgment:

Kelowna, B.C.

December 17, 2024

[1] THE COURT: This particular matter comes before the court based on a six-count indictment sworn against the accused, John Michael Aronson (the "Indictment"), pursuant to which Mr. Aronson stands charged with the following offences:

Count 1: John Michael ARONSON, on or about the 31st day of August, 2023, at or near Kelowna, in the Province of British Columbia, did possess a loaded prohibited or restricted firearm, a 9mm handgun, without being the holder of an authorization or a licence under which he may possess the firearm in that place and a registration certificate for the firearm, contrary to Section 95(1) of the Criminal Code.

[2] The elements of the offence that the Crown must prove for the possession of a loaded, restricted or prohibited firearm under s. 95 are:

- 1) The accused possessed a prohibited firearm or restricted firearm;
- 2) The object was functioning or could be made to function readily;
- 3) The firearm was loaded or could be readily loaded;
- 4) The ammunition was capable of being discharged;
- 5) If loaded, that the accused knew or was wilfully blind to the fact that the gun was loaded;
- 6) The accused was not the holder of (a) an authorization or licence under which the person may possess the firearm in that place; and (b) the registration certificate for the firearm; and
- 7) The use of the firearm was not under the direct and immediate supervision of another person who was lawfully entitled to possess it and was using the firearm in a manner in which the other person may lawfully use it.

[3] This has been interpreted as a full mens rea offence. Accordingly, to convict the Crown must establish that the accused knew or was wilfully blind to the fact that:

- a) he or she was in possession of the firearm; and
- b) that the weapon was loaded or near useable ammunition: see R. v. Eastgaard, 2011 ABCA 152, affirmed 2012 SCC 11.

[4] Count 2:

John Michael ARONSON, on or about the 31st day of August, 2023, at or near Kelowna, in the Province of British Columbia, did possess a prohibited weapon, prohibited device or prohibited ammunition, a switchblade, while not being the holder of a licence under which he may possess it, contrary to Section 91(2) of the Criminal Code.

[5] The elements of the offence that the Crown must prove for an unauthorized possession of a prohibited weapon or restricted weapon under s. 91(2) of the Criminal Code are:

- 1) The accused possessed a prohibited weapon, restricted weapon, a prohibited device, other than a replica firearm, or prohibited ammunition;
- 2) The accused does not hold a licence to possess it;
- 3) The accused was not under the direct and immediate supervision of a person who may lawfully possess it at the time of the prohibited act for the purpose of using it in a manner which the supervising person may lawfully use it; and
- 4) The accused did not within a reasonable period after acquiring possession of it lawfully dispose of it or obtain a licence under which the accused may possess it, and in the case of a prohibited firearm or restricted firearm, a registration certificate for it.

[6] This is also interpreted as a full mens rea offence: see *R. v. Porter*, 2004 BCSC 1520, at para. 74.

[7] Count 3:

John Michael ARONSON, on or about the 31st day of August, 2023, at or near Kelowna, in the Province of British Columbia, did possess a prohibited firearm; restricted firearm or non-restricted firearm, knowing that he was not the holder of a licence under which he may possess the firearm or knowing that he was not the holder of a registration certificate for the firearm, contrary to Section 92(1) of the Criminal Code.

[8] The elements of the offence that the Crown must prove for possession of a firearm knowing that its possession is unauthorized under s. 92 are:

- 1) The accused possessed a firearm as defined in s. 2 of the Criminal Code or a prohibited weapon;
- 2) The accused was not a holder of a licence under which a person may possess the object; and
- 3) The accused was not the holder of a registration certificate for the firearm in question and the accused knew or was wilfully blind to the fact that they were not the holder of such a licence or registration: see *R. v. Levesque*, 2009 PESC 12, at para. 16.

[9] Count 4:

John Michael ARONSON, on or about the 31st day of August, 2023; at or near Kelowna, in the Province of British Columbia, did without lawful excuse use, carry, handle, ship, transport or store a firearm, prohibited weapon, prohibited device, or ammunition in a careless manner or without reasonable precautions for the safety of other persons, contrary to Section 86(1) of the Criminal Code.

[10] The elements of the offence that the Crown must prove for careless use or storage under s. 86(1) are:

- 1) The accused carried, handled, shipped, transported or stored an item;
- 2) The item is a firearm, prohibited weapon, restricted weapon, prohibited device, or any ammunition or prohibited ammunition; the item was stored in an unsafe or careless manner and no reasonable precautions were taken for the safety of others.

[11] Careless is assessed on the criminal negligence standard, whether the accused's conduct amounts to a marked departure from the standard of care of a reasonable prudent person in the circumstances.

[12] Count 5:

John Michael ARONSON, on or about the 31st day of August, 2023, at or near Kelowna, in the Province of British Columbia, did possess a firearm, while he was prohibited from doing so by any order under this Act or any other Act of Parliament, contrary to Section 117.01(1) of the Criminal Code.

[13] The elements of the offence that the Crown must prove for possession of a firearm contrary to an order under s. 117.01(1) are:

- 1) The accused was in possession of a firearm;
- 2) The accused was subject to a weapons prohibition order at the time of possession; and
- 3) The accused was not authorized or licenced under an order made under s. 113(1).

[14] Count 6:

John Michael ARONSON, on or about the 31st day of August, 2023, at or near Kelowna, in the Province of British Columbia, while bound by a probation order made by The Honourable Justice Wilson on July 7, 2023, did without reasonable excuse fail to comply with such order by possessing a firearm and/or a prohibited. weapon, contrary to Section 733.1(1) of the Criminal Code.

[15] The elements of the offence that the Crown must prove for breach of a probation under s. 733.1 are:

- 1) The accused was previously convicted of an offence for which the sentence included a period of probation;

- 2) The accused was bound by the probation order at the time;
 - 3) The accused committed an act which was prohibited by the probation order or that the accused failed to perform an act required to be performed by the probation order; and
 - 4) The accused knowingly or recklessly and voluntarily performed or failed to perform the act or omission which constitutes the actus reus of the offence.
- [16] Mr. Aronson pled not guilty to all six counts on the Indictment, but due to certain admissions as to key elements of the offences specifically detailed above, the trial was effectively limited to knowledge of possession as it is conceded that Mr. Aronson was in physical possession of the weapons referred to at the time of his arrest. Moreover, in the course of closing submissions, it was effectively conceded that all the elements including knowledge of possession were proven in respect of Count 2. Count 2, as noted, pertains to a switchblade ("Switchblade"). All other counts pertain to the 9mm handgun ("Firearm").
- [17] With that background and context, all of the offences arise out of a discrete incident that occurred in the late afternoon of August 31, 2023, at the Kelowna Law Courts, located at 1355 Water Street (hereinafter the "Courthouse").
- [18] There were four witnesses called at trial, two on behalf of the Crown and two on behalf of the defence. All were present at the Courthouse on August 31, 2023. The Crown's case is with one exception limited to the events at the Courthouse on August 31, 2023. The events of August 30th and 31st, 2023, leading up to the Indictment at the Courthouse, become relevant when I conduct the analysis required by R. v. W.(D.) and the relevant authorities since Mr. Aronson elected to take the stand in his own defence.
- [19] The Crown's case is thus not overly complex, despite there being six counts on the Indictment. It is summarized as follows.
- [20] Mr. Aronson has an extensive criminal record and has been incarcerated for multiple periods of time during his adult life. In no way does Mr. Aronson's criminal record compromise his constitutionally protected right to the presumption of innocence for the counts on the Indictment, but realistically place the accused, Mr. Aronson, on the radar of the Royal Canadian Mounted Police (hereinafter the "RCMP").
- [21] Consistent with this, Sergeant Desmond Kiehlbauch, who personally met with Mr. Aronson approximately 10 days earlier, happened to be -- by what I accept to be a complete coincidence at a local business, namely, Premier Pawn Jewellery and Loans (hereinafter "Premier Pawn") off duty and driving his own personal vehicle on August 24, 2023, when he observed Mr. Aronson drive into the parking lot of Premier Pawn in a newer model black pickup truck. Mr. Aronson was the sole occupant of the black pickup on August 24, 2023, and it is an uncontroversial fact that he is a prohibited driver.

- [22] But for clearly being the operator of a motor vehicle despite being prohibited from doing so, the conduct of Mr. Aronson at Premier Pawn was lawful and generally unremarkable with one exception. Through a closed-circuit video obtained from Premier Pawn, Mr. Aronson is clearly seen wearing a black satchel or what was commonly referred to during the course of the trial as a "murse". The murse had a single black strap slung over Mr. Aronson's left shoulder with the satchel portion of the murse resting at his right hipbone. The murse has an identifiable zipper top which is metallic. The zipper is clearly apparent on the very high-quality closed-circuit television from Premier Pawn.
- [23] Despite that high-quality video, it cannot be seen whether or not there is more than one internal pocket on the murse. What is apparent is that there is no front pocket. In the course of the video, Mr. Aronson reaches in and out of the murse on several occasions, appears familiar with the murse and its contents. Those contents included a significant amount of cash. Mr. Aronson does not fiddle, rifle or otherwise struggle at all with locating the cash and other items required as part of his transaction with Premier Pawn.
- [24] Based on the closed-circuit video from Premier Pawn, which confirmed what Sergeant Kiehlbauch personally observed on August 24, 2023, Sergeant Kiehlbauch obtained an unendorsed warrant on the driving prohibition matter. The significance of the murse was completely unknown. The purpose of obtaining the video was to confirm Mr. Aronson was the sole driver of the black pickup truck, entered Premier Pawn, conducted a transaction and then drove away as the sole occupant of the truck.
- [25] In order to serve the unendorsed warrant in a convenient way, Sergeant Kiehlbauch also made inquiries to determine when Mr. Aronson, who was under reporting conditions, would be attending at the Courthouse to meet with his probation officer. He found it was the afternoon of August 31, 2023. Sergeant Kiehlbauch arranged for another officer on duty that day, Constable Ryland Shedden [phonetic], to attend with him at the courthouse. They attended at about 3:10 PM and started observing the closed-circuit cameras in the sheriffs' office on the first floor.
- [26] At around 3:38 p.m., Mr. Aronson was observed coming into the camera view on the closed-circuit videos operated by the sheriffs at the Courthouse. He was accompanied by a female and they were holding hands. This female individual is later identified to be Ms. Cassandra Mead [phonetic] (hereinafter "Ms. Mead"). Mr. Aronson is wearing a murse that is apparent on the video on his right hip. The strap is not visible at first instance because Mr. Aronson is wearing a hoodie and the video footage starts from behind. Mr. Aronson made a brief detour to the washroom after entering the main doors of the Courthouse and then headed down the hall to the Kelowna Corrections office. With the obvious exception of the brief visit to the washroom, this is all captured on video. The murse is on his right hip and that is obvious in all of the video. No other person is observed to have contact with the murse.

- [27] Sargeant Kiehlbauch and Constable Shedden then promptly entered the probation office, which is just mere steps from the sheriffs' office, and arrested Mr. Aronson. He had been seated next to the female he entered the Courthouse with. Importantly, the female individual was carrying a purse of her own. This is also clear in the video.
- [28] Mr. Aronson was searched incidental to arrest. At the time he had the black murse over his left shoulder under a partially zipped up hoodie. As part of the pat-down of Mr. Aronson, the murse was identified as containing something or some things hard in it. It was accordingly unzipped as part of the search incidental to arrest. Inside the murse was the Firearm. It was in plain view. Sergeant Kiehlbauch was surprised to find it. There was also some cash, a small amount of what looked like drugs in what is accurately described as a small jam jar, and some Visa gift cards. There was no identification or wallet. I will return to the contents of the murse in more detail below.
- [29] As part of the search incidental to arrest, a Switchblade was also located in Mr. Aronson's right front pocket. All of this was entirely consistent with the video surveillance from the Courthouse tendered as part of the Crown's case, with the exception that the angle of the cameras does not actually capture the removal of the items from the murse. Nothing turns on this as the defence does not suggest the items were not in the murse and that Mr. Aronson was not wearing a murse on his body at the time of his arrest.
- [30] Mr. Aronson was further arrested and transported to the Kelowna RCMP detachment. Ms. Mead followed and attended at the detachment, as well. No Charter issues were raised by the defence. So I turn directly to what Sergeant Kiehlbauch identified upon a review of the items seized from Mr. Aronson.
- [31] The murse was approximately eight-by-eight inches with a single compartment. It was all black. It had a metal zipper. There are no photographs taken of the murse and Sergeant Kiehlbauch readily conceded he does not remember the brand name of the murse. The Firearm was a 9mm as noted, specifically a Walther P38. It was loaded. There was a round in the chamber. There were seven more bullets in the magazine. Although the firearm had a safety, it was not engaged. It was thus capable of being fired immediately upon the trigger being pulled or even accidentally being engaged given there was a round in the chamber.
- [32] Subsequent forensic examinations were conducted and no fingerprints identified. The amount of DNA located was not suitable for comparison.
- [33] The Switchblade is primarily a blue rectangular object that fits comfortably in the average adult hand. There is a metal blade with two sharpened edges, one on each side, contained within it. There is a small black button, which when pushed extends the blades. This is simply done with a finger, no flicking required. At the base of the Switchblade is a small black component which I would, upon examining the exhibit, describe as a pick. It has various uses, some but not all of which are criminal. The cash was counted to be \$1,435. It was to the best of Sergeant Kiehlbauch's recollection in \$20 and \$50 denominations. He does recall that it was just folded in half and not wrapped or packaged.

- [34] There was a small glass jar with what appeared to be fentanyl. It was not even a tennis ball amount and was not tested. It was thus returned as part of Mr. Aronson's effects in due course due to its de minimis quantity even if it was a controlled substance.
- [35] As part of the return of Mr. Aronson's effects, Ms. Mead asked for and was given \$290 as she said this amount of money in the purse belonged to her. The significance of this specific amount, which was \$1,145 less than the total cash in the purse requested by Ms. Mead, will be addressed later when I consider the credibility and reliability of her evidence at trial. Ms. Mead did also request the Visa gift cards. Those were provided to her.
- [36] The other material point regarding the Crown's case is the concession that there is no video surveillance of Mr. Aronson and Ms. Mead until they are walking up the inclined walkway to the Courthouse's main doors. There is no surveillance of them behind the Courthouse or exiting the vehicle as they arrived as Sergeant Kiehlbauch made inquiries of a number of local businesses and agencies including Interior Health and none had closed-circuit video covering that particular area.
- [37] Mr. Aronson, as indicated above, elected to give evidence after the close of the Crown's case, despite his constitutional right to elect not to do so. In many material respects consistent with the admissions made, Mr. Aronson does not challenge what happened after he entered the Courthouse with Ms. Mead on August 31, 2023, in any material way. His primary evidence centers on what happened on August 30, 2023, and August 31, 2023, prior to entering the Courthouse.
- [38] By way of brief background before that specific evidence, Mr. Aronson is 36 years-of-age. He has his B.C. Dogwood and some certificates. He has more notably, and as referenced above, an admittedly very long criminal record. He also has had significant issues with substance addiction. Mr. Aronson was only released from custody in July of 2023, some approximately seven weeks before his arrest, after having served some 10 months in custody. He was under a current probation order and a firearms prohibition order, which he had been under for a long time.
- [39] At material times related to the Indictment, he was dating Ms. Mead. Mr. Aronson initially said that they had been dating for three months but conceded the relationship only commenced after leaving custody. So it could really only have been about three weeks. Mr. Aronson had known Ms. Mead prior but there was no dating relationship. They were primarily living together in a 5th wheel trailer with Ms. Mead also residing some of the time with her mother. They were both actively using drugs in August of 2023.
- [40] Mr. Aronson's most recent relationship prior to Ms. Mead ended in or about June of 2023. His former girlfriend passed away about 10 days after the end of the relationship. This former girlfriend, despite being deceased, does factor into the narrative, which is why I refer to this portion of his evidence.

- [41] Regarding the attendance at Premier Pawn, Mr. Aronson's explanation for being there on August 24, 2023, is not relevant and not contradicted in any event. What is critical is Mr. Aronson's acknowledgment he is wearing an all-black murse which he admits is his murse. As a regular wearer of murses, he is wearing it like he always does, with it slung over his left shoulder with the pouch portion -- or satchel portion positioned at his right hip.
- [42] He describes the contents of his murse that particular day as including court papers, two phones, jewellery, inmate card, court paperwork, a diamond and related documents, and this goes partially to the purpose of attending, and cash, sufficient enough to retrieve a gold necklace he had previously pawned. I return to the cash issue in due course.
- [43] In terms of the murse itself, Mr. Aronson said it had two pockets and was a different murse than the one he was wearing when he was arrested on August 31, 2023. Although he never waived from that evidence, under cross-examination he made certain concessions as to the similarities of the murses. He also under cross-examination gave evidence about purchases of additional murses following his recent release from incarceration. It went from four to five murses, to possibly 10 murses. This is evidence I frankly did not follow. The murse found on Mr. Aronson by Sergeant Kiehlbauch and Constable Shedden is either the murse he was wearing on August 24, 2023 at Premier Pawn, or, as Mr. Aronson maintains, a substantially identical murse accidentally handed to him by Ms. Mead from their shared vehicle just prior to entering the courthouse for his probation appointment. It matters not how many other murses Mr. Aronson may or may not have owned at the relevant time. This case turns on the knowledge of what was in the murse he was wearing on his person on August 31, 2023.
- [44] As to how it came to be that Mr. Aronson was arrested at the Courthouse with the black murse containing the Firearm, Mr. Aronson's evidence goes back to the previous evening of August 30, 2023. That evening he says he was up partying at a location near or around Postill Mountain with Ms. Mead and her friend Ben, nicknamed Fresh, and I will return to the fact that he made reference to other people. They were drinking, doing drugs, four-by-four'ing and just partying around a fire. He and Ms. Mead stayed there overnight and slept in the back of the black Dodge Nitro vehicle, which he described as "our truck", although the description of it makes it clear it is an SUV.
- [45] The vehicle was packed with certain items to go camping, such as a cooler of booze, some food, portable cookpot, blankets, pillows, extra clothes. Mr. Aronson brought a murse but he cannot recall if it was the murse he wore to Premier Pawn on August 24, 2023. He again stressed that he has multiple murses but did not give any evidence as to why he would have changed murses at the 5th wheel before going back to the Courthouse for his probation appointment beyond his generalized statement that he likes to match.

- [46] I digress. Returning to the Postill Lake events of the night of August 30, 2023, whatever murse Mr. Aronson brought with him stayed in the vehicle as Mr. Aronson did not want it lying around for "Ben to mess with". However, this is where the other people come in, other people were sitting on the hatch of the vehicle, in and out of the vehicle to get alcohol from the cooler, and in the front seat of the vehicle to do drugs.
- [47] Returning to Ben aka Fresh, Mr. Aronson says that he knew this individual for about two to three years and Ms. Mead knew him longer. Although Mr. Aronson did not know Ben's last name, he knew Ben had a firearm, a long gun specifically, and he saw it briefly that night as Ben was putting it away. He says he also knew Ben had a licence for this long gun. He denies shooting that firearm or any firearm that evening. He also denies knowing Ms. Mead to have any firearms or being aware that Ms. Mead had brought the firearm in the vehicle to Postill Lake.
- [48] The next day, August 31, 2023, him and Ms. Mead came down from the mountain around 2:00 p.m. They both went to the 5th wheel, in the shared vehicle. Within a few minutes he and Ms. Mead got in argument. The argument was over his ex-girlfriend referred to above who had recently passed away. Mr. Aronson had only unpacked a few items from the vehicle he says due to the argument with Ms. Mead when his probation officer, Carley Gilmore [phonetic], called. Ms. Gilmore said he had missed an appointment and he had to be at the Courthouse that afternoon or she would "breach him".
- [49] Mr. Aronson was still arguing with Ms. Mead at this time. Ms. Mead nonetheless agreed to drive him to the Courthouse. Mr. Aronson changed and left the 5th wheel with a murse. He flipped it into the backseat of the Dodge Nitro vehicle and it ended up on the driver's side. Mr. Aronson thus had a timely and sufficient opportunity to carry the black murse he left the 5th wheel with from the trailer to the vehicle and to have a sense of its weight, particularly when he tossed it into the backseat.
- [50] As he and Ms. Mead drove downtown, Mr. Aronson, who as noted had changed, was not wearing a hoodie, he says, but rather had one on his lap. Mr. Aronson and Ms. Mead were still arguing the whole way down to the Courthouse. They were somewhat rushed to make the appointment and were still a few minutes late arriving. They parked the Dodge Nitro in the Interior Health parking lot, which for reference is located behind the Courthouse but in fairly close proximity. After they parked, Mr. Aronson asked Ms. Mead to pass him his murse and he put it on. They proceeded to walk to the Courthouse together.
- [51] As this is a very key point in the evidence, it was explored in some detail in direct and cross-examination. Specifically, Mr. Aronson says that when Ms. Mead handed him the murse he did not open it or look inside. He emphasized that he did not touch the bottom of the murse when receiving it or walking to the Courthouse. He emphasized this particular point, namely, the not touching the bottom of the murse more than once.

- [52] Mr. Aronson maintains throughout that he thought it was his purse and that his purse did not contain the Firearm. Going back to how Ms. Mead handed him the purse, as again this is key, Mr. Aronson says that he was standing outside the passenger side, completely outside the vehicle. He was confused in his evidence to some degree if he had to lean in to get the purse from Ms. Mead after he requested that she pass it to him, but he maintains that she passed it to him while he was standing beside the passenger side of the car from the driver's side of the vehicle.
- [53] After putting the purse on, Mr. Aronson put on the hoodie that had been on his lap. As Mr. Aronson and Ms. Mead were walking into the Courthouse he says they were still bickering but concedes the video shows them holding hands. He said he did so to calm "his girl" down. He went to the bathroom briefly to make sure he did not look too hungover or high. He does not dispute he was wearing the purse at all material times from the vehicle to the probation office. Ms. Gilmore was at the front desk of the probation office and told him to take a seat. Two police officers came in, told him to stand up and arrested him. This is where the evidence is then generally consistent with that of Sergeant Kiehlbauch and Constable Shedden, except that he says that he was "shocked" when they retrieved the Firearm from the purse while searching him.
- [54] Consistent with this denial of the knowledge of the contents of the black purse he was wearing, Mr. Aronson denies that it was his cash, that the jar which may have contained drugs were not, if drugs at all, his drugs, and denied the Visa gift cards were his. Mr. Aronson also testified that the Switchblade was not in his pants pocket but said it was in his pants clipped.
- [55] Ms. Mead was called to give evidence on behalf of the defence as indicated. She was the final witness at trial. Ms. Mead's evidence on its face supports Mr. Aronson's version of the events of August 30, 2023, and August 31, 2023; specifically, Ms. Mead had known Mr. Aronson for a number of years but they had only recently started dating. Ms. Mead was living primarily with Mr. Aronson at the 5th wheel trailer but also sometimes with her mother. She was spending most of her time with him. Ms. Mead was actively engaged in drug use in August of 2023.
- [56] Ms. Mead knew Mr. Aronson had a criminal record. Ms. Mead had known Ben for a number of years. Ms. Mead, Mr. Aronson and Ben went up to Postill Lake on the night of August 30th to party with Ben. They did party hard. Ms. Mead makes no mention of any other people. She says that they partied hard and did not sleep much, but what sleep they did get was in the back of the Dodge Nitro vehicle.

- [57] They packed up on August 31, 2023, to come down because Mr. Aronson had a probation appointment at the Courthouse that day. Ms. Mead's evidence is somewhat unclear as to whether Ben accompanied them down from Postill Mountain, but she was not asked to clarify and that point is not material as Ben does not factor into the events of the 5th wheel or at the Courthouse. Importantly consistent with this, Ben is not said to have been aware of murses. Apparently, he prefers backpacks.
- [58] After arriving at the 5th wheel trailer, there was an argument regarding a comment Mr. Aronson made about his former girlfriend that had recently passed away, which she says upset her. Notwithstanding the argument, she agreed to drive him to his probation meeting. The argument continued during the drive. When they parked behind the Courthouse, Mr. Aronson asked her to hand him his murse. She did so. She did not realize it was not Mr. Aronson's murse.
- [59] They walked into the Courthouse together and made a short stop at the washroom and continued to the probation office. Shortly after sitting down, two police officers arrived and arrested Mr. Aronson. He was searched in her presence and then taken to the RCMP detachment. Ms. Mead followed. She requested the return of \$290 in cash and the Visa cards from the murse on the basis that they belonged to her. The request was granted and she received those items.
- [60] Ms. Mead is still in a relationship with Mr. Aronson but says she has testified because she does not want someone to go down for something they did not do.
- [61] In terms of the Firearm, Ms. Mead's evidence is as follows. She was previously in a relationship with an individual named Ryan. He passed away in early 2023. She acquired a number of his possessions, included with that was a firearm. Ms. Mead has no meaningful knowledge of guns but had carried the gun on a few occasions for protection due to some concerns for her safety. Ms. Mead brought the Firearm to Postill Lake on August 30, 2023, to have Ben teach her how to use it. That did not happen. Mr. Aronson was not aware that she brought the Firearm to Postill Lake.
- [62] Turning now to the legal analysis required by R. v. W.(D.).
- [63] First and foremost as with every criminal case, the accused is presumed innocent and the Crown bears the burden of proving each essential element of each offence charged beyond a reasonable doubt. Mr. Aronson does not have to prove anything. The burden of proof relates to each essential element of the offence and not to the individual pieces of evidence led by the Crown; see R. v. Morin, [1988] 2 S.C.R. 345; and R. v. Arp, [1998] 3 S.C.R. 339.
- [64] In the seminal decision of R. v. W.(D.) referred to above, Justice Cory articulated the framework to be applied by triers of fact to findings of credibility in criminal matters where the defence provides evidence in direct conflict with the Crown's evidence. It was augmented by the B.C. Court of Appeal in R. v. C.W.H., [1991] B.C.J. No. 2753.

[65] The W.(D.) framework as augmented in C.W.H. is as follows: first, if I believe the evidence of the accused, I must acquit; second, if I do not believe the evidence of the accused but I am left in reasonable doubt by it, I must acquit; third, even if I am not left in reasonable doubt by the evidence of the accused, I must ask myself whether on the basis of the evidence I do accept I am convinced beyond a reasonable doubt by the evidence the guilt of the accused; and fourth, if after careful consideration of all the evidence I am unable to decide who to believe, I must acquit.

[66] The W.(D.) analysis was helpfully explained by Justice Donegan recently in *R. v. Palmer*, 2023 BCSC 453. The factual matrix in *Palmer* differs, and there are multiple paragraphs which are guidance, but I will simply cite paragraph 15 which provides as follows:

[15] It is important to remember that the W.(D.) framework was never intended to be a statute and should not be read like one. As I have observed in other decisions, many courts have commented that this framework is not a magic incantation or something to be slavishly followed. What is important is that the principles underlying the W.(D.) framework are applied. Justice Paciocco of the Ontario Court of Appeal discussed these underlying principles in a fairly recent article. He identified the principles that drive the W.(D.) framework as these:

- 1) Criminal trials cannot properly be resolved by deciding which conflicting version of events is preferred;
- 2) A criminal fact-finder that believes evidence that is inconsistent with the guilt of the accused cannot convict the accused;
- 3) Even if a criminal fact-finder does not entirely believe evidence inconsistent with guilt, if that fact-finder cannot decide whether the evidence is true, there is a reasonable doubt and an acquittal must follow;
- 4) Even where the fact-finder entirely disbelieves evidence inconsistent with guilt, the mere rejection of that evidence does not prove guilt; and finally,
- 5) Even where the fact-finder entirely disbelieves evidence inconsistent with guilt, the accused should not be convicted unless the evidence that is given credit proves the accused guilty beyond a reasonable doubt.

[Citation omitted].

[67] Also instructive are the recent comments of Justice Wilson in *R. v. Hollaman*, 2023 BCSC 1612, at paragraphs 47 and 48. Justice Wilson states:

[47] An assessment of credibility generally involves a number of considerations. Some of the factors to be considered when assessing credibility were summarized in *Bradshaw v. Stenner* at 2010 BCSC 1398, affirmed 2012 BCCA 296, and leave to the Supreme Court of Canada refused. At paragraph 186, the Court said:

- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides . . . The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally . . . Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the . . .
- [48] In *R. v. Roth*, 2020 BCCA 240, the Court of Appeal confirmed that the trier of fact may rely on human experience, but advises caution when doing so. At paragraph 65:
- [65] Moreover, although judges are entitled to rely on their human experience in assessing the plausibility of a witness's testimony, they must avoid speculative reasoning that invokes "common sense" assumptions not grounded in the evidence . . .
- [68] In my conclusion, notwithstanding these valuable cautions and the core principles underlying the W.(D.) analysis which were stressed by counsel for Mr. Aronson, Mr. Aronson's evidence is not credible, it is not reliable, and it is simply implausible of belief. This was made abundantly clear through the cross-examination by the Crown, Mr. Lerfold.
- [69] First and foremost, by pure happenstance we have the video from Premier Pawn which is extremely high quality, clearly showing Mr. Aronson wearing a black murse in a distinctive style slung over his left shoulder, tight to his body and resting at his right hip. This was on August 24, 2023. The pouch of the murse is touching his body at all times he is wearing it, other than when he sits down and then brings it up in front of him to open the zipper and deal with its contents.
- [70] The black murse in the Premier Pawn video looks extremely similar to the black murse in the video surveillance from the Courthouse. There are no obvious markings and a metallic zipper on the top is obvious in both. The brightness of the zipper is slightly different but as is the tone of the closed-circuit videos from Premier Pawn and the Courthouse. It is undeniably metallic.
- [71] As indicated above, despite not following the evidence of the rapidly increasing murse collection between July of 2023 and August of 2023, I accept it is very plausible Mr. Aronson owns more than one murse and it is also very plausible that he owns more than one black murse. What I do not accept is that by mere coincidence Ms. Mead handed him by accident the wrong black murse which looks strikingly similar to his murse he was using just very recently, as recently, at least we know of, as August 24, 2023, and this other strikingly similar murse happened to contain the Firearm which Mr. Aronson simply failed to notice while walking to the Courthouse. This is despite the fact that he had carried what he claims was

his own black murse from the 5th wheel to the vehicle a very short time earlier.

- [72] Specifically, I find it defies belief that Mr. Aronson would not have noticed the weight of the Firearm in the murse when it was handed to him and he proceeded to sling it over his left shoulder, position it at his hip, and then put his hoodie overtop of the murse. I also find his explanation of putting his hoodie on over the murse while in the Interior Health parking lot not to be logical. Mr. Aronson was a bit late for his probation appointment and had been warned that afternoon that she would breach him. It was also August 31, 2023, in Kelowna. That is not, I take judicial notice, usually the time of year when it is necessary to pause to put on a hoodie, especially when in a rush.
- [73] Mr. Aronson then, as I have already noted, had to walk from the parking lot behind the Courthouse, through what I would describe as a courtyard area, and then up the ramp or inclined sidewalk to the Courthouse doors. That again would have presumably caused him to notice the weight of the Firearm resting at his hip and rubbing against it. In this regard, the Firearm was entered as an exhibit, and I examined it. It is a small gun, hence how it could fit in a murse of approximately eight-by-eight in size, but it is heavy. You would, I find, notice that weight when you picked it up and when it rubbed against your hip.
- [74] The manner in which the murse is worn is also relevant in my view. The video shows the shoulder strap is correctly fitted to Mr. Aronson. Mr. Aronson is not even close to the same size as Ms. Mead. That was obvious as they both testified. Ms. Mead must also have presumably worn the murse since she says it is her Firearm. She claimed some of the money and certain gift cards in the murse immediately after Mr. Aronson was arrested and transported to the Kelowna RCMP detachment. Either that or the strap fits because it is Mr. Aronson's murse and she just put her items in it, but that is not consistent with the defence theory, namely, that it is not Mr. Aronson's murse at all.
- [75] What makes far more sense is the Crown theory that Mr. Aronson did not want to leave his murse with a loaded handgun and a not insignificant amount of cash in a downtown parking lot on a summer day. Having been to the Courthouse on multiple occasions, Mr. Aronson would have knowledge that there are no metal detectors between the entrances and the probation office, and that the murse was at least partially concealed by his hoodie and would not likely have been subject to search but for the happenstance attendance of Sergeant Kiehlbauch and Constable Shedden for the arrest on the unendorsed warrant for the prohibited driving offence.
- [76] What is also very consistent with this theory is that Mr. Aronson knowingly brought the Switchblade with him to the Courthouse for his probation appointment. Mr. Aronson did not do this by accident or coincidence. There are only two explanations for how this occurred on the totality of the evidence of Mr. Aronson alone.
- [77] Specifically, Mr. Aronson said that he changed after they left Postill Lake at the 5th wheel trailer before attending at the Courthouse. This means he would have had to put the Switchblade in his pocket because Mr. Aronson's evidence was not that he put on an already

worn pair of pants which just happened to have the Switchblade in the pocket. Rather, he says that it was clipped to his pants, which would mean, I find, it would almost certainly have to have been attached after he got changed or at least adjusted upon putting on his pants. As with the Firearm, Mr. Aronson would also have known the Switchblade was there regardless of if it was in the pocket or clipped to his pants. While not as heavy as the Firearm, it is significant enough in size to not go unnoticed.

- [78] Mr. Aronson's version of the events of August 30, 2023, and the morning of August 31, 2023, are also so wrought with inconsistencies as to defy plausibility. Some very specific but not exhaustive examples of this include the lack of any knowledge of Ben's last name but knowledge of him holding a firearms licence. Usually in friendships the former is learned before the latter, if applicable. Further, there is not even attempted to be explained how Mr. Aronson came to know that information. It seems like an extraneous detail to provide some reliability to the evidence of Ms. Mead that she sought out the assistance of Ben and how to use the Firearm.
- [79] Mr. Aronson said that they were four-by-four'ing but no explanation was made as to how there was a four-by-four available to them at Postill Lake. It did not arrive in the back of the SUV that he was sharing with Ms. Mead. It was not stated that Ben brought it, and again the other people issue arises. As indicated Mr. Aronson made mention of people in and out of the SUV, but no people even by their first names were identified beyond himself, Ms. Mead and Ben.
- [80] Mr. Aronson's explanation for the amount of items packed in the vehicle for a single night of partying and car camping seems unusual. This in and of itself is a much more minor point but has to be considered in the totality of the evidence that this alleged evening -- about this alleged evening in that it too is an extraneous detail which seems to be meant to add to the story to bolster its believability in that the more stuff there was in the vehicle the more likely it would be to grab the purse by accident. In a largely empty vehicle, it would have been presumably apparent that there was more than one purse.
- [81] While it is plausible that Mr. Aronson and Ms. Mead had an argument on August 31st, it is also plausible that Ms. Mead agreed to drive him to his probation meeting, notwithstanding given he is a prohibited driver, albeit one who was driving just over a week prior, but driving to the Courthouse does bring with it some considerable greater risk. But if the argument was ongoing at the time of the arrival, Ms. Mead could have remained in the vehicle for the appointment to conclude, which would have been a short wait since the probation office closes at four o'clock, or that they would be entering the Courthouse holding hands. I just do not accept that Mr. Aronson was calming down "his girl". Nothing in their demeanour in the video is consistent with that explanation. It is much more consistent with them attending at the probation office together and Mr. Aronson wearing his purse, which contained the handgun, not mistakenly carrying the purse that was handed to him by Ms. Mead containing her handgun.

- [82] The corroborating evidence provided by Ms. Mead also does not assist in being either reliable or credible both in terms of the events of August 30, 2023, or August 31, 2023.
- [83] First and most importantly is the contradiction in handing Mr. Aronson the black purse in the Interior Health parking lot. Ms. Mead's evidence is that Mr. Aronson asked her to pass him his purse. This is of course consistent. However, Ms. Mead said she walked around the vehicle to give it to him and she did not pass it through to the passenger door. Ms. Mead on her evidence had the opportunity thus to hold the purse for more than a passing moment, feel its weight, and identify that it was the purse containing the Firearm that she says she brought to Postill Lake the night prior as she walked around the vehicle to hand it to Mr. Aronson on the passenger side.
- [84] Returning to Ben, Ms. Mead had known Ben for a number of years but also did not know his last name. She made reference to having him on her Facebook but did not even provide the name he used on Facebook, which I take judicial notice of is often not the same as someone's legal name, but she did not even indicate what that name was. Ms. Mead was also apparently going to have Ben teach her how to use this Firearm without even knowing his last name. Ben seems like a red herring in the story, I conclude.
- [85] In any event, Ms. Mead did not observe Ben firing a gun himself that evening at Postill Lake, contrary to what Mr. Aronson recalled. Her not seeing this occur is plausible. She could have been engaged in doing something else, but it does go to my disbelief that Mr. Aronson knew that Ben had a gun licence. It all seems too contrived.
- [86] Ms. Mead also had an extremely limited knowledge of firearms but knew it was a Walther P38. That knowledge of the particular details stood out to me as something she would have been told to remember and did. Ms. Mead's acquisition of the Firearm from her deceased boyfriend is plausible but conveniently incapable of being disproven since no other witness was called to confirm their knowledge of this fact, and of course Mr. Aronson's evidence was that he was unaware that she had this Firearm.
- [87] Ms. Mead's evidence about the cash in the purse also seemed very contrived to fit the defence theory. On August 31, 2023, Ms. Mead asked the RCMP detachment for a very specific amount of cash, namely, the \$290. I simply do not accept her evidence at trial that she did not know how much cash was in the purse and that she underestimated by \$1,135, especially when you put into context the admission that Ms. Mead was actively using drugs at that time and would have presumably needed access to cash to support that addiction.
- [88] Jumping back to the evidence of Mr. Aronson, he too gave evidence regarding the amount of cash he had in the purse at Premier Pawn and the amount of cash he would have had available to him on August 31, 2023, in his purse, which was all over the place during Mr. Lerfold's cross-examination, and while not determinative was just another example of the overall lack of reliability of the evidence underpinning the defence case.

- [89] That said, I do acknowledge defence counsel's argument that there were some differences in Mr. Aronson's and Ms. Mead's recollection of events which are normal and consistent with their evidence not being scripted and due to the passage of some time. Some of those include, for example, one, that Ms. Mead's evidence of the return from Postill Lake was not consistent with Mr. Aronson's evidence in terms of the timing of the return, the unloading or partial unloading of the vehicle, or the amount of items in the vehicle. Her recollection of Mr. Aronson showering before changing while at the 5th wheel contradicts Mr. Aronson's evidence that he recalls not showering but just changing. Third, the evidence from Ms. Mead that they came down from Postill Lake because Mr. Aronson had a probation appointment, where according to Mr. Aronson Ms. Gilmore called him about a missed appointment and told him to come down that day, not to remind him of pre-existing appointment.
- [90] An alternative to the explanation for the inconsistencies, despite the able submissions of defence counsel, which I ultimately accept, is that Ms. Mead was attempting to go along with the story created by Mr. Aronson to deny knowledge of the possession of the firearm and neither of them was particularly good at following that script.
- [91] In contrast, the Crown's evidence, principally that of the primary arresting officer, Sergeant Kiehlbauch, was very credible and reliable and unshaken on cross-examination in any material way. It was also corroborated by the key video surveillance evidence that I have referred to above.
- [92] So drawing my findings of fact back to the W.(D.) framework: firstly, I do not believe the evidence of Mr. Aronson; second, I am not left in a reasonable doubt by the evidence of Mr. Aronson; third, on the evidence I do accept I am convinced beyond a reasonable doubt of the guilt of Mr. Aronson; and fourth, after careful consideration of all the evidence which I have endeavoured to lay out in some detail, I am not in a situation of being unable to decide whom to believe.
- [93] In conclusion, based on the totality of the evidence, I find that the Crown has established that on August 31, 2023, Mr. Aronson knew what was in the black purse and thus was knowingly in possession of the Firearm. He was also on his own evidence knowingly in possession of the Switchblade since it was not in the purse.
- [94] Thus, regarding Count 1, I conclude the Crown has proven all of the essential elements of the offence that I outlined above beyond a reasonable doubt, and find John Michael Aronson guilty of possessing a loaded prohibited or restricted firearm, namely, a 9mm handgun, contrary to s. 95(1) of the Criminal Code.
- [95] Regarding Count 2, I conclude that the Crown has proven all of the essential elements of the offence, which elements as noted were effectively conceded by Mr. Aronson, that I outlined above beyond a reasonable doubt and find John Michael Aronson guilty of possessing a prohibited weapon, namely, a switchblade, contrary to s. 91(2) of the Criminal Code.

- [96] Regarding Count 3, I conclude that the Crown has proven all the essential elements of the offence that I outlined above, namely, that John Michael Aronson was possessing a firearm, contrary to s. 92(1) of the Criminal Code. However, having found Mr. Aronson guilty on Count 1 of the indictment, Count 3 is stayed under the Kienapple principle that prevents Mr. Aronson from being convicted of more than one offence that arises out of the same act.
- [97] Regarding Count 4, I conclude that the Crown has proven all of the essential elements of the offence that I outlined above beyond a reasonable doubt, and find John Michael Aronson guilty of transporting and storing a firearm in a careless manner and without reasonable precautions for the safety of other persons, contrary to s. 86(1) of the Criminal Code -- I may just have stated that was five. That was Count 4.
- [98] Count 5, so regarding Count 5, I conclude that the Crown has proven all of the essential elements of the offence that I outlined above beyond a reasonable doubt, and find that John Michael Aronson guilty of possessing a firearm, contrary to s. 117.01(1) of the Criminal Code.
- [99] Lastly, regarding Count 6, I conclude that the Crown has proven all of the essential elements of the offence that I outlined above beyond a reasonable doubt, and find John Michael Aronson guilty without a reasonable excuse of possessing a firearm while bound by a probation order, contrary to s. 733.1(1) of the Criminal Code.
- [100] Those are my reasons for judgment.

"Hardwick J."

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