

CANADA / JUDGMENT

## R. v. Belcourt

2024 BCSC 2186

COURT

Supreme Court of British Columbia

DECIDED

26 August 2024

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2024 BCSC 2186 R. v. Belcourt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Belcourt,

2024 BCSC 2186

Date: 20240826

Docket: 111358-3

Registry: Kamloops

Rex

v.

Brittany Belcourt

Before: The Honourable Justice Donegan

Oral Reasons for Judgment

Counsel for Crown:

P.V. Bachra

Counsel for Accused:

D. Gagnon

Place and Date of Trial:

Kamloops, B.C.

July 16, 2024

Place and Date of Judgment:

Kamloops, B.C.

August 26, 2024

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## Introduction

- [1] In the course of investigating and arresting an impaired driver in the early morning hours of September 8, 2021, Kamloops RCMP also arrested Brittany Belcourt, the front seat passenger. When police searched Ms. Belcourt's purse incidental to arrest, they found a plastic bag containing about 21 grams of cocaine and a fully loaded revolver with its hammer cocked and ready to fire. When they searched the vehicle, they found a baseball bat, a large hunting knife, ammunition, a scale and baggies.
- [2] Arising from these events, Ms. Belcourt now stands charged with unlawfully possessing cocaine for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA] and with possession of a loaded prohibited firearm without being the holder of an authorization or a licence under which she may possess it, contrary to s. 95(1) of the Criminal Code, S.C. 1985, c. C-46 [Code].
- [3] Ms. Belcourt has made a number of admissions in this trial. As the result of these admissions, and her counsel's submissions, the only issue for my determination on this trial is whether the Crown has proven beyond a reasonable doubt that Ms. Belcourt was in possession of the drugs and firearm found in her purse.
- [4] In addition to the admissions, the Crown relied on three police witnesses in its case, one of whom was qualified as a drug expert. Ms. Belcourt testified in her own defence. She denied any involvement with, or knowledge of, the drugs and gun in her purse. She offered a version of events that saw her purse unattended for a few minutes a short time before officers stopped the vehicle and searched it.

- [5] The Crown urges me to reject this evidence and not have any reasonable doubt based upon it. As the Crown's position on the only issue in this trial is based on circumstantial evidence, a conclusion that Ms. Belcourt had knowledge of and control over the firearm and the drugs must be the only reasonable inference arising from the evidence as a whole. The Crown says it has discharged its burden.
- [6] Ms. Belcourt does not take any issue with the credibility of the Crown's witnesses or the reliability of their evidence. She effectively does not dispute the Crown's evidence, but rather urges me to accept her evidence that she was unaware of the items in her purse at the time it was searched, or, at the very least, find it raises a reasonable doubt about whether her possession of these items is the only reasonable inference to be drawn from the evidence as a whole. She argues that the evidence as a whole gives rise to a reasonable inference that someone placed those items in her unattended purse without her knowledge and that the Crown has failed to meet its burden.

### Governing Legal Principles

- [7] Of course, any discussion of the legal principles must begin with the principle that the Crown bears the onus of proving, beyond a reasonable doubt, each element of the offences with which Ms. Belcourt is charged. The only element at issue, for each count, is whether the Crown has proven, for each count, possession to the requisite standard.
- [8] This case involves consideration of a variety of legal principles, including "possession" in this context, circumstantial evidence, and those principles articulated in *R. v. W.(D.)*, 1 S.C.R. 742 [W.(D.)].

#### Possession

- [9] Section 2 of the CDSA defines "possession" by reference to s. 4(3) of the Code.
- [10] Section 4(3) of the Code defines possession as follows:

#### Possession

- (3) For the purposes of this Act,
- (a) a person has anything in possession when he has it in his personal possession or knowingly
- (i) has it in the actual possession or custody of another person, or
- (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.
- [11] In this case, the Crown relies, on each count, upon personal possession.

- [12] Possession includes both knowledge and some act or measure of control: *R. v. Ngo*, 2009 BCCA 301 at para. 3. In *R. v. Morelli*, 2010 SCC 8, the Court discussed the allegation of personal possession at para. 16:
- [16] On an allegation of personal possession, the requirement of knowledge comprises two elements: the accused must be aware that he or she has physical custody of the thing in question, and must be aware as well of what that thing is. Both elements must co-exist with an act of control (outside of public duty): *Beaver v. The Queen*, [1957] S.C.R. 531, at pp. 541-42.
- [13] In *R. v. Bird*, 2020 ABCA 236, the Court observed, with reference to *Morelli*, that the elements of control and physical contact are often closely related in this context. At para. 13, the Court wrote, in part:

"Physical custody" may exist even where there is no touching of the object. For example, a person carrying a backpack known to contain a gun is properly seen as being in personal possession of the gun. A purchaser of drugs is in personal possession of drugs in his vehicle, even if they were placed on the front seat by the seller, without the purchaser ever touching them. While manual handling and knowledge is generally conclusive of personal possession, the absence of manual handling does not necessarily preclude possession, because "control" and knowledge combined with a sufficient degree of physical proximity may nonetheless establish possession. Whether physical proximity combined with control amounts to personal possession is a matter of degree.

#### Circumstantial Evidence

- [14] As the parties have acknowledged, the Crown's case is based on circumstantial evidence.
- [15] In *R. v. Villaroman*, 2016 SCC 33, Cromwell J. set out the law regarding drawing inferences from circumstantial evidence and the relationship between proof by circumstantial evidence and proof beyond a reasonable doubt. The Court held:
- [35] At one time, it was said that in circumstantial cases, "conclusions alternative to the guilt of the accused must be rational conclusions based on inferences drawn from proven facts": see *R. v. McIver*, [1965] 2 O.R. 475 (C.A.), at p. 479, *aff'd* without discussion of this point [1966] S.C.R. 254. However, that view is no longer accepted. In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts: *R. v. Khela*, 2009 SCC 4, [2009] 1 S.C.R. 104, at para. 58; see also *R. v. Defaveri*, 2014 BCCA 370, 361 B.C.A.C. 301, at para. 10; *R. v. Bui*, 2014 ONCA 614, 14 C.R. (7th) 149, at para. 28. Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.

- [36] I agree with the respondent's position that a reasonable doubt, or theory alternative to guilt, is not rendered "speculative" by the mere fact that it arises from a lack of evidence. As stated by this Court in *Lifchus*, a reasonable doubt "is a doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence": para. 30 (emphasis added). A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.
- [37] When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt: *R. v. Comba*, [1938] O.R. 200 (C.A.), at pp. 205 and 211, per Middleton J.A., aff'd [1938] S.C.R. 396; *R. v. Baigent*, 2013 BCCA 28, 335 B.C.A.C. 11, at para. 20; *R. v. Mitchell*, [2008] QCA 394 (AustLII), at para. 35. I agree with the appellant that the Crown thus may need to negative these reasonable possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.
- [38] Of course, the line between a "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.
- [39] I have found two particularly useful statements of this principle.
- [40] The first is from an old Australian case, *Martin v. Osborne* (1936), 55 C.L.R. 367 (H.C.), at p. 375:

In the inculcation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed. [Emphasis added.]

- [41] While this language is not appropriate for a jury instruction, I find the idea expressed in this passage -- that to justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative -- a helpful way of describing the line between plausible theories and speculation.
- [42] The second is from *R. v. Dipnarine*, 2014 ABCA 328, 584 A.R. 138, at paras. 22 and 24-25. The court stated that "[c]ircumstantial evidence does not have to totally exclude other conceivable inferences"; that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.

- [16] In *R. v. Wiwchar*, 2017 BCCA 9, our Court of Appeal considered the principles articulated in *Villaroman*, and succinctly summarized them this way:
- [37] When assessing circumstantial evidence, inferences of fact consistent with innocence no longer have to be drawn from proven facts. Such inferences may be drawn from "reasonable possibilities" arising from the evidence or lack of evidence that are inconsistent with guilt: *R. v. Villaroman*, 2016 SCC 33 at paras. 36 and 37.

[ ]

- [39] The critical requirement is that the alternate theory or possibility arising from the circumstantial evidence or lack of evidence, when viewed objectively, is a "plausible" or "reasonable" inference, other than the accused is guilty. In my view, the alternate inferences suggested by Mr. Wiwchar, which he says can be drawn from the circumstantial evidence or lack of evidence, are not "plausible" or "reasonable" when the totality of the evidence is considered.

### **W.(D.) Framework**

- [17] Ms. Belcourt testified. For cases involving the credibility of the accused, the Supreme Court of Canada gave us guidance in applying the reasonable doubt concept in *W.(D.)*. That framework 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 a reasonable doubt by it, I must acquit.
  - Third, even if I am not left in a 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 of the guilt of the accused.
- [18] To this list I would add, if, after careful consideration of all of the evidence, I am unable to decide whom or what to believe, I must acquit: *R. v. C.W.H.*, [1991] B.C.J. No. 2753 (B.C.C.A.).
- [19] Finally, this case requires me to make findings of fact, which of course requires me to assess the credibility of witnesses and the reliability of their evidence.

### **Assessment of Credibility and Reliability**

- [20] The court's fact-finding role requires an assessment of credibility, which is the truthfulness or honesty of a witness, and the reliability, or accuracy, of the witness' evidence. This requires consideration of many factors which were conveniently summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186:

- [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 (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). 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 (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [Farnya]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). 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 time (*Farnya* at para. 356).
- [21] To the above, I would add that a court may believe some, all, or none of the evidence of a witness, that credibility determinations "may not be purely intellectual and may involve factors that are difficult to verbalize": *R. v. M.(R.E.)*, 2008 SCC 51 at para. 49. It is important not to base determinations of credibility on emotional evaluations, stereotypes, guesswork, or other forms of impermissible reasoning. Credibility and reliability decisions have to be grounded in reason and made as objectively as possible.
- [22] I am also mindful to exercise caution in placing too much reliance on the demeanour of a witness. I have no baseline upon which to assess this, and I know that a courtroom can be an unfamiliar and intimidating place. People react to its pressures differently. Many authorities have discussed the potential deceptiveness of demeanour: see, for example, *R. v. Pelletier*, 1995 ABCA 128 at para. 18.
- [23] It is within the W.(D.) framework, informed by all of these underlying principles, that I approach my assessment of the evidence in this case. I will begin by finding the facts.

## Findings of Fact

- [24] Constable Callens and Constable Graham were the investigating officers in this case. No issue was taken with their credibility or the reliability of their memories. I found them both to be credible and their evidence, to the extent of their memories, reliable. Constable Reinburg was the drug expert. No issue was taken with his qualifications, his credibility or the general reliability of his opinions. From all of their evidence, I derive the following facts.
- [25] On September 8, 2021, Constable Callens was patrolling the north shore area of Kamloops in a marked police vehicle. At approximately 2:45 a.m., he noticed a motor vehicle, a 2009 Ford SUV, travelling southbound along the Overlanders Bridge and into the downtown area of Kamloops. He followed the vehicle, noticed some traffic infractions, and pulled it over at 2:54 a.m. Alden Smith was the driver. He was also the registered owner of the vehicle. Ms.

Belcourt was seated in the front passenger seat of this vehicle. The officer noticed that the back window of the vehicle was smashed out. When the officer pulled the vehicle over and saw Mr. Smith in the driver's seat, he observed Mr. Smith was not fidgeting or moving about in the vehicle.

- [26] While speaking to Mr. Smith through the driver's window, Constable Callens noticed a small unit scale located on the front dash of the vehicle. He also noticed that Mr. Smith was exhibiting signs of impairment, so he began an impaired driving investigation that eventually led to Mr. Smith's arrest at about 3:12 a.m. Constable Graham arrived on scene around this time.
- [27] After dealing with Mr. Smith, Constable Callens approached the passenger side of the vehicle to inform Ms. Belcourt (who was still seated in the passenger seat) that the vehicle would be towed, and to see if she wanted to provide information about something Mr. Smith had told him about. The time was now about 3:18 a.m.
- [28] After learning that Ms. Belcourt did not wish to discuss the event described by Mr. Smith, Constable Callens communicated to Ms. Belcourt that she was free to leave, but as the vehicle had to be towed she would have to leave the vehicle. Ms. Belcourt was compliant. She grabbed her purse from in front of her, somewhere on the passenger side of the vehicle. Constable Callens could not recall whether her purse had been by her feet or in her lap area before she grasped it to leave. Ms. Belcourt then asked the officer if it would be okay for her to grab some of her money. Constable Callens said this would be fine, believing Ms. Belcourt might need taxi money. To his surprise, Ms. Belcourt then began pulling out what appeared to be thousands in loose currency from inside the centre console of the vehicle. Not knowing who precisely this large amount of currency belonged to, Constable Callens told her to stop what she was doing.
- [29] Ms. Belcourt stopped what she was doing and opened the passenger door to get out of the vehicle. When the door opened, Constable Callens saw a large hunting knife on the floorboard by her seat, where her feet had been. He also saw a baseball bat stuffed between the passenger seat and the door, as well as a large round of ammunition on the seat where Ms. Belcourt had been sitting.
- [30] Constable Callens asked Ms. Belcourt "what is with this baseball bat?" She replied that she had it for her protection. It was at this point that Constable Callens determined that he had reasonable grounds to believe that Ms. Belcourt was in possession of a weapon, the bat, for a purpose dangerous to the public peace and that she was also in possession of a controlled substance for the purpose of trafficking. He informed Ms. Belcourt that she was under arrest for these two offences. The time was about 3:21 a.m.

- [31] The passenger door of the vehicle had already been opened by Ms. Belcourt at this point. Constable Callens took hold of Ms. Belcourt to effect the arrest. Her purse was on her right shoulder. Constable Callens removed her purse from her shoulder and placed it on the passenger seat of the vehicle. He then placed Ms. Belcourt in handcuffs.
- [32] At approximately 3:27 a.m., Constable Callens and Constable Graham began to search the vehicle incidental to arrest. Constable Callens started his search in the passenger side of the vehicle, beginning with Ms. Belcourt's purse. Constable Callens could not recall if the purse was open or closed when he began his search. Inside the purse he found a number of items:
- a) a fully loaded (six live rounds of ammunition in the cylinder) 44 magnum revolver, with the hammer cocked back and ready to fire.

Constable Callens later learned that this firearm had been reported stolen from a break and enter and theft in Logan Lake in 2016. Ms. Belcourt admits this is a firearm within the meaning of s. 2 of the Code. She also admits that this firearm is prohibited within the meaning of s. 84(1) of the Code, that she did not hold a registration certificate for it, and that she did not hold an authorization or a licence under which she could possess such a firearm. The firearm was not forensically tested by police following its seizure for DNA or fingerprints.

- b) a freezer bag filled with what is what is admitted to be 21.4 grams of cocaine.

If sold at the gram level, the value of these drugs was about \$2,000, and slightly higher if purchased at the ounce level. The bag was not forensically tested for either DNA or fingerprints;

- c) a pink wallet containing Ms. Belcourt's BC Services Card proving her identity;
  - d) some makeup products;
  - e) some Uno playing cards; and
  - f) a prescription pill bottle bearing Ms. Belcourt's name.
- [33] In the centre console of the vehicle, the officers found \$4,320 in Canadian currency. From the dashboard, they seized the digital scale that Constable Callens had initially seen. From the floor where Ms. Belcourt's feet had been, they seized a large hunting knife. From the seat where Ms. Belcourt had been sitting, they seized a 44-calibre round of ammunition. From between the front passenger seat and door, they seized the baseball bat. In a duffel bag behind the front passenger seat, they found: small unused plastic baggies; additional rounds of ammunition consistent with the rounds found in the gun in Ms. Belcourt's purse and the round found on her seat; a scale; and Uno playing cards.
- [34] At approximately 3:39 a.m., during the course of the search, Constable Graham went back to Ms. Belcourt where she sat in the back of his police vehicle. He re-arrested her, advising her that she was being arrested for possession of a weapon for a dangerous purpose, unauthorized possession of a restricted firearm and possession of a controlled substance for the purpose of trafficking.

- [35] Constable Reinburg, the drug expert, offered opinions about various matters, which I accept. I have already discussed his opinion about the street value of the cocaine that was located and seized from within Ms. Belcourt's purse. He also offered opinions about the significance of the presence of scales, money, empty Ziploc baggies, the quantity and packaging of powdered cocaine seized, and the close involvement between weapons and the drug trade. Drug dealers are susceptible to robbery and typically use weapons such as knives, guns, and bats as deterrence or for protection.
- [36] Constable Reinburg was also asked about whether valuable commodities in the drug trade, such as the drugs to be sold and firearms, are typically left in the possession of someone not trusted by the seller or without their knowledge. He opined that this would not be typical because of their value to the business. He explained that he often sees that if those trusted with firearms and drugs lose those items through theft or police seizure for example, their standing will be reduced in the drug trafficking hierarchy and they will be forced to earn back the trust of those above them.
- [37] I turn now to outline the accused's evidence.
- [38] Ms. Belcourt testified. She is 33 years old. She testified that on September 7, 2021, she was in a very new relationship with Alden Smith, the person Constable Callens arrested for impaired driving that night. She had known him for only about four or six weeks by this point.
- [39] During the day of September 7, 2021, Ms. Belcourt testified that she and Mr. Smith hung out at the river together, had some drinks, and then went to the home of one of his friends on Yew Street for a barbeque. She testified that there were three other people at this home, but she did not know their names. She brought her purse (the one officers later searched) inside this house with her. She described it as one of her everyday purses that she would normally carry. It held items such as her makeup, her wallet, and "smokes".
- [40] Ms. Belcourt testified that she brought her purse inside this friend's home. She recalled using the makeup from within the purse when she cleaned herself up a bit from her time at the river while she was inside the home. She also testified that when she carried it into the residence, she did not notice any difference in its usual weight.
- [41] Ms. Belcourt did not testify about where the purse was, or even what occurred, during the time she and Mr. Smith were inside this residence, other than that they "hung out" and ended up leaving later than they expected. They left the residence at about 2 or 2:30 a.m. and Ms. Belcourt took her purse with her. She testified that she did not notice any difference in its usual weight.

- [42] Ms. Belcourt testified that just as Mr. Smith got into the driver's seat of his vehicle (the vehicle that was later stopped by Constable Callens) and as she was about to get into the passenger seat, a man named Cody McKenzie (who she described as her "baby daddy"), unexpectedly appeared and blocked Mr. Smith's vehicle in. She then observed Mr. McKenzie smash out the back window of Mr. Smith's vehicle and leave. Mr. Smith pursued him on foot.
- [43] Ms. Belcourt testified that she then put her purse on the floor of the front passenger seat of Mr. Smith's vehicle. The vehicle was not locked. Then, for about the next estimated five minutes, she and two other women began to clean up the glass from the smashed window using a broom and dustpan. It was not clear to me from her evidence if these two women were the same women from within the residence or two other women. In any event, Ms. Belcourt testified that she did not know the names of these two women. She testified that after cleaning up the glass, she then drove Mr. Smith's vehicle in an effort to find him. When she located him only about a block away, she got into the passenger and he drove the vehicle. Their arrests happened a short time later.
- [44] Ms. Belcourt also testified that she and Mr. Smith were married only six days later. They are now separated.
- [45] Ms. Belcourt testified that she was aware of a number of the items police found in Mr. Smith's vehicle during their search. She was aware of the bat in the vehicle beside her. She was aware of the scale on the dash, and other things like the Uno cards and the money in the console. She was also aware of the presence of drugs in the vehicle, but testified that she was unaware of their precise location.
- [46] Regarding the loaded, cocked firearm found in her purse, Ms. Belcourt testified that she was unaware of the presence of this, or any, firearm in her purse or in the vehicle, and had never seen Mr. Smith or any of his friends with a firearm. Regarding the bag of cocaine found in her purse, Ms. Belcourt denied knowing this item was there either.
- [47] I will discuss my assessment of Ms. Belcourt's evidence shortly. I will now summarize the positions of the parties.

### Positions of the Parties

- [48] The defence does not take issue with the Crown having proven this vehicle contained evidence of a drug trafficking operation - the quantity of drugs, the packaging, the scales, the money, the weapons, all of the evidence is really quite overwhelming in that regard. The issue, however, is whether the Crown has proven Ms. Belcourt had possession of the cocaine and had possession of the firearm. The defence says it has not.
- [49] Ms. Belcourt has denied knowledge of the drugs and firearm found in her purse. Her counsel urges me to believe her evidence in this regard or, at the very least, have a reasonable doubt based upon it. In addition to her denial of knowledge, Mr. Gagnon emphasizes a number of features of the evidence that he says support his client's position:

1. the vehicle was owned and operated by Alden Smith, a man Ms. Belcourt did not know very well at that point and had only recently begun dating;
  2. a corroborative feature of the Crown's evidence that the back window of that vehicle was smashed out;
  3. the absence of any testing for DNA or fingerprint evidence on the items - evidence that would show potentially who may have handled the items;
  4. that the drugs and firearm were not found directly on her person, but rather in a closed purse; and
  5. that she had just recently left that purse unattended in the vehicle for a few minutes while she cleaned up broken glass, in the presence of unknown individuals. Mr. Gagnon submits that this allows for a reasonable inference, other than Ms. Belcourt's guilt, to be drawn - that an unknown individual placed the firearm and drugs inside her purse without her knowledge.
- [50] The Crown submits that on the basis of the direct and circumstantial evidence of Ms. Belcourt's possession of the drugs and firearm, the court should have no difficulty finding, as the only reasonable inference, that Ms. Belcourt had knowledge of, and control over, these two items, and her testimony to the contrary should not be believed and should not raise a reasonable doubt.

## Analysis

- [51] I agree with the Crown's position.
- [52] While I accept certain features of Ms. Belcourt's evidence about what happened that night as credible and reliable, I find her evidence on the material points, particularly about her knowledge of the drugs and gun in her purse, simply incapable of belief. I reject her evidence in this regard and find it does not raise a reasonable doubt.
- [53] I accept, and find as facts, that Ms. Belcourt was in a romantic relationship with Mr. Smith and that she was travelling with him in his vehicle during these events. I also accept that she and Mr. Smith spent the evening and early morning hours at a residence on Yew Street with three other people. I also accept, as it is supported by the observations of Constable Callens, that the back window of Mr. Smith's vehicle was smashed out by the person Ms. Belcourt identified shortly before the traffic stop. I also accept her several admissions against interest, such as her awareness of the scale, the bat, the money and her evidence that she was aware there were drugs in the vehicle.
- [54] However, I find the balance of the key features of Ms. Belcourt's evidence is incapable of belief for a number of reasons.

- [55] Ms. Belcourt's evidence was internally contradictory on a critical point. She testified she had no knowledge of the drugs found in her purse. However, she later admitted that she knew there were drugs in the vehicle. The difficulty with this evidence is that police searched the vehicle and the only drugs found, anywhere, were those found in her purse. On her own evidence then, she had knowledge of the drugs in the vehicle, which were located in her purse, a personal item over which she exercised control.
- [56] Moreover, Ms. Belcourt's evidence about how the cocaine and loaded firearm may have ended up in her purse without her knowledge defies all logic and human experience, and is inconsistent with the evidence of the drug expert. I find it is contrived.
- [57] On her evidence, the only way those items may have ended up in her purse was in the few minutes she was cleaning up the broken glass with two women, whose names she did not know. It defies all logic and human experience that Ms. Belcourt would spend hours socializing with three other people and not even learn their first names. Even if her evidence were true about cleaning up broken glass for a few minutes with two other women, leaving her purse unattended inside the vehicle, it defies all logic and common experience that in that short timeframe, some unknown other person could surreptitiously gain access to the vehicle and would, for some reason, chose to plant drugs worth over \$2,000 and a loaded firearm in Ms. Belcourt's purse without her seeing or hearing them do so. It defies all logic and common experience that some unknown person would even do such a thing, particularly in light of the expert evidence about the value of those two commodities to the drug trade, and how these items are generally only left to trusted individuals. Further, it defies all logic and human experience that some unknown person would plant not only a large quantity of valuable drugs and a firearm in the purse of Ms. Belcourt for some unknown reason, but that he or she would leave the firearm in a state that created a significant risk of harm - fully loaded and ready to fire.
- [58] However, the mere rejection of the central features of Ms. Belcourt's evidence does not prove her guilt. Ms. Belcourt cannot be convicted unless the evidence that is given credit proves her guilt, on each and every element of the offences, beyond a reasonable doubt.
- [59] The question I must decide here is whether the Crown has discharged its burden to prove, beyond a reasonable doubt, that the evidence in this case permits, as the only reasonable inference, that Ms. Belcourt possessed the cocaine for the purpose of trafficking and possessed the prohibited firearm. I must ask whether there are any plausible theories or reasonable possibilities that are inconsistent with guilt. I am satisfied there are not and that the Crown has met its burden in this case.
- [60] Considered as a whole, I am satisfied that, viewed logically and in light of human experience, the evidence is not reasonably capable of supporting any inferences other than that the accused is guilty on both counts.

- [61] The only reasonable inference to draw here is that Ms. Belcourt had knowledge and control of both of these items, and that they were both possessed for the purposes of drug trafficking. The evidence, taken as a whole, is really quite overwhelming. The accused's evidence does not raise a reasonable doubt, nor does the absence of evidence raise a reasonable doubt, such as the absence of DNA or fingerprint evidence.
- [62] As the Crown submits, these two items were not found in some garbage bag in the back of the vehicle. They were not found in the duffle bag in the back seat. They were found inside Ms. Belcourt's personal item - her everyday purse - the purse she admitted to carrying throughout that night. They were found alongside Ms. Belcourt's makeup, her smokes, her wallet, her identification, her prescription pill bottle and some Uno cards. The firearm and drugs are not small items, they have some weight to them. They cannot have been unnoticed. The purse was in close proximity to Ms. Belcourt when she went to leave the vehicle. She exercised control over it by putting it over her right shoulder when she went to leave the vehicle. Moreover, Ms. Belcourt admitted she had knowledge of the drugs in the vehicle, and the only drugs found were in her purse.
- [63] The overall context is very important here as well. Firearms and cocaine are very valuable and important tools to drug traffickers. There was clearly drug trafficking occurring in this vehicle. The items evidencing this activity were throughout the vehicle - on the dashboard, in the centre console, in a duffle bag in the back seat, at Ms. Belcourt's feet, on her seat, beside her seat, and inside her purse. The two items found in her purse are the most significant evidence of drug trafficking and, as the expert opined, would only typically be left only with trusted individuals. Ms. Belcourt and Mr. Smith were in a relationship at the time, it was obviously a committed one, as evidenced by their marriage only several days later. Ms. Belcourt was not some hitchhiker, or stranger, who just happened to be present in the car.
- [64] The drugs and firearm are only two of the items that are indicative of drug trafficking in this case. Not only did Ms. Belcourt have control and, as I have found, knowledge of the drugs and firearm in her purse, she had knowledge and exercised control over other items indicative of drug trafficking in the vehicle, such as the thousands in loose currency in the centre console and the bat she said was for her protection. I also note that she had another weapon in plain view at her feet, was sitting on a round of ammunition similar to that found in the firearm and to the ammunition found in the bag in the backseat, and had Uno cards in her purse similar to those found in the bag in the backseat.
- [65] I am satisfied the Crown has proven that Ms. Belcourt possessed the drugs for the purpose of trafficking and possessed the firearm. These are the only reasonable inferences to be drawn. No other reasonable inference, such as that suggested from Ms. Belcourt's evidence such as some stranger placing these items in her purse for some unknown reason shortly before her arrest, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty of both counts.

[66] Ms. Belcourt, I find you guilty of both counts as charged.

"S.A. Donegan J."

DONEGAN J.

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