

CANADA / JUDGMENT

R. v. Buchanan

2025 BCSC 871

COURT

Supreme Court of British Columbia

DECIDED

9 May 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 871 R. v. Buchanan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Buchanan,

2025 BCSC 871

Date: 20250509

Docket: 56889

Registry: Vernon

Rex

v.

Maxwell Buchanan

Before: The Honourable Justice Wilson

Reasons for Judgment

Counsel for the Crown:

T. Zanatta

Counsel for the Accused:

L. McPheeters

Place and Date of Trial:

Kelowna, B.C.

March 11 - 14, 2025

Place and Date of Judgment:

Kelowna, B.C.

May 9, 2025

Introduction

- [1] The accused, Mr. Maxwell Buchanan, is charged with the following counts occurring on January 9, 2023, in Vernon, BC:
- a) possession of an unloaded, prohibited, or restricted firearm along with readily accessible ammunition;
 - b) possessing a firearm without being the holder of a registration certificate;
 - c) carrying a concealed weapon; and
 - d) possession of break-in tools.

Undisputed Facts

- [2] On January 9, 2023, the RCMP received a 911 call from a female caller whose telephone number was later associated with a Nicole Anderson, also known as Nicole Andrews. The caller reported that she was walking through Polson Park in Vernon when she saw a man who said his name was Max, and that he was holding something that she thought was a shotgun.
- [3] The caller later said the man in the park was Max Buchanan, she thought he was in his 20's, and he was walking towards the Polson Motel. The female caller declined to provide her name to the 911 dispatcher. A male voice was subsequently heard on the 911 call and he did not provide his name either. The male caller said that the man with the gun was 29 years of age.
- [4] The dispatcher told the female caller that the police would like to talk to her, and she provided her location. However, she was not there when the police arrived.
- [5] The police responded to the 911 call and Constable Kineshanko located a man wearing a long, dark green trench coat with orange hair, glasses, and appearing to be approximately 20 years of age. The man identified himself as Max Buchanan. Mr. Buchanan was secured in handcuffs and when asked by Cst. Kineshanko for the location of the gun, he advised that it was in his backpack. The police searched the backpack and located a cutdown bolt action firearm.

- [6] A search of Mr. Buchanan incidental to his arrest produced three .30-06 rounds in the pocket of his pants. The search also located a plastic cylinder with .22 calibre rounds and an empty 12-gauge shotgun shell in his jacket. Upon arrest, police found a box of 20 x .270 calibre Winchester bullets. Most of the ammunition and, in particular, the three rounds in Mr. Buchanan's pants' pocket, were subsequently determined to be capable of being fired from the gun.
- [7] Upon closer inspection, the gun was determined to be a cutdown CIL, model 950C, bolt action rifle in .30-06 calibre and is a prohibited firearm within the meaning of s. 95 of the Criminal Code.
- [8] Following his arrest, the police took Mr. Buchanan to the local detachment where he provided a statement to Cst. Kineshanko. The parties agree that Mr. Buchanan provided the statement voluntarily.

The trial

- [9] Four witnesses testified for the Crown:
- a) Cst. Derzak, through whom exhibits were entered;
 - b) Cpl. Caston, who assisted in the arrest and search of Mr. Buchanan;
 - c) Cst. Kineshanko, who initially located and then arrested Mr. Buchanan and took his statement; and
 - d) Cst. Helgersen, who received the seized firearm from Mr. Buchanan and made efforts to try to locate the 911 callers, but without success.
- [10] The Court also watched and heard video evidence by way of the WatchGuard recordings from Cst. Kineshanko's police car.
- [11] Additionally, the Court had the benefit of a comprehensive agreed statement of facts.
- [12] Mr. Buchanan was the only witness for the defence. He provided an explanation for how he came into possession of the gun and what he had been intending to do with it at the time when he was arrested. He advances the defence of innocent possession.
- [13] During submissions, the Crown invited the Court to acquit Mr. Buchanan of the charge of possession of break-in tools because no evidence was led on the point. The Crown also accepted that the count of carrying a concealed weapon was, in the circumstances of this case, wholly subsumed within the counts of possessing a firearm without a registration certificate and with readily accessible ammunition, as suggested by counsel for Mr. Buchanan.

The defence of innocent possession

[14] The defence of innocent possession arises where an accused person possesses contraband but lacks a blameworthy state of mind that would lead to criminal liability. This can arise from possessing the contraband solely for the purpose of disposing of it, or from possessing it for a reason pertaining to public duty.

[15] Mr. Buchanan relies on the British Columbia Court of Appeal's decision in *R. v. York*, 2005 BCCA 74, for the principles relating to innocent possession. In *York*, the accused and his business partner had rented a warehouse. The business was not yet in operation. The accused discovered a large quantity of furniture in the warehouse, and believed the goods were likely stolen. The accused towed one of two trailers that contained the furniture away from the warehouse and dropped it off on a nearby street. He was returning to the warehouse when he was arrested.

[16] The trial judge convicted Mr. York of possession of stolen property. The Court of Appeal, in 2005 BCCA 74, concluded the following at para. 20:

20 I think the law can be summarized as follows. Personal possession is established where an accused person exercises physical control over a prohibited object with full knowledge of its character, however brief the physical contact may be, and where there is some evidence to show the accused person took custody of the object willingly with intent to deal with it in some prohibited manner. The judge convicted the appellant on the grounds that the appellant knew that the goods were stolen, and that he exercised physical control over them without notifying the police or the rightful owners. The blameworthiness of this conduct fell short of that required for a conviction for a crime of dishonesty. The circumstances here are not all that dissimilar to those in *Christie*, *supra*. The appellant's conduct was inconsistent with any intention to retain or deal with the goods.

[17] The Court of Appeal in *York* summarized the facts in *Christie*, 41 C.C.C. (2d) 282, 1978 CanLII 2535 (N.B.C.A.) as follows:

[15] . . . The facts are worth noting. The accused had lent her car to the daughter of a friend. She said it was her practice to leave the keys in her car so that her daughter could use it as well. When the car was returned to her, she noticed a brown paper bag in the trunk containing marihuana. She slammed the trunk door closed. She clearly knew that the bag contained drugs. She said she wished to seek advice from friends as she feared her daughters' involvement. She drove around the city looking for her friends when she got involved in an accident. The accused's explanation for her conduct was that she was in a state of panic and feared her daughters' involvement with the drugs.

[18] In *Christie* at 287, the Chief Justice of the New Brunswick Court of Appeal upheld the accused's acquittal, and stated as follows:

In my opinion, there can be circumstances which do not constitute possession even where there is a right of control with knowledge of the presence and character of the thing alleged to be possessed, where guilt should not be inferred, as where it appears there is no intent to exercise control over it. An example of this situation is where a person finds a package on his doorstep and upon opening it discovers it contains narcotics. Assuming he does nothing further to indicate an intention to exercise control over it, he had not, in my opinion, the possession contemplated by the Criminal Code. Nor do I think such a person who manually handles it for the sole purpose of destroying or reporting it to the police has committed the offence of possession.

[19] A very clear statement of the defence of innocent possession and the rationale behind it is found in *R. v. Chalk*, 2007 ONCA 815, wherein Justice Doherty, stated the following:

[25] I agree with the analysis described above. There are cases where an individual has the requisite control and knowledge, but cannot be said to be in possession for the purpose of imposing criminal liability. These cases will include cases in which a person takes control of contraband exclusively for the purpose of immediately destroying the contraband or otherwise placing it permanently beyond that person's ability to exercise any control over the contraband. In such cases, the intention is solely to divest oneself of control rather than to possess. Like the other appellate courts whose discussions are referred to above, I do not think that criminal liability should attach to that kind of brief, "innocent" possession: see e.g., *R. v. Glushek*, supra; *R. v. York*, supra.

[20] The Crown does not take issue with the law regarding the defence of innocent possession. It agrees with the principles and the authorities as set out above that counsel provided on behalf of Mr. Buchanan. Rather, the Crown takes issue with whether it applies in the circumstances of this case.

Accused's version of events

[21] Mr. Buchanan is presently 29 years of age and was 27 in January 2023. He had been homeless for approximately eight months at the time of these events and generally slept in a shelter he had erected under an overpass near Polson Park in downtown Vernon.

[22] Mr. Buchanan is a handyman, skilled in metalwork primarily but also in other things such as plastic and woodwork. Although he was provided with some resources, he used to do minor projects for people in exchange for extra money. For example, he would fix carts that people used, using heavy cutters, a hammer and his blowtorch.

[23] At the time he had difficulty moving due to issues with his feet and was using a cane to make himself more mobile.

[24] There were places within the community where he could go during the day, which included a number of drug houses. He had a positive reputation amongst the homeless and entrenched people that included his ability to repair things.

- [25] On the day in question, Mr. Buchanan visited a drug house on 21st St., known as Mom's Place, with which he was very familiar. He was welcome there and was treated well there. On occasion, he would even sleep there.
- [26] Mr. Buchanan would never leave or store his belongings of value there, however, because there were always people around and things would disappear. He kept a sleeping bag at Mom's Place but that was the extent of it. Everything else he either left at his camp or as for his more valuable items, he carried them with him in his backpack or jacket that had many pockets.
- [27] Mr. Buchanan says he acquired the firearm from a friend, Mr. Dylan Price. He had gone to Mom's Place in the late afternoon, and Mr. Price arrived sometime later. Mr. Buchanan was using methamphetamine while at Mom's Place. He had known Mr. Price for 10 years and considered him one of his best friends. Mr. Price died of an overdose in December 2024.
- [28] When Mr. Price arrived, he told Mr. Buchanan that he had something to show him. They went towards the back and in the direction of the bathroom at Mom's Place, out of camera range, and Mr. Price showed Mr. Buchanan the gun. It was apparent that it had been altered significantly and Mr. Price wanted to know if Mr. Buchanan could fix it.
- [29] Mr. Buchanan had known Mr. Price since he was a teenager. Mr. Price's behaviour had deteriorated over time. He had become increasingly erratic, violent and depressed. Mr. Buchanan was concerned about Mr. Price having a gun in his possession given his behaviours. He considered Mr. Price a danger to himself or others if he had the gun. Mr. Price owed money to Mr. Buchanan for a combination of drug purchases and work done by Mr. Buchanan. Mr. Buchanan said that if Mr. Price gave him the gun and all of the ammunition that went with it, he would forgive the entire debt. The debt at that point was around \$2,500. Mr. Price agreed and gave Mr. Buchanan the gun.
- [30] Mr. Buchanan quickly realized he did not actually want the gun. Rather, his concern had been getting it from his friend's possession. After considering and rejecting alternatives to dispose of the gun, such as throwing it in the river or in a dumpster, he hatched a plan to take it to the RCMP detachment and to drop it off at the after-hours door.
- [31] Some time after he received the gun and while Mr. Buchanan was still at Mom's Place, he got a phone call from Nicole (Nikki) Andrews. In the meantime, he had continued to use methamphetamine. Ms. Andrews is somebody he had previously been in a relationship with. She had told him previously about another relationship she had with a fellow by the last name of Stonechild who had gone to jail based upon her evidence. Mr. Buchanan was aware that Mr. Stonechild had been released, and that he and Nikki had somehow gotten back together at some point. When Ms. Andrews called, she sounded off and he assumed that perhaps she was having difficulty with Mr. Stonechild again.

- [32] Mr. Buchanan had never met Mr. Stonechild before but had spoken to him once when Mr. Stonechild had called to threaten him. When Ms. Andrews called, she wanted to meet by the skate park in Polson Park. This was directly on his planned route to the police station. It became an easy way to announce why he was leaving in order to dispose of the gun, and off he went.
- [33] In order to get to Polson Park, he crossed onto Highway 97 and went to the stairs that lead down into the park. When he got there, he observed something that he found to be very unusual - there were two people sitting in the gazebo, wearing masks and hats. He found this strange because usually people would only wear masks if they were doing something improper and did not want to be recognized.
- [34] One of the people was larger and had a bandana tied above his nose. The other was smaller and had a full-face balaclava with only eyeholes. Both were wearing hats. He did not recognize either person.
- [35] He walked past the gazebo while maintaining some level of observation of the two individuals. He changed his route through the park and headed in the direction of the skate park. When he got to an area with some large rocks by a tree where various paths intersect, he came across the two people from the gazebo again, who he assumes had gone around the other way.
- [36] The larger person asked for a cigarette while the other said nothing. Mr. Buchanan withdrew two cigarettes: one he handed to the larger person and the other he tossed towards the smaller person. The larger person then asked for a light. He did not have a working lighter, but had a blowtorch that he lit and handed to the larger person. The larger person lit his cigarette, but in an unusual way - he kept the bandana on his face and pushed the fabric into his mouth as he lit the cigarette thus keeping the bandana in place.
- [37] The larger one then said words to the effect of "nice headphones". Based on the manner of speech, Mr. Buchanan assumed he was expected to hand over the headphones he was wearing around his neck. He did so. By this point, the smaller person was flanking behind him.
- [38] Mr. Buchanan had previously put his backpack on a nearby rock, one of many placed alongside the pathway. The larger person, now with the torch in his right hand, started to reach in the direction of Mr. Buchanan's backpack. Mr. Buchanan grabbed his backpack. He removed the gun and operated the bolt. He knew that the gun was not loaded and could not fire, but the other two would not have known that. He pointed the firearm at both of them and said, "Put down what's mine and step back."

- [39] At this point, the larger person held the lit blowtorch and the smaller one had his headphones. He repeated his words. The smaller person removed her mask and he saw for the first time that it was Ms. Andrews, the person he was supposed to be meeting in the skate park. She identified herself to him. Mr. Buchanan said, "I don't care, put down what's mine and step back." At this point, he appreciated that he had been ambushed and was diffusing the situation with himself in control.
- [40] At that point, Ms. Andrews put the cigarette in her mouth and the larger person handed her the torch and moved behind her. The larger person reached into his own backpack and said he was loading his gun. Mr. Buchanan did not believe him because this is not something one would announce - you would simply do it and pull the gun out. Mr. Buchanan repeated what he had said before and Ms. Andrews put the headphones and the blowtorch down. The two were both were backing up.
- [41] Once there was some distance between him and the other two people, Mr. Buchanan put the headphones on his neck, and the blowtorch and the gun back in his backpack.
- [42] At this point, Mr. Buchanan says he had to rethink his plan to dispose of the gun. He was circling around behind the lawn bowling area in Polson Park and decided he would retrace a part of the route he had taken to get there in the first place. He decided to cross Highway 97, do a loop through the residential area, and then cross back over Highway 97 at the busy intersection with 25th Ave. before resuming the route he had always planned to take, which was to go north on 30th Street to the police station.
- [43] Mr. Buchanan had already crossed Highway 97 and had walked west on 23rd Ave. towards 34th Street when he saw flashing lights, which was obviously a police car. He changed his plan again. Instead of walking to the police station, he decided he could simply give the gun to the police officer in the car. He waved at the police car to stop it, but it did not initially do so. He continued to cross the street and saw the police car slowing and turning to come back towards him. He walked towards the parking lot of a nearby apartment building to wait for the police car to arrive. He moved off the side of the road for two reasons - one, so that it was safe and appropriate for everybody to pull over and two, because a known criminal actor lived across the street, and he did not want to be seen or recognized.
- [44] Mr. Buchanan was surprised when Cst. Kineshanko said he was investigating someone pointing a firearm. He did not expect that somebody would have reported the incident in the park to the police because that is not generally what homeless people would do.
- [45] When he gave his statement at the detachment, Mr. Buchanan did not tell Cst. Kineshanko that he had obtained the firearm earlier in the day from Dylan Price, that he took it because he was concerned about Mr. Price having it, or that he was flagging down Cst. Kineshanko because he wanted to give him the firearm. The reason he did not provide this information was because he was not asked those questions.

Reasonable doubt

- [46] The most fundamental principle in criminal law is that the Crown must prove its case beyond a reasonable doubt, which is a high threshold. The standard of proof beyond a reasonable doubt is intertwined with the presumption of innocence. The burden rests squarely on the Crown and never shifts to the accused.
- [47] The Crown must prove that the evidence as a whole establishes that the accused is guilty beyond a reasonable doubt. A reasonable doubt is not based on sympathy or prejudice, but on reason and common sense.

W.(D.)

- [48] Because Mr. Buchanan testified at his trial, I must be mindful of the principles set out by the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, 1991 CanLII 93:
- [28] Ideally, appropriate instructions on the issue of credibility should be given, not only during the main charge, but on any recharge. A trial judge might well instruct the jury on the question of credibility along these lines:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

- [49] In this case, the third principle from *W.(D.)* is of no application because Mr. Buchanan has admitted the elements of the Crown's case. In other words, Mr. Buchanan admits he possessed an unloaded prohibited or restricted firearm along with readily accessible ammunition, and that he possessed a firearm without being the holder of a registration certificate. The question for the Court is whether I believe Mr. Buchanan's explanation for why he did so, or, alternatively, whether it raises a reasonable doubt as to his guilt.

Positions of the parties

- [50] Mr. Buchanan argues that I should accept his explanation of how he came into possession of the gun and his plan to dispose of it. He says that his evidence is largely consistent with the evidence of the police officers, and that to the extent there are inconsistencies, either with the evidence of the officers or with the statement he provided to Cst. Kineshanko on the night in question, those differences are inconsequential and a reflection of the passage of time, as opposed to matters so serious that they undermine his credibility.

- [51] The Crown argues that I should reject Mr. Buchanan's evidence. It argues that his version of events is implausible, his evidence is inconsistent, and that some of the inconsistencies are not matters that can be explained away as a result of fading memory.
- [52] The Crown also argues that even if I were to accept Mr. Buchanan's evidence of how he initially came into possession of the gun, his possession was no longer innocent when he took the gun into Polson Park to go to hang out with his former girlfriend, and that his possession certainly lost all innocence when he removed it from his backpack and pointed it at two individuals in the park to intimidate them.
- [53] As such, not only do I need to determine whether I accept Mr. Buchanan's evidence or, alternatively, whether it gives rise to a reasonable doubt, I may also need to determine whether the defence of innocent possession was lost at some point during the events of the evening even if it was available earlier.

Discussion

Evidence of the police officers

- [54] There are many elements of the evidence of the police officers that were consistent with the evidence of Mr. Buchanan. For example, all of the police officers were aware of various drug houses around Vernon, and some were familiar with the specific drug house where Mr. Buchanan testified he met with Dylan Price and acquired the gun. Some of the officers were familiar with both Mr. Price and Mr. Price's father and, to varying degrees, with the propensity of the Messrs. Price for criminal activity.
- [55] The police witnesses were also familiar with the activities and the landmarks within Polson Park, as Mr. Buchanan was. While these various pieces of evidence do not corroborate Mr. Buchanan's version of events, they are consistent with the background of Mr. Buchanan's version of those events.
- [56] There were some inconsistencies in the evidence of the police officers. For example, Cst. Kineshanko testified that he recalled hearing Cst. Caston say, "We have a sawed-off .30-06" but Cst. Caston testified that he was not a gun expert and did not know that the gun was a .30-06 simply by looking at it. Rather, he only knew that it was a rifle and could not have identified it more precisely.
- [57] Constable Caston remembered seeing hand tools stored on Mr. Buchanan's vest but Cst. Kineshanko did not, even though they dealt with him during the same timeframe. None of the officers could remember who placed the various items that were removed from Mr. Buchanan's backpack onto the hood of Cst. Kineshanko's police car even though it is obvious from the various photographs that one or more of them must have done so.
- [58] Constable Kineshanko testified to having a brief oral interaction with Mr. Buchanan as he drove past him and before he turned his police car around and subsequently detained Mr. Buchanan. While the video in his police car is somewhat limited in its usefulness, there is

nothing in the audio recording that would suggest an oral interaction. The audio quality is good enough to hear interactions between Cst Kineshanko and Mr. Buchanan when Mr. Buchanan was detained and subsequently arrested, including when Cst. Kineshanko asked Mr. Buchanan where the gun was located. Since the audio is of sufficient quality to pick up what was said outside the vehicle, it very likely would have picked up anything Cst. Kineshanko said while seated in the vehicle. Certainly, it is good enough to pick up some of what the dispatcher is saying to him while he was driving.

- [59] Mr. Buchanan points out these various inconsistencies not because they undermine the Crown's case in any way or that the credibility of the officers' testimony should be called into question. Rather, counsel for Mr. Buchanan identifies these inconsistencies to point out that differences or gaps in recollection are to be anticipated, and that Mr. Buchanan's evidence should be assessed similarly.

Mr. Buchanan's evidence

- [60] One of the inconsistencies in Mr. Buchanan's evidence that the Crown pointed out is whether Ms. Andrews called Mr. Buchanan to ask him to hang out, or whether it was Mr. Buchanan who called her, after either receiving a text message from her or alternatively seeing that he had missed her call. In both Mr. Buchanan's statement to Cst. Kineshanko and in his evidence at trial, Mr. Buchanan's evidence was that Ms. Andrews initiated the contact and a conversation ensued.
- [61] Whether Mr. Buchanan answered a telephone call from Ms. Andrews or alternatively initiated a phone call in response is immaterial and would in no way undermine Mr. Buchanan's evidence.
- [62] Similarly, Mr. Buchanan's description of the face coverings on the two individuals he saw in the gazebo and who subsequently confronted him differed. During trial he testified that both were wearing face coverings, one with a bandana and the other with a balaclava, and both also wore caps. During his statement to Cst. Kineshanko, he described both as wearing bandanas, and the smaller wearing a toque. I expect the version he gave to Cst. Kineshanko is likely the more accurate one because he gave his statement on the evening of the encounter, whereas the trial was over two years afterwards. However, there is no question as to whether he encountered two people in the park. I do not consider these distinctions to be significant given the passage of time.
- [63] I will turn now to some of the more significant differences in Mr. Buchanan's evidence at trial when compared to what he told Cst. Kineshanko in his statement on the night in question.
- [64] In his evidence at trial, Mr. Buchanan testified that he saw the larger of the two individuals, presumed to be Mr. Stonechild, reaching for Mr. Buchanan's backpack. At that point, Mr. Buchanan grabbed his backpack, removed the gun, and pointed it at the individuals, telling them to drop what was his and to back away. However, in his statement to Cst. Kineshanko,

Mr. Buchanan made no mention of Mr. Stonechild ever reaching for Mr. Buchanan's backpack. While this detail is not particularly significant in terms of the charges before the Court, I consider it to be a relatively significant detail in the narrative because it provides the rationale for Mr. Buchanan taking the gun from his backpack in the first place, given that Mr. Buchanan was being investigated for pointing a firearm.

- [65] Another inconsistency between his evidence at trial and his statement to Cst. Kineshanko was the timing of when he returned the gun into his backpack following the altercation. In his evidence at trial, he said he put the blowtorch in the backpack when the two people started walking away but that he still had the gun in his hand. When he was a further distance away, he returned the gun to his backpack. However, in his statement to Cst. Kineshanko, he said he continued to carry the items as he walked around the path in the park that went behind the lawn bowling facility, across the bridge over the creek and did not put the items back in his backpack until he got to the gazebo, which is only a short distance from the stairs that lead to the sidewalk adjacent to Highway 97.
- [66] I could be persuaded to attribute a failure to recollect precisely where he was when he returned the various items into his backpack to be the result of a diminishing of memory over time. However, there is one aspect of Mr. Buchanan's differing recollections that warrants comment. When giving his evidence at trial, Mr. Buchanan explained why he knows he put the gun back in the backpack shortly after he had backed up sufficiently from the scene of the altercation in the area behind the lawn bowling green. He said he knows he did so because he would not have walked around the park with the gun in his hand. Yet, if Mr. Buchanan did not put the gun in his backpack until he got to the gazebo, which is what he told Cst. Kineshanko when providing his statement, that would be precisely what he had done.
- [67] As such, while a failure to recall where he was when he put the gun back in his backpack would not necessarily in and of itself be of any particular moment, his attempt to bolster his evidence by rationalizing a version of his evidence that is unlikely to be the correct one, given that his memory was likely much better on the evening in question than it is now, tends to undermine, rather than bolster, his credibility.
- [68] I will now address the moments leading to Mr. Buchanan's arrest. According to Mr. Buchanan, when he saw the lights on the police car as he was walking down 23rd Street toward 34th Ave., he quickly changed his plan and decided to flag down the police car and give the gun to the officer, as opposed to walking all the way to the police station to drop it off.
- [69] There are two WatchGuard videos from Cst. Kineshanko's police car in evidence, one pointing forward from the dashboard camera, and one pointing backwards from what would appear, as best as I am able to discern, the approximate location of the dome light in a car. It is not possible to determine from the video from the forward-pointing camera whether there is a pedestrian at all, Mr. Buchanan or otherwise. From the rear-facing camera, one

can see the feet of a person walking behind Cst. Kineshanko's police car. While there is no way of knowing whether the person walking was Mr. Buchanan, both Cst. Kineshanko and Mr. Buchanan testified that Cst. Kineshanko drove on before turning around to come back, and that Mr. Buchanan had crossed the street by the time Cst. Kineshanko returned.

- [70] If Mr. Buchanan were attempting to flag down Cst. Kineshanko, this evidence would greatly assist Mr. Buchanan's defence of innocent possession, because it would be consistent with his testimony that he was attempting to surrender the gun. Nonetheless, the fact that the video does not show this does mean it did not happen.
- [71] Although Mr. Buchanan cannot be seen in the forward-facing video, it is obvious the two men saw each other.
- [72] Shortly after he stopped his police car adjacent to Mr. Buchanan, Cst. Kineshanko got out of his vehicle. He then advised Mr. Buchanan that he was investigating someone pointing a firearm. When Cst. Kineshanko told Mr. Buchanan he was detained, Mr. Buchanan sounded surprised or upset, and said, "For what?" At no point during the initial detention did Mr. Buchanan voluntarily offer to hand over the firearm, nor did he suggest that he had a gun and was seeking to provide it to the police. Although Mr. Buchanan was cooperative on arrest, going to his knees and keeping his hands visible and showing Cst. Kineshanko that he had a knife on his belt, at no time did he volunteer that he had a firearm in his backpack. It was only after a minute or so following the initial detention, when Cst. Kineshanko asked Mr. Buchanan three times in short order and with increasing urgency "Where's the gun?", that Mr. Buchanan told him it was in the backpack.
- [73] I will now address what is an irreconcilable contradiction between Mr. Buchanan's evidence at trial and his statement to Cst. Kineshanko on the night in question. During trial, Mr. Buchanan's evidence was that he obtained the gun and all of the ammunition, including the shotgun shell, from Mr. Price while at the drug house known as Mom's Place. During cross-examination, his evidence was that he did not carry around spent ammunition. However, in his statement to Cst. Kineshanko he gave an entirely different version of events.
- [74] Mr. Buchanan told Cst. Kineshanko that he had purchased the shotgun rounds at a store and described them as "bear bangers". He said he disassembled them because they can be launched like a firework. He told Cst. Kineshanko that the shotgun shells had come in a box of twelve, which he then corrected to a box of six, and that he had been able to purchase them from the store without a firearms' license.
- [75] Mr. Buchanan agreed that at no time during his 45-minute interview with Cst. Kineshanko did he ever mention that he: (a) had only obtained the gun a few hours earlier; (b) got the gun from Mr. Price because he was concerned; and (c) was intending to hand it over to the police as soon as he could.

- [76] Had it been Mr. Buchanan's intention to hand over the gun, one would expect that he would have taken the opportunity to say so, either at the arrest scene or during his interview with Cst. Kineshanko. While his explanation at trial was that he was not asked those questions, I note that Mr. Buchanan told Cst. Kineshanko that he had purchased the shotgun shells from a store and they came in boxes of six, and he was not asked either of those questions either.
- [77] I consider Mr. Buchanan's evidence of his plan to voluntarily hand over the gun to police, when viewed as a whole, to be implausible.
- [78] Although Mr. Buchanan testified to having successfully persuaded Mr. Price to give him the gun for the benefit of all concerned, he remained at the Mom's Place drug house for up to another hour or so, while knowing that he had the gun in his backpack, which he knew might be operable. He also continued to use drugs, in this case methamphetamine, before he left. Instead of heading straight to the police station when he left the drug house, he went to hang out at the skate park with his ex-girlfriend.
- [79] Of significance is the fact that at the time he was arrested, Mr. Buchanan was going in the opposite direction from the police station. He had detoured into an area that he described as having a reputation for criminal activity and criminal actors, even though he had a much safer and better lit alternative, which was to simply continue to walk north on Highway 97.
- [80] I accept counsel's submission that the innocent possession cases all tend to involve a bad plan. I suppose it is inevitable that those who rely on the defence of innocent possession must have had a poor plan to the extent that they were presumably arrested before their plan had been fully implemented. Mr. Buchanan agreed with the suggestion that his plan was poorly thought out. The question for me is not the quality of the plan, but whether Mr. Buchanan had a plan at all.
- [81] I conclude he did not.
- [82] In reaching this conclusion, I consider Mr. Buchanan's evidence as a whole. While some inconsistencies between a witness's recollection at trial and a contemporaneous statement are inevitable, there are some inconsistencies in this case that cannot be explained by fading of memory due to the passage of time.
- [83] The most obvious example is his evidence at trial that he got the shotgun shell from Mr. Price, along with the gun and all the rest of the ammunition an hour or two earlier that evening in exchange for a debt, but told Cst. Kineshanko he bought the shotgun shells in boxes of six from a store. When faced with this inconsistency on cross-examination, Mr. Buchanan's answer was that he might have been lying to Cst. Kineshanko. That is of course a possibility, albeit not the one I find to be the most likely.

- [84] He attempted to bolster his evidence as to when he put the gun back into his backpack at trial with an explanation of why he would have done so, even though it was contrary to what he said to Cst. Kineshanko during his statement. Mr. Buchanan also included in his evidence at trial the additional detail of who we presume to be Mr. Stonechild reaching for his backpack, leading to Mr. Buchanan pointing the gun at his accosters.
- [85] Mr. Buchanan gave evidence that he has been diagnosed with ADHD since he has been at a residential treatment centre in Logan Lake, and that he has been prescribed Vyvanse, which has made a huge positive improvement in his thought processes and functioning. He also testified to the fact that he believes he is autistic, which, while not formally diagnosed, may well be true. He pointed to his undiagnosed autism to explain his words and actions on the night in question on many occasions.
- [86] Although Mr. Buchanan's explanation for why he did not tell Cst. Kineshanko about how he got the gun and what he intended to do with it was that he was never asked those questions, he nonetheless voluntarily offered up other details without being asked, such as how he came to acquire the shotgun shells. His reaction of surprise and upset upon being advised of his detention, which is audible on the WatchGuard recording from Cst. Kineshanko's police car, is not consistent with having formulated a new plan to hand over the gun to the passing police officer and therefore to avoid having to go all the way across town to the police station.
- [87] I do not accept that when Cst. Kineshanko drove by Mr. Buchanan for the first time, that Mr. Buchanan was trying to flag him down for the purpose of voluntarily handing over the gun. I find that Mr. Buchanan was walking down the alley towards the apartment block parking lot where he was arrested not because he was planning to give the officer the gun he had just acquired, but because he was hoping to avoid detection.
- [88] In all of the circumstances, I do not accept Mr. Buchanan's evidence that he had a plan to hand over the gun to police. I reject his evidence as not credible.

Second stage of W.(D.)

- [89] The next stage of the analysis is to consider if Mr. Buchanan's evidence raises a reasonable doubt, even if I do not accept it.
- [90] In *R. v. J.H.S.*, 2008 SCC 30, Justice Binnie said the following with respect to the second part of the W.(D.) test:
- [11] As to the second question, some jurors may wonder how, if they believe none of the evidence of the accused, such rejected evidence may nevertheless of itself raise a reasonable doubt. Of course, some elements of the evidence of an accused may raise a reasonable doubt, even though the bulk of it is rejected. Equally, the jury may simply conclude that they do not know whether to believe the accused's testimony or not. In either circumstance the accused is entitled to an acquittal.

- [91] The Court does not engage in an analysis of whether the accused's version of events could reasonably be true at the second stage of the W.(D.) test, even if his evidence is disbelieved. In *R. v. L.G.*, 2009 ONCA 895, Justice Goudge summarized the law and its rationale:
- [8] This court has repeatedly said that a trial judge errs in using the "could reasonably be true" test at the second step in the W.(D.) analysis. That is equally true of its equivalents "might reasonably be true" and "can reasonably be true": see *R. v. G.H.* (2002), 165 O.A.C. 56 (C.A.); *R. v. Rattray* (2007), 222 O.A.C. 28 (C.A.).
- [9] There are good reasons why this test must not be used. It is different from the proper approach to step two set out in *W. (D.)* (namely, whether, even if the accused's evidence is disbelieved, the trial judge is left in reasonable doubt by it) in several respects. First, it arguably risks reversing the burden of proof and undermining the presumption of innocence: see *R. v. Rattray* at para. 13.
- [10] Second, it asks more of the accused's evidence than step two requires. It invites an objective assessment of the accused's evidence against the standard of what could reasonably be true, rather than simply assessing that evidence to see if it leaves the trier with a reasonable doubt.
- [92] In *R. v. L. (D.O.)*, [1993] 4 S.C.R. 419 at 469-70, Madam Justice L'Heureux-Dubé said whether an account of events might reasonably be true is simply one factor to consider in determining whether or not to accept the evidence.
- [93] Evidence that is rejected as untruthful cannot itself give rise to a reasonable doubt. In some cases, the court may reject portions of the accused's evidence but accept some other aspects that may raise a reasonable doubt. In others, the accused's evidence may not persuade the trier of fact, but may nonetheless leave a reasonable doubt as to the accused's guilt. However, if the accused's evidence is rejected because it is considered to be untruthful or a fabrication, that evidence cannot form the basis for reasonable doubt.
- [94] In this case, I have rejected Mr. Buchanan's evidence as untrue. I do not accept that he acquired the gun and the ammunition from Mr. Price an hour or two before the incident in Polson Park and leading to his arrest. His evidence is irreconcilably different from what he told Cst. Kineshanko about how he acquired the shotgun shell, and the only explanation he could offer was that he may have lied to Cst. Kineshanko.
- [95] I have also rejected Mr. Buchanan's evidence that he was intending to take the gun to the police station when he was arrested, or that he was actively seeking to attract the attention of Cst. Kineshanko to surrender the gun when the officer drove past him on 34th Street shortly before turning around and arresting Mr. Buchanan.
- [96] It follows that because I have concluded that Mr. Buchanan's account of how he acquired the gun and his plan to subsequently dispose of it is untrue, his evidence cannot and does not raise a reasonable doubt.

[97] I find the Crown has proven beyond a reasonable doubt that Mr. Buchanan did not possess the gun innocently.

Disposition

[98] I find Mr. Buchanan guilty of counts 1 and 2:

- a) possession of an unloaded, prohibited, or restricted firearm along with readily accessible ammunition; and
- b) possessing a firearm without being the holder of a registration certificate.

[99] Mr. Buchanan is acquitted of count 6, possession of break-in tools, and there will be a stay of count 4, carrying a concealed weapon, as it is subsumed within counts 1 and 2.

"Wilson J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/08/2025BCSC0871.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-buchanan-2025>

Prepared on 26 October 2026 · Esheria