

CANADA / JUDGMENT

R. v. Chapman

2024 BCSC 2405

COURT

Supreme Court of British Columbia

DECIDED

8 November 2024

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

2024 BCSC 2405 R. v. Chapman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chapman,

2024 BCSC 2405

Date: 20241108

Docket: 111541-2

Registry: Kamloops

Rex

v.

Christina Victoria Brown

and Steven Craig Chapman

Before: The Honourable Madam Justice Lyster

Oral Reasons for Judgment

(Re: Steven Chapman)

Counsel for the Crown:

A. Wheele

Counsel for the Defence:

I. Currie

Place and Date of Trial/Hearing:

Kamloops, B.C.

October 2 & 3, 2024

Place and Date of Judgment:

Kamloops, B.C.

November 8, 2024

Introduction.. 2

Crown Evidence about what happened at the Residence. 3

Defence Evidence. 7

Legal Framework.. 15

Analysis. 20

Is there Evidence to the Contrary to Rebut the Presumption of Intent?. 20

Has the Crown Proven Guilt on the Totality of the Evidence?. 23

Defence of Necessity. 24

Conclusion.. 28

Introduction

- [1] Mr. Steven Chapman stands charged that, on or about July 16, 2021, he broke and entered a dwelling house with intent to commit an indictable offence therein, contrary to Section 348(1)(d) of the Criminal Code, R.S.C 1985, c. C-46 [Code]. The dwelling house was the home of Catherine Mabberly and John Albitson, located at 1188 Hook Road, at or near Monte Creek, British Columbia (the "Residence").
- [2] I heard this trial over two days on October 2 and 3, 2024. These are my oral reasons for decision. I will order a transcript, which I will review for readability, to add headings, and to ensure citations and quotations are complete and correct. The analysis and result will not change.
- [3] The background facts to this alleged offence are not in dispute. Most notably, Mr. Chapman does not dispute that he broke and entered the Residence. He and his partner, Christina Brown, entered the Residence through its unlocked front door, and were found inside by the residents some minutes later. Mr. Chapman and Ms. Brown did not leave the Residence for some hours, finally leaving only after the RCMP Emergency Response Team ("ERT") attended and a remote control police robot was deployed inside the Residence which commanded them to leave, which they did.

- [4] What is primarily in issue is whether the Crown has proven beyond a reasonable doubt that Mr. Chapman, at the point of breaking and entering the Residence, had the mens rea to commit an indictable offence in the Residence, specifically mischief or theft. In the alternative, if the offence is otherwise proven, Mr. Chapman submits that he has established the defence of necessity.
- [5] Mr. Mabberly testified for the Crown, as did Constable Jordan Canuel and Corporal Stephen Newport, two officers who attended at the scene. Mr. Chapman testified in his own defence. Ms. Brown also testified for the defence.
- [6] I will first lay out the evidence of Ms. Mabberly and the police officers about what happened at the Residence, none of which was seriously challenged by the defence. I find the Crown witnesses to be credible and reliable witnesses, and I accept their evidence. In Ms. Mabberly's case, I find her willingness to acknowledge some communications she had with Ms. Brown on social media after the incident, which did not put her in a flattering light, enhances her credibility.
- [7] I will then lay out Mr. Chapman's and Ms. Brown's evidence about how they came to be in Monte Creek and inside the Residence. I will then determine whether the Crown has proven the offence charged beyond a reasonable doubt. If it has, I will determine if the defence of necessity has been established.

Crown Evidence about what happened at the Residence

- [8] On July 16, 2021, Ms. Mabberly and Mr. Albitson resided at 1188 Hook Road, Monte Creek, British Columbia. The Residence is located near the Thompson River (the "River"), just off of the Hook Road exit from Highway 1, to the east of the City of Kamloops. According to Google Maps, it is some 26 kilometres from Kamloops, and Ms. Mabberly testified that it is 25-30 minutes driving distance from downtown Kamloops. As I understand the evidence, the railroad tracks and a road are located between the Residence and the River. The Residence is a double-wide modular home. It is located in a rural area and very private.
- [9] On July 16, 2021, Ms. Mabberly and Mr. Albitson were at home doing garbage cleanup. In the late afternoon, at about 3:00 or 4:00 p.m., they loaded their truck and took a load to the dump in Barnhartvale. Ms. Mabberly testified that the dump was about 15 minutes from the Residence, and that they were away for about 45 minutes in total. They left the front door to the Residence closed, but not locked.
- [10] When they returned to the Residence, Ms. Mabberly testified that she noticed some dirty wet socks on the steps going up to the front door. The socks did not belong to her or Mr. Albitson. She noticed that the door was locked, which was strange as they never locked their door. Mr. Albitson went around to the back of the Residence and opened the sliding glass door and then let Ms. Mabberly in the front door. They sat down and started to have a beer in the living room.

- [11] After a few minutes, Ms. Mabberly let her two puppies, which had been left outside, into the Residence. They were growling and acting strangely. She thought there was something or someone down the hallway from the living room. Mr. Albitson went down the hallway and found that the door to the master bedroom, located on the left side at the end of the hallway, was locked. The door can only be locked from the inside. They realized there was someone in the bedroom. Mr. Albitson grabbed an axe that was sitting close by and went down the hallway and banged on the bedroom door with the butt end of the axe, yelling angrily at whoever was in the bedroom to get out. They could hear whoever was in the bedroom talking to one another. Mr. Albitson told Ms. Mabberly to get out of the house. This was a frightening experience for Ms. Mabberly.
- [12] Ms. Mabberly called 9-1-1. The dispatcher told her to get Mr. Albitson out of the Residence, which she did. Ms. Mabberly told 9-1-1 that they had an unsecured .22 rifle, some bullets, another hatchet and a fillet knife in the bedroom. She thought the first responders should know those things were there. She and Mr. Albitson got the puppies and got into her Kia with the puppies and drove a short distance away from which they could see the Residence, and waited for the police to arrive. She did not observe anyone leave the Residence.
- [13] Ms. Mabberly was still on the phone with 9-1-1 when the first police officer arrived on the scene. He told them to get out of there, and he drove them some distance down the road to a field. They could still observe the Residence. Ms. Mabberly testified that they were in the field for a good eight hours, maybe more.
- [14] More police officers arrived and, after a while, the ERT or SWAT team arrived.
- [15] Constable Canuel, who works with the Tk'emlups Rural RCMP detachment, was one of the first officers on scene. He heard the call from dispatch at about 5:15 p.m. that Ms. Mabberly had reported a break and enter in progress at the Residence. He learned of the presence of the .22 rifle from dispatch. The presence of a firearm increased the level of concern of this call. Constable Canuel arrived on scene shortly after in his unmarked police car with lights and sirens engaged. He thought that there was already one officer on scene when he arrived.
- [16] Corporal Newport also arrived on scene in response to the call from dispatch. He believed the complaint came in at about 5:24 or 5:30 p.m. and that he arrived within 10-15 minutes. He was in charge at the scene until Corporal Tunbridge, who had experience with the ERT arrived, at which point Corporal Newport stepped into a support role. Corporal Newport assigned an officer to talk to the residents to gather more information, and as more officers arrived he put them in place to set up a perimeter around the Residence.

- [17] Constable Canuel testified that he donned hardbody armour at some point. He discussed with fellow officers the action plan to contain the Residence and to watch it on all sides to see if anyone was coming or going. Once they had the residents safely off the property, police established a perimeter around the Residence. Constable Canuel and another officer took up a position on the northeast side. When he joined the containment perimeter, Corporal Newport was roughly on the west side.
- [18] The police repeatedly used a loudhailer on a police car parked in front of the Residence to attempt to call the occupants out of the Residence with their hands up, but no one left in response. Constable Canuel thought they used the loudhailer about three or four times in a row at the start, with the siren sounding before each call. Constable Canuel said that this continued intermittently for approximately three or four hours until the ERT arrived to take over and manage the scene. Neither officer could say how many callouts there were in total before the ERT arrived, but Corporal Newport estimated perhaps a dozen times.
- [19] No movement was observed in the Residence during this period. Corporal Newport testified that dispatch received a report that someone had called from across the River who had heard the loudhailer, reporting that they had seen someone dropping bags near the shore of the River and heading towards the Residence.
- [20] The ERT is made up of members from a variety of locations, including Kamloops, Vernon and Kelowna, so it took them some time for them to arrive on scene and assemble. Once they arrived on scene, they attempted further callouts with the siren and loudhailer. They also deployed "flashbangs" towards the Residence to make noise. Finally, the ERT deployed a robot which went into the Residence. The robot is operated remotely by an officer and has a camera and microphone which allow the officer to see and communicate via the robot. It permits the police to give directions to people without putting officers in harm's way. The robot broke in the door to gain entry to the Residence.
- [21] Constable Canuel testified that at approximately 10:15 p.m. there was movement in the Residence. Constable Canuel thought that the occupants left the Residence about a half an hour after the robot was deployed. Ms. Brown came out first with her hands up. Once she was arrested and secured, Mr. Chapman came out with his hands up. Mr. Chapman was wearing only sweatpants with no shirt or shoes.
- [22] The police called for an ambulance to meet them at cells to assess Mr. Chapman and Ms. Brown for possible injuries. Ms. Brown had noted bruising on her face and Mr. Chapman had noted bruising to his mid-section. Ms. Brown was transported to hospital and released on charges. Mr. Chapman was not transported to hospital. He appeared coherent to Constable Canuel.

- [23] Once the police got Mr. Chapman and Ms. Brown out of the residence, Corporal Newport escorted Ms. Mabberly and Mr. Albitson back into the Residence. Photographs were taken of the Residence by Corporal Newport which show some damage, including the front door being smashed in. Ms. Mabberly testified that there was dirt on the bed in the master bedroom and that it had been moved out of place, and that the bathtub in the ensuite bathroom had been used. She noticed that some clothing was missing.
- [24] The .22 rifle and other items of concern in the master bedroom were still there. Police seized the .22 rifle. Some wet clothing was also seized.
- [25] A purse and a backpack were located somewhere in the vicinity of the property which contained Mr. Chapman's and Ms. Brown's identification documents.

Defence Evidence

- [26] Mr. Chapman and Ms. Brown both testified for the defence. I will now outline what they say happened on July 16, 2021.
- [27] Mr. Chapman is 47 years old and on long-term disability, he said due to rheumatoid arthritis and PTSD. At the time of these events, he testified he had been in a relationship with Ms. Brown for about two years, although they were under a no-contact order at this time. Ms. Brown is 31 years old. She testified that she has known Mr. Chapman for about five years. She thought that at the time of the incident they had been together for about a year. Mr. Chapman and Ms. Brown are now engaged.
- [28] On the day in question, Mr. Chapman was living in Knutsford and had ridden his bicycle into downtown Kamloops. He ran into Ms. Brown at the library. She was in some distress, so he threw down his bicycle and went in to grab her. According to Mr. Chapman, Ms. Brown said something about an ex-boyfriend and one of his friends, but she did not tell him the boyfriend's name. Ms. Brown tried to run further into the library, but Mr. Chapman told her to stop and stay beside him as they walked out by the two men. In cross-examination, he said that they were so close to the two men while walking out of the library that he rubbed shoulders with them.
- [29] Ms. Brown testified that she told Mr. Chapman about her ex-boyfriend, including his name.
- [30] In cross-examination, Mr. Chapman said that Ms. Brown was outside the library when he first saw her. He said she was walking around in circles and in disarray, crying and scared. He said that he asked Ms. Brown about her ex-boyfriend, but she never told him his name. He also said that he never asked for his name, saying that he was not particularly interested and thought the police should look into it. When asked when he reported the two men to the police, Mr. Chapman said that they tried, but he was not getting any death threats and Ms. Brown would be able to answer more accurately. He did not tell her she should tell the police about the two men because everything happened so quickly.

- [31] For her part, Ms. Brown testified that she ran into her ex-boyfriend, who was verbally abusive and whom she had recently learned to be violent, at the library that morning. One of the reasons she had gone to the library was to charge her cell phone, which was dead. Her ex-boyfriend was with another big guy that she did not know and was interacting with her in a threatening way. She said she was scared. Mr. Chapman happened to see her and came into the library, and she explained to him what her ex-boyfriend had done and how violent he was.
- [32] Mr. Chapman and Ms. Brown each testified that they proceeded west through downtown Kamloops on foot. They ended up at the sanidump at Mission Flats near the railway tracks west of downtown Kamloops. They tried to hide and figure out what had happened. According to Mr. Chapman, they then heard three gunshots. He did not see where the shots came from, but he heard the shots and he heard the bullets hit the train that was standing stationary beside them. In cross-examination, Mr. Chapman denied that the sounds he heard could have been the sounds made by the train as it started to move. Mr. Chapman decided to jump on the train between the two cars to get away from whoever was shooting a gun. He told Ms. Brown to follow his lead.
- [33] In cross-examination, Mr. Chapman said that the two men followed them for two to three blocks from the library. He was not sure if they continued to follow them after that to the sanidump at Mission Flats. He had left his bicycle behind but was carrying his packsack with his cell phone in it.
- [34] Ms. Brown testified that the two men were following them and yelling threatening things at them. She said that she and Mr. Chapman started running, but Mr. Chapman told her not to run. Ms. Brown testified that they were trying to hide at Mission Flats behind an embankment when she heard three "tings", like bullets hitting the train. In cross-examination, Ms. Brown testified that she tried to report the shots being fired to several officers she happened to interact with, starting about a week after this incident, but the police dismissed it like it was nothing.
- [35] After they jumped on the train, it started to move right away. Mr. Chapman thought this was a good thing and agreed in cross-examination that it was very good timing. Mr. Chapman said there was nowhere to sit or be comfortable and no ladder to hold on to. As I understood his description, they were basically standing on the coupling between the cars. They were already tired from running away from the two men. Mr. Chapman said he had to grab Ms. Brown three or four times to keep her from falling.
- [36] Ms. Brown also described jumping on the train. She had never done it before. It was terrifying, with no place to sit. She said she was holding onto a ladder, with one foot on the train and one on the coupling. She said that she almost fell a couple of times and Mr. Chapman had to catch her. She had a big purse that she was holding on to.

- [37] The train slowed down from time to time. Mr. Chapman was not sure exactly where, but he testified that at a pumphouse somewhere near Pritchard the train slowed down and he decided to jump because he did not think they could make it to Chase. I will note that Pritchard is some distance east of Monte Creek. Mr. Chapman described it as feeling like he hit a brick wall when he landed. He testified that he felt bones breaking. He testified that he hurt his face and his ribs and that he blew out both knees.
- [38] Mr. Chapman testified that he yelled at Ms. Brown not to jump because it hurt so bad, but she jumped anyway. Ms. Brown testified that she could not hold on any longer. Mr. Chapman told her not to jump, but she had to jump as she was not going to stay on the train by herself.
- [39] According to Mr. Chapman, Ms. Brown hit her head on a railroad tie and was knocked unconscious. He got to her as fast as he could and she regained consciousness in a couple of seconds. In cross-examination, Mr. Chapman testified that this was the first time she had a seizure and further that she stopped breathing and her heart stopped beating. It never occurred to him to call 9-1-1. He had seen her have a seizure before and he was confident that he knew what he was doing.
- [40] Ms. Brown testified that she hit her head on a tie and was knocked out. She testified that when she came to she started to have a seizure and that she was bleeding profusely. She said that Mr. Chapman took off his shirt and got it wet in the River to clean off her face. She said it was kind of blurry after that but she knows that Mr. Chapman carried her most of the way.
- [41] According to Mr. Chapman, Ms. Brown could not walk on her own and he carried her three-quarters of the way to their eventual destination.
- [42] In cross-examination, Mr. Chapman acknowledged that by the time they jumped from the train, they were a long way away from where they had heard the gunshots. He did not know if the two men or anybody else was still following them. He still had his backpack and his cell phone.
- [43] They walked down to the River. Mr. Chapman said it was one of the hotter days he had ever experienced and he was trying to get them out of the hot sun. They were thirsty and drank water from the River. They took off some clothes to get them wet to cool down. They walked along the River with Mr. Chapman carrying Ms. Brown. In cross-examination, Mr. Chapman said that he would creep up the bank every so often and that every vehicle he saw gave him cause for concern. They remained scared.
- [44] Mr. Chapman testified that they headed west; that is, back towards Kamloops. Along the way he testified that Ms. Brown fell down and had a seizure twice. He had seen her have a seizure before so he knew what to do. She was shaking and went stiff. He helped to ease her fall. According to Mr. Chapman, Ms. Brown again stopped breathing. He said that he had to give her chest compressions until she came back around. They then rested and he got their clothing wet again to cool Ms. Brown down. Eventually they reached the Residence.

- [45] Mr. Chapman was asked in cross-examination why he did not use his cell phone to call 9-1-1 to get help. He said that he was not about to stop because Ms. Brown had multiple seizures and he was concerned for her safety and needed to get her to a safe place. He testified that she stopped breathing and that he checked her pulse and her heart had also stopped beating. She needed CPR. He said that calling 9-1-1 was the furthest thing from his mind and it did not occur to him. He then said that he did try to make a call when he could not get any further carrying Ms. Brown and they left their belongings, but at that point, he said, there was no service.
- [46] Ms. Brown testified that she had a couple of seizures. She explained that she does not know what is happening when she is having a seizure and that afterwards she wants to run away and is exhausted. She said it was really hot that day and they had not had any water, which she thought made it worse.
- [47] Mr. Chapman testified that when he saw the Residence he was thinking for sure someone would be home. He knew he needed an ambulance because if he did not get Ms. Brown help right away he thought she would be dead. Ms. Brown, for her part, did not remember getting to the Residence.
- [48] Mr. Chapman said that he was very polite and knocked on the door of the Residence. He was only wearing underwear and socks by this time and took off his socks. He also took off Ms. Brown's clothes.
- [49] No one answered and the door was unlocked, so Mr. Chapman opened the door to the Residence. He took Ms. Brown to the first bed he could find, which was in the master bedroom. The air conditioning was on and it was very cold in the Residence. Ms. Brown was unconscious. He got water from the kitchen for her to drink. She was having another seizure and was unresponsive and not breathing, so he performed CPR again and she came around very quickly. In cross-examination, Mr. Chapman said he gave Ms. Brown CPR two times that day. She drank a glass of water. Mr. Chapman described himself as drained and he did not know if he had ever been that tired and hot.
- [50] Ms. Brown said that she came to when Mr. Chapman was laying her down in bed. He gave her some water and she dozed off.
- [51] Mr. Chapman testified that he locked the door to the Residence behind him. He said he did so out of habit.
- [52] Mr. Chapman was not sure how long they were at the Residence before the owners came home. He thought it was about half an hour. The door to the bedroom was closed. At the time he said they were both freezing cold and lying in bed together. He remembered the man yelling he was going to kill him and that we had better get the "F" out of their house. He could hear him banging something that sounded like a closed fist on the door. Mr. Chapman said that he asked them to please call an ambulance and said they were not there any reason other to save his fiancée. He said he could hear the woman on the phone to 9-1-1 and the

woman telling the man to put the axe down and get out of the house.

- [53] Ms. Brown testified that she woke up to a man yelling at them that he had an axe and was going to kill them if they did not leave. She remembered Mr. Chapman asking him to please call an ambulance. She also remembered the woman telling the man that the police were telling them to go outside and wait for the police.
- [54] When asked why they did not come out of the bedroom, Mr. Chapman said that he was scared the man was going to hurt him. After the yelling stopped, he laid down next to Ms. Brown, told her he loved her and fell asleep. In cross-examination, he said that he knew the police were on their way, so help was on the way.
- [55] Mr. Chapman testified in cross-examination that he fell asleep beside Ms. Brown in bed. He said he was talking to Ms. Brown, telling her to hang in there, playing with her hair, and that he tried to stay awake but he failed. He did not know how long it was after the owners left that he fell asleep. He had no idea how long he was asleep.
- [56] Mr. Chapman testified that the next thing he remembered was waking up to the robot. He did not hear it break the door down. Ms. Brown woke him up, shook him and told him there was a robot. He told her to just do what it asked her to do. The robot told them to listen to it and for Ms. Brown to leave first while Mr. Chapman stayed where he was. After Ms. Brown left, the robot told Mr. Chapman to come out of the house with his hands up. He complied.
- [57] Ms. Brown testified that she fell asleep and that the next thing she remembered was waking up to the robot several hours later. There was a bright blinding light and the bedroom door was knocked down. The robot was talking to her and she thought at first that she was dreaming. She woke Mr. Chapman up and he said to do what the robot said.
- [58] Mr. Chapman denied hearing any sirens, any calls on the loudhailer, or any flashbangs while in the Residence. His only explanation was fatigue.
- [59] Mr. Chapman denied that at any point in entering the Residence he intended to steal anything or damage anything. He acknowledged taking a t-shirt and a pair of sweatpants for himself, as well as a dress for Ms. Brown because neither of them had any clothing on. He denied intending to inconvenience the homeowners and said that he felt horrible for them.
- [60] Mr. Chapman was asked why he did not call for an ambulance once they were in the Residence. He testified that there was no home phone. He had had a cell phone, but he left it along with everything else by the River because he could not carry the bags anymore.
- [61] Mr. Chapman testified that they used the ensuite bathroom, although he denied that either of them used the tub. They got out of their wet clothing and put on clothing that they found in the Residence. He said that they purposely opened the bathroom window so that if the police came they would be able to see them in bed.

- [62] Ms. Brown testified that she went to the hospital that night. They did some tests on her and kept her overnight. She said the doctors gave her an inconclusive diagnosis and said that she should have gotten some stitches, but it was too late by the time she was at the hospital.
- [63] Mr. Chapman testified that he saw Ms. Brown the next day, July 17, 2021. According to him she had a black eye and could not walk for a week. In cross-examination, he said that he knew she went to the hospital, but he could not recall any conversation about her doing so. She said that she was fine but he could tell that she hurt. He testified that she still feels it to this day. Ms. Brown testified that the next day she was physically, emotionally and mentally drained, and felt like she had jumped off a train. She had bruises, but she did not break any bones. She testified in cross-examination that after she rested up from the seizures she was pretty much back to her normal self.
- [64] With respect to her seizures, Ms. Brown testified in cross-examination that since she was 19 she has had seven seizures in total to the time that she testified. She does not know why she has seizures. She denied having any seizures in the year or so since she was in a relationship with Mr. Chapman prior to this incident. She thought that they had known each other for perhaps only a week or two prior to entering into their relationship.
- [65] In cross-examination, Mr. Chapman acknowledged that he was carrying a cell phone with him at all times on July 16 until he left his bag by the River.

Legal Framework

- [66] Mr. Chapman is charged with breaking and entering into the Residence with the intent to commit an indictable offence therein. The Crown must prove the offence beyond a reasonable doubt.
- [67] The decision of Mr. Justice Brongers in *R. v. Hooper*, 2023 BCSC 1871, [Hooper] provides a helpful summary of the legal framework for the principles applicable to the presumption of innocence, the burden of proof, and the assessment of credibility and reliability.
- [68] At paras. 56-58, Brongers J. summarized the presumption of innocence and the Crown's burden of proof in a criminal case as follows:
- [56] It is a fundamental principle of criminal law that the accused is presumed to be innocent. In order for there to be a conviction, the Crown must prove that the evidence as a whole establishes the accused's guilt beyond a reasonable doubt. This is a high threshold, and the burden rests solely on the Crown. The burden does not shift and the accused never bears an onus of proof.

[57] While not easy to define, the concept of reasonable doubt was explained by the Supreme Court of Canada in *R. v. Lifchus*, [1997] 3 S.C.R. 320, 1997 CanLII 319 (SCC). At paragraph 39, the court set out a definition for reasonable doubt that is used as a standard instruction for criminal juries. Judges sitting without a jury on a criminal trial are also expected to apply this definition. It reads as follows:

39 . . . A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt.

On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.

In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

[58] It should also be noted that proof beyond a reasonable doubt does not apply to individual pieces of evidence; rather, it applies to the totality of the evidence: *R. v. Morin*, [1988] 2 S.C.R. 345, 1988 CanLII 8 (SCC) at paragraphs 36 to 38.

[69] Mr. Chapman testified in his own defence, and Ms. Brown testified as part of the defence's case. I must, therefore, consider the totality of the evidence and make my determination as to whether the Crown has proven Mr. Chapman's guilt beyond a reasonable doubt within the framework provided by the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742. In that case, the Court set out a jury instruction formula that is also to be followed by judges who hear criminal trials without a jury. It is as follows:

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.

[70] This is a case where my assessment of the credibility and reliability of the evidence is crucial. At para. 62 of *Hooper*, Brongers J. summarized the principles applicable to the assessment of credibility and reliability of evidence as follows:

- [62] The principles to be applied when considering the credibility and reliability of a witness who provides testimony are also well established. Credibility is the notion of a witness's truthfulness and honesty, while reliability is the notion of a witness' ability to accurately observe, recall, and recount events. Guidance on how to assess these notions can be found in the often-quoted case of *Bradshaw v. Stenner*, 2010 BCSC 1398 at paragraph 186, affirmed 2012 BCCA 298, leave to appeal refused [2012] S.C.C.A. No. 392:
- [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 CanLII (SCC).. 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.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [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 (*Faryna* at para. 356).
- [71] Section 348(1)(a) of the Code creates the offence of breaking and entering with intent to commit an indictable offence therein. There are two elements to this offence: (1) that the accused broke into a place; and (2) that they had the intent to commit an indictable offence: *R. v. Rodney*, 2007 ONCA 314 at paras. 2-3.
- [72] There is no issue that Mr. Chapman broke and entered into the Residence. He opened the closed door and went inside. He therefore committed the actus reus of breaking defined in s. 321 of the Code, which includes "to open any thing that is used or intended to be used to close or to cover an internal or external opening".
- [73] The main issue in this case is whether the Crown has proven beyond a reasonable doubt that, at the time when Mr. Chapman broke into the Residence, he had the intention to commit an indictable offence therein.
- [74] Under s. 348(2)(a), there is a presumption that evidence an accused broke and entered a "place" will also serve as proof that they had the intent to commit an indictable offence. A dwelling house is a "place" under s. 348(3)(a). Section 348(2)(a) reads:
- (2) For the purposes of proceedings under this section, evidence that an accused
- (a) broke and entered a place or attempted to break and enter a place is, in the absence of evidence to the contrary, proof that he broke and entered the place or attempted to do so, as the case may be, with intent to commit an indictable offence therein;

- [75] The presumption created by s. 348(2)(a) only applies if there is no evidence to the contrary.
- [76] If there is any evidence to the contrary, the presumption is rebutted and the Crown bears the burden of showing intent beyond a reasonable doubt: *R. v. Proudlock*, [1979] 1 S.C.R. 525. "Any evidence" is a low bar. As the Court found, "Once the trial judge determines that the evidence is admissible and relevant to the issue of intent, and the trier of fact does not reject the evidence, there is evidence to the contrary within the meaning of s. 306(2) [now s. 348(2)(a)]".
- [77] Evidence that the trier of fact does not believe is not evidence to the contrary and the presumption will apply.
- [78] Madam Justice Fitzpatrick recently explained in *R. v. Campbell*, 2024 BCSC 621, how a court must proceed in considering an accused person's evidence with respect to the intent to commit an indictable offence. She wrote:
- [45] Accordingly, in the first instance, I must consider whether there is "evidence to the contrary" under s. 348(2)(a) to invalidate the presumption.
- [46] If no "evidence to the contrary" is established in the sense of Ms. Campbell's evidence on the issue of intent being accepted by this Court, the presumption will apply and a conviction will follow.
- [47] Even if the presumption is rebutted by "evidence to the contrary", the Court must then consider whether the Crown has proven intent beyond a reasonable doubt based on the totality of the evidence: *R. v. Campbell*, [1974] O.J. No. 351, 1974 CanLII 1502 (O.N.C.A.) at paras. 9-11.
- [79] Therefore, if the presumption is rebutted, I must then go on to consider whether the Crown has proven intent beyond a reasonable doubt based on the totality of the evidence. It is the Crown's submission that Mr. Chapman intended to commit mischief, or in the alternative theft, at the time he broke and entered into the Residence.
- [80] Intent speaks to the accused intending to "use particular means to produce a particular result": *R. v. Pirko*, 2023 BCCA 120 [Pirko] at para. 85. Intent is different from purpose or motive: *R. v. Chartrand*, [1994] 2 S.C.R. 864 [Chartrand]; *R. v. Armstrong*, 2012 BCCA 248 at paras. 45-47. A motive "may explain why the person acted as they did": Pirko, at para. 84. Intent, on the other hand, is concerned with whether the accused meant to cause a certain outcome when they acted, rather than why they sought that outcome in the first place. Because of this distinction, "innocent motive or purpose, while relevant, is not dispositive of the question of intent": Chartrand at 891.
- [81] It is open to the court to infer intent by drawing inferences about the accused's ability to foresee the consequences of their actions. The Crown may establish intent by showing that the accused could have foreseen that a certain consequence was certain or substantially certain to flow from their actions and chose to act anyway: Chartrand at 890. In the words of

the British Columbia Court of Appeal, it is "well established that a trier of fact is entitled to draw the common sense inference that a sane and sober person intends the natural and probable consequences of their actions": R. v. Bergeron, 2015 BCCA 177 at para. 22, citing R. v. Seymour, [1996] 2 S.C.R. 252.

[82] The primary indictable offence relied upon by the Crown to establish the intent element here is mischief. Section 430(1) of the Code defines mischief as follows:

430(1) Every one commits mischief who wilfully

- (a) destroys or damages property;
- (b) renders property dangerous, useless, inoperative or ineffective;
- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property;
or
- (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

[83] Section 430(1)(c) is the operative subsection in this case.

[84] In R. v. Maddeaux, 33 O.R. (3d) 378 [Maddeaux], the Ontario Court of Appeal interpreted the words "use, enjoyment or operation" of a residence as follows:

"Use" of this property would include being present in the apartment for the purposes of cooking, eating, cleaning, resting, sleeping, listening to the radio and watching television. The word "enjoyment" might include any or all of those uses. "Operation" would not normally be employed in connection with a residential property, . . .

[85] To attract criminal sanction for mischief, interference with the use and enjoyment of property must be more than abstract. It must go beyond impacting mere notions of privacy or theoretical property rights: R. v. Besler, 2022 BCSC 484 at paras. 47-48.

Analysis

Is there Evidence to the Contrary to Rebut the Presumption of Intent?

[86] The first question I must consider is whether there is "evidence to the contrary" under s. 348(2)(a) to invalidate the presumption of intent. This leads me to a consideration of the credibility and reliability of Mr. Chapman's evidence. If I do not believe Mr. Chapman's evidence, then there is no evidence to the contrary, and the presumption will stand.

[87] I found Mr. Chapman's evidence to lack both credibility and reliability.

[88] The overall narrative told by Mr. Chapman is one which strains credulity. While not directly challenged on all points by the Crown, Mr. Chapman's evidence of walking and running through the streets of Kamloops with Ms. Brown, followed by two threatening men, having three gunshots fired in their direction, jumping on a train and riding between two cars for a

considerable distance before jumping from the train, and walking some distance back towards Kamloops, much of it while carrying Ms. Brown, while not impossible, is improbable.

- [89] There are a number of specific aspects of Mr. Chapman's evidence which I reject outright. I will provide some examples.
- [90] First, Mr. Chapman claimed not to know Ms. Brown's ex-boyfriend's name, saying that he was not particularly interested in it. It is most unlikely that Mr. Chapman would not be interested in the name of Ms. Brown's violent ex-boyfriend who threatened her and followed them with a menacing companion through the streets of Kamloops. Further, Ms. Brown testified that she told Mr. Chapman her ex-boyfriend's name, which is probable and I accept occurred.
- [91] Second, Mr. Chapman testified that when he jumped from the train he broke bones and blew out both of his knees. If he suffered injuries to that extent, one would have expected that he would have sought medical attention and that there would be some medical evidence to substantiate the injuries claimed. There is no evidence that Mr. Chapman sought or received any medical attention for the injuries he claims he suffered. Further, Mr. Chapman testified that he carried Ms. Brown for a considerable distance, from perhaps the Pritchard rail crossing back to the Residence, after suffering those injuries. No one who would have suffered broken bones and blown out both their knees could have carried another person for those kinds of distances.
- [92] Third, Mr. Chapman testified that on more than one occasion after they jumped from the train, Ms. Brown had a seizure and stopped breathing and her heart stopped beating. He testified that he performed CPR on two occasions and brought her back. I accept that it is entirely possible, indeed likely, that Ms. Brown had one or more seizures on July 16, 2021. I do not believe that she stopped breathing and that her heart stopped beating and that Mr. Chapman performed CPR twice to bring her back.
- [93] Fourth, whatever medical emergency Ms. Brown may have been experiencing after they jumped from the train, at that point Mr. Chapman had a functioning cell phone with him. He did not call for medical help and testified that it simply never occurred to him to use his cell phone and call for help. That is unbelievable.
- [94] Fifth, Mr. Chapman testified that he had seen Ms. Brown have a seizure multiple times before this day and that he knew what to do about them, expressing considerable confidence in his ability to provide her with the medical help she needed. This is flatly contradicted by Ms. Brown, who testified that she had not had a seizure during the time they had known one another. I do not believe Mr. Chapman's evidence to the contrary.
- [95] Sixth, Mr. Chapman testified that he never heard any sirens, calls from loudhailers or flashbangs while he was in the Residence, and that he was asleep from shortly after Ms. Mabberly and Mr. Albitson left the Residence until Ms. Brown woke him up to tell him about

the robot. The police evidence establishes that there were multiple calls on a loudhailer, preceded by sirens, and several flashbangs directed at the Residence. I do not believe that Mr. Chapman slept through all of that noise, particularly in light of his evidence that he had specifically left the ensuite bathroom window open. The police arrived on the scene at about 5:15 p.m., and the first movement from the Residence was detected at about 10:15 p.m. No one could have slept through all of the police activity and noise for five hours.

- [96] Seventh, Mr. Chapman testified that he was in fear for Ms. Brown's life when they were in the Residence. If that is true, then they were in desperate need of medical assistance. A person in desperate need of medical attention for their partner would have found a way to stay awake and would have taken advantage of the presence of police to obtain the needed medical assistance. On his evidence, Mr. Chapman did neither.
- [97] In light of the many frailties in Mr. Chapman's evidence, I find that I am unable to rely on it. I am not left in any reasonable doubt by Mr. Chapman's evidence. Mr. Chapman has failed to provide any evidence to the contrary, and in the absence of any evidence to the contrary, the presumption in s. 348(2)(a) is not rebutted.
- [98] That is a sufficient basis upon which to find Mr. Chapman guilty of break and enter with intent to commit an indictable offence.

Has the Crown Proven Guilt on the Totality of the Evidence?

- [99] Even considering the totality of the evidence, and without the benefit of the presumption, I would come to the conclusion that the Crown has proven beyond a reasonable doubt that Mr. Chapman had the requisite intent.
- [100] There is no evidence that Mr. Chapman was impaired by drugs or alcohol on the day in question. He may have been tired, hot and stressed by Ms. Brown's medical condition. However, there is no basis in the evidence to suggest that Mr. Chapman was unable to foresee the natural and probable consequences of his actions. Mr. Chapman knew that he was breaking and entering into the Residence. The fact that he closed and locked the front door behind him, and closed and locked the master bedroom behind him, suggests that he wished not to be disturbed in the bedroom. This is inconsistent with his professed need to get medical help for Ms. Brown.
- [101] The evidence amply establishes that Mr. Chapman, together with Ms. Brown occupied the master bedroom of the Residence for over five hours. They drank water from the kitchen. They slept on the bed. They used the ensuite bathroom. They removed their wet clothing and put on clothing that belonged to Ms. Mabberly and/or Mr. Albitson.
- [102] In so doing, Mr. Chapman used and enjoyed the Residence in the sense defined by the Ontario Court of Appeal in *Maddeaux*. He also interfered with Ms. Mabberly and Mr. Albitson's lawful use and enjoyment of the Residence while he was present within it.

- [103] Mr. Chapman testified to an innocent purpose for his actions in breaking and entering the Residence, the gist of which was that he was seeking help for Ms. Brown and respite from their exertions. If Mr. Chapman had such an innocent purpose, it does not negate the fact that he intended to break and enter the Residence and, in doing so, he intended to make use of and enjoy the Residence in a manner that any sane and rational person would foresee would interrupt or interfere with the owner's lawful use and enjoyment of the Residence.
- [104] Ms. Brown's evidence does not assist Mr. Chapman with respect to whether he intended to commit an indictable offence in the Residence at the time he broke and entered the Residence, as she does not recall getting to or entering the Residence, nor does she claim to have any insight into Mr. Chapman's intentions when they entered the Residence. On her evidence, she was too impaired by the after-effects of the seizures she had suffered to have any recollection of events at that point.
- [105] To use the formulation provided in *W.(D.)*, I do not believe Mr. Chapman's evidence that he did not intend to commit an indictable offence, namely, mischief, when he broke and entered the Residence. Nor am I left in a reasonable doubt by Mr. Chapman's evidence. Finally, I am convinced on the totality of the evidence that the Crown has proven beyond a reasonable doubt that Mr. Chapman intended to commit mischief in the Residence when he broke and entered the Residence.

Defence of Necessity

- [106] It remains to consider whether Mr. Chapman has established the defence of necessity.
- [107] The Supreme Court of Canada first recognized the necessity defence in *R. v. Perka*, [1984] 2 S.C.R. 232 [Perka]. In recognizing the common law defence, Mr. Justice Dickson, as he then was, introduced limitations on it aimed at ensuring it would only apply in situations where the impugned conduct was "truly involuntary". Justice Dickson found that "At a minimum the situation must be so emergent and the peril must be so pressing that normal human instincts cry out for action and make a counsel of patience unreasonable" at 251.
- [108] In *R. v. Latimer*, [2001] 1 S.C.R. 3 [Latimer], the Court set out a three-part test for when the necessity defence applies:
1. there must be imminent peril or danger;
 2. the accused must have no reasonable legal alternative to the course of action he or she undertook; and
 3. there must be proportionality between the harm inflicted and the harm avoided.

- [109] The initial onus is on the defence to show that there is an air of reality to the necessity defence. If the defence succeeds in doing so, the onus shifts to the Crown to disprove one or more of the essential elements of the defence beyond a reasonable doubt: *R. v. Guillemette*, 2022 ONCA 436 [Guillemette] at para. 32.
- [110] When established, necessity does not "justify" a criminal act or omission. Rather, it excuses the wrongful conduct because it was "realistically unavoidable": *Guillemette and Perka*. "It is based on the principle of fundamental justice that morally involuntary conduct should not be penalized": *R. v. Nwanebu*, 2014 BCCA 387 [Nwanebu] at para. 55.
- [111] Mr. Chapman relies upon the decision of the Court of Appeal in *Nwanebu* in support of the application of the defence of necessity in this case. In respect of the first element, imminent peril, the Court stated at para. 62:
- [62] . . . The requirement of imminence in the defence of necessity need not be restricted to immediate threats of harm, although the more immediate a threat, the more difficult it will be to avoid and, therefore, the greater the potential a person's response to it could be morally involuntary. However, the focus is not on the immediacy of the threat; rather it is on whether there is a sufficiently close enough connection between the threat and the harm such that immediate pressure is placed on the person to act, negating his or her ability to act freely. . . .
- [112] What is required is a sufficient connection between the threat and the harm, so that the resulting pressure negates the accused's moral voluntariness: *Nwanebu* at para. 62.
- [113] The court must assess whether the imminent peril element of the necessity defence is met on a modified objective standard: *R. v. Nelson*, 2007 BCCA 490, citing *Latimer*; and also *Nwanebu* at para. 81. This means the question is not whether the accused subjectively believed they were in imminent peril. Rather, it is whether objectively a reasonable person in the accused's situation and possessing the accused's characteristics would have understood the peril to be imminent. The accused's perceptions of the surrounding facts are relevant to the inquiry only so long as they are reasonable: *Latimer* at para. 33.
- [114] Similarly, the second element that the accused have no other reasonable legal alternative is also to be assessed on a modified objective standard: *Nwanebu* at paras. 64-66 and 85.
- [115] The Crown conceded that there was an air of reality to the defence of necessity; however, it submitted that the defence fails on the basis that Mr. Chapman had other reasonable alternatives open to him. The defence submits that at the point that Mr. Chapman opened the door to the Residence, he had no other legal alternatives to seek help for Ms. Brown as he no longer had his cell phone with him.
- [116] Given the Crown's concession, I will proceed on the basis that the defence of necessity has an air of reality on the facts before the court. I will also assume, notwithstanding some misgivings on this point, that the first branch of the test is met; that is, that a reasonable person in Mr. Chapman's circumstances, similarly situated to Mr. Chapman, would have

believed that Ms. Brown was in imminent peril. I will confine myself to a consideration of whether the second branch of the test is met; that is, has the Crown disproven beyond a reasonable doubt that Mr. Chapman did not have any legal alternatives available? For the defence to succeed, Mr. Chapman's belief that he did not have any reasonable legal alternatives available must be reasonable, taking into account his personal and situational circumstances.

- [117] I accept the defence's submission that Mr. Chapman's belief about the availability of legal alternatives must be assessed at the point that he committed the offence. That does not render what happened before and after that point irrelevant to a consideration of whether a reasonable person similarly situated to Mr. Chapman would have perceived that he had legal alternatives available to him.
- [118] Mr. Chapman did have reasonable legal alternatives available to him at the point that he broke and entered the Residence. He could have gone back to where he dropped off his backpack, retrieved his cell phone and called 9-1-1. He could have gone up to Highway 1 and flagged down a passing motorist and asked them to call for help. He could have sat on the doorstep of the Residence and waited for the owners to come home and asked them to call for help. On Mr. Chapman's evidence, Ms. Brown was not in acute medical distress at the point of entry into the Residence. A reasonable person, similarly situated to Mr. Chapman, would have realized that the courses of action I have just outlined were available and tried one or more of them before breaking into the Residence.
- [119] This point is underscored by Mr. Chapman's failure to call for help on his cell phone at anytime while he had it in his possession, in particular immediately after they jumped from the train, as well as his failure to take advantage of the presence of the police after they arrived to obtain help. Mr. Chapman's failure to do either of those two things leads me to believe that he did not at any point in this misadventure believe that Ms. Brown's life was in sufficiently imminent danger to require that he seek immediate medical help. Having failed to seek help when he could have readily done so by calling 9-1-1, it was not reasonable for him to choose to break and enter the Residence to obtain shelter and respite for Ms. Brown. A reasonable person in his circumstances and with his personal characteristics would have taken different steps to obtain help for Ms. Brown before breaking in, at the point of breaking in, or after breaking in. In point of fact, Mr. Chapman never obtained medical help for Ms. Brown. It was the police who did so after she left the Residence some five hours later and was arrested.
- [120] Mr. Chapman's act of breaking and entering into the Residence with the intention of committing mischief therein was not a morally involuntary act. The Crown has disproven the defence of necessity beyond a reasonable doubt.

Conclusion

- [121] Mr. Chapman, would you please stand.

[122] I find you guilty on Count 1 of Indictment 111541-2 of breaking and entering into a dwelling place with the intent to commit an indictable offence therein.

"L.M. Lyster J."

LYSTER 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/24/24/2024BCSC2405.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-chapman-2024>

Prepared on 28 October 2026 · Esheria