
CANADA / JUDGMENT

R. v. Dill

2020 BCSC 1453

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1453 R. v. Dill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dill,

2020 BCSC 1453

Date: 20200820

Docket: 26388

Registry: Nelson

Regina

v.

Thomas Troy Dill

Before: The Honourable Justice Branch

Oral Reasons for Judgment

Counsel for Crown:

D.I. Ferbey

Counsel for Accused:

B. Suffredine, Q.C.

Place and Date of Trial:

Nelson, B.C.

August 17-19, 2020

Place and Date of Judgment:

Nelson, B.C.

August 20, 2020

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I. INTRODUCTION

[1] Thomas Dill is charged with:

- a) possession of a loaded, prohibited, or restricted firearm, a handgun, without being the holder of an authorization or a licence under which he may possess the firearm in that place and the registration certificate for the firearm, contrary to section 95(1) of the Criminal Code;
 - b) possession of fentanyl for the purposes of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 ("CDSA"); and
 - c) possession of methamphetamine for the purposes of trafficking contrary to s. 5(2) of the CDSA.
- [2] A further count in the indictment relating to the alleged attempted theft of an excavator is stayed, at Crown's request.

II. ADMISSIONS

[3] Mr. Dill made a series of formal admissions that dramatically narrowed the scope of this inquiry. In particular, he admits that:

- a) the drugs seized included 71 grams of fentanyl and 287 grams of methamphetamine;
- b) the street value was \$14,200 for the fentanyl and \$28,700 for the methamphetamine;
- c) based on the fentanyl and other drugs seized, the drugs were possessed for the purposes of trafficking by a "mid-level" dealer;
- d) the handgun seized is a restricted firearm under the Criminal Code;
- e) Mr. Dill does not have a firearms registration certificate for any gun.

- [4] The net effect of these admissions and the submissions of the accused are that the case rises and falls on the question of whether the Crown has established beyond a reasonable doubt that Mr. Dill can be viewed as having been in possession of the drugs and the handgun.

III. THE EVIDENCE

- [5] Four witnesses testified at trial. The Crown called the two police officers involved in the investigation, Corporal Jaime Moffat and Constable Taylor Sippel. Mr. Dill called two individuals: Kenneth Millar, who testified that he drove Mr. Dill to the property at which the handgun and drugs were found, and Chase Dowson, who says he was the person who actually owned the handgun and drugs. Much of the evidence is not disputed and I have no difficulty relying on it. I will address any material disputes in the evidence in my analysis.
- [6] The story begins with Mr. Millar. He says that he was contacted by the renter of a property at Arrow Park about 22 km south of Nakusp, BC (the "Property"). The renter wanted help repairing a broken excavator on the Property. Mr. Millar says that he asked Mr. Dill for help, as he knew him to be a mechanic who could fix just about anything. When he described the problem to Mr. Dill, Mr. Dill explained what he thought might be wrong with it. He says that he drove Mr. Dill out to the property in the early morning hours of October 26, 2019. He says that Mr. Dill did not have anything with him other than the clothes on his back. In particular, he did not have a backpack. Mr. Millar says that this was not surprising, as he understood that they were first going to try and diagnose the problem with the excavator before actually trying to effectuate any repairs.
- [7] Mr. Millar says that he got stuck in the mud while he was at the Property and became upset. He says that he sped away from the property in a manner that could explain the skid marks shown in certain photographs later taken by the police. As he was returning to his home in Nakusp, he said he saw the police attending at a motor vehicle accident near the high school.
- [8] Mr. Dowson testified that he was already present at the Property when Mr. Dill arrived. He was going to help Mr. Dill with the work. He has known Mr. Dill for about 10 years. He drove a Dodge pickup truck with a flatbed trailer attached. He said he went early as he thought he would be slower getting to the Property. He testified that he had a backpack with him. He was able to accurately describe the contents of the backpack before the exhibit was presented to him. He said that it contained drugs, \$9000 in cash, the handgun, e-cigarettes, stash bolts, and vapes. Some of the items were stored in a hard shell Pelican case. He said that he had found the drugs and handgun in a false bottom in a travel trailer he had recently purchased, a pleasant surprise from his perspective. He believes he purchased the travel trailer in or about May 2019 from someone in the Kelowna area. It was not clear from whom the trailer was purchased. There was evidence admitted from the registered owner which suggested that the travel trailer was actually stolen. Mr. Dowson said that on arrival he hid the backpack between the walls of an outbuilding on the Property because he did not want Mr. Dill to know he had it with him. He says he was concerned that Mr. Dill would be upset

with him for bringing these things to a worksite.

- [9] After being presented with the backpack and its contents at trial, Mr. Dowson was able to identify the other items, including vape pens, bolts, and other personal effects. In particular, he was able to open the stash bolt to show how drugs were hidden inside of same. He said that he had not communicated with Mr. Dill about the contents of the backpack since his arrest, and that he had not seen any reports or photographs describing the contents of the backpack. The backpack contained a receipt from the Insurance Corporation of BC ("ICBC") location in Westbank, BC, dated either May 10, 2019 or October 5, 2019. Unfortunately, the receipt had no identifying personal characteristics.
- [10] After the backpack was reassembled, there was a loose piece of metal left on the clerk's table. The court clerk sought to confirm whether it belonged with the court exhibit. Mr. Dowson, still on the stand, voluntarily identified it as a part of a box of bongs in the backpack.
- [11] Mr. Dowson agreed that he had memory problems, particularly in relation to recalling dates, due to previously having been the victim of an attack where he was struck with a meat cleaver.
- [12] Mr. Dowson has a long and varied criminal record, including fraud, drug trafficking and firearms offenses.
- [13] Picking up the story again, we now have Mr. Dill and Mr. Dowson alone at the Property.
- [14] The police were called out to the Property because a neighbour heard sounds on the Property, and the owner apparently advised that he did not expect anyone to be on the Property at that time.
- [15] Corporal Jaime Moffat arrived on the scene first. She noted that a cable had been brought down at the entrance to the Property. She waited for backup for a few minutes.
- [16] Constable Taylor Sippel then arrived on scene in his vehicle. He had been attending at the motor vehicle accident near the high school before he came to the Property. The officers drove south down the long driveway. They saw a Dodge truck parked near an outbuilding with a trailer hitched to the back.
- [17] Corporal Moffat noted that the passenger side door of the truck was open. She found Mr. Dowson in the truck. After detaining him for investigation, she placed him under arrest for outstanding warrants. She ran the plates of the truck and they came back associated to Mr. Dill and to a vehicle other than the truck. She looked in the truck and found a wallet belonging to Mr. Dill in the pocket of the driver's side door.

- [18] The officers then noted that there was a battery pack connected to an excavator located near the truck. Given the wallet and association with the truck, the officers were suspicious that Mr. Dill was in the area as well. They were concerned that Mr. Dowson and Mr. Dill had been trying to steal the excavator. They began to walk into the bush behind the excavator. There was an area where the bush seemed to be beaten down.
- [19] After some unsuccessful investigation in the bush, Corporal Moffat saw a figure laying down in the bush. Corporal Moffat drew her gun and called out Mr. Dill's name while asking him to show his hands. The accused then stuck up his head. After a hesitation, he complied. He was placed under arrest for an outstanding unendorsed warrant. The officers saw a backpack within arm's reach of Mr. Dill. There was also an empty, black canvas bag of the type used for motorcycle helmets on the ground. The backpack was partially open and there was a hard plastic Pelican case visible within it. Constable Sippel walked the accused 20 to 30 feet back to his vehicle. The walk would have taken about 30 seconds.
- [20] Corporal Moffat stayed behind. She lifted up the canvas bag and, beneath it, located a handgun stuck into the ground. It was clean and dry, as the backpack had been. It was right beneath where the accused had been laying. She called out that she had found a handgun. Constable Sippel heard that call. He determined that he should advise the accused that he was also under arrest for firearms offences. The accused then stated "What gun", "The gun isn't mine", and "I don't know about a gun". Constable Sippel was not clear in what order the statements were made. During the trial, I ruled that these statements were admissible under the res gestae exception to the hearsay rule.
- [21] After the accused was taken to the detachment, Mr. Dill asked about his wallet. When Corporal Moffat said that he could not have the wallet as they needed the authority of the owner of the truck, the accused suggested he was the owner and asked if he could provide the required authorization.
- [22] The police later searched the travel trailer said to be Mr. Dowson's and found ammunition of the same make and calibre as that found in the backpack.
- [23] As a final coda to the story, Mr. Millar says that, as matters turned out, Mr. Dill's diagnosis of the problem with the excavator turned out to be exactly right.

III. THE LEGAL FRAMEWORK

- [24] Mr. Dill was recently found not guilty of drug trafficking charges in proceedings which carry parallels to the present matter: *R. v. Dill*, 2019 BCSC 182 (Dill #1). I can do no better in summarizing the regime applicable to the trafficking charges than Justice Iyer did in that case:
- [25] In order to prove the charges against Mr. Dill, the Crown must establish beyond a reasonable doubt that Mr. Dill knew he had each of the identified drugs in his possession.

- [26] Section 2 of the CDSA defines "possession" by reference to s. 4(3) of the Criminal Code, R.S.C. 1985, c. C-46 (the "Code"). Section 4(3) of the Code defines possession as follows:
- (3) For the purposes of this Act,
 - (a) a person has anything in possession when he has it in his personal possession or knowingly
 - (i) has it in the actual possession or custody of another person, or
 - (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
 - (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.
- [27] Possession includes both knowledge and some act or measure of control: *R. v. Ngo*, 2009 BCCA 301 at para. 3. With respect to personal possession, the Court in *R. v. Morelli*, 2010 SCC 8 held as follows:
- [16] On an allegation of personal possession, the requirement of knowledge comprises two elements: the accused must be aware that he or she has physical custody of the thing in question, and must be aware as well of what that thing is. Both elements must co-exist with an act of control (outside of public duty): *Beaver v. The Queen*, [1957] S.C.R. 531, at pp. 541-42.
- [28] I must consider the totality of the evidence. As stated in *R. v. Tahirsylaj*, 2015 BCCA 7:
- [29] When analyzing circumstantial evidence of control, one must consider the evidence cumulatively, and not piecemeal. However, the evidence must support the conclusion beyond a reasonable doubt when it is the only evidence upon which the Crown relies. Additionally, the circumstantial evidence that weighs against control must also be considered as part of the "whole" evidence.
- [33] In order to convict based upon circumstantial evidence, the trier of fact must be satisfied beyond a reasonable doubt that the only rational inference that can be drawn from the circumstantial evidence is that the accused is guilty: *R. v. Griffin*, 2009 SCC 28 at para. 33; *R. v. Twohey*, 2009 BCCA 428 at para. 13.
- [Emphasis in original]
- [25] As the case rests largely on circumstantial evidence, the principles of *R. v. Villaroman*, 2016 SCC 33 must be considered:
- [35] At one time, it was said that in circumstantial cases, "conclusions alternative to the guilt of the accused must be rational conclusions based on inferences drawn from proven facts": see *R. v. McIver*, [1965] 2 O.R. 475 (C.A.), at p. 479, aff'd without discussion of this point [1966] S.C.R. 254. However, that view is no longer accepted. In assessing circumstantial evidence,

inferences consistent with innocence do not have to arise from proven facts: *R. v. Khela*, 2009 SCC 4, [2009] 1 S.C.R. 104, at para. 58; see also *R. v. Defaveri*, 2014 BCCA 370, 361 B.C.A.C. 301, at para. 10; *R. v. Bui*, 2014 ONCA 614, 14 C.R. (7th) 149, at para. 28. Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.

- [26] On the issue of possession, I note that the Crown relies on there being actual rather than constructive possession. The Crown relies on the analysis of this issue in *R. v. Bird*, 2020 ABCA 236:
- [11] Personal possession generally requires three contemporaneous things: a) manual handling of the object, b) knowledge of what the object is, and c) control of the object: *R. v. York*, 2005 BCCA 74 at para. 10, 193 CCC (3d) 331; *R. v. Beaver*, 1957 CanLII 14 (SCC), [1957] SCR 531 at pp. 541-2, citing *R. v. Hess*, 1948 CanLII 349 (BC CA), [1949] 1 WWR 577 at p. 579, 94 CCC 48; *R. v. Morelli*, 2010 SCC 8 at paras. 15-17, [2010] 1 SCR 253.
- [12] The appellant argues that manual handling or physical custody is generally needed for personal possession, as stated in Manning, Mewett & Sankoff, *Criminal Law*, 5th ed., Markham, Ontario: LexisNexis Canada, 2015 at para. 27.16:
- [27.16] The easiest and most common type of possession is referred to as "personal" possession, a state that denotes the situation where a person has actual care - through some form of physical contact - of the item in question. Still, while manual handling is essential to establish this type of possession, not every touching will constitute possession in the legal sense. . . .
- The Crown replies that "skin to metal" contact is not required to meet this part of the test.
- [13] The elements of control and physical contact are often closely related. The concepts were explained in *Morelli* at para. 16:
- [16] On an allegation of personal possession, the requirement of knowledge comprises two elements: the accused must be aware that he or she has physical custody of the thing in question, and must be aware as well of what that thing is. Both elements must co-exist with an act of control (outside of public duty): *Beaver v. The Queen*, 1957 CanLII 14 (SCC), [1957] S.C.R. 531, at pp. 541-42.

(italics in original, underlining added)

"Physical custody" may exist even where there is no touching of the object. For example, a person carrying a backpack known to contain a gun is properly seen as being in personal possession of the gun. A purchaser of drugs is in personal possession of drugs in his vehicle, even if they were placed on the front seat by the seller, without the purchaser ever touching them. While manual

handling and knowledge is generally conclusive of personal possession, the absence of manual handling does not necessarily preclude possession, because "control" and knowledge combined with a sufficient degree of physical proximity may nonetheless establish possession. Whether physical proximity combined with control amounts to personal possession is a matter of degree.

- [27] Mr. Dill did not quarrel with this statement of the applicable principles, but did highlight its limits, relying inter alia on *R. v. Iturriaga*, [1994] B.C.W.L.D. 1117, where the court acquitted an accused of trafficking where the accused was the driver of a vehicle containing drugs. The drugs were under the passenger seat and in the console between the accused and his passenger:
- [9] I do not see how the fact that the appellant slowed down and was nervous when he was stopped by the police could lead a jury to conclude beyond a reasonable doubt that the appellant knew that there were drugs in the vehicle he was driving. In my view, it is common for people to be nervous when pulled over by the police particularly, as here, where they are driving without a licence. Similarly, the fact that the appellant was driving the car and the fact that the cocaine and marijuana were within arms reach of the appellant in the car cannot, without further evidence than is present here, justify a conviction. The evidence indicates that both drugs were concealed. These facts simply cannot establish beyond a reasonable doubt that the appellant had knowledge of or control over the drugs in question.
- [28] This issue was also reviewed in *R. v. Montgomery*, 2007 BCSC 664, aff'd 2009 BCCA 41 and *R. v. Robinson*, 2011 ONSC 4915.
- [29] In *Montgomery*, the trial court stated:
- [18] When there is no direct evidence that the accused has knowledge of the property, the question is whether the circumstantial evidence taken as a whole supports the accused's knowledge of those matters as the only reasonable explanation.
- [30] In *Robinson* the accused was found not guilty of trafficking and possession of a firearm found in a glovebox in a vehicle he was driving, but that he did not own. The court stated:
- [43] However, it is not sufficient for the court to draw such an inference simply because the accused was in near proximity to the contraband. In *R. v. Bullock, Downer and White*, [2000] O.J. No. 798 (Ont. Sup. Ct.) at paragraphs 6 and 9 the court stated:
- The case of *R. v. Iturriaga*, 1993 CanLII 2517 (BC CA), [1993] B.C.J. No. 2901 and *R. v. Douglas*, 1974 CanLII 1514 (ON CA), 1974, 18 C.C.C. (2d) 189, *R. v. Amado* [1996] B.C.J. No. 1943 stand for the proposition that when the contraband alleged to be in possession by an accused is concealed and not in the immediate close proximity of an accused, that without further evidence, the Crown will not have satisfied the degree of knowledge and control necessary to prove possession beyond a reasonable doubt.
- [71] While I have little doubt that Mr. Robinson knew the firearm was in the glove box, the doubt is a reasonable doubt and as such there will be an acquittal on the weapons charges.

- [31] Mr. Dill also relied on *R. v. Rideout*, 2017 NLTD(G) 34. In *Rideout*, the accused was driving the vehicle in which drugs were found. He claimed to have purchased the vehicle the day of the traffic stop. There was no drug paraphernalia in view. The accused did not attempt to retrieve the drugs after the vehicle was impounded, even though it was sitting open for two days. The court found that there was no constructive possession, stating:
- [66] Did Mr. Rideout know the drugs were present and exercise the necessary degree of control over them? Once again the evidence is circumstantial. There is no direct evidence linking Mr. Rideout to the drugs found in the vehicle. The drugs were hidden from view and there is no evidence that Mr. Rideout ever accessed the console in which they were found. The circumstantial evidence which, from the Crown's perspective points to Mr. Rideout's guilt, is the physical proximity of the drugs next to him in the vehicle and the text messages retrieved from the cellphone, some of which appear to relate to the sale and purchase of drugs of the same kind as those found in the vehicle.
- [79] The circumstantial evidence as a whole is such as to raise reasonable possibilities inconsistent with guilt. These reasonable possibilities are such as to raise a reasonable doubt as to whether Mr. Rideout knew the drugs were in his vehicle. The Crown had thus failed to prove beyond a reasonable doubt that Mr. Rideout was in possession of the drugs identified on the Indictment.
- [32] Although Mr. Dill did not testify, certain words spoken by him at the time of the arrest are in evidence under the *res gestae* exception. Both sides submitted that this arguably triggers the need to consider the analysis in *R. v. W.(D.)*, [1991] 1 S.C.R. 742. Again, I can do no better than set out Justice Iyer's analysis of this issue from *Dill* #1, where Mr. Dill did testify, and I have factored it into my analysis below:
- [30] Mr. Dill and the Crown both rely on the framework of analysis established by the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 at 758:
- 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 a 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.
- [31] In applying this framework, I have taken into account the recent comments of the Alberta Court of Appeal in *R. v. Ryon* 2019 ABCA 36 at paras. 48-51.

IV. ANALYSIS

[33] As noted above, this case turns on whether Mr. Dill was in possession of the drugs and the handgun. This issue in turn turns largely on the evidence of Mr. Dowson, as he says the drugs and gun were actually his, and that Mr. Dill did not know they were present at the Property.

[34] There is no doubt that the evidence of Mr. Dowson was problematic. Specifically:

- a) he last places the backpack inside the outbuilding's walls, whereas it was eventually discovered further into the bush, within arm's length of Mr. Dill;
- b) he last places the handgun inside the backpack, whereas it was eventually discovered outside the backpack, again, away from the outbuilding; and
- c) the suggestion that he accidentally found a large quantity of drugs and cash in a travel trailer is very difficult to accept.

[35] Mr. Dowson's long criminal record, including convictions for fraud-based offences, also has an adverse effect on his credibility. His alleged head injury undercuts his reliability. I approach his evidence very cautiously.

[36] That said, even the Crown was compelled to agree that there were elements of Dowson's evidence that were credible. I would include in that:

- a) his obvious glee when recounting his reaction to finding the drugs and gun in the travel trailer;
- b) his ability to recount in some detail the actual contents of the backpack before it was shown to him;
- c) his knowledge of the hidden compartment for drugs in the bolt found in the backpack;
- d) his spontaneous explanation for the small metal part left out on the clerk's table;
- e) there was ammunition of the same make and calibre found in both the backpack and the travel trailer in which Mr. Dowson said he was living;
- f) Mr. Dill's *res gestae* statements disclaiming ownership provide some corroboration for Mr. Dowson's evidence that the gun was not Mr. Dill's; and
- g) the evidence of Mr. Millar provides some corroboration for Mr. Dowson's evidence that the backpack and its contents were not the accused's.

[37] While Mr. Dowson's recall of the items in the bag may not have been perfect, it may have been more suspicious were he able to catalogue all items with precision. I note that there is no evidence of collusion with Mr. Dill and that Mr. Dill has been in custody since his arrest.

- [38] There was certainly a lack of clarity in Mr. Dowson's evidence regarding the purchase of the travel trailer, i.e. when was it purchased, from whom was it purchased, was it stolen, etc. However, much of the evidence in relation to the travel trailer bears little relevance to the guilt or innocence of Mr. Dill.
- [39] The Crown was left in an awkward position by Mr. Dowson's evidence. They need his evidence to be rejected on the basis of his long criminal record, but that same record makes it far from speculative that Mr. Dowson would be in possession of illegal drugs and a handgun.
- [40] Turning to Mr. Millar's evidence, the Crown did not suggest that there was any basis upon which his evidence should not be believed. I note that it was corroborated in three respects:
- a) the neighbour's call to the police spoke of sounds on the Property and Mr. Millar said that his vehicle got stuck in the mud while he was there;
 - b) there were skid marks where he said he peeled out of the Property; and
 - c) Mr. Millar's report of seeing a motor vehicle accident upon his departure from the Property is consistent with Constable Sippel's evidence about his attendance at an accident in the same location at the same time.
- [41] I find no basis upon which to reject Mr. Millar's evidence and I accept it. This finding, in turn, requires the Crown to open up to a broader array of explanations for the course of events. In particular, if Mr. Millar is telling the truth, that puts the Crown in a position where it needs to argue that either:
- a) The backpack and gun were Mr. Dowson's, but he gave them to Mr. Dill upon his arrival at the property. But why would he do so? There would obviously be risks in handing over such a treasure to someone else.
 - b) Alternatively, the backpack and gun were Mr. Dill's, but he gave them to Mr. Dowson to bring to the Property. But why would he do so? There would again be tremendous risk in doing so, particularly as Mr. Dowson testified that he, himself, was a drug user.
- [42] Addressing some of the other material circumstantial evidence and considering whether there are reasonable inferences other than guilt, there are the following issues:
- a) It is suspicious that Mr. Dill's wallet was in the driver's side door of the truck, and that the plates were associated with Mr. Dill. However, that suspicion does not drive the Crown's case very far since the backpack and drugs were not found in the truck, and I have already accepted Mr. Millar's evidence that he drove Mr. Dill to the Property rather than Mr. Dill arriving there in the truck.
 - b) The fact that Mr. Dill was hiding could logically be explained by a desire to avoid arrest on the unendorsed warrant.

- c) Mr. Dowson admitted that he had memory problems, which could conceivably explain why he places the backpack in a place other than where it was found, and the backpack was still in the same general area as where he says it was placed.
 - d) Constable Sippel advised that the backpack being partially open could explain the fact that the gun was found stuck in the brush rather than in the backpack.
 - e) Although the backpack and the gun were in very close proximity to Mr. Dill, and it is certainly possible, perhaps even probable, that Mr. Dill brought them into the bush with him, another potential logical inference is that he was in "fight or flight" mode as he tried to avoid arrest for the outstanding warrants. As such, it is possible to conclude that he might not have noticed items already around him as he hid. Although certainly the weakest link in the accused's argument, particularly in relation to the gun said to have been found beneath the accused, I find that a "fight or flight" focus on the position of the officers rather than his immediate surroundings remains as a logical inference rather than improper speculation: Villaroman, at para. 37. I note that the handgun was not directly under the accused, but rather was under a cloth bag. Accepting that "skin on metal" is not required to ground possession, I find that the proximity alone is insufficient to remove any reasonable doubt as to possession, particularly when considered alongside Mr. Millar's evidence that Mr. Dill did not have a backpack on arrival and Mr. Dowson's evidence that the backpack and gun were in fact his and had been stored, at least, in the general area.
- [43] It is unfortunate that none of the personal effects in the backpack were sent for DNA or fingerprint analysis, as Corporal Moffat accepted that many of the items could have had material on them that could have yielded some certainty as to whether the backpack was Mr. Dill's. In particular, the officers agreed that it would be necessary to forcefully push the ammunition to load the magazine in the handgun, in a manner that could conceivably have yielded helpful forensic evidence. Also, further evaluation of the ICBC receipt could have potentially tied the backpack to a particular individual. The uncertainty left by this lack of evidence effectively accrues to the accused's benefit in terms of the reasonable doubt analysis.
- [44] At the end of the day, I find that I am left in much the same situation as Justice Iyer in Dill #1, where she concluded:
- [42] The circumstances are certainly suspicious, but in all the circumstances I cannot draw inferences of guilt on the criminal standard. For these reasons, I find that the Crown has not met its burden of proof beyond a reasonable doubt.
- [45] Mr. Dill, will you please stand.
- [46] Mr. Dill, I acquit you on all of the charges that have not otherwise been stayed.

[47] Let me say this, however. You have now had a pair of successful results in this court very close together, but, in both situations, the courts have found them to be suspicious. In this case, I would go so far as to say that the circumstances were very suspicious. Given your good fortune, I would strongly advise you to find new friends and activities that do not put you so close so often to illegal goods.

"Branch J."

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