

CANADA / JUDGMENT

R. v. Farac

2025 BCCA 238

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 238 R. v. Farac

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Farac,

2025 BCCA 238

Date: 20250709

Docket: CA49811

Between:

Rex

Respondent

And

Mateo Farac

Appellant

Before:

The Honourable Chief Justice Marchand

The Honourable Justice Griffin

The Honourable Justice Mayer

On appeal from: An order of the Provincial Court of British Columbia, dated August 25, 2023 (conviction) (R. v. Farac, Richmond Docket 66001-2KC).

Counsel for the Appellant:

J. Whysall

K. Behnampour

Counsel for the Respondent:

M.J. Booker

Place and Date of Hearing:

Vancouver, British Columbia

June 12, 2025

Place and Date of Judgment:

Vancouver, British Columbia

July 9, 2025

Written Reasons by:

The Honourable Justice Griffin

Concurred in by:

The Honourable Chief Justice Marchand

The Honourable Justice Mayer

Summary:

The appellant appeals from convictions of unlicensed possession of a loaded firearm and overcapacity magazine, and careless storage of a firearm. The police found the weapon and magazine in garbage containers inside the appellant's residence. The police search arose after he threatened his former intimate partner who was moving out, and she called 9-1-1. At trial, the appellant submitted that a reasonable inference was that the gun belonged to someone else. On appeal, the appellant submits that the judge approached the circumstantial evidence improperly and while he now accepts it can be inferred that he owned the gun, the judge should have considered the reasonable inference that he may have abandoned the gun and magazine. Held: Appeal dismissed. The judge applied the proper approach to the circumstantial evidence, asking herself whether the evidence as a whole, including any lack of evidence, raised a reasonable inference other than guilt. There was a proper foundation for her conclusion that the appellant was in constructive possession of these items and the judge did not fail to consider a reasonable alternative inference inconsistent with guilt.

Reasons for Judgment of the Honourable Justice Griffin:

Introduction

- [1] The appellant, Mr. Farac, was convicted of possessing a loaded firearm and an overcapacity magazine without a licence, storing a firearm in a careless manner without reasonable excuse, and uttering threats. He appeals only from the firearm convictions.
- [2] The police found the loaded firearm, which was a handgun, and overcapacity magazine in Mr. Farac's residence in the early hours of September 15, 2021, after responding to a 9-1-1 call by Mr. Farac's former intimate partner, Ms. Guerra. The police obtained a warrant to search the residence after Ms. Guerra made a complaint that Mr. Farac was threatening her, and that he had a gun. Ms. Guerra had previously lived with Mr. Farac at the residence, and was there to retrieve some of her belongings.
- [3] Mr. Farac submits on appeal the judge ought not to have drawn the inference that he was in constructive possession of the gun and magazine, since other reasonable inferences were available.
- [4] Mr. Farac argued at trial that it was reasonable to infer that someone else had placed the gun and magazine in his residence without his knowledge, highlighting that the firearm and overcapacity magazine were found in garbage containers in the home, there was no direct forensic evidence such as fingerprint evidence linking him to them, and submitting that the complainant was involved with illicit drugs and connected to people who may own firearms. The judge expressly considered and rejected this theory.
- [5] On appeal, Mr. Farac concedes that it was reasonable to infer that he owned the gun, but asserts that it is also reasonable to infer that he had abandoned the gun and magazine in the garbage and therefore was no longer in possession of them because the items were not put there with the intention of retrieving them.
- [6] For the reasons that follow, I would dismiss the appeal.

Trial and Trial Judgment

- [7] In summary, the evidence called by the Crown at trial in relation to the firearms offences consisted of:
 - a) Ms. Guerra's testimony as to what Mr. Farac told her about purchasing the gun, and what she saw in the home in relation to the gun and magazine when she lived in the home. I will describe this in more detail shortly.
 - b) Threatening text messages sent by Mr. Farac, including a threat to "shoot up" the home of Ms. Ginter, a friend where Ms. Guerra was staying after her separation from Mr. Farac.
 - c) Ms. Ginter's testimony that she saw the text message threatening to "shoot up" her home, and that she saw a gun in the bedroom of the residence on one occasion.

- d) Photographs, notes, and testimony from the police officers who executed the search warrant, which showed:
 - i. Evidence that a male lived in the home, including male clothes and hygiene items.
 - ii. The home contained Mr. Farac's identification card and bank card which were both active, documents in his name, and photographs of his children.
 - iii. The loaded gun was found in a bag of garbage that contained discarded rotting food and two boxes of ammunition; the overcapacity magazine was found in a garbage canister along with some garbage. These were both inside the residence.

[8] More specifically, Ms. Guerra testified that:

- a) Mr. Farac purchased the gun approximately one year earlier, when they were living together. He told her he wanted the gun for protection. He was excited after he brought the gun home and practiced how fast he could put the gun together and take it apart.
- b) Mr. Farac had an extended clip for the gun that was black, and when attached made it look like a little AK-47 (this is consistent with the item the police found).
- c) She only saw Mr. Farac handle the gun three or four times in the residence. The last time was near the end of their relationship when they were arguing a lot, and he brought it out and cleaned it in front of her. That was within two weeks before the incident on September 15. While watching TV together, Mr. Farac brought the gun out and wiped it and the bullets down and she felt uneasy that he did this during such a tense time in their relationship.
- d) After they separated, Mr. Farac made various threats against her, including while she was staying with Ms. Ginter when he threatened to "shoot up" Ms. Ginter's place.
- e) She returned to the home she had shared with Mr. Farac on September 14, 2021, staying overnight with the plan to get her things and leave the next day. Mr. Farac woke her up at 1:00 or 2:00 a.m. and confronted her angrily. At one point he was screaming at her with her back to the wall and making punching motions beside her head. He left the room, and she was very scared so called the police. When she was on the 9-1-1 call, she told them he had a gun, and Mr. Farac returned, stated "[a]re you fucking serious?", then left the room.
- f) She did not answer truthfully in the 9-1-1 call when she was asked about when she had last seen the gun and bullets. She told the 9-1-1 operator she saw the gun that day and the day before; in fact, she had not seen the gun for several days. She testified she was untruthful about when she had last seen the gun because she was scared, in a panic and wanted the police to get there as fast as possible.
- g) Only she and Mr. Farac had keys to the house, to her knowledge, and she was not at the house for at least five days leading up to September 14.

- [9] Mr. Farac's trial counsel advanced the theory that Ms. Guerra could not be believed, as she was an attention-seeking drug-using person; had fabricated the threats and the evidence about Mr. Farac having a gun; and either possessed the gun for her own protection or had given access to the residence for someone else to store it there.
- [10] The trial judge was therefore of the view that "[t]he central issue" in the case was the credibility of Ms. Guerra and to some extent, Ms. Ginter: para. 6. After reviewing any inconsistencies in their evidence, the judge concluded that they were credible on the key facts in dispute.
- [11] Mr. Farac did not testify at trial. However, he called his mother as a witness. She testified that Mr. Farac was living with her in September 2021 and therefore was not living at the residence where the gun was found at the time of the police search. By the time of closing submissions, the defence did not rely on that evidence, but nonetheless the judge expressly rejected it: paras. 116-117.
- [12] Mr. Farac also called the evidence of a friend who testified that looking through a window she saw two males in the home on September 3, 2021 when Mr. Farac's car was not there.
- [13] The judge considered the defence argument that someone else left the firearm and magazine in the house and considered the evidence that some people who knew Ms. Guerra and were involved in drugs attended the house regularly. He noted there was no evidence other people connected to Ms. Guerra were at the house in the time leading to September 15, since she was not there: paras. 112-113.
- [14] Importantly, the judge expressly rejected the notion that anyone else that was visiting the house would have left the gun, ammunition, and magazine there, finding that "it does not make any sense" they would leave these items in the midst of rotting garbage: paras. 113, 115, 120.
- [15] The judge instructed herself to consider all of the evidence available, taking note of any gaps in the evidence, to determine whether there was any reasonable alternative inference to guilt: paras. 122-124.
- [16] The judge accepted the material aspects of Ms. Guerra's testimony that implicated Mr. Farac: paras. 86-95, 100, 126, 127. The judge held:
- [126] I accept Ms. Guerra's evidence that Mr. Farac said he bought the gun for protection. I accept her evidence that she saw Mr. Farac handle the gun on three to four occasions before September 15th, and I accept her evidence that Mr. Farac stored the firearm and magazine in the house. The evidence from Ms. Guerra establishes that Mr. Farac knowingly had the firearm and overcapacity magazine in the house for his use and benefit in the time period leading to September 15th, 2021.

- [17] This evidence, combined with the police officers' evidence of what they found in the house, satisfied the judge beyond a reasonable doubt that Mr. Farac possessed the firearm and overcapacity magazine. As explained by the judge:
- [127] The police evidence of locating the gun and overcapacity magazine establishes beyond a reasonable doubt that on September 15th, 2021, Mr. Farac knew the character of the firearm and magazine and intentionally kept them in the residence for his benefit. The only reasonable inference on the evidence is that Mr. Farac attempted to hide these items from the police when they attended in response to the 9-1-1 call. It was clear from the 9-1-1 call that Mr. Farac knew Ms. Guerra had told the police about the gun. Ms. Guerra testified when she told the police about the gun, Mr. Farac came out and said, "Are you fucking serious?" Mr. Farac had at least 10 minutes of opportunity to retrieve the firearm, ammunition, and magazine and to attempt to hide them from the police by placing them in the garbage.
- [128] I am satisfied that the Crown has proven beyond a reasonable doubt that Mr. Farac possessed the firearm and overcapacity magazine in his residence on September 15th, 2021. This finding is relevant to the issue of possession on Counts 1 to 6.

[Emphasis added.]

- [18] The judge further found that Mr. Farac knew the gun was loaded, for similar reasons, including the judge's acceptance of Ms. Guerra's evidence that after he bought the gun, he would practice putting it together as fast as he could. The judge concluded that the Crown had proven beyond a reasonable doubt "that the only reasonable inference is that Mr. Farac knew that the firearm was loaded": para. 133.
- [19] It was admitted that Mr. Farac did not have an authorization or licence for the firearm.
- [20] The other firearm convictions followed logically from these conclusions.

Issues on Appeal

- [21] Mr. Farac advances two related arguments on appeal, which I will address in this order:
- a) The judge made an error of law by requiring that an inference supporting a conclusion other than guilt be based on evidence; and,
 - b) The convictions are unreasonable and cannot be supported by evidence, relying on s. 686(1)(a)(i) of the Criminal Code.
- [22] In support of his argument that the verdict was unreasonable, Mr. Farac asserts that a reasonable inference was that the firearm and the magazine were "legally abandoned" by his placement of them in the garbage. He relies on cases that discuss when an item has been abandoned such that a person no longer retains a reasonable expectation of privacy in the item.

[23] The Crown submits that the judge did not misapply the law regarding reasonable inferences and the verdicts were supported by evidence and reasonable.

Relevant Legal Principles

[24] Certain legal principles are relevant to the analysis of the issues on appeal.

[25] The principles that apply to the determination of constructive possession were summarized by Justice Jamal, as he then was, in *R. v. Choudhury*, 2021 ONCA 560 [Choudhury] and were set out by the trial judge at para. 79 of her reasons. In *Choudhury*, Justice Jamal held:

[19] The relevant legal principles on constructive possession are not in dispute:

- Constructive possession is established when an accused does not have physical custody of an object but knowingly has it in the actual possession or custody of another person or has it in any place for their own or another's use or benefit: *Criminal Code*, s. 4(3)(a); *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at para. 17; and *R. v. Lights*, 2020 ONCA 128, 149 O.R. (3d) 273, at para. 47.
- Knowledge and control are essential elements of constructive possession, which is established when the Crown proves beyond a reasonable doubt that the accused: (i) has knowledge of the character of the object said to be possessed; (ii) knowingly puts or keeps the object in a particular place, whether or not the place belongs to or is occupied by the accused; and (iii) intends to have the object in the place for the use or benefit of the accused or another person: *Morelli*, at paras. 15, 17; *Lights*, at paras. 44, 47.
- Tenancy or occupancy of a place where an object is found does not create a presumption of possession: *Lights*, at para. 50; *R. v. Watson*, 2011 ONCA 437, at para. 13; *R. v. Lincoln*, 2012 ONCA 542, at paras. 2-3; and *R. v. Bertucci* (2002), 169 C.C.C. (3d) 453 (Ont. C.A.), at para. 18.
- When the Crown relies largely or wholly on circumstantial evidence to establish constructive possession, a conviction can be sustained only if the accused's knowledge and control of the impugned objects is the only reasonable inference on the facts. The trier of fact must determine whether any other proposed way of looking at the case as a whole is reasonable enough to raise a doubt about the accused's guilt, when assessed logically and in light of human experience and common sense: see *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at paras. 55-56; *Lights*, at para. 39; and *R. v. Stennett*, 2021 ONCA 258, at paras. 60-61.

[26] Where the Crown's case relies on circumstantial evidence, the proper approach to the question of whether the Crown has met the standard of proving the guilt of the accused beyond a reasonable doubt is to consider all reasonable inferences that arise from the evidence or gaps in the evidence. A reasonable inference other than guilt is something more than pure speculation but does not need to be based on proven facts. It can be difficult articulating the precise line between a reasonable inference and pure speculation: *R. v. Villaroman*, 2016 SCC 33 at paras. 35-43 [Villaroman].

- [27] In summary, as Justice Cromwell explained in Villaroman at paras. 35-43, in drawing inferences from circumstantial evidence the trier of fact needs to appreciate:
- a) Conclusions alternative to the guilt of the accused do not have to be based on inferences drawn from proven facts. Rather, the question is what inferences can be drawn from the circumstantial evidence and are there reasonable inferences other than guilt.
 - b) A reasonable doubt or theory alternative to guilt is not based on speculation but is based on reason and common sense, in light of human experience, and must arise logically from the evidence or absence of evidence.
 - c) The Crown may need to negative these reasonable possibilities but not every possible conjecture, no matter how irrational or fanciful.
- [28] Justice Cromwell found in Villaroman at para. 41 that a helpful way of describing the line between plausible theories and speculation is that the circumstantial evidence necessary to justify a conviction, assessed in light of human experience, must be such that it excludes any other reasonable alternative. Another way of describing it is that alternative inferences must be reasonable, not just possible.
- [29] In *R. v. Coffey*, 2020 BCCA 75 at paras. 15-18 [Coffey], this Court set out the role of an appellate court when addressing the argument that a trial judge failed to consider all other reasonable possibilities in convicting an accused based on circumstantial evidence. Two steps are involved:
- a) The Court asks whether the judge understood the proper approach to considering reasonable doubt where proof of a crime is based on circumstantial evidence, as explained in Villaroman: namely, whether viewed logically and in light of human experience, the evidence is reasonably capable of supporting an inference other than guilt, appreciating that a doubt may arise from a lack of evidence; and
 - b) The Court asks whether there was evidence from which the trial judge could draw an inference that the appellant was guilty, as the only reasonable conclusion.
- [30] This Court explained in Coffey, at para. 17, that the second question is linked to the argument that the verdict is unreasonable:
- [17] ... In terms of the place of these questions in a conviction appeal, Mr. Justice Harris explained in *R. v. Vickers*, 2016 BCCA 98:
- [22] In my view, the substance of this appeal is better seen as an argument that the verdict is unreasonable because the evidence left open reasonable inferences that were inconsistent with guilt. In relation to this question, the law is clear. Section 686(1)(a)(i) of the Criminal Code, R.S.C. 1985, c. C-46, provides that a conviction may be set aside on the grounds that "it is unreasonable or cannot be supported by the evidence." The issue under s. 686(1)(a)(i) is whether, on the whole of the evidence, the verdict is one which a properly instructed trier of fact, acting judicially, could have reached. In reviewing the verdict, this Court may engage in

a re-examination and reweighing of the evidence, through the lens of judicial experience, for the limited purpose of deciding whether the verdict is reasonable. We do not substitute our view of the evidence for that of the trial judge. We defer to the trial judge's findings of fact and factual inferences, interfering only if the judge made a palpable and overriding error. The analysis is the same whether the case is based on direct or circumstantial evidence: *R. v. Ngo*, 2009 BCCA 301 at paras. 6-7, 60, 65; *R. v. Munif*, 2009 BCCA 451 at paras. 9-12.

- [23] ... The proper approach, as the judge recognized here, is not to examine each individual circumstance in isolation. Rather, the question is whether all of the evidence taken together proves an accused's guilt and is inconsistent with any other rational conclusion: *Ngo* at paras. 53-57. Although the burden of proving guilt always rests on the Crown, that burden does not include an added burden of negating every speculative conjecture consistent with innocence: *R. v. Tahirsylaj*, 2015 BCCA 7 at para. 39.
- [18] In considering this ground of appeal from the perspective of an appellate court, we must recognize that it is for the trier of fact to decide if any proposed alternative way of looking at the case is reasonable enough to allow a doubt: *Villaroman*, citing at para. 56 *R. v. Dipnarine*, 2014 ABCA 328, 584 A.R. 138:
- [i]t is still fundamentally for the trier [of] fact to decide if any proposed alternative way of look[ing] at the case is reasonable enough to raise a doubt.
- [31] Appeal courts should approach trial reasons by considering them as a whole, functionally and contextually in light of the record and live issues at trial, informed by the positions taken by the parties. They are not to be finely parsed for error: *R. v. G.F.*, 2021 SCC 20 at para. 69.

Analysis

First Ground

- [32] Mr. Farac submits that in his approach to circumstantial evidence the judge erroneously reversed the burden of proof, requiring him to prove his innocence.
- [33] In this regard, Mr. Farac points to two passages in the trial reasons:
- a) Paragraph 80, where he submits the judge misquoted a word in a passage from Choudhury; and
 - b) Paragraph 111, where the judge rejected as unreasonable alternative inferences that someone else planted the gun and magazine clip.
- [34] At para. 80 of the reasons, the judge held:

The evidence that Mr. Farac possessed a firearm and a magazine on September 15th is circumstantial. As noted in Choudhury, before an accused can be convicted of constructive possession in a circumstantial case, the inference that the accused had knowledge and control over the item must be the only reasonable inference on the evidence. To prove control, the Crown must prove that the accused had an ability to exercise power over the item: Kim, at para. 45, relying upon R. v. Webster, 2008 BCCA 458, at para. 42.

[Emphasis added.]

[35] Mr. Farac submits that the paraphrasing of the principle from Choudhury at para. 80 of the judge's reasons was in error, and that the words "on the facts" should have been used instead of "on the evidence", if the judge understood the principle properly, as other reasonable inferences do not have to be based on evidence.

[36] Mr. Farac goes on to say that there is an indication that the judge did not understand the principles applicable to circumstantial evidence, because the judge later rejected reasonable inferences consistent with innocence due to a lack of evidence. While Mr. Farac no longer contends that someone else owned the gun and magazine clip, he points to para. 111 of the reasons to argue that the judge wrongly understood that reasonable inferences could only arise if they were based on the evidence. At para. 111 the judge held:

In the alternative, Mr. Farac argues that the evidence supports the inference that the gun and clip could have belonged to other people that had access to the house. I do not believe this is a reasonable inference based on the evidence before me.

[Emphasis added.]

[37] Respectfully, Mr. Farac's approach is to isolate and imbue with meaning a word or sentence here and there in the reasons, without taking a fair and contextual reading of the judge's reasons as a whole.

[38] I accept the Crown submission that the judge's use of the word "evidence" instead of the word "facts" in para. 80 is inconsequential to the judge's reasoning.

[39] Further, Mr. Farac's approach to para. 80 ignores the preceding paragraph. At para. 79, the judge cited the law that refers to reasonable inferences based on the "facts", not simply "evidence", setting out the passage from para. 19 of Choudhury regarding reliance on circumstantial evidence to establish constructive possession.

[40] Mr. Farac's submissions on appeal in respect of para. 111 of her reasons ignore the rest of the judge's reasons. A fair reading of the entirety of the judge's reasons indicate that the judge properly considered the possibility that other persons possessed the guns, which was the defence theory advanced at trial. She considered whether this inference was reasonable despite the absence of evidence directly supporting this theory. However, the judge rejected the theory as speculative and unreasonable because it was illogical and inconsistent with human experience, in light of the evidence she did accept.

[41] The judge understood that she had to consider reasonable inferences consistent with innocence that could arise not just from the evidence, but from a lack of evidence, and that these inferences did not need to depend on proven facts. This is clear from para. 124 of the reasons:

I have taken into account the evidence, and absence of evidence, including the lack of DNA and fingerprint evidence tying Mr. Farac to the firearm and magazine. I have taken into account the evidence of the alternative inferences offered, not just individually but cumulatively, in determining whether the Crown has proven possession beyond a reasonable doubt.

[Emphasis added.]

[42] However, the judge also understood that inferences need to be reasonable. An inference is reasonable if it is based on logic and human experience. An inference that is not reasonable is speculative. The judge said this about the approach to circumstantial evidence:

[122] The case law is clear that a reasonable doubt cannot arise from speculation or conjecture and that alternative inferences must be reasonable, and based on logic and experience. As noted in *R. v. Villaroman*, [2016] SCJ No. 33 at paragraph 37:

[T]he Crown thus may need to negative these reasonable possibilities but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which may be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2 at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

[123] I remind myself that the ultimate decision when determining whether the Crown has proven the offences is based on the evidence as a whole, as opposed to each individual item of circumstantial evidence. It is "the cumulative effect of all the evidence, taken together, each item in relation to another and the whole, that must be considered.": Kim, at para. 51, quoting from *R. v. Gibson*, 2021 ONCA 530, at para. 79.

[Emphasis added].

[43] In my view, the judge properly understood the correct approach to circumstantial evidence and did not make an error of law.

[44] I would not accede to the first ground of appeal.

Second Ground

[45] On the second ground of appeal, Mr. Farac submits that the convictions are unreasonable because there was an alternative reasonable inference on these facts inconsistent with his guilt: that he disposed of the gun and ammunition, and therefore legally "abandoned" them. He points to the third element of constructive possession summarized in Choudhury, which requires that the Crown prove that the accused "intends to have the object in the place for the use or benefit of the accused or another person": para. 19. He submits that evidence of

abandonment, such as leaving an item in the garbage, creates a reasonable doubt that a person intends to have that item in the place for their benefit.

[46] Mr. Farac did not advance this argument below and so the judge did not consider it. However, the Crown does not object to him raising it on appeal and does not argue that the evidentiary record is inadequate to consider it.

[47] Mr. Farac says the theory that he abandoned the items is reasonable and is based on the following parts of the record:

- The last time that Ms. Guerra saw the gun was sometime in the two weeks prior to September 15, so it was possible that Mr. Farac had already decided to dispose of it and placed it in the garbage before she called 9-1-1 that night.
- The items were found in garbage containers which also contained rotting food waste.
- Items were gathered in the home consistent with the transition in Mr. Farac and Ms. Guerra's relationship and with the notion that he had also collected garbage to take to the curb.
- Ms. Guerra's comments made on the phone call to 9-1-1 indicated that Mr. Farac was telling her when she was on the call that he no longer had the gun.

[48] In support of his abandonment theory, Mr. Farac cites *R. v. Patrick*, 2009 SCC 17 [Patrick] where the accused placed garbage bags at the property's curb for pickup; *R. v. Dymont*, [1988] 2 S.C.R. 417, 1988 CanLII 10, where the accused left blood on the seat of a vehicle; *R. v. Arp*, [1995] B.C.J. No. 882 (S.C.), 1995 CanLII 663, where the accused left cigarette butts in an ashtray at the police station; and *R. v. Love*, [1994] A.J. No. 847 (Q.B.), aff'd 1995 ABCA 448, where the accused discarded a used nose tissue in a garbage can, among others.

[49] These cases deal with whether a person has "abandoned" an item and therefore no longer has a reasonable expectation of privacy in it. This is a question of fact: Patrick at para. 25.

[50] Whether a person has abandoned, or discarded, an item is relevant to the larger question of whether, by police conduct in searching or seizing the item, the state has violated a person's right, pursuant to s. 8 of the Charter, to be secure against unreasonable search and seizure.

[51] In Patrick, the accused complained that the police searched his garbage bags without a warrant, finding evidence. He had placed the bags for collection at the edge of his property and next to an alleyway. In that case, the Court found that the police access to the bags was the same as the access afforded to the general public, and Mr. Patrick had no expectation of privacy in the contents. As explained in Patrick:

[20] The concept of abandonment is about whether a presumed subjective privacy interest of the householder in trash put out for collection is one that an independent and informed observer, viewing the matter objectively, would consider reasonable in the totality of the circumstances (Edwards, at para. 45, and Tessling, at para. 19) having regard firstly to the need to balance "societal interests in protecting individual dignity, integrity and autonomy

with effective law enforcement" (R. v. Plant, [1993] 3 S.C.R. 281, at p. 293); secondly, whether an accused has conducted himself in a manner that is inconsistent with the reasonable continued assertion of a privacy interest and, thirdly, the long-term consequences for the due protection of privacy interests in our society.

- [52] It can be seen from the analysis in Patrick that the broader policy factors relevant to determining a reasonable expectation of privacy, in the context of a police search and seizure, include objective reasonableness and society's interest in protecting individual dignity. These factors do not directly translate to the factors relevant to the inquiry into whether a person is in constructive possession of an object.
- [53] The question of whether a person retains a privacy interest in an object is not necessary to determine when considering constructive possession, which focuses instead on whether the person has knowledge and control over the object. I therefore do not find the cases cited by Mr. Farac on the issue of reasonable expectations of privacy to be of assistance.
- [54] Mr. Farac also relies on the cases of R. v. Balak, 2016 ONCJ 44 [Balak], and R. v. Cobby and Moulton, (8 November 2019), Vancouver 250247-2-C (B.C.P.C.) [Cobby and Moulton].
- [55] In Balak, the accused was a hoarder whose tenancy ended, and he was required to move out. He failed to come back for most of his possessions, despite the landlord's request that he do so, only coming back to retrieve his television. The landlord thus placed the rest of his belongings at the exterior of the property where garbage was stored awaiting municipal pick-up.
- [56] A person passing by the piled-up boxes in Balak took one of the boxes home. In the box he found firearms and other objects and so reported it to the police. The accused was interviewed and arrested for unlawful possession of the firearms. At trial several defences were accepted by the judge, including the defence that statements given by the accused were inadmissible, admitting to acquiring the guns 30 years earlier but forgetting that he had them. However, the judge went on to find that had the statements been admitted, he would have found that constructive possession was not made out. This is because the accused had not returned to retrieve the firearms weeks after moving out, had obtained them 30 years earlier and forgotten he had them, and so he lacked the intention to keep the firearms for his own use or benefit.
- [57] Respectfully, the alternative finding of the judge in Balak does not give rise to inferences in this case. In Balak, there was evidence that the accused had moved away from his belongings and not come back for them, and evidence that he had forgotten he even owned the guns, in the context where he had considerable belongings and hoarding tendencies.
- [58] The facts of Balak are not analogous to the facts of the case at bar. Here, there was evidence accepted by the judge that makes it unreasonable to infer that Mr. Farac did not intend to have the gun and ammunition firearms available for his own benefit, namely: evidence that Mr. Farac had purchased the gun relatively recently and was what could be fairly described

as fond of the gun; had not moved out of the home; had made recent threats to shoot up a place; and overheard and reacted to Ms. Guerra's report to the 9-1-1 operator that he had a gun. In light of this evidence, it would belie logic and human experience to infer that when he put the gun and ammunition into garbage containers inside his home, Mr. Farac no longer intended to keep these items for his own benefit.

- [59] The case of Cobby and Moulton involved accused persons seen emerging from a car and moving garbage bags out of it, quickly disposing of the bags in places such as a garbage bin and recycling bin and throwing one over a hedge. Those garbage bags were found to contain marijuana. The issue was whether it was reasonable to infer, as an inference inconsistent with guilt, that the accused did not intend to control the marijuana but instead intended to get rid of it. The judge accepted that was a reasonable inference and so found that the Crown had not proven unlawful possession of the marijuana.
- [60] I also do not find the case of Cobby and Moulton to be analogous to the facts in this case. The evidence that the judge accepted at trial in this case would make it illogical and unreasonable to infer that Mr. Farac put the loaded gun and ammunition in garbage containers inside his house because he no longer intended to control them. To the contrary, the evidence found to be credible established that Mr. Farac wanted the gun, but he learned that police were likely on the way due to Ms. Guerra's 9-1-1 call.
- [61] It would be contrary to logic and human experience and therefore speculation to infer that the appellant's relatively recent desire to own and possess the gun somehow changed for no known reason. It is not reasonable to conclude that Mr. Farac "got rid" of the items well before Ms. Guerra's call to the police, as he now submits on appeal. The only reasonable inference is that Mr. Farac put the items in garbage containers inside his residence, knew they were there, and he remained in control of those containers.
- [62] Despite the able arguments of Mr. Farac's counsel, I do not agree that this appeal raises a novel and important question as to how constructive possession applies to an item in a garbage container inside someone's residence. There is no general proposition that will answer that question in all cases. It will invariably depend on the facts of each case and whether the crucial elements of knowledge and control are established.
- [63] As stated above, the convictions were supported by a considerable amount of evidence that the judge accepted, as I have reviewed above in respect of the first ground of appeal. The evidence accepted by the judge, even when considered in context of any absence of evidence, did not leave open reasonable inferences that were inconsistent with guilt. To borrow from Villaroman, the circumstantial evidence, assessed in light of human experience, excludes the possibility that Mr. Farac abandoned his intention to possess the gun and magazine for his benefit when he placed them in garbage containers that he kept inside his home.
- [64] The second ground of appeal therefore cannot succeed.

Disposition

[65] I would dismiss the appeal.

"The Honourable Justice Griffin"

I AGREE:

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Justice Mayer"

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