

CANADA / JUDGMENT

R. v. Morrison

2010 BCSC 1921

COURT

Supreme Court of British Columbia

DECIDED

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2010 BCSC 1921 R. v. Morrison

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Morrison,

2010 BCSC 1921

Date: 20101203

Docket: 149623-2

Registry: Victoria

Regina

v.

Brian Lynn Morrison

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

(Delivered Orally)

Counsel for the Crown:

L. Baskerville

Counsel for the Accused:

M. Munro

Place and Date of Trial:

Victoria, B.C.

November 29 and 30, 2010

December 1, 2010

Place and Date of Judgment:

Victoria, B.C.

December 3, 2010

[1] THE COURT: The accused, Mr. Morrison, is charged by indictment with two counts as follows:

Count 1

Brian Lynn MORRISON, on or about the 11 day of February, 2010, at or near Victoria, in the Province of British Columbia, did possess a prohibited firearm, a shotgun adapted so that it is less than 660 mm in length, while he was prohibited from doing so by an order under the Criminal Code, contrary to Section 117.01(1) of the Criminal Code.

Count 2

Brian Lynn MORRISON, on or about the 11 day of February, 2010, at or near Victoria, in the Province of British Columbia, did possess an unloaded prohibited firearm, a shotgun, in a place, 2547 Prior Street, with readily accessible ammunition that is capable of being discharged in the firearm, without being the holder of an authorization or a licence under which he may possess the prohibited firearm in that place and a registration certificate for the firearm, contrary to Section 95(1) of the Criminal Code.

- [2] On February 11, 2010, members of the Victoria Police Department executed a search warrant at residential premises at 2547 Prior Street, Victoria, B.C. The procedure used by the police was called a "contain and callout" and then a search. They first contained the residence, then using loud speakers, called the occupants outside, then the police entered the residence. The "contain and callout" operation could colloquially be called a raid.
- [3] Four residents exited the residence on the call out. When the police entered the residence, it was unoccupied. The police forced open the locked door to a bedroom, which I will call Bedroom Number 1, on the main floor of the residence, using a battering ram device. Inside the bedroom they discovered a sawed-off shotgun, leaning against a wall next to the bed. They also found one shotgun shell which was tucked into an electrician's tool belt.
- [4] The Crown alleges that Bedroom Number 1 was occupied by Mr. Morrison. The Crown alleges that he was in possession of the shotgun, a prohibited firearm, and the ammunition, and therefore he is guilty of the charges set out above.

- [5] Mr. Morrison contends that the Crown has not proven the offences charged beyond a reasonable doubt. He contends that he was not in possession of the shotgun and ammunition, or at least there are grounds for reasonable doubt as to the essential elements of the offences.

Factual Overview

- [6] At approximately 11:00 a.m. on February 11, 2010, members of the Victoria Police Force set up surveillance at the residence. At 2:45 p.m., Mr. Morrison was observed leaving the residence. He went to a pawn shop in downtown Victoria where he pawned some personal belongings. Soon after pawning the items, he was arrested by the Victoria Police. Upon his arrest, a key was found in his personal possession. The key was later found to fit the deadbolt lock to Bedroom Number 1 at the residence, and no other door at the residence.
- [7] After Mr. Morrison was in custody, the police executed the raid at the residence, where they found the shotgun and shell in Bedroom Number 1.
- [8] The shotgun is a prohibited firearm, as defined by the Criminal Code of Canada. It was an operable weapon. The ammunition found in the search was capable of being discharged by the shotgun and was readily accessible within the meaning of s. 95(1) of the Code and Count 2.
- [9] Upon analysis of the firearm, DNA belonging to Mr. Morrison was found on the weapon. At the time of the police search, Mr. Morrison was prohibited from possessing firearms by virtue of a court order. He was not the holder of an authorization, licence, or registration certificate under which he had permission to possess the prohibited firearm.
- [10] At the material time, the Prior Street residence was being operated as a rooming house. The owner, Mr. Marson, testified that the rooms in the residence were available for rent. The residence is a split level design with the main entrance on the main floor, on the western side of the house. There is another bedroom on the second floor of the house, which I will call Bedroom Number 2, on the same floor where the kitchen is found. There is another bedroom on the third floor. There is also a basement suite. Bedroom Number 1, on the main floor, is near the front door of the residence, and is adjacent to a living room area.
- [11] Mr. Marson testified that Mr. Morrison paid rent for two months, January and February 2010. According to Mr. Marson, during January, Mr. Morrison and his girlfriend, Catherine Pocetti, occupied Bedroom Number 2. Before February 1, Mr. Marson's son was occupying Bedroom Number 1. As of February 1, 2010, the bedroom was cleared out, except for the furniture which remained for the use of Mr. Morrison and his girlfriend.

- [12] Mr. Marson testified that about a week prior to the police raid on February 11, there was a significant "ruckus" in the house. It occurred at about 1:00 a.m. The ruckus involved Catherine Pocetti and other residents or visitors to the house, the result of which was that Ms. Pocetti broke open the door to Bedroom Number 1, damaging the lockset for the room. After that occurrence, which took place on or about February 4, 2010, the door to Bedroom Number 1 could only be locked by use of a special "skeleton" key that Mr. Marson possessed.
- [13] On two or three occasions prior to February 11, 2010, Mr. Morrison requested that Mr. Marson lock the door using the skeleton key.
- [14] Mr. Marson testified that Mr. Morrison asked him to replace the lock on the door to Bedroom Number 1, but it took him a few days to find the time to do it. On February 10, 2010, he replaced the lock on the bedroom door, by taking the lock from the door to Bedroom Number 2, and putting that lock, a deadbolt, on the door to Bedroom Number 1. Mr. Morrison already had a functioning key to the deadbolt lock. This is the key that was found in Mr. Morrison's possession when he was arrested on February 11, 2010. Ms. Pocetti also had a key to the same lock.
- [15] Mr. Morrison testified that he moved into the Prior Street residence in November 2009. He rented Bedroom Number 2 on the upper floor.
- [16] He described a "major fight" in the house on or about February 4, 2010, involving him and Ms. Pocetti. He testified that he had not yet moved into Bedroom Number 1 as of the night of the fight, but after the fight he made arrangements with Mr. Marson to move into that room.
- [17] According to Mr. Morrison, Bedroom Number 1 was used generally by residents or visitors to the house as a place to do drugs. The house, generally, was what he described as a "drug house" or a "party house", where people were coming and going at all hours of the day and night, every day of the week.
- [18] Mr. Morrison testified that on the night of the fight with Ms. Pocetti, he was in Bedroom Number 1 with some female guests. They were using cocaine.
- [19] Ms. Pocetti testified that she awoke in Bedroom Number 2, went downstairs, and heard Mr. Morrison's voice and the voices of several females emanating from Bedroom Number 1. She became angry, started yelling, and broke in the door, damaging the lock.
- [20] Mr. Morrison says he spoke to Mr. Marson about moving into Bedroom Number 1 only after the fight incident. At that time he suggested that Mr. Marson should move the deadbolt from Bedroom Number 2 to put it on Bedroom Number 1. Mr. Morrison testified that Ms. Pocetti told him that the relationship was over. He testified that he was depressed, and that he stayed with a friend at a motel for three or four days prior to February 11, 2010. Between the 3rd or 4th of February and the 7th or 8th, he moved some of his belongings into Bedroom Number 1.

- [21] Mr. Morrison testified that he did not return to the residence until sometime after noon on February the 11. He needed money. He returned to the residence in order to obtain some belongings from Bedroom Number 1 to pawn them. He requested the assistance of a friend, Ms. Cari Lees, in order to pawn the goods, as proper identification would be required to pawn the goods, and he did not have the required identification. Ms. Lees had the required identification and agreed to assist.
- [22] Mr. Morrison testified that when he returned to the residence on February 11, Ms. Lees was waiting for him there. He and Ms. Lees entered Bedroom Number 1, the door to which was unlocked. He found an item on top of the bed, rolled up in cloth. He picked it up and unwrapped it, and he discovered that the item was a shotgun. He testified that it looked old or antique to him. He opened the shotgun and removed a shell. He was not sure if the shotgun was operable or not. He testified he was not sure whether it was real or imitation. He put the shotgun shell in a tool pouch, closed up the gun, and placed it on the floor, leaning up against the wall.
- [23] He removed a battery charger, an impact wrench set, and a yard trimmer from the room in order to pawn them. He and Ms. Lees got a ride to the pawn shop from Mrs. Marson. Shortly after pawning the goods, he was arrested.
- [24] He testified that he thought it was important to lock the door to Bedroom Number 1, as there were unsavoury people in the house on a regular basis. He described it as essentially a crack house. He had not made any decision as to what to do with the gun. He was focused on getting to the pawn shop in order to get money, as people were waiting to get paid.
- [25] Ms. Pocetti testified that Mr. Morrison was residing with her in Bedroom Number 2 until February 9, 2010, when she left the home, permanently. They had not been getting along even before the fight. She testified that Mr. Morrison did not, to her knowledge, ever own a shotgun and she had never seen him in possession of one. Subsequent to Mr. Morrison's incarceration for several weeks after February 11, their relationship resumed. They remain common-law spouses.
- [26] The evidence as to the dates when Mr. Morrison was away from the Prior Street residence is somewhat vague and inconsistent. As noted, Mr. Marson testified that Mr. Morrison was gone for a "couple of days" prior to February 11. As noted, Mr. Morrison testified that he was gone for three or four days prior to February 11. Ms. Pocetti testified that Mr. Morrison was gone from February 4 to 9. There are no records establishing any dates relating to Mr. Morrison's residency prior to his arrest on February 11.

- [27] Ms. Cari Lees testified that she agreed to meet Mr. Morrison at the residence on February 11. He asked her to help him pawn some merchandise. She was familiar with the residence. She had been there many times in the months prior to February 11. She described Bedroom Number 1 as the "office" and said that it was not used as anyone's bedroom on any kind of continuous basis. It was used for drugs or for encounters with prostitutes. No other witness made any reference to using the room for prostitution.
- [28] She generally confirmed Mr. Morrison's evidence concerning the events of February 11. She said that Mr. Morrison unwrapped the gun in her presence. They took the items to be pawned from Bedroom Number 1 and departed for the pawn shop.

Analysis

- [29] The central issue in the case is whether the Crown has proven beyond a reasonable doubt that the accused possessed the firearm and ammunition as required for conviction on the charges set out in the indictment.
- [30] Possession is defined in s. 4(3) of the Criminal Code 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.
- [31] In *R. v. Fisher*, 2005 BCCA 444, Madam Justice Smith for the court, after referring to s. 4(3) of the Code, commented as follows:
- [20] Thus, possession may be personal, constructive, or joint. In a frequently-quoted passage in *Rex v. Hess* (No. 1) (1948), 94 C.C.C. 48, 8 C.R. 42 [cited to C.C.C.] at 50-51 (B.C.C.A.), a case involving personal possession of a narcotic, O'Halloran J.A. said,

To constitute "possession" within the meaning of the criminal law it is my judgment, that where as here there is manual handling of a thing, it must be co-existent with knowledge of what the thing is, and both these elements must be co-existent with some act of control (outside public duty). When those three elements exist together, I think it must be conceded that under s. 4(1)(d) it does not then matter if the thing is retained for an innocent purpose.

This was said to be a correct statement of the law in *Beaver v. The Queen*, [1957] S.C.R. 531 . . .

- [32] To the same effect, in *R. v. Anderson*, (1995), 67 B.C.A.C. 311, Madam Justice Rowles for the court stated as follows:
- [12] On a charge of possession for the purpose of trafficking, the prosecution must establish the commission, by the accused, of the completed offence of possession. The Narcotics Control Act incorporates the definition of possession found in s.4(3) of the Criminal Code.
- [13] To establish possession, the Crown must prove both knowledge and control, and that the two have co-existed at some point in time.
- [14] Possession may be divided into several categories: personal or actual, constructive possession and joint possession. To establish any of these forms of possession, the Crown must prove that the accused had knowledge of the existence of the substance in question, and of its nature. The classic statement in that regard is to be found in *Beaver v. The Queen*, [1957] S.C.R. 531 at 541.

The essence of the crime is the possession of the forbidden substance and in a criminal case there is in law no possession without knowledge of the character of the forbidden substance.

- [15] Knowledge need not be proved by direct evidence but may be inferred from surrounding circumstances. In this case there was no direct evidence of knowledge.
- [16] Knowledge, being a state of mind, may be found to exist in the same way as intent, by proper inferences from facts proved.
- [33] In this case, the Crown argues that Mr. Morrison had personal possession, within the meaning of s. 4(3)(a) of the Code, in that he, on his own evidence, handled the weapon, knew what it was, and was also in control of the weapon. The Crown further argues that if there was any doubt about whether Mr. Morrison was in personal possession of the weapon, then he was in actual, constructive possession of it, in that he had it in a place, namely Bedroom Number 1, for his use and benefit.
- [34] The defence argues that I should accept Mr. Morrison's evidence that he did not place the shotgun in the bedroom, and that he only discovered it when he briefly returned on February 11 in order to retrieve some of his possessions for the purpose of pawning them. The defence argues that someone else placed the gun in the room. It is suggested that the gun may have belonged to another resident of the house, Mr. Henry Seymour, a long-time resident of the Prior Street house, who died on February 20, 2010, just a few days after the police search. It is argued that I should accept Mr. Morrison's testimony that he did not know whether the gun was operable or not, but took the precaution of removing the ammunition, and the further precaution of locking the weapon inside the bedroom in order to protect others from harm, and that he had made no decision as to what to do with the gun, because he was in a rush to pawn his goods.

- [35] The defence argues that in accordance with the principles set out in the decision of the Supreme Court of Canada in *R. v. W.(D.)*, and the recent decision of the Court of Appeal in *R. v. Thiara*, if I accept Mr. Morrison's evidence, he should be acquitted. Alternatively, if I do not accept his evidence, but I am left in a reasonable doubt about it, I should acquit. Thirdly, even if I am not in doubt by the evidence of Mr. Morrison, I must ask myself whether, on the basis of the evidence which I do accept, I am convinced, beyond a reasonable doubt, by that evidence of the guilt of the accused.
- [36] The defence argues that Mr. Morrison did not have possession as a matter of law, as he had no intention to exercise control over the weapon. The defence relies upon the decision of the New Brunswick Court of Appeal in *R. v. Christie*, (1978), 41 C.C.C. (2d) 282. In that case, the accused was charged with being in possession of marijuana for the purpose of trafficking. She was a 39-year-old mother of two. She was involved in a motor vehicle accident. She was the only occupant of the car. The police attended the accident. When they opened the trunk, they found cash and six bags of marijuana. The accused testified that prior to the accident, she had loaned her car to her friend's daughter. Just prior to the accident she had opened her trunk and she had noticed a brown bag in the trunk. As soon as she realized the brown bag contained marijuana, she slammed the trunk closed. She feared her children were involved with the drugs. She drove to her home for purposes of contacting her children or other friends in order to obtain counsel.
- [37] She testified that she was in a state of panic and feared drug involvement by her children. The trial judge acquitted her on the basis that she had not consented to the possession of the drug. *Hughes C.J.N.B.*, for the court stated as follows:

In my opinion there can be circumstances which do not constitute possession even where there is a right of control with knowledge of the presence and character of the thing alleged to be possessed, where guilt should not be inferred, as [here] where it appears there is no intent to exercise control over it. An example of this situation is where a person finds a package on his doorstep and upon opening it discovers . . . narcotics. Assuming he does nothing further to indicate an intention to exercise control over it, he ha[d] not, in my opinion, the possession contemplated by the Criminal Code. Nor do I think such a person who manually handles it for the sole purpose of destroying or reporting it to the police has committed the offence of possession. In the instant case the accused contended, under oath, that she was panic stricken and did not know what she should do when she found the narcotic in the trunk of her car, and that she drove around the City for about an hour before the accident in an attempt to find some of her friends from whom she might obtain advice as to what she should do with it. While the evidence is extremely suspicious, I cannot say that the learned trial Judge erred in failing to convict the accused if he had a reasonable doubt as to whether she intended to exercise dominion or control over the narcotic.

- [38] Similarly, in the case before me, the defence argues that I should have a reasonable doubt as to whether Mr. Morrison intended to exercise control over the gun with attendant ammunition. In assessing that question, I must review the evidence in more detail.

Evidence Relating To Bedroom Number 1

- [39] The accused testified, somewhat vaguely, that he had not physically occupied Bedroom Number 1 prior to February 11, in the sense of sleeping there. However, he acknowledged that he had, as a minimum, begun moving his belongings into the room and he intended to occupy the room after the fight or argument with Ms. Pocetti on or about February 4.
- [40] There is evidence that Bedroom Number 1 had been used by other residents as a form of common room, often for the purpose of narcotics. The owner, Mr. Marson, acknowledged that in his evidence. Mr. Morrison and Ms. Pocetti said that the room had been used for that purpose. Ms. Lees went further and said it was also used for prostitution. At the time of the police search, there were various items of drug paraphernalia in the room. The room was extremely messy, unlike most of the rest of the house.
- [41] However, I accept the evidence of Mr. Marson and Mr. Morrison that sometime around the beginning of February, and in any event no later than February 4, Mr. Morrison had agreed with Mr. Marson to rent Bedroom Number 1 and give up Bedroom Number 2.
- [42] There is a significant body of evidence linking Mr. Morrison to Bedroom Number 1. The police seized a large manila envelope from Bedroom Number 1 labelled "Brian's sentimental correspondence". It contained many documents personal to Mr. Morrison, consisting primarily of personal documents such as romantic correspondence, and correspondence with friends and relatives. The envelope also contained some financial documentation. The envelope and documents were found in an unsecured cabinet in the bedroom.
- [43] In *R. v. Emes*, 2001 CarswellOnt 2279, 157 C.C.C. (3d) 124, the Ontario Court of Appeal approved of the following comments of the trial judge, Hill J., concerning a proper inference to be drawn from the fact that personal papers are kept by a person in a location. There, Hill J. stated:

Personal papers are, as a general rule, maintained in a location to which a person has access and control. When documents such as income tax forms, invoices, cancelled cheques, leases, insurance papers and the like are located in a residential premise it is surely a fair inference that the person identified in the documents is an occupant with a significant measure of control. This is a matter of logic and common sense. While the existence of the papers at the location in question could be as a result of the documents being stolen, or simply stored there, or abandoned, such explanations do not, in my view, accord with the factual probabilities of the circumstances here.

- [44] Mr. Morrison had decorated the room to some extent. The police found three photographs of the accused pinned or affixed to the wall. There was a rock band silkscreen flag belonging to him which was displayed in the room, as well as an ornamental human skull belonging to a friend of his.
- [45] Mr. Morrison acknowledged putting his correspondence into the room. He acknowledged that the tools and other merchandise that he pawned on February 11 were in the room. It is obvious that the tools that were pawned were, to Mr. Morrison's knowledge, of some significant value, as on his evidence he went to the house to retrieve the tools for the purpose of pawning them in order to get some money, quickly.
- [46] The uncontradicted evidence of Mr. Marson was that, although the lock to the door was generally inoperative for several days prior to February 10th when he replaced it with the lock from Bedroom Number 2, Mr. Morrison had requested that Mr. Marson lock the door to Bedroom Number 1 using the skeleton key on two or three occasions, prior to the lock being changed on February 10.
- [47] Most significantly, however, Mr. Morrison had a key to Bedroom Number 1. The key operated no other locks in the house. On his evidence, he had the key in his possession when he returned to the house on February 11, as he was able to lock the door behind him. He retained the key in his possession.
- [48] I conclude, on all of the evidence, that Mr. Morrison was, in general terms, the occupant of Bedroom Number 1 when the police raided the residence and found the shotgun and ammunition in Bedroom Number 1 on February 11. He had placed valuable and important belongings in the room. He had decorated the room and had exercised rights of exclusive possession to the room.
- [49] This conclusion is unaffected by the fact that Mr. Morrison was absent for some of the time prior to February 11. In that respect, on all of the evidence, I view Mr. Marson's reference to a "couple of days" as being the most likely estimate of the length of Mr. Morrison's absence from the house.

Analysis of Possession

- [50] Mr. Morrison argues that the shotgun was not his and was not placed by him in the bedroom. He argues that the shotgun may have been owned by Henry Seymour, a long-time resident of the Prior Street house. Mr. Seymour died on February 20, just nine days after the police raid.
- [51] There is no admissible evidence that Mr. Seymour owned the shotgun. There is no evidence as to who, if not Mr. Morrison, had put the weapon in the bedroom.

- [52] Mr. Marson testified that he had heard stories that Mr. Seymour had a shotgun, but he had never seen it. The defence argues, as well, that Mr. Seymour had been bringing personal possessions into the home during the early February period, as he had been storing these possessions in a storage unit that was no longer available. The suggestion on the part of Mr. Morrison is that perhaps Mr. Seymour, or someone else, placed the loaded weapon on the bed in the bedroom, prior to Mr. Morrison's arrival and discovery of it on February 11.
- [53] In this case, there is no question that, on the evidence of Mr. Morrison and Ms. Lees, and the DNA evidence, he handled the weapon. Although he says he was not aware as to whether it operated or not, that he thought it was old or antique, he knew it was a weapon, and was concerned enough about the possibility that it would be operable that he removed the ammunition and, he says, secured it in the room in order to protect against harm. There is no objective basis for an honest belief on the part of Mr. Morrison that the weapon was an imitation or was possibly inoperative.
- [54] I am satisfied on the evidence that the Crown has proved beyond a reasonable doubt that Mr. Morrison had knowledge of the nature and character of the weapon, as a genuine firearm, and that it was not an imitation weapon. He was familiar enough with the weapon to open it and remove the shell. He was concerned about safety.
- [55] I am also satisfied beyond a reasonable doubt that Mr. Morrison had control over the weapon and ammunition. On his evidence, he locked the weapon in a room which, at the material time, he occupied. The evidence of Mr. Morrison does not leave me in a reasonable doubt about whether Mr. Morrison exercised control over the weapon or whether he intended to exercise control over it.
- [56] I return to the decision in *R. v. Christie*. There, Hughes C.J.N.B. stated:
- An example of this situation is where a person finds a package on his doorstep and upon opening it discovers it contains narcotics. Assuming he does nothing further to indicate an intention to exercise control over it, he ha[d] not, in my opinion, the possession contemplated by the Criminal Code. Nor do I think such a person who manually handles it for the sole purpose of destroying [it] or reporting it to the police has committed the offence of possession.
- [57] In this case, however, Mr. Morrison made a conscious decision to leave the weapon in his locked room, to which he had, by that point in time, acquired exclusive rights of access. On the evidence, Ms. Pocetti also had a key to the room, but she was no longer residing there on February 11. Mr. Marson had a key as well, but he testified that he would not enter the room without permission. He did not enter the room when Mr. Morrison was not present.
- [58] There is no doubt that the door was locked when the police raided the residence. They used a battering ram to enter the room, and the ensuing damage to the door was consistent only with the deadbolt being engaged when it was rammed.

[59] In *R. v. Vu*, 2002 BCCA 659, the appellant was convicted of possession of marijuana for the purpose of trafficking. The police found a marijuana grow operation in a barn on a rural property in Langley. While they were executing the search warrant, the appellant arrived. He was arrested. Upon the search, the police found a key in his possession which opened a padlock, which was the only lock securing the barn that contained the marijuana grow operation. The appellant testified that a week before the arrest he had met a man at a nightclub who had given him a key and had told him to go to the location of the grow op, in order to take part in some work cleaning up the site. He testified that when he arrived at the property, he got out of the car with the key in his hand and was arrested. He did not know anything about the marijuana in the barn.

[60] At paragraph 17 of its decision, Madam Justice Rowles for the court stated as follows:

In order to prove possession the Crown was required to prove that the appellant had knowledge and some measure of control over the marihuana. In relation to the charge of possession for the purposes of trafficking, the trial judge concluded that the Crown had proven the constituent elements of possession beyond a reasonable doubt:

In order to prove possession the Crown must prove knowledge of the existence of the grow op in the barn on the part of the accused and some measure of control over the drugs on the part of the accused. I find that the accused's possession of the key to the lock on the door to the grow op is proof of control over the drugs inside. Even though the accused was not found inside the building, possession of the key proves control. In fact, possession of the key is, in my opinion, a stronger indicator of control than mere presence in a building. A locked door and the key to that door is the very essence of control.

[61] In relation to that, the Court of Appeal stated:

Whether an inference as to knowledge and control can be drawn by a trier of fact is a matter to be examined in light of the particular facts and circumstances of each case. In the circumstances of this case, the appellant's possession of the key to the only lock on the barn where the growing operation was located is sufficient evidence to support the inference of control.

[62] Similarly, in the case at bar, when Mr. Morrison left the premises on February 11, he had secured the weapon in his room. He had been in actual possession of the weapon previously when he handled it, and following his departure, he remained in constructive possession of it, in that it was in his room for his use and benefit.

[63] Mr. Morrison did not testify that he had any intention of removing the gun from his possession. He certainly took no concrete steps to do anything in order to get rid of the weapon. He did not report it to the police or to any other authorities. On his own evidence, he made no decision as to what to do with the gun, but on that evidence, he could have decided to keep it or he could have decided not to keep it. The choice was his.

- [64] In the circumstances, I conclude that he continued to have possession and control of the weapon and ammunition prior to their seizure by the police. On that basis, I would convict Mr. Morrison, even if I accept his evidence. However, I do not accept his evidence.
- [65] It is very difficult to accept that someone would place a loaded weapon on top of the bed in an unlocked bedroom in a house that was, by some descriptions, a crack house. On the evidence, many people came and went to and from the house on a regular basis. In this respect, I do not accept the evidence of Mr. Morrison and that of Ms. Lees that the loaded weapon was simply found on the bed. Moreover, no part of Mr. Morrison's evidence leaves me in a reasonable doubt as to his guilt, nor do I have a reasonable doubt about the guilt of Mr. Morrison on the basis of all of the evidence.
- [66] I therefore find him guilty of the charges set out in Counts 1 and 2 of the indictment.
- [67] The defence also argued that the de minimis principle applies to the question of possession. I view that as a variation of the defence contention that the Crown has not established the requisite mens rea for possession. I therefore reject that argument for the reasons I have already given.

"Verhoeven J."

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