

CANADA / JUDGMENT

R. v. Robertson

2024 BCSC 1912

COURT

Supreme Court of British Columbia

DECIDED

10 May 2024

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

2024 BCSC 1912 R. v. Robertson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Robertson,

2024 BCSC 1912

Date: 20240510

Docket: 97395-2

Registry: Kelowna

Rex

v.

Melanie Marie Robertson

Before: The Honourable Justice M. Fleming

Oral Reasons for Judgment

Counsel for the Crown:

J.R. Bird

Counsel for the Accused:

E. Holzman

M.E. Heathman

Place and Dates of Trial:

Kelowna, B.C.

May 6-9, 2024

Place and Date of Judgment:

Kelowna, B.C.

May 10, 2024

- [1] THE COURT: In a four-count indictment, Melanie Robertson is charged with fraud and theft from EasyCash Inc. and 59 of its customers between July 1, 2018, and December 31, 2019. At the trial, the Crown alleged the offences occurred between January 3 and October 30, 2019.
- [2] EasyCash was a payday loan company that provided short-term loans, with stores in Kamloops and Kelowna. The Kamloops store stopped lending and ceased operations in June 2019. The Kelowna store did the same on October 30, 2019. Ms. Robertson was employed by EasyCash at the Kelowna store from July 2018 until sometime in December 2019. She was the manager and, the Crown alleges, the only employee of the Kelowna store after September 6, 2019. She stayed on after October 30, 2019, to assist EasyCash with collecting on outstanding loans.
- [3] EasyCash used a software program called Ecash to operate its payday loan business. The Crown alleges that through the Ecash system, Ms. Robertson created fake, fraudulent short-term cash loans between January 3 and October 30, 2019, in the names of 59 EasyCash customers, taking the cash for herself in the total amount of \$35,289.96. To conceal what she had done, the Crown also alleges, Ms. Robertson created subsequent loans in the names of the same various customers in a higher amount. She used those loans to pay off the existing loan and the interest on the due date and pocketed the difference. In order to issue subsequent loans in higher amounts, Ms. Robertson increased the customer's reported income in the Ecash system, which in turn increased the amount they were entitled to borrow.
- [4] The Crown's evidence includes the testimony of the investigating officer, RCMP Constable Ann Donnelly; the former owners of EasyCash, Daljit Sadhra and Jason Kreut; Mr. Kreut's wife, Allison Kreut; the former manager of the Kamloops store, Nicole Taylor; and a former employee of the Kelowna store, Jennifer Debow. In addition, the Crown relies on various records from the EasyCash system regarding the 59 customer or client files and "cash advance daily activity reports," from June 15 to December 30, 2019, demonstrative evidence prepared by Constable Donnelly based on these same records, some other EasyCash records, other documents and admissions.

- [5] A central feature of the Crown's theory that the fraudulent cash loans went undetected and Ms. Robertson took the cash provided for by the loans is that the EasyCash system balanced every day, meaning the missing money was balanced by the outstanding loans. However, records from the EasyCash system regarding the daily cash balance are not in evidence. Instead, some of the Crown witnesses testified about what those records showed or would have showed.
- [6] The defence position is that none of the alleged offences have been proven beyond a reasonable doubt, arguing the testimony of the EasyCash owners and Ms. Taylor is not credible, and the evidence as a whole and the lack of evidence gave rise to reasonable inferences other than the guilt of Ms. Robertson.

Overview

- [7] Mr. Kreut and Mr. Sadhra established EasyCash after they met while working at the TD Bank. Mr. Kreut testified that he and Mr. Sadhra's mother, not Mr. Sadhra, were the original shareholders because the bank viewed it as a conflict of interest to work in the payday loan industry. Mr. Sadhra, who testified before Mr. Kreut, did not mention this circumstance.
- [8] Turnover of staff at EasyCash was high. Ms. Taylor worked for EasyCash from the beginning. In addition to managing the Kamloops store, she helped oversee the Kelowna store. The Kamloops store stopped lending, as I have indicated, in June 2019 when Ms. Taylor left EasyCash to move to Alberta where she continues to work in the short-term loan industry.
- [9] Mr. Kreut described the Ecash system as cloud-based and a template system from EasyCash in Louisiana. He referred to the Ecash system as generic other than some restrictions or constraints in the system that he and Ms. Taylor set up.
- [10] An active username and password were required to access the Ecash system. Different users had different levels of access. Each employee and owner had a unique username or login and their own password.
- [11] In cross-examination, Mr. Kreut acknowledged he may have had more than one username, although he could only recall one for sure. In cross-examination, Ms. Taylor acknowledged having multiple logins. She also said she created her own password and did not recall any requirement to ever change it.
- [12] In direct examination, Mr. Kreut and Mr. Sadhra denied that usernames or passwords were ever shared, indicating people were not supposed to. But in cross-examination, Ms. Taylor said, at times, she would share hers with the owners if she was at home and they were not able to do something on the system, and then she would change it right away.
- [13] In direct examination, Ms. Taylor said she had no further dealings with EasyCash after she left in June 2019. When she was asked whether she helped out over the Internet or by phone after leaving, she said she may have fielded a quick question by phone, but she had no access to the computer system. Cross-examination showed that she did. Presented with a

text message exchange that included a screenshot of an Ecash document showing one of Ms. Taylor's logins and her password, she said she was able to recall what the messages show: Ms. Robertson asked her to help with "clearing the deposit hold". In response, Ms. Taylor asked Ms. Robertson to reset her login password using one of Ms. Taylor's logins. Ms. Taylor testified, at that point, that she had totally forgotten she had access to help them, meaning EasyCash, for a few weeks.

- [14] After denying that he could access passwords in the Ecash system based on the same Ecash document, Mr. Kreut agreed he could and had misspoken. The same exchange made it clear that even Ms. Robertson had access to usernames and passwords and Ms. Taylor had continued access to the Ecash system for some period of time.
- [15] Ms. Taylor acknowledged having more access to the Ecash system than Ms. Robertson before she left in June 2019 and an active user could access the Ecash system from any computer with Internet. Ms. Taylor also acknowledged that when an employee left EasyCash, their login may not have been immediately deactivated, although she denied this occurred frequently. Certainly her text message exchange with Ms. Robertson on September 7, 2019, shows that she still had some access despite apparently ending her employment in June 2019.
- [16] Mr. Kreut recalled having no limits on his access to the Ecash system as the system administrator. He identified himself as the only person who could make retroactive changes to the information in the system.
- [17] Unsure of his level of access, Mr. Sadhra said he did not recall an Ecash software document showing user information and passwords or having access to user screens for employees.
- [18] The Kelowna store was equipped with several CCTV cameras that monitored the front counter where employees and their computers were located, the safe, and the back door, as well as the lobby and perhaps other areas. The owners and Ms. Taylor had access to the video footage through their phones. Ms. Taylor testified the owners also had access through monitors, but she did not. Mr. Kreut testified to having access only up to a point on his phone, indicating he lost it and never tried to get it back and he is certain he did not try to access the footage from his computer.
- [19] Although Constable Donnelly requested the daily activity reports from prior to June 15, 2019, in an email in August 2020, the alleged fraudulent loans dated back to January 3, 2019, and Mr. Kreut's testimony he was acting under the direction of the RCMP, he did not provide her with those reports. Mr. Kreut indicated there would have been a subsequent conversation. He also said EasyCash had stopped its subscription with Ecash at some point. Asked to agree Constable Donnelly had also asked them not to cancel that subscription, Mr. Kreut said he did not recall, but that would make sense.
- [20] Regarding the Ecash records showing the cash balance in the system, Mr. Sadhra acknowledged not verifying this every day.

- [21] Asked whether he looked at the Ecash system every evening to verify the cash balance, Mr. Kreut said that was Mr. Sadhra's job. He also testified the cash balance was shown in the closing daily reports generated by the Ecash system which were emailed from the store each day. He did not provide those reports to police, he stated, because they were not requested. Indicating his email was eventually cancelled, Mr. Kreut acknowledged he had physical copies of the reports in his office and the Ecash system could have been reactivated.
- [22] The Crown's documents include close to 100 pages of forms that counsel and witnesses referred to as "cash sheets", but are titled "safe drawer balance form". Their purpose was to record the actual cash in the store on specific dates and at specific times and the system balance, meaning a cash balance according to the Ecash system. The form itself distinguishes between cash in the drawer and cash in the safe. There are columns and rows for the number of coins and bills and their amounts and totals. The form does not ask for the name of the person completing it. The first form in evidence is dated March 28 and the last November 13. The year is not indicated. Many of the forms show the initials "JD" or the name "Mel".
- [23] All of the witnesses identified the cash sheets as wholly unreliable because they often were not dated, did not show the time, were not signed, were based on a manual cash count, and could easily be falsified to reflect the Ecash system balance to conceal the fraudulent scheme.
- [24] Ms. Taylor acknowledged that Ms. Robertson complained to her about cash not balancing in the Ecash system and it not being clear why. Emphasizing it was their job to figure out why, Ms. Taylor could not recall whether the problem turned out to be the system or processing through the bank.
- [25] The Crown relies on Ecash timesheets for Jennifer Debow that show she worked some days from July 22, 2019 to September 6, 2019. Other documents show her working prior to that. Ms. Debow testified that she could have started with EasyCash in early February 2019 and she stopped working in or about the September date, which is not disputed and I accept.
- [26] Other than her being the only employee at the Kelowna store from September 7, 2019 onward, there is no direct evidence showing Ms. Robertson was actually in the store on the days when each of the alleged fraudulent loans was created. Mr. Kreut was in charge of payroll. He testified that Ms. Robertson was on salary so timesheets were not required, but he acknowledged there was a need to keep track of her holiday days and sick days or personal days. There are no such records in evidence.
- [27] EasyCash required customers to complete a written loan agreement in hard copy before a loan would issue. The contract was then scanned and uploaded to the Ecash system. This was also the policy for subsequent or rollover loans, that is, when a customer would take out another loan to pay off an existing loan.

- [28] Based on her review of the Ecash system records in evidence, Constable Donnelly created a chart that identifies all of the customers associated with the alleged fraudulent loans, the gross amount of the loans in their name, and the net debt. She also created charts in the name of each customer that sets out the specifics of the alleged fraudulent loans including the dates and alleged loan amounts as well as the amounts allegedly received and owed including interest.
- [29] Ms. Robertson admits Constable Donnelly's charts accurately reflect the amounts owing on the client accounts for each customer based on the Ecash system records in evidence, all of which were admitted by consent as business records pursuant to the common law exception.
- [30] Along with denying her own involvement, Ms. Robertson also admits the customers had some previous loans with EasyCash, but no involvement in or knowledge of the alleged fraudulent loans.
- [31] All of the alleged fraudulent loans were highlighted by Ms. Kreut in the individual client account records, Exhibit 5, under "Outstanding Advances" and "Previous Advances." Those parts of each record identify the loan number, the original date, due date, status, status date, original amount, and balance, but not who issued the loan. On the following pages, however, Ms. Robertson is identified as increasing the maximum loan amount and recording increases in pay amounts and preceding pay dates on dates that match when the loans were issued. The client account records include an additional page titled "Documents" where written contracts are identified along with other documents. There are no contracts identified for the alleged fraudulent loans.
- [32] Exhibit 6, or the ledger book, contains the cash advance daily activity records from, as I have indicated, June 15 to December 30, 2019. Under the heading, "Advance", they show the customer name, the store location by code, the loan number, the principal and fee amount of the loan, the original date, due date, and other details and the employee name. These records show all of the alleged fraudulent loans being issued from the Kelowna store by Ms. Robertson under the heading "Buy Back", which purportedly records money coming back to EasyCash and disbursed to customers. The cash advance daily activity records record all of the impugned transactions, that is, the customers receiving loan proceeds and paying back amounts owed to EasyCash as cash.
- [33] Almost all of EasyCash's loans, however, were issued and repaid in cash which involved customers coming into the store. Mr. Kreut, along with one other person, had to authorize a loan by e-Transfer.
- [34] For many of the customers, the alleged fraudulent loans ultimately resulted in money owing to EasyCash. In other words, the amount of the subsequent fraudulent loan was not enough to cover the balance owing, resulting in an amount being owed rather than an amount being received when the subsequent loan was issued.

- [35] The Crown alleges these amounts would have been repaid to keep the system balanced, although other fraudulent loans issued on the same dates that resulted in a net payment may have actually offset the requirement for cash.
- [36] The Crown relies on an email from Ms. Robertson to both owners dated October 18, 2019. There she stated that she is feeling stressed in part due to financial pressures including a \$7,000 plumbing issue. In that same email, she also asked the owners to delay hiring another employee because she is too busy at the store to train her.
- [37] As the defence points out, in the month of October 2019, about \$2,225 in cash was owed to EasyCash and would have been paid.
- [38] Among the documents new customers completed was an authorization for EasyCash to auto-debit their bank account for non-payment.
- [39] Through the Ecash system, Mr. Kreut and Mr. Sadhra had access to reports that included reports about what loans were outstanding and whose loans were overdue, as well as what information had been changed on the system and the daily cash balance. Mr. Sadhra testified, "[w]e would see it on the screen if a loan was overdue." Asked to indicate when he would have noticed an outstanding loan, in cross-examination, he indicated a month or less than two months for certain. Mr. Kreut gave similar evidence.
- [40] However, both were taken to loans not alleged to be fraudulent that were outstanding for much longer than 60 days. Mr. Kreut emphasized it was Ms. Robertson's responsibility to follow up on outstanding loans. The usual process involved calling references and/or an employer on file and then to auto-debit their account. Auto-debiting required an auto-debit function on the Ecash system to be clicked or turned on. Ms. Kreut then dealt with the process of auto-debiting through the bank.
- [41] Mr. Kreut also said he would contact Ms. Robertson about the need to follow up on outstanding loans by email or phone. He acknowledged there were no emails related to this or records of phone calls she may have made after October 30, 2019, to customers, customers' references, or employers in evidence, nor were they provided to police.
- [42] Both Mr. Kreut and Mr. Sadhra had other businesses and/or full-time jobs in 2019. Mr. Sadhra owned a real estate business. Mr. Kreut had a full-time job and owned and operated at least one other business.
- [43] Mr. Kreut's businesses included a real estate holding company and another loan business referred to as Little Loans. Ms. Taylor also worked for Little Loans while she worked for EasyCash and still does. Mr. Kreut asked EasyCash employees, including Ms. Robertson, to recruit customers for Little Loans, paying them referral fees for doing so.
- [44] Mr. Kreut and Ms. Taylor acknowledged Mr. Sadhra was not informed about Little Loans or Ms. Taylor's employment there. Mr. Kreut estimated that 40-50% of Little Loans' current customers were once EasyCash customers and the concentration may have been higher

previously. Mr. Kreut also acknowledged that Little Loans customers would sometimes come into the Kelowna store to pay for their loans and the cash would be stored in the EasyCash safe. Mr. Kreut indicated he saw nothing improper about not informing Mr. Sathra about Little Loans because he had no interest in the secure loan business and was risk-adverse, or about having Little Loans customers come into EasyCash to pay cash payments that were stored in EasyCash's safe. Asked how the payments were recorded, he said he could not recall and he did not know if they were even recorded, but he did seem to recall the cash being put in an envelope to keep it separate from EasyCash money.

- [45] Mr. Sathra gave similar evidence about Little Loans, indicating he did not see it as a potential conflict for Mr. Kreut, even if EasyCash customers were being recruited to Little Loans or Mr. Kreut's other loan business.
- [46] But Mr. Kreut also gave evidence that Ms. Taylor sent him text message(s) after she testified in this trial, telling him she had been asked about Little Loans and she was afraid of Mr. Sathra finding out. Mr. Kreut added he was almost certain that Mr. Sathra already knew and he was not concerned.
- [47] Asked if he used one business to finance another, Mr. Kreut indicated Little Loans holds the mortgage for his real estate holding company.
- [48] Both Mr. Kreut and Mr. Sathra indicated they decided to close the Kelowna store when Ms. Taylor left and Ms. Robertson said she would be leaving. Mr. Kreut acknowledged he did not wish to continue working with Mr. Sathra. Mr. Kreut also said he had always been willing to sell his shares in EasyCash and, in 2019, he would have sold them in a heartbeat if the right offer had been made. He gave further evidence about offering to buy Mr. Sathra's shares, but when they exchanged numbers, they were not even close. Mr. Kreut, more so than Mr. Sathra, acknowledged that having the fraudulent loans on the books made EasyCash look busier and more profitable than it actually was.
- [49] Mr. Sathra and Mr. Kreut testified the alleged fraudulent loan scheme came to light after Ms. Robertson stopped working. The Consumer Protection Agency called Mr. Kreut about complaints from customers. Mr. Sathra initially testified to receiving a lot of direct calls from angry customers. Although Mr. Sathra said he could not recall, Mr. Kreut testified it was Mr. Sathra who decided the police should be informed. Mr. Kreut also gave evidence about not wanting to go to the police. Denying the suggestion he did not believe a crime had been committed and he did not want the police looking into his other businesses, Mr. Kreut identified some of his reasons for being opposed as not seeing value in the process and not believing the outcome would satisfy him.
- [50] Each of the owners gave evidence that EasyCash refunded any customers whose bank accounts were auto-debited based on the alleged fraudulent loans. They also said they understood that those with no funds in their accounts would have been notified of attempted auto-debits by an NSF notation or charge on their account.

Legal Framework

Fraud and Theft

- [51] The charged offences include fraud and theft under ss. 380(1)(a) and 334(a) of the Criminal Code, R.S.C. 1985, c. C-46, respectively.
- [52] The essential elements of fraud were discussed in *R. v. Théroux*, [1993] 2 S.C.R. 5. The *actus reus* includes a dishonest act established by proof of deceit, falsehood, or other fraudulent means and deprivation. The *mens rea* or mental element is established by proof of subjective knowledge of the prohibited act and that it could cause a loss or create a risk of loss.
- [53] The *actus reus* for theft requires the taking or conversion of anything owned by another. In *R. v. Scallen*, 1974 CanLII 1543 (B.C.C.A.), it was held that "anything" does not necessarily need to be something tangible or material. The *mens rea* for theft requires that a person take or convert something "fraudulently and without colour of right". Fraudulent intent requires, again, deceit or an intention to deceive and the lack of any proprietary or possessory claim to the monies or other property.

Fundamental Principles

- [54] I turn to the fundamental principles that apply in every criminal case: the presumption of innocence and the Crown's burden to prove the guilt of the accused beyond a reasonable doubt. Ms. Robertson is presumed innocent unless and until the Crown has proved she committed the alleged offences beyond a reasonable doubt. The burden of proof remains with the Crown and never shifts. Ms. Robertson has no obligation to prove anything.
- [55] Proof beyond a reasonable doubt is a high standard. A reasonable doubt is a doubt logically derived from the evidence or the absence of evidence based on reason and common sense: *R. v. Lifchus*, [1997] 3 S.C.R. 320 at para. 39; *R. v. Starr*, [2000] 2 S.C.R. 144 at para. 242. Absolute certainty is not required, but proof that she is probably or likely guilty is not enough.
- [56] The standard of reasonable doubt applies to each of the essential elements of the alleged offences and the totality of the evidence, but not every piece of evidence: *R. v. Paquette*, 2019 BCCA 396 at para. 35; *R. v. Ryon*, 2019 ABCA 36 at paras. 44-49.
- [57] The reasonable doubt standard also applies to the issue of credibility and reliability. If I have a reasonable doubt about Ms. Robertson's guilt arising from the credibility or reliability of the witnesses, then I must find her not guilty.

Proof Beyond a Reasonable Doubt and Circumstantial Evidence

- [58] The Crown's case is largely circumstantial.

- [59] R. v. Villaroman, 2016 SCC 33, remains the leading authority on the correct approach to circumstantial evidence and proof beyond a reasonable doubt. Where proof of one or more elements of the offence depend exclusively or largely on circumstantial evidence, the inference of guilt or an essential element must be the only reasonable inference to draw from the evidence as a whole.
- [60] When assessing circumstantial evidence, the court should consider other plausible theories and other reasonable possibilities inconsistent with guilt. Reasonable alternative inferences need not be based on proven facts. Instead, they may arise from a lack of evidence.
- [61] While the Crown must negate reasonable inferences that are inconsistent with guilt, they are not required to negate every possible conjecture no matter how fanciful or irrational, which might be consistent with the innocence of the accused. Other plausible theories or reasonable possibilities must be based on logic and experience applied to the evidence or absence of evidence.
- [62] Circumstantial evidence is also assessed cumulatively and in the context of the evidence as a whole. To base a finding of guilt entirely or substantially on circumstantial evidence, taken as a whole and assessed in light of human experience, the circumstantial evidence must exclude any other reasonable alternative.

Credibility and Reliability

- [63] The credibility and reliability of the Crown's witnesses are significant issues in this case.
- [64] Credibility or truthfulness and reliability or accuracy are related but distinct concepts. For example, a truthful witness can be mistaken about what they observed or believe they remember. Further, credibility and reliability are not all-or-nothing concepts. I may believe all, some or none of a witness's evidence and attach different weights to different parts of their evidence. In making this determination, their evidence must be assessed in light of the evidence as a whole: R. v. R. (D.), [1996] 2 S.C.R. 291 at para. 93.
- [65] Bradshaw v. Stenner, 2013 BCSC 2051 at para. 186, identified several factors that may be considered in assessing both credibility and reliability. They include: the capacity and opportunity of the witness to observe the events at issue; their ability to recall those events; whether or the extent to which a witness is influenced by their interest in recalling; inconsistency in the witness's evidence, meaning did their testimony change between direct and cross-examination or inconsistencies between prior statements, discovery evidence, and their evidence at trial; whether the witness's evidence harmonizes with or is contradicted by other reliable evidence; whether their evidence seems unreasonable, improbable, or unlikely, bearing in mind the probabilities affecting the case; and the witness's demeanour, meaning the way they presented while testifying.
- [66] Regarding the last factor, the authorities recognize the danger of relying too heavily on demeanour to determine credibility (see: R. v. Jeng, 2004 BCCA 464 at para. 54; and R. v. Tyers, 2015 BCCA 507 at para. 18). There is, however, an important distinction between

demeanour and how a witness answers questions. Unresponsive, evasive, illogical, or confusing answers, for example, are not the hallmarks of a witness who is attempting to be truthful, and may well end up being informative about their credibility: K.R. v. J.R., 2022 BCSC 1856 at para. 339.

Analysis

- [67] The Crown made no submissions about the credibility of the witnesses. The defence argued, as I have indicated, that Mr. Sathra was simply not credible nor was his evidence reliable and I should also have significant concerns about the credibility of Mr. Kreut and Ms. Taylor arising from key aspects of their evidence. I agree.
- [68] Mr. Sathra was a poor witness. In direct examination, he testified confidently and rather categorically, although cryptically, about various circumstances including his knowledge of the Ecash system and the fraudulent loan scheme. But during cross-examination, he said he could not recall and or Mr. Kreut should be asked instead, in response to most questions. This was also the case when Mr. Sathra was probed about previous answers he had given. An inability to remember would be understandable in part given the passage of time, but the change in Mr. Sathra's evidence from a substantive answer to not recalling or deflecting the question to Mr. Kreut creates a significant concern about the credibility of his initial evidence, as well as its reliability. Further, to the extent Mr. Sathra continued to respond substantively, his answers typically reflected assumptions or conclusions he had drawn. There was nothing precise, careful, or thoughtful about his testimony.
- [69] Mr. Kreut's evidence about Mr. Sathra's mother holding or owning his shares in EasyCash because Mr. Sathra's employer would have viewed his involvement in EasyCash as a conflict of interest raises a separate potential concern about his integrity. I put very limited weight on this circumstance, however, because Mr. Sathra was not asked about it.
- [70] Left with very little, if any, confidence in his testimony about disputed matters, I conclude I cannot safely rely on it unless it is confirmed by other evidence I accept or has been admitted.
- [71] In general, Mr. Kreut and Ms. Taylor presented as much more straight forward. Mr. Kreut acknowledged circumstances that were not in his interest related, for example, to the Ecash system. However, as I have attempted to illustrate, there were marked changes in the evidence of Mr. Kreut and Ms. Taylor between direct and cross-examination concerning a number of significant issues. Their evidence about not informing Mr. Sathra about Little Loans, recruiting EasyCash customers to Little Loans, and paying referral fees to EasyCash employees is also concerning despite Mr. Sathra's denial of concern. I am also troubled by Ms. Taylor's text messages to Mr. Kreut about being asked about Little Loans during her testimony and her fear of Mr. Sathra finding out. Although no order was sought or made excluding witnesses and speaking about her testimony in generally is not prohibited once cross examination is complete, it should have occurred to her that discussing what she was

asked about with a witness who has not yet testified risks tainting their evidence. Simply put, her conduct is not what I would expect of a fair and honest witness. Also concerning is Mr. Kreut's use of the Kelowna store to accept cash payments for Little Loans. His apparent lack of care regarding the recording and storage of payments for loans from a separate and undisclosed loan business reflects troubling sloppiness or that his evidence simply is not true.

- [72] Like Mr. Sadhra, Mr. Kreut portrayed himself as hands off in his approach to operating EasyCash and relatively uninvolved in day-to-day operations. In all the circumstances, given the nature of the business, Ms. Robertson's circumstances at the time, that is, working alone in the store where cash transactions are occurring and she is reporting financial distress, the suggestion that Mr. Kreut was hands off simply because he trusted Ms. Robertson is just not persuasive or believable, as well as self-serving. Further, despite the casual approach each described, neither owner ever suggested their investment in EasyCash was unimportant to them.
- [73] In light of the evidence, absence of evidence and my assessment of the key witnesses, I am left without credible and reliable evidence that the Ecash system, as the Crown alleges, balanced each day or the amount of cash in the store on the dates of the alleged fraudulent loans. The cash balancing allegation, as I have said, is central to the Crown's assertion that all of the alleged fraudulent loans were cash loans that required the person responsible to remove the actual cash amount from the store and return cash when subsequent loans resulted in a deficit. This, in turn, is the basis for the Crown's assertion that Ms. Robertson must be responsible because she had exclusive opportunity as the only employee working in the store from September 7, 2019 onward.
- [74] Even if I were to accept it is reasonable to infer from all the evidence that Ms. Robertson created the fake loans and took the cash they provided for, I would be far from persuaded this was the only reasonable inference to draw, based my credibility and reliability assessment and all the evidence and the absence of evidence. I agree with the defence that other reasonable inferences inconsistent with guilt are available, based not on speculation but logic and experience applied to the evidence and the absence of evidence.
- [75] I have already attempted to identify the gaps or absence of evidence that cause me concern. The absence of evidence also, as the defence points out, restricts my ability to assess other evidence such as, for example, the number of loans that Ms. Robertson apparently issued each day and the extent to which she and other employees accessed the safe each day to pay cash loans and deposit payments. While surveillance evidence may well have little probative value given the in-store traffic, I have not been able to determine this. Again, there is Mr. Kreut's failure to provide key documents to police and his ability to retroactively change information in the system. There is also his and Mr. Sadhra's apparent lack of concern, attention, or supervision of the business, and the benefit to the appearance of EasyCash's financial success flowing from the alleged fraudulent loans coupled with each owner's interest in selling their shares - Mr. Kreut, in particular. In addition, there is the sharing of

passwords and the ability to access login information and passwords, the ability to access the system remotely, and the access available to Ms. Taylor after she apparently was no longer employed by EasyCash.

[76] I do not accept the Crown's suggestion that the owners had no motive.

[77] Applying the beyond reasonable doubt standard, ultimately, I am left to conclude that the testimony of the Crown's key witnesses given their lack of credibility and the circumstantial evidence are far from sufficient to ground convictions for the alleged offences.

[78] Accordingly, I find Ms. Robertson not guilty of each of the offences charged in the indictment.

"Fleming J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/19/2024BCSC1912.htm>

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

Prepared on 27 October 2026 · Esheria