
CANADA / JUDGMENT

R. v. Stephens

2020 BCSC 1737

COURT

Supreme Court of British Columbia

DECIDED

13 November 2020

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

2020 BCSC 1737 R. v. Stephens

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Stephens,

2020 BCSC 1737

Date: 20201113

Docket: 28720

Registry: Vancouver

Regina

v.

Derek James Stephens

Corrected Judgment: The text of the judgment was corrected at paragraph 50 on January 19, 2021.

Before: The Honourable Mr. Justice Crossin

Oral Reasons for Judgment

Counsel for the Crown:

C.J. Smith

E. Porter

Counsel for the Accused:

R.S. Fowler, Q.C.

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 17,18, 20, 24,

27 and 28, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 13, 2020

Introduction

- [1] Factually this is a straightforward case. Indeed, much of the material evidence is tendered as Admissions of Fact pursuant to s. 655 of the Criminal Code of Canada, R.S.C. 1985, c. C-46. In addition, the case for the Crown places a great deal of emphasis on video surveillance evidence that literally depicts the commission of the alleged offence.
- [2] The accused is before the Court upon a 21-count indictment relating to the possession of an array of firearms and ammunition over the course of approximately one week; between June 29, 2017 and July 8, 2017 contrary to ss. 95, 91(1), 92(1), 92(2),108(1)(b), and 86(1).
- [3] For convenience and efficiency the indictment is attached as appendix A to these reasons.
- [4] The central activity in relation to the alleged offences took place at Maple Leaf Self Storage Inc. located at 33 Commercial Drive in Vancouver, British Columbia ("Maple Leaf").
- [5] The surveillance video evidence plainly captures the accused attending the offices of Maple Leaf on June 29, 2017 and arranging to rent or lease a storage locker (number 6131). It is common ground the accused provided a false name and utilized false identification for this purpose. Once this task was accomplished the accused departed.
- [6] Later that same day, the surveillance evidence depicts the arrival of a vehicle at Maple Leaf driven by an unknown male. The accused arrived shortly thereafter. The vehicle occupied by the unknown male is then driven into the parking area of Maple Leaf and thereafter the accused is observed assisting the unknown male to unload seven large bags (suitcases and duffel-type bags) from the vehicle and placing the bags on a wheeled cart or trolley. Carts or trolleys are available at the facility for the use of customers.
- [7] The exercise of unloading the bags onto the cart took just moments and the accused is then seen wheeling the loaded cart into the elevator and thereafter seen exiting the elevator on the sixth floor where the locker is located. The accused is then observed returning to the parking area with the empty cart and departing in the same vehicle with the unknown male. While it is not captured on video, it is clear the accused unloaded the bags into locker 6131.

- [8] Within the week, an incident occurred that aroused the suspicions of one or more of the employees at Maple Leaf. The police were summoned. The locker was searched. It was soon discovered the bags in the locker contained an arsenal of firearms, ammunition and other items ("the items").
- [9] The discovery eventually led to the charges before the Court.
- [10] It is obvious the accused physically possessed the bags containing the items. There is however no direct evidence the accused knew what the bags contained. That is, there is no evidence he was told what the bags contained nor that he was a party to placing the items in the bags. There is no direct evidence he opened the bags to view their contents. There is no forensic evidence linking the accused with the bags or any of the items found in the bags.
- [11] The contest is really whether in all the circumstances the Crown has proven the accused knew, or was willfully blind to the fact, that the bags contained the firearms and ammunition that are the subject matter of the indictment.

The Evidence

- [12] The evidence is best appreciated as an unfolding chronological narrative.
- [13] On June 29, 2017 the accused attended Maple Leaf and arranged to rent a storage locker ("the storage locker").
- [14] This required the accused to complete a rental application form. In so doing the accused used the name of Trevor Morgan and as well presented identification in the name of Mr. Morgan. The fact is, Mr. Morgan had his wallet containing his identification stolen the previous day, June 28, 2017.
- [15] In accordance with the usual business custom, Maple Leaf provided the accused with an access code that allows access to the loading bay and the elevator. In addition, the accused purchased a lock that secured the actual locker entrance.
- [16] It is clear on the evidence that over the course of the ensuing week, the locker was only accessed by two persons, the accused and a Mr. Matthew Navas-Rivas. The Admissions of Fact in relation to the security arrangements at Maple Leaf make it clear that no other persons accessed the locker during the relevant time frame.
- [17] In particular, the evidence concerning security is as follows.
- [18] Upon renting the Storage Locker, Mr. Stephens was provided with a unique access code (the "Morgan Access Code"). As is typically the case, the Morgan Access Code was the last five digits of the number of the driver's license presented in support of the rental application, in this case the driver's license of Bradley Trevor Morgan.

- [19] Maple Leaf Storage provides the access code to the customer who completed the rental application and signed the lease agreement. There are no biometric security measures; a person with knowledge of a valid access code can access the Maple Leaf Storage facility.
- [20] An access code provides a customer with access to the main loading bay door of Maple Leaf Storage and to the elevator. Customers are only provided with elevator access to the floor corresponding to the customer's locker. In this case, the Morgan Access Code provided Mr. Stephens with access to the main bay door and to the sixth floor where the Storage Locker was located. Use of an access code is recorded in the locker activity log for each storage locker.
- [21] Access to each locker at Maple Leaf Storage is electronically monitored. Sensors on each locker record when a locker door is opened and closed; this information is also recorded in the locker activity log for each storage locker.
- [22] A security alarm will sound and Maple Leaf personnel will respond if the sensors on a locker are triggered, but the corresponding access code was not used to access the gate or elevator.
- [23] Customers place their own padlocks on their storage lockers. Locks are available for purchase from Maple Leaf Storage. Maple Leaf Storage does not have the keys or combinations to customer's padlocks. If a customer loses the key or combination to their lock, the lock must be cut off in order to gain access into the locker.
- [24] Whether or not a customer is using a lock purchased from Maple Leaf Storage, a blue sticker provided by Maple Leaf Storage stating "Thank you for storing with us" must be placed on the lock. A locker secured with a lock without this blue sticker would be subject to investigation by Maple Leaf Storage personnel and likely cut off due to security concerns.
- [25] For a person other than Mr. Stephens to gain entry to the Storage Locker, that person would need to be told the Morgan Access Code provided to Mr. Stephens, and to have the key or combination for the padlock securing the door to the Storage Locker.
- [26] The Locker Activity Log is a record of Maple Leaf Storage made in the usual and ordinary course of business, and is an accurate record of times that the Storage Locker was accessed or that the Morgan Access Code was used during this period.
- [27] As previously referenced, following the rental arrangements, later in the afternoon of June 29, 2017, an unknown male driving a Chrysler Sebring arrived at Maple Leaf and parked on the street near the facility.
- [28] Within some minutes the accused also arrived at Maple Leaf and met outside with the unknown male. The accused then accessed the loading bay and was followed into the loading bay and parking area by the Sebring. The vehicle was parked and thereafter the accused and the unknown male unloaded the bags and the suitcases from the vehicle onto the cart and thereafter the accused is seen wheeling the cart to the elevator and exiting the elevator with the loaded cart on the sixth floor. Some moments later, the accused is seen

returning to the loading bay area with the empty cart and departing with the unknown male.

- [29] It is the next day, June 30, 2017, that the now deceased Matthew Navas-Rivas enters the narrative of events. Mr. Navas-Rivas is seen arriving at Maple Leaf carrying a black backpack. He is alone. The accused is not present.
- [30] It is apparent Mr. Navas-Rivas is in possession of the access code. The recorded locker activity confirms the locker was accessed twice over the course of the ensuing approximately 15 minutes. Mr. Navas-Rivas is then observed exiting the facility carrying a different item; a black Nike duffel bag.
- [31] Why he apparently went in, and out, and then back in the locker, and what Mr. Navas-Rivas was doing in the locker, in particular, for those 10 to 15 minutes, is of course not known.
- [32] The second and last occasion the accused accessed the locker was the afternoon of June 30, 2017. He arrived in a white vehicle, parked outside the facility, and exited the vehicle carrying a black duffel bag. He approached a dark SUV that had also been parked on the street near the facility for some minutes. The accused opened the rear seating area of the SUV, looked in, closed the door, and proceeded to enter the facility carrying the black duffel bag. The locker was accessed for a little over two minutes.
- [33] The accused was observed exiting the facility still carrying the same black duffel bag. He proceeded to retrace his steps; that is, he opened the rear of the SUV, closed it, and carried on to his white vehicle with the black duffel bag and departed.
- [34] The next day of relevance is the following day, July 1, 2017.
- [35] Mr. Navas-Rivas again arrived at the facility in the afternoon and accessed the locker for approximately three minutes. What occurred in the locker is again unknown but it is clear he arrived without being encumbered by any bag or knapsack and left the facility carrying a knapsack and two rolling suitcases. He then departed with these items in a taxi.
- [36] Somewhat later that afternoon, Mr. Navas-Rivas and the accused arrived at the facility together, entered the facility but did not access the locker. They were emptied handed when they arrived and they were empty handed when they left.
- [37] The accused is not seen at the facility again until August 21, 2017. By then, the police had been in attendance and had seized the contents of the locker.

The Search and Seizure at the Locker

- [38] On July 7, 2017, Bradley Morgan contacted the Vancouver Police after he received a "thank you letter" from Maple Leaf with respect to the rental of the Storage Locker.
- [39] On July 8, 2017, Bradley Morgan and his mother attended Maple Leaf. They spoke with the Manager Sherry Carter about the unauthorized use of Bradley Morgan's Identification to rent the Storage Locker.

- [40] Bradley Morgan, his mother, Manager Sherry Carter, Assistant Manager Erin Leach, and Maple Leaf Storage employee, William Mallinson, went to the Storage Locker.
- [41] William Mallinson cut the lock of the Storage Locker using a grinder and the Storage Locker door was opened. The only items in the Storage Locker were several bags of different sizes including a gym bag, hockey bag and suitcase. All bags were zippered closed. Fearing, based on the shape, that there was a body in the larger hockey bag, Manager Sherry Carter unzipped the bag and also looked in one of the smaller bags, a black bag towards the front of the locker. In the hockey bag, she saw, wrapped in plastic, what she believed to be an AK automatic weapon with a clip attached, like an 'AK-47 from the movies'. Ms. Carter quickly zipped the bag closed as best she could, secured the Storage Locker, and asked a colleague to phone the police.
- [42] From the time Manager Sherry Carter secured the locker until Constable Watts and Constable Elian of the Vancouver Police Department attended, no items were taken or added to the Storage Locker, nor were the contents of the Storage Locker moved or disturbed in any way.
- [43] Constable Watts and Constable Elian conducted an initial cursory examination of the Storage Locker to ensure there was no person, dead or alive, inside the Storage Locker. Four bags were visible when the police entered the locker. A medium-sized red and black duffel bag was partially unzipped with a firearm visible. This firearm was wrapped in plastic and was comparable to an AK47. The other three bags were zippered closed. The officers opened the four bags, looking inside without disturbing the contents. No human remains were located. Inside one of the bags, a large, hockey-sized duffel bag, was another black bag, at least four rifles, multiple balaclavas and a bag of zap straps. Another firearm and various ammunition were observed inside a roller suitcase. Ammunition and a silencer were observed in a black backpack.
- [44] After conducting this initial cursory search, Constable Watts and Constable Elian exited the Storage Locker and secured it. Officers with the Vancouver Police Department conducted a full search of the Storage Locker later that day, July 8, 2017, pursuant to a search warrant (the "Search"). The search and the seizure appeared to be lead by Detective Chris Tang.
- [45] From the time of the initial examination by Constable Watts, until the Search, no items were taken or added to the Storage Locker, nor were the contents of the Storage Locker moved or disturbed in any way.

The Evidence of Detective Chris Tang

- [46] Detective Tang is a 14-year veteran of the Vancouver Police Department and was a forensic evidence technician at the relevant time.

- [47] On July 8, 2017 Detective Tang attended with an identification unit at the facility, arriving at approximate 10:05. There they waited for a warrant to arrive and entered the locker, pursuant to the warrant, at approximately 10:25.
- [48] Detective Tang testified that the five bags that were located in the locker and seized were open when he entered the locker. There are some photos of the bags as they were then observed in the locker; and, as well, photos taken of the bags after one or more of the bags had been taken to the hallway adjacent to the locker.
- [49] The five bags seized from the locker were as follows (the "five bags").
- a) a red and black duffel bag, with two carry handles and a shoulder strap, approximately 53 cm in length and a diameter at the ends of approximately 27 cm (the "Red and Black Duffel Bag");
 - b) a large "Team Canada" rolling hockey bag, with two carry handles on the top, a stitched canvas pull handle on one end, wheels on the other end, measuring roughly 82 cm long, 40 cm wide, 42 cm deep at the wheel end but 28 cm deep at the pull handle end, (the "Team Canada Hockey Bag");
 - c) a black "Outbound" duffel bag, which was located inside the Team Canada Hockey Bag, with two carry handles, stitched handles on the ends, and two plastic attachments for a shoulder strap, but no shoulder strap attached, measuring roughly 88 cm long, 40 cm wide and 34 cm deep (the "Black Outbound Duffel Bag");
 - d) a black "Roots" backpack, with two shoulder straps and a stitched handle on the top (the "Black Roots Backpack"); and
 - e) an "Air Canada" suitcase, with two wheels, stitched handles on the top and side, a retractable plastic handle on the top (which could be covered by a flap when not extended), measuring approximately 51 cm long, 35 cm wide and 25 cm deep (the "Air Canada Suitcase").
- [50] The only items in the Storage Locker when the Storage Locker was opened by Manager Sherry Carter, and when it was subsequently searched by the Police, were the five bags.
- [51] The officers then loaded the bags into a van and subsequently unloaded the bags at the police detachment. The contents of the bags were unloaded on July 9, 2017 and then examined by Detective Tang over the course of a period of time. The list of the contents of the bags is attached as Exhibit B
- [52] It is the evidence of Detective Tang that approximately a week before the trial (August 2020) he attempted to what he has referred to as "reconstitute" the contents of the bags. That is, as described by Detective Tang, he replaced the items in the same bags as where the items were found, and as well, with the use of photographs, replaced those items as best he could in the same location, within the bags, as where they were situated in 2017.

- [53] The bags were then brought to court by Detective Tang and introduced into evidence accompanied by certain testimony.

The Red and Black Duffel Bag

- [54] Constable Tang testified that he had to "deform" the bag in order to fit the firearm in the bag. Frankly I made no such observation of deformity but I accept that in the courtroom that day, the bag having been re-fitted with a firearm by Detective Tang, it appeared, at least to Detective Tang, to be deformed.
- [55] In addition, Detective Tang dropped the bag on counsel table. A thud and what was described by Detective Tang as "metal sounds" could be heard.

The Team Canada Hockey Bag

- [56] This large heavy bag was also reconstituted by Detective Tang and as reconstituted it was apparent, as Detective Tang testified, that there were objects in the bag that stretched or malformed its symmetry.
- [57] Detective Tang dropped the Team Canada hockey bag on the courtroom floor; again with a thud. Detective Tang testified that one could discern the shifting of objects. However, there was no testimony that metal sounds, accompanying the thud, was audible.

The Black Roots Backpack

- [58] Detective Tang testified that as reconstituted, objects could be heard inside the bag when moved. Detective Tang however did not demonstrate this in the courtroom.

The Air Canada Suitcase

- [59] Again, Detective Tang testified that objects could be heard inside the suitcase when it was handled by Detective Tang in the courtroom.

The Forensic Evidence

- [60] Detective Tang testified that he spent many hours retrieving forensic evidence in relation to the bags and their contents, including DNA and fingerprints.
- [61] In this regard the forensic evidence is as follows.
- [62] DNA from Matthew Navas-Rivas was on the trigger and trigger guard of the 9 mm Uzi Model A semi-automatic carbine, serial number SA05460, when located in the Team Canada Hockey Bag.
- [63] DNA from Neil Cameron McDiarmid was on the trigger of the .223 Remington Norinco 84S-2 semi-automatic rifle, serial number 600696, when located in the Team Canada Hockey Bag.

- [64] The following fingerprints suitable for comparison were located on the exhibits seized from the Storage Locker:
- a) Fingerprints from the left ring finger and the left little finger of Douglas Massah on the clear plastic wrapped around the .223 Remington Colt M4A1 automatic carbine with no serial number;
 - b) An unidentified fingerprint on a package of plastic zap straps;
 - c) An unidentified fingerprint on the ammunition packaging inside an empty box of ammunition found inside of a plastic grocery bag;
 - d) A fingerprint from the right little finger of Joshua David Lambrecht on the plastic grocery bag containing an empty ammunition box; and
 - e) Three unidentified fingerprints on the plastic box of the gun cleaning kit.
- [65] A fingerprint from Mr. Stephens left ring finger was on the rental agreement completed to rent the Locker on June 29, 2017.
- [66] There is no forensic evidence linking the accused to the bags or any of their contents.
- [67] The police executed search warrants on a residence where the accused stayed, and as well conducted a search of his vehicle. The police seized three phones from his vehicle and two phones from the residence. The police were unable to access the data on one of the phones seized from his vehicle. The balance of the phones were accessed by the police.
- [68] It appears from the evidence the phones contained hundreds of contacts and in particular there were many text exchanges between the accused and Mr. Navas-Rivas before and after the relevant event. In my view it is clear on this evidence, as well as other evidence in the matter, that the accused and Navas-Rivas were friendly; in fact they appeared to be friends.

Analysis

- [69] It is the submission of the Crown that possession of the firearms and ammunition as particularized in the indictment has been proven beyond a reasonable doubt.
- [70] There is no question the accused had physical possession of the bags in question for a period of time. The Crown submits that it is clear the accused knew the bags contained the firearms and ammunition in issue; or that he was wilfully blind in that regard.
- [71] The Crown has quite properly emphasized the fact that the accused rented the locker and in so doing used a false name and false identification.
- [72] The accused physically handled the bags by assisting in unloading the bags from the vehicle as previously referenced and again unloading the bags in the locker over the course of those few minutes.
- [73] The Crown submits that the bags, or at least some of the bags, were certainly heavy.

- [74] In addition, the evidence is clear that the accused on one other occasion (the next day), accessed the locker for two minutes. On this occasion the accused was carrying a duffel bag. Of course what the accused did in the locker and what was in the duffel bag, if anything, is not known.
- [75] The Crown points to the fact on a separate occasion, in the absence of the accused, Navas-Rivas accessed the locker for up to a 10 to 15-minute time period.
- [76] The Crown says there is uncontroverted evidence that the DNA of Nava-Rivas was found on one of the numerous firearms. This becomes significant because he was friendly with the accused.
- [77] It is also telling, submits the Crown, that upon the accused next attending the facility, on August 21, 2017; and being advised that the police had attended, he departed without making any further inquiry.
- [78] Finally, there was a great deal of contraband ultimately discovered in the bags and clearly the firearms were of more than trifling value.
- [79] These are some of the main features of the circumstantial case erected by the Crown. The question then becomes whether on the whole of the evidence it has been proven beyond a reasonable doubt the accused knew, either as a result of actual knowledge or wilful blindness, the bags contained the firearms and ammunition.
- [80] I am certainly not persuaded the Crown has proven beyond a reasonable doubt the accused had actual knowledge that the bags contained firearms and ammunition. The evidence is far too thin to come to this conclusion.
- [81] There was simply no context leading up to, or following, the events depicted on the video that would link the state of mind of the accused to actual knowledge of the contents of the bags. I cannot find there is a rational inference available on the evidence that the accused had actual knowledge of the contents of the bags.
- [82] The matter turns, in my view, on the application of the principles of wilful blindness to the facts of the case.
- [83] Wilful blindness was explained by the Supreme Court in *R. v. Sansregret*, [1985] 1 S.C.R. 570 at para. 22 as arising "where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth." Culpability is justified by the fault of the accused in deliberately failing to inquire when he or she knows there is reason for inquiry.
- [84] The Court placed some reliance on what has become the oft-quoted views of Glanville Williams (*Criminal Law: The General Part*, 2nd ed. 1961, at p. 159) that the concept of wilful blindness is of narrow application (at para. 22):

Glanville Williams, however, warns that the rule of deliberate blindness has its dangers and is of narrow application. He says, at page 159:

The rule that wilful blindness is equivalent to knowledge is essential, and is found throughout the criminal law. It is, at the same time, an unstable rule, because judges are apt to forget its very limited scope. A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. Any wider definition would make the doctrine of wilful blindness indistinguishable from the civil doctrine of negligence in not obtaining knowledge. [Sansregret].

[85] The Supreme Court had another opportunity to review the principles of wilful blindness in *R. v. Jorgensen*, [1995] 4 S.C.R. 55. The Court characterized wilful blindness as "deliberately choosing not to know something when given reason to believe further inquiry is necessary". It adopted several passages from Glanville Williams:

As Glanville Williams wrote in *Criminal Law: The General Part* (2nd ed. 1961), at pp. 157-58:

... the rule is that if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge. ...

In other words, there is a suspicion which the defendant deliberately omits to turn into certain knowledge. This is frequently expressed by saying that he "shut his eyes" to the fact, or that he was "wilfully blind."

And, at pp. 158-59, the learned author states:

Before the doctrine of wilful blindness applies, there must be realisation that the fact in question is probable, or, at least, "possible above the average." ...

A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realised its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness.

[86] The Court then offered that a finding of wilful blindness involves an affirmative answer to the question: Did the accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge?

[87] The Supreme Court, some years later in *R. v. Briscoe*, 2010 SCC 13 discussed wilful blindness in language that reflected the Court's earlier two decisions. Madam Justice Charron, for the Court, wrote (at para. 21):

Wilful blindness does not define the mens rea required for particular offences. Rather, it can substitute for actual knowledge whenever knowledge is a component of the mens rea. The doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries. See *R. v. Sansregret*, [1985] 1 S.C.R. 570 (S.C.C.), and *R. v. Jorgensen*, [1995] 4 S.C.R. 55 (S.C.C.). As Sopinka J. succinctly put it in *Jorgensen* (at para. 103), "[a] finding of wilful blindness involves an affirmative answer to the question: Did the accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge?"

[88] She cited Glanville Williams (the same passage cited in *Sansregret*), and also agreed with Professor Don Stuart that "deliberate ignorance" was more descriptive than wilful blindness since it connoted "an actual process of suppressing a suspicion" (at para. 24).

[89] In a case with facts somewhat similar to those here, the Ontario Court of Appeal in *R. v. Brown*, 2018 ONCA 481 reaffirmed these concepts. One of the issues at trial had been the appellant's knowledge of a firearm in a knapsack seized from his bedroom. The appellant's brother had testified that the gun was his and that he had left it in the residence without the appellant's knowledge. The trial judge had instructed the jury on the applicability of the doctrine of wilful blindness, pointing to the evidence of the brother that the appellant knew he had left the knapsack in the closet; he had told the appellant he was a drug dealer; and he had mentioned to the appellant that there were a couple of people he (the brother) had problems with, including possibly mentioning that some of them were after him.

[90] The Court of Appeal held that the trial judge had erred in instructing the jury on wilful blindness, writing:

[57] The Supreme Court of Canada has endorsed an articulation of this standard requiring that the appellant realize "the fact in question is probable, or, at least, 'possible above the average'", and that the appellant "suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge": *Jorgensen*, at para. 102, citing Glanville Williams, *Criminal Law: The General Part* (2nd ed. 1961), at pp. 157-59. This level of subjective suspicion must be high in order to substitute for knowledge; it must be that it "can almost be said that the [appellant] actually knew" the Gun was in the bag: *R. v. Farmer*, 2014 ONCA 823, 32 O.A.C. 175, at para. 26; *Morris Manning*, Peter Sankoff, *Criminal Law*, 5th ed. (Markham: LexisNexis, 2015), at p. 236.

And further:

[59] For wilful blindness to be made out it is not enough for the evidence to support the inference that there was reason for the appellant to suspect something untoward, or even that there was some unknown contraband in the knapsack. Wilful blindness has to replace knowledge of the Gun: *R. v. Malfara* (2006), 2006 CanLII 17318 (ON CA), 211 O.A.C. 200, at paras. 3-4; *R. v. Blondin* (1970), 1970 CanLII 1006 (BC CA), 2 C.C.C. (2d) 118 (B.C.C.A.), at pp. 121, 131-132; *R. v. Sauve and Stewart*, 2016 ONSC 6896, at para. 44. The parties agreed there

was no basis to support the appellant's having a suspicion there was a firearm in the bag with a defaced serial number; for the same reasons, on the same standard there was no evidence of the appellant's having an "aroused suspicion" of any firearm at all being in the knapsack - as opposed to simply drugs, other illegal items, or nothing at all. There must have been evidence to support a finding that the appellant had a strong subjective suspicion that the bag contained a gun but decided not to look to avoid confirming that suspicion.
[Emphasis in original.]

[91] Finally, Justice Moldaver for the majority of the Court again embraced this principle in *R. v. Morrison*, 2019 SCC 15 at para. 98:

Wilful blindness exists where an accused's "suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries": *R. v. Briscoe*, 2010 SCC 13, [2010] 1 S.C.R. 411, at para. 21 (emphasis in original). Wilful blindness has been characterized as "deliberate ignorance" because it connotes "an actual process of suppressing a suspicion": D. Stuart, *Canadian Criminal Law: A Treatise* (7th ed. 2014), at p. 261. "A court can properly find wilful blindness only where it can almost be said that the defendant actually knew": *Briscoe*, at para. 23, citing G. Williams, *Criminal Law: The General Part* (2nd ed. 1961), at p. 159. This Court has repeatedly held that if an accused is found to be wilfully blind, that state of mind may substitute for actual knowledge: *Sansregret v. The Queen*, [1985] 1 S.C.R. 570, at pp. 584-85; *Briscoe*, at para. 21. Indeed, it is "equivalent to knowledge": *Briscoe*, at para. 23, citing Williams, at p. 159.

[92] Recently our Court of Appeal in *R. v. Edwards*, 2020 BCCA 253, reviewed some of the cases to assess the state of subjective awareness of a material fact necessary to engage the doctrine of wilful blindness. Counsel helpfully referred the court to this most recent decision subsequent to the completion of argument in this matter.

[93] Writing for the Court, Willcock J.A. quoted at length from *Sansregret*, Jorgensen and *Briscoe*. He noted that the test in *Briscoe* was "strong suspicion or, in other words, suspicion to the point where the accused actually sees the need to make further inquiries" (at para. 56), and that the Court in that case had considered "deliberate ignorance" to be particularly descriptive of wilful blindness.

[94] Justice Willcock also referred to several Ontario Court of Appeal decisions, including *R. v. Duong* (1998), 39 O.R. (3d) 161 and *R. v. Lagace* (2003), 181 C.C.C. (3d) 12, where Mr. Justice Doherty spoke of the need for the accused to have "real suspicions" before liability could be imposed, and *R. v. Duncan*, 2013 ONCA 774, where the Court applied the deliberate ignorance standard.

- [95] Justice Willcock found the high standard applied in *R. v. Malfara* (2006), 211 O.A.C. 200 - a suspicion that a fact is probably true - to be exceptional, stating that requiring the accused to believe the fact in question to be more probable than not was the standard generally applied. To impose that standard, he wrote, would amount to saying the trier of fact could only draw the inference the accused saw the need for an inquiry if, before making any inquiry, the accused believed his suspicion to be probably correct.
- [96] Justice Willcock then described the parameters of the suspicion that engages wilful blindness as follows (at paras. 66-67):
- [66] A mere suspicion that does not lead the accused himself to recognize the need to make inquiries is insufficient to give rise to wilful blindness. Nor are circumstances that would cause a reasonable person to have qualms sufficient. The requirement of subjective appreciation of the probability is to some extent "heightened". Further, the requirement the suspicion be such as to give rise to the obligation to make enquiries is also a requirement for "heightened suspicion". In both *Jorgensen* and *Briscoe*, the Court spoke of the need to establish the accused had a "strong suspicion". That suspicion must rise to the level where it can be said the accused deliberately failed to make enquiries he knew were warranted because he wanted to be able to deny knowledge of the truth.
- [67] The test is stated nicely in *R. v. Farmer*, 2014 ONCA 823 by Sharpe J.A. (at para. 26): the accused must have "shut his eyes because he knew or strongly suspected that looking would fix him with knowledge" or because he became "aware of the need for some inquiry [yet] decline[d] to make the inquiry because he [did] not wish to know the truth".
- [97] I would observe that the quote "shut his eyes because he knew or strongly suspected" in the passage from *Farmer* is from *Jorgensen* and the second quote beginning "aware of the need for some inquiry" is from *Sansregret*. It also of some note that Willcock J.A. seems to have preferred the Supreme Court's own pronouncements about wilful blindness over its endorsement of the statements of Glanville Williams.
- [98] It follows from the foregoing discussion that wilful blindness requires a heightened suspicion of a material fact on the part of the accused. A mere suspicion is not sufficient but suspicion that the fact is probably true will in most cases be too high. A heightened suspicion (or "strong suspicion" in the language of *Jorgensen* and *Briscoe*) means that the accused's suspicion is aroused to the point where he sees the need for further inquiries. The deliberate choice to then not make those inquiries so as to be able to deny knowledge of the truth is what grounds liability as wilful blindness. The standard is met where the accused "shut his eyes because he knew or strongly suspected that looking would fix him with knowledge" (*Jorgensen*) or because he became "aware of the need for some inquiry [yet] decline[d] to make the inquiry because he [did] not wish to know the truth" (*Sansregret*), as cited in *Farmer*.

[99] On its facts, Edwards involved a hit and run. The accused had been looking in his rear view mirror when he heard a very loud bang and the passenger side of the windshield shattered. He stopped his vehicle to quickly inspect the extent of the damage and then proceeded on his way. The trial judge regarded this as evidence that the accused's suspicions had been aroused, and found that the facts raised a subjective suspicion in the mind of the accused requiring further inquiry as to what he had hit. In upholding the trial judge on appeal, Willcock J.A. said (at para. 82):

[The trial judge] began his analysis by referring to the description of wilful blindness in *Sansregret* and this description, from Williams, of the rule: "if a party has his suspicion aroused but then deliberately omits to make further enquiries because he wishes to remain in ignorance, he is deemed to have knowledge". That is clearly the test he applied when he concluded the facts "had to raise a subjective suspicion in the mind of Mr. Edwards requiring further inquiry" (at para. 90). That, in my view, is a sufficient description of the heightened suspicion, as described in *Sansregret*, *Jorgensen* and *Briscoe*, upon which to ground a finding of wilful blindness. In the words of Charron J. in *Briscoe*, cited above, Mr. Edwards' suspicion was "aroused to the point where he [saw] the need for further inquiries but deliberately [chose] not to make those inquiries" because he wanted to be able to deny the truth.

[100] Ultimately then, it would appear, at least to me, that the Court simply reaffirmed the Supreme Court's jurisprudence on wilful blindness.

[101] Returning to the facts at bar, it must be concluded that the circumstances of opening the account for the locker was suspicious on any reasonable notion. While there was no attempt to hide his physical appearance from the staff of Maple Leaf, it is some evidence that the accused knew he was participating in activity that was somehow untoward.

[102] In addition, of course, the accused was seen to physically handle the bags. There is no doubt that whatever was in some of the bags was heavy. That said, it is clear on the video the accused and the unknown male physically dealt with the bags with much more ease than apparently did Detective Tang in the courtroom.

[103] As to what might be in the bags, there was some evidence offered at trial that in handling and/or dropping the bags on the floor there was, at least in one instance, "metal sounds" and a sense of movement of the contents. In addition, there was some evidence at trial that the reconstituted bags, in at least one instance, created a distorted shape that could be interpreted as containing a solid lengthy object.

[104] It is difficult to determine on the evidence whether the physical appearance of the bags at the scene provided any insight into the contents. The photos and the video evidence do not present clear evidence in this regard. Consequently, it is entirely uncertain whether the physical appearance of the bags at the relevant time were the same or sufficiently similar as the reconstructed or reconstituted bags that were presented at trial. It is not at all apparent to me the bags as presented and described at trial, reconstituted and closed, replicated, or sufficiently replicated the physical appearance of the bags as they would have been

observed by the accused at the relevant time. The evidence in my view is too vague in this regard. As I stated, I was left with a good deal of uncertainty on this point.

- [105] In addition, there is no audio available on the surveillance video to allow any safe conclusions concerning some of the evidence regarding sound. But, in any event, it is apparent on the video that the accused and the unknown male did not drop the bags on the cart as Detective Tang dropped the bags onto the table and the floor in the courtroom.
- [106] It is clear on the evidence there were a number of persons, known and unknown, identified and not identified, who had contact with, and physically touched some of the items in some of the bags; including Navas-Rivas.
- [107] There is no evidence the accused had any association with these persons with the exception of Navas-Rivas. The DNA of Navas-Rivas was detected on one of the firearms. Navas-Rivas attended the storage locker alone on two occasions. As previously referenced, the nature of the activity that Navas-Rivas undertook while in the locker, relating to the contents of the bags or otherwise, is unknown. In any event, when in time the DNA of Navas-Rivas came in contact with this particular firearm is also of course unknown.
- [108] While there is evidence of communications between the accused and Navas-Rivas before, during, and after the relevant period, there is no evidence of any communication between the accused and Navas-Rivas that referenced the events in question. There is no evidence of communication between the accused and Navas-Rivas referencing the topic of firearms generally. In fact, there is no evidence of any communication between the accused and anyone concerning firearms. There is no evidence of material found in the residence, or seized from his vehicle, relating to these firearms or any firearms.
- [109] On the entirety of the evidence, I conclude that a state of mind arose that gave rise to a suspicion the bags contained contraband of some sort; stolen or otherwise. I find however there is insufficient evidence surrounding the handling of the bags by the accused, and indeed on all the evidence, that gives rise to a conclusion there was a suspicion on the part of the accused the bags contained firearms and ammunition, that was aroused to the point he saw the need for further inquiry; but deliberately chose not make that inquiry because he wanted to be able to deny the truth.
- [110] The evidentiary analysis concerning wilful blindness, and degrees of suspicion in particular, requires the drawing of logical inferences based upon the evidence, combined with a healthy dose of common sense and human experience. I find the constellation of these considerations fails to establish the required element in this case. In my view, to conclude the evidence demonstrates aroused or heightened suspicion, as required by the jurisprudence, would necessitate embarking upon speculation rather than rational inferences. The evidence fails to achieve what the law demands in relation to the required element of mens rea.

[111] On the whole of the evidence I have a reasonable doubt concerning the guilt of the accused and I find him not guilty of all counts.

"Crossin J."

Appendix A

Appendix B

The Red and Black Duffel Bag

The Red and Black Duffel Bag contained:

- a) a .223 Remington Colt M4A1 automatic carbine with no serial number, wrapped in clear plastic wrap;
- b) a black silencer wrapped in plastic wrap;
- c) a flash hider, a device that attaches to the muzzle of a firearm and reduces the visibility of the flash of light when the firearm is discharged; and
- d) one cartridge magazine containing 40 cartridges of .223 Remington cartridges suitable for use with .223 Remington calibre AR-15 type rifles such as the .223 Remington Colt M4A1 automatic carbine.

The Team Canada Hockey Bag

The Team Canada Hockey Bag contained:

- a) five black ski masks;
- b) a gun cleaning kit;
- c) two packages of plastic zap straps;
- d) one 9 mm Smith & Wesson 5904 semi-automatic pistol, serial number TCV2181, with a cartridge magazine loaded with two 9 mm cartridges, (one in the chamber), in a Ziploc bag;
- e) one .45 Auto Hi-Point JHP semi-automatic pistol, serial number X4158215 inside a Ziploc bag;
- f) one 7.62 x 39 mm Simonov SKS type semi-automatic rifle, with the serial number obliterated, with a cartridge magazine;
- g) one 7.62 x 39 mm Simonov SKS type semi-automatic rifle, with the serial number obliterated, with a cartridge magazine;
- h) one .223 Remington Norinco 84S-2 semi-automatic rifle, serial number 600696;
- i) one 9 mm Uzi Model A semi-automatic carbine, serial number SA05460, with cartridge magazine;

- j) an oversized, 25-round cartridge magazine suitable for use with 9 mm calibre Uzi submachinegun-type carbines such as Police a 9 mm Uzi Model A semi-automatic carbine;
- k) a 9 mm Luger cartridge; and
- l) the Black Outbound Duffel Bag.

The Black Outbound Duffel Bag

The Black Outbound Duffel Bag contained:

- a) one pair of black gloves;
- b) one pair of blue gloves;
- c) an empty ammunition box inside of a plastic grocery bag;
- d) one 12 gauge Mossberg 590 pump action shotgun, serial number U336460;
- e) one .308 Winchester DPMS LR-308 Panther semi-automatic rifle, serial number 72540, with cartridge magazine;
- f) one 9 mm Just Right Carbines JR Carbine semi-automatic carbine, serial number JRXL052120 with cartridge magazine; and
- g) a dehumidifier and "Firm Grip" gloves.

The Black Roots Backpack

The Black Roots Backpack contained:

- a) one 40 cartridge magazine suitable for use with .223 Remington calibre AR-15 type rifles such as a .223 Remington Colt M4A1 automatic carbine;
- b) one cartridge magazine suitable for use with 7.62 x 39 mm calibre SKS type rifles such as the 7.62 x 39 mm Simonov SKS type semi-automatic rifles;
- c) one cartridge magazine suitable for use with 9 mm calibre Uzi submachinegun type carbines such as a 9 mm Uzi Model A semi-automatic carbine;
- d) one cartridge magazine suitable for use with 9 mm calibre Uzi submachinegun type carbines such as a 9 mm Uzi Model A semi-automatic carbine;
- e) one cartridge magazine suitable for use with 9 mm calibre Glock pistols, or other firearms capable of using or designed to accept Glock pistol magazines, such as a 9 mm Just Right Carbines JR Carbine semi-automatic carbine;
- f) one Taser with plug-in for re-charging;
- g) one trigger lock;
- h) one Ziploc bag with forty 9 mm Luger cartridge;

- i) one 9 mm Luger cartridge;
- j) one .40 S&W cartridge and one 9 mm Luger cartridge;
- k) five 7.62 x 39 mm cartridges;
- l) two boxes of ammunition, each box containing fifty .32 Auto cartridges;
- m) ten boxes of ammunition (nine sealed, one open), each box containing twenty .762 x 39 mm cartridges (200 cartridges total);
- n) twenty-seven plastic-covered ammunition pouches, each pouch containing 10 cartridges of .762 x 39 mm cartridges (270 cartridges total); and
- o) miscellaneous pieces.

The Air Canada Suitcase

The Air Canada Suitcase contained:

- a) One .22 Charter Arms AR-7 Explorer semi-automatic rifle, serial number A68991, with its barrel cut down so it is less than 660 mm in length, with cartridge magazine;
- b) one pistol grip with RCMP exhibit label, suitable for use with a Mossberg model 500 type shotgun;
- c) one drum cartridge magazine suitable for use with 9 mm calibre Glock pistols, or other firearms capable of using or designed to accept Glock pistol magazines, such as a 9 mm Just Right Carbines JR Carbine semi-automatic carbine;
- d) four cartridge magazines suitable for use with .30 carbine calibre M1 Carbine-type rifles;
- e) one .45 Auto calibre cartridge magazine suitable for use with .45 Auto 1911 type pistols;
- f) one .45 Auto calibre cartridge magazine suitable for use with .45 Auto Star model Firestar pistols;
- g) two .22 LR calibre cartridge magazines suitable for use with .22 LR calibre Beretta model 70, 71 or similar pistols;
- h) one .22 LR calibre cartridge magazines, suitable for use with .22 LR calibre Beretta model 70, 71 or similar pistols;
- i) one cartridge magazine suitable for use with a 9 mm one 9 mm magazine loaded with thirty-two 9 mm cartridges;
- j) one 9 mm loaded with thirty-two 9 mm cartridges suitable for use with 9 mm calibre Glock pistols, or other firearms capable of using or designed to accept Glock pistol magazines, such as a 9 mm Just Right Carbines JR Carbine semi-automatic carbine;

- k) one black belt pouch with a loader for AR-15 type cartridge magazines in a pocket, and a .223 Remington cartridge inside the pouch;
- l) one pair of black handcuffs;
- m) one black silencer body, missing end cap;
- n) one .357 Magnum Hy Hunter Frontier Six Shooter revolver, serial number 3/230 in a brown holster;
- o) one .22 Long Rifle Beretta 71 semi-automatic pistol, serial number 61811, with no barrel, with the cartridge magazine missing its floor plate and stuck in its grip;
- p) one .38 Smith & Wesson Top Break 38 No. 2 Double Action Model 4 five shot revolver, serial number 419426, inside three Ziploc bags;
- q) two boxes of twenty .308 Winchester cartridges (40 cartridges total);
- r) one box of fifty American Eagle .357 Magnum cartridges and one box of twenty American Eagle .308 Winchester cartridges (70 cartridges total);
- s) two boxes of fifty .40 S&W cartridges (100 cartridges total);
- t) five 12-gauge shotshell cartridges;
- u) a Ziploc bag with five 12-gauge shotshell cartridges and twenty .223 Remington cartridges;
- v) plastic bag with one 9 mm cartridge and forty .40 S&W cartridges (41 total cartridges);
- w) a Ziploc bag with seventy-seven .45 Auto cartridges;
- x) a plastic bag with ten 9 mm cartridges and twenty-seven .40 S&W cartridges;
- y) a box with fourteen 12-gauge shotshell cartridges;
- z) a bag with forty-nine .357 Magnum cartridges;
- aa) a bag with:
 - i) one box of five 12-gauge shotshell cartridges;
 - ii) one box of fifty 9 mm cartridges; and
 - iii) eleven 9 mm cartridges;
- bb) a dehumidifier, a gun cleaning kit, and an instruction manual for "SUB-2000", a pistol-caliber semi-automatic carbine; and
- cc) a box with sixty-two 9 mm cartridges.

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/20/17/2020BCSC1737cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-stephens-2020>

Prepared on 28 October 2026 · Esheria