

CANADA / JUDGMENT

R. v. Tremblay

2025 BCSC 2710

COURT

Supreme Court of British Columbia

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2025 BCSC 2710 R. v. Tremblay

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Tremblay,

2025 BCSC 2710

Date: 20250314

Docket: 95375-2

Registry: Kelowna

Rex

v.

Dylan Mark Paul Tremblay

Before: The Honourable Justice Veenstra

Oral Reasons for Judgment

Counsel for the Crown:

D. Reznikov

Counsel for the Accused:

B. Belcher

Place and Dates of Trial:

Kelowna, B.C.

January 27-29, 2025

Place and Date of Judgment:

Kelowna, B.C.

March 14, 2025

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Introduction

- [1] THE COURT: Mr. Tremblay is charged with four firearms offences related to a handgun found in his backpack when the taxi he was in was pulled over on February 22, 2021, and his possessions searched.
- [2] All four charges relate to the same firearm. They assert that Mr. Tremblay:
- a) Possessed an unloaded prohibited firearm, with readily accessible ammunition capable of being discharged in the firearm, without being the holder of an authorization or license under which he may possess that firearm and a registration certificate for the firearm [Criminal Code, R.S.C. 1985, c. C-46, s. 95(1)];
 - b) Possessed a prohibited firearm, knowing that he was not the holder of a license under which he may possess the firearm or knowing that he was not the holder of a registration certificate for the firearm [Criminal Code s. 92(1)];
 - c) Occupied a vehicle knowing there was a prohibited firearm in the vehicle [Criminal Code s. 94(1)]; and

- d) Transported a firearm in a manner contrary to a regulation made under para. 117(h) of the Firearms Act, S.C. 1995, c. 39 [Criminal Code s. 86(2)].
- [3] Certain things were not in issue. It was admitted that Mr. Tremblay is the individual who was arrested on February 22, 2021, in the circumstances I will describe below. With respect to the firearm, it was admitted that:
 - a) The Kimber handgun that was seized on February 22, 2021, is a prohibited firearm within the meaning of ss. 84 and 95 of the Criminal Code;
 - b) The ammunition seized with the firearm was capable of being discharged in it and was readily accessible;
 - c) The empty magazine seized with the firearm was suitable for use in the firearm; and
 - d) The loaded magazine seized with the firearm was suitable for use with the firearm, and the cartridges of ammunition in it constitute ammunition within the meaning of s. 84 of the Criminal Code and were capable of being discharged in the firearm.
- [4] It was also admitted that Mr. Tremblay has never been the holder of a license or authorization under which he could possess the firearm, or a registration certificate for the firearm.
- [5] At trial, only one essential element of the offences charged was in dispute - that being whether Mr. Tremblay was knowingly in possession of the Kimber handgun and ammunition. The trial focused on whether the Crown had established this beyond a reasonable doubt.

Background Facts

- [6] The evidence in this case began with the development of a relationship between the accused, Mr. Tremblay, and a Ms. Weal. Ms. Weal was originally from Kelowna, but lived in Calgary for a number of years before moving back to Kelowna in about 2019. She met Mr. Tremblay on Tinder in about July 2020, and they spent quite a bit of time together for several months thereafter. At some point in about August 2020, Mr. Tremblay began living with Ms. Weal. The two of them had a room upstairs in a loft area at a place rented by Ms. Weal's father, Mr. Kopan. They paid Mr. Kopan about \$500 each month to live there.
- [7] Ms. Weal's evidence was that both she and Mr. Tremblay occasionally consumed drugs including cocaine.
- [8] Ms. Weal's evidence was that at some point in 2020, she became aware that Mr. Tremblay had a Kimber handgun. She said that the gun had come up in some of their conversations, that initially she did not know whether it was real or not, but that when she actually saw it then she believed it was real. She did not recall when she first saw it. She did not think she told her father about the firearm while Mr. Tremblay was living with them.

- [9] She recalled that at some point, she and Mr. Tremblay had gone for a drive at a time when it was dark out, that they stopped at a roadside turnout on Highway 33 between Kelowna and Big White, and that she observed Mr. Tremblay fire the handgun toward a garbage can. She thought that he might have fired the gun twice, or that two shots hit the garbage can, but she did not remember for sure. She recalled that, when the gun was fired, it was very loud and she was scared. She could not remember exactly when this happened, but thought that it was toward the end of the time that Mr. Tremblay lived with her at her father's place. At trial, she said that she thought they only went to a roadside turnout once, but acknowledged that in her police statement she had said that it happened twice.
- [10] Ms. Weal said that she was not forced to go with Mr. Tremblay to the roadside turnout, but if she had not then he would be mad and it "just wasn't worth it".
- [11] Ms. Weal said that she had also seen Mr. Tremblay with the firearm when he would go for a walk with it. She recalled that he had it in his waistband. She said that she walked with Mr. Tremblay once or twice when he had the firearm, but that he also went out for walks on his own.
- [12] Ms. Weal also said that she had seen the firearm in the loft area of the house where she and Mr. Tremblay were staying. She recalled that at one point he had a box for it, made of a hard material, but could not remember whether the box was black or grey, or whether there was a lock on it. At times, he would just set the firearm out on the bed - for example, if he was polishing it. On cross-examination, Ms. Weal said that Mr. Tremblay had insisted that she learn how to load the firearm.
- [13] Ms. Weal said as well that Mr. Tremblay had two boxes of ammunition that he would keep with his things in the loft.
- [14] Ms. Weal's evidence was challenging at times to discern. At times she would give an answer, then state something like "I don't know" or "I can't remember". By way of example, from her direct examination:

Q Did he talk about whether he had a license for the gun?

A I think he said no, he didn't. I don't know.

Q Did he talk to you about whether the gun was registered?

A I think he said it wasn't. I - I can't remember.

[15] Ms. Weal struggled to recall how many times she had seen Mr. Tremblay with the handgun. When asked if it was more or less than 10 times, she said:

A I don't know, fewer than 10 maybe. I don't know.

[16] When asked if it was more than five, she nodded her head, then said:

A Yes. I just - I don't know.

- [17] Mr. Tremblay did not get along well with Mr. Kopan. They had various arguments about matters such as how loud Mr. Kopan had the television on. Ms. Weal said that at some point in about mid-February 2021, Mr. Tremblay made some sort of statement as to what he would do if Mr. Kopan came upstairs. Ms. Weal struggled to remember exactly what it was that Mr. Tremblay said, other than that it involved shooting and kneecaps. She also could not remember when the statement was made. Her recollection was not refreshed through reference to a statement she gave to the RCMP in February 2021.
- [18] I note that Mr. Tremblay was initially charged as well with uttering threats against Mr. Kopan. That charge was stayed during trial, just prior to closing submissions.
- [19] Ms. Weal and Mr. Tremblay had disputes in early February 2021. Ms. Weal acknowledged being upset that Mr. Tremblay had peeled the glass off of her phone. On about February 4, 2021, Ms. Weal was travelling by car with Mr. Tremblay to Calgary, where Ms. Weal had a scheduled family court appearance, but when they got to Armstrong, Mr. Tremblay refused to go any further, and Ms. Weal missed her court hearing.
- [20] Ms. Weal said that she left her father's house on about February 18 or 19, 2021, and did not return until later in the day on February 20, 2021. Her evidence was that she had last seen Mr. Tremblay at some point between February 16 and 18, 2021, after which she left her father's home and did not return until later in the day on February 20, 2021.
- [21] On cross-examination, Ms. Weal was asked about a comment recorded in her police statement, to the effect that on February 17, 2021, Mr. Tremblay had told her that he had been sleeping with other women. Her answer was "Yeah, I guess so. It's in here." She agreed that she was upset. When asked if she was angry, she said "I guess, yes. I don't know." She said she did not recall if she felt jealous or betrayed. She agreed that she had assumed that Mr. Tremblay was not seeing anyone else. It was put to Ms. Weal that she stayed with Mr. Tremblay for the night of the 17th, and then left on the afternoon of the 18th. Although there was some uncertainty to her answer, I took her to in effect confirm this.
- [22] Mr. Tremblay sent an email to Ms. Weal at about 9:30 p.m. on Friday, February 19, 2021. The email includes complaints about Ms. Weal having disappeared, then goes on to say:
- To top it off your dad is threatening me all day saying where's Jenn don't lie. Then calls the cops and kicks me out after I paid until the end of the month wow what a goof.
- [23] Ms. Weal could not recall exactly when she saw this email. But she did not think she had actually seen it until after she had made her statement to the police.
- [24] On Saturday, February 20, 2021, Ms. Weal and a friend, Mr. Ellis, went to the Rutland Community Police office. They met there with Constable Fraser of the Kelowna RCMP, who took a statement from Ms. Weal and ultimately prepared a report recommending charges. Constable Fraser also asked for assistance from the detachment's GIST (General Investigations Support Team) to assist in disseminating information about the fact that Mr. Tremblay was arrestable, and to monitor any other information that might come in with

respect to Mr. Tremblay. The information that was to be disseminated indicated that Mr. Tremblay was arrestable, and should be considered armed and dangerous. A police query with respect to Mr. Tremblay would have showed that.

[25] When asked about how she came to make this report, Ms. Weal said:

A I don't know. I - I didn't know what to do. I knew that there was a gun out there and I just wanted it gone and away.

[26] Ms. Weal said that she provided a photograph of the Kimber handgun that she had seen Mr. Tremblay with to Constable Fraser. She could not remember how she came to have the photograph, although she thought it might have been on her tablet. In the photo, the gun is sitting on top of a case, and Ms. Weal said that she had seen Mr. Tremblay store the Kimber handgun in the case.

[27] Ms. Weal acknowledged that at the time she made her report, she could not say when she had last seen the handgun in person.

[28] On the Saturday afternoon, after she had made her report to the police, Ms. Weal went back to her father's house and found that Mr. Tremblay was not there and that all of Mr. Tremblay's things and some of Ms. Weal's things were gone. She said that some of her clothes and a blue and white comforter were missing, as well as a blue Rubbermaid bin. She said that the handgun was gone as well, along with the case and the ammunition, and that she did not see it again after leaving the house prior to her report to the police. Her father told her that Mr. Tremblay had packed up his things, called a cab and was gone.

[29] On cross-examination, Ms. Weal said that she was mad that Mr. Tremblay had taken some of her clothes, and she did not understand why.

Events of February 22, 2021

[30] Ms. Weal had a tablet, and Mr. Tremblay had an email account that was set up on that tablet. At some point either late at night on February 21 or early in the morning of February 22, 2021, Ms. Weal viewed Mr. Tremblay's emails and realized that he had booked an Airbnb in Kelowna, from which he was scheduled to check out on Monday, February 22, 2021.

[31] When asked on cross-examination about her reasons for checking Mr. Tremblay's emails that night, she said:

I just wanted to get the gun off the street. I knew where he was going to be. The cops were going to go and get him. He had already left the house, so we couldn't get him there.

[32] Ms. Weal also acknowledged having said, in a second statement to the RCMP on the evening of February 22, 2021:

And I wanted to know, you know, what was going on and found out, you know, just how untruthful that he's been to me and it just got me upset.

I really want to get him off the street, you know. I don't want him going after and taking advantage of any more women.

- [33] Ms. Weal initially texted Constable Fraser about where Mr. Tremblay was staying, but he was not on duty. She then called a friend, Mr. Ellis, who had a truck, and asked him to drive her to the address. Both Ms. Weal and Mr. Ellis testified as to what happened then - in particular, that at 11:00 or 11:30 a.m. on the morning of Monday, February 22, 2021, they drove by the address of the Airbnb and parked a short distance away. After a short period of time, a Yellow Cab drove up to the address. A person that Ms. Weal identified as Mr. Tremblay came out and loaded things into the back of the taxi (which was a hatchback). Ms. Weal said that her blue Rubbermaid bin was among the items he was loading into the taxi, as well as two backpacks. Her recollection was that one of the backpacks was green, while the other might have been blue or grey but she was not certain.
- [34] The taxi driver, Mr. Dhaliwal, also testified. His evidence was that he had been called to pick up a "Dylan" at the address, and that he arrived at about 11:45 a.m. The customer was at the gate and had several items with him, so Mr. Dhaliwal backed up his vehicle into the driveway then opened the rear hatch. The customer, who identified himself as "Dylan", then loaded all of his items into the back of the vehicle, and asked to be driven to the TD Bank downtown, with a stop en route at the Canco gas station on Clement Street.
- [35] Mr. Dhaliwal confirmed that all of the items in the back of the taxi were placed there by the customer, Dylan.
- [36] Once Mr. Tremblay had finished loading items into the back of the taxi, he got in and the taxi began driving away. Ms. Weal and Mr. Ellis followed the taxi and called 911 to report that Mr. Tremblay had been located. They used Mr. Ellis' phone, and they were able to converse with the 911 operator through the vehicle's Bluetooth speakers.
- [37] When asked what was going through her mind as she called 911 and followed the taxi, Ms. Weal said that she just wanted the gun to be away, and not with Mr. Tremblay.
- [38] Evidence from various police officers indicated that shortly before 11:45 a.m., a call came in to 911 from Ms. Weal, advising that Mr. Tremblay had been located and that he was in a taxi heading downtown. Several RCMP cars in the vicinity responded.
- [39] When the taxi pulled into the Canco gas station, Mr. Ellis and Ms. Weal drove on by and pulled into a parking lot further up the road. Later, they saw the taxi pass them and informed the 911 operator. They were instructed to stay in the parking lot and await further instructions. After waiting for a while, and not hearing anything further, they ended up leaving.

- [40] Mr. Dhaliwal's evidence was that his customer went into the Canco gas station for about five minutes, then they continued on toward the TD Bank branch. Before they got there, they were pulled over by the RCMP at the corner of Doyle and Ellis Streets. By the time the taxi was pulled over, there were three RCMP cars involved. Additional officers attended shortly thereafter.
- [41] Once the vehicle was pulled over, Mr. Tremblay was arrested by Constable Lamont-Paradis, subjected to a pat-down search, and taken to the RCMP depot which was only about a two-minute drive away.

Search of the Taxi

- [42] After Mr. Tremblay's arrest, other officers searched the items that were in the rear of the taxi. There were four main containers: a blue Rubbermaid bin, a green backpack, a grey/black backpack, and a reusable shopping bag. There was also a black jacket sitting on top of some of the bags, and a white pillow or comforter on top of the blue Rubbermaid bin.
- [43] Ms. Weal was shown photographs taken by the RCMP officers of the various items found in the rear of the vehicle. She identified the blue Rubbermaid bin as being hers, but said that the two backpacks belonged to Mr. Tremblay. She was not sure where the shopping bag was from.
- [44] Several of the officers who conducted searches gave evidence at a voir dire, as did Sergeant Caruth who maintained the exhibit log and took custody of the exhibits. By consent of the parties, the voir dire evidence was admitted into the record at trial.
- [45] Several items were located during the course of the initial roadside search. The largest items were two large plastic gun cases. The black case, which was the larger of the two, had cutouts inside that were of the right size to store the firearm that is the subject of the charge as well as two magazines. By my approximate measurements, the exterior dimensions of the case were about 17" x 13" x 5". The second plastic gun case was smaller. It had dimpled foam on the inside but no cutouts, and a Kimber logo on the exterior. Both of these cases were found by Constable Peacey, who believed that he found both of them in the blue Rubbermaid bin.
- [46] Constable Peacey also located a black plastic container with a translucent yellow lid, holding 51 rounds of pistol-calibre ammunition (and with empty spaces that could have held more). The container had a "Holsters" logo on the lid. As noted above, this ammunition was subsequently tested and found to be capable of being discharged in the firearm. Constable Peacey also found a further blue plastic container with a clear plastic lid which had various keys, Allen wrenches and other items that could be used to adjust a handgun. Constable Peacey could not recall whether he found these latter two items in a backpack or in the blue Rubbermaid bin.

- [47] Other items located during the roadside search - most likely from Constable Peacey's search of the grey backpack - included:
- a) A cardboard box that contained a rear sight adjustment tool for a firearm;
 - b) A small orange bottle containing gun lubricating oil;
 - c) Packaging material for a flashlight and laser sighting accessory that can be attached to a small firearm; and
 - d) Packaging material for Hogue automatic pistol stocks.
- [48] Constable Jones searched the green backpack. In it, he found a green-zippered pouch that contained an unloaded pistol magazine and a pair of black, checkered pistol grips.
- [49] No firearm was located during these initial searches. However, shortly after 1:00 p.m., Constable Jones and Sergeant Caruth conducted a more detailed search of the two backpacks at the RCMP detachment. During this search, Constable Jones found what he described as an "almost hidden" inner pocket in the grey backpack in which was located the Kimber .45 calibre handgun, with attached flashlight and laser sighting accessory, as well as a second magazine. The handgun was unloaded - with no magazine in it and an empty chamber. The flashlight accessory had the same brand name as the packaging materials located at the roadside search. The magazine was loaded with six .45 calibre cartridges. It was in the same backpack pocket as the handgun, but was not in the handgun.
- [50] Ms. Weal was shown some of the photographs taken by the RCMP officers. She identified the large black plastic case as one that she had seen Mr. Tremblay use to store the handgun, and thought that the case of bullets looked familiar.

Cross-Examination of Ms. Weal

- [51] On cross-examination, Ms. Weal was challenged on her evidence that she was afraid of the gun. She acknowledged that in her statement to Constable Fraser, when asked what she had said to Mr. Tremblay about the firearm, she told Constable Fraser:

Honestly, I said I felt safer. I mean I'm not going to lie, I didn't know - I said I - I didn't think he would - I knew he wouldn't use it, but he's just walking in Rutland with it, you know. He felt like the guy, and I was like, okay, well, safe for now, uh, you know.

- [52] It was suggested to Ms. Weal on cross-examination, that the Kimber handgun was in fact hers. It was suggested that she had up made the story about Mr. Tremblay having a handgun in order to get him in trouble with the police. She denied this, and insisted that the firearm belonged to Mr. Tremblay. She also denied that she had taken the photo of the gun before even meeting Mr. Tremblay.

- [53] It was suggested to Ms. Weal as well that she had placed her handgun in the backpack and then forgotten it. She denied this. It was further put to her that she knew her firearm was in the bag that Mr. Tremblay had taken, which she also denied.
- [54] Finally, it was put to Ms. Weal that the reason she waited until after she had seen Mr. Tremblay loading items into the back of the taxi before calling the police is that she wanted to make sure he had with him the backpack she believed the gun to be in. She denied this.
- [55] Ms. Weal agreed that she was upset that Mr. Tremblay had removed her things, and that he was sleeping with other women.

The Parties' Positions

- [56] The Crown says that I should accept Ms. Weal's evidence that the handgun, the ammunition, and the related items including cases were all Mr. Tremblay's. Alternatively, the Crown says that even if I do not accept Ms. Weal's evidence, I can convict nonetheless on the basis that the only reasonable inference that can be drawn from Mr. Tremblay's possession of the backpacks and bin that he loaded into the taxi on February 22, 2021, is that he knew that they included the firearm and ammunition.
- [57] The Crown acknowledged that Ms. Weal was not a perfect witness, and that her evidence contained some inconsistencies with respect to prior statements. The Crown submitted that those inconsistencies related primarily to peripheral issues. The Crown acknowledged that Ms. Weal also struggled to remember certain details, but says that Ms. Weal was giving evidence as to matters from August 2020 to February 2021, which was four or more years in the past. The Crown submits that these issues do not render her evidence on the key issue - that the firearm and related items were those of Mr. Tremblay - not credible or unreliable.
- [58] The Crown notes that Ms. Weal was clearly an anxious and reluctant witness, who explained that she was in court largely because she had been subpoenaed, and that she felt guilt about having "turned in" Mr. Tremblay. The Crown points out that Ms. Weal was frank about and made reasonable concessions, including:
- a) Her own struggles with substance issues;
 - b) Her limited memory of some specific events, including what Mr. Tremblay had said about her father; and
 - c) The fact that she did not actually see Mr. Tremblay take any items from their room in the loft of her father's house, and that she just assumed he had taken the things that were missing when she returned to the house on February 20, 2021.
- [59] The Crown submits, however, that Ms. Weal's evidence was firm on questions related to the handgun, including that it belonged to Mr. Tremblay, that she had seen Mr. Tremblay with it on multiple occasions, and that the two backpacks found in the taxi belonged to Mr. Tremblay.

- [60] The Crown further submits that, even if the Court does not accept Ms. Weal's evidence, the Court should nonetheless convict based on the other evidence. The Crown acknowledges that the other evidence as to Mr. Tremblay's knowledge of the firearm is circumstantial, but says that the only reasonable inference that can be drawn is that Mr. Tremblay was aware of the firearm. The Crown notes that, of the four containers that Mr. Tremblay had with him, at least three of them contained either the gun or gun-related accessories. The Crown submits that it is inconceivable, given the number of such items and their size, and the way they were spread out amongst the different containers, that Mr. Tremblay would not have known about them.
- [61] With respect to Mr. Tremblay's theory that the gun belonged to Ms. Weal, the Crown submits that this theory is inconsistent with the facts, including that:
- a) Mr. Tremblay had exclusive control over the items found in the taxi over multiple days leading up to his arrest - from the time Ms. Weal left on the Thursday night until the time Mr. Tremblay was arrested at mid-day on the Monday; and
 - b) The items found among Mr. Tremblay's effects included a plethora of firearm-related accessories and packaging materials scattered across at least two backpacks and a bin. These items took up a significant amount of space and collectively weighed a significant amount. It is unrealistic to think that Mr. Tremblay would not have discovered those items over nearly four days.
- [62] Mr. Tremblay argued that the Crown has not proven beyond a reasonable doubt that Mr. Tremblay was knowingly in possession of the firearm. Mr. Tremblay notes that:
- a) The firearm was not in plain view, and in fact was difficult to find to the degree that the police officers missed it on the initial search; and
 - b) There were no identifying documents with the firearm, and no fingerprints, DNA or markings on it or any of the related paraphernalia connecting them to Mr. Tremblay.
- [63] Mr. Tremblay says that Ms. Weal's evidence was unreliable because of her inability to recall so many details, and in particular her inability to recall the things she had reported to Constable Fraser even when presented with a transcript of her statement. Ms. Weal spoke repeatedly about being confused and about her brain "not working". Counsel asserted that Ms. Weal had used the phrase "I don't know" some 91 times during her direct examination, and many more times during her cross-examination. She could not remember when the firearm was first brought to the house; nor could she recall when she had last seen it before making her report to Constable Fraser. Mr. Tremblay argues that if Ms. Weal was as truly uncomfortable with the presence of the firearm she would have moved out of the house - rather than having lived there with Mr. Tremblay from August 2020 to February 2021.

- [64] Mr. Tremblay also noted things said by Ms. Weal at trial that were contradictory to past statements - for example, she said at trial that she was frightened of guns, but had told Constable Fraser in 2021 that she felt safe having a gun around. As well, counsel noted the different evidence as to whether she and Mr. Tremblay had gone once or twice to a roadside pullout to fire the firearm, and suggested that it makes little sense to be doing that sort of thing after dark.
- [65] Mr. Tremblay also pointed out differences between some of Ms. Weal's statements and those of Mr. Ellis. These differences primarily related to their estimates of how far away they had parked from the Airbnb while waiting for Mr. Tremblay to emerge, how long they waited there, and whose phone they used to call 911.
- [66] Mr. Tremblay also submits that Ms. Weal's evidence was neither reliable nor credible because it was clear she was upset and angry leading up to February 20, 2021, having learned that Mr. Tremblay was sleeping with other women. It was submitted that Ms. Weal had a motive to place a firearm in the backpack prior to Mr. Tremblay moving out and then report the existence of a firearm to the police.
- [67] Mr. Tremblay notes that the large gun case was presumably found in the blue Rubbermaid bin. Ms. Weal's evidence was that that bin was hers. More generally, the evidence indicated that other items of Ms. Weal's were found in the taxi, including a comforter. Mr. Tremblay says that this is consistent with items of Ms. Weal being among the things he had with him. He notes the evidence that Mr. Kopan had kicked him out of the house on the Friday, February 19, 2021, which meant that he had to pack up and leave, and it is reasonable to think that in doing so he might have ended up picking up items of Ms. Weal's as well as his own.
- [68] Mr. Tremblay says that there is no basis to draw an inference that he must have opened up each and every one of the containers he had with him. He submits that, with respect to the Crown's alleged circumstantial case, there is a plausible alternative inference: that being that Mr. Tremblay unknowingly had with him Ms. Weal's firearm. With respect to the bulk and the weight of items, Mr. Tremblay submits that he had several containers of items with him, there is no evidence as to the bulk and weight of the other items, and thus there continue to be multiple available inferences.
- [69] Mr. Tremblay submits that the standard of proof beyond a reasonable doubt is not met in this case.

Reliability and Credibility

- [70] Reliability and credibility are related but distinct concepts. The distinction between them was considered in *R. v. Morrissey* (1995), 22 O.R. (3d) 514 at 526, 1995 CanLII 3498 (C.A.), cited in *United States v. Bennett*, 2014 BCCA 145 at para. 23:

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable. ...

[71] The importance of inconsistencies with past statements was the subject of comment by Galligan J.A. in *R. v. M.G.* (1994), 93 C.C.C. (3d) 347 at p. 354-355 (Ont. C.A.):

Probably the most valuable means of assessing the credibility of a crucial witness is to examine the consistency between what the witness said in the witness-box and what the witness has said on other occasions, whether on oath or not. Inconsistencies on minor matters or matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness. This is particularly true in cases of young persons. But where the inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth.

[72] As noted by Justice Ker in *Gill Tech Framing Ltd. v. Gill*, 2012 BCSC 1913 at para. 28, citing *Novak Estate (Re)*, 2008 NSSC 283 at para. 37:

[37] There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.* [1996] 2 S.C.R. 291 at para. 93 and *R. v. J.H.*, *supra*).

Elements of the Offences

[73] Before turning to the specific charges, I note the general principles summarized concisely by Justice Williams in *R. v. Jessup*, 2022 BCSC 2058 at para. 200:

1. The defendant is presumed to be innocent unless and until this Court is satisfied that the Crown has proven his guilt to the standard of proof beyond a reasonable doubt;
2. The onus of proof lies upon the Crown; there is no obligation on the defendant to call evidence or to prove anything; and

3. The criminal standard of proof beyond a reasonable doubt will apply in respect of each element of the offence charged or any included offence. Any doubt on any element must be resolved in favour of the defendant. Unless the Crown proves all of the essential elements of the offence charged or any included offence, a verdict of "not guilty" must result.

[74] More recently, these principles were summarized by Justice Brundrett in *R. v. B.H.H.*, 2024 BCSC 2509 at para. 94:

[94] The accused is presumed innocent unless the Crown proves his guilt beyond a reasonable doubt. The standard of proof beyond a reasonable doubt is inextricably intertwined with the presumption of innocence. That burden to prove the elements of the offences rests on the Crown throughout the trial and never shifts to the accused: *R. v. Lifchus*, [1997] 3 S.C.R. 320, 1997 CanLII 319. Proof beyond a reasonable doubt is closer to absolute certainty than probable guilt; however, the Crown does not have to prove anything to absolute certainty: *R. v. Starr*, 2000 SCC 40 at para. 231; *R. v. Whitmore*, 2021 BCCA 302 at paras. 41-43. As well, the Crown is not required to prove beyond a reasonable doubt each individual piece of evidence that makes up its theory: *R. v. Morin*, [1988] 2 S.C.R. 345, 1992 CanLII 89.

[75] The first count alleges a breach of s. 95(1) of the Criminal Code, which states:

Subject to subsection (3), every person commits an offence who, in any place, possesses a loaded prohibited firearm or restricted firearm, or an unloaded prohibited firearm or restricted firearm together with readily accessible ammunition that is capable of being discharged in the firearm, without being the holder of

- (a) an authorization or a licence under which the person may possess the firearm in that place; and
- (b) the registration certificate for the firearm.

[76] This charge requires proof of the following elements:

- a) The accused knowingly had in his possession both a prohibited firearm and readily accessible ammunition;
- b) The accused had no license or registration certificate for the firearm; and
- c) That the firearm is a prohibited firearm within the definition of s. 84.

[77] The second count alleges a breach of s. 92(1) of the Criminal Code

Subject to subsection (4), every person commits an offence who possesses a prohibited firearm, a restricted firearm or a non-restricted firearm knowing that the person is not the holder of

- (a) a licence under which the person may possess it; and
- (b) in the case of a prohibited firearm or a restricted firearm, a registration certificate for it.

[78] The elements of this offence are the same as for the first count, other than the possession of readily accessible ammunition which is not required under s. 92(1).

[79] The third count alleges a breach of s. 94(1) of the Criminal Code:

Subject to subsections (3) and (4), every person commits an offence who is an occupant of a motor vehicle in which the person knows there is a prohibited firearm, a restricted firearm, a non-restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device, other than a replica firearm, or any prohibited ammunition, unless

(a) in the case of a prohibited firearm, a restricted firearm or a non-restricted firearm,

(i) the person or any other occupant of the motor vehicle is the holder of

(A) a licence under which the person or other occupant may possess the firearm, and

(B) in the case of a prohibited firearm or a restricted firearm, an authorization and a registration certificate for it,

(ii) the person had reasonable grounds to believe that any other occupant of the motor vehicle was the holder of

(A) a licence under which that other occupant may possess the firearm, and

(B) in the case of a prohibited firearm or a restricted firearm, an authorization and a registration certificate for it, or

(iii) the person had reasonable grounds to believe that any other occupant of the motor vehicle was a person who could not be convicted of an offence under this Act by reason of sections 117.07 to 117.1 or any other Act of Parliament;

[80] The elements of this offence include:

a) That the accused occupied a motor vehicle;

b) That the motor vehicle contained a prohibited firearm;

c) That the accused knew the firearm was there;

d) The accused had an opportunity to leave the vehicle or remove the firearm; and

e) The occupants of the vehicle lacked authorization and a registration certificate for the firearm.

[81] The final count relates to s. 86(2) of the Criminal Code:

Every person commits an offence who contravenes a regulation made under paragraph 117(h) of the Firearms Act respecting the storage, handling, transportation, shipping, display, advertising and mail-order sales of firearms and restricted weapons.

[82] The elements of this offence include (a) that the accused was knowingly storing, displaying, transporting or shipping a firearm, and (b) that the accused was doing so in a manner that breached the applicable regulation. Section 12 of the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations, SOR/98-209, imposes two requirements that the Crown says were not met in this case; specifically, s. 12 requires that an individual transporting a prohibited firearm ensure that:

- a) It is rendered inoperable by means of a secure locking device, and
- b) It is in a locked container.

[83] Each of these offences requires that the accused knowingly be in possession of the firearm. The first count also requires that the accused be knowingly in possession of the ammunition. It is this "knowingly" element that is in dispute on this trial. The other elements of the offences are all established by the undisputed evidence that Mr. Tremblay loaded the various containers into the taxi, the evidence from the police officers of the items they located in those containers, and the formal admissions that I have noted above.

Circumstantial Evidence

[84] I return to the Jessup case, where at paras. 201-204 Justice Williams concisely summed up the leading principles to be applied in dealing with circumstantial evidence:

[201] Where the evidence in a case is circumstantial, the Crown must prove beyond a reasonable doubt that the accused's guilt is the only reasonable inference to be drawn from the evidence as a whole: *R. v. Villaroman*, 2016 SCC 33 at para. 35. If there are reasonable explanations other than guilt, the Crown has not met the burden of proof: *Villaroman*, at para. 35.

[202] While the trier of fact must consider other "plausible theories" and "reasonable possibilities" inconsistent with guilt, this applies to the extent that these alternative theories are not speculative, and are "based on logic and experience applied to the evidence or absence of evidence": *Villaroman*, at para. 37.

[203] The burden of proof placed on the Crown does not require proof beyond a reasonable doubt of every individual piece of circumstantial evidence: *R v. Collin*, 2008 BCCA 431 at para. 17. Rather, circumstantial evidence must be examined in its totality, assessing the cumulative effect of all the evidence to determine whether the essential elements have been proven: *Cote v. The King*, (1941) 77 C.C.C. 75 (S.C.C.), at 76.

[204] When faced with circumstantial evidence, the core question posed to the trier is whether the evidence, "viewed logically and in light of human experience, is reasonably capable of supporting an inference other than [guilt]".: *Villaroman*, at para. 38.

[85] At para. 35 of *Villaroman*, the Court confirmed that:

- [35] In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts. Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence.

Possession

- [86] With respect to possession, the applicable legal principles were summarized by Justice Rowles in *R. v. Anderson*, [1995] B.C.J. No. 2655 (C.A.):
- [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.
- [87] The Crown drew my attention to *R. v. Dawkins*, 2021 ONSC 197, which was said to be factually analogous. In *Dawkins*, the police had obtained a warrant to search a motor vehicle and an apartment associated with Mr. Dawkins, and located a handgun in a backpack that Mr. Dawkins was carrying. At trial, it was acknowledged that Mr. Dawkins had physical control of the handgun since it was in his backpack; the sole issue at trial, as in the present case, was whether Mr. Dawkins had knowledge of the handgun. Mr. Dawkins testified and said the backpack belonged to a friend, and that he was in the process of returning it when searched. In considering Mr. Dawkins' evidence, Justice Monahan commented at para. 91 that:

It is an accepted matter of common sense that an illegal handgun is valuable, difficult to obtain and dangerous. As such, it is reasonable to infer that persons who possess illegal handguns either keep them in a secure location or, if they entrust them to someone else, ensure that that person is aware of the firearm and can be trusted with its safekeeping.

Justice Monahan rejected Mr. Dawkins' evidence, and he was convicted.

- [88] Mr. Tremblay referred me to four cases said to be somewhat comparable.

- [89] In *R. v. Robinson*, 2011 ONSC 4915, various drugs and a firearm were found in a vehicle that was under Mr. Robinson's apparent control. Justice Richetti reviewed the legal principles governing possession, including the following:
- [68] The Defence relies on the cases which state that, if there are other rational conclusions to be drawn from the evidence, the Crown will have failed to prove its case beyond a reasonable doubt. In *R. v. Mullings*, [2011] O.J. 1833 (Sup. Ct.) the court stated at paras. 25 and 41:
25. In other words, if there are other rational conclusions to be drawn from the evidence, the Crown will have failed to prove its case (*R. v. Bullock* [2000] O.J. No. 798; *R. v. Anderson*, [1995] B.C.J. No. 2655 (B.C.C.A.); *R. v. Chualna*, 181 C.C.C. (3d) 192 (B.C.C.A.); *R. v. Green*; *R. v. Rawlins*, [1993] O.J. No. 1346 (O.C.A.).
- ...
41. In circumstances involving unlawful possession in a motor vehicle of a concealed item, that is not readily apparent or visible to the driver of that automobile, something more than the driver's close proximity to the concealed item is required to establish proof of knowledge and control of the hidden item. (*R. v. McIntosh*, supra, para. 32; *R. v. Green and Rawlins*, 5 M.V.R. (3d) 280 (O.C.A.); *R. v. Bauer*, [2003] B.C.J. No. 505 (B.C.C.A.) at para. 18; *R. v. Anderson*, supra, at para. 26; *R. v. Inturrial*, [1993] B.C.J. No. 2901 (B.C.C.A.) at para. 9).
- [90] Mr. Robinson was not the owner of the vehicle, the firearm was in the glove box, and there was no evidence that Mr. Robinson had ever opened the glove box. As a result:
- [69] In this case there is no additional evidence, circumstantial or direct, which ties Mr. Robinson to knowledge of the firearm in the glove box.
- [70] Despite the excellent and compelling submissions of Mr. D'Iorio, I am not persuaded that the only inference to be drawn from the circumstantial evidence is that Mr. Robinson knew the firearm was present in the Nissan's glove box.
- [91] In *R. v. Gay*, 2017 ABQB 664, a vehicle was stopped and searched, with the search turning up both drugs and a prohibited firearm. Two individuals were in the vehicle, neither of whom was the owner. Neither the drugs or the firearm were in plain view. Justice Graesser concluded that one reasonable and available inference was that the accused had borrowed the vehicle for a legitimate purpose, with no knowledge of the drugs or the firearm. He noted at para. 105 that:
- [105] In a circumstantial case, the evidence must be inconsistent with any other rational conclusion except that the accused are guilty. Here, there are other rational conclusions that point to innocence. The constellation of facts in this case does not line up to establish guilt beyond a reasonable doubt. The Crown has not met its burden.
- [92] In *R. v. Aim*, 2023 ONSC 5909, a vehicle with multiple people in it was subject to a routine traffic stop and ultimately searched, and two firearms were found in the vehicle. The driver fled and was never apprehended. At para. 19, Justice Schreck noted that none of the firearms

were in the personal possession of either defendant, and as a result, this was a case where the Crown was required to prove constructive possession. Having considered the various available inferences as to whether Mr. Aim had knowing possession of one of the firearms, the court concluded at para. 32 that that was not the only reasonable inference and thus Mr. Aim's guilt had not been proved beyond a reasonable doubt.

[93] In *R. v. Roy*, 2024 SKCA 98, drugs and cash were found in an apartment said to be connected to the accused. The Court of Appeal concluded that the conviction of Mr. Roy was unreasonable and set it aside. At para. 33, the Court summarized legal principles related to constructive possession:

[33] Some understanding of the relevant legal considerations is a helpful preface to these comments. Constructive possession requires proof of both knowledge and control. A summary of the applicable principles was set out in *R v Choudhury*, 2021 ONCA 560 as follows:

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

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

[94] At para. 38, the Court noted the lack of any physical or forensic evidence linking Mr. Roy to the controlled substance or the cash. At para. 43, the Court commented:

- [43] In concluding this, I am mindful that the line between speculation and plausible theories is sometimes difficult to draw, and in most cases is left within the domain of the trier of fact. However, the focus remains on reasonable alternatives. "[T]o justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative" (Villaroman at paras 38-42,).

Analysis

- [95] I begin with the evidence of Mr. Dhaliwal and Mr. Ellis. I found both to be credible witnesses and generally reliable. In particular, I accept the evidence that the contents of the rear of the taxi were all items that Mr. Tremblay had with him when he was picked up by the taxi on February 22, 2021, and that they were all loaded by Mr. Tremblay into the rear of the taxi.
- [96] As a result, there is no dispute that Mr. Tremblay had physical control of the firearm and the ammunition. The only issue is whether the Crown has proven beyond a reasonable doubt that Mr. Tremblay was aware of them - i.e., that his possession was knowing.
- [97] Evidence as to Mr. Tremblay's knowledge was available from Ms. Weal. However, Ms. Weal was a far from perfect witness. She used the phrase "I don't know" almost as a crutch, even as she provided otherwise responsive answers to the questions put to her. It is important to note that she was testifying about events nearly four years in the past (actually more than four years in respect of her initial relationship with Mr. Tremblay). It was difficult to tell how much the phrase "I don't know" reflected Ms. Weal's challenges in recalling events that far in the past, how much it reflected her anxiety about being required to testify against Mr. Tremblay, and how much it reflected her actually not recalling the answers. I suspect that in many cases it was a combination of the three.
- [98] I note that there are some disparities between the evidence of Mr. Ellis and Ms. Weal. Those disparities relate to such matters as estimates of how close they were parked to and how long they waited outside the Airbnb and whose phone was used to call 911. They are, in my view, minor in nature and are not surprising given that nearly four years had passed between the events of February 22, 2021, and the time they gave evidence at trial. Generally speaking, I accept Mr. Ellis' evidence as to the first two matters, but I accept Ms. Weal's evidence that they used Mr. Ellis' phone to call 911, given her specific evidence that her phone had the glass peeled off and she was without a phone at the time.
- [99] As noted in Morrissey, reliability and credibility are distinct questions. The biggest concern with respect to credibility relates to Ms. Weal's evidence about how she felt about the gun. At trial, she expressed on multiple occasions that she was uncomfortable with the gun. However, when initially giving her statement to the police, she acknowledged that she told Mr. Tremblay that she "felt safer". In my view, it is significant that the question Ms. Weal was asked, and the answer she gave, relates to what she said to Mr. Tremblay at a time she was in a relationship with him. I do not see that as being necessarily and directly inconsistent with the sentiments she expressed about the gun at later times.

- [100] I accept as well that Ms. Weal was, at least during the events of February 20-22, 2021, motivated in part by anger and hurt. While that causes me to consider her evidence with care, in light of her evidence as a whole, and the frankness of some of the things she testified to, I do not conclude that she is not credible.
- [101] My concerns about the reliability of Ms. Weal's recollection leave me reluctant to rely on her answers as to details of events in late 2020 and early 2021. However, I accept her evidence on a major issue in this case: that is, that the firearm, ammunition and related items were Mr. Tremblay's and not hers.
- [102] I turn to the Crown's alternative theory of the case - that being that the circumstantial evidence with respect to Mr. Tremblay's knowing possession is such that there is no other available inference.
- [103] In this case, it is clear on the evidence that the various containers containing the firearm, ammunition and related materials were all in Mr. Tremblay's possession on February 22, 2021, when he loaded the containers into the taxi. Based on the email of Friday, February 19, 2021, it also seems clear that Mr. Tremblay had left the residence he had previously shared with Mr. Kopan and Ms. Weal on February 19, 2021. He had thus had those four containers in his possession for three full days, and they reflect what he chose to take with him upon moving out.
- [104] In my view, it is significant that the firearms-related items were found throughout the four containers that Mr. Tremblay had with him for those three full days. The firearm, the two magazines and the two pistol grips were found in the green backpack. The two plastic cases were found in the blue Rubbermaid bin. Several other items were likely in the grey backpack - including the box containing the rear sight adjustment tool, which was also fairly large.
- [105] In my view, it is inconceivable that Mr. Tremblay would have packed up the four containers he took with him, then had them in his possession for multiple days, without realizing that he had this collection of items spread through the containers containing the possessions he took with him when he moved out. I agree that these items collectively took up a significant amount of space.
- [106] In my view, the theory that Mr. Tremblay had inadvertently or unknowingly taken a gun belonging to Ms. Weal, and all of the associated paraphernalia scattered through most of the containers he took with him when he moved out, does not extend beyond speculation. Similarly, the theory that Ms. Weal had planted the gun in Mr. Tremblay's backpack, then reported him to the police, is speculative at best. I note that these are conclusions I would have reached independently of my acceptance of Ms. Weal's evidence that the firearm was Mr. Tremblay's, and not hers.

[107] In my view, the facts in this case have more in common with the Dawkins case relied upon by the Crown. This is not a case like Robinson, where the firearm was in the glove box of a vehicle belonging to someone other than the accused, with no basis to infer that the accused would have accessed the glove box. Nor is it a case like Gay or Aim where multiple people were connected with a vehicle and there was no basis to connect the firearm and drugs that were found in the vehicle to the accused. Here, the backpacks and bin were in the possession of Mr. Tremblay and had been for several days.

[108] I am satisfied beyond a reasonable doubt that, viewed logically and in light of human experience, the evidence with respect to the items seized on the search and the events leading up to Mr. Tremblay's arrest is reasonably capable of supporting only one inference: that the firearm and ammunition were knowingly possessed by Mr. Tremblay.

Conclusions and Verdict

[109] I conclude that Mr. Tremblay was knowingly in possession of the firearm and the ammunition. In light of the formal admissions and uncontested facts, I conclude that all of the elements of each of the four charges have been proven beyond a reasonable doubt.

[110] Mr. Tremblay, I find you guilty of each of counts one through four on the indictment, and in particular I find you guilty of:

- a) Count 1, in that you possessed an unloaded prohibited firearm, with readily accessible ammunition capable of being discharged in the firearm, without being the holder of an authorization or license under which you may possess that firearm and a registration certificate for the firearm, contrary to s. 95(1) of the Criminal Code;
- b) Count 2, in that you possessed a prohibited firearm, knowing that you were not the holder of a license under which you may possess the firearm or knowing that you were not the holder of a registration certificate for the firearm, contrary to s. 92(1) of the Criminal Code;
- c) Count 3, in that you occupied a vehicle knowing there was a prohibited firearm in the vehicle, contrary to s. 94(1) of the Criminal Code; and
- d) Count 4, in that you transported a firearm in a manner contrary to a regulation made under para. 117(h) of the Firearms Act, contrary to s. 86(2) of the Criminal Code.

"Veenstra J."

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