

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Baird, 2015 NSPC 48

Date: August 4, 2015

Docket: 2690075; 2690060-2690071

Registry: Halifax

Between:

Her Majesty the Queen

V.

Christopher Paul Baird and
Cal David Hann

DECISION

Judge: The Honourable Judge Marc C. Chisholm

Heard: October 20, 2014; December 19, 2014; May 22, 2015

Decision: August 4, 2015

Charge Section 4(1) of the *Controlled Drugs and Substances Act*;
Sections 86(2); 92(1); 95(1); 96(1); 94(1); 88(1) of the
Criminal Code

Counsel: Tanya Carter, for the Crown
Patrick MacEwen, for the Defendant, Baird
Wayne Bacchus, for the Defendant, Hann

By the Court:

Introduction

1) The accused, Christopher Paul Baird (Baird) and Cal David Hann (Hann), are charged, that they on or about the 13th day of January, 2014, at or near Halifax, Nova Scotia, did without lawful excuse store a firearm, to wit., a semi-automatic handgun, in a careless manner, contrary to Section 86(2) of the *Criminal Code*. And further that they at the same time and place aforesaid, did possess a firearm, to wit., a semi-automatic handgun knowing they were not the holder of a license or the holder of a registration certificate for the firearm, under which they may possess it, contrary to Section 92(1) of the *Criminal Code*. And further that they at the same time and place aforesaid, did possess a loaded prohibited firearm together with readily accessible ammunition capable of being discharged in the same firearm and were not the holder of an authorization or license and registration certificate under which they may possess the said firearm, contrary to Section 95(1) of the *Criminal Code*. And further that they at the same time and place aforesaid, did possess a firearm to wit., a semi-automatic handgun, knowing that it was obtained by the commission in Canada of an offence contrary to Section 96(1) of the *Criminal Code of Canada*. And further that they at the same time and place

aforesaid, were occupants of a motor vehicle, to wit., a 2000 Acura sedan, in which they knew that there was a prohibited weapon, to wit., a semi-automatic handgun, contrary to Section 94(1) of the *Criminal Code*. And further that they at the same time and place aforesaid, did unlawfully have in their possession a weapon or imitation of a weapon, to wit., a semi-automatic handgun for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to Section 88(1) of the *Criminal Code*.

2) The accused, Christopher Paul Baird, was also charged that he, on or about the 13th day of January, 2014, at or near Halifax, Nova Scotia, did, have in his possession Cocaine, a substance included in Schedule 1 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and did thereby commit an offence contrary to Section 4(1) of the said *Act*.

3) The accused are presumed innocent.

4) The burden of proving the charges rests on the Crown.

5) The Crown must prove the allegations beyond a reasonable doubt. Proof may be established by direct or circumstantial evidence. Where the evidence is circumstantial, proof beyond a reasonable doubt will be established when the guilt

of the accused is the only reasonable inference which may be drawn from the proven facts.

6) In this case, the Crown alleged that the two accused were together, in a motor vehicle, which went off the road turning from Duffus Street onto Lynch Street at approximately 5:50 am on January 13, 2014. A witness who heard the sound of the accident saw two men get out and run from the car heading north on Lynch Street. The passenger was heard by the witness saying he'd left something in the car. The driver told him to leave it. The passenger went back and retrieved something. The Crown has urged the Court to find that the something was a loaded firearm which was found under an outside oil tank at 5344 Lynch Street, which is north of the accident scene. The two accused were found in a residence, not their own, at 3617 Lynch Street, as a result of the police K9 officer and his police dog following a scent track from the accident scene to the oil tank where the gun was found, and then to 3617 Lynch Street. They were arrested shortly after 6:30 am.

7) Also in the residence at 3617 Lynch Street, at that time, were Dequan Skeard, a friend of the accused, and his mother.

- 8) The witness who heard the accident and saw two men get out of the car was not able to identify either of the two men, nor provide identifying information, such as clothing style, type or color or physical descriptors.
- 9) The car involved in the accident was removed from the scene before the identification officer arrived. The vehicle was never searched for fingerprints or DNA evidence.
- 10) A can of bear spray and a baton found in the vehicle revealed no fingerprints and no DNA evidence.
- 11) There were no fingerprints or DNA evidence found on the firearm located under the oil tank at 5344 Lynch Street.
- 12) The K9 officer expressed the opinion that the two persons who fled the accident scene went to the oil tank at 5344 Lynch Street and then to 3617 Lynch Street, but he cannot say which person or persons found at 3617 Lynch Street created the scent path which was followed by the police dog to that location.
- 13) Neither Dequan Skeard nor his mother were called to give evidence.
- 14) Neither accused called evidence.

15) The Crown case against each accused is circumstantial.

The Evidence

Cst. Tony Croft

16) On January 13, 2014, at 7:20 am, Cst. Tony Croft attended at a scene of a motor vehicle accident at Lynch and Duffus Streets in Halifax, Nova Scotia. The occupants of the vehicle were gone.

17) Cst. Croft took photos of the motor vehicle accident scene and other areas related to the police investigation, Exhibit #1. The car involved in the accident had been removed from the scene prior to his arrival.

18) Photos 9-14 are of 5344 Lynch Street and specifically of an oil tank on the property. The distance from the accident scene to 5344 Lynch Street was measured at 120 meters.

19) Photos 15-18 depict a firearm (Exhibit 2) found under the oil tank at 5344 Lynch Street. The firearm held four rounds, one of which was chambered. No fingerprints were located on the firearm. A request for DNA was done but the lab declined to do DNA testing.

20) Exhibit 5 was admitted by consent. It describes the firearm in question as a prohibited firearm with no serial number. Continuity of the firearm was admitted by both accused.

21) Photos 22-25 are of 3617 Lynch Street, where both accused were found. It is 180 meters from 5344 Lynch Street to 3617 Lynch Street. It is 300 meters from the accident scene to 3617 Lynch Street.

22) Photos 26-28 depict a canister of bear spray (Exhibit 3) taken from the car involved in the accident. There were no prints found on the canister. A DNA swab was taken but not sent to the lab for testing.

23) Photos 29-30 show a collapsible baton (Exhibit 4) taken from the car in question. There were no prints found on it. A DNA swab was not sent to the lab for testing.

24) Cst. Croft never examined the vehicle involved in the accident. Consequently, there were no prints or DNA samples obtained from the vehicle.

25) Both accused admitted they did not hold a licence or registration for a firearm.

Sarah Hann

- 26) Sarah Hann is the mother of Cal Hann, one of the two accused.
- 27) She lives at 3611 Acadia Street, which is only a few minutes (walk or drive) and a few (3 or 4) blocks from Lynch Street.
- 28) She testified that in January 2014 she was the registered owner of an Acura. She stated that she, and her boyfriend, her parents and her son Cal used the vehicle. She stated that Cal used it for school. She didn't know if Cal's friends drove it. She testified that only she and Cal were insured to drive it.
- 29) She testified that at around 10:00 pm on January 12, 2014 Cal left with the Acura, which had no damage. She didn't recall his clothing. He had told her he was going to spend that night with his girlfriend. He was due at school the next day.
- 30) She testified that early the next morning, before 7:00am, her son Cal called her and told her the car was stolen.
- 31) She was shown Exhibit 4, the baton, and said she'd never seen it. She was shown Exhibit 3, the bear spray, and said she'd never seen it before.
- 32) She did not see her vehicle at the accident seen at Duffus and Lynch.

33) When she got her car back, there was a wheel bent back and the airbags were out.

Cst. Stephen Wayne Cooper

34) Cst. Cooper was accepted by the Court as an expert in the field of “tracking and handling with respect to how dogs respond to human scents and how his dog communicates those findings to him”.

35) Cst. Cooper testified as follows:

36) On January 13, 2014, he and his dog, Copper, arrived on scene at approximately 6:08 am. After being briefed by officers on scene, he cast his dog in the area of Lynch Street about 30 feet north of the motor vehicle which had been involved in an accident. The dog quickly indicated that he had located a scent track near the middle of the street. Cst. Cooper followed the police dog as he tracked the scent north on Lynch Street. He testified that the dog’s actions indicated a strong scent track indicative of more than one person. The dog veered off the street to an oil tank on the property at 5344 Lynch Street and his movements indicated he found something there.

37) Cst. Cooper directed the dog to re-establish the scent track and follow it. The dog did so, proceeding north on Lynch Street. The dog followed the scent to the rear door at 3617 Lynch Street. The dog went “crazy” at that door signalling to him that the person(s) he was looking for went in that door.

38) Cst. Cooper did a 360 check of that building to ensure that the track did not continue. He confirmed that the scent track ended there.

39) Cst. Cooper testified that he waited until other officers arrived. Then he left and returned to the oil tank at 5344 Lynch Street. There, he directed the dog to search. The dog located a firearm (Exhibit 2) under the oil tank.

40) Cst. Cooper expressed the opinion that the scent track was less than a half an hour old.

41) Overall Cst. Cooper stated his opinion: (p. 131)

My opinion was that we tracked two people that left the car to the building on Lynch Street and that the two people that we tracked were inside the address on Lynch Street, and that they, on the way, they stopped at that oil tank and they put the gun underneath the oil tank and then continued on their way to where we found them.”

42) It was the opinion of Cst. Cooper based upon the dogs actions that both men went to the oil tank.

43) I noted that Cst. Cooper did not indicate any action by the dog, Copper, to indicate a return to the motor vehicle by one of the two men who's scent the dog was following as was observed by the eye witness to their fleeing the scene.

44) Cst. Cooper couldn't say which person or persons in the residence at 3617 Lynch Street created the scent track that he and Copper followed to that location.

45) Cst. Cooper acknowledged the scent track could possibly have been of one, two, three or four persons.

46) Cst. Cooper believed the persons who made the scent track did so approximately 25 minutes before his search.

47) Cst. Cooper did not search for a scent track leaving the scene south of the damaged motor vehicle.

48) Cst. Cooper testified that at the oil tank and at the door to 3617 Lynch Street, there was a pool of scent indicating the person(s) were there for more than a brief second. Later, he opined that the person(s) who stopped at the rear door to 3617 Lynch Street stopped there for more than 30 seconds to a minute. He added that it could have been five or even ten minutes.

49) Cst. Cooper's evidence stood up well under detailed cross-examination. His opinions were well explained. His evidence was credible. His evidence was consistent with the evidence of the eye witness, Mary Wills.

50) I accept the evidence of Cst. Cooper.

51) I noted these "limitations" to his evidence:

1. By commencing the track about 30 feet north of the accident vehicle, for a scent track of suspects leaving the scene and not checking for a scent track departing from south or east of the motor vehicle his evidence did not preclude the possibility of another suspect or suspects fleeing the scene of the accident in another direction;
2. Cst. Cooper cannot identify which person or persons at 3617 Lynch Street created the scent track that he and his dog Copper followed to that location;
3. If the Court accepts Cst. Cooper's opinion that one of the persons whose scent track he followed to the oil tank at 5344 Lynch Street, placed a firearm under the tank on that property, he cannot identify that person, other than to say that he proceeded to 3617 Lynch Street.

Mary Wills

52) In January 2014, Mary Wills lived on the third floor of a building not far from the intersection of Duffus Street and Lynch Street.

53) At the time of her testimony on May 4, 2015, Mary Wills had total vision loss. She testified that at the time of this incident, January 13, 2014, she was able to see quite well. She did not require visual aids or glasses. She was still working and going out on her own. She indicated that at a distance from the witness stand to the back row of the courtroom she wouldn't recognize someone.

54) She testified that at approximately ten minutes before 6:00 am on the morning of January 13, 2014, she was up and getting ready to go to work when she heard a noise, the squeal of tires, and then a crash. She ran to her bedroom window (11 steps) and looked out onto Lynch Street. She saw a car in the middle of the street. She saw two men exit the car, one out the driver's door and the other out the passenger side. She saw no one else on the street. She watched them run away from the car towards Rector Street, which is north. When they were about halfway up the street she heard the passenger say he forgot something in the car. She didn't hear what he said he forgot. She heard the driver say "fuck that...just leave it". But the passenger ran back to the car. When he left the car and ran back up the street he appeared to have something tucked under his arm. He hadn't been

running holding his arm like that the first time she saw him running. She couldn't see what he was carrying. As the two men got near Rector Street, they curved to cross a lawn. Once they were out of sight she went to the phone and called 911. She estimated it was 3 to 4 minutes from her first seeing the two men until she called 911. She testified that it took "a while" for the police to arrive.

55) She didn't note the color of the car.

56) She couldn't say the race of either person.

57) She believed the two were men.

58) She believed they were young because of their "spryness".

59) Ms. Wills' evidence was objective and clear. Her memory was excellent.

60) Her evidence was entirely credible.

61) She acknowledged the limits of her observations and, subject to those limitations, I accept that the evidence which she gave was entirely reliable.

62) I noted that she didn't testify to having observed any movement that suggested to her that either person was intoxicated. She didn't suggest any slurring of the words of either man or any unsteadiness on their feet.

Police Witnesses

Cst. Jordan Sheppherd

63) Cst. Sheppherd reported being dispatched to Lynch Street at 6:10 am on January 14, 2014, arriving “not long” thereafter.

64) He observed the scene of the accident as depicted in photos of Exhibit 1. He checked the car which was in the middle of Lynch Street. He noted damage to the right front wheel. He ran the licence plate. The vehicle was registered to Sarah Hann of Acadia Street, Halifax, just one block from the scene on Lynch Street.

65) Cst. Sheppherd observed a can of bear spray and a baton in clear view in the rear seat of the vehicle. He seized both items.

66) Later he took a statement from Mary Wills. Still later he interviewed the residents of 5344 Lynch Street, a man and his wife who were in their seventies.

Cst. Brad Murray

67) Cst. Murray reported attending the accident scene. He made a call for the canine unit to attend. He went with Cst. Cooper following a scent path from the accident scene to the rear door of 3617 Lynch Street. He saw the lights inside go

off and on. He went to the front door and knocked. The door was opened by Dequin Skeard. He stayed with Mr. Skeard. He noted that Mr. Skeard appeared sober. Cst. Murray received a radio communication from Cst. Algeery indicating that Mr. Hann and Mr. Baird, the two accused, had been located in the basement of the residence. Cst. Murray testified that Cst. Algeery noted that each of these men appeared intoxicated. They were not initially detained. However, several minutes later after he received word of a firearm being located under the oil tank at 5344 Lynch Street which was believed to have been put there by a person who fled the accident scene, Cst. Murray radioed Cst. Algeery to arrest the two accused.

68) Cst. Murray testified that he didn't see any alcohol beverage containers in the house.

69) He acknowledged that he didn't search the residence. He didn't look in bedrooms, other rooms, the fridge, garbage, recycle bags, etc.

Statement of Cal Hann

70) The Crown introduced a statement made to the police by Cal Hann. Mr. Hann's counsel admitted the statement was freely and voluntarily made and raised

no Charter issue. The statement was videotaped and a transcript of the statement and the video were introduced (Exhibit 11).

71) In his statement, Mr. Hann admitted being in possession of his mother's Acura TL (year 2001) on the afternoon and evening of January 12, 2014. He stated that he drove to his girlfriend's house in Fairview at about 2 or 3 in the afternoon. Later that day he drove to the store, once. He also went to his friend Dylan's home. He admitted driving around with Chris Baird in his car. He returned to his girlfriend's place. At approximately midnight he left and went by cab to Dequan Skeard's home at 3617 Lynch Street. He left his mother's car at his girlfriend's place. He said he may have left it unlocked and may have left the keys on the car seat.

72) At Dequan's he drank and played computer games. Chris Baird arrived there sometime after him. They fell asleep about an hour before the police arrived. The police entered and he awoke with a flashlight in his face. The police advised him that his mother's car had been in a hit and run accident. He said he didn't know which of his mom's cars. He called his girlfriend to check on the Acura. It was gone. He called his mother and told her the Acura had been stolen. The

police let him go. He started to walk to his home at 3611 Acadia Street. The police drove up and arrested him.

73) He stated that he sometimes lets his friend drive, but not that night. He maintained the car was stolen. He said if he was lying it would have been a better lie to say he drove his car to Dequan's and the car was stolen from there. He denied driving or being in the car at the time of the accident on Lynch Street. He denied any knowledge or involvement with a gun. When told of the gun under the oil take, he said the gun could've been there for 20 years (p. 59).

Analysis

74) There is no dispute and I find that a single vehicle, motor vehicle accident occurred at the intersection of Duffus and Lynch Streets at approximately 5:50 am on January 13, 2014. I accept the eye witness evidence of Mary Wills and the opinion evidence of Cst. Cooper and find that two men exited the vehicle, one from the driver's door and a second from the front passenger's door.

75) I accept Ms. Wills' evidence and find that the two men ran from the vehicle heading north on Lynch Street. The passenger told the driver he left something in

the car. The driver told the passenger to leave it. The passenger went back to the car.

76) Based upon the evidence of Ms. Wills, I am persuaded that the only reasonable conclusion to draw from the manner in which the passenger held his arm as he ran from the car and his statement that he forgot something in the car is that the passenger retrieved something from the car and carried it tucked under his arm as he ran to catch up to the driver.

77) I accept the evidence of Cst. Cooper, supported by the evidence of Ms. Wills, and find that the two men proceeded to a house at 3544 Lynch Street and stopped near the oil tank on the property. A handgun, Exhibit 2, was found under that oil tank.

78) The Crown urged the Court to draw the conclusion from the evidence that one of the two men fleeing the accident scene placed the handgun, Exhibit 2, under the oil tank at 5344 Lynch Street. I am persuaded that such an inference would be entirely reasonable. I have considered other conclusions that might be drawn from the proven facts, such as, that the two men stopped there to consider where to go or which direction to run. I noted that 5344 Lynch Street is on the corner of Lynch and Rector Streets. However, I find the possible coincidence of them veering off

the street to that oil tank for a reason entirely unrelated to the handgun, found there less than 30 minutes later, so remote as not to be reasonable.

79) Indeed, I am persuaded beyond a reasonable doubt that the only reasonable conclusion to be drawn from the evidence is that one of the two men placed a loaded handgun under the outdoor oil tank on that property.

80) The Crown urged the Court to find that the item that the passenger retrieved from the car was the handgun, Exhibit 2. The eye witness, Ms. Wills, did not hear what the passenger said he'd left in the car. She did not see what he retrieved from the car. According to her evidence, which I accept, upon return from the car the passenger appeared to be carrying something under his arm which he hadn't been doing previously.

81) I am persuaded that the only reasonable inference is that whatever he retrieved from the car was then carried under his arm. That action suggests an effort to conceal the item. I agree that it would be reasonable to conclude that the item was the handgun.

82) I am not persuaded beyond a reasonable doubt that this is the only reasonable conclusion that may be drawn from the facts. The passenger could have gone back for something else of value to him. That something was carried

under his arm rather than put into his pocket. I note that Mr. Baird is charged with possession of cocaine. It is not unreasonable to conclude that the passenger retrieved a package containing an illegal drug and perhaps a sum of money. The residence at 3617 Lynch Street was not searched so whatever was taken from the car by the passenger may or may not have been brought there.

83) In conclusion, I am not persuaded beyond a reasonable doubt that the Court ought draw the conclusion that the item referred to by the passenger and driver during the conversation overheard by Mary Wills was the handgun placed by one of them, moments later, under the oil tank at 5344 Lynch Street, nor am I persuaded beyond a reasonable doubt that it was that gun that the passenger retrieved from the vehicle.

84) While the evidence established beyond a reasonable doubt that one of the two men who fled the accident on Lynch Street on the morning of January 13, 2014, placed the loaded handgun, Exhibit 2, under the oil tank at 5344 Lynch Street, it did not establish which of the two did so. The driver may have fled the vehicle in possession of the handgun. The passenger may have fled the vehicle in possession of the handgun. The passenger may have gone back to the vehicle and retrieved the handgun.

85) Unlike the circumstances in many of the cases referred to by counsel, in this case, there was no evidence of the location of the gun in the car prior to or at the time of the accident on Lynch Street. I am persuaded beyond a reasonable doubt that the handgun was in the car during that time and that at least one of the two occupants was aware of its presence. The evidence failed to establish beyond a reasonable doubt whether, if only one of the two, it was the driver or the passenger who was aware of the handgun in the car and took it from the car. The evidence failed to establish which man placed the handgun under the oil tank. The evidence failed to establish, beyond a reasonable doubt that the person who was not in physical possession of the handgun had knowledge of it being in the possession of the other person or that it was in the motor vehicle and if it was, that he consented thereto.

86) Possession is defined in s. 4(3) of the *Criminal Code*:

4(3) For the purposes of this *Act*,

- (a) A person has anything in possession when he has it in his personal possession or knowingly
 - a. Has it in the actual possession or custody of another person, or
 - b. Has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and

(b) Where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

87) Each of the charges against Mr. Hann and Mr. Baird, except count 5, requires proof of the accused being in possession of Exhibit 2, which was admitted to be a “firearm” and “semi-automatic handgun” and a “prohibited weapon”.

88) The evidence proved beyond a reasonable doubt that one of the two men who fled the accident scene on Lynch Street was in possession of the handgun which was placed under the oil tank at 5344 Lynch Street. The evidence failed to prove which of the two was in possession. The evidence failed to prove that the second man was in possession of the handgun, as defined in s. 4(3) of the *Criminal Code*. In relation to each accused it has not been proven that the only reasonable conclusion to be drawn from the evidence is that he was in possession of and/or aware of the presence of the handgun.

89) I am not persuaded that the element of possession has been proven beyond a reasonable doubt against either accused.

90) Count 5 requires proof that the accused knew that the semi-automatic handgun was in the motor vehicle on the early morning of January 13, 2014.

91) The evidence failed to establish proof of this element of the offence beyond a reasonable doubt against either accused.

92) Therefore, even if the evidence established beyond a reasonable doubt that the two men who were in the motor vehicle when it crashed on Lynch Street on the morning of January 13, 2014 were Mr. Hann and Mr. Baird, the evidence failed to establish proof beyond a reasonable doubt that either of them was guilty of any of the firearms related charge.

93) Having said that, the evidence did not prove beyond a reasonable doubt that either Mr. Baird or Mr. Hann was in the car which crashed on Lynch Street on the morning of January 13, 2014.

94) At approximately 6:30 am on January 13, 2014, the accused, Baird and Hann were located in 3617 Lynch Street. The scent trail from the accident on Lynch Street went to that residence. But, in the residence, at that time, was Dequan Skeard, a friend of Mr. Baird and Mr. Hann and of a similar age.

95) The residence was not searched by the police, so it is unknown whether any young men were present, but there was no evidence of any other young men being present. Assuming there were no other young men in the residence at that time,

then two of the three young men present there were the ones who fled the accident scene on Lynch Street.

96) The Crown urged the Court to find that Mr. Hann and Mr. Baird were the two men who fled the accident scene and went to 3617 Lynch Street. The Defence argued that the evidence did not preclude Mr. Skeard being one of the two men who fled the accident. The evidence relied upon by the Crown to connect each of the accused to the accident scene differed. In relation to Mr. Baird the evidence was:

- a) That Mr. Baird was at the residence at 3617 Lynch Street only thirty minutes after the accident;
- b) That Mr. Baird did not live at that residence; and
- c) That Mr. Baird was intoxicated, as was Mr. Hann but not Mr. Skeard.

97) In my view, there was no admissible evidence of Mr. Baird being intoxicated. Cst. Murray testified that Cst. Algeery made such an observation of Mr. Baird. Cst. Algeery did not testify. Information in Mr. Hann's statement to the police that he and Mr. Baird were drinking is not admissible against Mr. Baird. Neither Mr. Skeard nor his mother gave evidence.

98) The admissible evidence failed to persuade the Court that the only reasonable inference to draw from the facts was that Mr. Baird was one of the two men in the motor vehicle accident on Lynch Street. On the evidence, Mr. Hann and Mr. Skeard could reasonably have been those two persons.

99) In relation to Mr. Hann, the evidence was that:

- a) He was at the Skeard residence on Lynch Street within thirty minutes of the accident on Lynch Street;
- b) He didn't live at 3617 Lynch Street;
- c) The car involved in the accident on Lynch Street was registered to Mr. Hann's mother, Sara Hann;
- d) Mr. Hann had possession of that car on the evening of January 12, 2014;
- e) Ms. Hann's vehicle was damaged that night;
- f) Mr. Hann claimed the car was stolen;
- g) Mr. Hann admitted in his statement to the police, Exhibit 11, that he did not lend his car to anyone on the night of January 12-13, 2014;

h) Mr. Hann admitted to consuming alcohol on the evening of January 12th and early morning of January 13, 2014 and being too impaired to drive;

i) Mr. Hann admitted in his statement to the police, to being with Chris Baird during part of the evening of January 12, 2014;

100) At the core of the Crown's argument is the alleged connection of Mr. Hann to the car involved in the accident on Lynch Street. Was that Ms. Hann's vehicle of which Mr. Hann had possession?

101) There were no photos taken of the car on Lynch Street. Consequently, there was no identification of the car by means of photos by Ms. Hann. Ms. Hann did not specify the license plate number of her car. Therefore, her testimony provided no direct evidentiary connection to the car in the accident on Lynch Street.

102) Cst. Shepperd testified that he "ran the plate" of the vehicle involved in the accident on Lynch Street. He received information that the vehicle was registered to Sarah Hann, of Acadia Street in Halifax. He did not state what the license plate number was that he ran. The evidence was hearsay.

103) Defence counsel consented to the admission of a Registry of Motor Vehicle record showing that, as of January 2014, Ms. Sarah Hann was the registered owner of a 2000 silver, Honda Acura, license plate number FGW 290.

104) The vehicle on Lynch Street on the morning of January 13th was not proven, by means of license plate number, to have been Ms. Hann's vehicle.

105) In his statement to the police, Mr. Hann did not indicate the license plate of the vehicle which he had in his possession on January 12, 2014.

106) The Crown's case that the vehicle on Lynch Street on the morning of January 13, 2014 was registered to Ms. Sarah Hann was circumstantial. The vehicle on Lynch Street was within a couple of blocks of her home. Her son, who'd had possession of her car was at a residence only 300 metres from the car on Lynch Street. Her car had no damage as of January 12, 2014, and when she got it back the right front tire was bent back. This damage was consistent with the damage noted to the car at the accident on Lynch Street. However, Ms. Hann also said that the airbags had deployed. I made no note of any observation by the police of airbags having deployed in the car involved in the accident on Lynch Street.

107) Mr. Hann claimed, in his statement to the police, that his mother's car was stolen from his girlfriend's residence in Fairview, after he left there by cab on the

night of January 12-13, 2014 to travel to Mr. Skeard's residence. He intimated that Fairview was a high crime area so it was not surprising that the car was stolen. Yet, with that knowledge, he said that he may have left the car door unlocked and the keys on the front seat. Such action would be entirely illogical. That statement was not believable. On a number of occasions during his statement, Mr. Hann began to provide more details of his activities on January 12, 2014 but whenever he appeared to be caught in an inconsistency he changed the subject or declined to continue discussing the matter. He said he was asleep when the police arrived at 3617 Lynch Street but I accept the evidence of Cst. Murray that the lights were on and then turned off when the police arrived. Mr. Hann's statement was not credible.

108) Although highly probable, the totality of the circumstantial evidence failed to establish that the vehicle on Lynch Street was registered to Mr. Hann's mother.

109) In relation to other circumstantial evidence of Mr. Hann being one of the two men in the car on Lynch Street, the witness Mary Wills did not report observing any signs of intoxication of either man she observed fleeing the accident scene on Lynch Street. She did not indicate any slurring of words or unsteadiness on the part of either of the two men. Therefore, given the evidence of Mr. Hann

being impaired/intoxicated, Ms. Wills' evidence did not support the Crown theory that Mr. Hann was one of those two men.

110) The totality of the circumstantial evidence failed to establish beyond a reasonable doubt that Mr. Hann was one of the two men who fled the accident scene on Lynch Street. The two men could have been Mr. Baird and Mr. Skeard.

111) In conclusion, the evidence established proof beyond a reasonable doubt that two men got out of the vehicle involved in the accident on Lynch Street shortly before 6:00 am on January 13, 2014. One of those two men who fled the scene was in possession of a loaded handgun. The two men proceeded to 5344 Lynch Street where one of the two men hid the loaded handgun under the outdoor oil tank. The two men then went to 3617 Lynch Street. They were still there when the police arrived about thirty minutes later as was a third young man. The circumstantial evidence failed to prove beyond a reasonable doubt which two of those three men ran from the accident scene on Lynch Street. Even if the evidence had proven which two men had fled the accident scene, the evidence failed to prove beyond a reasonable doubt which of the two men had physical possession of the firearm hidden under the oil tank at 3544 Lynch Street or whether the man who

was not in physical possession was, in law, in possession of the handgun as defined in s. 4(3) of the *Criminal Code*.

112) Consequently, each of the two accused are found not guilty of all firearms related charges.

113) Mr. Baird was charged with an additional offence of possession of cocaine contrary to s. 4(1) of the *Controlled Drugs and Substances Act*. There was no evidence presented in support of this allegation.

114) I find both accused not guilty of all charges.