IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Crowe, 2011 NSPC 19

Date: April 19, 2011
Docket: 1577836, 1577837, 1577837
1577838, 1577839
Registry: Amherst

Between:

Her Majesty the Queen

v.

William Edward Fulton Crowe

Judge: The Honorable Judge Timothy Gabriel

Heard: November 25, 2010; January 11, 2011

Decision: April 19, 2011

Charge: CC 334(a); 355(a); 334(b); 355(b)

Counsel: Bruce Baxter, counsel for the crown
Andrew Melvin, counsel for the accused

Charges

The accused, William Edward Fulton Crowe, born March 24, 1983, stands charged pursuant to a four count information, which alleges that he, on or about the 11th day of August, 2005:

Charge one:

Did steal a property of Arthur Norman Turnbull, of a value exceeding $5,000.00, contrary to

section 334(a) of the Criminal Code.

Charge 2:

And furthermore at or near Springhill, Cumberland County, Nova Scotia, did steal the property of Blaine and Claire Canning, of a value not exceeding $5,000.00, contrary to section 334(b) of the Criminal Code.

Charge 3:

And furthermore at or near Springhill, Cumberland County, Nova Scotia, did have in his possession property of a value exceeding $5,000.00, knowing that same was obtained by the commission in Canada of an offence punishable by indictment, contrary to section 355(a)

Charge 4:

And furthermore at or near Springhill, Cumberland County, Nova Scotia, did have in his possession property of a value not exceeding $5,000.00, knowing that same was obtained by the commission in Canada of an offence punishable by indictment, contrary to section 355(b)

Facts

[1] The accused is the son of Edward Allen Crowe of Miramichi, New Brunswick, and Claire
Anne Canning of Springhill, Nova Scotia.

[2] His parents are divorced and Claire Canning has remarried. The accused (hereinafter referred to also as "Billy") has resided intermittently in the past with his father in Miramichi, N.B., and also with his mother and Blaine Canning (her husband), at 107 Junction Road, Springhill, N.S., at which latter location the offences charged are alleged to have been committed.

[3] I propose to deal with the evidence of each witness in turn, but with the order varied in a manner more conducive to a chronological flow.

[4] Blaine Canning, Billy's step-father and current husband of Claire Anne Canning, was the third Crown witness called. He resides at 107 Junction Road, Springhill, N.S., is 54 years of age, and has been married to Claire Canning since 2000. Billy lived with his mother and Mr. Canning for a short period of time in the early part of their marriage. He relocated to live with his father in Miramichi, New Brunswick, thereafter. The accused continued with his education while in Miramichi for a period of time, however, on or about August 5, 2005 returned to live with his mother and Mr. Canning at 107 Junction Road, Springhill, Nova Scotia. The alleged offence date was August 11, 2005, six days later.

[5] On the whole, Mr. Canning had difficulty recalling many of the incidents which occurred on August 11, 2005. While understandable, given the length of time that has elapsed, it is simply to be noted for now that his evidence was punctuated with a number of pauses to refresh his memory, mainly by reference to a written statement that he had provided to the police two days after the offence had allegedly occurred.

[6] Many of his answers, both during direct and cross-examination, were provided in this manner. For the purposes of this decision, and the summary to be subsequently offered of his wife's evidence, I do not distinguish (for the most part) between information that he was able to recall presently, and that which was provided after having refreshed his memory with the aid of the written statement.

[7] Mr. Canning testified that on Wednesday August 11, 2005, sometime between 6:00 and 7:00 am, he was up and in the shower. His wife had left for work shortly before. In traveling to work, she had taken the family car, (a blue cavalier) which vehicle had been loaned to Billy sometime during the previous day, supposedly to go fishing.

[8] Mr. Canning indicated that he heard a sound while in the shower. He wrapped a towel around himself went downstairs and looked out and saw Billy trying to get in the front door. His wife had already left for work. Mr. Canning doesn't believe Billy saw him (at that time). By the time he got to the front door, unlocked it, and opened it, he couldn't see Billy or the cavalier. This front door entered into a cluttered sun porch which was largely used as a storage area. For that reason, the front door was seldom, if ever, used by anyone in the household.

[9] Mr. Canning closed and locked the front door. By the time he reached the back door, he could see Billy through the glass. He unlocked the door and let him in. At this point, he asked Billy how the “fishing trip” went, and Billy responded in words to the effect that he had not caught anything.

[10] Mr. Canning also noticed at that time that Billy’s clothing was clean, much cleaner than he would have expected if it had been worn on a fishing trip. He had cargo pants on, which consisted of two pieces of clothing joined by a zipper. Billy indicated that he wanted to get the zipper off the cargo pants to make them into a “regular” pair of pants. The accused also mentioned that he was with a “friend from away” who had come back to visit. The friend was apparently from Alberta. Mr. Canning went back upstairs to complete his shower and after finishing the shower, looked out of the upstairs window. He didn’t see his blue cavalier (which is consistent with Mrs. Canning having taken it to work shortly before). He did, however, see a different vehicle traveling out Junction Road from his residence toward Amherst. This vehicle had a Nova Scotia license plate.

[11] At this point, Mr. Canning comes back downstairs, has a look around and at that time notices a CD player is out of its position. He looks around some more, goes into the sun porch and notices a stereo system missing as well as a large number of CD’s (in his evidence in chief he indicated approximately 20 to 30 CD’s had gone missing, in his statement to the police given 5 years earlier he indicated approximately 40 CD’s were missing).

[12] In a filing cabinet located just off of the sun porch, a decorative Christmas plate had been removed and placed on top of the cabinet. Further, a camcorder, that would ordinarily have either been situate behind a rocking chair in the living room, or resting on top of the entertainment center, was also missing.

[13] In addition, a backpack belonging to Mrs. Canning containing medical supplies (including medication, and needles designed to deliver intramuscular injections to treat her psoriasis) was also missing. This backpack was generally also stored behind the rocking chair in the living room.

[14] The final missing item was an automobile diagnostic scanner owned by Norman Turnbull, Mrs. Canning's brother, which had been stored at the Cannings home. Mr. Turnbull frequently made use of this device when making repairs to the Canning automobile. This device had been left by Mr. Turnbull at the Canning residence, and placed by Mr. Canning in one of the drawers of the filing cabinet. This device was also noticed by Mr. Canning to be missing. These comprise the items that the accused is alleged to have stolen and/or possessed.

[15] Mr. Canning was very clear in his testimony that it was only upon the second trip downstairs that morning that he noticed that the aforementioned items were missing. He was much less clear on exactly when it was that he had last seen these missing items in his residence. In his direct testimony, he was unable to provide even a frame of reference from which an extrapolated date could be obtained. In his earlier written statement (provided to the police 5 years previously) he had indicated that he had last seen all of the missing items "before the

school reunion". Even after having refreshed his memory with this written statement, and having his attention drawn to the words "school reunion", Mr. Canning was unable to give the court any indication as to when this reunion had taken place, and indeed, he was unable to recall the "reunion" to which he had been referring when he provided the statement.

[16] Returning to August 11, 2005, upon discovering the items missing, Canning called his wife at work. It is convenient to turn at this point and consider her evidence.

[17] Claire Anne Canning was the fourth witness to testify. She and Mr. Canning have no children themselves. The accused is her child from a previous marriage. On August 11, 2005, Billy had been staying with her and Mr Canning for approximately one week. He was 22 at the time, and had left his father's home in Miramichi to return to Springhill, for the ostensible purpose of applying for a job with a local company. He had had some previous experience as a fork lift operator. He hoped to get on in that capacity with Oxford Frozen Foods. As of August 11, 2005 he had not initiated any contact with that company to her knowledge.

[18] When Billy first returned to live with her, Mrs. Canning was optimistic that his drug problem was a thing of the past. Both she and her husband acknowledged that Billy had been a heavy drug user. On the basis of the information that she had been given by her ex-husband prior to Billy's arrival from Miramichi, she believed was that Billy was clean.

[19] It became quickly apparent to her and Mr. Canning, however, that the accused was not "clean". Billy had lost a significant amount of weight (he was down to a 116 lbs) and both of the

Cannings testified that they thought he was dying. During the week or so that elapsed between his return to live with them on August 5, 2005, and the alleged offence date of August 11, 2005, they were quite sure that he had become part of the "drug culture" in Springhill.

[20] Ms. Canning testified that she gave Billy money from time to time for cigarettes and other things. Other than that he had no apparent means of support.

[21] In the morning of August 11, 2005, Billy returned with the family's blue cavalier automobile just as Ms. Canning was ready to leave for work. She required the car for transportation purposes and, as Billy turned the car over to her, she checked the odometer. She did this because she was skeptical about whether Billy had been "fishing" the previous day, as he had earlier said. She was aware that Billy would ordinarily go fishing either down Oxford way, or to River Hebert.

[22] When she checked the odometer she saw that it had "rolled over", which suggested to her that he had gone further than would have been the case had he simply gone fishing at either of those usual locations.

[23] In any event, Ms. Canning (and the vehicle) departed for work at approximately 7:30 am. on August 11, 2005. Neither she or her husband had spent a very restful night, as both of them were "worried sick" about Billy and his condition.

[24] Ms. Canning, while at work, received a phone call from her husband, after he had noticed items missing from their home that morning. What he conveyed to her over the phone was that Billy had taken the car radio from their home. This was a car radio that Mr. Canning had earlier purchased for her, one which was not yet installed in their vehicle.

[25] Ms. Canning came home, and then called Billy on the cell phone (it was her cell phone but she permitted him to use it). She told him "the car stereo is missing and you have to bring it back".

[26] She testified that the accused denied having taken it, then proceeded to laugh strangely. Ms. Canning indicated she had "no idea" why Billy laughed, however he told her he was "in a car" with an individual named Matt Whelton.

[27] The accused repeated "I don't have it" a couple of times, which prompted Mrs. Canning to tell the accused that she would call the police if he didn't come home. He responded by saying "do what you have to do". During the conversation, Ms. Canning was left with the distinct impression that Billy was high.

[28] Billy did not return home in response to his mother's threat to involve the police. In fact, he never returned to her home at all. He apparently remaining in the Springhill area for a number of days after August 11, 2005, then returned to live with his father in Miramichi, New Brunswick. He did not take up residence with the Cannings again until May of 2010, almost five years later. In addition to living in Miramichi, during that hiatus, the accused entered a

rehabilitation or treatment centre ("detox") in Sault Saint Marie, Ontario, and also worked for a period of time.

[29] By the time the accused came back to live with the Cannings (in or about May of 2010), he appeared to them to have changed his life around significantly. He was eating better, looked much healthier and had put on weight. It did not appear to them that he was involved with drugs any longer.

[30] This latter point appears to have led to some ambivalence, particularly on the part of Ms. Canning. At some point during the accused's five year absence, and after charges had been laid, Ms. Canning indicated that she received a phone call from an unidentified individual, which conversation apparently caused her to change her opinion as to the perpetrator of the crime. By the time she testified, it was clear that she no longer believed that her son was responsible for the theft.

[31] While I did not allow evidence of what was said during the course of her conversation with this unidentified individual, her change of opinion as to her son's culpability in the crime was evident. Her new found belief in his innocence is relevant only because it appears to have effected the reliability of her testimony.

[32] Mr. Canning had given his testimony before that of his wife, and made no mention of this phone call. His evidence was that the parties utilized the backdoor for access and egress to and from the household. Moreover, keys to that door were kept on a rack in the home. There was a

problem with “missing keys”. The rack held about six copies of the key for the back door, and when the last key was lost, they were in a habit of changing the lock on the door itself. This appeared to be the pattern.

[33] Ms Canning testified that she had a “problem with keys” and for that reason customarily left the backdoor unlocked. She felt that she had left the door unlocked as she left the home on the morning of August 11, 2005 to meet Billy outside and obtain the car from him. She obtained the car from the accused just as he was bringing it home that morning. This was at odds with the testimony of her husband who indicated that he had to unlock the back door in order to enable Billy to enter, and that Billy had first tried to enter via the locked (and little used) front door.

[34] Ms. Canning also indicated that, because keys were lost so frequently in their household, the back door had been “kicked in” on a number of occasions. Therefore, even if the back door was locked, it could very easily be opened by someone without a key, simply by employing a minimally forceful kick or shove. Neither of these alternative ways to gain entrance through the back door was mentioned by Mr. Canning in his earlier testimony.

[35] To return to the chronology of events on August 11, 2005, Ms. Canning threatened the accused with the police if he didn’t return. The accused didn’t return home. However, she and Mr. Canning did not call the police right away. They waited a few days to consider their course of action. Ultimately, they determined that Billy would be better off in jail, receiving treatment, than on his present course. To repeat, they thought he was dying.

[36] Ms. Canning called the local pawn shop to let them know her car stereo was missing. The car stereo had been customarily stored on the floor in the living room behind a chair in proximity to the backpack in which she kept her medical supplies. She testified that she had no reason to make frequent visits to the backpack, since it was her habit to take a quantity of the materials and medication (needed to treat her condition) from the backpack and store them in the fridge. Every Sunday afternoon at 3:00 pm she would administer the medication.

[37] She offered this as an explanation as to why she did not necessarily have to attend to or even notice the back pack with much frequency before her husband noticed that it was missing on August 11, 2005.

[38] After receipt of Mr. Canning's phone call, and upon her return to the home, Ms. Canning had also been advised by her husband that the camcorder, CD's, and her brother (Arthur Turnbull's) car scanner were missing as well.

[39] When she was referred to her written statement, also given 5 years earlier (to the police), Mrs. Canning confirmed that she had last seen the missing stereo on Wednesday August 10, 2005. Since this statement was dated August 13, 2005, her memory would have been very fresh at that time.

[40] Neither Ms. Canning nor her husband noticed any signs of forced entry. The accused did not have his own key.

[41] As will be apparent from the above, neither Arthur Turnbull, (who testified as to his ownership of the car scanner and the background to its having been left at the Canning's residence) Claire Canning or Blaine Canning, the three owners of the allegedly stolen items, saw the accused take the items. A fourth Crown witness also testified (although he was actually the first witness called by the Crown). This was Constable Douglas Allister Williams of the Springhill Police Service.

[42] Cst. Williams testified that on August 15, 2005, (approximately four days after the alleged theft took place) while on patrol he noted the accused at Crosby Park at approximately 19:40 hours.

[43] Mr. Crowe was arrested and cautioned that evening. The officers performed a "pat down search" incidental to the arrest and discovered a syringe on the accused's person.

[44] When asked on cross-examination for some descriptors in relation to the syringe, Cst. Williams was unable to offer any. He also could not offer any comparison between the type of syringe that was found on the accused and the syringes that were reported missing by Ms. Canning (along with the other contents of her backpack).

[45] The defence elected to call no evidence. What necessarily follows from this is that the accused, William Crowe, did not testify.

Analysis

[46] Section 322(1) to (3) of the Criminal Code reads as follows:

> 322. (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent
>
> (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
>
> (b) to pledge it or deposit it as security;
>
> (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
>
> (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.
>
> (2) A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.
>
> (3) A taking or conversion of anything may be fraudulent notwithstanding that it is effected without secrecy or attempt at concealment.

[47] Section 334 goes on to state:

> 334. Except where otherwise provided by law, every one who commits theft
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> (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen exceeds five thousand dollars; or
>
> (b) is guilty
>
> > (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
> >
> > (ii) of an offence punishable on summary conviction,
>
> where the value of what is stolen does not exceed five thousand dollars

[48] Sections 354(1) and 355 of the Criminal Code read as follows:

> 354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from
>
> (a) the commission in Canada of an offence punishable by indictment; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

355. Every one who commits an offence under section 354

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

[49] Section 322 first requires that the accused must take "fraudulently and without colour of right," or convert to his own use the property of another to constitute theft. "Taking" (or conversion to one's own use or to the use of another) is therefore the physical component, or *actus reus* of the offence. Section 354 (obviously) designates "possession" of the allegedly stolen item as the physical component of that offence. It is therefore integral to all charges that the crown show that the allegedly stolen items came into the possession of the accused, or that he

converted them, and/or that the accused facilitated their coming into the possession of another party. Only if I am satisfied beyond a reasonable doubt on this point, need I consider the other components of the offences charged.

[50] To repeat a point made earlier, nobody actually saw Mr. Crowe in possession of the items. Further, no one witnessed him remove them from the Canning household, or aid/facilitate another in doing so.

[51] In saying this I am conscious of Cst. Williams' indication that when the accused was arrested on August 15, 2005, he was in possession of a syringe. In and of itself, if I were satisfied that this syringe was among the number that was stored in Mrs. Canning's back pack, which was allegedly taken from her household on the offence date, this in and of itself might provide some basis for a finding that the accused had taken the backpack and, by extension, the other items that were noticed missing at the same time.

[52] In fact, given the lack of detail that Cst. Williams was able to offer with respect to the type and/or other description of the syringe found in the accused's possession, I am not able to conclude any such thing. Billy was a drug user, and was suspected by his mother to be a member of the "drug culture" of Springhill at that time. His possession of a (nondescript) syringe is not particularly surprising, given that circumstance.

[53] So what am I left with in relation to the other allegedly stolen items? The Crown argues the accused had the exclusive opportunity to commit the thefts. Alternatively, if he didn't do it,

he let someone else into the house to do it. This alternative argument relates to the fact that if I were satisfied that Mr. Crowe aided (by act or omission) the unlawful removal of the items by someone else, he could be convicted as a party to the offence pursuant to section 21 of the Criminal Code.

[54] The accused did not testify in this matter nor offer any evidence. That, taken in isolation, is a neutral thing. I must still go on to consider whether the Crown, through the witnesses and evidence which it called, has proven its case against the accused to the requisite standard.

[55] There was no witness to testify that Mr. Crowe was observed taking the items from the home, nor any evidence that he was ever witnessed in possession of any of the items in question (I cannot conclude that the syringe in his possession as noted by the police officer was one of the stolen syringes). Therefore, I must consider whether the crown has proven its case circumstantially.

[56] Circumstantial evidence is evidence. A case can be (and often is) proven circumstantially. There are, however, some special considerations upon which to focus when dealing with this type of evidence.

[57] Judge Jamie Campbell in R. v. M.C.S., 2010 NSPC 26, clearly summarized the law applicable to circumstantial evidence in paragraphs 65 to 75 of his decision:

> “Direct evidence is testimony of a witness as to what that witness perceived with

his or her senses. The issue is whether that perception and recall is reliable."

[58] "Circumstantial evidence is evidence from which a fact or issue may be inferred. There are two issues. The first is whether the evidence itself is reliable. The second is whether the inference sought to be made is a sound one."

[59] "Circumstantial evidence is not some kind of evidentiary poor cousin. A case can be proven on circumstantial evidence. It is evidence that allows a judge to make inferences...A driver who sees a green light drives through the intersection he or she operates on the reasonable inference that because the light is green the drivers approaching the intersection from the other side of the street have a red light. He or she also makes the inference the driver with the red light will stop. The driver has no direct evidence either of the state of the other light or state of mind of the approaching driver. The reasonable inference is made.

[60] "Inferences are not precise. In the real world, the traffic light may not be functioning properly. The other driver may be inattentive. The reasonable inference may just be wrong. Sometimes it is."

[61] "When judges are asked to rely on inference there must be an understanding that inferences, even entirely reasonable ones may just be wrong. In a system that operates on the presumption of innocence that is important. The system accounts for that by requiring that when a case is sought to be proven on the basis of such

inferences it is not enough to prove that the inference of guilt is reasonable. Reasonable inferences can be wrong."

[62] "The judge must be satisfied beyond a reasonable doubt that the guilt of the accused is the only rational inference that can be drawn from the facts. It is not an issue of the Crown showing that guilt is a rational inference or a more rational inference. It must be the only rational inference"

[63] "That standard means that if the evidence is capable of supporting a rational inference that is not compatible with guilt the accused person must be found not guilty."

[64] "Two things could flow from all of this. First, there is always another "possible interpretation". Second, each piece of evidence proves nothing on its own."

[65] "An accused could propose alternative inferences or explanations. When dealing with inferences, it is true to say that almost anything is theoretically possible."

[66] "The Crown does not have to address every possible explanation that might conceivably be raised, "no matter how irrational or fanciful." ®. v. Torrie, [1967] 2 O.R.8, (C.A.)) Almost anything is possible. Some things are just very, very ,very unlikely. "It could have been" explanations don't always make sense in the real world."

[67] " Each piece of circumstantial evidence can be rather easily countered or negatived. If, in an entirely methodical way, one were to assess each piece of evidence without reference to the rest, the Crown's case could be dismantled. The process of assessing evidence is neither so simple nor so linear. The evidence must be considered in its entirety or synthesized in its entirety. (R. v. White (1996), 108 C.C.C. (3d) 1 (Ont. C.A.)) It is usually only when all of the circumstantial evidence is considered that inferences can be made."
(emphasis added)

[68] In assessing the evidence of Mr. and Mrs. Canning, I have commented earlier on some of my concerns with respect to same. In particular, the evidence of Mr. Canning as to when he had last seen the missing items, and the proximity of that occasion to a "school reunion", noted in his written statement 5 years earlier, which "reunion" no longer resonated with him when he gave his evidence on the stand. This must necessarily have an impact on the "window of time" that we are facing during which the items could have been removed. It is true that Mrs. Canning, in her written statement, did make mention (in her written statement) of having last seen the stereo the day before the offence took place but this does not provide any dependable guidance with respect to the other items

[69] Likewise, there is the overall fact of the unreliability of the Canning's evidence in general. The lack of comfort that the court may derive from their evidence must detract from the Crown's case.

[70] To return to but a couple of examples, Ms. Canning's testimony was that she regularly left the backdoor to the home unlocked, and that, even when it was locked, it could be "kicked in" without too much difficulty, and that it was somewhat bowed from previous entrances having been affected in this manner, was significant. Despite (she says) regularly leaving the backdoor unlocked, and her being the last person to exit it the morning of August 11, 2005, (when she stepped outside to get her car from the accused, (who had just come home with it) Mr. Canning testified that he had to unlock the back door to let Billy in, and that Billy had first gone to the front door to attempt his entrance. Billy had not been given a key of his own.

[71] Mr. Canning testified that he was a "fanatic" about locking the door. While he did not advert to his wife's alleged practice of leaving the door unlocked, he did note that plenty of keys were going missing and it was only when the last key (of six) in the household was lost, that the lock would be changed. Nor did he mention that the back door could be easily kicked or pushed in with minimal force even when it was locked, which was a point his wife was at pains to stress.

[72] There are other considerations. For example, according to Ms. Canning's testimony, although Billy did sound like he was "high", when she telephoned him on August 11, 2005, and although he laughed in what Ms. Canning described as an odd manner, he did deny that he had stolen anything in response to her accusation.

[73] Again, while it is true that Billy did not again return to live with the Cannings until long after the events of August 11 2005, I am not prepared to infer that this was due to a "guilty mind". There are other reasons that may explain this, such as the realization that he had to get "clean"

and away from drugs, the tension in the household, or the fact that he'd "had enough" after being accused by his mother.

[74] I have considered all of the facts in this case both individually and collectively. There is uncertainty surrounding the date upon which the allegedly stolen items were last seen at the Canning residence (other than, perhaps, the stereo). Therefore, it cannot be stated with any degree of precision whether they went missing on August 11 2005, or some earlier date. In addition, there is the uncertainty arising from the Crown witnesses' testimony (the Cannings) as to whether the back door was generally locked or unlocked, whether it was unlocked on August 11, 2005, whether it could be opened with minimal force even when locked, the plethora of lost or missing keys to that door, and the testimony offered by the police officer with respect to break and enters (in general) in the area during 2005, (some of which predate Billy's arrival in Springhill). All of these things do further damage to the crown's "exclusive opportunity" argument.

[75] While I have not listed exhaustively all of the concerns with the Crown's case, the foregoing should suffice to indicate why I am left in reasonable doubt that the accused ever possessed or converted any of the missing items, or, indeed, that he had anything to do with their disappearance from the Canning household.

[76] While anyone would certainly be suspicious of the accused's involvement in the disappearance of these items (he did, after all, have a drug habit at the time and no obvious means of supporting it), it is not sufficient for the Crown to show, as in this case, that he "probably"

committed the offences charged. It must establish the elements of the offences charged beyond a reasonable doubt. Since I cannot be satisfied to the requisite degree that the allegedly stolen property ever came into the possession of the accused, or that he converted it to his own use, or that of another, or even that he had the exclusive opportunity to effect or aid in its removal, or that he did so, I acquit him on all counts.