

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Bruhm*, 2021 NSSC 371

**Date:** 20220408

**Docket:** *Bridgewater*, No. 501840

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Dakota Bruhm and Michelle Arenburg

**Judge:** The Honourable Justice Diane Rowe

**Heard:** October 12 and 13, 2021, in Bridgewater, Nova Scotia

**Oral Decision:** October 25, 2021

**Counsel:** Keavin Finnerty, for the Crown  
Jeremiah Raining Bird , for the Defendant Bruhm  
Noel Fellows, for the Defendant Arenburg

**By the Court Orally:**

[1] Mr. Bruhm and Ms. Arenburg are each charged, on the same indictment, with three counts. The first count charges the two with break and enter with theft over \$5000 contrary to s. 384(1)(b) of the *Criminal Code*, RSC 1985, c. C-46, committed between September 15<sup>th</sup>, 2018, and September 30<sup>th</sup>, 2018 at a cottage property owned by Dr. Dhiman Chowdhury and his spouse (the “Chowdhurys”).

[2] The second count charges that they did also commit mischief by wilfully damaging, without either colour of right or justification or excuse, the property owned by the Chowdhurys, in excess of \$5000 contrary to s. 430(3) of the *Criminal Code*.

[3] And finally, that the accused persons did traffic property, specifically antique furniture, of a value in excess of \$5000 knowing that the property was obtained by an offence, contrary to s. 355.2 of the *Criminal Code*.

[4] It should be noted that this proceeding encountered timing delays. First, as the accused failed to attend court for arraignment in the pre-trial phase and then later, as the effects of the COVID19 pandemic affected scheduling, with attendant challenges for counsel prior to trial.

## **OVERVIEW**

[5] The burden of proof remains with the Crown at all times. In this matter, the Crown must prove beyond a reasonable doubt that Dakota Bruhm and Michelle Arenburg committed the elements of each count. The Crown presented the evidence of Dr. Dhiman Chowdhury, Nathaniel Mansfield, and Constable Paul McCallion.

[6] The accused, as is their right, did not tender evidence.

[7] There was little dispute about these facts established at trial.

[8] Dr. Chowdhury and his wife have owned a cottage property in excess of 20 years. The Chowdhury cottage property is unique, as it can only be accessed by walking over a right of way on the next most adjacent owner's cottage land and then walking over a wooden bridge, over water, to a secluded, "island like" wooded area where the cottage and a large shed are located. Inside the shed were boats, and storage for firewood. There is also a dock at the Chowdhury cottage.

[9] The Arenburg family, specifically Ms. Arenburg's father and mother, own that adjacent cottage and land subject to the right of way. I will refer to the property as the "Arenburg cottage", for ease of reference.

[10] The Chowdhury cottage can only be accessed by a person walking across the Arenburg property, or by water on the lake that the cottages surround.

[11] When Dr. Chowdhury and his wife went to lock up their cottage for the winter, they found their personal property scattered around and on the Arenburg property. This included boats, hip waders, bedsheets, a dining chair, and other items. They continued to their cottage, over the wooden walkway, and then saw that both the cottage and the shed had been forcibly opened.

[12] On entering they saw that their cottage had been ransacked. An entire bedroom's furnishings were missing, as was their dining set. The woodstove was dismantled. A bathroom vanity was now in the middle of their kitchen, and the bathroom had been significantly damaged. An interior French door was taken off its hinges entirely. The adjacent shed also had the door broken in, with items removed, including a boat, and recreational items.

[13] The Chowdhurys were very disturbed by this damage. It is readily apparent that the peaceful enjoyment of their property was significantly disrupted. Some items were never recovered. Repairs were undertaken, with some expense.

[14] The Chowdhurys phoned the RCMP. Their investigation included the adjacent Arenburg cottage. The owner of the Arenburg cottage permitted the

RCMP entry, and within that structure many items previously at the Chowdhurys' cottage were being held at the Arenburg cottage, including the dining set. The bedroom set and armoire, and certain other items, were not recovered.

[15] One other person has been convicted in relation to possession of stolen property taken from the Chowdhurys.

## **ANALYSIS**

[16] The elements of the offences are readily set out.

[17] On the first count, the Crown must establish that the accused did break into the cottage and then entered, without right or excuse. The *Criminal Code* provides that anyone who breaks and enters does so with intent to commit an indictable offence. In this matter, the indictable offence is particularized as theft. The next element to be proven on this count is that there was a theft of property, worth over \$5000 on its actual value, not its replacement value.

[18] On the second, of mischief, the Crown must prove that the accused damaged or destroyed property, in a manner that was unlawful, and wilful, with the damage resulting in disruption to the owner's enjoyment or use of the property. The cash value amount of the damage is alleged to be in excess of \$5000, and, if proven, is

an indictable offence. The Crown submits that if this amount is not proven, but the offence has been, that the accused should be found guilty of the offence as a summary conviction.

[19] And, in regard to the third count, the Crown must prove that the accused trafficked in the Chowdhurys' property, with knowledge that the items were obtained by commission of an offence, with the value of the property in excess of \$5000. The definition of "traffic" in the *Criminal Code* at s. 355.1 indicates it includes "to sell, give, transfer, transport, ... deal with in any way or to offer to do any of those acts.."

[20] On the first count, Dr. Chowdhury's evidence was that he knew neither of the accused, although he acknowledged he may have seen Ms. Arenburg when she was a child, but could not recognize her today as a young woman. Dr Chowdhury established that neither Mr. Bruhm or Ms. Arenburg had his permission to enter, for any reason, the Chowdhury cottage property.

[21] The next element of the charge is whether there is evidence that the actual cash value of the property taken from the Chowdhury cottage was in excess of \$5000.

[22] Dr. Chowdhury relied upon his own valuation for many items taken in the inventory filed with the investigation. His valuation of items he considered antiques was made in a general sense, as he noted these larger furniture pieces came with the cottage when he purchased it. He was candid on the value of some items, acknowledging that the current value of a used boat that was decades in use may be low, but he was able to provide specific evidence on some newer items that were recently purchased.

[23] The items removed from the cottage, some of which were later found in the Arenburg cottage on RCMP investigation, were numerous and varied. They included, but were not limited to: a full bedroom set; an armoire with mirror; a table and chair set; a corner table; a wooden coat rack; microwave; a French door; a boat; a paddle boat; kayak; sheets; towels; a new Lagostina pot set valued at \$450; various household items (brooms, trashcans, radio, lightbulbs, fireplace set); shoes; clothing; toiletries; fishing rods and life vests; bike pumps; wrought iron hooks; and even a marine battery. The amount claimed for theft was totalled at \$9853 in the course of the RCMP investigation, based on this information.

[24] While I find that Dr. Chowdhury was generous in his estimate of certain items' values, I would not wholly discount his evidence. Some of these items were very old and would be a premium even if simply solid wood. I find that the total

value of the items taken was above \$5000, although it was not as high as \$9853.

Dr. Chowdhury was not motivated to inflate the loss to double its impact, as he readily stated that he is self insured.

[25] Mr. Nathaniel Mansfield's evidence was that the bedroom set was sold to an unknown couple in Liverpool for \$2000, and while I may have some concerns about his evidence on that point which I will address later in this decision, he admitted his own guilt to being in possession of items worth in excess of \$5000 taken from the Chowdhury cottage, with restitution in place.

[26] The Crown entered Mr. Mansfield's evidence, and he was rigorously cross examined by counsel for the defendants. Mr. Mansfield's evidence was that he was staying with Mr. Bruhm and Ms. Arenburg at the Arenburg family cottage, in an informal rental situation. He stated that he initially stayed at a trailer parked next to the cottage, but that the family did not want him to remain there. Mr. Mansfield's evidence was that Ms. Arenburg and Mr. Bruhm accepted cash from him to be a "hidden tenant".

[27] On October 30th, 2018, Mr. Mansfield was charged with possession of stolen property, in excess of \$5000, in relation to the Chowdhury cottage property found at the Arenburg cottage. He was not charged with breaking and entering, or



trafficking the items. After his arraignment, Mr. Mansfield pled guilty to this charge, and received a conditional sentence.

[28] A significant amount of time was spent in submissions concerning the testimony of an unsavoury witness tendered by the Crown to establish guilt of the accused. Mr. Mansfield's evidence was all in relation to his assistance and witnessing of the break and enter of the Chowdhury cottage and shed, and the removal of items to the Arenburg cottage, with sale to others on Facebook.

[29] Some submissions of defence counsel alluded to the Court being required to also apply *R. v. Vetrovec* [1982] 1 SCR 81 considerations to Mr. Mansfield's testimony. In the event that this was a jury trial, a presiding Justice must consider whether there should be a warning to a jury concerning the credibility of an unsavoury witness. This line of argument from defence counsel was to request the Court self warn, and to either dismiss, or weigh very lightly, Mr. Mansfield's evidence.

[30] However, I rely upon the reasoning set out in this regard in *R. v. Snyder*, 2011 ONCA 445, to guide consideration on this point. In *R. v. Snyder*, at para 24 it was stated:

[24] There is no need to import the requirement of a "Vetrovec" caution designed to alert juries to the danger of relying on the evidence of certain witnesses into a

trial judge's reasons for judgment. Judges know the risks inherent in relying on witnesses like Burgess and Doucette. It would be pure formalism to require judges to articulate those dangers in their reasons.

[31] Nathaniel Mansfield's evidence was forthright, and frank. His evidence was given in great detail, and he readily acknowledged his own mental health issues, drug dependency, criminal record and criminal acts of violence.

[32] Nathaniel Mansfield knew the accused Ms. Arenburg since middle school, and knew Mr. Bruhm as her boyfriend.

[33] I will note Mr. Mansfield attempted to support his own credibility as he spoke, specifically in regard to his repeated commitment to now "turn his life around..." which gave rise to some consideration and caution by the Court regarding his credibility. This also extended to gratuitous comments characterizing his own impressions of Mr. Bruhm and Ms. Arenburg's relationship, which are not relevant.

[34] Not long after the investigation began, upon Dr. Chowdhury's complaint on discovering the theft and damage to the cottage on September 30th, 2018, Constable McCallion arrested Mr. Mansfield. Mr. Mansfield initially "decompensated" on his arrest, after being asked to make a statement, and alluded to "hearing voices" and having a breakdown. Constable McCallion ended the interview, and obtained mental health services for Mr. Mansfield immediately.

[35] Mr. Mansfield received psychiatric help, and then obtained legal counsel. He referenced psychiatric medications as assisting him presently, and denied that he experienced delusions or hallucinations at the time that he first spoke with Constable McCallion or afterward.

[36] Mr. Mansfield did make two statements to the police. The first was December 5, 2018, after he was charged, and then another statement on December 13, 2018, prior to sentencing. The defence referenced both in order to impeach his testimony. The second statement concerning his involvement and observations was referenced as intended to be self serving, and submitted as a requirement for conditional sentencing, however this was not established. Mr. Mansfield maintained that this was given as a cautionary statement intended to admit his guilt.

[37] There was no evidence that Mr. Mansfield received a “deal” from the Crown to assist in the prosecution of the co-accused. He admitted he was fearful of federal prison, but had agreed to restitution and other sanction, and that his subsequent conditional sentence was a surprise to him. There was no apparent animus against either Mr. Bruhm or Ms. Arenburg, three years after the incidents he spoke about.

[38] Constable Paul McCallion's evidence, in conjunction with Dr. Chowdhury and Mr. Mansfield did all establish that the items located near, and in, the Arenburg family cottage were Dr. Chowdhury's property.

[39] I find that Mr. Mansfield's evidence was helpful in terms of corroboration of elements of the Crown's case, and direct and relevant evidence, but I did not automatically defer to his evidence in every aspect. The Court was required to carefully balance and consider, on the totality of the evidence, credibility and the weight of the evidence that Mr. Mansfield had given.

### **Break and Enter**

[40] On the first count, I find that the evidence of Constable McCallion on the manner of entry to the Chowdhury's property indicated that applied force, aided with a tool, was used to open the door to the cottage and the shed. I also find that Nathaniel Mansfield's evidence corroborated Constable McCallion in this regard.

[41] Mr. Mansfield's evidence was that Mr. Bruhm had formed the plan to enter the next door cottage to get firewood, and that on entering the shed, the cottage itself was forced open by Mr. Bruhm. Mr. Mansfield indicated he was not as physically strong as Mr. Bruhm, and he followed the other's lead. Mr. Mansfield

was credible in this regard, as his precarious lifestyle, drug use and psychological health were unstable at the time.

[42] Mr. Mansfield's testimony was that Mr. Bruhm had directed the removal of the items, based on worth for later sale. His testimony was that Mr. Bruhm had removed a vanity from the Chowdhury's cottage, and inadvertently gotten an electric shock as he tried to disconnect the water heater, yelling that Mr. Mansfield needed to shut off the power. This was quite credible, as Dr. Chowdhury had to hire tradespeople to repair the electrical system.

[43] Mr. Mansfield stated the parties were to remove all items that he determined could be used personally or sold online, or by other methods. This included the stove, water heater, furniture and other items. This was evident also as some items were moved as if about to be removed, such as mattresses and bags of items left at the cottage and found by investigating RCMP.

[44] The smaller items were taken over the footbridge, on the path. The larger furniture items were ferried across, on the larger boat. Mr. Mansfield wore Dr. Chowdhury's hip waders, which were found at the Arenburg property on the ground, to assist from the shore in guiding the boat onto the land or into the water.

[45] Mr. Mansfield did not give any evidence against Michelle Arenburg in relation to the forced entry of the other structure, and so, as this element of the charge against her has not been proved, I find her not guilty of the first count of breaking into the Chowdhury's cottage. Further, the evidence of Mr. Mansfield was contradictory in content in regard to Ms. Arenburg's participation in removing items. He had given evidence that she was actively engaged in taking items from the cottage with him and Mr. Bruhm, on Mr. Bruhm's direction, carrying many items across the boardwalk over several days, but then he also gave evidence on cross examination that was inconsistent as he acknowledged that during the daytime he rarely saw Ms. Arenburg as she was working in the evenings and sleeping in the day. As the test in *R. v. WD* [1994] 3 SCR 521 sets out, if the Crown has not sufficiently proven an element of the offence that an accused has been charged with, such that the trier of fact has a reasonable doubt, then a finding of guilt can not be made.

[46] The Crown has established, through its photographic evidence and direct witness evidence, that Dr. Chowdhury's property was found within the Arenburg cottage.

[47] The defence submitted that there was no proof that Mr. Bruhm or Ms. Arenburg were residing at the cottage, however the majority of personal items

found in the cottage belonged to the accused. Mr. Mansfield's evidence was that they were living there, as the two had been evicted from another residence. Mr. Bruhm's photo identification card was found among the items at the Arenburg cottage, as well, placing him at the scene.

[48] I find that the Crown has established beyond a reasonable doubt that Dakota Bruhm did break and enter the Chowdhurys' property, and removed their property to the Arenburg cottage. The defence's cross examination attempted to demonstrate that Mr. Mansfield had acted alone, without the accused's knowledge, and was not credible.

[49] Mr. Mansfield was seen as an unwelcome guest by Ms. Arenburg's parents, who were the true owners. He was permitted to "rent" for cash from the accused a space to sleep in, while Ms. Arenburg and Mr. Bruhm were permitted by her parents to live there. It is not credible to think that Mr. Mansfield, who was occupying such a tenuous place at the Arenburg cottage had the physical strength, motivation to lose a place to live, the sole opportunity or any license from Ms. Arenburg and Mr. Bruhm to begin collecting items taken from their next door neighbour's cottage. It is credible that he assisted Mr. Bruhm in taking the items, at Bruhm's direction, and then bringing them to Bruhm's girlfriend's family cabin.

[50] It should also be noted though, as set out in *R. v. Kowlyk* [1988] 2 SCR 59, a trier of fact may make an inference of guilt of not only a possession offence but also an offence, such as break and enter committed in obtaining the stolen goods, pursuant to unexplained possession of recently stolen goods. This is conditional on the facts before the Court. In this matter, it is a reasonable inference, given that there is only a very narrow access point from the Chowdhury's cottage to the Arenburg cottage, there were proven various stolen items owned by the Chowdhury's found at and around the Arenburg cottage, and all recently removed.

### **Mischief**

[51] Dr. Chowdhury's estimate of damage to his cottage property was about \$19,700 received from a Mr. Parsons for repairs. Dr. Chowdhury then repaired the cottage on his own, with a helper, and arranged for an electrician for other repair.

[52] Again, there is some question about the measure of Dr. Chowdhury's actual cash value of the damages. He relies upon the estimate he obtained from a local repairman, although he arranged for much of the repair himself citing the difficulty in getting a tradesperson to come out to the cabin. This was a credible point, as repair people would have to traverse the Arenburg cottage lands and a wooden



footbridge to get on-site. However, there were no supporting receipts for either work or materials provided to the Court to support the asserted amount of damage.

[53] I will note that the damage to the cottage and the shed was serious. Doors were wrenched open and damaged, pulling frames apart, and one door was removed entirely. A wood stove was partially dismantled out of the ceiling.

[54] The bathroom vanity had been removed from the bathroom, ripped out of the wall, and the electrical water heater had been taken out of the wall and was found in the kitchen. Electrical repairs were required. The Chowdhurys' personal cosmetic items were jammed into the toilet, as well, which was disturbing.

[55] In sum, while I am not satisfied that the full measure of the damages is \$17,000, or \$30,000, which was another estimate provided, I do find it was substantial. The issue before the Court is whether the amount was in excess of \$5000.

[56] I am not satisfied that the measure of damage established on the evidence provided by the Crown was in excess of \$5000.

[57] However, having found Mr. Bruhm guilty of the first count in the indictment in breaking and entering the property, I do find there is evidence of guilt for the mischief associated with the damage to the Chowdhury's cottage, specifically the

damages to the doors, frames, bathroom and electrical damage attributed to his removal of the water heater.

[58] Again, there was no evidence that Ms. Arenburg participated in this damage to these portions of the premises or objects. I can not make a finding of guilt for Ms. Arenburg under this count.

### **Trafficking Stolen Property**

[59] The evidence tendered by the Crown readily established that the Chowdhury property, found at the Arenburg property, was stolen. Mr. Mansfield's conviction for possession of stolen property provides evidence of this element of the offence.

[60] Ms. Arenburg and Mr. Bruhm had knowledge that the various items at the Arenburg property were Dr. Chowdhury's. There is photographic evidence of the items, including the boat, and even sheets on the ground, around the Arenburg cottage.

[61] Mr. Mansfield's evidence was that Ms. Arenburg had posted the bedroom set online, on a social media site, and that it was sold for \$2000 cash. His evidence was that she used her online account, on the direction of Mr. Bruhm, and that a

couple from Liverpool bought the bedroom set, arrived at the cottage and took it away.

[62] There is no corroboration of this statement by other evidence. The Crown did not produce corroborating evidence that the transaction took place, provide evidence of the posting, or the identity of the purported purchaser.

[63] I find that on this charge, that the Crown has not adduced sufficient evidence to establish guilt, beyond a reasonable doubt, that the accused were engaged in trafficking, but has tendered evidence of possession.

## **CONCLUSION**

[64] I find that Mr. Bruhm is guilty of the charge of break and entry, with theft, over \$5000. I also find Mr. Bruhm guilty of mischief, in the amount under \$5000, which is a summary conviction offence.

[65] I find Ms. Arenburg not guilty of the first and second counts in the indictment.

[66] I find Mr. Bruhm and Ms. Arenburg not guilty of trafficking property, as set out in the third count of the indictment.

[67] Ms. Arenburg is found guilty of the included offence of s. 354(1)(a), for possession of stolen property, in an amount over \$5000.

Rowe, J.