

SUPREME COURT OF NOVA SCOTIA

Citation: *R v. Tibbo*, 2022 NSSC 319

Date: 20221025

Docket: *CRBW*, No. 504900

Registry: Bridgewater

Between:

His Majesty the King

v.

Linda Deloris Tibbo

Judge: The Honourable Justice Diane Rowe

Heard: May 9, 10, 11, and 12, 2022, in Bridgewater, Nova Scotia

Oral Decision: July 5, 2022

Counsel: Bryson McDonald, Crown Attorney
Michael Power, Defence Counsel

By the Court - Orally:

Background

[1] Ms. Linda Deloris Tibbo is before the Court charged with two offences.

[2] The first count is that between May 27, 2016 and December 21, 2018, she defrauded Zinck's Auto Salvage ("Zinck's") of \$150, 981.80 by writing cheques to herself, contrary to section 380(1) of the *Criminal Code*, R.S.C. (1985) c. C-46.

[3] The second count is that, during the same time period, Ms. Tibbo stole money that was owned by Zinck's Auto Salvage of a value exceeding five thousand dollars, contrary to section 334(a) of the *Criminal Code*.

Burden and Standard of Proof

[4] Throughout all criminal proceedings, there is a presumption the accused is innocent. The burden of proving all the elements of an offence lies wholly with the Crown. The standard of proof for the Crown to meet is high, with the proof of each element of the offence to be established beyond a reasonable doubt before there is a finding of guilt.

[5] Cory J, in *R v. Lifchus* [1997] 3 SCR 320 stated, at paragraph 36, in regard to the standard of proof beyond a reasonable doubt:

[36] ...

- the standard of proof beyond a reasonable doubt is inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence;
- the burden of proof rests on the prosecution throughout the trial and never shifts to the accused;
- a reasonable doubt is not a doubt based upon sympathy or prejudice;
- rather, it is based upon reason and common sense;
- it is logically connected to the evidence or absence of evidence;
- it does not involve proof to an absolute certainty;
- it is not proof beyond any doubt nor is it an imaginary or frivolous doubt; and
- more is required than proof that the accused is probably guilty - a jury which concludes only that the accused is probably guilty must acquit.

[6] In *R v. W.(D.)*, [1991] 1 S.C.R 742, the Supreme Court of Canada held the Court must engage in a three step analysis to determine whether the evidence accepted during trial establishes a finding of guilt, as follows:

- (a) If the evidence of the accused is believed, the accused must be acquitted;
- (b) If the evidence of the accused is not believed, but the evidence still raises or leaves unreasonable doubt, they must be acquitted; and,
- (c) Even if the evidence of the accused does not raise a reasonable doubt, they must be acquitted if a reasonable doubt is raised by other evidence that is accepted. In order to convict, the evidence that the court does accept must prove the accused's guilt beyond a reasonable doubt.

Elements of the Offences

[7] In regard to the charge of fraud, contrary to s. 380(1), the Crown must prove all the elements of the charge that the Accused, "...by deceit, falsehood, or other fraudulent means..." defrauded a person, of any property, money, or valuable security. "Valuable security", as defined in s. 2 of the *Criminal Code*, is inclusive of an order to entitle a person to a deposit in a financial institution, such as a cheque.

[8] The Crown must prove, beyond a reasonable doubt that the Accused is the person who actually committed the fraud, with the offence occurring at the same time and place set out in the indictment. The Crown must also prove that the Accused used deceit, falsehood, or other fraudulent means to deprive the Complainant of their property, money, or valuable security. Further, the Crown must prove that the Accused intended to defraud the Complainant, and that the value of the property exceeded five thousand dollars.

[9] In *R v. Theroux*, [1993] 2 S.C.R (Tab1), at paragraph 24, the Supreme Court of Canada provides guidance with determining the *actus reus* and *mens rea* for fraud:

These doctrinal observations suggest that the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and

2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another...

[10] In regard to the second charge of theft, the Crown must demonstrate first, in regard to the *actus reus*, that the Accused fraudulently, and without colour of right, took or converted to their own use anything owned by another person. The Crown must also prove the *mens rea* element, that the taking was done with intent to deprive the owner of their property, the value of which exceeded five thousand dollars.

[11] I considered the caselaw submitted in the written briefs provided by the Crown and Defence after the close of the evidence in this matter. The case of *R v. Skalbainia*, [1997] 3 S.C.R. 995 sets out the *mens rea* test for theft at paragraph 6:

The second issue concerns the *mens rea* required for conviction under s. 332(1). We agree with Rowles J.A. in the British Columbia Court of Appeal that an intentional misappropriation, without mistake, suffices to establish *mens rea* under s. 332(1): see *R v. Lafrance* (1973), [1975] 2 S.C.R. 201 (S.C.C); *R v. Williams*, [1953] 1 Q.B. 660 (Eng. C.A.). The word “fraudulently”, as used in this section, connotes no more than this. The dishonesty inherent in the offence lies in the intentional and unmistaken application of funds to an improper purpose.

Evidence before the Court

[12] As the Court held in *R v. Beland* [1987] 2 SCR 398 at paragraph 20, credibility is a question for the trier of fact, “using their experience of human affairs and basing judgement upon their assessment of the witness and on consideration of how and individual’s evidence fits into the general picture revealed on a consideration of the whole of the case.”

[13] In *R v. HC* 2009 ONCA 56, the Court, at paragraph 41, remarked that credibility and reliability are different concepts, with credibility addressing the witness’ truthfulness and reliability being a measure of the witness’ ability to accurately see, recall, and then recount the events. As the Court noted, “Any witness whose evidence on an issue is not credible, cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability; a credible witness may give unreliable evidence. (*R v. Morrissey* 1995 CanLII 3498 at 526 (ONCA)).”

[14] I will canvass my findings on the evidence accepted at trial. As was noted by the Supreme Court of Canada: “A judge may accept some, none or all of the evidence of any witness at a criminal trial in Canada.” (*R. v. J.H.S.*, [2008] 2 S.C.R. 152 at para. 10)

[15] Further, there are evidently considerations in regards to documents placed before the Court in the course of trial, which I will comment on as those items came before me.

Ms. Judy Croft

[16] Ms. Croft is the common law wife of Mr. Ambrose Zinck, the sole proprietor of Zinck's Auto Salvage. They have been together as a couple for over 30 years.

[17] Ms. Croft testified in a straightforward manner, without exaggeration and without contradiction. I found her evidence to be both credible and reliable.

[18] She alluded to having power of attorney over Mr. Zinck as his spouse, and that she makes business decisions accordingly as he has limited literacy skills. She works at Zinck's Auto Salvage at the front desk and takes cash payments, and issues receipts. Ms. Croft does not take a salary, but will use cash for household and personal expenses, with the knowledge of Mr. Zinck that she does this as a matter of course. Ms. Croft made the deposits to the business accounts of cash and cheques.

[19] Ms. Croft confirmed that Ms. Tibbo was hired to assist Zinck's Auto Salvage with administrative tasks, which was referenced as "doing the books." It was evident to the Court that Ms. Croft was not familiar with what that might entail, but that she completely trusted Ms. Tibbo had the knowledge to perform the task.

[20] Ms. Tibbo and Ms. Croft once enjoyed a very close friendship, developed since she first began working for the business about 17 to 18 years before. They spent time together, and were confidants.

[21] Ms. Croft eventually stopped looking at the bank statements completely, and would simply hand the unopened envelopes to Ms. Tibbo, along with the receipt books and other materials that came into the business. Ms. Croft did not have online access to the business banking account and did not receive statements from the accountant.

[22] Ms. Tibbo was entrusted with "taking the paperwork, income tax...and all that" in, organizing it, making out cheques to cover taxes and delivering paperwork to a professional accountant for tax preparation, as needed. She was given a block of blank cheques, some signed by Mr. Zinck, for the purpose of paying bills. Her wage for this was \$50.00 per month.

[23] Ms. Croft became aware of the shortfall in the business account when the bank informed her, just prior to Christmas 2018, that there were problems with clearing funds. She did not act immediately by speaking with Mr. Zinck, hoping for a “nice Christmas” before having to address the problem. Instead, she was contacted by Ms. Tibbo via text messages exchanged during the first week of December, 2018.

[24] These texts were put to Ms. Croft, and are admissible only for the limited purpose of impeaching her as a witness. As the Supreme Court of Canada in *R v. Dinardo*, 2008 SCC 24 at paragraphs 36 and 37 held:

36 As a general rule, prior consistent statements are inadmissible (*R v. Stirling* [2008] 1 S.C.R. 272, 2008 SCC 10 (S.C.C.)). There are two primary justifications for the exclusion of such statements: first, they lack probative value (*Stirling*, at para 5), and second, they constitute hearsay when adduced for the truth of their contents.

37 In some circumstances, prior consistent statements may be admissible as part of the narrative. Once admitted, the statements may be used for the limited purpose of helping the trier of fact to understand how the complainant’s story was initially disclosed.

[25] Ms. Croft readily admitted to the text exchange. In it, Ms. Tibbo alluded to “thousands being given to Mike”, who is Ms. Croft’s son. However, on cross examination, Ms. Croft denied that she ever gave authority to Ms. Tibbo to deposit cheques for the purpose of giving money to her son. Ms. Croft denied this took place, responding that if she were to have given money to her son, she had ample

opportunity to simply use the cash received when she was working at the salvage yard, or write cheques to herself, using her authority as the power of attorney for Mr. Zinck, rather than involve Ms. Tibbo.

Mr. Ambrose Zinck

[26] Mr. Zinck is the owner of Zinck's Auto Salvage, which he has owned since he was 14 years old. His evidence was that he had a grade four education, and then left school to begin work, eventually using his skills as a self-taught mechanic and welder to begin his own successful salvage yard business.

[27] The evidence in the banking records before the Court show that the business was very profitable, earning at least over \$100,000.00 per year at the time of the alleged offences. It was noted by Mr. Zinck and Ms. Croft that not all the payments to his company were made by cheque, but also in cash payments by customers. These cash transactions are not captured in the banking records filed in this matter.

[28] Mr. Zinck also trusted Ms. Tibbo with "the books". He confirmed that he gave cheques to her for the purpose of paying bills. He did not look at the statements at all, and had no online access to his own accounts. He relied completely on those around him to handle all paperwork and business banking.

[29] It was evident to the Court that he was unaware of all the transactions. Some of the cheques that were shown to him for his confirmation were met with a presumption that, as it looked like his signature was “onto it”, he presumed he authorized it, but had no recollection. Other cheques were firmly rejected by him as not being his signature at all. One cheque had no signature on it for endorsement, but was processed by the bank in any event. The item line for the cheques varied, and were blank, or included notations for “computer equipment”, or “office supplies.” There is no notation for “loan to Ms. Tibbo” occurring.

[30] I am satisfied that Mr. Zinck did not knowingly authorize all of the transactions associated with the 60 cheques that were passed in the Tibbo account, either implicitly or explicitly. He firmly stated that he did not authorize Ms. Tibbo to deposit money in her own account, and then take it. He also stated on cross examination that Ms. Croft did not have power of attorney over him, and this point of evidence is at odds with Ms. Croft’s. However, in this regard, and in light of Mr. Zinck’s literacy and numeracy challenges, I accept Ms. Croft’s evidence that she does.

[31] Mr. Zinck was informed of the shortfall in his account by Ms. Tibbo, who told him it occurred because Ms. Croft directed her to deposit money into her personal account, in order to give Ms. Croft money for her son, Mike Croft.

Expert witness Ms. Anick Lamoureux

[32] Ms. Lamoureux was qualified as an expert witness, produced by the Crown for the purpose of providing expertise in analysis of banking records. The bank records, though hearsay, were accepted by the Court as being within the “business records” exception. Their accuracy and reliability were not challenged by the defence.

[33] The records tendered in evidence fill a bankers box, as there are numerous transactions between the Zinck’s Auto Salvage account and Ms. Tibbo’s personal account during the time period referenced in the indictment.

[34] Ms. Lamoureux’s evidence was detailed and professional. She has significant expertise in the area of forensic accounting. Her limitations were noted in the report provided to the Court.

[35] Ms. Lamoureux observed that 48% of all funds deposited into Ms. Tibbo’s account came from Zinck’s Auto Salvage. She also received funds from Ms. Croft in cash for her services in this time period. Further, Ms. Tibbo was receiving money from other employment and other sources in the same time period.

[36] In addition, Ms. Lamoureux’s analysis established that 60 cheques were deposited into Ms. Tibbo’s personal account in 60 separate transactions. The 60

cheques amounted to a total of \$98, 156.00. Ms. Tibbo made a total of 464 cash withdrawals during the same time, with total cash withdrawals of \$91, 457.00.

[37] Some of these withdrawals occurred with absurd frequency, within half an hour to an hour, particularly at the Gold River gas station, which also houses a small VLT Casino operation.

[38] The withdrawals are not credibly linked to the ostensible purposes of the Zinck's Auto Salvage cheques being deposited into the Tibbo account.

Defence

Michael Croft

[39] Michael Croft is Ms. Croft's only child, from a previous relationship. He was called by the defence.

[40] His evidence was that Ms. Tibbo was formerly a close friend of his mother's, who had been with her on at least one instance of his release from the Central Nova Correctional facility in Burnside. He confirmed that he had been convicted for drug crimes in the past, and that he had a large number of outstanding fines.

[41] He was quite firm that his mother, Ms. Croft, did not pay his bills, and that while she would meet him upon his release from jail, she would just help him get established with clothing and food, with Ms. Croft not responsible for his ongoing expenses. She did co-sign a loan for his truck, but he has responsibility for the payments.

[42] Mr. Croft admitted that he was stabbed on account of a drug debt, once in the shoulder, and treated at the South Shore Hospital. Ms. Croft did pay that debt, but it was less than a thousand dollars and was repaid.

[43] I found Mr. Croft to be a credible witness, and unflinching in retelling his prison experience and addictions.

Ms. Linda Tibbo

[44] Ms. Tibbo confirmed having no formal training in accounting. She is currently working as a home health care aide.

[45] Ms. Tibbo's evidence was that she was first a friend of Mr. Zinck, when she lived near him. She then became a very close friend of Ms. Croft's. Her evidence was that her business relationship with Mr. Zinck began about 23 years ago, prior

to her friendship with Ms. Croft. This was the first inconsistency with Ms. Tibbo's evidence in relation to that of Ms. Croft and Mr. Zinck.

[46] Ms. Tibbo's evidence was inconsistent, generally, and contradictory in regard to material points in issue, sometimes in the same answer to a single question. She was not a reliable witness.

[47] Her evidence was also not credible in relation to key aspects. Ms. Tibbo's contradictions were numerous. When challenged on cross examination, she would adjust the narrative. On the second portion of cross examination, she referenced having had a stroke at some prior time that would affect her memory so she could not remember what she had said the day before in her evidence.

[48] Ms. Tibbo was evasive, and not forthcoming. Her evidence concerning her addresses in the time period was offered without repeated and persistent questioning. She evidently resisted telling the truth about this fact, until she stated during her later cross examination that she resided at or near the Gold River reserve at a particular point in time, while being questioned on transactions in detail.

[49] Ms. Tibbo confirmed that there were a series of rapid cash withdrawals from an ATM located at the Gold River gas station and casino. She had first deposited

funds into her own account in October and November, 2018, from the Zinck's Auto Salvage account. There are then a series of cash withdrawals, some spaced only 30 minutes apart, from the Gold River ATM, on subsequent days.

[50] It is not logical or reasonable to accept Ms. Tibbo's evidence that she made these withdrawals to then give to cash to Ms. Croft, for the benefit of Mike Croft. It is more logical and reasonable to consider the Crown's submission that the funds were being used in real time, perhaps for video lottery gaming or some other purpose unknown to the Court.

[51] Ms. Tibbo's evidence concerning Mr. Croft's difficulty with addictions and even his stabbing, differed significantly from the evidence offered by Mr. Croft, who is best placed to speak about his own injury. Ms. Tibbo embellished this story, and it became more colourful, and then in contradiction to her own recollection on the stand.

[52] As I find Ms. Tibbo to not be credible in regard to this evidence, I cannot rely on her evidence on this point.

[53] Further, the payment for bookkeeping services is not reliable or credible. Ms. Tibbo's evidence was that she was paid \$50.00 per month and that,

occasionally, accumulated months were paid in one cheque for \$150.00, as an example.

[54] However, the Crown entered three cheques, at Exhibit 1, Tabs 3-3, 4-4, and 4-5. The 4-4 and 4-5 items were both dated and cashed one day apart. It is not reasonable that both would have been made within one day of the other for a total of six months work. I do not find it credible that these payments were made for this purpose, and must reject Ms. Tibbo's evidence.

[55] Ms. Tibbo gave evidence concerning the signatures on the cheques, as well as the payee portion. Occasionally, she would confirm having written in her own name, and in others she disputed that she wrote the cheques to herself as her name was in printed form. On cross examination, she was presented with a cheque she had written on her own account that refuted her evidence that she only wrote in cursive.

[56] Further, some cheques were endorsed with Mr. Zinck's name written incorrectly, and one blank, with others misspelled or written in a form different than Mr. Zinck's usual signature. All of these cheques, with irregularities or error, were deposited into Ms. Tibbo's account.

[57] Ms. Tibbo testified that she always had money in her own account, and did not need to rely upon the Zinck's cheque. This was refuted by cross examination on the banking records where it was demonstrated that there were at least two instances in which Ms. Tibbo's account would have gone into withdrawal but for the coincidental and timely deposit of corresponding cheques in that amount from Zinck's Auto Salvage.

[58] Finally, on direct examination, Ms. Tibbo confirmed knowledge of the cheque at Tab 5-11 as she said "a couple" of cheques had bounced, and Mr. Zinck "had nothing". This cheque was for \$8604.00 in total, dated June 14, 2018. Ms. Tibbo's evidence was that she had paid the company's taxes from her own account and she was repaying herself, however, a review of the Zinck's account indicated that he did have funds available. There are no cheques or money orders written to Revenue Canada from Ms. Tibbo's account, at all.

Crown's Submission

[59] The Crown submits that the evidence proves, beyond a reasonable doubt, each of the elements of the count of fraud and the count of theft. It relies upon the evidence of Ms. Croft, Mr. Zinck, and Mr. Michael Croft to demonstrate that Ms.

Tibbo was not authorized or directed to deposit all of the monies into her account, whether expressly or implicitly.

[60] The analysis of Ms. Lamoureux was offered to assist the Court to consider the voluminous banking information presented to the Court, and indicate that the transactions were for the benefit of Ms. Tibbo.

[61] The Crown further submits that the evidence of Ms. Tibbo, particularly, must be discounted as it is neither credible or reliable.

Defence Submission

[62] In regard to the charge of fraud, Ms. Tibbo submits that there are discrepancies in the Crown's evidence that would lead to an acquittal.

[63] It is submitted that, generally, Ms. Tibbo deposited the money into her account at the direction of Ms. Croft, in order to access funds she then gave to Ms. Croft for her son, Michael Croft. As Ms. Croft had ostensible authority to deal with funds from the business, Ms. Tibbo submits that she was directed by a person who had authority and therefore, all her dealings in this regard were under a "colour of right".

[64] Ms. Tibbo also indicates that Mr. Zinck directed and authorized her to use cheques to pay creditors and herself, from time to time. It is submitted that neither Ms. Croft or Mr. Zinck were unequivocal that all the cheques to her were unauthorized.

[65] Therefore, it is submitted that the Crown has not proven the *mens rea* for fraud, and theft.

[66] Finally, it is also submitted that as there is no expert handwriting analysis of the cheques, there is no reliable proof that Ms. Tibbo engaged in forgery and that some other person, unknown, could have been involved in writing the name “Deloris Tibbo” as payee.

Analysis

[67] In regard to identity, the Crown has proven to the Court’s satisfaction that it was Ms. Tibbo who deposited the Zinck’s Auto Salvage cheques to her own account and that she completed the information in the blank cheques in her own name. The banking records demonstrate the time and place of each transaction.

[68] In regard to the third element of fraud, the Court considers dishonest conduct. This means conduct that ordinary decent people would feel is at odds with

straightforward or honest dealings. In deciding whether the conduct of Ms. Tibbo is at the level of dishonest conduct, the Court must apply an objective test. I do not have to decide whether Ms. Tibbo subjectively intended to be dishonest.

[69] Judge Scovil in *R v. Kitch*, 2022 NSPC 4, provided a good analysis on the law of fraud. This case bears some semblance to the case before the Court. Ms. Kitch was the former CEO of the IWK Children’s Hospital who expensed personal purchase on her corporate credit card in violation of hospital policy. Ms. Kitch was convicted of fraud. At paragraph 60, Judge Scovil (citing other cases) discussed acts that would satisfy the “other fraudulent means” element of the actus reus and said:

“In a number of subsequent cases, courts have defined the sort of conduct which may fall under this third category of other fraudulent means to include the use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized arrogation of funds or property.”

[70] I am satisfied that, on an objective test, that Ms. Tibbo’s dealings with the Zinck’s chequing account were dishonest as she wrote and deposited cheques to her own account from the Zinck’s account, in a manner that was indifferent or reckless to the harm created, without explicit authorization. She did not speak with Mr. Zinck or Ms. Croft about her dealings, until the moment it was clear that the business account was exhausted and reckoning was due.

[71] Mr. Zinck is a trusting man, with limited literacy skills, who built a successful business in his scrap yard through hard work. His limitations with numeracy and accounting led him to rely, completely, on the people hired to do administrative and accounting tasks for him. In this sense, he was vulnerable to economic exploitation by a trusted employee.

[72] On the fourth element, the actions of Ms. Tibbo in depositing the Zinck's Auto Salvage cheques resulted in money being unaccounted for, and then converted for her own use.

[73] Finally, regarding the intent to defraud, Ms. Tibbo's defence hinges on this element. The Crown must prove that Ms. Tibbo intended to defraud Zinck's Auto Salvage.

[74] In order to prove an intention to defraud, the Crown must prove that the accused deliberately carried out the acts or business transactions alleged, knowing or being reckless, or wilfully blind to the facts and circumstances that make this dishonest conduct in the eyes of a reasonable person and that the accused is deliberately knew, or was being reckless, or wilfully blind that they would create harm or risk of harm to the economic interests of Zinck's Auto Salvage.

[75] In this matter, the Court makes a common sense inference that Ms. Tibbo had subjective knowledge that she knew taking funds from the Zinck's Auto Salvage account would create harm or loss or a risk of harm or loss.

[76] I will note that Ms. Tibbo never spoke directly with Mr. Zinck, the owner and principal of Zinck's Auto Salvage, about her various dealings with the money from the business, although her cheques deposited in this time period exceeded \$90,000.00. This is remarkable on a common sense basis.

[77] Ms. Tibbo's evidence was that she knew that the account was out of balance. The evidence of both the Crown and Defence was that she contacted Mr. Zinck in attempt to forestall the "final reckoning" by contacting him and attributing blame to Ms. Croft.

[78] In *R v. Walle*, 2012 SCC 41, the Court held that the common sense inference does not need to be tied to a rigid formula. The Court may, as a matter of common sense, draw an inference that a sane and sober person realizes the natural and probable consequences of their voluntary actions.

[79] Ms. Tibbo admitted she wrote cheques naming herself as the payee drawing on the Zinck's Automotive bank account. she deposited these, to her own account. She then drew upon her own account to remove the cash deposited.

[80] Common sense would indicate that an adult, familiar with the basics of how cheques operate to have funds drawn from another person's account that are then deposited to the credit of their own account, would understand that cheques resulting in such significant withdrawals from the Zinck's account created loss or a risk of additional loss to the business. I am satisfied that the Crown has met its burden of proof in regard to intent.

[81] Ms. Tibbo asks that the Court consider an alternative theory on the transactions that may give rise to a reasonable doubt, which is that she did not know this was wrong, and that she either made deposits on the implicit authority from Mr. Zinck, or that she did this on the direction and with the knowledge of his partner, Ms. Croft, who then used the cash to fund her son's life.

[82] On a consideration of the evidence that is accepted, I do not find any basis for a reasonable doubt based on this submission.

Conclusion

[83] Therefore, while I do not accept the Accused's evidence in relation to the offence, I have found that, on considering the third branch of *R v. WD*, supra, the evidence that the Court does accept is that the Crown has proven the Accused's guilt beyond a reasonable doubt in relation to the charge of fraud, in excess of five

thousand dollars. In this case, the *Lifchus, supra* comment that the proof beyond a reasonable doubt, is proof "...based upon reason and common sense; it is logically connected to the evidence or absence of evidence;" is most pertinent.

[84] The elements regarding theft have also been proven beyond a reasonable doubt by the Crown. There is no credible evidence that there was a colour of right for the Accused to have deposited cheques from Zinck's, resulting in a taking of money from the business account to her personal account. the intention to do so is inferred, in like manner to what I have reference above, and the value of the taking exceeding five thousand dollars.

[85] That concludes my decision in regard to this matter.

Diane Rowe, J.