

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Oldham*, 2026 NSSC 127

**Date:** 20260327

**Docket:** Hfx CRH No. 542462

**Registry:** Halifax

**Between:**

His Majesty the King

v.

Justin Shawn Oldham

**Decision**

**Judge:** The Honourable Justice John P. Bodurtha  
**Heard:** January 27 and 28, 2026, in Halifax, Nova Scotia  
**Oral Decision:** March 27, 2026  
**Written Decision:** April 20, 2026  
**Counsel:** Tim McLaughlin KC and Adrian Hutcheson, for the Crown  
Quy Linh, for the Accused

**By the Court (orally):**

**Introduction**

[1] Justin Oldham is charged on a three-count indictment with the following charges:

That on or about the 4th day of November 2022, at or near Halifax, Nova Scotia, he did unlawfully have in his possession for the purpose of trafficking, Cocaine, a substance included in Schedule I of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and did thereby commit an offence contrary to section 5(2) of the said Act;

And further that at the same time and place aforesaid, he did unlawfully have in his possession for the purpose of trafficking, Hydromorphone (dihydromorphinone), a substance included in Schedule I of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and did thereby commit an offence contrary to section 5(2) of the said Act;

And further that at the same time and place aforesaid, he did unlawfully have in his possession for the purpose of trafficking, Methylphenidate (methyl 2-phenyl-2-(piperidin-2-yl) acetate), a substance included in Schedule III of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and did thereby commit an offence contrary to section 5(2) of the said Act.

[2] The three counts on the indictment under s. 5(2) are each for a different substance included in the schedules of the *Controlled Drugs and Substances Act* (“CDSA”).

**Governing Principles**

***Presumption of Innocence and Burden of Proof***

[3] The Crown must prove beyond a reasonable doubt that Justin Oldham was in possession of cocaine, hydromorphone, or methylphenidate for the purpose of trafficking on the respective counts. Justin Oldham is presumed innocent of the charges. The Crown bears the burden of proof regarding each specific element of the charges beyond a reasonable doubt. Justin Oldham does not need to prove anything, and this never changes.

[4] The standard of proof was summarised in *R. v. Lifchus*, [1997] 3 S.C.R. 320, at paragraph 36:

36 Perhaps a brief summary of what the definition should and should not contain may be helpful. It should be explained that:

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.

[5] In *R. v. Starr*, 2000 SCC 40, Justice Iacobucci, for the majority, said that “an effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than to proof on a balance of probabilities” (para. 242).

[6] The Crown called five witnesses. The Defence called none. I have considered the totality of the evidence in arriving at my decision as to whether guilt is proven beyond a reasonable doubt. In hearing the evidence of the witnesses, I can believe none, part, or all of the evidence: *Novak Estate, Re*, 2008 NSSC 283.

## **Legislation**

[7] Section 5(2) of the *CDSA*, S.C. 1996, c. 19 (*CDSA*), makes it an offence to possess for the purpose of trafficking a substance included in Schedules I-V. The offence is comprised of possession with an added mental element of an intention to traffic. "Traffic" is defined as follows at s. 2(1):

traffic means, in respect of a substance included in any of the Schedules I to V,

(a) to sell, administer, give, transfer, transport, send or deliver the substance,

(b) to sell an authorization to obtain substance, or

(c) to offer to do anything mentioned in paragraph (a) or (b), otherwise than under authority of the regulations.

[8] Section 2 of the *CDSA* directs that possession means possession within the meaning of subsection 4(3) of the *Criminal Code*, which reads:

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

(i) has it in the actual possession or custody of another person, or

(ii) 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 possession of each and all of them.

[9] The case against Justin Oldham is entirely circumstantial. No one saw him in actual possession of the drugs or exercising any acts of control over the drugs. The Crown alleges that Justin Oldham had constructive possession of the drugs with an intent to traffic and says the circumstantial evidence leads to no other reasonable conclusion. According to the Crown, the constituent elements of the charged offences have been proven beyond a reasonable doubt and therefore, Justin Oldham is guilty of all the offences on the indictment.

[10] The defence argues there is a lack of sufficient evidence that Justin Oldham had constructive possession of the drugs. According to the defence, he had no knowledge or control of the drugs in the residence and had no intent to traffick, and the Crown has not met their burden.

[11] Expert witness Cpl. Todd Howe testified that after reviewing the evidence (pills, cocaine, scales, baggies, nunchucks, and a safe), he had no issue concluding that the evidence was consistent with someone in possession for the intent to traffick. I agree. The items found in the residence are highly suspicious and indicative of drug trafficking, but the question remains: who possessed the drugs? The Crown argues that they belong to Justin Oldham based on constructive possession.

[12] The Crown pointed out that section 51 of the *CDSA* establishes that a certificate of analysis is proof of the statements it contains, in the absence of evidence to the contrary. In any event, defence counsel took no issue with the results of the certificates.

## Analysis

[13] The Crown's case is comprised of circumstantial evidence. *R. v. Villaroman*, 2016 SCC 33, is the leading authority on circumstantial evidence. Cromwell J., writing for the Supreme Court of Canada, cited the Canadian Judicial Council's *Model Jury Instructions* as an example of the difference between direct and circumstantial evidence at para. 23:

[1] As I explained at the beginning of the trial, you may rely on direct evidence and on circumstantial evidence in reaching your verdict. Let me remind you what these terms mean.

[2] Usually, witnesses tell us what they personally saw or heard. For example, a witness might say that he or she saw it raining outside. That is called direct evidence.

[3] Sometimes, however, witnesses say things from which you are asked to draw certain inferences. For example, a witness might say that he or she had seen someone enter the courthouse lobby wearing a raincoat and carrying an umbrella, both dripping wet. If you believed that witness, you might infer that it was raining outside, even though the evidence was indirect. Indirect evidence is sometimes called circumstantial evidence.

[14] If there are reasonable inferences the court can draw other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt (para. 35). The court, per Cromwell J., wrote:

[35] At one time, it was said that in circumstantial cases, "conclusions alternative to the guilt of the accused must be rational conclusions based on inferences drawn from proven facts." ... However, that view is no longer accepted. In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts... Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.

[36] I agree with the respondent's position that a reasonable doubt, or theory alternative to guilt, is not rendered "speculative" by the mere fact that it arises from a lack of evidence. As stated by this Court in *Lifchus*, a reasonable doubt "is a doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence": para. 30 (emphasis added). A certain gap in the evidence may result in inferences other than guilt. But those inferences must be

reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

[37] When assessing circumstantial evidence, the trier of fact should consider “other plausible theor[ies]” and “other reasonable possibilities” which are inconsistent with guilt... I agree with the appellant that the Crown thus may need to negative these reasonable possibilities, but certainly does not need to “negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused”...“Other plausible theories” or “other reasonable possibilities” must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

[38] Of course, the line between a “plausible theory” and “speculation” is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

[15] I also keep the following excerpt from *Villaroman* at the forefront of my analysis:

[55] ... Where the Crown’s case depends on circumstantial evidence, the question becomes whether the trier of fact, acting judicially, could reasonably be satisfied that the accused’s guilt was the only reasonable conclusion available on the totality of the evidence”...

[16] *Villaroman* is clear that alternate inferences consistent with innocence need not be based on proven facts (para. 35).

[17] Beveridge, J.A. in *R. v. Murphy*, 2014 NSCA 91, reproduced a portion of a lengthy extract from *R. v. Smith*, 2012 NBCA 99, where Drapeau C.J.N.B. quoted with approval from a leading text on drug offences in respect of the dual requirements of knowledge and control:

50...

16 Whether the requisite degree of control exists is a question of fact, which stands to be determined in the light of the particular circumstances of each case. In *Drug Offences in Canada*, 3d ed. looseleaf (Aurora, Ont.: Canada Law Book Inc., 2012), the authors, Bruce A. MacFarlane, Robert J. Frater & Chantal Proulx, provide, at paras. 4.1280-4.1296, the following insights regarding evidence of control in residential cases:

In *residential* cases of constructive possession, it should also be noted that where a person occupies a room, such occupation constitutes some evidence from which an inference may be drawn that the person was aware of the presence and had control of a drug

found within the room...However, a rebuttable presumption of possession because of tenancy or occupancy does not exist at common law or under the *Controlled Drugs and Substances Act*, and a decision by a trial judge to analyze the evidence on a presumptive basis constitutes a reversible error....

Whether and to what extent any particular accused can be tied to drugs found in residential premises will depend on a range of factors, including: whether the accused lived there or regularly stayed over; whether others lived there or stayed over, and the frequency; clothing and other indicia of living arrangements; who paid the rent or mortgage; in whose name are the various utility accounts; frequency of attendance based on surveillance; and relationship between individuals appearing to live in the premises. This is not, of course, an exhaustive list. For example, knowledge and control over openly visible drugs can and often will be inferred where the accused are the only ones living in the premises....

On the other hand, where the accused simply visited the premises from time to time and had a key to the door, but there was no other evidence connecting the accused to the drugs and the other persons frequented the premises, an inference of knowledge and control usually will not be drawn: Indeed, where the evidence adduced by the Crown is entirely circumstantial, and razor thin, a trial judge is entitled to enter a directed verdict where the evidence does not meet the standard established by the Supreme Court in *USA v. Shepard*, [1977] 2 S.C.R. 1067....

51 The Court had no difficulty in concluding that the verdict reached was not unreasonable. The conclusion was reached for a number of reasons. Among them: the trial judge rejected the innocent or neutral gloss of the appellant's incriminating comments; there was male clothing present; the appellant's truck keys were found near a bag of marijuana in the pantry; there were three bronchial inhalers (recently prescribed) located in a kitchen cupboard.

...

56 It is safe to extract a number of principles from these authorities. The question whether an accused has constructive possession of something is a question of fact. Whether a judge or jury can reasonably draw the requisite inference of knowledge and control will therefore depend on the totality of the circumstances. Occupancy of premises in which there are drugs and related paraphernalia in plain view, or hidden in circumstances indicative of likely knowledge, can be sufficient to ground reasonable inferences of knowledge and control.

57 In this case, the Crown commented that a trial judge would not likely have convicted. I agree. The drugs and other related items were not in plain view. There is lacking any of the usual evidence that demonstrates regular occupancy or

connection to the drugs. There was no evidence the appellant's belongings were present in the master bedroom, (or anywhere in that apartment), or that he paid the power or phone bill. Car keys were found, but no evidence that they were in any way related to any vehicle connected to the appellant.

58 If I was trying this case based on the trial record, I would have a reasonable doubt. I venture to say that in every case where an appeal court finds a verdict to be unreasonable or unsupported by evidence such a conclusion is necessary. But the law is clear, it is clearly not a sufficient basis to say the verdict is unreasonable.

[citations omitted]

[18] The Ontario Court of Appeal reviewed the law with regards to constructive possession and proof of trafficking under s. 5(2) of the *CDSA* in *R. v. Pham* (2005), 203 CCC (3d) 326, 2005 CarswellOnt 6940 (Ont. C.A.). The issue was whether the appellant had knowledge and control of cocaine found in the bathroom and therefore had it in her possession. The court stated:

15 In order to constitute constructive possession, which is sometimes referred to as attributed possession, there must be knowledge which extends beyond mere quiescent knowledge and discloses some measure of control over the item to be possessed. See *R. v. Caldwell* (1972), 7 C.C.C. (2d) 285 (Alta. C.A.); *R. v. Escoffery* (1996), 28 O.R. (3d) 417 (Ont. C.A.) [hereinafter *R. v. Grey*].

...

17 The element of knowledge is dealt with by Watt J. in the case of *R. v. Sparling*, [1988] O.J. No. 107 (Ont. H.C.) at p. 6:

There is no direct evidence of the applicant's knowledge of the presence of narcotics in the residence. It is not essential that there be such evidence for as with any other issue of fact in a criminal proceeding, it may be established by circumstantial evidence. In combination, the finding of narcotics in plain view in the common areas of the residence, the presence of a scale in a bedroom apparently occupied by the applicant, and; the applicants apparent occupation of the premises may serve to found an inference of the requisite knowledge.

The court of appeal decision in *R. v. Sparling*, [1988] O.J. No. 1877 (Ont. C.A.) upheld the above passage as being sufficient evidence to infer knowledge.

18 The onus is on the Crown to prove beyond a reasonable doubt, all of the essential elements of the offence of possession. This can be accomplished by direct evidence or may be inferred from circumstantial evidence. In *Chambers, supra* at 448, Martin J.A. noted that the court may draw "appropriate inferences from evidence that a prohibited drug is found in a room under the control of an accused and where there is also evidence from which an inference may properly be drawn that the accused was aware of the presence of the drug."

[19] This standard of proof applies to the evidence as a whole, not to each individual piece of circumstantial evidence: *R. v. Gibson*, 2021 ONCA 530, at para. 78.

[20] Most of the evidence proffered by the Crown in this case is circumstantial. In order to convict, I must be satisfied beyond a reasonable doubt that the accused's guilt is the only rational inference that can be drawn from the circumstantial evidence. I must look to other reasonable inferences other than an accused's guilt.

[21] In *R. v. Hickey*, 2022 NSSC 235, Brothers, J. relied on *R. v. Al-Amiri*, 2017 NLTD(G) 35, a case that provides further guidance on constructive possession and circumstantial evidence. I quote from the passage she relies on at paragraph 82 of her decision:

32 With respect to the first two means of establishing possession, the Crown refers to the decision of the Supreme Court of Canada in *R. v. Morelli*, 2010 SCC 8 (S.C.C.) in which Justice Fish stated that knowledge and control are essential elements in order to establish both personal possession and constructive possession. Justice Fish described these two essential elements as follows at paragraphs 16 and 17:

16 On an allegation of personal possession, the requirement of knowledge comprises two elements: the accused must be aware that he or she has physical custody of the thing in question and must be aware as well of what that thing is. Both elements must co-exist with an act of control (outside of public duty): *R. v. Beaver*, [1957] S.C.R. 531 (S.C.C.), at pp. 541-42.

17 Constructive possession is established where the accused did not have physical custody of the object in question but did have it "in the actual possession or custody of another person" or "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." (*Criminal Code*, s. 4(3)(a)). Constructive possession is thus complete where the accused: (1) has knowledge of the character of the object, (2) knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and (3) intends to have the object in the particular place for his "use or benefit" or that of another person.

...

35 The Crown refers to the British Columbia Court of Appeal's decision in *R. v. Fisher*, 2005 BCCA 444 (B.C. C.A.), at paragraph 47, in which Smith, J.A. stated:

... an accused person may be convicted solely on the basis of circumstantial evidence provided the evidence is consistent with the accused "having committed the act" and is "inconsistent with any other rational conclusion".

...

51 In considering the type of evidence required to establish guilt, I have considered the comments of Burrage, J. of this Court at paragraph 62 of *Dunn*, Burrage, J. reviewed case law and listed some of the considerations bearing on the assessment of circumstantial evidence of possession:

While the cumulative import of the circumstantial evidence is to be assessed, considerations which have been shown by the foregoing authorities to bear on this assessment include:

1. Whether the contraband in question is in plain view, or whether it is hidden.
2. The proximity of the accused to the contraband in question.
3. Whether there are items belonging to the accused in proximity to the contraband in question.
4. The reaction of the accused when first confronted.
5. The connection of the accused to the place in which the contraband is found.
6. The credibility of the accused, in circumstances where the accused testifies.

This list is not exhaustive, and an assessment of the evidence may entail a consideration of some, or all, of the above considerations.

[22] In the case before me, Cpl. Howe testified that the evidence found allowed him to conclude without a doubt that whoever possessed the drugs, it was with the intent to traffick. Applying the principles from these cases, I shall look at the elements of constructive possession.

[23] There were several individuals that resided in the residence: Zach McEwen, Desirae Johnson and her daughter, and John Oldham. Justin Oldham had moved out because he had broken up with Ms. Johnson. He did sleep in Ms. Johnson's bedroom (the master bedroom) on occasion as they worked through a breakup. He came and went as he pleased. Only he and Ms. Johnson knew the keypad number to the master bedroom. Zach McEwen was couch-surfing at the residence and was there unless he was over at one of his girlfriends' places.

[24] John Oldham, Justin's grandfather was residing at the residence. It is reasonable to infer that Justin Oldham would still be in and out of the residence to visit him even though he had broken up with Ms. Johnson. Ms. Johnson testified that both she and Justin Oldham were paying rent to Elizabeth, Justin's grandmother and all three of them had their names on the lease.

[25] The only person from the residence who testified was Ms. Johnson, although there were several individuals who lived there. She testified that she did not know about the drugs. She did not provide any evidence regarding drug use or drug trafficking by Justin Oldham. She testified that John Oldham and Zach McEwen were drug addicts.

[26] Ms. Johnson had a keypad put on her door to the master bedroom because money was going missing from her bedroom. She thought people were stealing from her.

[27] On November 5, 2022, the day of the search, there was a large amount of cash seized from the master bedroom; \$2,166 CDN and \$20 USD (Ex. 1) and \$3,310 CDN (Ex. 2). When Ms. Johnson was asked about the money that was found in the master bedroom beside the safe, she thought it was from the sale of an e-bike. Neither the Crown or defence asked questions about whose e-bike it was, or who sold it. She said the other cash found in the master bedroom came from her savings, as she was trying to save enough money so that she could leave the residence with her daughter. She said this was her bedroom, and on occasion Justin would sleep there. There was no evidence that Ms. Johnson locked the bedroom door all the time. The police seized a prescription pill bottle found adjacent to the wall by the television in the master bedroom. The pills in the bottle were analyzed and found to be Methylphenidate. Ms. Johnson and Justin Oldham shared a safe in the master bedroom.

[28] With respect to the master bedroom, the Crown argues that Justin Oldham and Ms. Johnson were the only ones who had access to it and therefore they had the ability to control items in the master bedroom where the prescription bottle was found.

[29] The Crown argues that Justin Oldham had control over the residence where the drugs were found because he had access to all the areas where the drugs were located, and submits that they only have to prove he had the ability to exercise control over the drugs along with knowledge of them to establish constructive possession.

[30] I shall address the locations where the drugs were found, beginning with the kitchen cupboard. The Crown argues that the blue pill case on top of the scale owned by Justin Oldham in the kitchen cupboard was under his control, a conclusion inferred from his access to the residence and the common area kitchen. Ms. Johnson testified that Justin Oldham owned a scale because he sold gold and would weigh it on the scale. By inference, the Crown argues, Justin Oldham had control over the drugs located in the cupboard because if he wanted to weigh the gold he would have to go to the kitchen to get the scale and would see the blue pill case.

[31] The kitchen is a common area used by all the residents. There were three other adults in the residence with access to the kitchen: Zach McEwen, John Oldham, and Ms. Johnson (Ms. Johnson's daughter would have been around ten years old at the time). There was no other kitchen in the home. I find that Justin Oldham lacked control over this area in the residence because his alleged control did not exclude other residents. In addition, Justin Oldham was only there some of the time. He was not living at the residence. Although Justin Oldham used the scale for a work purpose (weighing gold), the suggested inference is that he would have seen the drugs on top of the scale. There is no evidence of when that scale was there, when it was placed there, or when it was last used. Justin Oldham had moved out and there is no specificity around the amount of time per week or per day that he was spending at the residence. The evidence was he would come and go as he pleased. This does not mean he had knowledge or he had control as to what items were being brought into the residence and where they were being placed.

[32] The Crown argues that the source of knowledge of the drugs found in the kitchen was that anyone could go in the kitchen and see the drugs in the cupboard. This was a common area in the residence, the drugs were not locked up, and all someone needed to do was open the cupboard. For anyone who had control of the residence, we can infer their knowledge based on use of the kitchen, being a common area. Justin Oldham used the residence on a semifrequent basis and there was no evidence before the court that he was in kitchen on a regular basis. All other occupants had access to the kitchen. There are too many other individuals that had access to the kitchen for me to find beyond a reasonable doubt that Justin Oldham had knowledge of the drugs in the cupboard.

[33] I agree with the Crown's position that it stretches the reasonable inference that no one in the residence knew about the drugs in the common area of the kitchen that anyone could access, but that same stretch applies to finding that Justin Oldham had

control and possession over those same drugs beyond a reasonable doubt when so many other people in the residence had that same access.

[34] I shall now discuss the prescription bottle found in the master bedroom. Zach McEwen was in and out of the residence, essentially couch surfing. It makes sense that Zach McEwen would have his prescription medication there, but this does not explain how it got into the master bedroom. Even if I were to find that Justin Oldham had control over the bedroom, knowledge has not been established. How is the Court to infer from the evidence that Justin Oldham knew that Zack McEwen's prescription pill bottle was in the master bedroom, and that it was adjacent to the wall by the television. Establishing knowledge requires finding that Justin Oldham knew about the drugs and knew they were a controlled substance listed in the *CDSA*.

[35] Ms. Johnson testified that she was not having a good relationship with Justin. If Justin were trafficking the drugs in the prescription pill bottle, why would he leave them in his ex-girlfriend's bedroom in plain view when they were not getting along? Why would he trust her?

[36] Again, the prescription belonged to Zach McEwen, a resident of the premises. It was not established that Mr. McEwen or the other residents could not obtain access to the master bedroom. There was no evidence that Ms. Johnson always locked her door when she left the master bedroom. I am not convinced beyond a reasonable doubt that Justin Oldham had the requisite level of control over the prescription pill bottle.

[37] Lastly, I will address the cocaine hidden in the base of the air fryer in the kitchen. The Crown argues, based on the same reasoning advanced regarding the kitchen cupboard, that Justin had control over the cocaine not in plain view hidden in the air fryer.

[38] Regarding the drugs in the air fryer that were not in plain view, I make the same finding. The Crown has failed to prove he had knowledge and control of the drugs contained within the air fryer. Ms. Johnson who was living at the residence and had personal items such as mail and a pay cheque located next to the air fryer, relatively close to the kitchen cupboard where the blue pill case was found, testified that she did not know anything about the substances in the air fryer and cupboard. However, the Crown is asking this court to make the inference that Justin Oldham, who lived there sporadically, would know the drugs were there and would have control over them.

[39] The burden in a criminal case is beyond a reasonable doubt. To convict Justin Oldham on the circumstantial evidence led in this case would require the court to turn a blind eye to the burden on the Crown. For instance, the Methylphenidate prescription bottle in the bedroom. It is odd to have a prescription for someone else in Ms. Johnson's bedroom. The Crown says that it is not rational for Zach McEwen to go into Ms. Johnson's bedroom and place his pills there, because he was someone that she was actively trying to keep out of her bedroom, which is why she got the keypad lock. Yet, I am supposed to be convinced beyond a reasonable doubt that Justin Oldham, who did not live at the residence knew that Zach McEwen's prescription pill bottle would be located in his ex-girlfriend's room in plain view.

[40] When I look at the totality of the evidence, there are other explanations for the circumstantial evidence, including direct examples from the testimony of Ms. Johnson. Justin Oldham's scale was explained as something that he used to weigh gold; the cash located in the master bedroom was from Ms. Johnson's savings, and she believed the other amount was from the sale of an e-bike; Justin Oldham's bank card was stored in the safe in the bedroom. Is this the only bank card he had? Was the bank card saved on his mobile phone? I am not sure what significance I am to draw from this. As to the baggies hidden in the residence, Ms. Johnson spoke of leaving the bags in various places around the residence and how she used a certain type of bag for her business. There was no explanation for the remaining bags. Nunchucks were found under Ms. Johnson's bed; she testified she had no knowledge of them and did not recall ever seeing Justin with them. Cpl. Howe spoke about how they could be used in the drug trade as a weapon. He also spoke about how these items could have a dual purpose and how one would have to look at the totality of the evidence to reach a conclusion regarding trafficking.

[41] Justin Oldham may legitimately contend that gaps in the evidence gives rise to an alternate, exculpatory inference without having to prove the facts in support of that alternate inference. The accused is not required to fill those gaps or present evidence sufficient to support an exculpatory inference.

[42] I refer to the passage from Drug Offences in Canada cited in the cases referenced above in para. 17, where the author states that "where the accused simply visited the residence from time to time and had a key to the door, but there was no other evidence connecting the accused to the drugs and other persons frequented the premises, an inference of knowledge and control will not usually be drawn: *R. v. Grey* (1996), 47 C.R. (4<sup>th</sup>) 40 (Ont. C.A.), at pp. 41-3; *R. v. Do* (2003) 175 CCC (3d)

176 (Ont. C.A.), at paras. 23-26.” This has similarities to the case before me and assists in my conclusion that the evidence of knowledge and control is unsupported.

### **Conclusion**

[43] For the Crown to prove beyond a reasonable doubt that Justin Oldham was in constructive possession of the drugs, the court must conclude no other reasonable inference inconsistent with guilt existed. There were other individuals living in the residence. Justin Oldham was in and out of the residence at various times. Other inferences can be drawn that do not put Justin Oldham with knowledge and control beyond a reasonable doubt to establish constructive possession.

[44] Based on the totality of the evidence, I can conclude there is suspicious activity and indicia of drug trafficking, but I cannot reach the conclusion that Justin Oldham had constructive possession in relation to the drugs found on the indictment. I am not convinced beyond a reasonable doubt that the Crown has proven the elements of the offence for the charges against Justin Oldham.

[45] As a result, I must acquit the accused on all counts.

Bodurtha, J.