

- [2] As a result, the defendant was charged with assault, assault with a weapon (a bottle), kidnapping, forcible confinement, pointing a firearm, as well as a host of other firearm possession offences. Ms. H [REDACTED] was charged with various offences as well.
- [3] The defendant elected to be tried by a judge of the provincial court and pleaded not guilty before me to all charges.

B. THE EVIDENCE

(a) Introduction

- [4] [REDACTED] H [REDACTED] testified for the Crown as did P.C. H. Masoul, P.C. I. Nicoara, and P.C. G. Civichino.
- [5] Mr. S [REDACTED] testified for the defence.
- [6] Several audio/visual exhibits and an agreed statement of fact were filed as exhibits.
- [7] I shall not set out the evidence in detail. A transcript of the evidence is readily available. Rather, I shall summarize the witnesses' versions of events with emphasis on the salient aspects of their testimony.

(b) Ms. H [REDACTED]'s version of events

- [8] According to Ms. H [REDACTED], she and the defendant met that day so that they could have a drink and he could give her a present. It was her birthday that day.
- [9] He arrived in his Cadillac and came into the lobby of the apartment building she had directed him to. She met him there and they went to his car which was parked across the street.
- [10] Once in the car they began to argue over money he said she owed him. She denied owing the defendant any money. She tried to get out of the car, but he grabbed her by the hair and would not let her out of the car.

- [11] He then drove off. She screamed and tried to crash the car by grabbing the steering wheel. He struck her with a bottle of liquor and pointed a gun at her.
- [12] He then turned left into a street off St. Clair Avenue. He got out of the car as a police car pulled in behind them. As he left the car, he told her “if you say anything you already know”. She thinks he left the gun on the driver’s seat when he got out. She put the gun in the rear waist band of her pants and emerged from the car to speak to the police. They arrested her for assault, and she told them about the gun in her pants.

(c) Ms. H [REDACTED]’s cross-examination

- [13] Cross-examination of Ms. H [REDACTED] revealed that her testimony was rife with contradictions and questionable failures of recollection. She falsely complained to the police of bleeding from her face. She falsely told the police that she had gone to law school for six years. She at first denied there was a weapon in the car then told the police that there was a gun or perhaps a knife behind her back and that the defendant had put it there, quite contrary to her trial evidence. She testified that she told the police about the gun before being arrested which is clearly not correct. She had consumed cocaine and alcohol and perhaps other psychotropic drugs shortly before the incident.

(d) The police testimony

- [14] P.C. Masoul dealt principally with Ms. H [REDACTED] after the Cadillac was stopped. Ms. H [REDACTED] was crying hysterically. He asked her if there were any weapons in the car and she said there were not. She then told him that the defendant had put either a knife or a gun in her waistband. He did not see any injuries on her.

- [15] P.C. Nicoara observed the driving of the Cadillac for a considerable period before police pulled it over and did not note any erratic or unlawful driving. She first dealt with the defendant after he emerged from the car. She then engaged with Ms. H [REDACTED].
- [16] Ms. H [REDACTED] told her that the defendant had put something in her waistband. P.C. Nicoara searched Ms. H [REDACTED] and found a handgun tucked into her rear waistband under a jacket and a sweater that was tied around her waist.
- [17] P.C. Civichino also witnessed the driving which did not strike him as unusual. He then dealt with the defendant after the defendant emerged from his car. The defendant told him that he had had an argument with Ms. H [REDACTED] and that she had struck him in the face.
- [18] In-car camera video shows the defendant being visibly upset when he hears a reference to the firearm on the police radio as he sat in the back of a police car.

(e) The agreed facts

- [19] Mr. S [REDACTED] admits that the firearm in question is a firearm by definition and that it is both prohibited and restricted. He also admits that its serial number had been effaced. He further admits that he was not licensed to possess it.
- [20] The parties also agree the PC Tan removed a curly black hair from the seized firearm. The hair was located when PC Tan removed round #7 from the magazine. The defendant admits that the hair is his.

(f) The testimony of Mr. S [REDACTED]

- [21] The defendant was 40 years old when he testified and had no criminal record.

- [22] According to the defendant, he had no knowledge of the firearm that the police found in Ms. H [REDACTED]'s possession. He agreed to meet her that day to have a drink in celebration of her birthday and to retrieve the \$200 she owed him.
- [23] He met her in the lobby of the apartment building she directed him to. They went to his Cadillac, and both drank from a bottle of brandy that he had in the car. She then asked to be driven to a nearby Walmart after which she would pay him.
- [24] Before departing for the Walmart, they began to argue. He asked her to get out and she refused. He then decided that he would take her to the Walmart in hopes of eventually getting his \$200. She began hitting him and continued to yell at him. He then reconsidered the trip to Walmart and decided to turn around and take her back to the apartment where he had met her, which he believed was her home.
- [25] As he turned around on a side street near Warden and St. Clair the police arrived. He got out of the car and told the officers that Ms. H [REDACTED] had assaulted him.
- [26] In his testimony, the defendant denied any knowledge of the gun and denied ever assaulting Ms. H [REDACTED] and denied confining or kidnapping her.
- [27] When asked about the police having found his hair on the gun, he had no explanation for its presence on the gun.

C. ANALYSIS

(a) Introduction

- [28] This case turns principally on the credibility of Mr. S [REDACTED] and Ms. H [REDACTED], and I must thus apply the rule in *R. v. W.D.*, [1991] S.C.J.

No. 26, which can be summarized as follows: if I believe the testimony of the Mr. S [REDACTED], I must of course find him not guilty. Even if I am not convinced by his testimony, it may nonetheless, when examined in the context of all the evidence, raise a reasonable doubt. If it does, I must also find him not guilty. If it does not raise a reasonable doubt, I must examine the evidence that I do accept to see if it proves the criminal allegations against the defendant beyond a reasonable doubt. If it does not, the defendant must be acquitted. If it does, he must be found guilty.

(b) The credibility of the witnesses and their accounts

- [29] As I set out above, Ms. H [REDACTED]'s testimony was rife with contradictions and questionable failures of recollection. Her account is manifestly unreliable, and her credibility is wanting.
- [30] The police did not see any erratic driving which one would expect if she had indeed behaved in the car the way she testified that she had.
- [31] Ms. H [REDACTED]'s demeanour as depicted on the in-car camera on the way to the booking station does not inspire confidence in the reliability of her account.
- [32] On the other hand, the defendant's testimony was delivered in a calm and straightforward fashion. Nothing in his cross-examination undermined the cogency of his evidence. As referred to above, Ms. H [REDACTED]'s testimony is so inconsistent and unreliable that it does not successfully rebut his account.
- [33] There are only two items of evidence that might call the defendant's account into question: the DNA evidence, and his reaction as he sat in the back of the police car after his arrest.

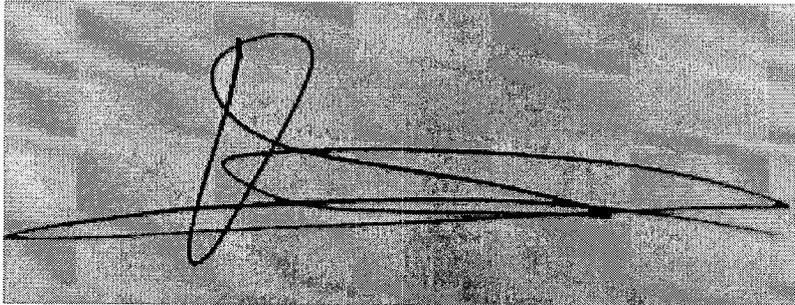
[34] As concerns the DNA evidence, it proves that one of the defendant's hairs was located and removed from the gun while a police officer was handling the magazine. The agreed statement of fact does not specify where on the gun the hair was located. And, regardless of where it was located, no evidence was led as to when the hair was deposited on the gun nor was any evidence led to support the proposition that the hair landed on or in the gun by primary transfer while the defendant was handling the gun (as proposed by the Crown), as opposed to by secondary transfer as Ms. H [REDACTED] handled the gun. Given the intimate nature of their relationship, there was ample opportunity for transfer of one of the defendant's hairs to an article of Ms. H [REDACTED]'s clothing or to her body. Such a hair might easily have been transferred to the gun by Ms. H [REDACTED] thereafter, without the defendant ever coming into contact with the weapon.

[35] The defendant's reaction in the police car (summarized above) is equivocal. The defendant was clearly upset and angry when he repeatedly swore as he heard voices on the police radio referring to the gun that they had discovered. But his mood also coincided with his arrest and sudden loss of liberty. It is impossible to conclude that these utterances ("fuck...fuck..") are evidence of consciousness of guilt regarding the gun and not anger and frustration at his situation more generally.

D. CONCLUSION

- [36] I am thus left with a reasonable doubt as to what occurred on April 6, 2024. I also have a reasonable doubt that the defendant ever possessed the handgun found in Ms. H. [REDACTED]'s pants.
- [37] The Crown has failed to prove any of the criminal allegations against the defendant beyond a reasonable doubt.
- [38] The charges are dismissed.

Released on October 6, 2025

A handwritten signature in black ink, appearing to be 'R. Silverstein', written over a grey, textured background.

Justice Russell Silverstein