**Unofficial English Translation of the Judgment of the Court**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Vernelus c. R. | | | | | 2022 QCCA 138 |
| COURT OF APPEAL | | | | | |
|  | | | | | |
| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | | MONTREAL | | |
| No.: | 500-10-006907-180 | | | | |
| (500-01-164847-177)(500-01-164848-175)(500-01-164849-173) | | | | | |
|  | | | | | |
| DATE: | January 31, 2022 | | | | |
|  | | | | | |
|  | | | | | |
| CORAM: | | THE HONOURABLE | | FRANÇOIS PELLETIER, J.A.  MARK SCHRAGER, J.A.  BENOÎT MOORE, J.A. | |
|  | | | | | |
|  | | | | | |
| MIKERLSON VERNELUS | | | | | |
| APPELLANT – Accused | | | | | |
| v. | | | | | |
|  | | | | | |
| HER MAJESTY THE QUEEN | | | | | |
| RESPONDENT – Prosecutor | | | | | |
|  | | | | | |
|  | | | | | |
| JUDGMENT | | | | | |
|  | | | | | |
|  | | | | | |

1. The appellant appeals against a verdict rendered orally on October 17, 2018, by the Court of Québec, Criminal and Penal Division (the Honourable Louise Provost), which found the appellant guilty of possession of a firearm and breach of his recognizance after a two-day trial held on September 6 and 7, 2018.
2. For the reasons of Moore, J.A., with which Pelletier, J.A. concurs;

**THE COURT**:

1. **DISMISSES** the appeal;
2. For other reasons, Schrager, J.A. would have reversed the judgment and substituted acquittals.

|  |  |  |
| --- | --- | --- |
|  | | |
|  | |  |
|  | | FRANÇOIS PELLETIER, J.A. |
|  | |  |
|  | |  |
|  | | MARK SCHRAGER, J.A. |
|  | |  |
|  | |  |
|  | | BENOÎT MOORE, J.A. |
|  | | |
| Mtre David Leclair | | |
| DAVID LECLAIR, AVOCAT | | |
| For the appellant | | |
|  | | |
| Mtre Jean-Philippe Mackay | | |
| DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS | | |
| For the respondent | | |
|  | | |
| Date of hearing: | December 8, 2021 | |

|  |
| --- |
|  |
|  |
| REASONS OF SCHRAGER, J.A. |
|  |
|  |

1. The appellant appeals against a verdict rendered orally on October 17, 2018, by the Court of Québec, Criminal and Penal Division (the Honourable Louise Provost), which found the appellant guilty of possession of a firearm and breach of his recognizance after a two-day trial held on September 6 and 7, 2018.[[1]](#footnote-1)
2. The only issue raised by this appeal is whether the trial judge could conclude from the evidence before her that the only possible inference, in the circumstances, was that the appellant was in possession of a firearm, that is, that he had control of the gun and knew it was in his bag.

# FACTS

1. At approximately 1:30 a.m. on December 5, 2017, officer Perreault-Bolduc and his colleague officer Crête-Poudrier were patrolling the Notre-Dame-de-Grâce neighbourhood, in Montreal, and performed an initial check of the licence plates of the various vehicles at the “Les Amazones” bar. At that time, the two officers noted the presence of a grey Kia Sportage car whose owner had not paid his driver’s licence fees.
2. The police officers returned from their break at approximately 3:00 a.m. and saw the Kia vehicle, which they had identified earlier, leaving the bar’s parking lot. They decided to intercept it in order to check the validity of the driver’s driving licence. Because of the tinted windows in the rear of the vehicle, it was only when the police officers approached the vehicle that they saw, in the back seat, Kevinson Daniel, who was seated on the passenger side, and the appellant, who was seated on the driver’s side. Dave Gilbert was the driver of the vehicle.
3. Neither individual was wearing a seat belt and, for that reason, officer Perreault‑Bolduc asked them to identify themselves. Kevinson Daniel asked several questions and was uncooperative. To identify himself, the appellant unhesitatingly took an envelope from the bag at his feet and identified himself by means of the papers in it, specifying to the police officer that he had just been released from prison. The bag, described as brown, with cardboard handles, and approximately 6 inches by 12 inches, contained some of the appellant’s personal belongings.
4. At that time, Mr. Daniel lied about his identity. When the police officers discovered his real identity, they noted that he was subject to an arrest warrant and they arrested him. Although the driver, Mr. Gilbert, was not subject to an arrest warrant, he was also arrested for having lied about his identity.
5. It was then that a police officer who had been called in as reinforcement, officer Rodier, pointed out the presence of a bag of cannabis to the right of the appellant’s thighs. During the search incidental to the appellant’s arrest for possession of cannabis, the police officers discovered a firearm with its buttstock pointing upwards in the bag on the floor of the car. At trial, the police officers testified that, when the weapon was discovered, the appellant remained “*de glace*” / [translation] “cool”. An analysis of the weapon revealed only the presence of Mr. Daniel’s DNA.

# JUDGMENT UNDER APPEAL

1. After summarizing the evidence presented by each of the parties, the judge considered whether the testimony of the appellant, who had denied any knowledge of the weapon, raised a reasonable doubt in her mind. Faced with the numerous inconsistencies between the appellant’s testimony at the bail hearing and his testimony at trial, the judge found his testimony implausible and not credible. In this regard, she pointed, *inter alia*, to the fact that, at the bail hearing, the appellant had claimed not to know Mr. Daniel, but, at trial, had referred to him as a friend. At the bail hearing, he stated that he had been sitting in the back of the vehicle at all times, but at trial he stated that he had jumped into the back seat of the vehicle. She also emphasized that she did not believe the story given by the appellant and witness Dave Gilbert to the effect that they had gone back to Saint-Michel during the evening to get some money to pay one of the bar’s dancers.
2. The trial judge then stated her reasons for finding the appellant guilty. She was of the view that the circumstances of the arrest and the appellant’s [translation] “numerous” inconsistencies [translation] “also eliminated any reasonable doubt regarding his knowledge and control of the loaded weapon in his personal belongings”.
3. With respect to control of the firearm, the judge stated that the bag containing the firearm was located at the appellant’s feet and that he had control of the bag, a bag described as not very big, in which he searched to give the police officers identification documents.
4. As regards *mens rea*, the judge first noted that she did not believe the appellant’s testimony that he did not know the firearm was in his bag. The judge added that the appellant’s calm demeanour when the police officers discovered the weapon indicated that he knew the weapon was in his bag. She therefore distinguished the matter before her from the case law[[2]](#footnote-2) and convicted the appellant in file 164847-177 (possession of a firearm) and file 164849-173 (breach of a recognizance). She ordered a conditional stay on the charge of being an occupant of a motor vehicle in which the appellant knew there was a firearm, also in file 164847-177.
5. At the appeal hearing, the appellant informed the Court that he had fully served the prison sentence imposed on him.

# DISCUSSION

1. The appellant raises only a single ground of appeal—the verdict is unreasonable. However, I agree with the respondent that we must also determine whether the judge erred in applying the principles laid down in *W(D)*.[[3]](#footnote-3)
2. In my view, the verdict is unreasonable in large measure because of the judge’s misapplication of the third *W(D)* step. The approach proposed by the Supreme Court in *W(D)* and followed by triers of fact is well known:

[translation]

[…] Do I believe the accused? If so, I must acquit him; If I don’t believe him, does his testimony raise a reasonable doubt? If so, I must acquit him; Even if I don’t believe him and even if his testimony does not raise a reasonable doubt in my mind, does the evidence as a whole convince me, beyond a reasonable doubt, that he committed the offence charged? […][[4]](#footnote-4)

[References omitted]

1. *Dubourg* summarizes the principles applicable to an unreasonable verdict where there is circumstantial evidence:

[translation]

**19** When the charges are based—entirely or as regards an essential element—only on circumstantial evidence, special considerations apply. In *Villaroman*, the Supreme Court explained that circumstantial proof beyond a reasonable doubt has been established when the only reasonable inference the circumstantial evidence can support is that the accused is guilty. If that is not the case and a reasonable inference consistent with the accused’s innocence exists, there is necessarily a reasonable doubt and he must be acquitted. Inferences consistent with innocence need not be based on evidence or proven facts, because reasonable doubt can arise from a lack of evidence.

**20** Combining these two sets of principles, one concludes that to determine whether a verdict based solely on circumstantial evidence is reasonable, one must ask whether a reasonable assessment of the evidence as a whole can lead to the conclusion that the only reasonable inference is that the accused is guilty. In short, are the conclusions drawn from the evidence by the trier of fact and the conclusion that the only reasonable inference is the accused’s guilt reasonable?[[5]](#footnote-5)

[Emphasis added]

1. A verdict is unreasonable if it is inconsistent with uncontradicted evidence.[[6]](#footnote-6)
2. The reasonableness of the verdict is a question of law, and the Court’s intervention is warranted when the verdict cannot be supported by the evidence.[[7]](#footnote-7) The Court should not intervene simply because its opinion differs from that of the trial judge.[[8]](#footnote-8) The Court, however, must reassess all of the evidence in order to rule on the reasonableness of the verdict.[[9]](#footnote-9) To do so, it can examine the reasons in order to identify a flaw in the analysis or evaluation of the evidence.[[10]](#footnote-10)
3. Given these principles, in the present case one must ask: Can the presence of Mr. Daniel’s DNA and the location of the bag very close to him (both uncontradicted pieces of evidence) give rise to the inference that he placed the weapon in the bag unbeknownst to the appellant. The answer to this question is yes, and the trial judgment must therefore be reversed.
4. In short, the fact that Mr. Daniel was seated in the backseat of the car next to the bag and that only his DNA was found on the weapon makes it reasonable to infer that Mr. Daniel put the gun in the appellant’s bag when the police car turned on its flashing lights signalling the group to stop.
5. Was this done without the appellant’s knowledge? There is no direct evidence of the appellant’s knowledge that the weapon was in his bag or that Mr. Daniel had a gun in his possession. The only evidence of the appellant’s knowledge is that the bag belonged to him and the expression on his face after the police officer discovered the gun.
6. Possession is defined in s. 4(3) of the *Criminal Code*:

|  |  |  |  |
| --- | --- | --- | --- |
| 4. (3) For the purposes of this Act, | 4. (3) Pour l’application de la présente loi : |  |  |
| (a) a person has anything in possession when he has it in his personal possession or knowingly | a) une personne est en possession d’une chose lorsqu’elle l’a en sa possession personnelle ou que, sciemment : |  |  |
| (i) has it in the actual possession or custody of another person, or | (i) ou bien elle l’a en la possession ou garde réelle d’une autre personne, |  |  |
| (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 | (ii) ou bien elle l’a en un lieu qui lui appartient ou non ou qu’elle occupe ou non, pour son propre usage ou avantage ou celui d’une autre personne; |  |  |
| (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 custody and possession of each and all of them. | b) lorsqu’une de deux ou plusieurs personnes, au su et avec le consentement de l’autre ou des autres, a une chose en sa garde ou possession, cette chose est censée en la garde et possession de toutes ces personnes et de chacune d’elles. |  |  |

For purposes of this case, the respondent was required to prove that the gun had been found in the bag belonging to the appellant and that the latter had placed it there or knew and had consented to someone else doing so.[[11]](#footnote-11) Possession requires knowledge of the object’s presence as well as control.[[12]](#footnote-12)

1. With all due respect, the trial judge fell into the trap of reasoning that since she did not believe the appellant, the prosecution’s version had been proved.[[13]](#footnote-13) Such an approach, however, reverses the burden of proof.[[14]](#footnote-14) In the instant case, the judge did not believe the appellant when he testified that he was unaware of the gun’s presence in his bag. She therefore concluded that the inference that Mr. Daniel put the gun in the bag is not reasonable, but rather speculative. The following are some excerpts from the judge’s observations in that regard:

[translation]

The accused hopes the Court will believe his testimony and give him the benefit of a reasonable doubt regarding the possession of a firearm […].

Further on in the judgment, the judge wrote:

[translation]

The accused’s numerous inconsistencies and the circumstances of the arrest also eliminate any reasonable doubt regarding his knowledge and control of the loaded weapon in his personal belongings.

[…]

And the defence as a whole raises no reasonable doubt regarding his knowledge, control and possession of the weapon found, including his consent.

[…]

This case involves a matter of credibility, from which neither the accused nor the defence can benefit, for the reasons set out above.

Such reasoning does not give the appellant the benefit of reasonable doubt. The facts introduced into evidence by an accused found not to be credible may be considered when analyzing the evidence as a whole.[[15]](#footnote-15) It could not, however, be inferred that the prosecution had met its burden of proving the appellant’s possession of the object in question because the appellant was not believed when he denied having knowledge thereof.

1. In the present case, the judge found as a matter of fact that the appellant knew about the presence of the firearm and had control thereof, based on the weapon’s location in the bag next to the appellant’s right foot, which bag also contained his personal belongings. This finding is also based on the lack of credibility she attributed to his version when he claimed he had not known the weapon was in his bag. The judged added as confirmation of this knowledge [translation] “the accused’s calm demeanour when the weapon was discovered”.
2. As mentioned above, given the presence of Mr. Daniel’s DNA on the gun, the fact that he was seated next to the bag and the absence of the appellant’s DNA or fingerprints, it was reasonable and not speculative to infer that Mr. Daniel may have placed the firearm in the bag.[[16]](#footnote-16)
3. In the present case, the fact the bag belonged to the appellant does not prove his knowledge. Moreover, the fact he reacted passively or that he remained “*de glace*” / [translation] “cool” (which the judge interpreted as [translation] “calm”) when faced with the police officers’ discovery of the weapon is not, in and of itself, evidence that he knew the weapon was present, no more so than a facial expression indicating some nervousness.[[17]](#footnote-17) The Court’s judgment in *Carrington c. R.*,[[18]](#footnote-18) relied upon by the respondent, does not support its position on this aspect of the evidence. Carrington had been charged with possession of drugs and weapons concealed in the car he was driving. The Court stated that the judge’s error in saying, in his charge to the jury regarding possession, “People normally intend the natural consequences of their actions,” had been neutralized by other portions of his charge in which he had directed the jury to 19 pieces of circumstantial evidence consistent with the accused’s knowledge. Among that evidence was the accused’s aggressive attitude towards the police officer and his “nervousness” during the search of the vehicle. Suffice it to say that this is far from a precedent signalling that the appellant’s expression indicated his knowledge of the weapon’s presence. While I concede that a person’s reaction when confronted with incriminating facts may be considered with all of the evidence,[[19]](#footnote-19) I believe it is risky to draw conclusions on a person’s state of mind based solely on their facial expression. One must exercise caution before drawing conclusions from a person’s silence in an incriminating situation.[[20]](#footnote-20) Credibility should not be determined based solely on a person’s conduct in the witness box.[[21]](#footnote-21) The same caution is required before drawing the conclusion that a person is guilty because of their blank or “calm” expression. In the instant case, the expression “*de glace*” / [translation] “cool” (according to the police officer’s testimony), which the judge interpreted as [translation] “calm”, is the only direct evidence that the appellant knew the weapon was in the bag. Given the possibility that the weapon was placed in the bag without his knowledge—a reasonable inference from the evidence in this case—I believe the appellant was not given the benefit of the reasonable doubt to which he was entitled, because the evidence does not reasonably support the guilty verdict. Accordingly, the verdict is unreasonable.
4. For all these reasons, the judgment should be reversed. Given that there is no evidence of possession, an acquittal may be substituted on all counts of possession of a firearm.
5. Nevertheless, there remains the charge of being an occupant of a motor vehicle in which the appellant knew there was a firearm (s. 94(1)(2)(a) *Cr.C.*). The judge ordered a conditional stay. Knowledge is also an element of this offence. A person is not presumed to be in possession of things in a vehicle simply because they are a passenger.[[22]](#footnote-22) Given the reasonable inference that Mr. Daniel placed the weapon in the bag without the appellant’s knowledge and given that there is no evidence that the appellant knew Mr. Daniel was armed, an acquittal should also be entered on this charge.
6. Lastly, given my findings regarding the charges relating to possession of a firearm, the verdict of breach of a recognizance must also fail and be replaced by an acquittal.

|  |  |
| --- | --- |
|  | |
|  |  |
| MARK SCHRAGER, J.A. |

|  |
| --- |
|  |
|  |
| REASONS OF MOORE, J.A. |
|  |
|  |

1. I have had the benefit of reading the reasons of my colleague, Schrager, J.A. With all due respect, however, I cannot concur.
2. As my colleague points out, possession of a firearm, the offence of which the accused was convicted, is based on control and knowledge. In the present case, the judge found that the evidence established these elements beyond a reasonable doubt. I am of the opinion that this conclusion was open to her.
3. First, one must not forget that the bag in which the weapon was found was the appellant’s and, in addition to the weapon itself, the bag was filed with items—clothing, all kinds of papers—that belonged to him. In fact, it is from this bag that the appellant retrieved his proof of identity at the police officers’ request. Furthermore, the weapon, which was not visible from the outside, was in the centre of the bag, in clothing that had been placed under, around and on top of the weapon. Lastly, while the bag was near Mr. Daniel, it was also near the appellant.
4. In my view, all of these elements establish the appellant’s control of the weapon. They are also significant indicators which, without a reasonable explanation, allowed the judge to infer that the appellant knew the weapon was there and, therefore, that he was guilty. At this stage, the judge’s rejection of the appellant’s testimony, due to its inconsistencies, became determinative of and fatal to the outcome of his defence.
5. But there is more. The judge also accepted the testimony of police officer Perreault-Bolduc according to which the appellant [translation] “remained cool” when he was arrested for possession of a firearm. While, admittedly, some caution must be exercised in such matters, in the case at bar, the judge was entitled to give a certain amount of weight to this element from among all the other evidence.[[23]](#footnote-23) The judge did not use this indicator to evaluate the appellant’s credibility when he testified in court, but rather as a fact described by a police officer, in order to gauge whether or not the appellant knew the weapon was there at the time of the events.
6. I would add that the judge did not dismiss the idea that Mr. Daniel may have placed the gun in the bag, which is indeed highly probable given the DNA evidence found on the gun. This DNA evidence, however, must not mislead the court and modify the prosecution’s burden. It is immaterial that the appellant himself did not place the weapon in the bag. The prosecution was simply required to establish that the weapon had not been put there without the appellant’s knowledge or against his will. Indeed, this is exactly what the judge concluded.
7. While it is true that inferences consistent with innocence may be based on evidence—or the lack thereof—[[24]](#footnote-24) it is up to the trier of fact to draw the line, sometimes a fine one, between reasonable doubt and speculation.[[25]](#footnote-25) That said, a possible and theoretical inference which is pure speculation cannot suffice to raise a reasonable doubt at the third *W.(D.)* step, because even if, in principle, a certain gap in the evidence may result in inferences other than guilt, those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.[[26]](#footnote-26) It is at this stage that the judge’s decision to reject the appellant’s testimony, a decision that was hers to make, was fatal to him.
8. The role of this Court, as it pointed out in *Dubourg*,[[27]](#footnote-27) is not to step into the shoes of the trier of fact, but rather to verify whether her determination is reasonable, even if a another judge could have made a different finding.[[28]](#footnote-28)
9. In the present case, as in *Villaroman*, while the Crown’s case regarding the appellant’s knowledge may not have been overwhelming, in my view “[…] it was reasonable […] to conclude that the evidence as a whole excluded all reasonable alternatives to guilt”.[[29]](#footnote-29)
10. For these reasons, I would dismiss the appeal.

|  |  |
| --- | --- |
|  | |
|  |  |
| BENOÎT MOORE, J.A. |

1. *R. c. Vernelus*, Montreal C.Q., No. 500-01-164847-177, October 17, 2018, Provost, J.C.Q. [↑](#footnote-ref-1)
2. *R. v. Morrison*, 2013 BCCA 408 (firearm discovered in a room to which the accused had the key) and *Marc c. R.*, 2006 QCCA 57 (drugs in an apartment). [↑](#footnote-ref-2)
3. *R. v. W.(D.)*, [1991] 1 S.C.R. 742. [↑](#footnote-ref-3)
4. *Ouchfoun c. La Reine*, 2004 CanLII 76451 (QC CA), para. 10 [*Ouchfoun*]; *R. v.* *W(D), supra*, note 3, p. 758. [↑](#footnote-ref-4)
5. See *Dubourg c. R.,* 2018 QCCA 1999, cited as an example in *Domond c. R.*,2021 QCCA 412, para. 13; *Charron c. R.,* 2020 QCCA 1599, para. 127; *Ben Hariz c. R.,* 2019 QCCA 267, para. 45. See also *Drouin c. R.,* 2020 QCCA 1378, para. 93. [↑](#footnote-ref-5)
6. *R. v. R.P.*, 2012 SCC 22, [2012] 1 S.C.R. 746, para. 9. [↑](#footnote-ref-6)
7. *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381, para. 37; *R. v. Burke*, [1996] 1 S.C.R. 474, para. 4; *R. v. Yebes*, [1987] 2 S.C.R. 168, p. 186 [*Yebes*]. [↑](#footnote-ref-7)
8. *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621, para. 10; *R. v. A.G.*, 2000 SCC 17, [2000] 1 S.C.R. 439, para. 29. [↑](#footnote-ref-8)
9. *Yebes*, *supra*, note 7, p. 186. [↑](#footnote-ref-9)
10. *R. v. W.H.*, 2013 SCC 22, [2013] 2 S.C.R. 180, para. 26. [↑](#footnote-ref-10)
11. *Marc c. R*., 2006 QCCA 57, paras. 58 and 59. [↑](#footnote-ref-11)
12. *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, paras. 15-16. [↑](#footnote-ref-12)
13. *R. v. Vuradin*, 2013 SCC 38, [2013] 2 S.C.R. 639, para. 21; *R. v. C.L.Y.*, 2008 SCC 2, [2008] 1 S.C.R. 5, paras. 6-8; see also *J.L. c. R.*, 2017 QCCA 398, para. 75; *J.R. v. R.*, 2014 QCCA 869, para. 38; *Dallaire c. R.*, 2013 QCCA 83, para. 44; *Willard c. R.*, 2007 QCCA 1483, para. 3; *Ouchfoun*, *supra*, note 4, para. 12. [↑](#footnote-ref-13)
14. *Lalonde c. R.*, 2019 QCCA 2131, para. 52. [↑](#footnote-ref-14)
15. *R. v. Pincemin*, 2004 SKCA 33, para. 30. [↑](#footnote-ref-15)
16. *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, para. 42. [↑](#footnote-ref-16)
17. *R. v. Iturriaga*, [1994] BCWLD 1117, 1993 CanLII 2517 (BC CA), para. 9. [↑](#footnote-ref-17)
18. *Carrington c. R.*, 2014 QCCA 118. [↑](#footnote-ref-18)
19. Martin Vauclair and Tristan Desjardins, *Traité général de preuve et de procédure pénales*, 28th edition, 2021, Yvon-Blais, para. 44.49. [↑](#footnote-ref-19)
20. *Tanasichuk v. R.*, 2007 NBCA 76, paras. 104-110. [↑](#footnote-ref-20)
21. *R. c. Cedras*, 1994 CanLII 5843 (C.A.), p. 10 (reasons of Proulx, J.A.). [↑](#footnote-ref-21)
22. *R. v. Iturriaga*, 1993 CanLII 2517 (BC CA), para. 9. [↑](#footnote-ref-22)
23. *R. v. Warner* (1994), 94 C.C.C. (3d) 540 (ON CA), p. 549; Martin Vauclair and Tristan Desjardins, *Béliveau‑Vauclair : Traité général de preuve et de procédure pénales*, 28th ed., Montreal, Yvon Blais, 2021, para. 44.49; Sidney N. Lederman, Alan W. Bryant and Michelle K. Fuerst, *Sopinka, Lederman, Bryant – The Law of Evidence in Canada*, 5th ed., Toronto, LexiNexis, 2018, no 6.463-6.468. [↑](#footnote-ref-23)
24. *R.* v*.* *Villaroman*, 2016 SCC 33, para. 36. [↑](#footnote-ref-24)
25. *Id.,* para. 71; *Domond* *c.* *R.*, 2021 QCCA 412, para. 15; *R. v. Robinson*, 2017 BCCA 6, para. 38, appeal dismissed 2017 SCC 52; *R v. S.B.1*, 2018 ONCA 807, para. 139; *R. v. Loor*, 2017 ONCA 696, para. 22; *R. v. Cabrera*, 2019 ABCA 184, para. 169, appeal dismissed 2019 SCC 56. [↑](#footnote-ref-25)
26. *Villaroman*, *supra*, note 24, para. 36, referring to *R. v. Lifchus*, [1997] 3 S.C.R. 320, para. 30; *Grenier c. R.*, 2021 QCCA 867, para. 7; *Papillon c. R.*, 2021 QCCA 296, paras. 68-69. [↑](#footnote-ref-26)
27. *Dubourg* *c.* *R.*, 2018 QCCA 1999, para. 20. [↑](#footnote-ref-27)
28. *R. v. Delorme*, 2021 ABCA 424, para. 66. [↑](#footnote-ref-28)
29. *Villaroman*, *supra,* note 24, para. 71. [↑](#footnote-ref-29)