

SUPREME COURT OF YUKON

Citation: *R v Evans*,
2023 YKSC 50

Date: 20230523
S.C. No. 20-01502
Registry: Whitehorse

BETWEEN:

HIS MAJESTY THE KING

AND

TRAVIS THOMAS EVANS

Before Justice E.M. Campbell

Counsel for the Crown

Noel Sinclair

Counsel for the Accused

Brian Goldsworthy (by videoconference)

This decision was delivered in the form of Oral Reasons on May 23, 2023. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] CAMPBELL J. (Oral): Travis Evans is charged with one count of arson endangering life, pursuant to s. 433(a) of the *Criminal Code*, in relation to a fire that occurred at the rear of 405 Black Street in Whitehorse, Yukon, on August 13, 2018.

[2] There is no dispute the Royal Canadian Mounted Police (“the RCMP”) and the Whitehorse Fire Department were called to the scene of a fire at the rear of 405 Black Street in downtown Whitehorse at approximately 1 a.m. on August 13, 2018.

[3] The evidence reveals the RCMP were the first on scene and extinguished the fire at the rear of the house prior to the arrival of the fire department a few minutes later. The Crown's theory is that the fire was intentionally set by Mr. Evans using gasoline, as an accelerant, poured from a jerry can - found at the scene of the fire partially burned and melted - that Mr. Evans had obtained earlier that night/morning at a downtown convenience store and gas station where he also purchased gas.

[4] The fundamental issues I must decide in this case are whether the Crown has proven beyond a reasonable doubt that: (i) the fire was of criminal origin — in other words that it was set intentionally; and (ii) that it was Mr. Evans who intentionally lit that fire.

[5] The Crown's case rests mainly on circumstantial evidence that consists of:

- the testimony of two individuals who interacted with Mr. Evans at a gas station in downtown Whitehorse in the hour or so preceding the fire at 405 Black Street;
- video footage of varying quality obtained from different locations and at different times around downtown Whitehorse in the early morning hours of August 13, 2018, before and after the fire;
- the testimony of four police officers who attended the scene of the fire, two of whom arrested Mr. Evans six months after the fire;
- a jerry can (a gas canister) found by the RCMP at the scene of the fire;
- a sweater found by the RCMP a number of blocks away from the scene of the fire;

- an aerial map of downtown Whitehorse with street names and markings regarding the locations of the fire, of the security cameras that captured the video images filed by the Crown at trial, the directions and path seen on the different videos, and where the black and red Canada sweater was found and seized by the RCMP.

[6] The Crown also relies on a statement allegedly made by Mr. Evans at the time of his arrest. The statement was found admissible after a *voir dire* held before trial (see *R v Evans*, 2021 YKSC 10).

[7] In addition, the Crown filed the recordings of seven telephone conversations that occurred in November and December 2021, while Mr. Evans was incarcerated at the Whitehorse Correctional Centre (“WCC”), in which Mr. Evans discussed an alibi different than the one he testified to at trial. The defence did not object to these recordings being tendered in evidence at trial.

[8] Travis Evans testified to events that amount to an alibi in his defence. The defence also called two members of the Whitehorse Fire Department and a DNA analyst to testify at trial in support of the accused’s position that the police’s investigation was lacking and that necessary and available expert evidence was not obtained with respect to important elements of the case. The defence also filed a weather report for Whitehorse for August 13, 2018.

GENERAL PRINCIPLES

[9] The function of a criminal trial is to determine whether the Crown has proven beyond a reasonable doubt that the accused is guilty of the offence with which he is charged. Travis Evans is presumed innocent unless or until the Crown has proven

beyond a reasonable doubt each of the essential elements of the offence with which he is charged. This burden does not shift to the defence.

[10] The accused testified and presented exculpatory evidence in his defence at trial. Therefore, I must consider and apply the principles set out in *R v W(D)*, [1991] 1 SCR 742, which I summarize as follow:

- (i) If I believe the evidence of the accused, I must acquit.
- (ii) If I do not believe the evidence of the accused, but I am left in reasonable doubt by it, I must acquit.
- (iii) Even if the evidence of the accused does not raise a reasonable doubt, I must consider, on the basis of the evidence I do accept, whether I am convinced beyond a reasonable doubt of his guilt.

[11] I note that the *W(D)* framework does not direct the trier of facts to analyse the evidence in a certain order.

[12] In addition, in assessing the evidence of the witnesses, I must consider both their credibility and reliability. In *R v Nyznik*, 2017 ONSC 4392 at para. 15, the Court explained the difference between these two concepts:

... Reliability has to do with the accuracy of a witness' evidence -- whether she has a good memory; whether she is able to recount the details of the event; and whether she is an accurate historian. Credibility has to do with whether the witness is telling the truth. A witness who is not telling the truth is by definition not providing reliable evidence. However, the reverse is not the case. Sometimes an honest witness will be trying her best to tell the truth and will fervently believe the truth of what she is relating, but nevertheless be mistaken in her recollection. Such witnesses will appear to be telling the truth and will be convinced they are right, but may still be proven wrong by incontrovertible extrinsic evidence. Although honest, their evidence is not reliable. Only evidence that is both reliable and credible can

support a finding of guilt beyond a reasonable doubt.
[Emphasis added]

[13] In addition, the trier of fact is “entitled to believe all, some or none of a witness’s evidence” (see *R v H(SM)*, 2011 ONCA 215 at para. 8).

[14] Keeping these principles in mind, I now turn to the evidence adduced at trial.

THE WITNESSES’ EVIDENCE AT TRIAL

[15] Four police officers (Cst. Vanasse, Cst. Wiltse, Cst. Perro, and Cst. Turner) testified to their involvement in responding to an anonymous call the RCMP received at approximately 1 a.m. on August 13, 2018, regarding a fire at 405 Black Street.

Cst. Vincent Vanasse

[16] Cst. Vanasse testified that he was on duty and patrolling the downtown area of Whitehorse when the anonymous call about the fire came in. He proceeded quickly to the location. He was one of the first officers on scene. Cst. Wiltse and Cst. Perro also attended the scene while he was there. He did not see the fire department while he was on scene.

[17] When he arrived behind 405 Black Street by the back alley, Cst. Vanasse saw a line of fire on the ground, which was made up of grass and dirt, between an area near the back alley as well as a jerry can, which was also on fire. The jerry can was sitting on the ground right beside the base of a residential oil tank adjacent to wooden stairs at the back of the house, near one of the doorways at the back of the house. Cst. Vanasse estimated the line of fire was approximately 20 metres long. He believed the flames along the line were going from the jerry can towards the back alley. Cst. Vanasse described the fire has neither very big nor very high. He did not recall if there were

flames around the doorway of the back door. However, he stated that the oil tank was not on fire.

[18] Upon arrival, Cst. Vanasse took the fire extinguisher from his police vehicle and proceeded to extinguish the fire. He used the extinguisher on the line of fire, the jerry can and its surrounding area. He did not remember if there was something under the jerry can or if the jerry can moved while he was extinguishing it.

[19] After the fire was extinguished, Cst. Vanasse looked around the location of the fire for evidence or to see if there was someone in the area. He seized the burned and partially melted jerry can. He also found and seized the cap of the jerry can nearby. However, he did not locate a nozzle for the jerry can. Cst. Vanasse did not recall whether the cap was still on the jerry can before he extinguished the fire. He did not know how long the jerry can had been where he found it. The only smell Cst. Vanasse could recall was the smell of fire.

[20] Cst. Vanasse described 405 Black Street as a detached dwelling house with two apartment units, one in the basement and one on the main floor. He did not remember seeing anyone inside the house while he was there.

[21] Later that night, Cst. Vanasse attended the Tags convenience store, where he looked at the store's security video footage. He did not recall whether he was able to identify the individual he saw on the video at the time. He seized the first plastic bottle he found at the top of the store's garbage bin after seeing on the video the individual putting a plastic bottle in it. However, he could not say for certain that the bottle he had seized was the same bottle he saw in the video. Cst. Vanasse then went back to the RCMP detachment, where he secured the jerry can in an evidence locker.

[22] Cst. Vanasse confirmed the photographs of the jerry can filed by the Crown depicted the jerry can he had seized in the condition it was at the time he seized it.

[23] In cross-examination, Cst. Vanasse acknowledged he did not have any training regarding fire investigation, arson, cause and determination of fire, fire extinguishment or the use of fire extinguishers.

[24] Cst. Vanasse testified he did not look closely at the residential fuel tank nor did he observe its fuel level at the time. He did not recall whether there was anything leaking from the tank. He did not recall seeing any electrical wiring near the fuel tank. He agreed it was possible that an accelerant other than fuel could have caused the fire. He agreed it was possible that the fire had originated from the oil tank.

[25] However, in re-examination, Cst. Vanasse testified that he did not see any leaks from the oil tank nor did not he see any fire on it.

[26] Finally, Cst. Vanasse did not see anything splash from the jerry can while he was extinguishing it. He stated the jerry can was empty when he seized it.

Cst. Nikki Perro

[27] Cst. Perro testified that she responded to a call of a fire in the back alley of 405 Black Street at approximately 1:06 a.m. on August 13, 2018. She believes she was the first to arrive on scene in her vehicle immediately followed by Cst. Vanasse and then Cst. Wiltse.

[28] Upon arrival, she observed flames on the back stairs of the house in the area adjacent to an oil tank. She also observed a jerry can and a trail of grass on fire at the rear of the house. The jerry can was sitting closer to the back alley than the house. The

trail of burning grass connected the jerry can to the area where the stairs and the oil tank were located.

[29] Cst. Perro testified the bottom of the stairs leading to the main floor apartment unit were on fire. Also, there were flames at the base of the oil tank in the area where the oil tank meets up with the first few steps of the stairway. There was also fire in the area where the pipe comes out of the oil tank. The flames on the stairway were approximately four or five inches tall. The flames on the ground between the stairway and the oil tank were smaller.

[30] Cst. Perro stated that, shortly after they arrived on scene, Cst. Vanasse took a fire extinguisher from his police vehicle and started putting out the flames. As for Cst. Wiltse, he went to see if there was anyone inside the house. She did not observe Cst. Wiltse's actions further. She did not go inside the residence.

[31] The fire department arrived not long after Cst. Vanasse had extinguished the fire. Cst. Perro saw them pull the fire hose out but did not see them use it. She left the rear of the house shortly after they arrived. She then drove around to see if there were people in the immediate area but did not see anyone.

[32] Cst. Perro testified that she did not see any cables or outlets near the oil tank. She did not make any specific observation about the oil tank itself. She was never closer than five metres to the oil tank. She did not observe what the level of the fuel tank was or if there was something leaking from the tank or the pipes from the tank. She was not in a position to say whether the oil tank was new or old. She could not say which way the trail of grass was burning.

[33] Finally, Cst. Perro acknowledged she has no specialized training in arson, cause and determination of fire, or fire investigation.

Cst. Steven Wiltse

[34] Cst. Wiltse testified he was dispatched to a call of a fire at 405 Black Street at approximately 1 a.m. on August 13, 2018. He and Cst. Vanasse arrived at the scene at approximately the same time, within a few minutes of the call. When he arrived at the rear of the house, he saw a red jerry can on fire in the grass of the property. The jerry can was sitting approximately 20 to 30 feet away from the rear of the house, near the back alley. Cst. Wiltse also observed a fire at the base of the stairs leading up to the main floor door in a corner where a large heating oil tank was located. There was also fire in the area at the base of the stairway going down. He also observed a black streak of burned grass between the jerry can and the area of the oil tank and the stairway of the house. The streak was not burning when he arrived.

[35] There were visible and big enough flames to require fire extinguishers to put the fire down. Cst. Wiltse believed he used a fire extinguisher to extinguish the fire but did not specifically recall doing so. He did not recall observing Cst. Vanasse using a fire extinguisher to extinguish the fire. He said that there were other officers present in the area but did not recall who they were.

[36] He stated the fire department arrived a few minutes later. The flames had been extinguished by the time they arrived. He added that the firefighters dealt with the remaining hot spots. He observed them dealing with parts of the stairway both going up and down the staircase.

[37] Cst. Wiltse stated that the oil tank itself was not on fire. The only smell he could remember was that of the burning wood and the smoke. Cst. Wiltse did not handle the jerry can.

[38] Cst. Wiltse stated that there was grass and wood under the oil tank. He also stated that the blackened streak on the ground between the stairs and the back alley was not on fire when he arrived. Cst. Wiltse did not check the fuel level of the oil tank.

[39] Cst. Wiltse described 405 Black Street as a house with apartment units, one in the basement, one on the main floor at the back, and another apartment at the front. After he knocked on the back door of the main floor unit for some time, an elderly man came to the door. He explained to the man what was going on but that the situation was under control. The man told Cst. Wiltse he lived in the main floor apartment and had been sleeping. He also told Cst. Wiltse there was nobody in the apartment below. Cst. Wiltse did not see anybody else inside the house.

[40] After the fire was extinguished, Cst. Wiltse saw three youths sitting on a fence approximately 50 feet away observing the scene. While he talked to them briefly, it was another officer who spoke to them in more detail. Cst. Wiltse surveyed the area for other evidence but did not find anything.

[41] Cst. Wiltse acknowledged that he did not have training in arson, cause of fire and fire investigation.

[42] On February 18, 2019, he was tasked with walking from Whitehorse Beverages to the scene of the fire. Cst. Wiltse took 4 minutes and 36 seconds to walk, at a medium pace, the distance between Whitehorse Beverages at the north end of 6th Avenue to the back alley at the back of 405 Black Street.

[43] Cst. Wiltse stated that, on February 18, 2019, Travis Evans attended the RCMP detachment in Whitehorse. Cst. Turner requested that he assist with the arrest of Travis Evans. Cst. Wiltse took his notebook and proceeded right away to a room located right beside the area where the public comes into the detachment.

[44] At 12:38 p.m., Cst. Wiltse arrested Travis Evans for arson with disregard to human life in that room in the presence of Cst. Turner. Cst. Wiltse then gave Mr. Evans his right to counsel. Mr. Evans requested to speak with a specific counsel. Mr. Evans appeared very angry and frustrated he was being arrested and taken back to WCC, according to Cst. Wiltse. At the time, Mr. Evans was with his girlfriend, who was in the car waiting for him. Cst. Wiltse noted that Mr. Evans' tone of voice was louder.

Cst. Wiltse understood that Mr. Evans' spouse/girlfriend, who was pregnant, was waiting for him in a car outside the detachment; that she was close to giving birth to their child; and that Mr. Evans did not want to go back to jail. Cst. Wiltse did not remain with Travis Evans and Cst. Turner at all times while they were at the detachment.

Cst. Wiltse did not believe he was ever alone with Travis Evans in the room. At some point, he did leave the room to get the vehicle to transport Mr. Evans to WCC.

[45] Cst. Wiltse has training in the areas of drugs and alcohol. He believed Mr. Evans was sober when he arrested him. However, he did not perform any sobriety test on Mr. Evans because he did not display any signs of impairment. According to Cst. Wiltse, Mr. Evans did not smell of alcohol, his speech was not slurred, and there was nothing out of the ordinary regarding his balance.

[46] Before transporting Mr. Evans to WCC, Cst. Wiltse allowed Mr. Evans to say a few words to his girlfriend. Approximately 15 minutes elapsed between Mr. Evans'

arrest and their arrival at the arrest processing unit at the WCC. Cst. Wiltse stated that, during that time, he mainly talked about Mr. Evans' spouse and the arrest. He denied asking Mr. Evans directly whether he was responsible for the fire at 405 Black Street.

Cst. Derek Turner

[47] Cst. Turner was the watch commander on duty in the early morning hours of August 13, 2018. At approximately 1:06 a.m., the watch was advised there was a fire in the alley between Alexander Street and Black Street directly behind 405 Black Street. All the members on duty at the time attended. According to Cst. Turner, Cst. Wiltse, Cst. Vanasse, Cst. Perro, Cst. Conway, and he, attended the scene of the fire. He said he arrived within five minutes of receiving the call.

[48] When he arrived, Cst. Wiltse and Cst. Vanasse were on scene. The fire had just been extinguished. He described 405 Black Street as a bi-level structure. Cst. Turner testified there were some obvious charred marks on the set of stairs going up from the ground to the upper level as well as on the rear end of the porch adjacent to an oil tank. The oil tank also displayed some obvious charred marks. He said there was smoke in the air. The fire department arrived on scene shortly after he did.

[49] According to Cst. Turner, the fire appeared to have been deliberately set. Cst. Turner observed a jerry can that was burned and partially melted in the middle of the gravel parking lot that makes up the area behind the building. He did not recall if there were fluids in the jerry can at the time. One of the members told him they had to kick the jerry can away from the fire trail. However, he did not recall which member gave him that information. He did not recall, at the time of his testimony, seeing a burned trail behind the house.

[50] Cst. Turner identified the partially burned and melted jerry can and cap that he had retrieved earlier that day from the exhibit locker at the RCMP detachment as the items that had been seized by Cst. Vanasse at the scene of the fire. Cst. Turner stated that the jerry can was in the condition he observed it to be at the scene of the fire. The two items were filed as an exhibit at trial.

[51] Cst. Turner also retrieved from the RCMP exhibit locker the Brisk Lemon iced tea plastic bottle seized by Cst. Vanasse at Tags, which was also filed as an exhibit at trial. The bottle had been examined by Sgt. Gizci of the Whitehorse RCMP Identification Unit. However, Cst. Turner did not recall whether any relevant fingerprint evidence had been found on the bottle. Cst. Turner believed the bottle was submitted for DNA analysis.

[52] Cst. Turner stated that he was not at the scene for very long.

[53] Cst Turner testified that, before departing the scene, Cst. Conway was approached by three young men who provided a description of a male with whom they had had an interaction at Tags, they thought was suspicious, earlier in the evening. They provided a description of the individual. Most of the officers then began making patrols to locate that male.

[54] In the days that followed the fire, Cst. Perro and Cst. Turner patrolled the downtown area to look for anything relevant to the investigation.

[55] Five days after the fire, Cst. Turner found a red and black fleece sweater with the word "Canada" on it. The sweater was on a tall wooden fence at the Baxter Street end of the alley that runs at the back of the Yukon Inn from Baxter Street towards 6th Avenue. Cst. Turner seized the sweater because he believed it was the sweater he

had seen on a video he had recently reviewed. Photographs of that sweater were filed as an exhibit.

[56] In the course of his investigation, Cst. Turner obtained video footage from different business premises in downtown Whitehorse. Cst. Turner testified he recognized Mr. Evans as being the individual seen on the Big Bear videos and the interior video of Tags. However, Cst. Turner testified he could not conclusively identify the individual seen in the other videos when watched separately from one another.

[57] Cst. Turner identified the location of the businesses from where he obtained the video footage on an aerial photograph of the downtown area of Whitehorse that was filed as an exhibit at trial. Cst. Turner explained that the red arrows on the photograph describe the path taken by the individual seen on those videos. The location of the sweater is also indicated on the aerial photograph, which, Cst. Turner stated, is an accurate depiction of the Whitehorse downtown area.

[58] Cst. Turner testified the video from The Electrical Shop had to be enhanced because it was quite grainy and dark. Sgt. Gizci viewed the video and suggested it be enhanced by a forensic RCMP unit in Vancouver. The video was sent to the forensic technologist in Vancouver, who forensically enhanced an area of the video. The enhanced video was not altered in any other way.

[59] Cst. Turner then merged the videos he obtained from the different businesses in order to present the relevant video footage in a chronologically relevant manner. The defence did not object to the merged video being filed as an exhibit along with the original videos obtained by Cst. Turner. The merged video was played at trial during Cst. Turner's testimony. Cst. Turner provided information regarding the origin and

location of each video, as well as the area seen in each of them. He also described the images captured by the cameras.

[60] Cst. Turner was working on February 18, 2019, when, shortly after noon, someone informed him that Travis Evans was at the front counter of the Whitehorse RCMP detachment for an unrelated matter. Cst. Turner testified that, by that time, he had formed reasonable grounds to believe Travis Evans could be charged for arson endangering life. He asked Cst. Wiltse to assist him with the arrest of Travis Evans. They asked Mr. Evans to come speak with them in the room adjacent to the foyer area of the detachment. Cst. Wiltse formally arrested Travis Evans for arson with disregard for human life. He also read the police warning to him and asked him if he wanted to speak with a lawyer. After his arrest, Travis Evans requested to speak with a specific counsel.

[61] Cst. Turner added that Travis Evans was upset he was being arrested. Cst. Turner believed Travis Evans was sober from alcohol and drugs at the time of his arrest because he did not display any signs of impairment. Cst. Turner added that he would not legally have had the authority to order him to take a sobriety test at that point. Cst. Turner stated he had dealt with Mr. Evans once before while he was under the influence and there was a marked difference in his behaviour. According to Cst. Turner, Mr. Evans was very calm, concise, and there was no smell of alcohol or evidence of drug behaviour. Nonetheless, Cst. Turner stated it was possible Travis Evans was intoxicated by some substance and that he did not detect it.

[62] After the arrest, Cst. Turner asked Cst. Wiltse to get the vehicle to transport Mr. Evans to the WCC so he could speak with a lawyer privately there. Cst. Turner

testified that he planned on interviewing Mr. Evans after he had spoken to counsel.

While they were alone in the room waiting for Cst. Wiltse, they had a discussion regarding Mr. Evans' counsel of choice and Mr. Evans informed Cst. Turner that his girlfriend was out front waiting for him.

[63] Cst. Turner stated that after that, Travis Evans spontaneously and without questioning or prompting said, "I'm not going down for this. It was the Silverfox bitches. They paid me to do it." Cst. Turner said he was not prepared to take a statement when he arrested Travis Evans. His arrival at the detachment was unexpected. Cst Turner testified he was unprepared and excited. As a result, he did not bring a recording device to record their interactions at the time of arrest. However, Cst. Turner is certain that those words are the words Travis Evans said.

[64] After that, Cst. Wiltse came back in the room. Neither Cst. Turner, Cst. Wiltse, or Mr. Evans discussed any other investigation or any other pending charge with Mr. Evans — except that, after the utterance, Mr. Evans stated he wanted to provide information about the Silverfox sisters in relation to a major crime homicide investigation. Cst. Turner advised him that if he wanted to speak to someone from major crime, he could facilitate that.

[65] In cross-examination, Cst. Turner acknowledged he did not have any specialized training on arson, fire investigation or cause and determination of fire.

[66] Cst. Turner acknowledged he did not examine the fuel level of the tank, and did not examine the seams or the fittings of the fuel tank or the piping of the tank. He did not see if there was leaking from the oil tank.

[67] He stated the RCMP did not conduct a forensic investigation regarding any potential source of ignition out of the stairs near the base of the fuel tank or originating from the fuel tank.

[68] Cst. Turner testified that no swabs of the interior of the jerry can were sent for analysis. Also, the sweater was not sent for DNA analysis.

[69] Cst. Turner acknowledged it is possible the content of the jerry can was spilled when it was kicked by one of the members. Cst. Turner stated that, based on the description provided to him by the member who kicked the jerry can that was on fire, he could only assume it contained gasoline.

[70] Cst. Turner stated he lives in the Yukon Territory. He has burned both gasoline and diesel, and they burn differently. As a result, his view is that what was used for the fire was gasoline. However, Cst. Turner acknowledged it could also have been another accelerant, such as naphtha.

[71] Cst. Turner stated that, at the time, there was only one RCMP member who was specialized in fire investigation and that member was unavailable when the events occurred. Cst. Turner added that the fireman who was in charge at the scene at 405 Black Street told him they were going to do an investigation.

[72] In re-examination, Cst. Turner was asked to smell the inside of the jerry can filed as an exhibit and found at the scene. He responded that it smelled like gasoline and not diesel.

Gurprit Sidhu

[73] Mr. Sidhu testified to being the manager of the Tags gas station and convenience store located on 4th Avenue in Whitehorse since approximately 2000. Tags is open 24 hours a day.

[74] Mr. Sidhu is familiar with the accused, Travis Evans. He stated Mr. Evans is a regular customer and Mr. Evans' partner used to work for them. He identified Mr. Evans in the courtroom.

[75] Mr. Sidhu testified he was working in the early morning hours of August 13, 2018, when he saw Mr. Evans outside the store putting gasoline into a small 500 ml bottle. Mr. Sidhu went outside to offer Mr. Evans assistance because what he was trying to do was not safe. Mr. Evans told him he needed gas for a vehicle that had run out of gas. He also said the vehicle was on Black Street.

[76] Mr. Sidhu offered to lend him a jerry can. Mr. Evans accepted, paid for the deposit for the jerry can and for gas. According to Mr. Sidhu, Tags asks for a deposit because they want the jerry cans returned to them. However, Mr. Evans never returned the jerry can. Mr. Sidhu did not recall whether there was someone with Mr. Evans at the time he came to the store.

[77] Mr. Sidhu added that the jerry can he lent to Mr. Evans had special markings indicating it belonged to Tags.

[78] Mr. Sidhu testified that Mr. Evans did not appear to be intoxicated at the time. He was not stumbling, and Mr. Sidhu did not smell alcohol on his breath.

[79] Mr. Sidhu was shown video footage from the security camera inside Tags as well as video footage from outside the store. Mr. Sidhu recognized the individual seen on the

video entering Tags and wearing a black baseball hat, a grey jacket, a black T-shirt, black jeans, and black shoes as Mr. Evans. Mr. Sidhu stated that, to his knowledge, the date and time of the day indicated on the surveillance video were accurate.

[80] Mr. Sidhu described the conversation he had inside the store as Mr. Evans wanting to fill the plastic bottle he had with gas and Mr. Sidhu lending him a jerry can instead. In addition, Mr. Evans is seen on the video paying for the deposit and gas before leaving the store with the jerry can.

[81] After watching the video footage, Mr. Sidhu noted the events took place more than four years ago. He acknowledged he was mistaken when he stated the jerry can he lent to Mr. Evans had special markings because it did not.

[82] Mr. Sidhu added the video accurately depicts his encounter with Mr. Evans that night.

[83] Mr. Sidhu testified the jerry cans they lend to customers are used ones that are given to them by people who no longer need theirs, and that Tags try to avoid lending the brand new jerry cans they sell. Mr. Sidhu added that the gas cans Tags sells are not similar to the ones they lend. The jerry cans they sell are all of the standard red colour. Mr. Sidhu agreed that there is no way to tell them apart from one another when they are new.

[84] Finally, Mr. Sidhu stated that, prior to lending a gas can to a customer, they ensure it is empty, clean, and in working order.

Michal Najman

[85] Michal Najman was 18 years old when he testified at trial. He was a teenager visiting Whitehorse from Dawson City at the time of the events. Mr. Najman testified he

was hanging out and sitting on a piece of concrete with two friends in front of the parking lot area of Tags gas station and convenience store in the evening of August 12, 2018, to August 13, 2018, when a male holding an empty plastic bottle of iced tea and a \$20 bill approached them and asked him if he could fill up the plastic bottle with gas for him. Michal Najman asked the man why he needed gas in a bottle. The male did not answer the question. Instead, he persisted in asking him to purchase gas for him. According to Mr. Najman, they went back and forth on this issue. Mr. Najman stated he refused to do what he was asked to do because it did not seem right.

[86] Mr. Najman testified that, at some point, the male turned away and started walking south. He does not believe the man went in the store. He and his friends stopped paying attention to the man after he walked away from them.

[87] Mr. Najman stated he had never met the man who approached them before. He described the individual as a First Nation male. He believed the man was older and drunk because he smelled of alcohol, slurred his speech, and displayed the general unpleasantness of drunk people. Mr. Najman identified the accused as the individual who approached them that evening.

[88] Mr. Najman testified he was sober. He had not consumed alcohol or drugs on the night in question.

[89] After the encounter, Mr. Najman continued to hang out and walk around with his two friends. At some point, later that evening or early the next morning, they heard fire trucks. They decided to follow them and came across a house fire attended by RCMP vehicles and fire trucks. They were looking at the scene over a wooden fence located on the other side of the back alley of the area on fire. Mr. Najman approached one of

the police officers or firemen and told him a man had asked them to buy gas for him at a gas station, and that man could be the person who caused the fire. Mr. Najman said that he went to speak with the police officer because he felt he needed to. Mr. Najman did not see the individual at the scene of the fire.

[90] Finally, Mr. Najman denied he and his friends were responsible for the fire.

Defence's evidence

Platoon Chief Barry Blisner of the Whitehorse Fire Department

[91] Platoon Chief Blisner had been a firefighter for 22 years when he testified at trial. He was promoted to the rank of Platoon Chief in 2012. He stated that he has attended between 200 to 300 fires over his career. He would have been the incident commander from half to two-thirds of those fires. He estimated that approximately only 10 fires he had attended had been determined to be arson.

[92] He described the role of an incident commander as being in charge of the strategies, tactics, and apparatus to be used to deal with a fire. Also, part of the role of an incident commander is to liaise with other entities on scene. They also provide input to investigations regarding the cause of a fire they attend.

[93] He said that he was on duty on August 13, 2018, at approximately 1:05 a.m., when they were dispatched to a fire at the rear of 405 Black Street. He said that five firefighters were dispatched to the scene, and that they arrived on scene at approximately 1:12 a.m.

[94] He stated that the RCMP were already on scene when they arrived. There were two police officers there. They reported that there was a fire at the back of the building and that they had used dry chemicals to extinguish it. When he arrived on scene, the

flames were out but still smoking somewhat. He noticed a line of fire or smoke from the alley way to the back stairs. He said that they used a hose from one of their trucks to cool down the smoking and charring on the back steps area of the building. They also hosed down the dark line on the ground. He said that they waited to make sure there was no re-ignition and that once everything had cooled off, they conducted a cursory investigation. He said that their involvement ended at approximately 1:35 a.m.

[95] Platoon Chief Blisner indicated that the backyard at the back of 405 Black Street was a mixture of gravel and grass, and that they saw a black line leading to the stairs that appeared to be some sort of accelerant. Other than that black line leading up to the stairs and the stair area where there were traces of fire, there was no other trace of fire in the backyard.

[96] He also said that they saw a melted jerry can near the stairs that was later seized by the RCMP. He described that the jerry can was partially consumed or melted and he saw it to the left of the stairs when facing the house. He said that the line of fire was running from the back alley towards the back stairs, that it was 10 to 15 feet long, and that the jerry can was, to the left of the trail, two or three feet away from the stairs.

[97] He also indicated that right beside the stairs was a household oil tank that had some black soot. He looked for but found no structural damage to the stairs or the tank. Platoon Chief Blisner stated that the fire did not get passed the stairs onto the building.

[98] Platoon Chief Blisner testified to telling one RCMP constable, that he dealt with at the scene that night, that he felt that the fire was suspicious in nature. However, the RCMP did not ask the fire department to perform any cause and determination investigation of the fire.

[99] Platoon Chief Blisner believed the fire was suspicious because of the presence of the jerry can; the trail from the back alley to the steps, which appeared to be an accelerant; and the fact that there were no other visible sources of ignition within the area. However, he stated he was not in a position to determine whether in fact there was accelerant on the ground.

[100] He also said that he understood 405 Black Street was an occupied residential building.

[101] Platoon Chief Blisner said that he did not investigate any other potential causes for the fire, such as electrical, domestic, smokers' materials, spontaneous combustion, or others. However, he did not see rags or other organic materials at the base of the tank. Based on what he saw, he did not believe there was enough fire to consume any rags or organic materials that could have been at the base of the tank. He could not conclude that the bottom of the stairs was not the seat of the fire. He could not determine where the fire started or what the source of the ignition was. He could not determine whether the fire was set intentionally or recklessly. He could not totally rule out electrical, spontaneous combustion, or smokers' materials as the cause of the fire.

[102] However, he said that while he was performing his cursory investigation or observations, he did not uncover what would have been the source of ignition.

[103] In addition, based on his observations, he could not determine whether the fire started at the tank and moved to the jerry can or moved from the jerry can to the tank.

[104] Nonetheless, as part of his cursory investigation or observations, Platoon Chief Blisner looked at the oil tank, including the entire length underneath the oil tank, to see if there was any structural damage to the oil tank. He did not see any. He

agreed that if smokers' materials had been present on the stairs, they could have been washed away by the water they directed at the stairs. He also looked for leaks coming from the oil tank, and he did not see any. The only observation he made with respect to the oil tank is that it had some black soot, mostly from the charring of the steps, that had floated to the tank. He did not see anything suggesting it was the oil tank that was the source of the fire.

[105] Platoon Chief Blisner stated that, generally, any time they attend a fire, they try to narrow down what the cause of the fire was. He stated that, in this case, there were no visible ignition sources that could have caused the fire. He did not see anything at the location indicative of spontaneous combustion. He stated that he was looking for something that could have caused the fire but did not see any materials that could have been the cause of spontaneous combustion. He looked for smokers' materials, but he did not see any. He looked for domestic electrical short circuits or electrical problems that had ignited the fire and did not see any.

Cindy Lee, DNA analyst

[106] Defence also called Cindy Lee, a DNA analyst, to testify at trial. Ms. Lee is a forensic biologist specializing in forensic DNA. She was qualified as an expert in the areas of DNA detection, collection, and factors relating to such; forensic processing of bodily substances, interpretation of DNA, DNA analysis, statistical analysis regarding DNA and DNA typing. Ms. Lee has worked at one of the RCMP forensic labs since 1999 in different capacities.

[107] Ms. Lee testified that any time an individual comes into contact with something a transfer of DNA is possible. However, how much DNA is transferred and retained on a

surface and whether it can be recovered will depend on a number of factors, including but not limited to the texture and porosity of the surface, the pressure and duration of the contact with the other surface, and the individual themselves. She said that the storage condition will also have an impact on DNA retention on a surface. High temperature and humidity will affect DNA by breaking it down. She said that DNA can be washed away by water, that ultraviolet rays will damage DNA, and that chemicals can degrade DNA.

[108] Ms. Lee testified that there is a pre-authorization process that takes place when an officer wants to have items analysed for DNA. An analyst from the lab will look at an officer's request to determine in consultation with the officer whether the lab will devote time to the request. She indicated that the lab does not have time to analyze all the items seized by the RCMP. As a result, sometimes the lab will put limits on what it will agree to process.

[109] She stated that, typically, a swab is used to recover DNA from a surface, and that is what was submitted for analysis in this case. She confirmed the lab analysed two swabs from the RCMP in this case, one from the jerry can and one from the cap of the jerry can. The result of the analysis was that no human DNA suitable for analysis was recovered or obtained from either of the swabs. Ms. Lee was unaware of a request for an authorization for a DNA analysis for a sweater.

[110] She stated it is possible that DNA could have been deposited and collected on the red sweater if an individual had enough contact with the sweater and enough DNA on their hands. She also stated it may have been possible to recover a suitable DNA sample from a smooth surface exposed for approximately 90 minutes at night to a

temperature of 8 degrees Celsius without precipitation — which was the weather in Whitehorse around the time of the fire — provided there was sufficient DNA deposited on the surface in the first place.

[111] She added that whether an officer will submit an item for analysis depends on what forensic question they want answered. If an officer wants to establish a forensic link between an object and a suspect, then the investigator can make a request for analysis.

[112] Ms. Lee confirmed the lab has a trace evidence unit that analyses trace materials. She knew that the trace evidence unit have analyses to determine whether an accelerant is present. However, she did not work in that unit and did not know their process and whether they could perform an analysis to identify the type of accelerants present on a surface.

Jason Everitt, Fire Chief of the City of Whitehorse Fire Department

[113] Fire Chief Everitt is a career professional firefighter. He has been a firefighter for 33 years. His role as a fire chief is to provide overall management and strategic direction for the Whitehorse Fire and Protective Services in addition to serving as the emergency management coordinator for the City of Whitehorse.

[114] However, Fire Chief Everitt was not working for the Whitehorse Fire Department nor was he in the Territory at the time of the fire. He joined the Whitehorse Fire and Protective Services in 2020. Nonetheless, he was aware of Platoon Chief Blisner's report and had discussions with him regarding the fire at 405 Black Street. He was aware that Platoon Chief Blisner deemed the fire suspicious, but that

Platoon Chief Blisner did not make any further findings regarding cause and determination of the fire.

[115] Fire Chief Everitt explained that once an incident commander believes a fire to be suspicious, they are to inform the RCMP. The RCMP then become responsible for the scene and for further investigation. He stated that, nonetheless, the fire department will assist upon request. He stated that there was no indication the RCMP ever requested the assistance of the fire department in this case. He said that he was aware the RCMP had police officers in Whitehorse trained in fire investigation. However, he did not know whether those officers were available at the time.

[116] Based on the information he received regarding this case, Fire Chief Everitt was of the opinion that further investigation was warranted but could not and would not comment on the extent of the further investigation that would have been required.

Travis Evans

[117] Mr. Evans denied having anything to do with the fire at 405 Black Street. He testified he was never near the rear of 405 Black Street on the night in question after midnight.

[118] Mr. Evans testified that, after being released from WCC on August 12, 2018, he went to his friend's, Adrian Ellis, house, at 607 Cook Street in downtown Whitehorse to hang out and drink. Mr. Evans said that he drank alcohol on and off throughout the day. He estimated that he had more than 3 but less than 10 shots of alcohol that day.

[119] At around 10 p.m., he said that Adrian Ellis received a call from someone who needed help with gas. Mr. Ellis asked Mr. Evans to purchase gas for them. Mr. Evans agreed to do so because Mr. Ellis, who is now deceased, was on a court-ordered

condition at the time not to attend the Petro-Canada gas station. While Mr. Ellis was trying to get him to go purchase gas, he said that he did not leave the house until approximately 11 p.m. Mr. Evans stated he does not know who phoned Mr. Ellis. He believes they phoned Adrian Ellis because their car had run out of gas. He also stated that the car was not at Mr. Ellis' Cook Street address.

[120] Mr. Evans testified he took a cab from Mr. Ellis' house to the Town & Mountain, an off-sales establishment on Main Street, to purchase alcohol for Mr. Ellis. As it was already closed when he arrived, he decided to go to the Big Bear off-sales. There, he purchased a bottle of vodka for Mr. Ellis. Mr. Evans added he was on a court-ordered condition not to purchase alcohol at the time. Mr. Evans testified the taxi driver was a friend of his but he does not know his name because they only know each other by face.

[121] In cross-examination, Mr. Evans acknowledged picking up a red sweater outside of Big Bear off-sales. However, he stated, he never put it on. He said he left it at Mr. Ellis' house because Mr. Ellis' house is like a shelter for people.

[122] Mr. Evans said that he then walked to Petro-Canada, where he intended to purchase gas. However, when he arrived, the gas station was closed. As a result, he continued to Tags.

[123] Mr. Evans testified he asked three youths, who were near Tags, to fill up a plastic bottle with gas while he was distracting Preet Sidhu because he knew Mr. Sidhu wanted people to use jerry cans to do so. Mr. Evans does not remember exactly what the teenagers said but they did not agree to fill the bottle for him. Mr. Evans believes it was an iced tea plastic bottle he had at the time or something similar.

[124] In cross-examination, Mr. Evans stated he agrees with the substance of Mr. Najman's and Mr. Sidhu's testimony. However, he pointed out that Mr. Najman was incorrect when he testified that he went back the way he came after he talked to them.

[125] Mr. Evans stated that after talking to Mr. Najman and his friends, he went inside and told the cashier he needed gas to prime a car. He wanted to try to fill the bottle with gas but Mr. Sidhu insisted he take a jerry can, which he did. He said he had to leave a deposit of \$15 or \$20 for it. Mr. Evans then exited the store and got premium gas because it is usually what he gets. He then went over to McDonald's, but it was closed. From there, he got a ride with a taxi to the beginning of Cook Street, where he saw Mr. Ellis, who had already left his house.

[126] In cross-examination, Mr. Evans stated it does not take much to prime a car and get it going. Mr. Evans stated that a pop bottle filled with gas is sufficient to allow a car to travel a couple of kilometers.

[127] Mr. Evans met Mr. Ellis at the corner of 6th Avenue and Cook, when he came back from purchasing gas. However, Mr. Evans did not give Mr. Ellis the jerry can he had obtained at Tags because Mr. Ellis already had one. Mr. Evans testified to not knowing where Mr. Ellis had gotten the one he had, because he said he was gone for approximately 40 minutes. He also said he did not know where Mr. Ellis went after seeing him. Mr. Evans said that he walked back to Mr. Ellis' house at 607 Cook Street and left the jerry can on the steps of the house.

[128] In cross-examination, Mr. Evans stated he did not return the jerry can because he used Mr. Ellis' money to pay for the deposit and gas. Mr. Evans stated he had done

what he had to do, and he was not going to waste his time by going back to Tags to get Mr. Ellis' money back.

[129] Mr. Evans testified that, after that, he had pizza with Mr. Ellis' girlfriend and some of her friends, whose names he did not remember. Mr. Evans stated he was more than likely at Mr. Ellis' house between 12:30 a.m. and 1:30 a.m. He added he had no reason to check the clock to know where he was at the time. Mr. Ellis returned to the house while he was still there. Mr. Evans said he gave the bottle of vodka to Mr. Ellis because he had purchased it for him.

[130] Mr. Evans then took a taxi to go from Cook Street to his friend Keith Bunbury's house, located at 38 Heron, in another Whitehorse subdivision. Mr. Evans testified that 38 Heron is a home away from home for him. He stays there any time he comes to Whitehorse.

[131] He said he arrived at 38 Heron in the early morning hours and stayed until later that day. After he arrived, he had food before going to bed. He said that Keith Bunbury and his brother were there.

[132] Mr. Evans stated that the quantity of alcohol he drank on and off during that day was not sufficient to affect his memory.

[133] Mr. Evans also acknowledged to being the person seen on the video footage from the Big Bear restaurant and off-sales exiting a taxi and picking up a sweater on the ground prior to entering the store. He also acknowledged it was him who is seen purchasing a bottle of vodka prior to exiting Big Bear off-sales and walking north on 4th Avenue.

[134] He also acknowledged it is him who is seen on the video footage from the Yukon Inn walking towards the Tags convenience store and approaching a group of people before entering Tags. It is also him who is seen inside the Tags convenience store past midnight on August 13, 2018, interacting with the cashier and Mr. Sidhu, paying the deposit for the jerry can, and exiting the store with it. He said that it is also him who is seen exiting Tags, approaching the gas tanks, walking towards and in the parking area of the McDonald's restaurant before crossing 4th Avenue.

[135] In cross-examination, Mr. Evans stated that he cannot be sure it is him who is seen walking north on 4th Avenue on the Whitehorse Motors video footage.

[136] He denied being in any other part of the video played and filed by the Crown.

[137] Mr. Evans testified that, on February 18, 2019, he attended the RCMP headquarters in Whitehorse to retrieve a shoe and a phone. Upon entering the detachment, he went to the front counter where he spoke to an officer, whose name he does not remember. He said that he had been waiting for approximately 10 minutes in the reception area and was getting ready to leave when Cst. Wiltse opened a side door and called him over, saying he wanted to speak to him for a moment.

[138] When he arrived in the room, Mr. Evans said that Cst. Wiltse told him that he was under arrest. Mr. Evans replied, "For what?" Cst. Wiltse responded, "For arson." Mr. Evans said that he was then given his rights to counsel and requested to speak with counsel. He said that his request was not acted upon until they arrived at the Arrest Processing Unit ("APU") of the WCC, where he did speak with duty counsel. He said that he was then released without any conditions.

[139] According to Mr. Evans, Cst. Turner arrived in the room approximately five minutes after he was arrested. Mr. Evans denies saying the words the police attributed to him. Mr. Evans stated that, not long prior to attending the detachment, investigators had attended his house in Carmacks and had asked him about a couple of homicides. Mr. Evans testified that what he said in the room after his arrest was related to the homicide investigation. He testified that his exact words were, “I know something about those Silverfox bitches.” He said he never said, “Those Silverfox bitches paid me to do it.”

[140] Mr. Evans acknowledged that he knows Charabelle and Lynzee Silverfox. He added that they are probably not his friends anymore. Mr. Evans denied they paid him to set the house on fire. He stated that never happened.

[141] Mr. Evans testified he had consumed crack cocaine and a beer prior to attending the RCMP detachment. However, he said the officers did not ask him whether he had been taking drugs or was under the influence of alcohol at the time of his arrest.

Mr. Evans testified his interactions with the officers in the room were not recorded. He did not see any recording device in the room, nor did Cst. Turner bring a recording device in the room when he came in. Mr. Evans stated that cocaine does affect someone’s ability to perceive but is of the view that it does not affect one’s memory.

[142] Mr. Evans did not dispute the content of the recordings of the phone conversations filed by the Crown that he had while he was in custody at WCC. He acknowledged that, while he was in custody in 2021, he had telephone conversations with others about the possibility of fabricating a false alibi. Mr. Evans testified that he was not being truthful in discussing the events that made up the alibi in those

conversations. He further testified that he made up facts that incriminated Mr. Ellis, who was already deceased at the time, because it was closest to the truth. He agreed he was trying to provide information to others so that they could help him with a false alibi that would benefit him in those conversations.

[143] He stated that the lies were the facts that supported the false alibi. Mr. Evans denied admitting in those conversations being at the Black Street residence with gas at the time of the fire. He added that what he said was solely for the purpose of the false alibi. However, Mr. Evans stated he was being truthful in those conversations when he said that he was not involved in the incident at the rear of 405 Black Street. Mr. Evans acknowledged that he mostly tells lies around WCC because everybody there lies.

[144] Mr. Evans testified that, at the time of those conversations, he had lost faith in his previous legal counsel who wanted him to plead guilty to a crime he did not commit. He stated he was charged with an offence the police did not properly investigate and friends had told him that he, too, should play with a stacked deck. Mr. Evans stated he did not proceed with the false alibi because he retained counsel in which he has confidence. In addition, he stated that he was exploring the possibility of giving a false alibi, he was not actually considering going through with it in those conversations.

[145] Mr. Evans added he was aware his phone calls were being recorded while he was incarcerated because there is a sign to that effect on the wall at WCC. Mr. Evans also acknowledged that the Crown did not hear about the alibi that he presented in court prior to his testimony.

[146] Mr. Evans acknowledged that the criminal record filed with the court is his. However, he stated that the November 17, 2017 charge of fraud under \$5,000 should

not form part of his record because the Crown had agreed to stay that charge considering he had reimbursed the complainant.

Crown's material evidence

[147] The Crown filed as an exhibit a DVD with surveillance video footage from the night in question that the RCMP gathered from different locations in downtown Whitehorse. As I said, the defence did not object to the Crown filing the video footage as an exhibit. I find that, apart from the video from The Electrical Shop, there is no issue with respect to the time appearing on the videos.

[148] When going through the videos, first, I find that there is good quality, black and white footage from cameras placed outside the Big Bear liquor store located at the corner of Alexander Street and 4th Avenue in downtown Whitehorse, as well as colour footage from inside the store. The footage shows a person getting out of a taxi at around 12:30 a.m. on August 13, 2018, in the parking area of Big Bear Donair located along 4th Avenue. That person is seen walking towards the entrance of the liquor store. As the individual approaches the ramp leading up to the entrance of the liquor store, the individual notices and picks up a sweater on the ground. The individual then leaves the sweater on the ramp prior to entering the store.

[149] The inside footage clearly shows Mr. Evans entering the store, interacting with the cashier in an appropriate manner, and purchasing a bottle of what appears to be hard liquor of a clear colour before exiting the store at approximately 12:35 a.m. The footage reveals Mr. Evans is wearing a black ball cap with colour markings on the front and sides, a pair of dark blue jeans, a black top with a white design on the front, and a lighter greyer coloured jacket with long sleeves and a hood that has markings on the

sleeves and a design on the front and back. The inside of the jacket is black. Mr. Evans is also wearing dark shoes/boots.

[150] After purchasing the alcohol, Mr. Evans is seen leaving the store, picking up the sweater he had left on the ramp, as he leaves the store, and turning north on 4th Avenue.

[151] The next footage comes from Whitehorse Motors' security camera located approximately a block away from the liquor store on the opposite side of 4th Avenue. The footage shows a person wearing dark clothes walking north on the liquor store side of 4th Avenue. The person is too far from the camera to see or distinguish any facial features. However, the footage is taken a minute or so after the last images of Mr. Evans walking north are captured by the liquor store camera. There is very little vehicle traffic on 4th Avenue at that hour and no other person is seen walking on the street. Based on the timeline and the side of the street the person is walking, and what the person is wearing on that video, I am satisfied that the person seen walking north in the video is Mr. Evans.

[152] The next footage starts at approximately 12:43 a.m. and comes from a camera installed outside of the Yukon Inn, a hotel located on 4th Avenue, on the same side as the Ford dealership, and approximately five blocks north of the liquor store. The colour footage shows a person wearing dark clothes coming from the south and walking towards the Tags gas station and store located on the opposite side of 4th Avenue. The person is seen walking by the front entrance and then towards a group of people seated nearby. The person interacts with the group for approximately one minute before walking back towards and entering the store.

[153] At 12:45 a.m., footage from inside Tags shows Mr. Evans entering the store holding an empty plastic bottle in his hand. Mr. Evans is wearing the same clothes he had at the liquor store. He is also carrying what appears to be the red sweater under his left arm. He is then seen holding the plastic bottle in the air prior to interacting with the cashier. At some point, Mr. Sidhu is seen arriving behind the counter with a red jerry can. The video shows that a discussion took place and that, during the discussion, Mr. Evans gave money to the cashier, took the jerry can, left the empty plastic bottle on the counter, and exited the store with the jerry can at approximately 12:47 a.m.

[154] The next footage comes from the Yukon Inn camera again. It shows a person with dark pants and a lighter grey jacket exiting the store at the same time Mr. Evans is seen exiting the store from the camera placed inside the store and going towards one of the gas pumps. Another person wearing different clothing is seen exiting the store at almost the same time and going towards a car parked nearby. The individual with the dark clothing stays in front of one of the gas pumps for approximately a minute. The person is then seen walking north through the gas station parking lot and through the parking area of the adjacent McDonald's restaurant. The person, which I am satisfied is Mr. Evans, is then seen crossing 4th Avenue and walking north again until he is no longer captured by the camera footage at 12:49:36. The crossing takes place near Baxter Street. There is no other individual seen walking in the area at that time and vehicle traffic is fairly light.

[155] The next footage starts at 12:52. It comes from a camera located at the back of the Yukon Inn. The colour footage shows a person wearing a dark ball cap, a dark shirt, a lighter grey jacket, and dark blue jeans walking south behind the hotel. The person is

carrying something fairly big in their right hand. The image is clear but the camera is too far to distinguish the individual's facial features. Nobody else is seen on that footage. Considering the location and timing of the footage in comparison to the previous video footage, the clothing worn by the individual seen on that footage, as well as the size and shape of the item the individual is carrying, I find that this person is Mr. Evans.

[156] The next footage comes from a camera located at Whitehorse Beverages, approximately a block away south of the Yukon Inn. Most of the image is fogged up. However, the top right corner part of the image is clear.

[157] At around 12:55 a.m., an individual wearing dark clothes and holding a fairly big item in their right hand is seen walking south behind Whitehorse Beverage. However, the person is too far to see any facial features. Nonetheless, considering the location and timing of this footage and the previous footage in which I found that Mr. Evans was the person seen walking, the clothing worn by the only individual seen on that footage, as well as the size and shape of the item the individual is carrying, I find, without a doubt, that this person is Mr. Evans.

[158] The image of the next footage is also somewhat fogged up, it starts at 12:55 a.m. and ends not even a minute later. It shows a person with dark pants and a lighter jacket walking. The quality of the image does not allow me to say whether the person is wearing something on their head or carrying something in their hands.

[159] The next footage shows an individual wearing dark pants and a lighter jacket walking in the direction of the Black Street alley where the fire occurred. That video comes from The Electrical Shop. The black and white footage is blurred and not of very good quality. A few minutes after seeing the individual walking towards the Black Street

alley, where the fire started, a bright light appears to be coming from the area, brightens the image, and a person is seen running from the back alley, slowing down, and crossing the street in a different direction than where that person came from. At this point, it is not possible by looking at that video itself to identify anybody — other than there is a person walking there.

ANALYSIS

[160] When I go back to the *W (D)* test, I will look first at the evidence from Mr. Evans.

[161] First, I must say that I do not find Mr. Evans credible. I do not believe any parts of Mr. Evans' testimony regarding his whereabouts prior to attending Big Bear Donair, his reasons to purchase gas that evening, or what he did after he left Tags with gasoline.

[162] First, I find that his evidence that he went to get gas for someone he did not know for a car that had run out of gas at an undisclosed location because his friend Mr. Ellis could not attend one of the gas stations in downtown Whitehorse is difficult to believe when the evidence reveals there were other gas stations in close proximity to the gas station Mr. Ellis could not attend, such as Tags, where Mr. Evans purchased gas.

[163] Second, I note that Mr. Evans' friend Mr. Ellis sadly passed away since the events occurred. More importantly though, Mr. Evans had forgotten the names of Mr. Ellis' girlfriend and of all the individuals who could have been contacted to verify whether he was at the residence of Mr. Ellis on the night in question. Mr. Evans also testified to only knowing the cab driver who took him from Mr. Ellis' house to Big Bear Donair by face not by name.

[164] Third, Mr. Evans testified that it does not take much gas to prime a car and that there is enough gas in a plastic bottle to allow a car to cover a distance of two

kilometres. If all the car needed was enough gas to cover that short distance, it does not make a lot of sense that the driver or occupants would not have been in a position to get the gas themselves and had to ask for Mr. Ellis to do so.

[165] Mr. Evans acknowledged he asked Mr. Najman to fill up the bottle with gas for him because he knew Mr. Sidhu would not allow someone to use a plastic bottle to get gas — and that his plan was to try to get Mr. Sidhu’s attention while they were doing so. However, based on that reasoning, it did not make a difference whether it was Mr. Evans or Mr. Najman trying to fill up the bottle. Based on Mr. Evans’ understanding of the situation, if Mr. Sidhu would have been able to see what was happening, he would have prevented Mr. Najman from doing so.

[166] Also, Mr. Evans testified that he did not walk but took a cab to go back to Mr. Ellis’ residence after he purchased the gas. However, I found, based on the timing and clarity of the video showing the back alley of the Yukon Inn and Whitehorse Beverages, that it was him walking in the direction of 6th Avenue after he purchased gas wearing clothing that corresponds in all aspects with the clothes he is seen wearing at Tags and carrying something in his hand. This material piece of evidence directly contradicts Mr. Evans’ testimony about the fact that he took a cab and did not walk to return to Cook Street after he purchased gas.

[167] In addition, I find that Mr. Evans was aggressive and belligerent towards the Crown while on the stand, which behaviour I can consider in assessing his credibility or lack thereof.

[168] As admitted by Mr. Evans, the substance of the recordings of seven of his telephone conversations with different individuals, while he was detained at WCC in

November and December of 2021, reveals he made up and discussed a false alibi he intended to use in his defence. I note the alibi discussed in those conversations is different than the one Mr. Evans testified to at trial.

[169] In *R v. MJH*, 2019 YKCA 15, the Court of Appeal discussed the situation when an adverse inference against the accused may be drawn from a fabricated alibi. The Court said, starting at para. 51:

[51] It is only when an alibi has been concocted to deceive the trier of fact that the rules against self-incrimination and the right to silence may be set aside and an inference capable of supporting guilt may be drawn.

[52] Finding that an alibi was fabricated for the purpose of deception permits the Crown to place the accused's false statements on the scale against him. The principle was enunciated by Justice Rowles in *Tessier*:

[45] The words "proof of falsity" were used by Martin J.A. in [*R. v.*] *Davison*: "Proof of the falsity of the alibi may constitute affirmative evidence of guilt". His reference in that regard was to *Kahn v. The Queen*, in which Lord Hodson stated:

What is found against the appellants is that *the statements were concocted for the purpose of escaping from the consequences of their crime* and, if false, are admissible to show guilt. As has been said: "The recourse to falsehood leads fairly to an inference of guilt".

[Emphasis in *Kahn* quotation added by Rowles J.A.; emphasis in *Davison* quotation in original.] [Citations omitted.]

...

[57] The principles applicable to using a fabricated alibi as after-the-fact conduct are found at para. 67 of Arbour J.'s reasons in *Hibbert*.

- In the absence of evidence of concoction (deliberate fabrication) an alibi that is disbelieved has no evidentiary value.
- A disbelieved alibi is insufficient to support an inference of concoction or deliberate fabrication. There must be other evidence from which a reasonable jury could conclude that the alibi was deliberately fabricated and that the accused was involved in that attempt to mislead the jury. It is the attempt to deceive, and not the failed alibi, that supports an inference of consciousness of guilt.
- In appropriate cases, for instance if there were multiple accused, the jury should be instructed that the fabricated alibi may be used to place the accused at the scene of the crime, but may fall short of directly implicating him in its commission.
- When there is evidence that an alibi was fabricated, at the instigation or with the knowledge and approval of the accused, that evidence may be used by the jury to support an inference of consciousness of guilt.
- In cases where such an inference is available, the jury should be instructed that it may, not must, be drawn.
- A fabricated alibi is not conclusive evidence of guilt.

[170] In my view, the fabricated alibi greatly impacts Mr. Evans' credibility in this case. I find he is prepared not only to lie under oath but to ask his friends to lie under oath in order to ensure an acquittal. My conclusion would remain the same even if I were to accept Mr. Evans' explanation that he did so because he had lost faith in his lawyer at the time and he has changed his mind and not proceeded with the false alibi because he now has a lawyer he trusts.

[171] However, I am not prepared to conclude Mr. Evans' description of the area of 405 Black Street where the fire occurred is an admission he was there on the night in question. As acknowledged by the Crown, Mr. Evans already had access to the Crown's disclosure at that time, which would have contained the details discussed by Mr. Evans on the phone.

[172] That is the extent of the weight I am prepared to give to the false alibi in this case in light of the substance of the conversations that took place, which in my view show Mr. Evans believed he had to lie in order to secure an acquittal, whether he was guilty or not of the offence before the Court.

[173] There are also offences of dishonesty on Mr. Evans' record, which impacts his credibility and reliability as a witness.

[174] Finally, Mr. Evans did not disclose the alibi to which he testified to the Crown prior to his testimony at trial. This resulted in the Crown being in no position to investigate the alibi before trial. I find the very late disclosure permits me to draw an adverse inference against the defence he presented at trial, and I do so.

[175] Based on all the above factors, as I said before, I do not believe Mr. Evans' testimony. Even coupled with the absence of evidence on certain aspects regarding the origin of the fire, his testimony does not raise any doubt.

Mr. Evans' spontaneous utterance

[176] As explained earlier, I do not find that Mr. Evans is a credible witness. In addition, I am of the view that Cst. Turner remained steady fast, that Mr. Evans did say without prompting that he was paid by the Silverfox sisters "to do it", and there is nothing in cross-examination or that the defence put forward that challenged Cst. Turner in a way

where I would have doubt about what Mr. Evans did say at the time of his arrest. So, I find that Mr. Evans pronounced the words that Cst. Turner said he pronounced even though they were not recorded.

[177] However, there are some issues that impact the weight to give to Mr. Evans' utterance:

- (i) first, the arrest took place six months after the fire at 405 Black Street had occurred, at a time when Mr. Evans was attending the RCMP detachment for another purpose; and
- (ii) the police officers did not testify to giving him any details or specifics about the alleged arson they arrested him for at or around the time of his arrest. No one testified to Mr. Evans being informed and acknowledging or understanding he was charged with arson endangering life for the fire that took place on August 13, 2018, at 405 Black Street before he made the utterance adduced at trial. All I have before me is that the police officer told him he was arrested for arson endangering life six months after the fact.

[178] Considering the lengthy period of time that elapsed between the fire and the arrest, as well as the lack of details provided to Mr. Evans regarding the alleged offence for which he was arrested, and the fact that Mr. Evans did not testify to knowing any details about the arson he was charged with — he testified that he was arrested for arson — I cannot conclude, and I am not prepared to assume, he was referring to the fire at 405 Black Street when he made his utterance. As a result, I am not prepared to

consider what he said as an admission of guilt for the fire at 405 Black Street, nor am I prepared to give it weight.

Has the Crown proven beyond a reasonable doubt that the fire was intentionally set?

[179] Cst. Vanasse, Cst. Wiltse, and Cst. Perro all testified to being dispatched to the scene of a fire at the rear of 405 Black Street and arriving at the scene a few minutes after 1 a.m. on August 13, 2018. Cst. Turner also testified to that effect. Their testimony regarding their attendance at the scene was unchallenged.

[180] Also, Cst. Wiltse, Cst. Vanasse, and Cst. Perro's general description of the fire they saw upon arrival at the rear of 405 Black Street is consistent.

[181] All three police officers testified to seeing a fire affecting the first few steps and base area of the back staircase of 405 Black Street, as well as the area in front of the stairs at the base of the adjacent home heating oil tank. They all described seeing a trail of burned grass on the ground between an area near the back alley and the burning area around the base of the staircase and the oil tank. The fact Cst. Vanasse and Cst. Perro testified to seeing flames along that trail whereas Cst. Wiltse testified to only seeing burned grass is not significant in my view. All three testified to seeing a jerry can on fire at the time they arrived. They all testified to attending a fire that was not very big. While Cst. Perro was never really close to the oil tank, all three stated the oil tank was not on fire. Also, they did not observe any leaks coming from the oil tank. They did not observe electric wiring or cords in the area of the fire.

[182] The description they provided is consistent with the burned and blackened areas shown on the photographs of the rear of 405 Black Street taken after the fire was extinguished. It is also generally consistent with what Cst. Turner saw and what

Platoon Chief Blisner observed upon arriving on scene a few minutes later after the fire had been extinguished by the RCMP.

[183] In addition, the testimony of the three officers regarding what they did at the scene is consistent. Cst. Vanasse took the fire extinguisher from his police vehicle and extinguished the fire. He also seized the burned jerry can and a cap. Cst. Wiltse went to the house to alert anyone who may have been inside the building and Cst. Perro patrolled the area after the arrival of the fire department.

[184] Nonetheless, there is one discrepancy between the testimony of the three police officers who attended the scene of the fire within minutes of being dispatched to 405 Black Street, which is of some significance. That discrepancy is the location of the burning jerry can when the officers arrived on scene.

[185] Cst. Vanasse testified the burning jerry can was just in front of the staircase right beside the oil tank, whereas Cst. Perro and Cst. Wiltse testified it was sitting in the grass closer to the back alley at the beginning or end of the burned grass trail. I note Cst. Vanasse did not recall whether he kicked or otherwise caused the jerry can to move while he was extinguishing it.

[186] Also, Platoon Chief Blisner testified the melted jerry can was two or three feet to the left of the stairs when facing the house from the back alley — so closer to the stairs.

[187] In my view, the evidence does not clearly establish where the jerry can was initially. However, whether the jerry can was closer to the one end of the burned grass trail near the back alley or at the other end of the burned grass trail in the area that was on fire by the back stairs where they meet the side of the oil tank is not, in my view, determinative.

[188] In addition, Chief Platoon Blisner conducted a cursory investigation on scene that led him to look at the oil tank, including underneath it to see if there were any damages or leaks they should be concerned about. While Platoon Chief Blisner did not recall looking at the oil tank fittings, he testified that he did not see any leaks coming from the oil tank or any structural damage to the oil tank. The only effect of the fire on the oil tank observed by Platoon Chief Blisner was black soot in an area close to the stairs that were on fire.

[189] Platoon Chief Blisner also testified that he looked around the area for a possible source of ignition. However, he did not see smokers' materials, such as cigarettes butts, electrical wirings or outlets, or organic materials that could have led to spontaneous combustion. He did not believe the fire was strong enough and had burned long enough to consume any rags or other materials that could have been at the origin of a spontaneous combustion. Nonetheless, he acknowledged that smokers' materials could have been washed away from the stairs when they hosed them down.

[190] Based on his observations at the scene, Platoon Chief Blisner concluded the fire was of a suspicious nature based on three elements:

- (i) the presence of a burned and melted jerry can;
- (ii) the presence of the line of burned and black grass running from an area near the back alley to the stairs, and the fact there was no other area of the backyard that appeared to be burned, which caused him to believe there was an accelerant; and
- (iii) there were no other observable sources of ignition.

[191] Platoon Chief Blisner testified he was not asked by the RCMP to conduct a formal investigation to determine the cause of the fire. Therefore, he could not conclude that the bottom of the stairs was not the seat of the fire. He could not determine where the fire started or the source of ignition. He could not determine whether the fire was set intentionally or recklessly. He could not totally rule out electrical, spontaneous combustion, or smokers' materials as the cause of the fire.

[192] However, while the conduct of a forensic investigation into the cause of the fire would have been justified and useful in this case, I am of the view that the absence of such an investigation is not determinative in this case considering the observations made by the police officers and Platoon Chief Blisner on scene. Even though Platoon Chief Blisner testified he specifically looked for things that could have been the cause of the fire, no one testified — including him — to seeing anything other than the burned and melted jerry can and the burned grass trail running from the back alley to the stairs (not the oil tank) that could have been at the origin of the fire. The photographs filed at trial do not show otherwise. According to Platoon Chief Blisner, these elements are consistent with the use of an accelerant to start the fire. I note it is the area at the top of the jerry can, where the opening for the fluid is located, that was burned and melted.

[193] In addition to that, the video from The Electrical Shop shows someone walking towards the back alley that leads to the rear of 405 Black Street shortly before the fire started, and running away from the back alley shortly after the fire started.

[194] In *R v Villaroman*, 2016 SCC 33, the Supreme Court of Canada stated the following with respect to circumstantial evidence:

[30] It follows that in a case in which proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence, it will generally be helpful to the jury to be cautioned about too readily drawing inferences of guilt. No particular language is required. Telling the jury that an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits will often be a succinct and accurate way of helping the jury to guard against the risk of “filling in the blanks” by too quickly overlooking reasonable alternative inferences. ... The inferences that may be drawn from this observation must be considered in light of all of the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

[195] I am also mindful that in *Villaroman*, starting at para. 35, the Court stated:

[35] ... 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. [Citations omitted]

[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.” 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. [Citations omitted]

[196] And finally at para. 41

[41] ... to justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative — ...

[197] In light of the observations made by the police officers that were on scene and in light of the observations made by Platoon Chief Blisner to the effect that they did not see anything other than the black line and the jerry can that could have been the cause of the fire at the scene, and despite the fact that there was no expert investigation or forensic evidence that was provided, based on the reasons in *Villaroman*, I am of the view that the only reasonable conclusion I can draw from all the evidence and lack of evidence is that the fire was intentionally set by someone using an accelerant coming from the black line and the jerry can. Therefore, I find the Crown has proven beyond a reasonable doubt that the fire was intentionally set.

[198] In addition, based on the description of 405 Black Street and the unchallenged testimony of Cst. Wiltse that there was at least one person occupying the house at the time of the fire, I find the Crown has proven beyond a reasonable doubt that 405 Black Street was an occupied or inhabited dwelling house at the time of the fire.

The question that remains is whether the Crown has proven beyond a reasonable doubt that the person who intentionally set that fire is Mr. Evans.

[199] Mr. Najman’s and Mr. Sidhu’s testimonies of their respective encounter with Mr. Evans at Tags is to a large extent corroborated by the video footage that shows the

interior and the exterior of Tags on 4th Avenue at approximately 12:45 a.m. on August 13, 2018. Mr. Najman and Mr. Sidhu both acknowledged that the passage of time has affected their recollection of events to a certain extent. After watching the video, Mr. Sidhu acknowledged he was mistaken when he testified there were specific markings on the jerry can he lent to Mr. Evans.

[200] Other than his acknowledgment, there were no inconsistencies in their testimony that, in my view, would affect their credibility and reliability as witnesses. The defence did not challenge the overall substance of their interactions with Mr. Evans. In addition, Mr. Najman's evidence that he was not under the influence of any alcohol or drugs was not really challenged by the defence. As a result, I find the substance of their respective testimony to be both credible and reliable.

[201] Therefore, I find that Mr. Evans did approach Mr. Najman and his friends shortly before 12:45 a.m. on August 13, 2018, to try to convince them to take the \$20 bill he had to fill up his plastic bottle with gas for him. When they refused, he went inside Tags to purchase gas himself. Mr. Sidhu refused to allow Mr. Evans to fill up his plastic bottle with gas. Instead, Mr. Evans had to take a used jerry can from the store for which he had to leave a deposit, and Mr. Evans purchased gas.

[202] Mr. Sidhu's testimony that Mr. Evans told him the gas was for a car that had run out of gas on Black Street, where the fire occurred, was not challenged by the defence in cross-examination.

[203] Also, Mr. Evans is clearly identifiable in the video footage from inside Tags and the Black Bear Donair off-sales. The footage reveals he is wearing a black ball cap, a black t-shirt, dark pants, black shoes or boots, and a grey hoodie jacket.

[204] The video from the front of the Yukon Inn facing 4th Avenue shows Mr. Evans getting gas in front of Tags prior to walking in a northerly direction on 4th Avenue towards McDonald's. The video then shows him crossing 4th Avenue towards Baxter Street at approximately 12:49 a.m.

[205] I also conclude, based on the location of the cameras showing the alley behind the Yukon Inn close to Baxter Street, that the individual seen walking southerly towards 6th Avenue with something in their hand and wearing clothes that are in all aspects similar to the ones Mr. Evans is seen wearing at Big Bear Donair and Tags, that that person is Mr. Evans. As indicated before, I made that same conclusion with respect to the video from Whitehorse Beverages.

[206] However, I am of the view that the video from The Electrical Shop, which is located on Baxter Street between 5th and 6th Avenues, is not clear enough to allow me, when considered on their own or with the other video footage, to identify the person seen walking in those videos even if on the enhanced black and white electrical shop video the person seen walking wears dark pants and a lighter colour top.

[207] Nonetheless, the observations made by Cst. Wiltse regarding the time it took him to walk from Whitehorse Beverages to the scene of the fire on Black Street (4 minutes and 36 seconds) lead me to conclude that Mr. Evans, who I identified behind the Yukon Inn and the Whitehorse Beverages locations, would have been in a position to cover the distance separating the Yukon Inn from the scene of the fire before the RCMP and the firefighters were called to the scene of the fire at approximately 1:06 a.m.

[208] In addition, the footage from inside Tags is sufficiently clear to allow me to conclude that the jerry can obtained by Mr. Evans is similar if not identical in size,

shape, and colour to the melted jerry can found at the scene of the fire. They bear the same type of label located at approximately the same place.

[209] Also, the video of Tags and testimony of Mr. Sidhu reveal the jerry can lent to Mr. Evans is different in size and shape from the ones sold at Tags. However, I am of the view that I can take judicial notice of the fact that Tags is not the only store in town that sells jerry cans.

[210] In addition, there are no identifiable markings on the jerry can lent to Mr. Evans or the one found at the scene that would distinguish them from other jerry cans of the same volume made at around the same time by the same manufacturer. There are therefore many other jerry cans in circulation that would look like the one Mr. Evans got at Tags and the one found on scene.

[211] I note that no identifiable human DNA was found on the swabs taken from the melted jerry can and the cap found at the scene of the fire.

[212] In addition, I am of the view that the evidence adduced by the Crown with respect to the nature of the accelerant used to set the fire at 405 Black Street is not conclusive. While Cst. Turner, based on his own experience living in the Yukon, testified that the way the fire was burning, as described by the other police officers to him, is more consistent with the use of gasoline than diesel, he also acknowledged in cross-examination it was possible it could have been another substance, such as naphtha.

[213] Cst. Turner testified that he recognized the smell coming from the inside of the jerry can, which he was asked to smell while he was testifying, as gasoline. However, the possibility the smell could come from a substance other than gasoline was not put to

him because that initial question was asked for the first time by the Crown in re-examination.

[214] I note the gravel and grass along the black line at the rear of 405 Black Street was not analysed to try to determine the nature of the substance used to start the fire. Also, no analysis of the inside of the jerry can was performed to try to identify the substance it contained.

[215] As a result, I do not find that the lay observations of Cst. Turner are sufficient to allow me to conclude that the substance inside the melted jerry can was gasoline and nothing else.

[216] Also, I am unable to give any weight to the fact that a sweater, matching the sweater picked up by Mr. Evans at Big Bear off-sales, was found in the alley at the back of the Yukon Inn Plaza near Baxter Street because its discovery was not timely: it was found five days after the fire occurred in a busy downtown area of the city.

[217] As stated earlier, I am not prepared to give weight to the utterance made by Mr. Evans at the time of his arrest.

[218] Finally, while the videos reveal there were few people walking in the downtown area of Whitehorse in the early morning hours of August 13, 2018, there were nonetheless other people outside walking in that area. The original video from The Electrical Shop shows at least one other person walking in the shop's vicinity around the time of the fire —this is not to say that that person may have been responsible for the fire, but it is to say that there were people, other than Mr. Evans, walking in that area at the time of the fire.

[219] The standard of proof in a criminal case is high. It is intended to be a heavy burden for the state to meet in order to prevent or guard against the risk of wrongful convictions. Proof that an accused is likely guilty is not enough. No matter how suspicious the circumstances appear, an accused cannot be convicted on anything less than proof beyond a reasonable doubt (see *R v Yakup Cetin*, 2023 BCSC 735 para. 104).

[220] Overall, even though I find Mr. Evans' conduct and the information he provided to Mr. Sidhu and Mr. Najman in the downtown area of Whitehorse approximately half an hour before the respondents were called to the fire at 405 Black Street suspicious, I am of the view that the evidence before me is not sufficient to conclude that the Crown has proven beyond a reasonable doubt that Mr. Evans is the person who set the fire at the rear of 405 Black Street. As a result, I find him not guilty on the charge of arson.

CAMPBELL J.