Citation: *R. v. Williams,* 2026 YKTC 26

Date: 20260617
Docket: 25-00663
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

KAUSHEE WILLIAMS

Appearances:
Suzanne Ross — Counsel for the Crown
Mark Chandler — Counsel for the Defence

This decision was delivered from the Bench in the form of Oral Reasons. The Reasons have since been edited without changing the substance.

REASONS FOR JUDGMENT

[1] CAIRNS T.C.J. (Oral): Kaushee Williams is charged with the indictable offence of possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act,* S.C. 1996, c. 19 ("*CDSA*"). Ms. Williams pleaded not guilty and the trial proceeded on April 7 and April 15, 2026.

[2] The Crown's case relied on an Agreed Statement of Facts ("ASF"), and the evidence of two police witnesses, Cst. Christina Bigrigg and Cpl. Mitchell Hutton, who

was qualified as an expert witness. In addition, video footage showing Ms. Williams carrying the tote bin containing the drugs into the Air North cargo office was tendered.

[3] In her defence, Ms. Williams testified that she was unaware the tote bin contained controlled substances.

[4] Few facts surrounding the allegation are disputed. It is admitted that, on May 6, 2025, Ms. Williams delivered a tote bin to the Air North Cargo office and, from there, sought to have it shipped to Old Crow. It is not challenged that the tote bin contained crack cocaine, packaged in a manner and quantity consistent with possession for the purposes of trafficking. The disputed issue is whether Ms. Williams had knowledge of, or was wilfully blind to, the presence of controlled substances in the tote bin. Counsel filed caselaw on this issue, all of which I have considered.

[5] There is no direct evidence that Ms. Williams had knowledge of the contents of the tote bin. The Crown is relying on circumstantial evidence to argue that Ms. Williams either had knowledge, or was wilfully blind, that the tote bin contained controlled substances.

[6] The Crown argues that the only reasonable inference from the circumstantial evidence is that Ms. Williams knew or was willfully blind to the contents of the tote bin. The defence argued other reasonable inferences can be drawn, including that Ms. Williams was simply naïve and was “duped”. With respect to wilful blindness, the defence argues that there is no evidence that Ms. Williams was suspicious of the contents of the tote bin, never mind strongly suspicious.

General Principles

[7] Ms. Williams is presumed innocent unless and until the Crown proves she is guilty beyond a reasonable doubt. There is no burden on Ms. Williams to establish her innocence.

[8] Proof beyond a reasonable doubt is a high standard, more rigorous than the balance of probabilities standard applied in civil cases. It is more than suspicion or probability; however, it is not proof beyond any doubt, nor does it require absolute certainty. However, it is closer to absolute certainty that to proof on a balance of probabilities (*R. v. Lifchus*, [1997] 3 S.C.R. 320).

[9] A reasonable doubt is not an imaginary, far-fetched or frivolous doubt, nor one based on sympathy for or prejudice against anyone. It is a doubt based on reason and common sense and one that logically arises from the evidence or absence of evidence.

[10] Proof that Ms. Williams likely, or probably, committed the offence is not enough. If, after considering all the evidence, I am sure that Ms. Williams committed the offence, that means I am satisfied of proof beyond a reasonable doubt. If after considering all the evidence, I am not sure that she committed the offence, that means I am not satisfied of proof beyond a reasonable doubt.

[11] As noted, in this case, the contested issue is knowledge. The Crown must prove beyond a reasonable doubt that Ms. Williams either knew or was wilfully blind to the fact that the tote bin contained cocaine or a controlled substance of some kind (as opposed to another type of contraband) (*R. v. Beaver*, [1957] S.C.R. 531, at pp. 541-42;).

[12] Wilful blindness can substitute for actual knowledge and arises where the accused has a strong suspicion, sees the need to make further inquiries, and deliberately chooses not to make those inquiries because she wants to be able to deny the truth. Otherwise put, wilful blindness arises when the accused shuts her eyes because she knew or strongly suspected that looking would fix her with knowledge (*R. v. Briscoe*, 2010 SCC 13, para. 21).

[13] To prove wilful blindness, in *R. v. Crookedneck*, 2024 SKCA 49, the Court held at para. 28, that the Crown must show that the accused had:

> …a strong suspicion, something beyond a mere suspicion: it "must rise to the level where it can be said the accused deliberately failed to make enquiries [s]he knew were warranted because [s]he wanted to be able to deny knowledge of the truth"…

[14] The Court in *R. v. Edwards*, 2020 BCA 253, at para. 66 states:

> …A mere suspicion that does not lead the accused…to recognize the need to make inquiries is insufficient to give rise to wilful blindness. Nor are circumstances that would cause a reasonable person to have qualms sufficient. …

[15] Wilful blindness flows from the decision not to inquire once real suspicions have arisen that (*Edwards*, para. 53), not on the hypothetical result of inquiries which were never made:

> Speculation as to what the accused would have learned had [s]he chosen to make other or further inquiries is irrelevant to the determination of the blameworthiness of that accused's state of mind at the pertinent time [*Edwards,* para 42, citations omitted].

[16] Wilful blindness is also sometimes described as “deliberate ignorance”, as it connotes the actual process of suppressing a suspicion (*Briscoe*, para. 24). It requires a subjective focus and is narrow in scope:

> …A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. [She] suspected the fact; [s]he realised its probability; but [s]he refrained from obtaining the final confirmation because [s]he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. …
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> [*Briscoe,* para. 23, citing *Sansregret v. The Queen*, [1985] 1 S.C.R. 570].

[17] As noted, there is no direct evidence that Ms. Williams knew what the tote bin contained. That said, the Crown is not required to prove knowledge or wilful blindness based on direct evidence. Knowledge or wilful blindness can be inferred from circumstantial evidence arising from the overall circumstances (*R. v. Pham* (2005), 77 O.R. (3d) 401, 2005 CanLII 44671 (C.A.), at para. 18, aff’d 2006 SCC 26).

[18] In my view, the circumstantial evidence, reviewed below, does not establish that Ms. Williams had actual knowledge. As a result, the issue I must decide is whether Ms. Williams was “wilfully blind”.

Facts

[19] Ms. Williams is a 48-year-old member of the Taku River Tlingit First Nation of Atlin, British Columbia. She is an alcoholic and drinks daily. She explained that alcohol helps with the pain she experiences from fibromyalgia. She is on various medications. Her evidence was that she typically consumes a mickey (12 oz) or 26 to 40 oz of vodka. On special occasions, she drinks more than that and may drink alcohol other than

vodka. She denies any use of illicit drugs over the past three to four years. She supports herself on Social Assistance and has received Disability for about eight years.

[20] Ms. Williams has been in a relationship with John Tizya for about six years. They do not live together. Mr. Tizya is from Old Crow and has family there; Ms. Williams has never been to Old Crow. Ms. Williams describes her relationship with Mr. Tizya as having issues. Providing emotional testimony, Ms. Williams described Mr. Tizya as being insecure and very jealous.

[21] Ms. Williams resides in an apartment complex in the Porter Creek neighbourhood of Whitehorse, Yukon. Her unit has an ungated and unfenced balcony that is accessible to anyone by climbing three steps.

[22] The apartment complex where Ms. Williams resides is social. The two connected buildings are tenanted with alcoholic individuals who, like her, like to drink and party. She knows many of them. John's niece, Chantelle, lived in the same building as Ms. Williams, upstairs and one apartment over. Chantelle is from Old Crow and has children. Ms. Williams says she did not know that Chantelle had children at the time the allegations arose.

[23] On May 4, 2024, Ms. Williams was celebrating the birthday of one of her daughters. Neighbours from the complex stopped by, including some of John's relatives. In addition to the birthday celebration, those gathered were concerned about a tragic situation connected to John's family. John's niece, his sister's daughter, had passed away and an inquest into her death was underway; the person who passed away was Chantelle's sister.

[24] The party did not stop on May 4 or May 5 but continued with numerous people coming and going and consuming alcohol, either at Ms. Williams' unit or at other units in the complex. Ms. Williams continued drinking with other people on May 6.

[25] Ms. Williams testified that, on May 6, before lunch, she and John went outside to smoke on her balcony. While on her balcony, they noticed a blue tote bin there with an address label on it. The name on the label was "Tyson Tizya". Recognizing the name "Tizya", Ms. Williams asked John if the tote bin was his. She said that he got mad and argued with her. Ms. Williams said she did not know who Tyson Tizya was at that time, but that she learned from John that Tyson was his nephew, Chantelle's son.

[26] When asked why John got mad at her, Ms. Williams explained that he was very jealous and insecure, and thought his relatives were trying to "fool around" with her. Ms. Williams was unable to clearly explain what she meant when she said, "fool around", reiterating that John was a jealous man, was jealous over everything, and he made assumptions. She said he was upset and she was not going to argue with him. She was visibly distraught during this part of her testimony, alluding to other issues in their relationship.

[27] During cross-examination, the Crown asked Ms. Williams if it was possible that John was jealous because she was going to get paid to send the package. Ms. Williams responded incredulously, "Paid? For what?" When the Crown clarified, "To send the package," Ms. Williams responded, still appearing confused, "Why would I be getting paid?"

[28] Ms. Williams said either she or John brought the tote bin into her apartment, where they played music and continued drinking. She maintained that neither of them opened the heavily taped tote bin.

[29] Ms. Williams said that, from time to time, she has received packages on her porch addressed to her or her daughter or, by mistake, to someone else. However, there was no evidence that she had ever received a parcel to ship to someone else with no instructions or information about why it had landed on her porch. She confirmed that when the tote bin arrived on her porch, neither she nor John called anyone, not even any of John's relatives, to ask them about the tote bin. When asked why she did not contact Chantelle, she said Chantelle had left to go to her boyfriend's, had no phone, and Ms. Williams did not have the boyfriend's phone number. Further, when asked if she had asked John to contact Chantelle, Ms. Williams said she had not, reiterating that she had not had any concerns.

[30] Later the same day, Ms. Williams received a phone call from a cab driver, saying a cab was there to take her to the airport. As she had not called for a cab, she was confused, and asked John if he knew what was going on. He said he did not. She said the cab driver said the cab was there to take her with the tote bin to the airport.

[31] There was a van cab waiting outside and, together she and John went in the cab to the airport with the tote bin. John waited in the cab with the driver while Ms. Williams went alone into the airport, taking the tote bin to the Air North counter. She was not permitted to get it on the plane because the person named on the tote bin was not on

the plane. She was told by the person at the Air North counter that it looked like the tote bin was supposed to go through the cargo office.

[32] Ms. Williams then returned to the cab with the tote bin, and she and John were driven to Air North cargo. Again, she went alone into the Air North cargo office. Video footage of her bringing the tote bin to the Air North cargo counter was tendered at trial. She said the cab driver gave her money to pay for the shipping. When asked if she thought this was odd, Ms. Williams said she thought that John's relatives had arranged for it to be given to her or John. At the Air North cargo office, she was told that it would not be shipped today. She conveyed this to the cab driver, and he told her to leave it there anyway.

[33] Ms. Williams testified that, on previous occasions, John's relatives had sent a cab to pick her and John up to go downtown to meet up and drink with the relatives. However, there was no evidence of previous occasions when a cab driver had contacted her in the manner this one had – unbidden, to take a package to the airport. Ms. Williams also agreed that she had never had a cab driver give her money instead of her giving them money. She testified that she did not know the name of the cab driver, which company it was, and no longer had the phone number.

[34] Old Crow is a remote fly-in community, where the sale, possession, and consumption of alcohol is prohibited. Ms. Williams testified that she had not known that Old Crow was a dry community, explaining that everyone she knows from Old Crow drinks alcohol.

[35] While at the Air North cargo office, Ms. Williams was asked if there was alcohol in the tote bin. Although she testified that she did not know what was in the tote bin, in response to the question about its contents, she said there was no alcohol. She told the Air North cargo office that it was clothes and stuff for work. She testified that she did not actually know what the contents of the tote bin were and that, by saying it was clothes and stuff for work, she was making an assumption. Ms. Williams reiterated throughout her testimony that she thought she was doing someone a favour, helping, or doing something nice, and that she thought it was just mail.

[36] When asked why John did not bring the tote bin into either the airport or Air North cargo, she said because she had identification and he did not.

[37] After dropping off the tote bin, she and John returned home and continued drinking. After Ms. Williams dropped off the package, an Air North employee opened the package and located the alcohol. Ms. Williams was then called by Air North cargo and told that the tote bin contained alcohol, and that she would need to come pick it up. She apologized for the alcohol and said she would return immediately. Ms. Williams said that she was happy to pick it up as it was free alcohol. She then called the same cab driver, who drove her back to Air North cargo. John did not accompany her.

[38] However, after the phone call but prior to Ms. Williams returning to the Air North cargo office, a tin inside the tote bin was opened by an employee and its contents (later determined to be cocaine) discovered. The RCMP were called. When Ms. Williams arrived back at the Air North cargo office, she was told that the tote bin would not be returned to her. Ms. Williams went home.

[39] In a statement to RCMP, the transcript of which was attached to the ASF, the Air North employee, Patria Rumbaoa, who interacted with Ms. Williams, did not describe Ms. Williams as upset or bothered when she was told the tote bin would not be returned to her.

[40] The return address on the tote bin was drawn to Ms. Williams' attention. The sender was identified as "Aunt Marie". Ms. Williams confirmed that her middle name was Marie. However, she denied going by that name and said few people know her middle name, only her parents and her daughter. She said John did not even know her birthday, never mind her middle name. Prior, during direct examination, Ms. Williams confirmed that the postal code on the return address was not hers.

[41] Cst. Bigrigg testified for the Crown, having been the officer who attended the Air North cargo office to deal with the tote bin and who later processed the exhibits. The tote bin contained 24 bottles of 375 ml Smirnoff Vodka, three bottles of 1.4L Alberta Pure Vodka, a tin containing 22.73 grams of crack cocaine, and a blanket and miscellaneous items of clothing. The crack cocaine was packaged in two separate baggies, which had multiple, smaller spitballs within each bag. The larger baggie contained 43 smaller spitballs. The smaller baggie contained six smaller spitballs. She confirmed there was no physical evidence, such as fingerprints, linking the tin or cocaine baggies to the accused.

[42] Cpl. Hutton testified as an expert with respect to cocaine in the following areas: manner of use, manner of packaging, manner of distribution, prices, consumption patterns, paraphernalia, jargon, practices and habits of users, and practices and habits

of traffickers. In relation to the cocaine seized, his opinion was that the crack cocaine appeared to be packaged for street level sale, but the smaller bag was likely for personal use. He also opined on the value of the drugs seized, on the different methods of selling drugs in Whitehorse and Old Crow, as well as the difference in cost of drugs between those communities. Additionally, his opinion is that most street level couriers are users and are paid in drugs, payment in cash being rare.

Analysis

[43] To prove Ms. Williams is guilty of possession of cocaine for the purpose of trafficking, the Crown must prove that Ms. Williams:

1. Possessed the substance;
2. The substance was cocaine;
3. She knew or was wilfully blind that it was a controlled substance: and
4. Her purpose in possessing the substance was to traffic it. "Traffic" is defined in s. 2(1)(a) of the *CDSA* as "to sell, administer, give, transfer, transport, send or deliver" a controlled substance.

[44] The evidence proves beyond a reasonable doubt that Ms. Williams was in possession of the substance and that the substance was cocaine. As noted above, I find that the Crown has not proven that she had actual knowledge that the tote bin contained a controlled substance. The central question is whether Ms. Williams was wilfully blind that the tote bin contained a controlled substance. If the Crown proves that

Ms. Williams was wilfully blind, trafficking will be made out by the attempt to send the tote bin containing cocaine to Old Crow.

[45] Where the Crown's case is circumstantial, the Crown must establish beyond a reasonable doubt that the accused's guilt is the only reasonable inference available on the evidence as a whole (*R. v. Villaroman*, 2016 SCC 33). I must consider whether the circumstantial evidence, viewed as a whole, assessed logically and in light of common sense and experience, is reasonably capable of supporting an inference other than guilt (*Villaroman*, para. 38).

[46] The Crown urges me to find that Ms. Williams was not credible and to reject her version of events as implausible; the central points of Ms. Williams' evidence include the innocent finding of the tote bin, the unsolicited call from the cab driver, and the cash payment made by the cab driver to ship the tote bin to Old Crow. As well, cross-examination established that she made no inquiries of anyone, other than John, about the tote bin. The Crown argues that the only reasonable inference to draw from the circumstantial evidence is that Ms. Williams was wilfully blind of the contents of the tote bin and is therefore guilty of the offence charged.

[47] Counsel for Ms. Williams argues that there is no evidence that Ms. Williams had a suspicion that the tote bin contained drugs, never mind a "strong suspicion" (*Edwards,* para. 66). In the face of cross-examination, Ms. Williams maintained that, in attempting to ship the tote bin to Old Crow, she thought she was helping a relative of John's. Counsel argues that, on the evidence, it is a reasonable inference that she was being taken advantage of and simply did not know what was happening. Further, counsel

points to Cpl. Hutton's expert opinion that drug couriers are typically paid in drugs and that it is rare to be paid cash; on this point, Ms. Williams' evidence that she is not a drug user is unchallenged.

[48] *R. v. Aiello*, [1978] 30 N.R. 559 (SC (CA) (Ont.)), provides an example of evidence establishing that the accused had a strong suspicion but chose not to make inquiries:

> The accused testified in his defence. He stated that on the afternoon of April 29, 1976, he was driving past the Brock Hotel when a man whom he knew as Jim waved to him. "Jim" offered the respondent the sum of $50.00 to pick up something, but did not specify the nature of the thing that he was to pick up. The respondent testified that he thought it might be jewellery because "Jim" sometimes dealt in it. The respondent went to the washroom as instructed by "Jim", and removed the cigarette package from where it was. He said that he opened the cigarette package and found inside a plastic bag with something in it. He said:
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> > At that point I knew it wasn't jewellery, and I figured it had to be some kind of drug, or something, so I got scared, I didn't know what to do with it, so I just shoved it down my pants and left fast, and afterwards, after that, that is when I was arrested. I really didn't know what it was.

[49] The Court in *Aiello* went on to say:

> …[I]t was not necessary for the prosecution to prove the required knowledge by direct evidence, but that it could be inferred from the surrounding circumstances, such as, for example, the finding of the drug on the accused's person in his trouser pant leg, his evidence that he figured that it must be a drug, the circumstances in which, and the place where he had picked up the package.

[50] In my view, the evidence in *Aiello* on which to impute knowledge is much stronger than in the case before me. See also *R. v. Olivedi*, 2021 ONCA 518, at para. 8, where the accused accepted $3,000 from his cocaine dealer to get a package delivered to his house. When he attempted to get out of the arrangement, he was

threatened. In response, he bought weapons to protect himself. In that case, the accused said he had asked his dealer what was in the package and then said, “You know what, I don’t even want to know.”

[51] Given that Ms. Williams testified at trial, I must apply the analysis in *R. v. W(D)*, [1991] 1 S.C.R. 742. If I believe the evidence of the accused, I must acquit. Even if I do not believe the testimony of the accused, if it leaves me with a reasonable doubt as to as to whether she was wilfully blind, I must acquit. Even if I am not left in doubt by the accused’s evidence, I may only find her guilty if, on the basis of the evidence which I do accept, I am convinced beyond a reasonable doubt of her guilt by that evidence.

[52] I will start by saying that I do not find Ms. Williams’ response to the appearance of the tote bin and her interactions with the cab driver *objectively* reasonable; however, that is not the test. It is critical that the assessment of wilful blindness is based on a subjective standard – the issue is not whether Ms. Williams should have been suspicious, but whether she was *in fact* suspicious. As a result, the Crown needs to establish two things: one, that the accused’s suspicion was aroused and, two, she made a deliberate decision not to inquire in order not to be fixed with knowledge (*Briscoe*, para. 21).

[53] Ms. Williams presented as a naïve and unsophisticated individual. Despite that, I found that she withstood cross-examination well. I generally found her evidence to be credible. Ms. Williams is a chronic alcoholic who, by May 6, 2024, had been drinking for three days. Despite this, she presented a fairly detailed recollection of the events of May 6. I found her evidence generally reliable.

[54] The Crown cross-examined Ms. Williams on her criminal record in an effort to undermine her credibility. However, Ms. Williams' criminal record is limited, dated and unrelated. Ms. Williams made no effort to deny or downplay her record and expressed remorse for the actions that led to those convictions. I find that her record bears little on her credibility.

[55] In light of her fibromyalgia, Ms. Williams was cross-examined on the weight of the tote bin, how she had been able to carry it in to both the airport and the Air North cargo office singlehandedly, and the clinking and sloshing of bottles inside. Although the Air Waybill filed as evidence establishes that the tote bin weighed 43 pounds, Ms. Williams estimated its weight as being about 20 pounds, saying it did not feel heavy; I note that Cst. Bigrigg similarly estimated the weight of the tote bin at about 20 pounds. The video footage showed Ms. Williams carrying the tote bin without evident difficulty. When asked, Ms. Williams denied hearing any sloshing or clinking of bottles emanating from the tote bin when she was carrying it. On this point, no evidence contradicted her; neither Cst. Bigrigg nor the transcript of Ms. Rumbaoa's statement to RCMP mentioned the sound of bottles clinking or sloshing. I did not find that these lines of questioning undermined her credibility.

[56] For the following reasons, I find that the Crown has not met its burden of proving that Ms. Williams was wilfully blind that the tote bin contained cocaine or a controlled drug of some kind. Applying the second branch of the *W.D.* analysis, Ms. Williams' evidence raises a reasonable doubt.

[57] First, the evidence that Ms. Williams did not open the tote bin and did not speak to anyone other than John about the tote bin is unchallenged. The tote bin was taped up and there is no physical evidence, such as fingerprints, linking her to the tin or the plastic baggies inside the tote bin.

[58] Second, I find no evidence that Ms. Williams had a "strong suspicion" that the tote bin contained cocaine or a controlled substance of some kind. The evidence does not persuade me that Ms. Williams deliberately failed to make inquiries about the tote bin so that she could deny knowledge. She provided evidence that she did not make inquiries because she had no concerns and because she thought John's relatives had arranged and paid for the shipping of the parcel.

[59] Third, Ms. Williams' response to being asked about being paid was striking. She appeared to be confused and shocked at the suggestion that she would be paid to ship the tote bin, seeming to have no idea why she would be paid.

[60] Fourth, her behaviour in returning to pick up the tote bin from Air North cargo is inconsistent with a guilty mind. Her explanation that she was happy to go back to pick up "free alcohol" is consistent with her description of herself as an alcoholic. As well, when advised she would not be getting the tote bin back, Ms. Rimbaoa did not describe Ms. Williams as upset.

[61] Finally, Cpl. Hutton's expert opinion that most street level couriers are users and are paid in drugs, with payment in cash being rare. Ms. Wiliams does not fall into that category, her testimony that she has not used illegal drugs for three to four years being unchallenged.

[62] Where the Crown's case rests on circumstantial evidence, the question is whether the trier of fact can reasonably be satisfied that the accused's guilt is the only reasonable conclusion on the totality of the evidence (*Villaroman*, para. 55). I am not so satisfied. Ms. Williams' evidence as to her involvement with the tote bin satisfies me that guilt is not the only reasonable inference from the circumstantial evidence in this case. I remain mindful that this is a subjective inquiry, not a reasonable person inquiry. The issue is "what did she know, not what should she have known?" (*R. v. Tyrell,* 2014 ONCA 617, para. 30). With that in mind, based on her evidence, coupled with the lack of evidence that she had suspicions about the contents of the package, it is a reasonable inference that Ms. Williams was an unwitting accomplice.

Decision

[63] I find that the Crown has not proven the *mens rea* for the offence beyond a reasonable doubt. The evidence overall, including Ms. Williams' testimony, raises a reasonable doubt, and she must be acquitted.

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CAIRNS T.C.J.