

Citation: *R. v. R.B.V.*, 2020 YKTC 17

Date: 20200515
Docket: 18-00821
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

R.B.V., J.L.V. AND C.A.R.

Publication of Information that could identify the complainant or a witness is prohibited pursuant to section 486.5 of the *Criminal Code*.

Appearances:

Leo Lane

Malcolm E. Campbell

Lynn MacDiarmid

Gregory Johannson

Counsel for the Crown

Counsel for R.B.V.

Counsel for J.L.V.

Counsel for C.A.R

REASONS FOR JUDGMENT

[1] COZENS T.C.J. (Oral): R.B.V. and C.A.R. have been charged with having committed the following offences:

- possession of stolen property on or between September 1 and 2, 2017, being gold nuggets, gold and silver coins, and a silver bar, with a value in excess of \$5,000, contrary to s. 354(1)(a) of the *Code*;
- possession of stolen property on or between September 1 and 2, 2017, being granulated gold scrap, with a value in excess of \$5,000, contrary to s. 354(1)(a) of the *Code*; and

- possession of stolen property on or about October 25, 2017, being granulated gold, with a value in excess of \$5,000, contrary to s. 354(1)(a) of the *Code*.

[2] R.B.V. has also been charged with having committed the offence of theft on or between January 12 and October 25, 2017, with a value in excess of \$5,000, contrary to s. 334(b) of the *Code*.

[3] J.L.V. has been charged with having committed the offence of possession of stolen property on or about September 1, 2017, being a gold coin, with a value not exceeding \$5,000, contrary to s. 354(1)(a) of the *Code*.

[4] The Information initially charging these offences was sworn, with respect to R.B.V., on December 5, 2018. With respect to C.A.R. and J.L.V., Informations were sworn on January 17, 2019. One Information charging all of these individuals was sworn on March 14, 2019. This is the Information that proceeded to trial. A replacement information was sworn on March 14, 2019.

[5] In brief, the Crown's theory of the case is that the three defendants, without any lawful authority, obtained a number of gold and silver items, including coins, which were the property of a Mr. Anthony Kopp. The approximate value of these items in total is just in excess of \$100,000.

[6] R.B.V., C.A.R., and on one occasion, J.L.V., then sold these gold and silver items through Murdoch's Gem Shop Ltd. ("Murdoch's") and Locksmith Services. Although not charged, C.A.R.'s daughter, J.R. sold some placer gold to Murdoch's.

[7] In his written submissions, Crown counsel states:

The only reasonable explanation for how the defendants acquired the treasure is that R.B.V. found it on Anthony Kopp's property, probably after months of searching. There is no innocent explanation for finding a treasure of this magnitude and then going to such lengths to disguise its origins.

[8] All three defendants were aware that the gold and silver items were stolen property.

[9] The theory of the defence is premised on the gold and silver items having been found and/or otherwise lawfully acquired.

[10] The trial took place over several days in November and December, 2019. Written submissions were provided and oral arguments made on February 24, 2020. Judgment was reserved until today's date.

[11] This is my judgment.

Witness Evidence

Troy Ford

[12] Troy Ford has been the manager at Murdoch's for approximately 15 years. As part of his duties, he buys gold as an intermediary for a gold refinery in British Columbia.

[13] Mr. Ford testified that on September 1, 2017, J.L.V. came into Murdoch's. She was in possession of a single one-ounce troy gold maple leaf coin that she wished to sell (the "Coin"). Mr. Ford had had no prior dealings with J.L.V.

[14] Mr. Ford met with her privately in his office. He inquired into the source of the Coin as he wanted to ensure that J.L.V. was lawfully able to sell the Coin. This was his standard practice. J.L.V. told him that the Coin had been bequeathed to her by a deceased miner in a “living will”. Mr. Ford did not believe that J.L.V. provided him any additional information about this miner.

[15] He advised her that the value of the coin was \$1,632. After Murdoch’s deducted their 10% commission, she would receive \$1,468. She agreed to sell the coin and was provided with a cheque that day.

[16] In his statement previously provided to the RCMP, Mr. Ford acknowledged that he had said that J.L.V. had stated on that day that her son and daughter had other items to sell. Mr. Ford did not testify, however, as to having any independent recollection of J.L.V. having said that to him.

[17] Mr. Ford had no other dealings with J.L.V.

[18] Mr. Ford stated that approximately one hour after J.L.V. had left Murdoch’s, J.R. and her brother came into the store with a small amount of placer gold to sell. He was not aware of any connection between them and J.L.V.

[19] He inquired as to the source of the gold. He testified that this was his normal procedure with respect to placer gold. They told him that it had been mined on Horse Creek near Whitehorse. This surprised Mr. Ford as he was not aware of any active mining claim that was producing in that area. He thought that he had heard of there

being an active mining operation in the Whitehorse area, and that maybe this was it. He had never purchased gold from Horse Creek before.

[20] After deducting Murdoch's commission, Mr. Ford provided J.R. with a cheque for \$547 for this placer gold.

[21] Later that same day, R.B.V. and C.A.R. came into Murdoch's. Mr. Ford had never had any prior dealings with them. They were in possession of some placer gold which they wished to sell.

[22] Mr. Ford asked them where the gold came from, and they said it was from Horse Creek in the Whitehorse area, and that they had mined it. He was not sure which of the two stated that.

[23] Mr. Ford was provided his statement to the RCMP in order to refresh his memory. He testified that on this first visit, they told him that they had mined the gold.

[24] After reviewing his statement that he had provided to the RCMP, Mr. Ford confirmed that in this first meeting they told him that they had mined it at Horse Creek. He stated that in a subsequent meeting they told him that they had been bequeathed the claim in a "living will", and that a miner had told them to stake that ground and to start mining.

[25] As was his normal practice, Mr. Ford advised them that they could either sell this gold to Murdoch's, or they could deal directly with Instant Gold. R.B.V. and C.A.R. agreed to sell the gold to Murdoch's. This enabled them to have a set price and receive

their money right away, as compared to the delay that would occur if they sold directly to Instant Gold. Mr. Ford provided them with a cheque for \$4,860.32.

[26] Mr. Ford testified that R.B.V. and C.A.R. came back to Murdoch's the following day. They had more placer gold, some gold and silver coins and a silver bar. They were paid \$4,469.09 for the placer gold, from which \$3,187.64 was deducted for purchases C.A.R. made at Murdoch's that day.

[27] He stated that they said they had mined the placer gold.

[28] With respect to the coins and silver bar, due to their higher value Mr. Ford stated that he advised R.B.V. and C.A.R. that it was in their best interests to sell these items directly to Instant Gold.

[29] These items were:

- 24 one-ounce maple leaf gold coins, with 99.99% purity;
- 105 one-ounce maple leaf silver coins with 99.99% purity; and
- one 100-ounce silver bar, with 99.99% purity.

[30] Mr. Ford stated that he had mistakenly marked the silver coins as being sterling silver, which is only 92.5% pure.

[31] He stated that the gold coins were exactly the same as the Coin that had been brought in by J.L.V.

[32] On the Instant Gold Refining Inc. Receipt (Exhibit 32) line reading "Recovered From", Mr. Ford wrote down "Inheritance". He stated that he did so because he was

told these were given to R.B.V. and C.A.R. as part of a “living will” by a deceased miner. No further details were provided.

[33] The Instant Gold Refining Inc. Know-Your-Client Checklist (Exhibit 34) (the “Checklist”) includes a statement that: “All goods being sold here are the proceeds of an inheritance”.

[34] Mr. Ford stated that he wrote this into the Checklist based upon information he was provided by R.B.V. and C.A.R. that they had been given the goods in a “living will”.

[35] The Checklist was signed by R.B.V. and C.A.R. on September 2, 2017. Mr. Ford stated that they had read this document prior to signing it. They had the opportunity to ask questions if they wished.

[36] On the Transaction Risk Checklist (Exhibit 35), Mr. Ford wrote that the source of the precious metal was from an inheritance. He stated that he had reviewed this document with R.B.V. and C.A.R. He concluded that they were low-risk.

[37] Mr. Ford said that they told him that they had four more 100-ounce silver bars.

[38] Mr. Ford stated that he did not forward the items to Instant Gold as he had planned because, based upon information that he received, he suspected that there may have been a fraud committed. At the time that he was dealing with R.B.V. and C.A.R., no red flags were raised in his mind. He contacted the Mining Recorder’s Office to follow up on his suspicions.

[39] Mr. Ford stated that he only usually asked for the source when it was placer gold, due to it being a government requirement. He agreed, however, that he did ask C.A.R. and R.B.V. for the source of the coins and silver bar.

[40] On December 4, 2017, Mr. Ford swore a statutory declaration in order to recover funds for Murdoch's from the Public Guardian and Trustee ("PGT"). He agreed that in this statutory declaration, he wrote that on September 1, 2017, R.B.V. had told him that he had received the gold "...as part of an inheritance in a living will from a miner who had recently passed away who had mined it from Horse Creek near Whitehorse". Mr. Ford agreed that this was different than what he had testified to in court and what he told the police in his September 9, 2017 statement, which was that that he had been told at this September 1, 2017 meeting with C.A.R. and R.B.V. that they had mined the gold.

[41] Mr. Ford at first agreed in cross-examination that it was in his September 2, 2017 meeting with R.B.V. and C.A.R. that they had mentioned a living will.

[42] However, after reviewing his statement to the RCMP, he agreed in cross-examination that he never mentioned the term "living will" in his statement to the RCMP in relation to the origin of the metals. In context, I understood this to be in relation to his interactions with C.A.R. and R.B.V. during their September 2, 2017 attendance at Murdoch's.

[43] However, in re-direct, Mr. Ford reviewed a portion of his statement where he had stated, in response to a question from Cst. Turner about where all this property had come from, that the coins and silver bar "...was from the deceased miner who had

named them, the R.s and the V.s, in their living will as recipients of these goods". Mr. Ford went on to say that, in relation to the nugget gold, they had said that they had mined it at the claim with the deceased miner, although he was unsure as to whether this mining had occurred before or after the miner had died.

[44] Mr. Ford said that it was always clear to him that the bars and coins had come to them from a living will.

[45] Mr. Ford said that up until the information provided by C.A.R. and R.B.V. at the second meeting that caused him to write "Inheritance" on the forms, he had been told they had mined the placer gold at Horse Creek.

[46] Mr. Ford agreed that what he had told the police was that in his conversations with C.A.R. and R.B.V. they had been told by a miner, at some point, to go out and stake the particular claim where they said they mined the placer gold.

[47] Mr. Ford stated that he believed C.A.R. and R.B.V. were sober during his two interactions with them.

[48] Mr. Ford agreed that his memory of the meetings was likely affected by the passage of time, and that he generally does two to three transactions a day. He stated that he believes that what he told the police had occurred had been discussed at some point, although the exact chronological order may vary somewhat.

[49] Mr. Ford agreed that it was not unusual for him to purchase a single gold coin. He agreed that other than the year, there is nothing distinctive about the coins. The

coins have no identifying serial number to distinguish them. There is no way for him to identify where the coins originated from.

[50] Mr. Ford stated that he was not sure if J.L.V. had stated that she received the Coin via a living will or inheritance. He stated that both meant the same thing to him.

[51] He stated that he was told more than once that the source of the gold and silver was a living will. He said that he was not clear what a living will was and that, in hindsight, he should have questioned it more.

Eamonn Campbell

[52] Mr. Campbell is an owner of Locksmith Services in Whitehorse. This business acts as intermediaries for buying and selling gold. This activity comprises less than 1% of Locksmith Services' business.

[53] Mr. Campbell stated that on September 1, 2017, a male and female individual came into the store just before the 5:00 p.m. closing time, wanting to sell some gold. He stated that he did not really want to deal with them as they seemed intoxicated. He subsequently identified them as being R.B.V. and C.A.R.

[54] He testified that they told him the gold had been mined at Horse Creek. He stated that he handles a fair amount of placer gold and this did not look like it was placer gold or gold that had been mined.

[55] Mr. Campbell agreed that he could not say with certainty whether they had told him the gold was placer finds, or whether that is the conclusion he reached. He agreed that he has no recollection of his conversation with the couple beyond their mentioning

of Horse Creek, and that they could have said more to him. He stated that he generally goes with what the customer says. He said they both talked equally.

[56] Mr. Campbell filled out a form for Technic Inc. Canada (“Technic”).

[57] He stated that his brother had written in blue ink the words “said to be” before what he had written as “placer finds”, and that his brother wrote in blue ink “granulated material”, after what he had written.

[58] Shortly after they left, the couple returned and asked for some changes to be made to the form. They wanted the contact to be changed to R.B.V. instead of C.A.R.

[59] A transaction involving 31.60 ounces of troy gold was completed. After deducting \$336 in fees, Technic paid R.B.V. \$48,935.87 for this gold (Exhibits 16 and 18).

[60] Mr. Campbell stated that the couple attended Locksmith Services a second time on October 25, 2019, with 2.4 ounces of gold to sell. On this occasion they were not intoxicated. He labelled this gold as “amalgam” as he did not consider it to be placer gold. He stated that amalgam is gold that has been melted down. He noted that there was one more solid piece and some smaller bits and pieces of gold. He said that R.B.V. and C.A.R. told him the source of the gold was Scott Rd. He could not say whether this gold was in the same form as the gold that they had brought in previously.

[61] Technic, after deducting \$182.71 in fees, paid R.B.V. \$3,423.87 (Exhibits 17 and 19).

[62] Mr. Campbell stated that gold with a purity of 99% and above is only found in refined gold minted at the mint. He agreed that it was rare for him to see the assay results from Technic, as he did in this case. He agreed that he had told the RCMP in his statement that this high of a purity percentage is usually only found in refined gold bars or in minted coins.

[63] Mr. Campbell never had any dealings with J.L.V.

James McMillan

[64] Mr. McMillan was qualified as an expert in gold, including smelting and material identification. He has worked for Technic since 2011. In his capacity as an employee of Technic, he receives gold and/or silver in either scrap, placer or dory bar form. The gold and silver is melted (or re-melted) and sent out for assay.

[65] He received a shipment on September 1 or 2, 2017. Mr. McMillan stated that the difference in the dates on Exhibits 16 and 18 could have been a typo on his end.

[66] The shipment had been labelled as placer gold, but he changed it to be identified as gold scrap granulated material, as it was no longer in placer form. The gold was in large and unusual globs. It was also quite black.

[67] He did not, at first, believe this to be a placer find. He said that he had never seen anything like this gold. Unlike the normal practice for a miner to melt the gold into a form, it appeared to him that the gold had been melted and then poured into water. This is a procedure utilized to produce fine, granulated gold for jewelry dealer purposes. It is not normally utilized to produce gold in the shape he received. This gold was from

½ to 1 inch in size, as compared to the usual 1/8 of an inch or smaller that is usually associated with this type of gold.

[68] It looked to him as though this had been a “too quick” pour. He stated that he knew he was dealing with a very pure substance. The 31.46 ounces (.14 ounces was lost in the melting) of gold was assessed at 99.8% pure gold. The typical Yukon placer gold is between 75% – 85% pure gold. The highest gold he had ever seen was 93% pure. This gold was located in the Quesnel, BC area, and was a highly unusual result.

[69] In his opinion, the gold was not mined in the form that it was provided to him. It was his opinion that the gold had been refined prior to it being melted into the state he received it. He could not say when this would have occurred. Mr. McMillan agreed that the process of melting gold could be quite involved and required some tools and expertise. It could also be dangerous if it was done incorrectly.

[70] He said that the required equipment could be purchased at a hardware store.

[71] Mr. McMillan agreed that the black might have been soot, but also stated that it could have been from an acetylene torch. He had never before seen gold in this blackened state.

[72] The payout that Technic provided for this gold was \$48,935.87. This was wired into the TD Bank account number that he had been provided. This bank account belonged to R.B.V.

[73] Mr. McMillan received a second shipment of gold on October 25, 2017. The 2.240 troy ounces (after re-melting) was assessed at 99.9% pure. The payout was

\$3,423.87. This gold was in the same shape and form as the September 2, 2017 gold, with the only exception being that it was not as black as the previous shipment.

Cst. Hornblower

[74] Cst. Hornblower testified that on September 7, 2017, he went to Murdoch's, spoke with Troy Ford, and seized a number of items. The items seized included the following:

- silver bar;
- 24 one-ounce gold coins;
- 105 one-ounce silver coins;
- 141.65 grams of nugget gold sold by R.B.V. to Murdoch's;
- the Coin;
- 15.72 grams of gold sold to Murdoch's by J.R.; and
- 130.32 grams of gold sold by C.A.R. to Murdoch's.

[75] He agreed that he had no notes of any dates in relation to the gold and silver coins. He also stated that he had not contacted the company associated with the name stamp on the silver bar.

J.R.

[76] J.R. is 17 years old. She lives with R.B.V. and C.A.R., as well as her brother.

[77] She stated that on September 1, 2017, she and her brother went to Murdoch's and sold some gold. This was the first time she had ever sold gold to anyone. She did not know whether Murdoch's bought gold; she just thought that they would be able to

help her. She asked her brother to come because she had never done this before. No one had mentioned going to Murdoch's about the gold before.

[78] J.R. said that she had received the gold from C.A.R. and R.B.V. the night before while they were at home. She believed it was around 10:30 p.m. She had already gone to bed but was not asleep. She heard her brother open the outside door and say "we're rich" in an excited tone.

[79] She said that she went with her brother to where C.A.R. and R.B.V. were. There was a tube container on the floor. She had never seen this tube container before. It was an approximate 30" x 10" whitish/translucent plastic tube shaped container. The amount of gold that she received was in a small container taken from out of this larger container. She had never seen that container before. She said that she and her brother each received a tube of gold.

[80] R.B.V. and C.A.R. were there. She saw quite a few silver and gold coins, as well as some nugget gold. She said that while she was in disbelief and shocked, she was also excited by what she saw.

[81] Besides hearing her brother say that the gold and silver had come from Horse Creek while they were in Murdoch's, she believed that she had also heard this from someone else, maybe from C.A.R. that night. She said that there had been no gold or silver in the house before, and that she had never heard the name Horse Creek before.

[82] She said that R.B.V. and her brother had been out earlier that evening, while she and C.A.R. were at home.

[83] She said that R.B.V. had said something about finding the gold and silver in the ground. She did not think that he said where this ground was. He had said that he moved a rock and there was a tube there which he pulled out. She believed that he had said this some time after the day she first saw the container with the gold and silver, although she could not recall whether he had mentioned it as well that evening. She was not really sure when and from whom she had heard this. She said that this was a general topic of discussion within the family after that evening.

[84] J.R. said that she had not met Mr. Kopp before, and that she was not sure whether R.B.V. had mentioned him. She said that C.A.R. had not mentioned him. She said that while R.B.V. talked about Mr. Kopp after these events, including funny things Mr. Kopp had done, she believed that this was after August 31, 2017. She testified that she was unsure as to whether R.B.V. had talked about Mr. Kopp before these events, although she conceded that maybe, or probably, he did. She said that she has been so busy in programs that she was barely home and did not really know what was going on.

[85] J.R. stated that her mother, C.A.R., and maybe R.B.V., had told her not to sell the gold. She said that she did not know where the gold had come from, and that it was her brother, while they were at Murdoch's, who said it had come from Horse Creek. She did not believe her brother had sold his gold. Neither C.A.R. nor R.B.V. mentioned Murdoch's to her.

[86] Her parents said that they would use the rest of the gold and silver to pay bills and to put into bank accounts for her and her brother's future. Her parents said that they were going to sit on the gold and silver for a bit.

[87] J.R. stated that she told her parents that she had gone to Murdoch's about two hours after she had cashed in her gold.

[88] J.R. said that she used the money to buy a laptop computer, school supplies, camera and a puppy.

[89] J.R. knew that her parents were in court to see if they were or were not guilty of taking the gold.

[90] J.R. also stated that her memory of the events of August 31, 2017 was not great. She said that she has always had memory problems.

[91] She agreed that she had not said anything to the RCMP in her statement about a rock. She said she was very tired when she made this statement.

Cst. Smee

[92] Cst. Smee testified that he became involved in the investigation in September 2017. He spoke to R.B.V. on November 10, 2017. At that time, he told R.B.V. that he was not a suspect in the commission of an offence, although another individual had accused R.B.V. in a complaint made. Cst. Smee stated that he wished to get R.B.V.'s version of events before he decided anything.

[93] He stated that on November 11, 2017, R.B.V. attended the Detachment voluntarily to provide a warned statement. R.B.V. was told that he was being investigated for being in possession of stolen property. He was told that he was free to leave at any time.

[94] In this statement, which on consent was tendered for the truth of its contents, R.B.V. said or acted as follows:

- R.B.V. testified that he is illiterate.
- He produced two copies of a claim which was registered as the Kye claim (exhibits 38 and 39).
- R.B.V. pointed to a location on a map that was near Scott Rd., which was approximately 5.5 km past Horse Creek Rd.
- He pointed out two locations where he had staked a claim.
- He pointed out to Cst. Smee on the maps where the claim could be accessed.
- He said that he was walking around when he tripped over a tube sticking out of the ground. The tubes were not even 10 feet off the trail but would not be seen even if you were looking for them in the snow. He knows exactly where they are, however. There was nothing covering the tubes, which looked like a water “vein” [main] type of thing.
- He kicked the tube and the top came off and the gold was there. He said that he left for three or four days and looked up the area on Google earth. When he was satisfied that the gold belonged to no-one

- in particular, he went and retrieved it. He said there was also silver in the tubes.
- He also pointed out the location where the precious metals were found. He showed Cst. Smee photographs of the tubes that he found on the claim, and described to Cst. Smee where the tubes he had found were located. This was at a location approximately 5.5 km from Mr. Kopp's property. This location was marked with an "X" by Cst. Smee on the larger of the two maps.
 - R.B.V. stated that he had left the tubes there. One still had a little gold and silver left in it. He said he did so in case anyone did not believe him so that they could go out there and find it. He said that he knew something was going to happen sooner or later, and he might be accused of stealing it.
 - R.B.V. said that he found the gold a couple of months after Mr. Kopp passed, and that he never got the gold from Mr. Kopp's property. He said people probably thought that he did because they thought Horse Creek runs into Scott Rd.
 - He told Cst. Smee that he was an "honest man, that he wasn't a thief and that he had never stolen anything in his life". He said that he loved Mr. Kopp and that he never stole from him.

- He said that he had gold tested and it was 98.3% or 99% pure and acid toned (clean). He said that it had not been melted and was basically raw nugget.
- He said that when Cst. Smee went out and saw the tubes, he would understand where the gold came from. He said that he would have to take Cst. Smee in and show him where the tubes were located, because Cst. Smee would not be able to find them; he would just be looking around.
- R.B.V. stated that when he went to the Elijah Smith building and showed “the Sheriff” what he had found, the Sheriff told him that what he had was a “find”. He was told he needed to file for a claim. R.B.V. said that he staked a claim, however, the first time he had made an error, so he had to go back and fix the error. He was able to complete the requirements and now had the proper paperwork for the claim. R.B.V. said that a while back Mr. Kopp had been trying to help him file a claim, and that he had told him not to try to file a claim behind Mr. Kopp’s property, because that was “Native” land. He said that Mr. Kopp had been trying to help him claim this claim.
- R.B.V. said that the hospital called to tell him Mr. Kopp had asked him to do several things for him. R.B.V. was asked to bring Mr. Kopp’s truck into town, so he did. Mr. Kopp then asked him to take the truck back, because it had something screwed up on it, so he did. Mr. Kopp

- then asked him to get another truck from his property. R.B.V. thought that Mr. Kopp was “losing it”.
- He said that when he, and C.A.R. were at the hospital, Mr. Kopp signed a letter saying that he could be on Mr. Kopp’s property to do what he wanted, but that a social worker had ripped it out of his (R.B.V.’s) hands. He said that he had known Mr. Kopp since 1992. He said that his mother, J.L.R., had done lots for Mr. Kopp.
 - He said that while Mr. Kopp was in the hospital, he asked R.B.V. to get his Will from its location in the residence behind a calendar, but that when he went to do so, the Will was gone. R.B.V. said that he remembered Mr. Kopp telling him on Christmas morning 2016, when he went to Mr. Kopp’s place to visit him and bring him some presents, that he had written a Will. R.B.V. said that Mr. Kopp told him he had written him into the Will.
 - R.B.V. stated that he returned to the hospital and told Mr. Kopp that he could not find a Will. He said that he was told at that time that he was not allowed to come to the hospital and visit Mr. Kopp any more. He also said that Mr. Kopp had asked him to bring up “another piece of a will paper” to the hospital. While Mr. Kopp was writing it, he was interrupted and told he had to come upstairs. R.B.V. said it “was like they did not want somebody to have something from him.”

- He stated that the “sureties” [the people at the court house] asked him to lock up [something] at Mr. Kopp’s property, and to block the driveway with a piece of equipment. He said that someone had cut the 1.5 inch-cable that had been across the driveway. He said that he went out and “reburied the hole” using his own money (he had been taking cabs back and forth to see Mr. Kopp and go to his property). He said that he fired up the hoe that was sitting there and used it to “dig” the hole, before putting it back where it had been. He said that when he came back some days later, the truck that had been in the driveway had been yanked out of it.

- R.B.V. stated that he knew two people for certain that had been stealing out of Mr. Kopp’s yard. There was a trail coming into the yard from Mud Lake that was being used to do this. He said that someone had chopped the door off Mr. Kopp’s house and stolen the wood stove and everything out of the house. R.B.V. named one individual as “Paul” and provided some further information about him.

- R.B.V. said that Mr. Kopp was poor and did not have money. Mr. Kopp was a miser. He said that he often helped Mr. Kopp, who he said was like a father to him. He said that he helped Mr. Kopp “all the time” and that he had lived at his place for “months and months”. He said he used to do the firewood for years. R.B.V. said that he worked for stuff that he received from Mr. Kopp, and that he never stole anything from him.

- He said that he paid for Mr. Kopp's claim for two years in order to keep it active, and that Mr. Kopp thanked him for doing this. He said that the "sureties" got mad at him for doing this.
- He said that he had never stolen from Mr. Kopp.
- He said that the year before Mr. Kopp had told him that he could have his boat. When Mr. Kopp was in the hospital, R.B.V. took the boat. He said that this was the only thing that he took. However, due to the hassle, he took the boat to the dump and that is where it still is.
- R.B.V. stated that it hurt him not to be allowed to see Mr. Kopp at the hospital. It also hurt him to see people at Mr. Kopp's funeral fighting over Mr. Kopp's stuff. He said that people would take advantage of Mr. Kopp, and that since Mr. Kopp was in the hospital, people were fighting over his stuff.
- He said that people were making deals with Mr. Kopp and then coming back and stealing it back from him. Mr. Kopp told him that some guy had just walked in and put \$26,000 on his table. This was the \$26,000 Mr. Kopp came into the hospital with.
- R.B.V. said that Mr. Kopp just wanted the community to have his stuff, not people.
- When R.B.V. brought Mr. Kopp's truck to the hospital, Mr. Kopp told him he just wanted to jump in the truck with him. R.B.V. said that he

- wished he had just cut Mr. Kopp's hospital band off and left with him to take him home. He felt that all the pills that Mr. Kopp was being given were "tying him down and straining him every day". He said that Mr. Kopp told him that he felt good and there was nothing wrong with him, except he was given all these pills, and he was not a good person and did not feel good.
- R.B.V. said that the day before Mr. Kopp was admitted to the hospital, he had driven his truck to the dump to do some salvage. He admitted that he was not supposed to be driving and that usually his mother drove it for him.
 - R.B.V. told Cst. Smee that where Mr. Ford had written "inheritance" as a source of the gold on the form (Exhibit 34), he should have stated "found" instead, because that is what R.B.V. told him.
 - R.B.V. said that the man who had been staying with his mother was greedy. When R.B.V. did not give him anything, he accused R.B.V. of stealing it from Mr. Kopp. He identified this man as "Heiko". He said that Heiko was trying to stay in Canada and did not want to get deported, so he complained to the police because he thought it would allow him to stay. He said he thought Heiko was hoping to get the money. He said that Heiko was deported anyways.
 - R.B.V. said that Heiko did not go to Mr. Kopp's property or get to know Mr. Kopp.

[95] Cst. Smee could not recall telling R.B.V. that if he did not provide a statement he would be charged.

[96] Cst. Smee stated that he had made some recommendations to his supervisor after he had received the initial information from Heiko Butner. He recommended that a search warrant be prepared immediately, and that several production orders also be obtained. This was to verify the accuracy of information that he had received. Unfortunately, his supervisor told him that the RCMP were not going to be moving forward with these recommendations. After his investigative requests were denied, Cst. Smee then recommended on several occasions that the file be moved to the General Investigation team ("GIS"). He kept the file until it was turned over. He believed that GIS only had one member working within it at the time.

[97] He said that he was angry at this denial of his recommendations for a search warrant and production orders because he felt he was not being allowed to move forward with the file. He said that he was not given any reason for this denial other than his recollection that he was told that they did not have time for this file, and that it was a GIS file.

[98] Cst. Smee stated that he did not feel like he was over his head with this file, as he had just completed a multi-jurisdictional \$500,000 break and enter/fraud file. He had also done a multi-million dollar fraud file in Squamish, B.C. He believed that he had the skill set to work on this file and that he was well aware of what investigative steps needed to be taken. This is why he made the requests that he did to his supervisor.

[99] He stated that the Whitehorse detachment was very busy at that time. He acknowledged that he was also very busy with a number of other files. Cst. Smee agreed that he had received information about items being stolen from Mr. Kopp's property, and the individuals involved, and that he did not follow up with the information about the stolen items because he was too busy. He says he forwarded this information to GIS.

[100] Cst. Smee stated that he just did not have the time to dedicate to this file, although he wanted to do so.

[101] When he was asked whether he agreed with the report of another police officer, Cst. Thur, that stated that at these early stages the investigation was "unfocused and inadequate" and that he wished it "had the attention of an experienced RCMP investigator", he said that he did not believe that was true with respect to his involvement. He believed that he was advancing the file and did advance it enough for it to go to GIS.

[102] Cst. Smee said that he was not aware of any DNA testing or any forensic analysis having been done on the items seized.

[103] He said that he took control of the gold items that had been seized by Cst. Hornblower and Cst. Turner, who provided them to Cst. Heighington who then logged them into a temporary exhibit locker. On October 24, 2017, when Cst. Smee took possession of these items from Cst. Heighington, he logged them into PROS and put them into an exhibit locker. He said that it took him approximately one and one-half months to log the exhibits because Cst. Heighington was in and out; their two work

schedules did not mesh well, and his work schedule had not provided him an opportunity before that date. He was unsure what the RCMP policy was in regard to this process. Only Cst. Heighington had access to the temporary exhibit locker.

[104] Cst. Smee stated that he did not have any contact with the Mining Recorder's Office.

[105] He also did not follow up with anybody about the map on which R.B.V. had shown him where the claims were located. He said that he did not know what the numbers on the map meant. He just knew what R.B.V. told him that the map meant. He said that he believed R.B.V. had offered to take him out to where the claims were, but he did not go out there or ask any other RCMP member to.

[106] He agreed that R.B.V. told him that there was still some material, i.e. precious metal, in these tubes, and that he had offered to take him to where he had found the items in the tubes, but that he did not go out there with R.B.V. or otherwise. He said it would have been hard for him to find, like a "needle in a haystack". He said that he did not know whether what R.B.V. told him about more material being out there was a fiction or not. He agreed that there may or may not have been more material out there, as well as more potential information. He said that a number of different things could happen to the material or information that may have been at the location R.B.V. told him about.

[107] Cst. Smee stated that R.B.V. showed him a picture of what he claimed was his claim post. He did not recall being shown a picture of the tubes. He said that he was shown some photos with snow, but that these were poor quality.

[108] He agreed that R.B.V. had told him that two people were stealing things from Mr. Kopp's property, but that he did not ask R.B.V. for the names of any of these individuals at any time.

[109] Cst. Smee recalled having a conversation with the PGT regarding R.B.V.'s claim to have to have barricaded access to Mr. Kopp's property. He was not sure who told who this information, however.

[110] He said that he was not aware of a statement Mr. Ford made on September 9, 2017, to Cst. Turner. He said that he did not know who Mr. Ford was. He was not aware that Mr. Ford said that R.B.V. and C.A.R. said that they had four more bars of silver.

[111] He agreed that this statement should have been on the police file, and that this is information he should have had as lead investigator at that time. He did not recall seeing this statement on the police file.

[112] He said that he did not contact the company located in Vancouver whose name was stamped on the silver bar to see if they had any records regarding provision of this silver bar to Mr. Kopp.

[113] Cst. Smee stated that his last real involvement in the file was to take the statement from R.B.V. on November 11, 2017.

Jordie Amos

[114] Mr. Amos was employed at the Mining Recorder's Office. He recorded mining claims, registered them and issued paperwork, including permits. He dealt with walk-in

clientele. Mr. Amos had previously been employed as a Sheriff. He was working in this capacity when he had visited Mr. Kopp's claim in February or March 2017. He attended with the PGT and a deputy sheriff from his office. He was at the property in order to assist the PGT in locating and securing Mr. Kopp's assets.

[115] He noted that a truck had driven through a chain that had been strung across the driveway. He also noted a new trail that had been made on the other side of the property.

[116] Mr. Amos stated that the property was a mess of vehicles, equipment and garbage. The inside of the house had a lot of stuff inside and was in a hoarder state, with a small pathway into the bedroom and kitchen.

[117] Mr. Amos attended the property on one other occasion approximately a month after the first visit.

[118] Mr. Amos noted on the second visit that a large number of logs had been removed from the property. He was unable to say whether any items had been removed from the property, other than a four-wheeler that had been beside the residence. He was unable to locate the keys to the four-wheeler on the first visit.

[119] Mr. Amos left the Sheriff's office in March 2017 to begin employment at the Mining Recorder's Office.

[120] He confirmed that on April 18, 2017, R.B.V. came into the office and renewed Mr. Kopp's claims for an additional two years (Exhibit 9). He said that Mr. Kopp's claims still had a year left on them when R.B.V. renewed them. Had they been allowed to expire

on December 31, 2017, they could not have been renewed by anyone else as they were on Ta'an land. They had been grandfathered in such that Mr. Kopp, or anyone acting on his behalf, could renew them.

[121] This was the first time Mr. Amos met R.B.V., although he had heard his name mentioned in the course of attending at Mr. Kopp's property as a Sheriff.

[122] Mr. Amos said that he had several interactions with R.B.V. in the fall of 2017. On one occasion R.B.V. came in and was looking to sell some gold. C.A.R. and another younger person were with him. R.B.V. showed Mr. Amos a small film container which had some small pieces of "chunky" gold. This was a common container for miners to use for carrying gold. R.B.V. pulled out a second container with gold, and C.A.R. also pulled out one container of gold. They said they had between 9 – 16 ounces of gold.

[123] Mr. Amos asked R.B.V. where the gold came from. R.B.V. said that they had recently hand-panned it on a creek.

[124] Mr. Amos said that this looked like "clean" gold. He told them that they had no right to keep this gold and that they should go and throw it back into the creek. It was against the regulations to keep the gold. He also told them that the Mining Recorder's Office did not buy gold, and he recommended Locksmith Services as a gold-buying service.

[125] He said that he pulled out some maps and R.B.V. and C.A.R. attempted to locate where they had found the gold. They had said it was a creek adjacent to Horse Creek and adjacent to Mr. Kopp's claim. They had trouble identifying the area.

[126] R.B.V. said that he had worked on claims with Mr. Kopp.

[127] Mr. Amos could not recall for certain whether either R.B.V. or C.A.R. talked to him about where they had been staking a claim. They said that they had staked a claim the day of the panning.

[128] Mr. Amos provided them some paperwork and they left. He believed, from his notes, that the date was September 1, 2017.

[129] R.B.V. and C.A.R. returned a few times within the next month.

[130] He said that C.A.R. had filled out the paperwork for a claim to be registered. This Application for Grant for Placer Mining is dated August 30, 2017. Within it, C.A.R. states that she staked the claim on August 27, 2017.

[131] There was no mention of any other precious metals. They did not say anything at any time about the gold they possessed having been gifted to them.

[132] Mr. Amos initially did not issue a permit for a claim because R.B.V. and C.A.R. were not 100% sure of the location. He agreed that from the photos C.A.R. provided him, that the posts used to stake the claim may have been deficient in the information they provided. He said it was not unusual for individuals to have trouble identifying claim locations unless they used a GPS or other landmark.

[133] C.A.R. returned to the Mining Recorder's Office on September 6, 2017. C.A.R. was still trying to register a claim, but she was told that she needed to know the exact location of each post.

[134] C.A.R. and R.B.V. attended again on September 15, 2017. They still had difficulty pinpointing where the claim was located on the map.

[135] Ultimately, they were able to provide the necessary information in order to be granted a claim. The Application for Grant for Placer Mining made by R.B.V. was dated September 19, 2017 (Exhibit 10). He believed that it was C.A.R. who filled out the paperwork. He acknowledged that it was possible someone else in his office could have filled it out. Within this Application, R.B.V. states that he staked the claim on September 17, 2017. The Grant for Placer Mining for the Kye claim was issued on September 19, 2017 for a period of one year. It was not extended past that date and is now expired.

[136] I note that the “Pete” and “Irene” claims expiry date was December 31, 2019. Mr. Amos reviewed the map and stated that Mr. Kopp’s property appeared to be outside of the claim boundaries.

[137] He agreed that the Kye claim was located on a tributary to Horse Creek. He agreed that R.B.V. and C.A.R. had said that the Kye claim was adjacent to Horse Creek.

[138] He was not aware of any claims Mr. Kopp may have had that were near the Kye claim.

[139] Mr. Amos stated that his conversations with R.B.V. and C.A.R. were positive. Due to the large amount of gold they had brought in and shown him, and his previous

involvement with Mr. Kopp's property, Mr. Amos said that, nonetheless, he was very suspicious.

Tracie Harris

[140] Ms. Harris said that she had been friends with Mr. Kopp since they met in Dawson City in 1977. She said that they had begun a romantic relationship in 1978 that never really ended, although their relationship had changed over the years. They had not been romantically involved for a number of years prior to Mr. Kopp's death.

[141] She and Mr. Kopp were neighbours, and in the last few years she saw Mr. Kopp a couple of times a week, or month. He would come to the landfill where she was a volunteer at the free store. He would be looking for copper and other metals. She said that he was a scrap collector. His claim was full of stuff, old vehicles and equipment, trucks and water pumps etc. He had a hard time getting rid of this stuff that he had collected. She said that in the last 10 years, she had mostly seen Mr. Kopp while he was in her area, although she had been to his place a few times.

[142] Ms. Harris knew Mr. Kopp to have been involved in mining and hiring out himself and his equipment. This was for mining mostly in the Dawson City area. She said that Mr. Kopp's work had tapered off in the last four to five years prior to his death.

[143] She said that Mr. Kopp had told her he hated banks.

[144] Ms. Harris said that earlier, when in Dawson City, Mr. Kopp would look for claims that had lapsed, renew these claims, and then sell them to others to mine. He would sometimes help them mine.

[145] She said that Mr. Kopp had lived at his Horse Creek property since 1978/79, which was approximately 10 km from her Deep Creek property. She said that Mr. Kopp's Horse Creek claim was not really a mining operation, although Mr. Kopp had a grid lay hooked up to a sluice box. She said that no gold had been found at Horse Creek. However, Ms. Harris said that Mr. Kopp kept doing the assessment required to renew the claims.

[146] She said that Mr. Kopp hid gold and silver at his claim, which was normal for miners in her experience, until they took it to the assay office. She said that she had seen Mr. Kopp in possession of precious metals. This included gold bricks. He once brought her two gold bricks in a bag as security for a \$15,000 loan she provided him to purchase a cherry-picker. She believed that this was in 1991. He repaid her the money two and one-half months later and she gave the gold bricks back to him.

[147] Ms. Harris said that she was not aware of any rumours Mr. Kopp had a stash on his property. She never saw any stash belonging to him.

[148] She said that she believed that he had gold and that she had told the police that it was buried off Mr. Kopp's property. She said that she did not know how many stashes Mr. Kopp had. She said that he would joke with her about where his stash was hidden.

[149] She knew that in the 1970's Mr. Kopp possessed some two-ounce gold Kruggerand coins. She was not sure what he did with them. She had sold hers in the 1980's.

[150] She had also seen a small amount of differently shaped gold nuggets in the early 1980's.

[151] Ms. Harris said that in 1991, Mr. Kopp had given her advice about hiding gold. He had told her to dig a hole behind an outhouse and bury it there, because no-one would think of looking there. She said that she knew Mr. Kopp had gold and that he was secretive about it. She agreed that she did not ask him and he did not tell her. She said that she thought that he had more than one stash, and that these stashes would not be too far from the main cabin. Mr. Kopp would likely place something on top of the buried stash so that he would know where it was.

[152] She said that she last saw Mr. Kopp in October 2016, before she left for Mexico. She said that he seemed a little forgetful but not ill. She was not concerned. She said that when she returned to the Yukon in April 2017, Mr. Kopp was in the hospital, and that she was not allowed to visit him there because she was told by the hospital staff that he "was not stable".

[153] Ms. Harris said that she did not know any of the defendants, and that she did not recall Mr. Kopp talking about any of them.

[154] She recalled that there was a teenaged boy that used to hang out at Mr. Kopp's property. She said that Mr. Kopp had been unhappy with him when he spilled an oil container on the ground. She said that she did not know who he was, and that Mr. Kopp had stated: "That kid drives me crazy". She thought that this had maybe been five or six years earlier, but that she was not too sure.

[155] She said that this boy was the same person who was at the Celebration of Life for Mr. Kopp with his mother, who she also saw for the first time.

[156] She agreed that in the last few years, she was not really aware of who came and went from Mr. Kopp's property. She believed that Mr. Kopp's only income came from the government in these last few years.

[157] She agreed that she had encouraged Mr. Kopp to prepare a will, and that he had told her he had done so. She believed that this occurred in the mid 1980's. Mr. Kopp did not tell her what was in the will. She agreed that she was aware that Patricia Stark had been named as Executor.

[158] She agreed that other people had items that belonged to them on Mr. Kopp's property. She said that she was on his property after Mr. Kopp died, and that she saw other people, including a Roy Pawluk, removing stuff. She said that there were lots of tracks going in and out of Mr. Kopp's property.

Reba Miller

[159] Ms. Miller testified that she was a social worker at the hospital in early 2017. Mr. Kopp was admitted to the hospital on January 12, 2017, and she met him for the first time at 10:00 a.m. on the 13th. She understood him to have memory issues, and that he was unable to recall who he was and where he was. Her task was to identify him.

[160] She said that Mr. Kopp was very dishevelled, confused, distressed and frightened. He seemed to have no understanding. He was non-communicative.

[161] Later that day, or the next day, she learned who he was from Adult Protection. She was involved with Mr. Kopp until Ms. Haley Henderson-Thur returned to work on January 25 or 26, 2017.

[162] Ms. Miller said that Mr. Kopp's condition slowly improved in that approximate two-week period, to the point where he seemed to understand where he was and that he was having some troubles with his mind. He reacted well when his dog was brought in, saying the dog's name.

[163] She was unable to locate any relatives of Mr. Kopp's. She said one couple that were Mr. Kopp's neighbours came to visit. They were concerned about him and had helped Mr. Kopp over of the years.

[164] There were also two older gentlemen, one who called himself a "friendly-enemy", and the other who she thought may be work-related.

[165] There were other visitors, including a real-estate agent.

[166] Ms. Miller said that a younger male in his 30's visited Mr. Kopp. He left and returned later that day with a woman. They were together in Mr. Kopp's room. They were trying to shut the door. The male was trying to get Mr. Kopp to sign something. The couple were in his room and the male was holding a paper over the bedside table. They said they were looking for Mr. Kopp to give them his consent to stay in his place and watch over his things. She saw them put a pen in his fingers. She said that she questioned them about what they were trying to get Mr. Kopp to sign. The male's name was R./B. and the female's name was C. She later learned that R./B.'s last name was

V. from reading it on the note. They told her people had been taking stuff from Mr. Kopp's property, and that they wanted to occupy his cabin in order to protect his property.

[167] It seemed to her that they were trying to force Mr. Kopp to sign the paper. She said that Mr. Kopp seemed somewhat confused. She said it felt suspicious to her. She did not feel that Mr. Kopp was in a position to sign anything. Ms. Miller left the room but did not take this note from R.B.V. She believed that later on a nurse had taken the note away and placed it on Mr. Kopp's file.

[168] Ms. Miller said that she saw R.B.V. maybe three or four times at the hospital. On one other occasion, she heard him ask Mr. Kopp where his black box was. He seemed to be trying to get Mr. Kopp to tell him where this black box was. Mr. Kopp appeared to be confused, and was not responding, although he seemed to her to be happy that he had a visitor.

[169] She saw both R.B.V. and C.A.R. another time in Mr. Kopp's room. She reminded them to keep the door open. The woman said her last name was "R.". They stayed maybe five or 10 minutes. Mr. Kopp did not seem to be particularly distressed. There was a third person present at the time. Ms. Miller did not overhear anything.

[170] She felt like this couple had an agenda. They did not ask her about Mr. Kopp's medical care. She thought that the way they conducted themselves was vague and secretive.

[171] Ms. Miller recalled another occasion on January 18, 2017, where she was paged to come to Mr. Kopp's room. A woman named Joanne or (Louise) was there. She refused to provide her last name. She said that she was an old friend of Mr. Kopp's since the 1990's. Mr. Kopp seemed agitated, sitting on the bed and shrieking: "She says that I owe her money...that I need to pay her money." She said that Mr. Kopp seemed frightened and upset, and that he needed to get money to pay her. She told her that if Mr. Kopp did not settle down, she would have to leave. She left.

[172] She said that she believed the woman was R.B.V.'s mother. She believed that she may have visited Mr. Kopp on two occasions. Ms. Miller had written down that this woman was "helpful" to Mr. Kopp, although she could not recall why she had written that. She said that she knew Mr. Kopp needed batteries for his hearing aid, but she could not say whether this woman brought them for Mr. Kopp.

[173] She agreed that she had written down "helpful" after this woman visited Mr. Kopp in her notes from January 20, as well as "wrong size hearing aid batteries". She thought, however, that this may be in reference to a Rose Burns, and not this woman.

[174] Ms. Miller said that, while all visitors to Mr. Kopp should be reflected on his chart, it is possible that he had more visitors than what is written in the chart.

[175] Mr. Kopp told her on January 19 that he owed several locals some money.

[176] Ms. Miller stated that she was not concerned enough about Mr. Kopp's visitors to make a report to Adult Protection. What she heard and saw seemed relatively minor to her.

Clarence Berndt

[177] Mr. Berndt is a neighbour of Mr. Kopp. He said that he has known Mr. Kopp since he moved out to his “so-called mining property” in approximately 1981. He stated that they were “sort of” friends. They became closer friends in the last few years. He would go to Mr. Kopp’s land to visit and help him and Mr. Kopp would also come to his place to visit and to drop things off for him and his wife. In the last five years, he estimated that he saw Mr. Kopp every two to three days. He would use his backhoe to help Mr. Kopp with the required assessment work for his mining claim. He said that he was not sure if Mr. Kopp’s claim was ever properly staked.

[178] He said that the only gold he saw at Mr. Kopp’s claim was “flour” gold. He never saw Mr. Kopp with any gold nuggets.

[179] Mr. Berndt agreed that he had told the police that he had never really seen Mr. Kopp with any gold or precious metals other than silver. He agreed that everyone “in the countryside” talked about Mr. Kopp having a stash, including under the doghouse. He said that on one occasion, in the fall of 2018, he noticed that the doghouse had been upset and dug under. He helped replace it and a few days later the doghouse was upset again and dug under.

[180] He stated that Mr. Kopp’s property was a “terrible mess”, and that it had taken years to get that way. Stuff was all spread out. He said that Mr. Kopp lived poorly, sometimes eating out-dated food from stores that was given to him.

[181] He said that Mr. Kopp hated banks. In the last couple of years, Mr. Kopp seemed to be more forgetful. Mr. Kopp was alone 90% of the time that he saw him. He said that Mr. Kopp had a lot of friends, however, and that “everybody knew Tony”. He said that he did not know any of Mr. Kopp’s close friends.

[182] Mr. Berndt said that he knew all three defendants from seeing them at Mr. Kopp’s funeral. He agreed that he may have seen the defendants before Mr. Kopp was in the hospital. He had been friends with C.A.R.’s mother and father. He had never, however, seen any of them at Mr. Kopp’s residence. He further stated that their names had never come up in a conversation with Mr. Kopp.

[183] He said that when he last saw Mr. Kopp before he was admitted to the hospital, Mr. Kopp seemed particularly forgetful. He tried to give Mr. Berndt a set of boots. At times, he would forget why he had come to Mr. Berndt’s house. He said that Mr. Kopp was full of pills from the hospital, and that his condition was worsening pretty badly. He said that there were numerous incidents where Mr. Kopp was forgetful.

[184] He said that he would check in on Mr. Kopp every three to four days. On one occasion, Mr. Kopp was sitting in his house with the lights and the wood furnace off. It was freezing in there, but Mr. Kopp did not seem to notice. Mr. Kopp said the propane burner on the stove would heat the uninsulated house. On that occasion, Mr. Kopp did not at first recognize Mr. Berndt.

[185] Mr. Berndt stated that he first visited Mr. Kopp in the hospital about a week after he was admitted. He visited a second time about three days after the first visit. He said that Mr. Kopp recognized he and his wife right away, and asked them to care for his

dog. Although Mr. Kopp could not recall how he ended up in the hospital, he was able to carry on a conversation with him.

[186] Mr. Berndt stated that he visited Mr. Kopp about four or five times over the next three months, until further visits were denied. About one month after Mr. Kopp was hospitalized, he noticed that Mr. Kopp's condition was deteriorating. Mr. Kopp wanted to get out of the hospital and wanted to know where his things were. Throughout all his visits with Mr. Kopp at the hospital, Mr. Kopp would be saying strange things.

[187] He also stated that while he was visiting Mr. Kopp at the hospital, people would be coming in and trying to get deals from Mr. Kopp. They would offer Mr. Kopp money for some items. Mr. Kopp would have a sensible conversation with some of these individuals, negotiating a deal. Mr. Berndt said that he would just sit and listen. He always left before a deal was reached.

[188] Mr. Berndt stated that he saw many tracks on Mr. Kopp's driveway and saw people going into and out of the property on the driveway. He said lots of people had things stored on Mr. Kopp's property. He saw that things were missing from the property, including a loader. He saw that the woodpile was disappearing. He said that people just seemed to be helping themselves. He agreed that it seemed like a "circus" with all the coming and going and stuff being removed.

[189] He said that someone had vandalized Mr. Kopp's house, going through it from end to end, as well as his vehicles and garage.

[190] Mr. Berndt said that he never saw any of the defendants on the roadway into Mr. Kopp's property.

[191] He said that a "Sandy" was the only woman who he saw that lived with Mr. Kopp at his residence. He agreed that J.L.V. had appeared to be a girlfriend of Mr. Kopp from what he had heard. He had not ever seen the two in a romantic way.

Hayley Henderson-Thur

[192] Ms. Henderson-Thur has been a social worker at the hospital for 11 years. She returned to work from holidays on January 24, 2017. She believes she met Mr. Kopp on a "handover" from Ms. Miller on that day. She worked with Mr. Kopp until his death on May 2, 2017.

[193] Mr. Kopp was in a secure medical ward at the time of his death. Ms. Henderson-Thur saw him daily Monday through Friday while he was there. Prior to his placement there, which Ms. Henderson-Thur stated was in the beginning of February, 2017, she had seen him regularly in his prior location in the medical unit. She would check in and say hello. However, his condition deteriorated to the point that his needs had exceeded what the medical unit was able to provide. At that time, Mr. Kopp was more agitated, angry and threatening. He was becoming difficult to manage.

[194] Upon taking over responsibility for Mr. Kopp, she learned that he had a large sum of cash on him at the time that he was admitted to hospital. This amount was \$24,550. It was stored in Inpatient Safe Keeping. From this amount she retained \$100 for incidentals and turned the remainder over to the PGT.

[195] When she first met Mr. Kopp he was very confused and disoriented as to person, place and time. She considered him to be “cognitively impaired”.

[196] She stated that Mr. Kopp was dishevelled and unable to attend to his personal grooming.

[197] She said that she had many conversations with Mr. Kopp trying to ascertain his personal circumstances. During the first two weeks that she interacted with him, Mr. Kopp was much better than he was towards the end. She was able to have a conversation where each could understand the other. Mr. Kopp talked about his dog, Noisebox, with her. At times, however, Mr. Kopp had a questionable grasp of reality. Ms. Henderson-Thur stated that Mr. Kopp was being medicated in order to control his behaviour and calm him. This impacted Mr. Kopp’s ability to respond.

[198] Ms. Henderson-Thur stated that she saw R.B.V. on one occasion visiting Mr. Kopp. This occurred on January 31, 2017, while Mr. Kopp was in the medical ward. The door was open at the time. She said that she did not overhear anything, and it appeared as though R.B.V. and Mr. Kopp were interacting.

[199] When Ms. Henderson-Thur returned approximately half an hour later, R.B.V. was gone. She spoke to Mr. Kopp, who told her that the visitor was R.B.V. He also told her that he did not trust R.B.V. because he had “bad genetics” (which I recognize as being hearsay). Mr. Kopp was not angry when he said this. He also did not appear to be alarmed or distressed. He was concerned that he could not find his keys which he believed were missing from the side of his bed.

[200] Ms. Henderson-Thur also observed Mr. Kopp interacting with Mr. Berndt's wife, Rose. Mr. Kopp wanted to leave with them after one visit, and could not understand why he was not able to.

[201] She stated that she needed to identify someone to become a substitute decision-maker for him and provide necessary consents as he was medically unable to do so. This was difficult to do due to his impaired memory and inability to follow the conversation she was having with him.

[202] Ms. Henderson-Thur received a message on February 15, 2017 from J.L.V., in which J.L.V. stated that she was willing to be Mr. Kopp's decision-maker. Ms. Henderson-Thur then had a phone conversation with J.L.V. on February 20, 2017. J.L.V. asked her why no visitors were allowed for Mr. Kopp. She also asked why he needed a decision-maker. She said that Mr. Kopp was well known to them, and that her son was safe-guarding Mr. Kopp's property. She again stated that she was willing to act as a decision-maker for Mr. Kopp. Ms. Henderson-Thur directed J.L.V. to a Mr. Doug Knutson at Adult Protection.

[203] The only person who she identified as a possible substitute decision-maker was Mr. Berndt, however that was not able to be worked out. Therefore, she made a referral to the PGT. This occurred on February 9, 2017. Joy Vall was appointed as the Public Guardian's representative.

[204] Mr. Kopp was identified as suffering from severe advanced dementia. His mental state rapidly declined over the three months that he was at the hospital. Towards the

end, Mr. Kopp was incapable of caring for himself. He also was not capable of speaking.

[205] She noted him to become more agitated and upset after he had visitors. She felt that there was a need to restrict the visitors to Mr. Kopp. She said that once the Public Guardian was acting for Mr. Kopp, there were some visits from Mr. Berndt near the end.

Shauna Clare

[206] Ms. Clare was a client administration officer with the PGT. She became aware of Mr. Kopp's file in June 2017, within a couple of weeks of her start date of June 5, 2017.

[207] Ms. Clare quickly located Mr. Kopp's Will at a local law firm. Mr. Kopp signed this Will on December 21, 1985 (Exhibit 4). In this Will, he left the residue of his estate to the Society for Engineers for the Yukon Territory. On June 20, 2017, the Executor named in the Will renounced this role as she did not want to manage the estate. Therefore, the PGT assumed this responsibility.

[208] Ms. Clare stated that she made six visits to Mr. Kopp's Horse Creek property. The first visit was on August 16, 2017, and the last visit was October 5, 2018. Ms. Clare was accompanied on these visits. Her purpose in going to the property was in order to protect and secure Mr. Kopp's assets.

[209] Ms. Clare agreed that she did not know the boundaries of Mr. Kopp's claim, and was not able to say with certainty which items on the property were situated on or off the claim.

[210] She stated that she had heard, and that it was commonly known, that Mr. Kopp would hide valuables, including gold, on his property.

[211] On her first visit to the property, she discovered 175 one-ounce maple leaf silver coins hidden in tubes in a banking bag in a van. These coins were dated 2015. No documentation indicating ownership of the van was discovered.

[212] Ms. Clare did not discover any other precious metals on her subsequent visits to the property. Neither was she aware of any documentation in regard to any precious metals being found on the property.

[213] Ms. Clare also observed some lenses for a 10-inch diameter telescope in Mr. Kopp's residence, although she did not find the telescope. Subsequently, on September 18, 2017, J.L.V. was at the PGT office where she disclosed that she had the telescope, as well as a photo album. Ms. Clare had been told by J.L.V. that she and Mr. Kopp used to watch stars together using the telescope. J.L.V. was told that the telescope was part of the estate and that it needed to be returned. J.L.V. was not asked to return the photo album. The telescope was delivered to the PGT as requested.

[214] Ms. Clare also confirmed the existence of a receipt for moving services that Mr. Kopp provided J.L.V. in 1994.

[215] Ms. Clare noticed that on every visit to the property more items would be missing from the property, from both inside and outside the house. This included buckets of paydirt. She noted a number of tracks going in and out of the property. She said that the barricades placed across the driveway were not successful in stopping traffic.

[216] On her last visit to the property, she noted that a doghouse had been propped up against the house and it had been dug underneath. It had not been propped up like this on the previous visit to the property. There were a number of doghouses on the property.

[217] Ms. Clare had several telephone conversations with C.A.R. on July 24, 2017. She also spoke with her on other occasions and received voice mails from C.A.R.

[218] In a voice mail, C.A.R. said that she and R.B.V. had placed a lock on Mr. Kopp's house to secure it, and had returned the key to the PGT. C.A.R. also said that she and R.B.V. had Mr. Kopp's truck and they wanted to purchase it.

[219] In a phone call Ms. Clare said occurred on August 3, 2017, C.A.R. stated that she and R.B.V. had been staking a claim near to Mr. Kopp's property. They stopped by his house to pay their respects and noticed that the house had been destroyed. They saw another individual, whom they named, driving a truck on the property. They believed that Mr. Kopp's winch and headache rack were being taken by this individual. They provided the license plate number of this truck. They told Ms. Clare that they believed the road to Mr. Kopp's residence needed to be blocked. R.B.V. suggested placing piles of gravel on the roadway in order to block it.

[220] She said that she told C.A.R. and R.B.V. that they needed to stay away from the property, and R.B.V. responded that he understood.

[221] In cross-examination, Ms. Clare agreed that C.A.R. had told her about this individual on July 24, 2017.

[222] Ms. Clare said that this individual contacted the PGT on August 3, 2017. He told her that he would put a gate across the roadway and provide the PGT with the key. He also told her that some of his items were on Mr. Kopp's property.

[223] Ms. Clare said this individual was not authorized by the PGT in regard to conducting any activity on the property. She was not sure whether he had been authorized to take possession of the winch and headache rack.

[224] Ms. Clare stated that she was subsequently provided photos R.B.V. had taken of the damage to the house.

[225] Ms. Clare stated that Mr. Berndt took items from the property and arranged to pay for these items afterwards. Ms. Clare said this was not the correct procedure, as a sealed bid auction was the correct way to proceed. The PGT, however, allowed Mr. Berndt to keep these items and pay for them. This all occurred after the conclusion of the silent auction.

[226] Ms. Clare stated that the large items were sold through a silent auction and sealed bid process. Individuals who had expressed interest in the items were contacted in order to allow them to make bids. The defendants were not contacted due to the ongoing investigation. With respect to the remaining items, individuals who had expressed an interest in these were allowed to purchase them.

[227] Ms. Clare said that hardly anything from the property was sold in the first six months.

[228] Ms. Clare agreed that the individual named by C.A.R. and R.B.V. as being on the property August 3, 2017, had purchased a lock for the property, for which he was reimbursed, and that this individual had keys to the property.

[229] Ms. Clare agreed that the PGT was never able to fully secure the property. Although a request for security cameras was made to Safer Communities and Neighbourhoods Unit, they were unable to obtain any to place on the property.

[230] She also agreed that a number of people had their own items stored on Mr. Kopp's property.

[231] She agreed that Mr. Kopp's assets were first secured by the PGT on August 16, 2017. Some, but not all of the items, were inventoried.

[232] She confirmed that R.B.V. had re-registered Mr. Kopp's "Pete" and "Irene" claims in April 2017.

[233] Ms. Clare said that Mr. Kopp kept a lot of notes, and that she found them in various locations in somewhat of a state of disarray, although she cannot say who created the disarray. She said that Mr. Kopp's financial documentation was located in bags and were in sequential order.

[234] She agreed that there may be other documents that were not located.

Michelle McDonnell

[235] Ms. McDonnell assumed her responsibilities at the PGT on July 31, 2017. She became aware of Mr. Kopp's file within the first week that she was employed in this

capacity. She attended at Mr. Kopp's claim property on August 16, 2017 and October 5, 2018.

[236] She became involved in the RCMP investigation in this matter in the fall of 2017. She spoke with Cst. Smee and also called the Mining Recorder's Office regarding an individual selling gold, and a suspected theft.

[237] Ms. McDonnell spoke with Mr. Ford from Murdoch's on September 14, 2017.

[238] She spoke with J.L.V. in person on September 18, 2017, and by telephone on October 11, 2017. J.L.V. inquired about the investigation. She was upset that the RCMP were involved. She gave the names of two individuals who she said were involved with Mr. Kopp's property. She also told Ms. McDonnell that she had the telescope and a photo album. She thought that Mr. Kopp had left her the telescope in his Will, although she did not say that she had seen this Will. She said that Mr. Kopp had given her the telescope and photo album the previous summer. She stated that she and Mr. Kopp had been in a 20-year relationship. Ms. McDonnell gave her permission to keep the photo album.

[239] She also said that her son had Mr. Kopp's boat.

[240] Ms. McDonnell said that there was lots of talk about Mr. Kopp having had gold on his property. She agreed that some of Mr. Kopp's equipment had been sold and the money went into the estate. She said that she believed the gold and silver that was Mr. Kopp's would belong to the estate. This included the silver coins Ms. Clare had discovered, as well as the assets seized by the RCMP in this proceeding.

[241] Ms. McDonnell said that the proceeds of Mr. Kopp's estate would be used to cover some of the costs of the cleanup of Mr. Kopp's property.

Other evidence

Affidavit of Sabine Morehouse

[242] By agreement, filed as Exhibit 30 was the affidavit of the Assistant Branch manager at the Whitehorse branch of the Royal Bank. The attached documents show that Mr. Kopp ordered the following from the Royal Bank:

March 21, 2012: 48 one-ounce silver maple leaf coins;

April 12, 2012: 3 one-ounce silver maple leaf coins;

May 29, 2012: 145 one-ounce silver maple leaf coins;

April 16, 2014: 335 one-ounce silver maple leaf coins;

7 one-ounce gold maple leaf coins.

[243] The undated transaction records show that Mr. Kopp was shipped the following:

- 350 one-ounce silver maple leaf coins;
- 175 one-ounce silver maple leaf coins;
- 178 one-ounce silver maple leaf coins.

Admission

[244] The RCMP made efforts to locate the individual identified as “Heiko” in R.B.V.’s statement. They learned that he had been deported.

Betty Lou Bergeron

[245] Ms. Bergeron was the only witness called by the defence. She was a friend of J.L.V. She had last seen J.L.V. a month before the trial. She had last seen Mr. Kopp about four years before he passed away. She had seen him on this occasion at J.L.V.’s home.

[246] She was aware that Mr. Kopp had passed away.

[247] Ms. Bergeron lived in Whitehorse and Dawson City in 1992 and from 1994 through 1998. She currently resides in Watson Lake.

[248] Ms. Bergeron testified that J.L.V. also lived in Whitehorse from 1993 – 1998.

[249] She had been introduced by J.L.V. to Mr. Kopp in 1992. She stated that she knew J.L.V. and Mr. Kopp to have been in an intimate relationship, although they had never lived together.

[250] She said that Mr. Kopp would come to J.L.V.’s residence in Whitehorse. She considered him to be a soft-spoken and generous man. She felt that he and J.L.V. were in a very caring relationship. He would bring over KFC, pizza, and homemade pie.

[251] She said that she knew Mr. Kopp to have been somewhat of a father figure to R.B.V. and to R.B.V.’s brother, C. She observed Mr. Kopp together with J.L.V. and her

two sons several times. She said that she believed Mr. Kopp took both R.B.V. and his brother out to his property to help him out. She said that he taught both of J.L.V.'s sons a lot, as they had no father figure in their lives. She felt that Mr. Kopp helped the two boys in a very positive way and she was not aware that they had any unhealthy or toxic disagreements.

[252] Ms. Bergeron stated that she had never been to Mr. Kopp's Horse Creek residence.

[253] In cross-examination, Ms. Bergeron stated that J.L.V. had approached her about testifying at trial approximately one week before. They talked about Mr. Kopp and the two boys.

[254] Ms. Bergeron stated that she knew the boys did things out at Mr. Kopp's residence.

[255] She said that she was not aware of the reason J.L.V. and Mr. Kopp ceased being in a romantic relationship, although she knew they had kept in touch over the years.

Voir Dire Evidence

[256] There were several *voir dire*s within the course of the trial. By agreement, all the evidence heard on these *voir dire*s was admitted as evidence at the trial proper. By agreement, J.R.'s brother's statements were not admissible for the truth of their contents. Statements made by C.A.R. and R.B.V. to others in their presence were admissible as admissions made by the defendants.

Submissions of Counsel

Crown

[257] Crown counsel submits that the charges are possession of stolen property.

Therefore the items did not need to have been on Mr. Kopp's property. It is enough that the defendants were in possession of Mr. Kopp's items, without any legal right to be in such possession.

[258] Counsel submits that the only reasonable explanation for the defendants being in possession of the "treasure" is that R.B.V. found the treasure on August 31, 2017, in the evening, and shared it with the others.

[259] Counsel submits that this is a case of circumstantial evidence. There are seven factual propositions founded in the evidence that prove the guilt of all three defendants beyond a reasonable doubt.

1. Mr. Kopp had wealth, as evidenced from his years of mining work, his frugal lifestyle, ownership of gold bars and Kruggerands, had purchased gold and silver coins, and the over \$24,000 found on him when he was admitted to the hospital;
2. Mr. Kopp stashed his wealth because he was a hoarder who did not trust banks. He told Ms. Harris where to bury her gold, and 175 silver coins found in a van steps away from his cabin could only be reasonably explained as being Mr. Kopp's;

3. People believed Mr. Kopp had buried treasure and went there to look for it. This is evidenced by the rumours several of the witnesses heard or were aware of about Mr. Kopp's stashes, the numerous people who were entering and leaving Mr. Kopp's property after he was admitted to the hospital, at times dismantling barriers to do so, the fact that many items went missing, and the evidence of searches having occurred. This provided a motive for the defendants to be interested in Mr. Kopp's property, and there was evidence R.B.V. had both the opportunity to be, and in fact was, on Mr. Kopp's property;
4. The defendants were very interested in Mr. Kopp's property, as evidenced from their interactions with Mr. Kopp, the staff at the hospital, the PGT, and R.B.V. trying to be appointed to care for the property, J.L.V. trying to become Mr. Kopp's substitute decision-maker, and their intent and actions professed to be to protect Mr. Kopp's property from others being there, but really in order to allow themselves a greater opportunity to search for treasure themselves. It is not reasonable to accept that the true motive was to protect Mr. Kopp's assets. Also, evidence of this is R.B.V. renewing Mr. Kopp's claims, and R.B.V.'s stated belief he had been written into Mr. Kopp's Will and that he went to the property to search for it.
5. R.B.V.'s discovery of the gold on August 31, 2017, and steps taken thereafter, is inconsistent with having been in possession of the gold for long. C.A.R. spent over \$3,000 at Murdoch's on September 2,

- 2017, and R.B.V.'s bank records (Exhibit 36) show undisciplined spending of large amounts of money over very brief periods of time after coming into possession of that money. The only reasonable explanation for this post-offence conduct of the defendants is knowledge of the theft of the treasure.
6. J.L.V. received a coin from the "discovered" treasure and knew it was stolen, as evidenced by her taking a coin identical to that in the possession of R.B.V. and C.A.R. to Murdoch's the day after the August 31, 2017 discovery, informing Mr. Ford that her son and daughter-in-law had more coins they were trying to sell, and her reference to the Coin coming from a "living will" of a deceased miner.
 7. R.B.V. and C.A.R. told conflicting stories about where they got the treasure. They said they had mined the 9-16 ounces of placer gold on a creek adjacent to Horse Creek and then said it was mined at Horse Creek. They said that the coins and silver bar had been left to them in a "living will". They told Mr. Campbell that the first batch of gold was placer material from Horse Creek and the second was from Scott Rd., although Mr. Campbell said he may have been the one to call it placer finds.

[260] Crown counsel also points to R.B.V.'s explanation for where he found the coins and silver bar in plastic tubes that he left for three days before going back to retrieve it.

This just happened to be on land that he said he had been trying to stake a claim on for months, and where Mr. Kopp was trying to help him do so.

[261] Counsel submits that R.B.V. melted down the pure gold to make it appear like nuggets. While perhaps dangerous, the tools required were readily available. He submits that R.B.V. had ample time to do so between returning home with the treasure at approximately 10:30 p.m. on August 31, 2017, and going to see Mr. Amos at approximately 3:30 p.m. the following day. The explanation he proffered to Cst. Smee is not capable of being believed. R.B.V. could have testified and fixed this.

[262] The mint date of 2014 on the gold coins means that they were not likely placed there by anyone other than Mr. Kopp.

[263] The explanation proffered that some of the gold had been panned at Horse Creek in a single day, undermines the argument that the gold was all part of a find.

Counsel for C.A.R.

[264] Counsel submits that this case is about buried treasure. The explanation proffered by R.B.V. in his statement is reasonably capable of belief.

[265] Counsel submits that the Crown must prove beyond a reasonable doubt that the items they are accused of stealing were in fact stolen, and that the defendants knew these items were stolen (*R. v. Vinokurov*, 2001 ABCA 113, at para. 7).

[266] There is insufficient evidence to establish that Mr. Kopp owned any of the items the Crown alleges he owned. While ownership can be inferred in certain

circumstances, it should not be in this case. The treasure that the defendants came into possession of was not known to exist by anyone before they found it. In fact, Mr. Kopp made no mention of any such treasure in his Will.

[267] Even if the Crown had been able to do so, Mr. Kopp could have provided the defendants information that would assist them in finding the treasure or they could have found the treasure in a location situated off of Mr. Kopp's claim. There was evidence to indicate that J.L.V. had been in a relationship with Mr. Kopp and that R.B.V. had spent a considerable period of time with him while growing up and afterwards.

[268] Counsel submits that if the treasure was located where R.B.V. said it was, or anywhere off of Mr. Kopp's claim property, this treasure was abandoned. Determining whether treasure is abandoned is a fact-specific inquiry. Abandoned treasure belongs to the party that finds it (*Bird v. The Town of Fort Frances*, [1949] 2 D.L.R. 791, at paras. 8-13).

[269] Even if in law it were to be determined in a particular set of circumstances that the finder of such "abandoned treasure" was not entitled to retain it, the finder would still not necessarily possess the necessary *mens rea* to have knowingly had possession of stolen property, which would apply to the defendants in this case.

[270] Counsel notes that Mr. Kopp had many of the items he possessed on land off of his claim boundaries. Holding a claim is not, in any event, the equivalent of owning property.

[271] C.A.R. lacked the necessary *mens rea* to believe these items were stolen. In order to have possessed the requisite *mens rea*, she would have had to have known that the treasure was obtained through the commission of the indictable offence of theft, and she would not have been able to mount a defence of having had a colour of right, a lack of fraudulent intent, and an intent to deprive (*R. v. Dorosh*, 2003 SKCA 134, at paras. 14-18).

[272] Any secrecy regarding the treasure was due to concerns that it was discovered on land which had not yet been lawfully claimed.

Counsel for R.B.V.

[273] Counsel submits that the Crown has not proven beyond a reasonable doubt that Mr. Kopp ever owned or possessed any of the items of precious metal, or that R.B.V. stole these items from Mr. Kopp while he was alive, or from his estate after his death, or that they were stolen from anyone in particular.

[274] There is no evidence that R.B.V. found these items on Mr. Kopp's property.

[275] It is not at all unreasonable to believe that R.B.V. found this treasure where he said he did. Miners, including Mr. Kopp, are well-known to bury treasure off their own property.

[276] If the actions of C.A.R. and R.B.V. when dealing with Murdoch's and Locksmith Services were to be considered to be somewhat less than forthright, this could be explained by the fact that Mr. Amos, admittedly contradictorily, told them to throw the

gold back into the river as being the right thing in law to do, but also directed them to both of the businesses as being gold-buying locations.

[277] The Crown is asking the Court to draw inferences that establish guilt on what was a poor police investigation. Cst. Smee should have taken up R.B.V. on his offer to take him to where the tubes were located. He would likely have been able to determine whether the ground had been so recently disturbed as to show that the tubes had been planted by R.B.V.

[278] Count 5 particularizes the theft as being from Mr. Kopp.

[279] The Crown suggestion that the reason the defendants made attempts to secure and control Mr. Kopp's property is not the only explanation for their actions. It is also reasonable to believe that they were trying to protect the property. The ongoing and repeated contact with public authorities by the defendants is more consistent with that explanation than the other. The actions of the defendants throughout, noting in particular the repeated efforts to try to have the access road into the property blocked, were the opposite of those expected if they were thieves. They were consistent in trying to protect Mr. Kopp's assets from others taking them.

[280] The note that Mr. Kopp was presented with at the hospital was only for the purpose of preserving the property, not for taking ownership of it.

[281] Even the actions of J.L.V. in requesting decision-making authority was only in respect of health issues for Mr. Kopp, not property.

[282] Someone else could have altered the shape of the gold that R.B.V. found.

[283] R.B.V. “changing the location of where he found the gold”, as submitted by Crown, can be explained by the not uncommon difficulty of discerning on a map where a particular location was. The locations of fences, private property etc. on the map by Mr. Amos enabled R.B.V. to properly determine where the correct location was.

[284] If the defendants were actively searching for buried treasure on Mr. Kopp’s property, why did they not find the silver coins which the PGT easily located?

[285] Counsel notes the evidence that Horse Creek is a stream that runs for several kilometres, and is not confined to a location closely proximate to, or synonymous with, Mr. Kopp’s claim.

[286] There is no evidence to establish that any of the items belonged to Mr. Kopp. The Crown cannot prove that these items were stolen and therefore also cannot prove possession of stolen property.

Counsel for J.L.V.

[287] Counsel submits that it is not the only reasonable inference to be drawn that J.L.V. knew the gold coin which she was in possession of was stolen. There is evidence that she had been in a prior relationship with Mr. Kopp. There is also evidence that her son, R.B.V., had a connection with Mr. Kopp.

[288] If the gold coin was in fact Mr. Kopp’s, she could have received it at another time. While the timing may be suspicious, that is not evidence to support a finding of collusion.

[289] There is also no evidence that J.L.V. would have known that the Coin came from the commission of an indictable offence.

[290] Her statement to Mr. Ford that the Coin came from a living will is consistent with it having been gifted to her or to R.B.V. while Mr. Kopp was still alive.

Analysis

[291] This case relies almost entirely on circumstantial evidence.

[292] With respect to the witnesses who testified, in general I did not find any of them to have been non-credible or to have provided evidence that I would reject as being unreliable.

[293] In particular, J.R., being the daughter of C.A.R., and aware of the charges against her mother, was in a position where she could perhaps be accused of tailoring her evidence to assist her mother, step-father and grandmother. I find that she did not do so.

[294] Counsel for R.B.V. suggested that many of the Crown witnesses showed a bias in their testimony against the defendants. I find that, to the extent that any of these witnesses may have viewed the actions of any of the defendants unfavourably, it did not cause them to be non-credible or to provide unreliable evidence on the salient issues.

[295] In brief overview, the defendants are found in possession of a significant amount of treasure at a time within months after Mr. Kopp died, and after he had been hospitalized with declining mental awareness for a number of months. Mr. Kopp was

clearly struggling with memory and other dementia-related issues while at the hospital, although he did have times of apparent lucidity, recognition, and recall.

[296] The testimony of J.R. about learning of the discovery of the treasure would appear to support a finding that this discovery had occurred near the time that she learned of it, perhaps on August 31, 2017, as Crown asserts.

[297] Mr. Kopp is believed by some to have buried stashes of treasure, either on and/or off his property.

[298] R.B.V., in particular, but also the other defendants, are noted to be at the hospital visiting Mr. Kopp. This included R.B.V. and C.A.R. trying to get him to sign a paper allowing them authority to protect his property while he was in hospital, and J.L.V. volunteering to act as a substitute decision-maker.

[299] R.B.V. somehow accidentally stumbles on tubes sticking out of the ground on an area several kilometres away from Mr. Kopp's residence, and discovers treasure in the tubes. He states that this piece of ground was advised to he and C.A.R. as potential claim property by Mr. Kopp some time back, and that they had been trying to stake a claim there for some time before the discovery.

[300] They also apparently find placer gold through panning on Horse Creek, which is not known to Mr. Ford to have ever produced gold.

[301] There is some evidence indicating that some of the treasure was part of a "living will", although from whom is not specified, other than a deceased miner, which logically could be presumed to be Mr. Kopp.

[302] R.B.V. and C.A.R. go on an extended spending spree for some time.

[303] I consider these circumstances, as set out fully in the evidence and very briefly here, to be quite suspicious, and the explanations for the treasure being in his possession that were proffered by R.B.V. in his statement, and in the explanations given by himself, C.A.R. and, to a lesser extent, J.L.V. to Mr. Campbell, Mr. Ford and Mr. Amos to be somewhat eye-brow raising.

[304] The test for how the trier of fact is to assess circumstantial evidence when the Crown relies on it to try to secure a conviction was set out recently in in **R. v. Hayes**, 2020 ONCA 284, at para. 79:

Where the Crown's case rests entirely or substantially on circumstantial evidence, the standard of proof requires that the trier of fact be satisfied beyond a reasonable doubt that the accused's guilt is the only reasonable inference to be drawn from the evidence as a whole: *R. v. Lights*, 2020 ONCA 128, at para. 36; *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at para. 20.

[305] The Court is not to speculate, but only to consider reasonable inferences that can be drawn. In **R. v. Miles**, 2020 MBCA 45, at paras. 5 and 6, the Court upheld what the trial judge did with the circumstantial evidence and post-offence conduct stating:

5 The trial judge properly reviewed the law relating to circumstantial evidence and post-offence conduct. She recognised that she must be satisfied that guilt is the only reasonable inference to be drawn from the evidence and that she must consider other reasonable possibilities based on logic and experience applied to the evidence or absence of evidence, not on speculation (see *R v Villaroman*, 2016 SCC 33 at para 37). ...

6 We see no error in the trial judge's treatment of the circumstantial evidence or post-offence conduct. It was for the trial judge to draw the line between speculative and reasonable inferences (see *R v Ong*, 2020 MBCA 14 at para 7). We are satisfied that the inferences drawn by the trial

judge having regard to the standard of proof were reasonably open to her. The decision, that this was an unlawful act, is one that a properly instructed trier of fact could reasonably have rendered on the whole of the evidence (see *RP* and *Villaroman*).

[306] At trial, in *R. v. Miles*, 2018 MBQB 95, the trial judge stated in paras. 6 - 11:

6 To secure a conviction, the Crown must prove the accused's guilt beyond a reasonable doubt. A reasonable doubt is not an imaginary or frivolous doubt. It is based on reason and common sense. It is a doubt that arises logically from the evidence or from an absence of evidence.

7 To the extent that the case against the accused is a circumstantial one, I must take care to follow the instructions given by the Supreme Court of Canada in *R. v. Villaroman*, 2016 SCC 33.

8 In *Villaroman*, the Supreme Court of Canada reconfirmed that in a criminal trial when the Crown's case rests on circumstantial evidence, before convicting the accused, a judge must be satisfied that guilt is the only reasonable inference to be drawn from the evidence. The judge must consider other possible inferences that would be inconsistent with guilt. These potentially exculpatory inferences need not be based on proven facts, but they must not be purely speculative. A judge must consider other plausible theories or other reasonable possibilities "based on logic and experience applied to the evidence or the absence of evidence, not on speculation" (at para. 37).

9 The Supreme Court of Canada in *Villaroman* goes on to say:

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

10 Finally, I will refer here briefly to the legal principles that apply to evidence of "after-the-fact conduct" or "post-offence conduct". The leading cases are: *R. v. White*, [1998] 2 S.C.R. 72; *R. v. White*, 2011 SCC 13, [2011] 1 S.C.R. 433.

11 Boiled down, these cases say that evidence of what the accused did or did not do after the alleged offence is a type of circumstantial evidence that I may consider, but I must be cautious about what inferences I draw from that evidence. I must not jump to the conclusion that the accused's conduct shows a consciousness of guilt when there are

other reasonable explanations for his conduct. See **White** 1998 at paras. 19-23.

[307] The meaning of what a reasonable doubt is was explained by the Supreme Court of Canada in **R. v. Lifchus**, [1997] 3 S.C.R. 320, at para. 39:

...

The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the Crown has on the evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty.

What does the expression "beyond a reasonable doubt" mean?

The term "beyond a reasonable doubt" has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning.

A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt. (Emphasis mine)

On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.

In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

[308] In **R. v. Quintero-Gelvez**, 2020 ABCA 44 at para. 22 the Court stated:

A reasonable doubt may be based on the evidence or the absence of evidence. A reasonable doubt may stem from a lack of evidence or areas of uncertainty: *R v Lifchus*, [1997] 3 SCR 320 at para 36, 150 DLR (4th) 733. It is not necessary that evidence be presented to establish a reasonable doubt. It is trite that the defence is never required to call evidence; it is the Crown's unwavering obligation to prove an accused's guilt beyond reasonable doubt. ...

[309] On the issue of the *mens rea* for the offence of possession of stolen property, in **R. v. Vinokurov**, 2001 ABCA 113, the Court stated at para. 7:

The onus is on the Crown to prove that the accused knew that the property was stolen. It is a general rule of statutory construction that when the term "knowingly" is used in a criminal statute, the reasonable person standard will not satisfy the *mens rea* requirement. ...

[310] In paras. 8-14, the Court holds that wilful blindness meets the requisite *mens rea* standard, as it is the equivalent of knowing or imputed knowledge, but that recklessness does not, as it is something less than that.

[311] On the issue of abandonment, in **Stewart v. Gustafson** (1998), [1999] 4 W.W.R. 695, at para. 18, the Court stated:

In *Hoyt v. Grand Lake Development Corp.* (1975), 13 N.B.R. (2d) 544 (Q.B.); (1976), 13 N.B.R. (2d) 537 (C.A.); aff'd (1977), 79 D.L.R. (3d) 241 (S.C.C.), the plaintiff moved his mining equipment onto property where mining operations were underway and left it there unattended for four years. During this time, his equipment was sold as scrap or put to use and could no longer be traced. In an action for conversion the trial judge noted at p. 546:

... and if somebody leaves equipment claimed to be worth \$75,000.00 for 4 1/2 years and doesn't even go back to look at it, I consider it to be abandoned, and I assume that that is what the defendant corporations may have thought as well....

The trial judge's opinion was upheld by the Supreme Court of Canada. The the contrary conclusion in *Dixon v. Spencer and Monk* (1952), 4 W.W.R. (N.S.) 222 (B.C.S.C.) therefore is no longer good law.

...

[312] As I stated earlier, I find that the circumstances in which the defendants came into possession of the precious metals, to be highly suspicious. In his submissions, the Crown has set out a number of reasons based upon the evidence why I should be satisfied beyond a reasonable doubt that R.B.V. took the precious metals from Mr. Kopp's claim/property, and he and the other two defendants, knowing full well that these precious metals belonged to Mr. Kopp, and therefore, after he died, his estate, took possession of them for themselves.

[313] The various steps R.B.V. took to try to prevent others from having access to Mr. Kopp's claim/property, and to assume some authorized type of control over it, could logically be seen as steps taken to provide himself the best opportunity to look for the treasure stashes that were rumoured to have been buried or hidden there, or close to there, by Mr. Kopp.

[314] It appears highly unlikely that the "placer" gold brokered through Locksmith Services had been originally mined in the form it was delivered to Technic, unless someone altered it from its original mined state and dumped it into a creek where it was subsequently panned. This makes the V./R.'s claim of having mined some of the gold through panning very suspect.

[315] The explanation offered by all three defendants that the treasure was granted to them as a result of the "living will" of a deceased miner is also highly questionable and

suspect. Mr. Kopp had a Will authored in 1985. No other Will was ever located. There is no legal authority I am aware of that would allow any of the three defendants to claim ownership of any of Mr. Kopp's possessions after his death on the basis that he had promised them something. As Mr. Kopp had taken steps to ensure his 1985 Will was in a law office and readily available if needed, it would seem inconsistent to intend to transfer assets to any of the defendants upon his death without him taking steps to ensure it was done in the same readily available way.

[316] It also seems unlikely that Mr. Kopp would have bequeathed the Coin to J.L.V. when he was alive, given that she cashed it in the same day that J.R. and R.B.V. and C.A.R. cashed in precious metals.

[317] I agree that it is a stretch to imagine the coincidence of R.B.V. happening to find another miner's stash, or even Mr. Kopp's stash, in the same unremarkable spot that he says Mr. Kopp told him to stake a claim and mine. Especially by just happening to trip over it as he walked by.

[318] It is much easier and coherent to visualize that what occurred is that what R.B.V. did in fact do, was continue to surreptitiously search on Mr. Kopp's claim/property after Mr. Kopp's death until he fortuitously found the treasure, and that he and C.A.R. obtained none of it by panning on Horse Creek or a tributary of it. J.L.V. was provided a single gold coin from this treasure, while being aware that R.B.V. and C.A.R. possessed much more of it. This explanation for the events makes a lot of sense and can be said to be consistent with the evidence.

[319] The question I must ask myself is whether it is the only reasonable explanation for the evidence that was adduced and inferences I am asked to draw from this evidence.

[320] It is not enough that the evidence would cause me to believe the defendants are likely or probably guilty of the offences with which they are charged. I have to be satisfied beyond a reasonable doubt, not any doubt, but a reasonable doubt.

[321] The evidence that Mr. Kopp had wealth or a number of treasure stashes is not conclusive. Leaving aside the precious metals that are alleged to have been stolen by R.B.V., no precious metals other than the 175 silver coins found in the van by Ms. Clare were located. No gold bars, kruggerands, gold coins, or placer gold was located. It seems unusual that what the PGT found, and what R.B.V. had, would be all of the stash Mr. Kopp had, if he had as much wealth as the Crown submits. It would seem that if there was any more stash of treasure there, that there would have been ample time to locate it. I am not aware of any evidence that there was an exhaustive search or even much in the way of searching by legitimate authorities, other than the during the six visits Ms. Clare said she made to the property. Perhaps the “circus” of individuals in and out of the property may have resulted in some of these stashes being located without the PGT being aware.

[322] It is also true that there is nothing in the evidence that definitively proves that any of the precious metals ever belonged to Mr. Kopp. There is nothing unique about any of the coins and gold that could cause them to be attributed to Mr. Kopp. The fact that he purchased some gold and silver coins, including the purchases made in 2014, does not

mean that the coins in the impugned treasure were the same coins. It does not even necessarily mean that the coins in the van were from these purchases, although that is certainly more likely to be the case. It is not as though Mr. Kopp was shown to have purchased exactly the same amount and type of coins that were found. While not necessarily conclusive, this would certainly have been more persuasive.

[323] Even if the precious metals belonged to Mr. Kopp, there is no definitive evidence that these were stashed on his claim/property. Much of what constituted his personal property was, in fact, outside of his claim boundaries, including, I believe, part of his house. This raises the notion of abandonment, in particular after his death. There is an argument that precious metals stashed on public land allow others to claim that a find of these precious metals creates ownership under the principle of abandonment.

[324] With respect to the silver bar, no efforts were made by the RCMP to contact the company who distributed this bar in order to see whether Mr. Kopp had ever purchased such a bar.

[325] There were several areas where it appears more investigative efforts could have been made by the RCMP, particularly early on in the investigation. Despite Cst. Smee's entreaties, no search warrant was sought to be obtained to see whether R.B.V. and C.A.R. had any items in their home that may have provided probative and relevant evidence. This could perhaps be items such as the plastic tube the treasure was in, the other four silver bars, the remaining treasure, an acetylene torch, and evidence of its use to melt gold.

[326] There were also no steps taken, such as forensic or fingerprint analysis, to see whether any of these items had been handled by Mr. Kopp, or whether there was any evidence that connected him to the precious metals. The white translucent tube that J.R. said the treasure was in may have had fingerprints on it. By description, it was similar in colour and shape, albeit not in size, to the tubes Ms. Clare found the silver coins in. There were also containers within this container. If these had once been Mr. Kopp's, perhaps evidence of that could have been located. Perhaps the silver bar would have had a fingerprint on it that could be compared to one of Mr. Kopp's from other items he was known to have possessed.

[327] Despite Cst. Smee being told by R.B.V. that he would take him to where he found the precious metals in the tubes, and that at least one was still there with some silver and gold in it, Cst. Smee did not take him up on his offer. I appreciate that Cst. Smee had no real dealings with the investigation after taking the statement from R.B.V. But someone could have gone with R.B.V.

[328] While it is true that R.B.V. may have set it up to look like tubes with precious metals had been there, that may have been evident to a police officer, which, of itself, could be useful evidence. Even if Cst. Smee did not believe R.B.V., it would seem to me to have been a fairly necessary step in the investigation to get to the bottom of R.B.V.'s story. It is not that far of a drive out of Whitehorse.

[329] This is simply about trying to obtain the best evidence as it is reasonably possible to do, in particular when the case is possibly going to rely on circumstantial evidence. I am therefore left with perhaps less probative and relevant evidence than I might otherwise have before me.

[330] While I believe there is some merit to the Crown's submission that the treasure was found on August 31, 2017, I also think that R.B.V., who was not known to have any particular experience in the melting of gold, would have had to have been pretty busy to bring the treasure home at 10:30 p.m. that day, then later decide to melt down some of it, pour it into water to create a "nugget" form of gold, and then attend at the Mining Recorder's Office to meet with Mr. Amos at 3:30 p.m., the following day. As stated by Mr. McMillan, this is a somewhat dangerous, although, not a necessarily particularly sophisticated enterprise.

[331] While I agree that R.B.V.'s motive for wanting to be in a position to control access to Mr. Kopp's property could reasonably be viewed as being so that he could search it for precious metals, it could perhaps even be likely to be viewed that way, these actions are not necessarily inconsistent with him simply wanting to protect Mr. Kopp's property from being taken or destroyed by others. There is some evidence that is supportive of R.B.V. having had a long-standing relationship with Mr. Kopp from when he was young, including being at his property and working with him. There is also evidence that J.L.R. also had a long-standing relationship with Mr. Kopp. I appreciate that other witnesses who knew Mr. Kopp did not really have much to say about these relationships from their own interactions with Mr. Kopp, but it is not necessarily

surprising as most of the time, albeit not all the time, it appears that they saw Mr. Kopp other than at his property and 90 percent of the time when he was alone.

[332] If, in fact, Mr. Kopp had decided to bury some treasure in that location, albeit somewhat far from his residence, it could be said that he might provide some information to R.B.V. as R.B.V. said he did, to perhaps allow R.B.V. the opportunity to locate it, if R.B.V. put the work in to do so. It would be speculation to think that happened. However, the point is that the inconsistency the Crown submits exists on this point is not necessarily as apparent or necessary to find as the Crown suggests.

[333] With respect to the living will, there was evidence that could be said to support the idea that the living will was, in fact, information from Mr. Kopp about a particular place they should stake a claim that just happened to be where R.B.V. says he found the tubes with precious metals. Now, why someone would call that a living will rather than simply information passed to them, especially given that Mr. Kopp was not transferring a claim to them that he had, or directing them to a claim that he had once had. To me it really accords more with an idea that Mr. Kopp may have said things to the defendants that gave them a reason to believe that he meant to give them something after he died, or that that they were just trying to come up with some explanation for the precious metals that they had come into possession of. It really seems that the simplest thing for the defendants to have said would have been that they found the gold on a place Mr. Kopp had told them to stake a claim.

[334] With respect to the conduct of the defendants after August 31, 2017, this is circumstantial evidence that must be considered. While to some extent it could be

considered to be evidence of guilt in regard to the theft and possession of stolen property, it could also be consistent with concerns about not having a lawful right to the precious metals because no claim had been filed for the land it was said to have been located upon. It could also be consistent with concerns that they may not have the lawful authority to possess these items that they thought they did.

[335] The spending habits of R.B.V. and C.A.R., while perhaps consistent with trying to spend illicit money before it is discovered to be just that and taken away, is also consistent with them simply being the type of people, spendthrifts, who will spend whatever they have, regardless of how they obtained it.

[336] This is a complex case in some ways, based upon the nature of the circumstantial evidence before me. There are problems with the evidence of the defendants that cause me to have some doubts about their story of how they came into possession of the precious metals.

[337] The theory of the case as presented by the Crown, on the salient points at least, I would say is a more persuasive theory, and has support in the evidence. The tipping point, however, is not on which version of events is more persuasive or on which version the evidence seems to favour. I must be convinced of the guilt of the defendants beyond a reasonable doubt.

[338] The evidence, including the absence of evidence, also lends some support to some extent that the precious metals were not stolen from Mr. Kopp or from his estate. While I find the evidence on this point to be perhaps less persuasive, I find that it raises

a reasonable doubt in my mind. Therefore, I find that it would be unsafe to convict the defendants of any of the charges they face, and they are therefore acquitted.

COZENS T.C.J.