ONTARIO COURT OF JUSTICE

CITATION: *R. v. Lawrence*, 2016 ONCJ 701
DATE: 2016·11·09
COURT FILE No.: Ottawa 15-20002

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

LESTON EVRIS LAWRENCE

Before Justice P. K. Doody
Heard on September 12, 13, 14, 15, 16, 19, 20 2016
Reasons for Judgment released on November 9, 2016

David Friesen ..... counsel for the Crown
Gary Barnes ..... counsel for the defendant

Doody J.:

I Overview

[1] Leston Lawrence, the defendant, worked at the Royal Canadian Mint from July 23, 2008 until March 10, 2105 as an Operator-Refinery. He was regularly assigned the job of Refiner-Foundry.

[2] That job required him to purify gold purchased in lots by the Mint which included old jewelry, gold coins, bullion and other materials which contained significant amounts of gold. He purified the gold by melting it and injecting chlorine gas into the molten metal. The chlorine gas reacts with base metals, causing them to rise to the top.

[3] Mr. Lawrence was required to skim off the base metals until the molten gold had reached the required level of purity of 99.5%. Once he believed that the gold had been purified to that extent, he would use a “dip spoon” (a ladle) to remove

some molten gold. He would cool it and remove the hardened metal, referred to as a "puck". Each puck weighed between 5 and 6 ounces (depending on how much molten gold was taken with the ladle). The puck was then tested for purity.

[4] The pucks are supposed to be returned to the vat of molten gold after testing. If the test showed that it was sufficiently pure, the gold was poured into ingots and subjected to further processing. If not, the process of purification with chlorine gas continued and another puck was taken and tested.

[5] Mr. Lawrence has been charged with, between November 27, 2014 and March 12, 2015,

(a) stealing gold from the Mint;

(b) conveying gold out of the Mint;

(c) having in his possession gold knowing it to have been obtained by the commission of an indictable offence;

(d) disposing of gold or proceeds of gold with intent to convert the gold or proceeds knowing it to have been obtained or derived by the commission of an indictable offence; and

(e) committing a breach of trust in connection with the duties of his public office

contrary to s. 334, s. 459, s. 354(1)(a), s. 462.31(1)(a) and s.122 of the *Criminal Code*.

[6] There is no direct evidence that Mr. Lawrence committed these offences. Nobody testified that they saw him take the gold. Nor is there a video of him taking it.

[7] The Crown's case is entirely based on circumstantial evidence. It asserts that the facts it has proven lead inexorably to the conclusion that Mr. Lawrence smuggled gold – both coins and the gold "pucks" - out of the Mint, keeping some in his safe deposit box and selling the balance, and used money resulting from the sales to pay to have a house built in Jamaica and buy a boat in Florida.

[8] In determining whether the Crown has proven its case, I must pay rigorous attention to the bedrock principle that the defendant is presumed innocent. Findings of guilt cannot be made unless the Crown proves beyond a reasonable doubt each and every element of the offences. I must be alert to the risk that I may unconsciously "fill in the blanks" or bridge gaps in the evidence to support the inferences that the Crown asks me to draw.

[9] I may draw inferences of guilt from the circumstantial evidence only if those

inferences are the only reasonable inference that the evidence permits. In determining whether inferences consistent with innocence arise from the evidence, I am not limited to inferences drawn from proven facts. Reasonable doubt can arise from the evidence or from a lack of evidence.

[10] Reasonable doubt does not arise, however, from speculation or conjecture. The Crown is not required to prove its case to an absolute certainty and the burden on the Crown does not extend to "negativing every conjecture". While gaps in the evidence may result in inferences other than guilt, an acquittal requires that those inferences be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense. (*R. v. Villaroman,* 2016 SCC 33 at paras. 26, 30, 35, 36, and 37)

[11] I should note that the Crown led evidence relating to facts occurring prior to Nov. 27, 2014. Furthermore, there was evidence, as I will explain later in these reasons, that the defendant sold gold coins during the time period covered by the charges. No application was brought by the Crown to have any of the evidence available as "similar fact evidence" to prove the commission of the counts before the court. In other words, it is not seeking to use the evidence relating to events before Nov. 27, 2014 to assist in proving the defendant's guilt. Nor has the Crown brought an application seeking to use the evidence relating only to the gold pucks to support a conclusion that the defendant stole gold coins. I cannot rely on such evidence to support any such inferences. (*R. v. J.V.*, [2015] O.J. No. 7735 at paras. 13-15, 2015 ONCJ 815)

[12] There were no serious issues of credibility raised with any of the witnesses, other than a suggestion by defence counsel, Mr. Barnes, that the witnesses from Ottawa Gold Buyers, to whom the defendant sold gold, were less than forthright when they testified that they had no concerns with where Mr. Lawrence got his gold. Those issues do not affect my assessment of those witnesses' credibility on matters material to these charges. Furthermore, much of the evidence was either contained in or corroborated by documents admitted on consent as either business records or documents in the possession of the defendant. I accept that all of the witnesses were credible and reliable with respect to matters material to these charges and that all of the documents were what they purport to be.

[13] I propose to set out the facts which have been proven by the evidence. Once those facts are established, I will discuss what has or has not been proven beyond a reasonable doubt, following the principles set out in this overview.

II Established facts

a) The defendant had the opportunity to take gold pucks and coins from the Mint.

[14] The Mint buys gold from three categories of sources – gold mines which

sell “semi-refined” ore which is typically 40% to 60% gold; secondary markets such as businesses which purchase old jewelry and gold bullion coins, small bars and wafers from individuals; and sellers of industrial gold “scrap” such as leftover gold from jewelry manufacturing, gold grains from manufacturers of medical machinery, and the remnants of gold sheets from which coins have been punched out.

[15] When the purchased gold from the secondary market arrives at the Mint, it is weighed. The weight is compared to the weight in the manifest prepared by the vendor. If the two weights are within one ounce of each other the gold is put in pails. The pails are placed on the refinery floor.

[16] At the time the defendant worked at the Mint as an operator and acting refiner, the pails of purchased gold jewelry and gold bullion coins, small bars and wafers would sit open in front of the furnace.

[17] The contents of the pails are melted in a furnace to create a homogenous liquid. Some of the molten metal is removed for testing in a ladle referred to as a “small dip”. When cooled, the metal is analyzed to determine its purity. The balance of the molten metal is poured into forms to make bars. This process is referred to as the “pre-melt”.

[18] The bars are weighed. The weight and proportion of gold determined by testing the samples is used to fix the price to be paid to the vendors of the purchased gold.

[19] As a result of the pre-melt process, the Mint has, from multiple purchases, bars of varying purity. Staff pick and choose bars to be melted together to produce, when combined, 8,000 ounces of “rough gold” of approximately 70% purity – that is, 70% pure gold in the aggregate. These combinations of bars are referred to as “recipes”.

[20] Each recipe is sent to the refinery floor on skids and placed in front of the chlorination furnaces. The bars are melted together. Once molten and the liquid has reached a temperature of 1,000 to 1,100 degrees Celsius, chlorine gas is injected into the molten metal. The chlorine attaches to the base metals and silver. They rise to the top as “slag”. The refiner skims off the slag and pours it into a cart for further processing.

[21] When the refiner believes that the molten metal is approaching the end point of this part of the refining process of 99.5% purity, he turns off the gas and takes a sample in a ladle referred to as the “large dip”. The sample is cooled and removed from the ladle. The cooled, hardened sample is referred to as a “puck”. Each puck weighs about 5 to 6 ounces.

[22] The puck is then tested for purity in a machine on the refinery floor called an “XRF” machine. If the target purity has not been reached the puck is returned to the vat and the chlorine gas is turned back on. The process is continued until the

XRF machine indicates that the target purity has been reached. When that has been done, the puck is supposed to be returned to the vat once again and re-melted into the liquid gold.

[23] The pucks are not marked or labelled in any way, because they are meant to be put back into the vat and re-melted.

[24] The liquid gold is then poured into forms to create small “paddles” of 110 to 120 ounces each. These are called “anodes” and, once cooled, are taken to the next step of the purification process, which increases the purity to 99.99%.

[25] Typically, two people would be on the refinery floor during this process. From time to time, however, the defendant worked in this area alone while the pails were open and during the melting, chlorination, sampling and testing process. When he was working as a refiner, his job was to remove the samples and test the pucks in the XRF machine.

b) The Mint would not know if some of the gold purchased by it had been taken.

[26] A “recipe” of bricks weighing 8,000 ounces which are, in the aggregate, 70% pure gold will produce 5,500 ounces of gold. A puck weighing 5 to 6 ounces is about .1% of that amount.

[27] Furthermore, the initial testing of purity is not exact. There can be a variation of upwards of 5% of the expected gold in each batch. Consequently, the Mint does not know exactly how much 99.5% pure gold will be produced by each recipe.

[28] A recipe from which a puck or coin had been removed would not be missed.

c) The Mint had inadequate security cameras so that it would have been simple for the defendant to secrete gold on his person without being detected.

[29] The refinery room has several large structures on its floor, including the pre-melt furnace and chlorination furnaces. These structures prevent the entire room being viewed. There are many places where an individual can be working and unable to be seen by anyone else in the room. A video from a security camera showed the defendant working behind a number of structures and being visible only from time to time.

[30] Only one security camera showed the entire refinery room at the time the defendant was employed. There were many areas that could not be seen by that camera, including the XRF machine used to test the pucks. The table where the pre-melt bars are weighed cannot be seen. If the refiner removing a large dip sample had his back to the camera, the sample could not be seen.

[31] The Mint building is divided into two sections – a secure side and a non-secure side. Employees working on the secure side, where the refinery is located, have to change in a locker room on the non-secure side from their civilian clothing to clothing and boots issued by the Mint. That clothing has pockets. They go to a locker room on the secure side, change to new boots, and go to work. There are no cameras in the locker rooms on either the secure side or the non-secure side.

d) Employees exiting through metal detectors were allowed to leave even if the detectors were set off and the metal could not be detected by hand wands; the hand wands do not detect metal in body cavities.

[32] Before leaving the secure side, employees must shower, with any precious metals on their bodies being recovered from the shower water. They are required to put their uniform in a laundry bin on the secure side and put on a fresh uniform and boots which contain no metal. They exit the secure side through an archway metal detector which looks like one used at airports. Personal belongings are put through an X-ray machine.

[33] In late 2014, a new archway metal detector was installed. It processes people more quickly than the one previously used, and was required because of an increase in the number of employees. Over 1,000 people now work on the secure side of the Mint. For a period of time while the new archway was under construction, employees leaving the secure area were searched only with the hand wands.

[34] The new archway metal detector is more sensitive than those used at airports. It detects very small amounts of non-ferrous metal.

[35] Persons exiting the secure side were required to walk through the archway. If an alarm was set off, they were searched with hand held wands in an attempt to locate the metal.

[36] The wands are less sensitive than the archway. In particular, they are of limited use when something is put in an armpit. For that reason, employees who set off the archway detector were asked to raise their arms before being wanded.

[37] Nor do the wands adequately detect metal located in a body cavity. In a test after these charges were laid, an employee of the Mint came through the archway with a piece of gold in his rectal cavity. He set off the archway detector. When the wand scanners were used, they did not detect the metal.

[38] The process of searching exiting employees by this process was described by Martin Sevigny, a security analyst at the Mint, as the primary defence against theft by employees. He testified that at the time of the defendant's employment there were three possibilities when employees went through the archway:

(a) the archway metal detector was not set off, and the employee was al-

lowed to leave;

(b) the archway metal detector was set off, resulting in a successful hand scan with the wands which determined the metal's location; if determined to be accidental, the employee was allowed to leave; or

(c) the archway metal detector was set off, resulting in an unsuccessful hand scan with the wands which failed to locate the metal; in this case, the employee was allowed to leave despite the fact that no metal was detected.

e) The Mint's archway metal detectors were set off by the defendant more than any other employee without metal implants.

[39] The new archway metal detectors, in operation commencing December 15, 2014, require each person to swipe their pass before walking through. The result of the scan by the detector is then recorded. The records of each person's results is kept.

[40] The system records not only whether a person sets off an alarm, but a numeric value which roughly corresponds to the amount of metal a person is carrying, although the same amount of metal will produce a lower number if it is further from the archway or covered by a part of the body. Mr. Sevigny gave examples of a dime, which would produce a reading of approximately 1.6, and an ounce of metal like a toonie which would produce a reading of approximately 4.5 if it was in the person's pocket. A value of 11.5 is very high and indicates a knife or large metal object.

[41] The system is also set to randomly set off an archway alarm even if no metal is detected, so that persons are subjected to the hand wand scan from time to time. This is intended to detect metal which, for whatever reason, is not detected by the archway.

[42] The records of Mr. Lawrence's exits through the archways were entered into evidence. He set off the archway detectors (other than in a random fail) 28 times on 18 of the 41 days he worked on the secure side between December 15, 2014 and March 15, 2015, the date he stopped working at the Mint. The chart below indicates the dates and times of each alarm and the numeric value indicated on each occasion. Frequently, he set the detectors off more than once in the same day. Employees were allowed to leave and return to the secure area as often as they wished over the course of their shift.

Date and Time Failed	Numeric Value
Dec. 15, 2014 11:52:50	11.5
Dec. 15, 2014 15:27:52	11.5

Dec. 16, 2014 09:17:59	11.4
Dec. 16, 2014 11:51:43	11.5
Dec. 17, 2014 13:04:00	4.2
Dec. 19, 2014 09:27:44	3.4
Jan. 6, 2015 22:28:44	1.4
Jan. 6, 2015 22:28:44	1.4
Jan. 8, 2015 18:01:10	8.4
Jan. 8, 2015 21:23:15	7.6
Jan. 9, 2015 18:21:53	12.0
Jan. 9, 2015 21:43:52	9.0
Jan. 16, 2015 12:54:10	5.1
Jan. 16, 2015 15:26:02	1.6
Jan. 20, 2015 22:26:32	1.2
Jan. 21, 2015 18:11:08	9.3
Jan. 21, 2015 22:31:34	11.1
Jan. 22, 2015 17:38:22	9.3
Jan. 22, 2015 22:30:12	9.8
Jan. 27, 2015 11:37:56	4.5
Jan. 27, 2015 15:27:02	2.9
Feb. 2, 2015 19:29:12	7.2
Feb. 2, 2015 22:35:13	6.8
Feb. 3, 2015 22:31:58	9.5
Feb. 4, 2015 22:27:59	8.6
Feb. 5, 2015 18:27:52	9.6

Feb. 5, 2015 22:32:09	7.2
Feb. 25, 2015 15:18:56	2.6
March 2, 2015 18:04:30	6.7

[43] Mr. Sevigny testified that employees with metal medical implants, such as screws or plates, consistently set off the archway detectors. Those employees, however, register the same numeric value each time. Mr. Lawrence's records are quite different – they show many days with no metal detected, and, when displayed in a graph, significant peaks on the days when metal is detected. This is very unusual.

[44] He testified that the Mint has compiled the results for the 40 employees who show the highest number of failures at the archway metal detector. The first 15 employees have all had surgical implants. Of the remaining 25, the defendant had the most failures over the period of time between December 15, 2014 and March 15, 2015.

f) None of the metal detector alarms when the defendant left the secure area were caused by his having left an incongruous metal item on his body before passing through.

[45] Video cameras record persons exiting through the archway metal detector and being wanded. Mr. Sevigny testified that he reviewed all of the video recordings of the defendant exiting when he set the alarm off. On no occasion did the use of the wands show any innocuous metal, such as a small coin or a paper clip, having been left in his clothes or on his person. He noticed this frequently occurring when he reviewed videos of other employees who had set off the archway alarm.

g) The defendant was allowed to leave after failing the archway metal detectors when the hand wands did not detect metal on his person.

[46] On every occasion the defendant exited through the archway and set off the alarm, he was subjected to a secondary search with the hand held wands. Mr. Sevigny testified that none of these wand searches found any metal on the defendant. Some of these videos were played in court. Every time this happened, the defendant was allowed to leave.

[47] Mr. Sevigny testified that during his review of the videos, he saw no physical search of the defendant. He is not aware of the defendant ever having been physically searched or strip searched.

h) The defendant had Vaseline and latex gloves in his locker which could have been used to facilitate insertion of gold items inside his rectum.

[48] On March 12, 2015 the defendant's private locker in the high security locker room was searched. It contained a jar of Vaseline which was almost empty, and some blue latex gloves.

[49] Urgel Pelletier, the supervisor of the refinery at the Mint and the defendant's boss, testified that there was no reason for an employee to use Vaseline in his job. In cross-examination, he testified that he had heard of Vaseline being used to treat burns and that burns did occur from time to time. He also testified that it was mandatory for employees to report any burns. He did not recall the defendant ever reporting having suffered a burn while on the job.

[50] Robert Sargent, the Director of Refining and Assay Operations at the Mint, testified that he had never seen an employee at the Mint use Vaseline for burns.

i) The gold pucks made at the Mint were unique because the dips used were unique.

[51] The "large dip" ladle used to remove molten gold from the cauldron before testing is manufactured at the Mint. After the ladle "bowl" is made, it is attached to a metal rod at the Mint's machine shop.

[52] For the last 9 or 10 years, ladles have been made by André Lauzon, a machinist. Mr. Lauzon took the measurements from the large dip ladle used at the time, and programmed a metal lathe, using a computer assisted design program. That program has been used to make the large dip ladles at the Mint since that time. It is unique to the Mint.

[53] The dimensions of every ladle are the same because they are all manufactured using the same program.

j) The dip used to make the gold pucks at the Mint was not sold outside the Mint and worn out dips are destroyed on site.

[54] Mr. Sargent testified that the Mint does not sell the ladles.

[55] About 20 large dip ladles are made at the Mint every year.

[56] Any ladle that is broken or for some other reason cannot be used is put in a special metal disposal bin with all other metal that has been used at the Mint and is no longer useful. They are then crushed into a powder which is taken to a third party processor which removes any gold which has adhered to the ladle and returns it to the Mint.

k) Gold pucks from the Mint had concentration of elements consistent with the gold pucks in the defendant's safety deposit box and those sold by the defendant to Ottawa Gold Buyers.

[57] On February 6, 2015 the defendant entered the Royal Bank of Canada's branch at the Westgate Mall in Ottawa. He spoke with Malyna Lunn, a teller. He asked Ms. Lunn to cash two cheques made out to him from Ottawa Gold Buyers, a business at the Westgate Mall which purchased gold jewelry, coins, and bullion from members of the public.

[58] One of the cheques was in the amount of $7,992.27 and the other was for $7,269.63. The two cheques totalled $15,261.90. The defendant told Ms. Lunn he wanted to deposit the cheques into his RBC account at another branch in Nepean and wire $14,693.67 (1,303,786.00 Jamaican dollars) to a company named MJC Masterbuilders Ltd. in Jamaica. He handed her a copy of a wire transfer from another RBC branch which showed a transfer of exactly the same amount to the same company two days previously, on February 4, 2015. He told her she could copy the particulars from that transfer.

[59] The amount which the defendant was asking to transfer would not be allowed for persons who did not have an account with RBC. Because both the defendant and Ottawa Gold Buyers did have an RBC account, however, it was permitted. The cheques from Ottawa Gold Buyers to the defendant were much larger than were normally seen. Ms. Lunn asked the defendant what he had sold to Ottawa Gold Buyers and he told her "gold nuggets".

[60] Ms. Lunn checked the bank's records for the defendant and saw that he had indicated when he opened the account that he was an employee of the Mint. She testified that when she saw this she "panicked a little bit" because he had just told her that he had sold gold nuggets.

[61] Ms. Lunn asked him why he was transferring precisely the same amount and whether there had been a problem with the previous transfer. The defendant told her that the previous wire transfer had been received and that he was helping to rebuild his parents' home in Jamaica.

[62] The amount the defendant was asking to send exceeded Ms. Lunn's authority. She asked a fellow employee to provide her authorization. She shared Ms. Lunn's concerns. Ultimately the wire transfer was sent later that day, after the defendant had left the bank. The RCMP was notified of RBC's concerns.

[63] On March 9, 2015, the defendant was the subject of surveillance by the RCMP. He was seen entering Ottawa Gold Buyers' offices at the Westgate Mall. He left ten to fifteen minutes later.

[64] The RCMP spoke with employees at Ottawa Gold Buyers that day and were told that the defendant had sold a 24 karat gold puck for $7,966.27. The puck

was retrieved from the safe and seized, along with a copy of an invoice dated March 9, 2015 indicating that Mr. Lawrence had sold a gold nugget weighing 219.72 for $7,586.93, which included a 5% “customer satisfaction” bonus.

[65] The RCMP also seized from Ottawa Gold Buyers numerous records, including copies of other invoices for sales of gold by the defendant.

[66] On March 11, 2015, a safety deposit box belonging to the defendant at the RBC branch in Nepean was searched by the RCMP pursuant to a search warrant. They found a pouch containing 4 gold pucks, about 3/4 “ thick with the same diameter, about that of a golf ball. The thickness of each puck varied slightly.

[67] The five pucks (the four from the safe deposit box and the one seized from Ottawa Gold Buyers) were analyzed by Michael Hinds, an assay chemist at the Mint. Mr. Hinds’ expertise in the area of assay or elemental analysis of metals was admitted by the defence. He was permitted to provide opinion evidence in these areas.

[68] Mr. Hinds analyzed one of the pucks found in the safety deposit box using a spectrometer, a very precise instrument which detects impurities (elements other than gold). Those impurities are expressed in parts per million. The percentage of impurities is subtracted from 100%, with the resulting number being the purity of the gold in the sample. The result of the analysis showed the puck to be 99.568% pure gold.

[69] This was consistent with the purity expected of gold after it had gone through the chlorification process at the Mint, which has a target of 99.5% purity.

[70] Mr. Hinds also tested two samples provided by the Mint after chlorination. The analysis of those samples by the spectrometer showed 99.554% purity and 99.523% purity.

[71] The specific elements other than gold, and the amounts thereof, were also determined by the spectrometer for the three samples. They varied, but Mr. Hinds testified that the variation was quite normal and not significant. The specific elements other than gold found in any batch are dependent on a number of things, including the type of material put into the cauldron.

[72] Mr. Hinds testified that, in his opinion, the composition of the puck taken from the safety deposit box was consistent with the composition of the two known samples taken from the Mint. I accept that opinion. It was not seriously challenged.

[73] Mr. Hinds also tested the remaining four pucks – the other three from the safety deposit box, and the one seized at Ottawa Gold Buyers – and analyzed them using the somewhat less sensitive XRF machine. The analysis was compared with an analysis done on a puck taken from the Mint which had been kept after the end of the chlorination process. Four showed purity of slightly more than 99.5%; one, the puck seized at Ottawa Gold Buyers, showed a purity of slightly less than 99.5%. Mr.

Hinds testified that, in his opinion, the composition of all of the pucks were consistent with pucks made during the chlorination process at the Mint. It was also his opinion that the puck seized at Ottawa Gold Buyers could have been taken somewhat earlier in the process and could be described as “not quite ready yet”. I accept those opinions.

[74] Each of the four seized pucks and the puck seized from Ottawa Gold Buyers were weighed by the RCMP. Their weights were 219.8 grams, 238.6 grams, 213.4 grams, and 238 grams.

l) The pucks seized from the defendant and sold by him to Ottawa Gold Buyers were an identical diameter to the pucks from the Mint.

[75] A large dip ladle was seized by the RCMP from the Mint. It was introduced into evidence at the trial. Three of the pucks seized from the safety deposit box, and the puck seized at Ottawa Gold Buyers, were inserted into the ladle. Each fit snugly. There was no room for movement once the puck was inserted. If the puck was any larger in diameter, it would not have fit; if it were smaller in diameter, it would have been loose.

[76] A gold puck seized from the Mint by the RCMP, which had been formed after the chlorination process by taking a sample with the large dip ladle, fit the ladle in exactly the same way.

m) Other gold pucks which looked the same as and were the same purity as the gold pucks made at the Mint were sold by the defendant to Ottawa Gold Buyers.

[77] The defendant sold 18 gold pucks to Ottawa Gold Buyers during the time period covered by the charges of Nov. 27, 2014 to March 15, 2015. The following chart shows the dates, weights, descriptions contained in the Ottawa Gold Buyers invoices, and amount paid to the defendant.

Date of Sale	Description	Weight	Amount Paid
Nov. 27, 2014	Melted gold piece	240.14 gms	$7,610.00
Dec. 1, 2014	Gold nugget	217.77 gms	$6,957.75
Dec. 12, 2014	Refined nugget	257.76 gms	$8,567.94
Dec. 18, 2014	Refined nugget	248.16 gms	$8,090.01
Jan. 7, 2015	Gold nugget	211.07 gms	$6819.67
Jan. 7, 2015	Gold nugget	226.03 gms	7621.73

Jan. 12, 2015	Refined nugget	219.57 gms	$7,566.38
Jan. 12, 2015	Refined nugget	209.15 gms	$7,207.30
Jan. 16, 2015	Refined nugget	212.16 gms	$7,648.36
Jan. 23, 2015	Gold puck	210.49 gms	$7,914.42
Feb. 3, 2015	Refined nugget	211.77 gms	$7,807.95
Feb. 3, 2015	Refined nugget	205.64 gms	$7,581.94
Feb. 6, 2015	Refined nugget	199.42 gms	$7,248.91
Feb. 6, 2015	Refined nugget	219.87 gms	$7,992.27
Feb. 6, 2015	Refined nugget	199.99 gms	$7,269.63
Feb. 12, 2015	Refined nugget	264.31 gms	$9,467.58
Feb. 23, 2015	Gold nugget	192.68 gms	$6,834.35
Mar. 9, 2015	Gold nugget	219.72 gms	$7,966.27

[78] The total amount of cheques issued to the defendant by Ottawa Gold Buyers to purchase these items was $138,172.46. The last cheque in the amount of $7,966.27 was subjected to a stop payment after that puck was seized by the police, and was not paid.

[79] The employees who had purchased the gold from the defendant all testified that all of the items purchased from the defendant and described in the manner set out in the above chart looked the same, and looked like the gold puck seized from Ottawa Gold Buyers. The only differences were in the weight, which varied a little bit from piece to piece.

[80] The five pucks seized by the RCMP also varied in weight. Their average weight was 225.9 grams. The average weight of the 5 gold pucks seized and the other pucks sold to Ottawa Gold Buyers was 220.32 grams.

[81] Mr. Sargent explained that the weight of each puck will vary, because it is dependent on the exact amount taken out of the cauldron in the ladle.

[82] The gold purchased at Ottawa Gold Buyers is tested for purity before the price is determined. Each of the samples sold by the defendant except one were 24 carat gold. The other was 23 karat.

n) Only the defendant sold gold pucks like these at Ottawa Gold Buyers.

[83] Two of the three Ottawa Gold Buyers employees who testified were asked if they had ever seen items like the gold pucks from any other sellers. They both testified that they had never seen items like these from anyone else. The third employee was not cross examined at all by defence counsel.

o) Gold coins which were of a type used by the Mint in its refinery were sold by the defendant to Ottawa Gold Buyers.

[84] The defendant also sold gold coins and wafers to Ottawa Gold Buyers during the time period covered by the charges. He sold such items on four occasions for a total of $13,563.87. These items were available on the open market. Items like this were sometimes purchased by the Mint from its own suppliers.

p) The defendant's income was insufficient to purchase gold in the amount sold to Ottawa Gold Buyers.

[85] The defendant declared total income in the years 2012, 2013, 2014 and 2015 of $60,000, 50,416.32, 55,604.00 and 13,687.00 respectively. His employment with the Mint ended on March 19, 2015.

q) The defendant sent money abroad to build a house in Jamaica, buy a boat in Florida, and jointly to himself and another person.

[86] A search was conducted of the defendant's home under a search warrant. A number of documents were found which were admitted to be documents in the defendant's possession. They included an application by the defendant to purchase a house to be constructed in Kingston, Jamaica. It was signed and dated January 12, 2015. The application was directed to MJC Masterbuilders Limited at an address in Kingston.

[87] The documents also included two statements of account with MJC Masterbuilders Limited. One was marked "draft" and was undated other than 2015. It was for a particular lot. The purchase price of the house was 6,294,650 Jamaican dollars. The other was marked "preliminary" and was dated January 30, 2015 and initialled and sealed by MJC Masterbuilders Limited. It was for the same lot, with a purchase price of 6,294,608 Jamaican dollars and an acknowledgement of a deposit of 289,732 Jamaican dollars paid on January 13, 2015. The balance due was indicated to be 6,004,875 Jamaican dollars, including a "balance on deposit" of 2,607,572 Jamaican dollars. The document contained handwriting dividing this last figure by 2 with the result being handwritten as 1,303,786 Jamaican dollars.

[88] A search warrant was also executed at the Royal Bank of Canada. The records of an account held by the defendant at the Nepean branch of the RBC were seized, as were a number of wire funds transfer documents.

[89] The following funds were transferred by wire from the RBC, utilizing funds from the defendant's account, to MJC Masterbuilders Limited in Jamaica on the dates indicated.

Date	Amount in Jamaican Dollars	Amount in CAD (not including fee for transfer)
January 12, 2015	289,732.50	3,172.57
February 4, 2015	1,303,786.00	14,693.67
February 6, 2015	1,303,786.00	14,693.67

[90] As can be seen, the amounts transferred were the deposit acknowledged on the signed and sealed statement of account dated January 30, 2015, and two payments in the handwritten amount which equalled the balance of the deposit due.

[91] Also found in the defendant's home was a document entitled "Purchase Agreement of Vessel" dated December 1, 2014 in which the defendant agreed to purchase a vessel named "Galaxy" from a company named Blue Seas Marine Inc. located in Cape Canaveral, Florida. The purchase price was 45,000 USD with a deposit of 10,000 USD due January 13, 2015 and the balance of 35,000 USD due January 19, 2015. It was signed by the defendant but not the vendor.

[92] It was found together with a document dated January 26, 2015 entitled "Delivery of F/V Galaxy Agreement Addendum" under which Blue Seas Marine Inc. agreed to deliver the vessel from New Bedford, Maine to Port Canaveral, Florida for an additional10,000 USD. This document was signed by the defendant and Blue Seas Marine Inc. and described the owner as "Desmond Roberts/Leston Lawrence".

[93] The following funds were transferred by wire from the RBC, utilizing funds from the defendant's account, to Blue Seas Marine Inc. on the dates indicated.

Date	Amount in USD	Amount in CAD (not including fee for transfer)
January 12, 2015	5,000.00	6,090.50
January 14, 2015	8,750.00	10,659.25
January 16, 2015	8,750.00	10,674.13
January 26, 2015	5,000.00	6,336.50

[94] As can be seen, the amounts transferred equalled half the price of the vessel, including the delivery fee. The initial payment of 5,000 USD was made the day before the 10,000 USD deposit was required and the final payment of 5,000 USD

was made the day of the agreement to deliver the vessel for 10,000 USD.

[95] Two wire transfers were made by the RBC with funds from the defendant's account, payable to "Leston and Marvin Lawrence" at an account of the Republic Bank Grenada Limited located in St. George's, Grenada. One was for 4,500 CAD on February 23, 2015 and the other was for 5,000 CAD on March 9, 2015.

III Analysis

[96] As I have indicated, guilt is proven beyond a reasonable doubt when it is the only reasonable conclusion which can be reached in light of all the evidence which has been led. In forming this conclusion, I am to consider all of the evidence, taken together. Conclusions which may be reasonable in respect of one piece of evidence may not be so in light of all of the evidence.

[97] Mr. Barnes submits for the defence that a number of reasonable doubts arise from the evidence. He admits that the evidence clearly establishes that the defendant sold gold to Ottawa Gold Buyers which was similar to or consistent with items available at the Mint.

[98] He submits, however, that the court cannot be absolutely positive that the gold pucks are identical to ones created at the Mint. He submits that it cannot be concluded that the pucks which were sold and not seized would have fit into the ladle.

[99] Nor, he submits, can it be concluded beyond a reasonable doubt that the dipping spoons were exclusive to the mint – that there is no evidence that this is so, because the machinist got the specifications for the computer assisted design program by measuring the ladles already used.

[100] He submits that every single person at the Mint had the opportunity to steal, in light of what he calls the Mint's appalling security procedures, with gold sitting around in buckets and individuals setting off security and being allowed to leave without the metal being located.

[101] Mr. Barnes points out that none of the pucks had a mark on them to indicate their origin, and, most importantly, that the Mint cannot even say that gold is missing. He points to a number of cases in which convictions based on circumstantial evidence were not upheld in the absence of proof that the item stolen was the property of the alleged victim. He cites the Supreme Court of Canada's decision in *Villaroman, supra,* and the Court's warning against drawing inferences of guilt too readily and jumping to unwarranted conclusions.

[102] I do not accept Mr. Barne's very able submissions. In my view, there is only one conclusion that can be reached when the totality of the evidence is considered – that Leston Lawrence secreted gold pucks out of the Mint.

[103] He clearly had the opportunity. The security cameras at the Mint would not have detected him putting a puck in his pocket after taking a sample from the cauldron. He often worked alone. There were no cameras in the locker room in the secure area. His locker contained Vaseline and latex gloves, which could have been used to insert a puck into his rectum. A puck so inserted would not have been detected by the hand wands which were used after the archway alarm was set off.

[104] The evidence from the records of the archway metal detectors is consistent with the defendant having regularly secreted gold in his rectum. He set off the alarms more frequently than any other employee who did not have a medical implant. Every time he set it off, he was wanded and allowed to leave without the metal being located.

[105] The Mint's failure to notice missing gold was adequately explained. It does not know exactly how much pure gold it purchases. The amount taken was not material when considered in the context of all the items containing gold purchased by the Mint.

[106] The pucks which were recovered from the defendant's possession were identical in diameter to those produced in the Mint. They fit the ladle perfectly. Their elemental composition was consistent with those produced at the Mint. The discrepancies in each batch of gold produced at the Mint were insignificant and adequately explained.

[107] The employees of Ottawa Gold Buyers testified that only the defendant sold pucks like the ones seized, and that all the others which were sold to Ottawa Gold Buyers and not seized looked the same.

[108] The ladles used to create the pucks were exclusive to the Mint. They were all made using the same computerized lathe program. It was based on measurements taken by the machinist who created the program from the ladles previously used, but there is no evidence that those ladles were all the same.

[109] The ladles were not commercially available outside the Mint.

[110] Mr. Lawrence's declared income was insufficient to purchase the gold he sold to Ottawa Gold Buyers.

[111] This case is not like those cited by Mr. Barnes. As an example, I refer to the case of *R. v. Finn*, [1991] B.C.J. No. 3266 (C.A.). In that case, the defendant, charged with possession of stolen property, was found with 20 cartons of siding material. The material was widely distributed throughout Vancouver and the rest of Canada. It was found in a truck driven by the defendant about 1:00 a.m. in an isolated location 50 yards from the broken gate of a business which sold building supplies. One carton was found outside the gate. It could only be established with certainty that one carton was missing from the building supply business. Since the product was widely available, and it could not be shown that any other material was

missing from the building supply store, the defendant's conviction was set aside.

[112] In this case, the gold pucks were unique. Furthermore, much other evidence, set out above, points to the defendant's guilt.

[113] Each case turns on its own facts. In my view, the facts of this case lead to the inexorable conclusion that the defendant stole gold pucks from the Mint. Any other conclusion which is consistent with the evidence is not reasonable. Any such conclusion is, to use the words of the Supreme Court of Canada in *Villaroman,* fanciful and speculative.

[114] I conclude that the Crown has proven beyond a reasonable doubt that the defendant stole 22 gold pucks from the Mint and sold 18 to Ottawa Gold Buyers. He received $130,206.19 for 17 of those pucks. He did receive a cheque for $7,966.27 from Ottawa Gold Buyers for the 18th puck sold on March 9, 2015, but that cheque did not clear after that puck was seized.

[115] The Crown submits that I should conclude that the coins and wafers sold by the defendant to Ottawa Gold Buyers were also stolen by the defendant from the Mint. Mr. Friesen submits that the evidence establishes that items such as these were often sold to the Mint and contained in the open pails on the floor at the pre-melt stage. Consequently, they were available to the defendant. These coins could account for the alarms in the archway metal detector with a lower numeric value.

[116] I am not prepared to conclude that this has been established beyond a reasonable doubt. There is a distinct difference between gold coins and wafers and the gold pucks. The former are readily available on the commercial market and the latter are unique to the Mint. A reasonable inference from the evidence (setting aside an impermissible inference which might be drawn from the evidence in respect of the theft of the gold pucks) is that the defendant purchased the coins and wafers and resold them to Ottawa Gold Buyers.

[117] Mr. Friesen, Crown counsel, submits that the value of the four pucks found in the safety deposit box can be conservatively estimated at $6,819.67 each. That was what was paid by Ottawa Gold Buyers for the cheapest puck sold by the defendant on January 7, 2015. That puck weighed 211.07 grams and was 23 karats. All four seized pucks weighed more than that and were 99.5% gold. Consequently, their value was higher. Using that figure as the value of the four seized pucks, they had a total value of $27,278.68, and the total value of the stolen pucks was $165,451.14.

IV Findings of guilt

[118] Mr. Lawrence has been charged with five offences.

a) Theft, contrary to s. 334

[119] I have already explained why I have concluded that he is guilty of theft of gold from the Mint. He took gold which belonged to the Mint, knowing that he had no right to do so. The value of the gold taken was more than $5,000. There is a finding of guilt on this count.

b) Possession of property obtained by crime, contrary to s. 354()(a)

[120] Mr. Lawrence was in possession of the gold pucks, knowing them to have been obtained by the commission of the indictable offence of theft. There is a finding of guilt on this count.

c) Conveying gold out of the Royal Canadian Mint, contrary to s. 459

[121] Subsection 459(c) provides:

> 459. Every one who, without lawful justification or excuse, the proof of which lies on him, knowingly conveys out of any of Her Majesty's mints in Canada,
>
> …
>
> (c) coin, bullion, metal or a mixture of metals,
>
> Is guilty of an indictable offence….

[122] Mr. Friesen submitted that I should make my decision without reference to the words "the proof of which lies on him". He made that submission relying on *R. v. Fisher*, [1994] O.J. No. 358, 17 O.R. (3d) 295, in which the Ontario Court of Appeal dealt with similar language contained in the definition of the offence under s. 121(1)(c) of a government official accepting a reward from a person dealing with the government without written consent of the head of the branch of government of which he is an official "the proof of which lies on him." The Court of Appeal held that that language created a reverse onus on the defendant, contrary to s. 11(d) of the *Charter*, and that the section should be applied as if the words I have put in quotes were not in the section.

[123] I agree with Mr. Friesen's submission. While it is likely that the words "the proof of which lies upon him" offend s. 11(d) in s. 459(c) just as they did in s. 121(1)(c), I need not decide that. The evidence satisfies me beyond a reasonable doubt, without the necessity to resort to a reverse onus, that the defendant does not have a lawful justification or excuse to have taken the gold out of the Mint. I heard significant evidence about the Mint's efforts to prevent gold being taken out in just the way that Mr. Lawrence did. He worked in the refinery. It was not part of his job to take gold out of the Mint. I am satisfied beyond a reasonable doubt that he took gold out of the Mint without lawful justification or excuse. There is a finding of guilt on this count.

d) Laundering proceeds of crime, contrary to s. 462.31(1)(a)

[124] Paragraph 462.31(1)(a) reads:

> **462.31 (1)** Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of
>
> **(a)** the commission in Canada of a designated offence…

[125] A "designated offence" is defined by s. 462.3(1) as any indictable offence other than one which has been designated by regulation. Each of the offences with which the defendant is charged is a designated offence.

[126] In order for the defendant to be found guilty of this offence, the Crown must prove that the defendant dealt with property or its proceeds that were obtained by crime, that he knew they were obtained by crime, and that he dealt with that property with the intent to conceal or convert it. To convert property is to change its character from what it was when it was obtained.

[127] I have already explained why I have concluded that the defendant obtained the gold pucks by the crimes of theft and taking gold from the Mint without authorization. He thus knew they were obtained by crime. When he sold the pucks to Ottawa Gold Buyers, and when he used the proceeds of those sales to purchase the house in Jamaica and the vessel in Florida, he was converting the stolen property and its proceeds.

[128] There is a finding of guilt on this count.

e) Breach of trust by public official contrary to s. 122

[129] Section 122 reads:

> **122** Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

[130] In order to obtain a conviction under this section, the Crown must prove beyond a reasonable doubt that the defendant was an official acting in connection with the duties of his office; that he breached the standard of responsibility and conduct demanded of him by the nature of the office; that the defendant's conduct was a marked and serious departure from the standards expected of an individual in the defendant's position; and that the defendant acted with the intention to use his public office for a purpose other than the public good – for example, for a dishonest or cor-

rupt purpose. (*R. v. Boulanger*, [2006] 2 S.C.R. 49 at para. 58)

[131] I conclude that the Crown has proven all of these things.

[132] The defendant was an "official" within the meaning of this section, since he was employed by Royal Canadian Mint, which is by s. 5 of the *Royal Canadian Mint Act* an agent of the Crown and therefore a "public department" as defined in s. 2 of the *Criminal Code*. Employment in a public department is an "office" by s. 118 of the *Criminal Code* and, by the same section, an "official" includes a person who holds an office.

[133] The defendant was engaged in the duties of his employment when he secreted the gold pucks on his person and stole them from the Mint. The theft was a serious and marked departure from the standards expected of a person working at the Mint – it is without doubt a fundamental principle that one who works at the Mint does not steal the money one is engaged in the manufacture of. The defendant removed the gold pucks for a corrupt purpose – to benefit himself at the expense of the public, the owners of the Mint.

[134] There is a finding of guilt on this count.

Released: November 9, 2016.

Signed: "Justice P.K. Doody"