

IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Jarrett*, 2003 NSPC 045

Date: 20030924

Case No.(s): 1261610

1261611

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Registry: Halifax

Between:

R.

v.

Carol Elizabeth Jarrett

Judge: The Honourable Judge C. H. F. Williams, JPC

Heard: Decision rendered orally September 24, 2003
in Halifax Nova Scotia

Counsel: Richard Miller, for the Crown
Mark Knox, for the Defence

BY THE COURT

Introduction

- [1] Against a background of seventy nerve-wracking unresolved suspicious fires during the Summer and Fall of 2001, Tuesday, December 18, 2001 might well be remembered by the residents of the south end of Halifax, in the Halifax Regional Municipality, and their fire and police services as the burning night when a series of successive suspicious fires seriously compromised public safety and overburdened the official resources that were required to deal with the many potential dangerous fiery threats to life and property. The police and fire services received reports that fires were ignited successively or were in progress at 1569 Dresden Row, 1341 Dresden Row, 1252 Queen Street, 5267 Tobin Street, 5653 Fenwick Street, 1136 South Park Street, and 5661 Victoria Road. All these fires appeared to have been set by the same person or persons whom the police suspected, after months of surveillance and intelligence gathering, to be one and the same culprits.
- [2] Suspecting that the accused, Carol Elizabeth Jarrett and a friend Christopher Bamford were involved in setting the fires, the police, for the past several months, were actively conducting surveillance and gathering intelligence on their movements and activities. As a result, on December 18, 2001, on the report of the first fire, the police immediately took up surveillance positions outside the apartment building where the accused lived in order to monitor any and all entrances or exits from it. Satisfying themselves that during their surveillance the accused never entered or left the building two officers subsequently entered and went to her apartment where they found her appearing to have been awakened by them from her sleep.
- [3] After seeking and receiving instructions from their supervisor the officers arrested the accused for setting the fires. Taking her to the police station they detained and interrogated her for twelve hours and then released her without charge. However, later that day, she contacted the police and gave them a witness statement indicating that Bamford had disclosed to her that he had set the fires in question. Consequently, on December 18, 2001 the police arrested Bamford and he confessed to setting the fires and informed them that he was the only person involved. Nonetheless, the police did not believe that he acted alone and after many suggestions, representations and importuning to him by the police, Bamford, on December 6, 2002, informed them that the accused was his accomplice in setting the fires for which he was charged with setting on December 18, 2001. As a result, the police arrested the accused and charged her with not only setting those fires but also with setting one at 5300 Morris Street on November 6, 2001.

Summary of Relevant Evidence

- [4] Because the accused and her friend Christopher Bamford were prime suspects in a series of unsolved fires that plagued the south end of Halifax, in the Halifax Regional Municipality, the police on November 6, 2001, had a surveillance team, led by Constable Charles Bruce, that was tracking their movements and activities. As was their habit, Bamford and the accused met up on Spring Garden Road and travelled on foot to the accused apartment at 1271 Church Street where they intended to watch a movie. Shadowing them, the Constable observed that at the location of 5300 Morris Street which intersects Church Street, the accused disappeared behind the building, into a cul-de-sac, leaving Bamford standing at the corner of Church and Morris Streets. Before she went behind the building, the accused told Bamford that her reason for going behind the building was that she had to do something. She, however, never specified what she had to do and neither did he ask her what she was going to do. He, however, saw that she had a lighter in her hand and he surmised that perhaps she was going to use it.
- [5] The Constable who had, for a few minutes, temporarily lost visual contact of the accused, reestablished it from a secluded vantage point. However, when he did so, he only saw her walking about three to five feet away from the direction where there was located a wooden garbage dumpster near the building. He saw her walk up to Bamford and they hugged each other. Again, even when they hugged the accused and Bamford never discussed what, if anything, she did when she was behind the building. Nonetheless, almost immediately as they hugged, the Constable noticed that a fire was burning in the dumpster and he radioed for the fire service. Tenants and the fire service extinguished the fire which was classified as suspicious in nature by the fire investigator. Nevertheless, on November 21, 2001, the police arrested the accused and, after detaining and interrogating her for twelve to thirteen hours, released her without charge.
- [6] Between 0230 hours and 0330 hours on December 18, 2001 the police and fire services of the Halifax Regional Municipality had to contain and suppress seven successive suspicious fires that were reported burning or in progress. The protection services were leapfrogging from fire to fire in their efforts to extinguish and to control them. The first fire reported in at about 0233 hours was at 1569 Dresden Row. This was followed by reports of fires at 1341 Dresden Row, 1252 Queen Street, 5267 Tobin Street, 5653 Fenwick Street, 1136 South Park Street and 5661 Victoria Road. The origins of these fires were the garbage or the debris stored or kept near the buildings.
- [7] On the report of the first fire the police almost immediately went to the area of the accused address on Church Street and, from about 0243 hours and until officers arrested her inside her apartment at 0316 hours, they had her building under constant and continuous surveillance. During that period the police saw no one enter or leave the building. One officer, Constable Bryan Naas, who was conducting surveillance from about 0243 hours was

dispatched to the fire on 5653 Fenwick Street that was called in during his surveillance. He arrived at the fire scene at about 0315 hours.

- [8] As he approached the area of Fenwick Street Constable Naas saw and encountered Bamford who was walking by himself. The Constable stopped him and, for about ten minutes, cursorily questioned him concerning his identification and whereabouts that evening. On request, Bamford emptied the pockets of his bulging winter coat and placed the contents on the trunk of the police car. These were a large floodlight, a regular ordinary light bulb and two or three Christmas lights, all intact. However, the Constable did not know whether Bamford was in possession of a lighter or any matches and none were produced by him at that time. Recalling his observations of Bamford, the Constable noted that he was not out of breath or perspiring. However, although he responded to the questions asked it appeared that he was searching for the answers. The Constable also did not detect any smell of alcohol.
- [9] Meanwhile, back at 1271 Church Street, Constable Sarah Smith who had arrived at 0306 hours and Constable Stephen Guzzwell who was also watching the building from about 0300 hours, both without observing anyone entering or leaving, linked up and did a perimeter reconnaissance of the building to determine whether there were any exits or entrances that could be used by the accused should the police enter the building. Satisfying themselves on this point they then alerted the building superintendent of their presence and requested permission to enter the building. Going to the accused apartment, they listened for any movements inside. Hearing no sounds they rapped and waited.
- [10] After a minute or two the accused opened the apartment door. She was dressed in pyjamas and wearing socks. Her hair was disheveled but smelled normal and she appeared groggy as if awakened from sleep. She did not appear to be short winded as if she had been running and her breathing was normal. The police informed her why they were present and she did not appear to be surprised and invited them inside. The police could see into her bedroom and observed that her bed was partially turned down, not greatly disturbed with a pillow exhibiting an indentation in it. They, however, given the purpose of their visit, did not examine her available footwear or clothing to assess or to determine whether she had been recently outdoors.
- [11] When the accused was detained by the police in her apartment, Constable Smith, one of the officers who was present, to her surprise, heard at least one radio communication announcing that another fire was discovered burning. Nevertheless, after seeking directions from and on the instructions of Sgt. Kenneth Burton, the shift supervisor, Constable Guzzwell, at 0316 hours, formally arrested the accused for setting fires. Under the escort of Constable Smith the accused, at 0320 hours, left the building for the police station where she was detained and interrogated for twelve hours before they released her without charge. About the same time, at 0315 hours, Constable Naas, on his way to the Fenwick Street fire, encountered and stopped Bamford.

- [12] Bamford and the accused met later in the day and spoke generally about the fires. However, at 1700 hours, the accused contacted the police and informed them that she had information from Bamford linking him to the seven fires. As a result, the police arrested Bamford and he confessed to setting the fires. Nonetheless, the police did not believe that he was truthful when he asserted that he acted alone. As a result, the police interviewed him at the Correctional Centre in early January 2002. Before Bamford's Preliminary Inquiry in November 2002, Constable Bruce had a meeting with defence lawyer and the Crown prosecutor to discuss his, Bruce's, views about Bamford's position as the sole person and principal in setting the fires.
- [13] Constable Bruce believed passionately that the accused was a party to the offences. He requested the defence lawyer to arrange another meeting between him and Bamford and indicated tacitly that it would be in Bamford's best interest to rethink his position as the sole participant in setting the fires. Constable Bruce also explicitly told Bamford, defence lawyer and the Crown prosecutor that he, Constable Bruce, believed strongly that the accused was a party to the offences and that Bamford was not telling the full story in his confession statement. In consonance, on December 6, 2002, Bamford gave to the police an audio and videotaped statement implicating the accused as his accomplice in setting the fires. As a result of this information the police arrested the accused and charged her with setting the fires.
- [14] In his direct examination, Bamford asserted that he and the accused met on December 18, 2001 and decided to set some fires. He lit the first fire at 1569 Dresden Row and the second one at 1341 Dresden Row. He avowed that the accused was with him and more or less acted as a look out. Further, he related that they went to 5257 Tobin Street, where it was the accused who put her lighter to some garbage saying that she was going to light it. Additionally, they went to 5653 Fenwick Street and 1136 South Park Street where the accused lit garbage and debris setting them on fire. He did not remember the sequence of setting the fires but remembered, after the last fire was set, that a male police officer stopped him, put him in the police vehicle and questioned him. When the police stopped him, the accused was not with him and he did not know when or where they had separated. Later in the day, after he had rested, he spoke with the accused but not in any details of the fires. Nevertheless, when the police arrested him he confessed to all the fires because of his friendship with the accused and he wanted to protect her.
- [15] During his cross-examination, however, Bamford disclosed that he was a drug addict. He recounted that five days before the fires he had reached such a state of anxiety that he had locked himself in his own apartment, thinking that it was bugged, and was daily consuming drugs and alcohol. Additionally, he related that on the evening of December 17, early morning of December 18, 2001, he was "fried" from his ingestion of a combination of street drugs and alcohol that caused him at times to "black out" and to lose detailed memory of his locomotion and whereabouts. Also, he only knew the times of the fires from police reports and not from his own personal view. He further remembered that the police had stopped him

on two occasions. Once was by a male officer and the second time was by a female officer when he was at a location near to the accused's residence where he noted the presence of several police vehicles.

- [16] Before he set the fire at 1569 Dresden Row, he remembered that he had a blackout at the Public Gardens and when he snapped out of it the accused was not with him. He also had a blackout after 1569 Dresden Row and the blackouts were recurring frequently and all he can remember was being at the fires but cannot remember how he got to the locations, the exact locations, what route he took or any landmarks to orient him as to where he was. Additionally, he related that he was walking down unknown streets with no identifying features.
- [17] For the first couple of months after the fires, Bamford believed honestly that he acted alone and doubted that the accused was involved. However, after eight months of reflection and a period of importuning by others, including the police, he recognized the gravity of his own legal predicament and decided to implicate the accused and to share the burden of responsibility. He asserted that his now drug free life style and good nutrition had restored his deficient memory of the events.

Findings of Facts and Analysis

- [18] The Crown's theory, as I apprehended it, was that assuming the good credit of Bamford, there was no doubt that the accused was a party to the offences and, in some instances, the principal in setting the fires. Further, again assuming good credit, identity was the issue to be determined. In other words, accepting that two persons were involved, the main issue to decide was whether the accused was sufficiently identified as the person who along with Bamford set the fires.
- [19] Even so, the Crown has acknowledged that Bamford's testimony was problematic and here, it was a proper case to instruct myself according to the warning enunciated in *R.v. Vetrovec*, [1982] 1S.C.R. 811. In argument, however, he submitted that there was independent supporting evidence to show that two persons were seen in the vicinity of the 1569 Dresden Row fire and that a female was reported to be seen running in the vicinity of 1271 Church Street, the address of the accused's apartment building. Furthermore, the post offence conduct of the accused after the 5300 Morris Street fire, when she and Bamford embraced and her reaction on the arrival of the fire service, suggested strongly a consciousness of guilt.
- [20] Conversely, the theory of the defence, as I understood it, was that the police investigation of the fires and their subsequent conclusions that the accused was a party to the offences charged, were seriously flawed and deficient of factual proof. He submitted that the police had very strong suspicions concerning the accused's culpability and he suggested that they were so obsessed with this notion that they ignored and disregarded any evidence that could

have exonerated the accused. Moreover, Bamford was a discreditable person who shamelessly would incriminate the accused to win a promised leniency for himself. Additionally, there was no corroborative evidence to support Bamford's assertion on any particular salient factor that the accused was probably involved with him. On the contrary, there was pertinent evidence that not only contradicted and conflicted with that of Bamford but which refuted the theory that the accused could have been involved with the offences charged.

- [21] At the outset, however, and before I begin my analysis I should say that it seems to me and I think, as it is very appropriate in this case, that we ought to remember that in our rational developed system of criminal jurisprudence and in all cases of the impartial application of its rules, regardless of the gravity of the alleged offence, we should not be deterred from asserting but should always defend and adhere to well-founded and entrenched principles that have for centuries guided our courts of justice and protected our liberties. I refer to such principles as the presumption of innocence and the burden upon the prosecution, in all cases, to prove the guilt of the accused beyond a reasonable doubt by presenting at the trial of the accused, relevant, credible, trustworthy and reliable evidence.
- [22] Here, inductively and deductively, I think that as a valid proposition, it is rational to conclude that on December 18, 2001, the police were faced with a conundrum. There were too many unsolved cases of suspected arson and the incidents were becoming more frequent with the potential for catastrophic consequences. On the evidence, I think that it is reasonable to conclude, and I do, that the police had a strong belief, based upon their own surveillance history and intelligence gathering, that the accused was most probably involved in setting the fires. However, it was a belief and not a reality regardless of how convincing it was to them. Additionally, it was not a fact in the sense that it was something that they could prove objectively. If it were, it would not be a belief but rather factual knowledge. Moreover, I think that they sincerely believed it but couldn't substantiate it with any proof. Nevertheless, it seems to me that as long as they believed it and it was not revoked by any objective evidence or experience, to them, it had the substance of truth, and they accepted it as such.
- [23] In support of this proposition, I bring to mind Constable Bruce's testimony that, as the lead arson investigator, he had an unassailable belief that the accused was a party to the offences and, despite his confession, Bamford was not telling the full story. As a result, the Constable interviewed him in the Correctional Centre in early January 2002. In November 2002, and before Bamford's preliminary inquiry, the Constable met with Bamford's lawyer and the Crown attorney handling the case and, in effect, solicited the defence lawyer to encourage Bamford to be sensible about his own position. He also implied that it would be in Bamford's best interest to rethink his account of the fires. Additionally, he expressly told the Crown, defence lawyer and Bamford himself that, despite his denials, he, the Constable, believed that the accused was his accomplice.

- [24] On this point, I should note that I was not convinced by what I considered to be the Constable's evasive and equivocal responses to the question on whether he had made or offered any promises to Bamford, implicitly or explicitly, to the effect that if he were to cooperate with the police it would help him in his own case, that something significant did not occur. Consequently, I think that it is reasonable to conclude, and I do conclude, as it is in harmony with the preponderance of the probabilities that currently existed and which a practical and informed person would, in the circumstances, readily accept as reasonable, that after interviews and persistent, explicit and not too subtle presentations by the Constable and others, Bamford believed sincerely that cooperating with the police was in his best interest. I conclude and find that, as a result, he did cooperate with the police.
- [25] I was also mindful that the police had arrested the accused on November 21, 2001, after the November 6, 2001 dumpster fire at 5300 Morris Street. Then, they detained and questioned her for twelve to thirteen hours and released her without charge. Likewise, they had detained and questioned her for twelve hours on December 18, 2001 and also released her without charge. Additionally, I have Bamford's testimony of the pressures placed on him by the police and others and their efforts to inveigle him to implicate the accused as his accomplice. He also speaks of his self doubts and his flashes of memory due to his abstinence from street drugs, good nutrition and time to reflect upon things. In the end, he asserted that he made up his mind, concerning the accused, by his own soul searching despite external pressures to arrive at the same conclusion.
- [26] Consequently, in my determination of the adequacy of the evidence against the accused, I weighed and assessed carefully the many disparate and arresting pieces of testimonial data. First, it seems to me that when an individual, cast in the position of the witness Bamford, has pled guilty and has accepted full responsibility, as the principal, for the same offences which form the subject matter of the offences presently charged against the accused and for which he is now a prosecution witness, it must be presumed that his guilty plea was voluntarily and unequivocal. Likewise, it must be presumed that he must have accepted his responsibility for the crimes with full knowledge of the consequences of his guilty plea. Now, as the preminent Crown witness whose testimony is central to demonstrate the guilt of the accused, he was not denying his culpability but has stated quite candidly that he has implicated the accused as his accomplice in the offences primarily because of his belief that by sharing the blame with someone whom the police had explicitly importuned to him was a party to the offences whom he ought not protect from justice, would result in a favorable recommendation on the imposition of his own sentence.
- [27] All the same, it seems to me that, although a competent witness, his evidence, by itself, cannot be used as proof positive of the guilt or innocence of the accused or to draw an inference of consciousness of guilt or otherwise. *R. v. White* (1998), 125 C.C.C (3d) 385 (S.C.C.), *R.v. Poirier* [1995] B.C.J. No.368 (C.A.). Therefore, I think that, as a witness asserting the belated existence of a co-principal in the same offences to which he has plead guilty as the only participant, determining his reliability and trustworthiness become

especially critical factors in deciding whether his testimony is to be believed.

- [28] Second, as he is the only person who might have the full and detailed knowledge of the crimes, I also considered and weighed carefully, with the total evidence, his admission that days immediately prior to the fires on December 18, 2001 he had secluded himself in his apartment and daily was consuming non-prescribed drugs. Added to this mix was his admitted lack of coherent and reliable recollection of the events without third party influences and suggestions; his confused mental state; his difficulty in remembering things and his memory flashbacks. I think that these factors were indicative and symptomatic of his emotional state and which I reasonably inferred had a significant impact on his reliability. These factors, however, were never addressed nor explored by counsels.
- [29] Additionally, there was his transient lifestyle; his survival as a panhandler on the streets of Halifax; his drug abuse habit and his stated good friendship with the accused. These factors, when rationalized, could, I think, suggest his receptivity to draw inferences from hidden assumptions which might have served as the basis for his conclusions or they might also demonstrate his capability of inventing a story that had all the features of credibility but lacking the qualities of any real memory. Nevertheless, on my impressions of him as he testified and bearing in mind the above factors, I found it difficult with any degree of confidence, to bridge the gap between his perceived actual and real experiences, and in particular as they might relate to the accused on the evening in question.
- [30] Third, I am mindful that during the fires on December 18, 2001, the police had the accused's home under active and continuous surveillance and did not see her enter or leave the building. When officers eventually located her inside her apartment, she appeared to have been awakened by them. Further, when they detained her and she was in police custody, at least one more fire was reported to have been ignited. Furthermore, when Sgt. Burton, the night supervisor, ordered her arrest, he admitted that he did so only on his personal knowledge and belief concerning the arson investigations in which the accused was a prime suspect. Thus, her arrest, on that night, I think, was based upon historical information and a subjective belief that disregarded the fact that she was in actual police custody when other fires that she is accused of setting were being ignited and reported to the authorities.
- [31] As a result of these worrisome factors I was compelled to ask myself the following:
- (a) Apart from Bamford's affirmative unsupported assertions concerning the accused, could it be the case that the police presented and suggested to him their personal belief as the truth, and, subconsciously implanted in his mind an idea that established an affinity with their views and which, by accretion, developed and acquired a state of perfection resulting in flashes into his consciousness or objective mind as an intuitive impression that he considered and translated to be his own unblemished recovered memories of the events?

(b) Given his self induced drug befogged mental state at the time of the events, his confused mental state and his then contemporaneous lack of recall or report of any actual and any indubitable involvement of the accused, or at all, did and could his memory recall of the actual events improve over time and, if so, apart from his own self-interested, self-flattering and gratuitous assertions, on what independent, confirmatory and valid basis could his testimony of his reconstructed memory be considered trustworthy and reliable?

(c) In short, was this a case where Bamford's testimony was characteristic of a false memory created by constant, repetitive and polarized suggestions to a receptive and pliable individual with selfish motives?

I, however, do not think that there was any extrinsic or convincing evidence to ground or to support Bamford's contention that after many months of rest, good nutrition, self doubts and soul searching, his reconstruction of events rendered it free of self interest, third party influence and aggressive suggestions that could have intentionally or unwittingly tainted and corrupted his thinking, or that it could, in fact, be accurate. In the end, I concluded that it was difficult to accept, without doubt, his positive assertion of his own creditworthiness without independent supporting evidence.

[32] Fourth, when I considered all the above factors along with his self declared interest prompted by the implied promise, hope or expectation of conditional leniency in his own legal predicament and the need to cooperate with the authorities, I think that it would have been easy for him, shrewdly, pragmatically and quick-mindedly, to construct and to manipulate facts, known only to him, to conform with the convincing belief held by the police that the accused was his accomplice in setting the fires. In the end, I concluded that there was a high risk of tainted testimony where having admitted his guilt, but in coming to grips with what reasonably could be interpreted as police inducements, he, Bamford, could now be attempting to purchase some manner of immunity or leniency by falsely incriminating the accused and agreeing to testify against her as his alleged partner in crime.

[33] In summary, therefore, in all the circumstances, I conclude and find that, by his testimony, Bamford has placed himself squarely and has become the guilty self-confessed accomplice of the accused, as alleged. *R. v. Horsburgh*, [1968] 2 C.C.C. 288 (S.C.C.), *R. v. Morrison* (1917), 29 C.C.C. 6 (N.S.S.C.). Moreover, his testimony is tendered to establish that the accused participated in setting the fires on December 18, 2001. Therefore, it seems to me, that the test for the reliability and trustworthiness of his testimony must be that, at the least, it is consistent with the existing probabilities that surrounded the event and which a practical and informed person would, in the circumstances, readily recognize as reasonable. *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.). Additionally, there must be some independent and supporting evidence that is capable of persuading me that his testimony is in harmony with other relevant and pertinent evidence relating to the subject matter of his detailed assertions and which would strengthen my belief that he is truthful. *R. v. Vetrovec*, [1982]

1S.C.R. 811. In my view, absent these values, his testimony would remain questionable, untrustworthy and unreliable and would not be sufficiently cogent to persuade me that he is truthful. See also: *R. v. Campbell* (2002), 163 C.C.C. (3d) 485, 202 N.S.R. (2d) 170 (N.S.C.A.).

- [34] In assessing and weighing the total evidence concerning the fire on November 6, 2001, I looked for direct or circumstantial evidence to establish that the accused did set the fire in the wooden garbage bin at the rear of 5300 Morris Street. There was no evidence that anyone saw her directly at the bin's actual location doing anything, or at all. When Constable Bruce saw her she was walking in a direction, three to five feet, away from where the bin was located. Before she went behind the building and out of sight of the witnesses presented, the evidence was that all she was reported to have said to Bamford, who was her companion, was that she had to do something behind the building. Bamford did not ask her what she was going to do and he certainly did not see whatever she did, if anything, behind the building.
- [35] When she returned from behind the building and hugged him she did not discuss what she had done and neither did he ask her what she had done. He assumed, and speculated, on no other basis than because he initially saw her with a lighter in her hand before she left him and went out of his view behind the building, that she was going to light the fire. However, he saw no fires burning. It was only when they were in her apartment, some minutes later, and he heard the fire engines that he became aware of the probability of a fire outside. But, the evidence was that he did not check to see the location of the fire, or if indeed there was a fire. The comments attributed to the accused when Bamford heard the fire engines, in my view, lacked context or nexus to her alleged prior activity, was ambivalent and, in my view, cannot without doubt, support the hypothesis that she exhibited a consciousness of guilt.
- [36] The cause of the fire was suspicious with no specific reference as to the agent that could have caused it. True, the accused presence near the bin and the timing of the fire was indeed suspicious. However, in my view, a gap existed in the evidence. The significant question is: what nexus, if any, has been established between her and the fire? With respect to any confirmatory evidence, by way of example only, there was no prior out of court statement made by her; no traces of her were found at the scene and, when she was arrested on November 21, 2001 there was no evidence that she possessed a lighter that could have been identified by Bamford as the one allegedly in her possession on November 6, 2001. The evidence also pointed to other speculative causative factors that, in my view, raised some doubt that it was some unspecified and speculative activity of the accused and only the accused could have caused the fire. In short, we are left with speculations and suspicions which certainly are not the basis on which to ground a conviction in a criminal trial. In the result, I conclude and find that the Crown has not met its burden of proof beyond a reasonable doubt, and I find the accused not guilty as charged.
- [37] I do not doubt that in the early morning of December 18, 2001 a series of fires were reported

and were in fact burning in Halifax. Further, I do not doubt that Bamford has confessed to setting those fires. What is in doubt was whether the accused was Bamford's partner in crime in setting those fires. However, during the course of the trial, the Crown conceded that because Bamford could not recall being at 1252 Queen Street and 5661 Victoria Road either alone or with the accused to set any fires, or at all, it could not reasonably hope to get a conviction against the accused on these two counts. Consequently, on a joint motion with the defence, it requested the court to dismiss these two counts against the accused and to discharge her forthwith. Accordingly, I acquitted the accused of these two offences charged on the Information.

[38] Nonetheless, in addressing the fires, all the witnesses agreed that 1569 Dresden Row was the first to be ignited at about 0230 hours. When Sgt. Burton arrived at that location at 0239 hours he received a report of a second fire located at 1341 Dresden Row. Then a report came in for the 1252 Queen Street incident. Constable Scott MacLeod who had arrived at 1569 Dresden Row at 0245 hours went to the Queen Street location where he arrived at 0301 hours. Meanwhile Sgt. Burton who was leapfrogging over fences heard radio communications, at 0258 hours, that someone had seen a female person running toward the area of Church Street. He also spotted the beginnings of the fire at 5653 Fenwick Street where he arrived at 0305 hours. He also saw the fire at 1136 South Park Street where Constable MacLeod arrived at 0306 hours. Capt. Joe Cuvelier of the City's fire service at 0302 hours also received the dispatch call of the fire at 1136 South Park Street where he arrived at 0308 hours. At 0315 hours Constable Naas encountered Bamford on Fenwick Street. According to Sgt. Burton, the 5661 Victoria Street fire was the last to be called in.

[39] Therefore, in my opinion, it is essential to determine the sequential timing of the fires as that fact is critical in deciding the probable involvement of the accused with Bamford in setting them. Thus, on weighing and assessing the total evidence I conclude and find, on my best estimates, that the sequence of the fires was as follows:

1. The first fire was at 1569 Dresden Row and was lit between 0230 hours and 0233 hours.
2. The second fire was at 1341 Dresden Row and was lit between 0239 hours and 0245 hours.
3. The third fire was at 1252 Queen Street and was lit between 0245 hours and 0300 hours.
4. The fourth fire was at 5653 Fenwick Street and was lit between 0258 hours and 0300 hours.
5. The fifth fire was at 1136 South Park Street and was lit between 0300 hours and 0302 hours.

6. The sixth fire was at 5267 Tobin Street and was set between 0300 hours and 0315 hours.
7. The seventh fire was at 5661 Victoria Road.

[40] I accept and find that Constable Naas, at 0243 hours, was positioned in a strategic spot observing the front and Church Street side of the accused apartment building. Further, I accept and find that he kept the building under observation for fifteen to twenty minutes. Additionally, I accept and find that the purpose of his surveillance was to intercept the accused should she attempt to enter her building. However, I accept and find that during his period of surveillance the Constable did not see the accused or anyone enter or leave the building. On my findings of facts, also during this period, the Queen Street, Fenwick Street and South Park Street fires were ignited.

[41] Furthermore, I accept and find that Constable Naas was dispatched to the Fenwick Street fire from his location of surveillance of the accused apartment. Before he departed, he saw Constable Sarah Smith who I accept and find arrived at 1271 Church Street at 0306 hours. Thus, Constable Naas did not leave the Church Street area until after 0306 hours which corresponded with his testimony of being at the location for fifteen to twenty minutes. Also, I accept and find that Constable Stephen Guzzwell had taken up a surveillance position of 1271 Church Street just before 0300 hours and that he linked up with Constable Smith when she arrived at 0306 hours. Likewise, during his period of observation, Constable Guzzwell did not see the accused or anyone enter or leave the building.

[42] Further, I accept and find that Constables Smith and Guzzwell did a perimeter reconnaissance of the building to satisfy themselves that should they enter it there were no other exits or entrances that could be used by the accused. I accept and find that when the Constables knocked on the door of the accused's apartment she was present inside and appeared to have been there for some period of time. It therefore seems to me, and I so find, that objectively there was no evidence to conclude or to infer that the accused was anywhere else other than in her apartment from at least 0243 hours until she was arrested in her apartment at 0316 hours.

[43] I accept and find that the police testimonies concerning their contacts with the accused and their observations of her building to be credible and trustworthy. In my opinion, there was no extrinsic evidence to confirm or to suggest that she was outside her building when the fires were ignited. The evidence, tenuous as it was, that an unidentified female was seen running in the area of Church Street did not provide proof of anything as the surveillance officers saw no female or anyone running to or entered the accused apartment building. Accordingly, I find that the Crown's position on this point, apart from Bamford's untrustworthy, unsupported and unreliable testimony, was speculative, subjective and impressionistic but hardly probative. By way of example only, given the stated purpose of watching her building and going to her apartment, there was no evidence to show that the

police bothered to collect forensic or other evidence by examining her clothing or footwear to determine whether she had been outside recently as they suspected. Additionally, there was no evidence that she was in possession of any lighter, as suggested by Bamford, that she used to ignite the fires. Also, there was no evidence to show that there were other modes of access to the building that the police did not have under surveillance and, that she had the means and ability to use such access without them observing her.

- [44] Furthermore, she is charged with igniting the fires at Queen Street, Fenwick Street and South Park Street which I find occurred between 0245 hours and 0302 hours and also at Tobin Street that I find occurred between 0300 hours and 0315 hours, periods that I also find that she was in her apartment or was either detained or in actual police custody. Therefore, on the police own testimonies that disclosed their knowledge of these facts, I found it odd and it was difficult to fathom how the total prosecution apparently failed to recognize the obvious exculpatory evidence that cast doubts on the involvement of the accused. This observation I found to be troublesome and, in my view, it called into question the prosecution of the accused on those counts.
- [45] Concerning the two Dresden Row fires that I found occurred between 0230 hours and 0245 hours, I conclude and find that Bamford's testimony on these incidents was unreliable and untrustworthy. He was not only inconsistent and self-contradictory but presented as a person who, in direct examination, was scripted but who fell apart in his cross-examination that was quite telling as it revealed obvious errors that were never corrected to rehabilitate his credit. He disclosed, for example, that he was so high on a combination of street drugs that he drifted in and out of conscious awareness and even momentarily and frequently blacked out and lost awareness of his surroundings. He did not know where he went or how he got to the fires. He could not remember the exact locations or what routes he took or any landmark to orient himself as to where he was and, contemporaneously, he was not even sure whether the accused was with him.
- [46] As I have found, Bamford also had a motive to color his testimony. On the evidence, I found that it was reasonable to conclude that he believed, based upon his interviews with the police and their importuning, that it was in his best interest to cooperate with the police by telling them that the accused was his partner in crime. Thus, having instructed myself on the *Vetrovec* warning, on the evidence, I could not find any independent supporting evidence relating to the subject matter of his detailed assertions that would strengthen my belief that he was truthful.
- [47] The evidence that two persons were seen in the vicinity of the Dresden Row fires was vague and inconclusive as to the genders of these persons. In my view, this does not amount to confirmatory evidence that the accused was outside her building at the time of these fires. Thus, in my opinion, as I could not find any independent supporting evidence, Bamford's testimony remained untrustworthy, unreliable and questionable and, as a result, did not rise to the standard of proof beyond a reasonable doubt. In the result, with respect to the two

Dresden Row fires, on the evidence presented, I am not satisfied, beyond a reasonable doubt, that the accused was with Bamford when he admitted to setting these two fires. Accordingly, I will find her not guilty of these two offences and will enter acquittals on the record.

Conclusions

- [48] In my opinion, there was not the remotest of supporting evidence that the accused was outside her apartment on the early morning of December 18, 2001, and if so that she was in Bamford's company. Indeed, the only objective evidence of the whereabouts of the accused was from the police officers who had her apartment building under constant and continuous surveillance from 0243 hours until she was arrested inside her apartment at 0316 hours. During their period of surveillance the officers did not see the accused enter or leave the building and there was no empirical objective evidence to demonstrate that she had recently entered or was recently outside the building before the police arrived on the scene although fires that she was supposed to have started were being reported to the authorities.
- [49] Furthermore, in my opinion, Bamford's testimony revealed significant internal discrepancies and contradictions. It was also inconsistent on material particulars with other credible and trustworthy witnesses. Thus, even if I were to give it the most generous interpretation it would still hardly be consistent with the hypothesis that his testimony was sufficiently reliable to eliminate from my mind any reasonable doubts concerning his reliability or creditworthiness as a witness or to strengthen my belief that he was truthful. Overall therefore, I find that it would be unsafe to ground convictions on the unsupported testimony of Bamford a self-confessed accomplice. In the result, I find and conclude that the Crown has failed to meet its burden in proving the guilt of the accused beyond a reasonable doubt on all counts charged on the Information tried before me.