

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**FRANÇOIS PARISELLA**

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**REASONS FOR DECISION  
of the  
HONOURABLE JUDGE GARTH MALAKOE**

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Heard at: Yellowknife, Northwest Territories

Date of Decision: December 18, 2019

Date of Trial: July 24 and 26, November 13 and 15, 2019

Counsel for the Crown: Morgan Fane

Counsel for the Accused: Jay Bran

[Section 354(1)(a) of the *Criminal Code*]

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**A. INTRODUCTION**

**A.1 Charge and Circumstances**

[1] François Parisella is charged with possessing firearms, gun cases and a gun locker knowing that they were stolen.

[2] In particular, it is alleged that he:

On or about the 12<sup>th</sup> day of October in the year 2018 at or near the city of Yellowknife in the Northwest Territories, did have in his possession property of a value not exceeding five thousand dollars knowing that all of the property was obtained by the commission in Canada of an offence punishable by indictment contrary to Section 354(1)(a) of the *Criminal Code*.

[3] On October 12, 2018, the police found these items in a storage locker which Mr. Parisella had rented three days earlier. Mr. Parisella was arrested by the police when he was in the yard where the storage locker was located.

[4] The case against Mr. Parisella is circumstantial. The items were stolen from a house on Rivett Crescent (“the O’Keefe residence”). A distinctive lime green Dodge truck had been seen towing a car stuck in the driveway of this house. This was on the Yellowknife news and on social media. Mr. Parisella gave a statement to the police in which he described how he used his wife’s lime green Dodge truck to tow the car belonging to his wife’s nephew, Beau Desire-Tesar. He denied any involvement with the theft. Within an hour or two of speaking to the police, Mr. Parisella rented a storage locker at Diamond Mini Storage. No one saw Mr. Parisella placing items in or taking items from the storage locker. The RCMP met with Mr. Parisella and advised him that they were aware that he had rented a storage locker and that they felt it might be connected to the theft. Shortly after

this meeting, Mr. Parisella was arrested after he arrived at the Diamond Mini Storage yard.

[5] The Crown submits that François Parisella had constructive possession of the stolen items, i.e., that he had knowledge that they were stolen and that they were stored, with his knowledge, in a storage locker which he had rented and therefore, over which he had control.

## **A.2 Conduct of the Trial**

[6] The Crown called five witnesses, Robert Mitchell, Randy Robertson, Stanley Grimes, Cst. Derek Young and Cst. James Gallant. François Parisella testified on his own behalf. In addition, his wife, Bonnie Parisella and his sister, Mélanie Parisella testified.

[7] At the beginning of the trial, there was an admission that the statement that Mr. Parisella gave to the RCMP on October 9, 2018 starting after 1:00 p.m. and ending at 1:58 p.m. was voluntary. As part of its case, the Crown filed an Affidavit of Ownership pursuant to section 657.1 of the *Criminal Code* in which Cameron O'Keefe affirmed that he was the owner of certain firearms, gun cases and gun lockers which had been taken from the garage of his house on Rivett Crescent.

[8] At the conclusion of the Crown's case, there was an agreement among counsel as to the weights of certain items that were found in the storage locker. In particular the gun locker with the items in the bottom weighed 77 pounds. The Stanley construction case weighed 29 pounds empty and with the items found in it, weighed 108 pounds. These weights are relevant since the defence asserts that the accused was not capable of lifting items of this weight due to his health problems.

[9] At the conclusion of the trial, the Crown directed a stay of proceedings with respect to a charge that Mr. Parisella stole the items listed above.

[10] In the decision that follows, the evidence of the witnesses is summarized. Then, there is a review of the applicable law with respect to credibility, circumstantial evidence and possession. Next, the credibility of François Parisella is examined. Finally, each of the elements of the circumstantial evidence of the Crown is reviewed.

[11] The following is a summary of the testimony of each of the witnesses.

## **B. SUMMARY OF EVIDENCE**

### **B.1 Testimony of Robert Mitchell**

[12] Mr. Mitchell is employed at Diamond Mini Storage and Fiberglass North, which are the same business. He knows the accused because Mr. Parisella rented a storage unit last fall and had cleaned the vents at their shop before. Mr. Mitchell was in the office on break when Mr. Parisella rented a storage unit from Randy Robertson, the manager.

[13] After Mr. Mitchell saw Mr. Parisella the day he rented the storage locker, he saw Mr. Parisella's truck on a following day. It was the same truck Mr. Parisella was driving when he rented the storage unit. Mr. Mitchell is unable to describe the truck. There was no one in the vehicle. It was located at the end of a row of storage units.

[14] He told Randy Robertson, the manager of Diamond Mini Storage, that he saw the truck that day. When Mr. Mitchell saw the truck, he was either on his coffee break (10 a.m.) or his lunch break.

[15] If someone wanted to drive right up to their storage unit, they could. In this case, Mr. Parisella's pickup truck was at the end of the storage units. It would have been 65' from storage unit I8. The storage units are accessible 24 hours a day.

### **B.2 Testimony of Randy Robertson**

[16] Randy Robertson is manager of Diamond Mini Storage and of Fiberglass North. He has known François Parisella and his family for over 20 years.

[17] He knows that Mr. Parisella has two trucks: one is a neon lime green Dodge truck; the other is a white crew cab truck for business which normally has all of Mr. Parisella's work equipment in the back.

[18] Mr. Parisella came to Diamond Mini Storage to rent a storage locker on Tuesday, October 9, 2018. The business is located at 22 Coronation Drive in Yellowknife. The rented locker was a 5' x 8' unit. Unit I8. Mr. Parisella paid for two months. He paid with debit and the debit slip is dated October 9<sup>th</sup> at 13:36. The time on the debit machine is an hour behind so the actual time was 2:36 p.m. Mr. Parisella did not look at the unit. The storage unit does not come with a lock. The user has to provide his own lock.

[19] Mr. Robertson asked Mr. Parisella why he needed the unit. Mr. Parisella said that he wanted to get a bunch of stuff out of the garage. “His wife was bitching him out that he had too much crap.”

[20] Mr. Robertson had seen posts on social media which seemed to involve Mr. Parisella’s lime green Dodge truck. He asked about these posts at the time Mr. Parisella was renting the storage unit. Mr. Parisella said that he got a call late at night. It was Beau Desire-Tesar. Mr. Desire-Tesar’s car was stuck on a retaining wall and Mr. Parisella had to go and pull it off the retaining wall at the residence on Rivett Crescent. Mr. Parisella also said that Mr. Desire-Tesar was a relative of his or his wife and that one night Mr. Desire-Tesar came to his house at 1 a.m. drunk and wanted to get a sawed-off shotgun that Mr. Desire-Tesar had stashed in the back of Mr. Parisella’s garage. Mr. Parisella also said that Mr. Desire-Tesar was a little out of control.

[21] On Wednesday, October 10, 2018, Mr. Robertson looked in storage unit I8. There was no lock on it and nothing inside. On the morning of Wednesday, October 10, 2018, Mr. Robertson received an e-mail from Cpl. Lie inquiring if he had rented a storage unit in the last 24 to 48 hours. Mr. Robertson responded to Cpl. Lie. Shortly after, Cst. Young contacted Mr. Robertson. On Thursday, October 11, 2018, Mr. Robertson checked unit I8 at 8:00 a.m. and there was no lock on it. At 10 a.m. after being told by Mr. Mitchell that the accused’s truck had been there, Mr. Robertson checked unit I8 and there was a lock on it. Mr. Robertson then let Cst. Young know that there was a lock on the storage unit.

[22] The lock was a padlock which required a key to open.

### **B.3 Testimony of Stanley Grimes**

[23] On October 8, 2018, before lunch, Mr. Grimes saw a man exiting the O’Keefe residence at 185 Rivett Crescent. The man was a white male, about 6’ tall and had a beard and a stocking cap. A couple of hours later that day, he got a call from Pam, the next door neighbour to the O’Keefe residence. She said that there was a car on the driveway of the O’Keefe residence. It was ½ on the driveway and ½ overhanging a 4’ drop.

[24] Mr. Grimes went out of his house and observed this. The car was foreign. It was a hunter green sedan with four doors. The driver’s side two wheels were on the driveway. The passenger’s side two wheels were in the yard. It was full of household contents. The doors were opened. There was stuff sticking out at least one of the windows and for sure the driver’s side. The trunk was not fully closed. A half hour or so later, he was told by Pam that a green full-sized Dodge pickup

with two stripes was pulling the car out. A minute or so later, Mr. Grimes saw the green Dodge truck described by Pam going down Borden Drive.

#### **B.4 Testimony of Cst. Derek Young**

[25] On October 9, 2018, Cst. Young took over carriage of a file involving a reported theft from the O'Keefe residence. The theft had occurred on October 8<sup>th</sup>.

[26] He became aware of a green Audi registered to Beau Desire-Tesar which had pieces of weapons included arrows, perhaps a bow and a soft gun case inside. The car had been towed, the day before, after being found broken down on a main road in Yellowknife. In the vehicle were found pill bottles with the names of members of the O'Keefe family.

[27] On October 10<sup>th</sup>, Cst. Young spoke to Randy Robertson and learned that François Parisella had rented a storage locker in the afternoon of October 9<sup>th</sup>, located at 22 Coronation Drive and that the unit number was I8. On October 11<sup>th</sup>, Randy Robertson told him that there was no lock on the unit early in the morning, but there was a lock at 10:18 a.m.

[28] On October 11, 2018, Cst. Young ordered surveillance on Mr. Parisella and on the locker at 22 Coronation Drive. The surveillance on Mr. Parisella lasted until about 8:00 p.m. Mr. Parisella was travelling to various work locations in his white utility truck. In describing the white utility truck, Cst. Young said it was similar to a rescue fire truck with a large amount of compartments and duct hoses in the back.

[29] On October 12, Cst. Young was trying to get a hold of Mr. Parisella. Cst. Young saw him and another occupant in the white work truck on Franklin Avenue. He followed the truck to the Stanton Plaza parking lot. Mr. Parisella was in the white truck with a passenger. Cst. Young was in a police vehicle with Cst. Gallant.

[30] Cst. Young introduced himself as the lead investigator and said that he had knowledge of the storage locker on Coronation Drive. Cst. Young said it was suspicious and offered Mr. Parisella the opportunity to provide a statement. Mr. Parisella appeared very nervous. Cst. Young also offered Mr. Parisella the opportunity to consent to a search of the locker by filling out a consent search form at the detachment.

[31] Cst. Young left Mr. Parisella around 5:00 p.m. with the impression that Mr. Parisella was coming to the detachment. Cst. Young exited the parking lot of Stanton Plaza and turned left on Borden Drive. He saw that Mr. Parisella exited and turned right on Borden Drive.

[32] At 5:20 p.m. or 5:25 p.m., Cst. Young was at the detachment and became aware that Mr. Parisella had arrived at the yard where the storage unit was located. Cst. Young travelled to the Diamond Mini Storage yard and was present when Mr. Parisella was arrested.

[33] Later on, Cst. Young was present when Cst. Gallant tried the keys that he had seized from Mr. Parisella to open the lock on unit I8. None of these keys fit. The lock was cut off and Cst. Young observed guns, a gun locker and a Stanley construction case inside unit I8.

### **B.5 Testimony of Cst. James Gallant**

[34] Cst. Gallant has a total of 10 ½ years' experience as an RCMP officer and was the exhibit officer for this case.

[35] He was involved in the search on October 9, 2018 of the green Audi in which the police discovered pill bottles labelled with the name of Beau Desire-Tesar and with the names of various members of the O'Keefe family.

[36] The first time that Cst. Gallant encountered François Parisella was on October 12, 2018 when Mr. Parisella pulled into the Stanton Plaza and Cst. Young spoke to him. Mr. Parisella was driving a white heavy-duty Ford truck with a flatbed which had silver metal brushed silver work boxes on the bed. Mr. Parisella appeared nervous and frantic and used a lot of hand gestures. Cst. Young and Mr. Parisella spoke in an area away from the truck because Mr. Parisella did not want the passenger to hear the conversation.

[37] Cst. Young spoke to Mr. Parisella about attending the RCMP detachment in regard to a storage unit. Cst. Young advised Cst. Gallant that Mr. Parisella was going to attend the detachment. There was a middle-aged male passenger in Mr. Parisella's truck.

[38] Cst. Young and Cst. Gallant went to the detachment to wait for Mr. Parisella. He did not attend. Cst. Gallant had left the detachment and received a radio call from Cst. Thibeault that Mr. Parisella was at the Diamond Mini Storage facility.

[39] Cst. Thibeault was in plain clothes in an unmarked police car at the storage area. Cst. Gallant was wearing plain clothes with a police vest.

[40] Cst. Gallant went to the storage facility and arrested Mr. Parisella for possession of stolen property. When Cst. Gallant arrived, Mr. Parisella was in the

driver's seat of the truck. Cst. Gallant seized Mr. Parisella's cell phone. At the detachment, he seized Mr. Parisella's keys in a search incidental to arrest.

[41] Later, Cst. Gallant executed a search warrant on locker I8 at 22 Coronation Drive. They tried every one of the seized keys that would fit in the padlock. None of them worked. To Cst. Gallant's knowledge, no one searched the white work truck before the passenger drove it away.

[42] Cst. Gallant located and took photographs of the firearms, ammunition, gun cleaning equipment and rifle cases found in unit I8. These photographs are Exhibit 7. The seized firearms are the firearms described by Cameron O'Keefe in his Affidavit of Ownership (Exhibit 1). Cst. Gallant estimates the rolling Stanley construction case found in the storage locker to weigh from 50 to 60 pounds and the gun safe to weigh 80 pounds.

## **B.6 Summary of Statement of François Parisella given on October 9, 2018**

[43] Mr. Parisella spoke to Cst. Adam Long between 1:29 p.m. and 1:58 p.m. on October 9, 2018. In the statement, Mr. Parisella said that his wife's cousin, Beau Desire-Tesar came to his place around lunch time on October 8<sup>th</sup> and wanted a tow. Mr. Parisella went to the residence where the car was stuck in his wife's 2017 lime green Dodge Ram; hooked up the car and pulled it out. Mr. Parisella then left. Mr. Parisella's wife called him on the morning of October 9<sup>th</sup> and said that "our truck is all over the news."

[44] Mr. Desire-Tesar had come over to Mr. Parisella's house in a car that he said belonged to the people in the house.

[45] Mr. Parisella drove the green truck to the house which was about a minute from his house. Mr. Parisella does not think he got out of his vehicle; that Mr. Desire-Tesar hooked up the tow cable to the car for Mr. Parisella to pull it out. Mr. Parisella did not look into the green four door Audi quarto. It has tinted windows.

[46] Mr. Desire-Tesar seemed hung over. Mr. Parisella was "kinda hangover myself too a bit."

## **B.7 Testimony of François Parisella**

[47] Mr. Parisella is 38 and moved to Yellowknife from Quebec in 1997 or 1998. When he first moved here, he worked three jobs. He moved to Edmonton for two years in 2003 when his girlfriend (later his wife) went to school. In 2004, he moved back to Yellowknife. He has two boys, 8 and 13.



[48] In October of 2018, he and his family were living at a residence on 146 Jeske Crescent, in Yellowknife. It is a double wide mobile home with a driveway on the side. At the end of the driveway is a 24' x 28' garage or shop. At the time of these events, Mr. Parisella owned his own company, François Duct Cleaning. He did duct cleaning, installed pellet stoves, cleaned chimneys and cleaned range hoods.

[49] At the end of July 2018 or the beginning of August, one of Mr. Parisella's kidneys stopped working. He was medevaced to Edmonton where they installed a tube to his kidney to monitor if it was working. Later, he had surgery to insert a stent to the kidney. He also had a hernia. At the time of the incident before the Court, he was recovering from surgery and was told not to lift anything over 5 to 10 pounds.

[50] Beau Desire-Tesar is the cousin of Mr. Parisella's wife. Mr. Parisella has known Mr. Desire-Tesar since Mr. Desire-Tesar was a 10 or 12 year old. Mr. Desire-Tesar worked for Mr. Parisella a bit. Mr. Desire-Tesar would come to the Parisella house on a regular basis. He was always using the shop. Even when Mr. Desire-Tesar was locked out of the shop, he would crawl through the window. Mr. Parisella was aware of Mr. Desire-Tesar's bad reputation and did not want him around. There was one occasion when Mr. Desire-Tesar came to the Parisella house at 3:00 a.m.; woke the entire family up; was messed up and wanted Mr. Parisella to open the shop for him so he could get a shotgun that Mr. Desire-Tesar had stashed there so he could go shoot someone.

[51] On Thanksgiving Day, 2018, Mr. Desire-Tesar showed up at the Parisella residence. He said that he had been partying at a house; his car was stuck and he needed a tow. Mr. Parisella was still in his pajamas. He changed his clothes; drove to the place on Rivett in his wife's truck and pulled the car out. Mr. Parisella does not think he even got out of his truck. He remembers that the wheels on the stuck car were still turning meaning that Mr. Desire-Tesar had left the car running and in gear. The house on Rivett was about a minute's drive from Mr. Parisella's house on Jeske Crescent. Mr. Parisella did not see Mr. Desire-Tesar for the remainder of that day.

[52] The next morning, Mr. Parisella's wife phoned him and said that her truck was all over the news. Mr. Parisella and his wife went to the police detachment and gave a statement about their involvement in towing the car.

[53] On the afternoon after giving the statement to the police, Mr. Parisella decided to go rent a storage locker. His wife had been asking him to do so for three or four months. It was for the equipment and hoses that were all over the

yard. He called her and told her that he had rented a storage locker and she was happy. He went to Diamond Mini Storage because he knew Randy Robertson and it was the cheapest place in town

[54] Either on the day that he rented the unit or on the day after, Mr. Parisella went to the storage yard to look at the inside of the unit. He noticed that there was a lock on the unit. He thought that was weird and was going to talk to Randy about it but did not. That was the only time that he went to the unit after renting it and before being arrested by the police.

[55] Beau Desire-Tesar came to Mr. Parisella's residence once after Thanksgiving. It was either on the day after Thanksgiving (October 9<sup>th</sup>) or on October 10<sup>th</sup>. It was the only time that Mr. Parisella saw Mr. Desire-Tesar after towing him. Mr. Beau Desire-Tesar wanted to go in the garage. Mr. Parisella told him to leave. Mr. Desire-Tesar was messed up. He came inside the house. Mr. Desire-Tesar was mad at Mr. Parisella because Mr. Parisella had gone to the RCMP and told them that he pulled Mr. Desire-Tesar's car out on Rivett Crescent. Mr. Parisella told Mr. Desire-Tesar to get anything he had in the garage out and leave. Mr. Parisella went in the house and Mr. Desire-Tesar left. Mr. Parisella saw Mr. Desire-Tesar leave but he does not remember Mr. Desire-Tesar carrying anything.

[56] Mr. Parisella had a piece of paper which was a receipt showing that he rented a storage locker. It was on his work bench in the garage. He never saw it again after Mr. Beau Desire-Tesar was in his garage.

[57] Prior to this incident, Mr. Parisella had changed the locks on the garage twice in the same week in an attempt to ensure that Mr. Desire-Tesar did not have access to the garage. On one occasion, Mr. Desire-Tesar got a key from one of Mr. Parisella's employees and made his own copy.

[58] Mr. Parisella did not put a lock on the storage unit. He does not know who put the lock on the storage unit. He never told anyone to put the lock on the storage unit. He also does not know who put any of the items in the storage unit. He could not have moved those items into the storage locker since they were too heavy for him to lift because of the issues with his kidney and surgery.

[59] Mr. Parisella recognizes the Stanley construction case as being a case that he stored in his garage. He also recognizes the gun case with "308 Win" written on it as being his.

[60] Mr. Parisella remembers his conversation with Cst. Young in the Stanton Plaza. His understanding of the conversation was that he was going to meet the

police officer at the storage locker to show him inside the locker. When Mr. Parisella got to the Mini Diamond Storage locker, he saw Cst. Thibault in a truck. Cst. Thibeault ducked down in the back seat. Mr. Parisella waited in his truck with the passenger for the police to arrive.

[61] After he was arrested, Mr. Parisella took a single key off his key chain and gave it to his passenger and friend, Simon, who drove the white work truck away.

## **B.8 Testimony of Bonnie Lee Parisella**

[62] Bonnie Parisella has known her husband for 19 years. They have been living at 146 Jeske Crescent since January 20, 2010. She has been a financial management officer for the Government of the Northwest Territories Finance Department for 12 years.

[63] Beau Desire-Tesar is Mrs. Parisella's first cousin. Mrs. Parisella's father is the brother of Beau Desire-Tesar's father.

[64] As a result of Mr. Parisella's duct cleaning business, he had five or six ladders and hoses in her yard. Mrs. Parisella asked him to move these and he had mentioned that he should rent a storage unit. These conversations would normally happen in the summer.

[65] They have a detached garage. It is only 24' by 20'. There is not really a lot of room in it. There are benches on one side. There are a lot of toolboxes on the very far part and there is Bonnie Parisella's stained glass stuff as well as the car detailing and shelves all on the other side. All of Mr. Parisella's tools and supplies are in the garage.

[66] Mrs. Parisella thought that in October 2018, only François Parisella had a key to their garage.

[67] Bonnie Parisella was in a meeting at noon when one of her directors asked to speak to her and showed her a media post about a lime-green truck which she owned. She phoned Mr. Parisella and went and picked him up and drove him to the police station where they both gave a statement to the RCMP. She told the police that Beau Desire-Tesar had come to their place the day before, on the Thanksgiving Monday to ask to borrow their truck for a tow. Mrs. Parisella said no, so Beau Desire-Tesar went and woke up François Parisella and got him to give him a tow. They went to her brother's for Thanksgiving dinner; stayed until 7:30 or 8:00 p.m. and then came home and stayed home.

[68] After Mr. and Mrs. Parisella left the police station on the day after Thanksgiving, she drove him to his duct cleaning truck which was in front of their house and she went back to work. The family including Mr. Parisella stayed home that night.

[69] At 4:30 or 4:45 p.m. on October 12<sup>th</sup>, Bonnie Parisella received a call from Mr. Parisella saying that the police wanted to meet him at his storage locker. This was the first that she heard about the storage locker. At that time, she realized she had not seen the hoses lying around for a couple of weeks or days. This was the last she spoke to him that day. Later that evening at 7:30 or 8:00 p.m., Simon came to her residence with Mr. Parisella's duct cleaning truck, gave her an RCMP card and said that she needed to phone him. She phoned Cst. Young and the RCMP came to her door at 10 p.m. and searched their house for Beau Desire-Tesar she thought. The police came back with a document which set out her rights in giving them permission to search her garage.

[70] Simon was Mr. Parisella's best friend. He was not an employee of Mr. Parisella's business.

[71] Mr. Parisella phoned her the next day when he was released from jail. Bonnie Parisella refused to allow him to come back to the house.

[72] François Parisella and Beau Desire-Tesar were always close. They worked together. They even put a back-up camera on Mr. Parisella's duct cleaning truck. Beau Desire-Tesar would come over to their house regularly uninvited and unwanted. Mrs. Parisella was not aware of Beau Desire-Tesar using the garage when she or Mr. Parisella did not want him to but she was aware of him using the garage when they were not home. Mrs. Parisella was not aware of any problems between Mr. Parisella and Beau Desire-Tesar or of Beau Desire-Tesar storing a shotgun in the garage.

[73] Beau Desire-Tesar had a drug problem and always was high. Bonnie Parisella never made observations of him that worried her or made her scared for her family. She has not seen Beau Desire-Tesar since the day of the tow.

[74] Mr. Parisella had a stent inserted in his kidney at the beginning of September, 2018. He was bedridden for a couple of weeks when they returned. There is no way that he could have moved a case weighing 100 pounds, even if someone helped him. While Mr. Parisella was recovering, he was on painkillers and would maybe have a couple of beers here and there.

## **B.9 Testimony of Mélanie Parisella**

[75] Mélanie Parisella is the older sister to François Parisella. She has lived in Yellowknife since September of 1999. When she first moved to Yellowknife, she lived with her brother. She is a teacher and also works on a part time basis at the Raven Pub in Yellowknife

[76] She knows Beau Desire-Tesar as a customer at the Raven Pub and also as someone who is part of Bonnie Parisella's family. Ms. Parisella is aware of Mr. Parisella's health problems with his kidney and has stayed in Edmonton while he was being treated. After his medical treatment and in the month of October 2018, she knew that Mr. Parisella was not even able to lift 20 pound bags of wood pellets without assistance. He would not be able to lift the boxes that were found in the storage locker unless, perhaps, if they were empty.

[77] Mélanie Parisella never had a discussion with François Parisella about renting a storage locker but had mentioned to him that Bonnie Parisella was getting tired of all the stuff what was in their yard and that he needed to do something about it.

[78] Ms. Parisella had no contact with François Parisella between a call on Thanksgiving Day around supper time and when he was released from jail on Saturday, October 13, 2018.

## **C. APPLICABLE LAW**

### **C.1 Credibility and Circumstantial Evidence**

[79] Since Mr. Parisella has testified and denied any involvement with the items found in the storage locker, I must consider his credibility carefully. In addition, this is a situation where the Crown's case against Mr. Parisella is based on circumstantial evidence. I must also consider whether the evidence allows for any reasonable alternative other than Mr. Parisella's guilt.

[80] In this regard, I am guided by the Supreme Court of Canada's decision in *R. v. W.D.*, [1991] 1 SCR 742, which was modified by the BC Court of Appeal in *R. v. H. (C.W.)* (1991) 68 CCC (3d) 146. The applicable principles are the following:

- (a) if I believe François Parisella and he convinces me that he is not guilty, then it of course follows that the Crown has not proved the case beyond a reasonable doubt and Mr. Parisella must be acquitted;

- (b) if I do not know whether to believe François Parisella or the circumstantial evidence case against him, then I must acquit;
- (c) there is a middle ground where I may not believe everything that François Parisella said, but his denial of knowledge of and involvement with the stolen items at least raises a reasonable doubt and, if so, I must give him the benefit of that doubt;
- (d) and, finally, if I do not believe François Parisella and his evidence does not raise a reasonable doubt, then I must still consider all of the evidence which I heard and which I do believe to determine if the Crown has proven beyond a reasonable doubt the case against François Parisella.

[81] The Supreme Court of Canada in *R. v. Villaroman*, 2016 SCC 33 gave directions on how to consider circumstantial evidence. At paragraph 35, the Court said that “if there are reasonable inferences other than guilt, the Crown’s evidence does not meet the standard of proof beyond a reasonable doubt.”

[82] The Court further directed that “when assessing circumstantial evidence, the trier of fact should consider ‘other plausible theories’ and ‘other reasonable possibilities’ which are inconsistent with guilt.”

[83] Further, the trier of fact must assess the body of circumstantial evidence in its totality and not to consider it piecemeal. In *R. v. Munif*, 2009 BCCA 451, Frankel J.A. wrote:

[10] In applying that test, it is important to keep in mind that it involves a judicial assessment of “the cumulative effect of all of the evidence”, not a “piecemeal evaluation”: *R. v. Robinson*, 2003 BCCA at para. 40.

[84] In a case, such as the one before the Court, there may be an interaction between the reasonableness of a theory which does not require the guilt of the accused and the credibility of the accused where the alternate theory is being proposed by the accused. Similarly, where the accused is simply denying involvement, his credibility can be considered in the context of all of the evidence including the evidence making up the circumstantial case against him.

## **C.2 Possession**

[85] Section 4(3) of the *Criminal Code* defines possession and in particular s. 4(3)(a)(ii) defines constructive possession as follows:

(3) For the purposes of this Act,

- (a) a person has anything in possession when he has it in his personal possession or knowingly
  - (i) has it in the actual possession or custody of another person, or
  - (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- (b) where any of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

[86] A summary of the elements of constructive possession is contained in the decision of Justice Smallwood in *R. v. Mohamed*, [2018] N.W.T.J. No. 69 (NTSC):

29. There are three ways, then, that a person can be in possession: personal, constructive, or joint.

30. To prove possession, the Crown must prove beyond a reasonable doubt both knowledge and control by the accused of the substances. This can be done by direct and/or circumstantial evidence. The Court must consider the evidence as a whole and consider the totality of the evidence.

31. Personal possession is where someone has actual, physical control of a substance, for example, by holding it in their hand, or keeping it in their pocket. What is required is that an accused person is aware that they have physical custody of the substance, and must be aware of what it is. Both elements also require control. *R v Morelli*, 2010 SCC 8, at paragraph 16.

32. A person can also be in constructive possession. A person who knowingly has a substance in the actual possession of somebody else, or in some place, for the use or benefit of herself or somebody else, has that substance in their possession provided that they have some measure of control over the substance.

33. Constructive possession thus requires that an accused have knowledge of the character of the object, knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and intends to have the object in the particular place for his use or benefit or that of another person. *Morelli*, supra, at paragraph 17.

34. Knowingly means that the person is aware of the possession or custody of the substance by another, or in another place, and does not act through ignorance, mistake or accident. Knowledge is more than quiescent knowledge, and the accused must have some measure of control over the substance: *R v Pokojoy*, 2013 ABQB 69, at paragraphs 22-23.

...

36. With respect to control for constructive possession, the Crown must prove that the accused had the ability to exercise some power (some measure of control) over an item in issue, and it is not necessary for the Crown to prove that such power was, in fact, exercised. That is *R v Wu*, 2010 BCCA 589, at paragraph 20.

[87] In the case before the Court, it is clear that Mr. Parisella had rented the locker in the name of “François Duct Cleaning”, a business for which he would have been the sole owner and for which there were few, if any other, employees. Mr. Parisella had the ability to determine who, besides himself, had access to the storage locker and the ability to remove the lock on or contents of the storage locker. In other words, he had the ability to exercise some power (some measure of control) over any items in the storage locker.

#### **D. CREDIBILITY OF FRANÇOIS PARISELLA**

[88] Overall, Mr. Parisella’s testimony can be characterized as containing a number of inconsistencies and exaggerations. As a result of this, I cannot accept his account of his interactions with Beau Desire-Tesar.

[89] These inconsistencies and exaggerations can be summarized as follows:

- (a) Drinking the night before Thanksgiving;
- (b) How busy he was on Thanksgiving Day;
- (c) The description of the interaction with Beau Desire-Tesar on Wednesday, October 10, 2018;
- (d) The reason for renting the storage locker;
- (e) His behaviour with respect to finding the lock on the storage locker;
- (f) The description of his relationship with Beau Desire-Tesar.

[90] Some of the inconsistencies arise where Mr. Parisella is explaining certain of the circumstantial evidence against him. I examine these inconsistencies in the next section. Other of the inconsistencies and exaggerations are identified and examined below.

[91] When Mr. Parisella spoke to the RCMP on October 9, 2018, he said that when Mr. Desire-Tesar came over on Thanksgiving Day at noon, Mr. Parisella was just waking up; that he had a few drinks the night before and he was a bit hung over. In cross-examination, Mr. Parisella said something different:

Q. How about alcohol?

A. No, I am not allowed to.

Q. You were not allowed to drink alcohol in October 2 –



A. No, I don't drink alcohol.

Q. -- you do not drink alcohol?

A. No.

Q. Never drink alcohol?

A. I used to, but I quit four years ago.

Q. Totally quit?

A. I'll probably have one beer, two beer a year. And I don't

Q. Did you have one or two beer in the month of October of 2018?

A. No.

[92] Later on, he was cross-examined on this inconsistency and he said that he drank once in a while; that one drink could give him a hangover and "Yeah. Like, I didn't remember that part. It's a year ago almost."

[93] In his testimony and in his statement to the police, Mr. Parisella described how busy he was on Thanksgiving Day and that he had jobs to do. This was to support his testimony that he did not see what was in Mr. Desire-Tesar's car. Because he was in a hurry to tow Mr. Desire-Tesar's car, he did not even get out of his truck and did not look to see what was in the car. On the other hand, Mrs. Parisella testified that Mr. Parisella came home after towing the car; went out again with one of their sons to Walmart to get a prescription filled and to buy some Lego; and then went for Thanksgiving dinner with her family.

[94] Mr. Parisella's description of his meeting with Mr. Desire-Tesar after Mr. Parisella gave a statement to the police is described in the next section of this Decision.

[95] Mr. Parisella's testimony was inconsistent with the testimony of his wife with respect to the renting of the storage locker; first, with respect to the use of a Sea-Can of his father-in-law and second, when Mr. Parisella told his wife that he rented the storage locker.

[96] Mr. Parisella said that after this incident, he did not rent another storage locker. He did not have to because his father-in-law gave him a Sea-Can to put his stuff in. "I didn't have it before that." Yet Mrs. Parisella said that her father had given them the Sea-Can years ago. It is the only Sea-Can that they have access to; however, they had filled it with other things.

[97] François Parisella testified and gave the impression that he had told his wife that he had rented the storage locker; that she was happy with what he had done; and he was going to clean up the yard.

Never – never thought about not – you know – and I just rent the storage, and I told the wife --- I said yeah, I actually – I finally rent the storage, and she was happy, and then I was going to go clean up and take, you know, what was ...

[98] In contrast, Bonnie Parisella testified that the first time she learned about the storage locker was when François Parisella phoned her on Friday, October 12, 2018 and said the RCMP wanted to meet him at the storage locker. She testified, “And then I mentioned, well, that makes sense why the hoses have been gone.” I accept the testimony of Bonnie Parisella. François Parisella’s testimony that he had told her about the locker shortly after he rented it was not true and was an attempt by Mr. Parisella to deflect the suspicious timing of the rental.

[99] Mr. Parisella testified that he drove out to the Diamond Mini Storage yard on either October 10<sup>th</sup> or 11<sup>th</sup> to look at the inside of the unit. It was then that he noticed that there was a lock on it. He thought that this was weird. He was going to go talk to Randy Robertson, but he did not. He just left. Mr. Parisella had been seen in the yard by Robert Mitchell. When Mr. Parisella was testifying, he had to account for his presence in the lot. It makes no sense that he would drive out to the lot to see the inside of the storage unit; find it locked and then not say anything to the people who run the storage business.

[100] François Parisella told the RCMP in his statement that he tried to stay away from Beau Desire-Tesar and that Mr. Desire-Tesar was not allowed to come around his place. Mr. Parisella told Randy Robertson that Mr. Desire-Tesar was doing a lot of bad things and came to his house at 1:00 in the morning and wanted to get a gun that was stashed in Mr. Parisella’s garage. Mr. Parisella told Mr. Robertson that Mr. Desire-Tesar was a little out of control.

[101] In his testimony before the Court, Mr. Parisella stated that he did not want to have Mr. Desire-Tesar around because “he’s got a bad reputation” and “he’s a bad guy.” Mr. Parisella stated that Mr. Desire-Tesar “came to my house knocking at the door, waking up the whole family, and he was, like, messed right up, like, drunk, on drug and then asking me to – to open the shop for him, because he said he had a gun, a shotgun stashed in my shop .... I was freaking out, and the wife was freaking out too.”

[102] In contrast to what François Parisella testified, Bonnie Parisella stated that her husband and Beau Desire-Tesar were always close. She was not aware of any problems between Mr. Parisella and Mr. Desire-Tesar.

Q. Yeah? Were you aware of any problems the two of them had?

A. No.

Q. Were you aware of Beau storing a shotgun, at some point, in your garage?

A. No.

Q. That's not something you were aware of?

A. No, definitely not.

[103] In his testimony, Mr. Parisella tried to distance himself from Beau Desire-Tesar. His description of his relationship was contradicted by Bonnie Parisella. With respect to the circumstantial evidence against him, Mr. Parisella seemed always to have an explanation. For example, he was in too big of a rush to look into the car that he was towing. He was renting the storage unit because his wife has been asking him to clean up the mess in the yard. He was at the storage unit to see what it looked like inside. Beau Desire-Tesar must have found the sheet which said that Mr. Parisella had rented storage unit. Mr. Parisella went to the Diamond Mini Storage yard rather than the RCMP detachment because he misunderstood what the RCMP had said to him. As I have stated earlier and in the section that follows, these explanations contain inconsistencies and exaggerations.

[104] That I do not believe Mr. Parisella on these points does not mean that the Crown has proven its case. Mr. Parisella may not be telling the truth but in order for the Crown to prove its case, the circumstantial evidence must still be so solid that no reasonable explanation, other than Mr. Parisella's guilt can be inferred.

[105] The following is an examination of each of the elements of the Crown's circumstantial case.

## **E. THE CIRCUMSTANCIAL EVIDENCE**

### **E.1 The Rental of the Storage Locker**

[106] François and Bonnie Parisella went to the RCMP detachment on October 9, 2018 after Mrs. Parisella became aware of the news announcement regarding her lime green Dodge truck. Mr. Parisella gave a statement to the police on which the starting time is marked as 13h29. The statement ends at 13h58. Mrs. Parisella testified that she then drove Mr. Parisella back to their home on Jeske Drive where she dropped him off.

[107] Randy Robertson rented the storage locker to Mr. Parisella that afternoon. Diamond Mini Storage is located on Coronation Drive. The debit transaction was made at 14h36 on October 9, 2018.

[108] In other words, Mr. Parisella rented the storage locker within 40 minutes after having given a statement to the police about his involvement with respect to the theft of items, including guns, from the O’Keefe residence.

[109] Mr. Parisella was asked about this while testifying:

- Q. And, so, a very – you basically went directly to the Diamond Mini Storage, isn’t that right? Afterwards?
- A. No, I don’t believe I went right after. I – it was later on. Maybe an hour after. Later on in the afternoon. It was not right, right after.

[110] The timing of the rental of the storage locker is suspicious. Yet, as defence points out, there may be an explanation other than Mr. Parisella renting the locker to store the stolen goods. In addition, if Mr. Parisella was looking for a place to store the stolen goods, this would have been a poor choice given his relation with Randy Robertson. Let me deal with those two issues.

[111] With respect to the alternate explanation, it is acknowledged that the subject of Bonnie Parisella wanting the yard cleaned up and in particular Mr. Parisella’s work equipment including hoses and ladders had been spoken about by the couple for some time. There is no evidence, however, that Mr. and Mrs. Parisella spoke about this as they were driving from the RCMP detachment on October 9, 2018. Mrs. Parisella testified that as far as she knew, after she dropped him off at the house, Mr. Parisella went back to a job. Further, Mr. Parisella did not tell Mrs. Parisella that he rented the storage locker. She only became aware of it on October 12, 2018 at around 16h45 when Mr. Parisella phoned her to tell her that the police wanted to meet him at his storage locker. If Mr. Parisella rented the storage locker in order to appease his wife, I would have thought that he would have told her either shortly before he rented it, that he was going to do it, or shortly after he had rented it, that he had done it.

[112] It was also odd that Mr. Parisella had no interest in seeing the inside of the storage space that he was renting. Mrs. Parisella spoke of five or six ladders and hoses which were “ridiculously large and take up a huge amount of space”. Mr. Parisella simply rented a 5’ x 8’ storage locker without checking to see whether it would be big enough, determining for example, if the height was sufficient to accommodate the ladders. In the light of Mr. Parisella’s testimony that on Thursday, October 11, 2018, he drove to the locker because he “just wanted to see

what it look[ed] like.”, it is surprising that he would not want to see what it looked like before he rented it.

[113] There is one other point with respect to the hoses and ladders. Bonnie Parisella said that when she learned that Mr. Parisella had rented the storage locker, she mentioned “Well, that makes sense why the hoses have been gone.” Either Mrs. Parisella is incorrect, and the hoses were still at the residence or she is correct and they were gone from the residence. If they were gone, we know that Mr. Parisella did not take them to the storage locker so he must have found somewhere else to store them. This weakens his stated purpose for renting the storage locker.

[114] With respect to the relationship with Randy Robertson, it is acknowledged Mr. Robertson was a friend of François Parisella and his family for over 20 years. Mr. Parisella knew that Mr. Robertson worked with the RCMP. Mr. Parisella had done duct cleaning work at Mr. Robertson’s business. Mr. Robertson asked Mr. Parisella about the incident involving a lime green truck that was on social media and Mr. Parisella told Mr. Robertson that it was his and then went on to describe what a problem Beau Desire-Tesar was, including an incident where Mr. Desire-Tesar stashed a shotgun at this place.

[115] Defence asks the Court to question why Mr. Parisella would go to this storage facility to rent a storage locker to store stolen goods, knowing that Mr. Robertson was tied to the police and having spoken about his involvement with Beau Desire-Tesar. This is certainly something to be considered. On the other hand, Mr. Parisella might not have anticipated that Mr. Robertson knew of the connection of Mr. Parisella to the break-in and theft on Rivett Crescent and was surprised by the question. Further, there may have been a strong reason for renting a storage unit from Diamond Mini Storage which did not necessary exist with respect to other storage businesses. There was evidence by both Robert Mitchell and Mr. Robertson that people had access to the storage units 24 hours a day; that there was no gate to access the yard and that there was no video surveillance. Because Mr. Parisella had done duct cleaning work at this location before, he would have been aware of the access procedures.

[116] On its own, the timing of the storage locker is suspicious. However, in the absence of other evidence, Mr. Parisella may have been renting it for the purpose that he indicated to Mr. Robertson.

## **E.2 Mr. Parisella's Inability to Lift Significant Weight**

[117] The evidence of François Parisella, Bonnie Parisella and Mélanie Parisella is that at the time of these events, Mr. Parisella was advised not to and was unable to lift more than five to ten pounds. He had had surgery in Edmonton in July of 2018 after one of his kidneys stopped working. There was another surgery in September to insert a stent. In the first week in October, Mrs. Parisella said that Mr. Parisella was only able to do light duties. He could not even finish mowing the lawn.

[118] I accept that it is highly unlikely that Mr. Parisella could have moved the items that were found in the storage locker without considerable assistance.

## **E.3 How did Mr. Desire-Tesar know about the storage locker?**

[119] Either Mr. Parisella put the stolen items in the storage locker with or without the assistance of others or he did not. If he did not, then Beau Desire-Tesar and others would have been responsible for that. Beau Desire-Tesar would have had to learn that Mr. Parisella had rented a storage locker and where the storage locker was located.

[120] There are only two realistic possibilities as to how Mr. Desire-Tesar learned of the storage locker. The Crown argues that Mr. Parisella told Mr. Desire-Tesar so that the stolen items would be moved from Mr. Parisella's garage. The Defence argues that Mr. Desire-Tesar must have found the duplicate receipt for the storage locker rental in the garage and determined the existence and location of the storage locker in that way.

[121] Randy Robertson acknowledged that if a customer wanted a copy of the storage locker receipt, he would make a photocopy of it and give it to them. In Mr. Parisella's case, he could not remember if Mr. Parisella received a copy.

[122] Mr. Parisella says he received a copy of the receipt which he put on the bench in his workshop. A few days later, he was looking for the receipt and never found it again. Mr. Parisella testified that the only way that Mr. Beau Desire-Tesar could have known that Mr. Parisella had rented locker unit I8 was from finding the receipt.

Q. So your belief is that Beau took the receipt for the storage locker and that's how he knew that locker I8 was yours?

A. That's the only way he could've find out.

...

Q. But you believe that he took your Stanley work case?

A. Yeah.

Q. And that he took the 308 marked –

A. Yeah.

Q. -- un case? Yes?

A. That one for sure – sure I know it's ..

Q. And he stored those items in the storage locker.

A. He did.

[123] I do not accept Mr. Parisella's evidence regarding how Mr. Desire-Tesar must have found out about the storage locker. Mr. Parisella's testimony in this regard is simply not worthy of belief.

[124] Mr. Parisella originally testified that Mr. Desire-Tesar came to his house on the day or the day after Mr. Parisella went and gave his statement to the police about towing Mr. Desire-Tesar's car. Mr. Desire-Tesar was angry because Mr. Parisella talked to the police. Mr. Parisella told Mr. Desire-Tesar to take his items and leave. Mr. Parisella did not go in the garage with Mr. Desire-Tesar. Mr. Desire-Tesar left a half hour later. Mr. Parisella is sure that Mrs. Parisella saw Mr. Desire-Tesar. Nothing else happened and Mr. Parisella has not seen Mr. Desire-Tesar since, except for one day in court.

A: And I told – he was mad at me because I went to the RCMP and told – told – told them that I pulled him out and all that. And I told him I wanted him out of my life, and every – I didn't – like, you know, if he had something you own in my shop or whatever, get your stuff, get out, I never want to see you again. And then that's the last time I saw him.

Q. So you let him go to your shop to get his stuff?

A. Yeah. I went in the house. I said, if you have anything or whatever, just grab it and then leave, I don't want you around my house anymore, I don't want you around my family, my kids. And then I went in the house with the kids and the wife. And then he left.

Q. Did you see what, if anything, he took with him from the garage?

A. No. I just – I – I went with the wife and kids in the house and – and then he left. And then I never see him again.

[125] Mr. Parisella was then cross-examined about a handgun which Mr. Desire-Tesar was waving around during that visit at Mr. Parisella's house. Mr. Parisella then stated that he was afraid of Mr. Desire-Tesar because "he was all messed up and he was scary" and he went "with the kids and the wife in the house." Mr.

Desire-Tesar was waiving a handgun. Mr. Parisella's wife did not see the gun but he told her about it. Mr. Parisella also told his sister and father about Mr. Desire-Tesar waiving the gun and saying that Mr. Parisella was now involved with him. Mr. Parisella even told the police about the gun.

[126] Mr. Parisella said that the reason that he did not mention the "waiving of the gun" incident in court is because he is afraid of Mr. Desire-Tesar. He did tell Mr. Desire-Tesar to "grab your stuff and go."

[127] Mrs. Parisella denies having seen Mr. Desire-Tesar since Thanksgiving Day, the day of the tow.

[128] Mr. Parisella's account of this meeting with Mr. Desire-Tesar is improbable, inconsistent and contradictory. At the point where Mr. Desire-Tesar came to Mr. Parisella's residence, Mr. Parisella was aware that Mr. Desire-Tesar was involved with the theft of guns including a handgun and diamonds. The police were looking for Mr. Desire-Tesar and the police knew that Mr. Parisella had towed Mr. Desire-Tesar's car. It is unlikely the conversation would have been as calm as Mr. Parisella's first described in his testimony. Mr. Parisella tried to initially paint a picture of Mr. Desire-Tesar dropping by; Mr. Parisella saying to go get his stuff out of the garage and Mr. Parisella staying with his wife and kids in the house. He said that his wife saw Mr. Desire-Tesar.

[129] Under further cross-examination, Mr. Parisella tried to distance himself from Mr. Desire-Tesar; he talked about the waiving of the handgun; he talked about the missing storage locker receipt. I accept Mrs. Parisella's testimony that she did not see Mr. Desire-Tesar there and that nothing unusual happened on either Tuesday, October 9<sup>th</sup> or Wednesday, October 10<sup>th</sup>.

[130] The only fact pattern that fits is that Mr. Parisella told Mr. Desire-Tesar to get everything out of Mr. Parisella's garage and to take it to the storage locker. Mr. Desire-Tesar stumbling across the storage locker receipt and deciding on his own to move the stolen items to the storage locker makes no sense. First, Mr. Desire-Tesar would have to find the receipt among all the other items in the garage and recognize that it pointed to a potential hiding place for the stolen items. In this regard, the receipt does not explicitly state which storage locker was rented. The only indication is some handwriting across the top with "I8 - St8 - \$80.00/month" with I8 circled. Second, he would have to take a chance that the storage locker was not locked. Third, he would have to take a chance that there was room in the storage locker. Fourth, he would have to take a chance that he would not be seen putting items in a locker whose location that he had not seen. Finally, he would



have to take a chance that someone else than François Parisella might have access to the storage locker.

[131] The only reasonable explanation is that Mr. Parisella told Mr. Desire-Tesar about the existence and location of the rented storage locker.

#### **E.4 Mr. Parisella did not have the key to the lock for the storage unit**

[132] The RCMP did not find a key to the padlock that was on storage locker I8. After François Parisella was arrested at the location of the storage locker around 5:30 p.m. on Friday, October 12, 2018, his friend Simon left with the truck. The police tried the keys that Mr. Parisella had in his possession and none would open the lock on the storage locker. There was no evidence that Mr. Parisella had bolt cutters with him.

[133] According to Mr. Parisella, he had been there the day before for the purpose of looking at the locker. He had seen a lock on the storage locker but had done nothing about it. According to Mr. Parisella, he went to the storage locker at 5:30 p.m. on October 12, 2018 because he thought he was meeting the police there. The defence argues that if Mr. Parisella went to the storage yard without some means of getting into the locker, he could not have been going there to remove items from the storage locker.

[134] That a key to the storage locker was not found does not assist the analysis. The key could have been hidden in the truck when Mr. Parisella saw the police officer. It is equally as likely that Mr. Desire-Tesar had the key if Mr. Desire-Tesar had put the items in the storage locker.

[135] What is important is that Mr. Parisella, or rather “François Duct Cleaning” which appears to be Mr. Parisella’s business name, was the “tenant” and therefore had control of the storage locker, including the right to cut off a padlock that was put on the storage locker without the tenant’s authorization.

## **F. SUMMARY**

[136] The key circumstantial evidence of the Crown is the following:

- (a) On Monday, October 8, 2018, François Parisella towed Beau Desire-Tesar’s car at the O’Keefe residence from where Mr. Desire-Tesar took the stolen items;
- (b) On Tuesday, October 9, 2018, Mr. Parisella gave a statement to the police that he had towed Mr. Desire-Tesar’s car the day before. Mr.

Parisella became aware from the news reports and from the RCMP that items including firearms and diamonds had been stolen from the O'Keefe residence;

- (c) On Tuesday, October 9<sup>th</sup>, within 40 minutes after speaking to the police, Mr. Parisella rented storage locker I8 at Diamond Mini Storage;
- (d) On Tuesday, October 9<sup>th</sup> or Wednesday, October 10<sup>th</sup>, Beau Desire-Tesar came to the Parisella residence. Mr. Parisella told Mr. Desire-Tesar to get his things out of Mr. Parisella's garage;
- (e) On Thursday, October 10<sup>th</sup> at 8:00 a.m., there was no lock on storage locker I8. At 10:00 a.m., there was a lock on I8;
- (f) On Thursday, October 10<sup>th</sup>, Mr. Parisella's truck was seen at the storage yard;
- (g) On Friday, October 12<sup>th</sup>, at 4:35 p.m. the police stopped Mr. Parisella and told him that they were aware that he had rented a storage locker and were suspicious of it. Mr. Parisella was told to meet them at the RCMP detachment. Mr. Parisella did not come to the detachment;
- (h) On Friday, October 12<sup>th</sup>, at 5:25 p.m., Mr. Parisella was arrested after he arrived at the Diamond Mini Storage yard;
- (i) Storage locker I8 was searched by the police on October 12<sup>th</sup>. The stolen items plus items known to be from Mr. Parisella's garage were found inside.

[137] For the reasons that I have stated, the evidence establishes that Mr. Parisella communicated to Beau Desire-Tesar that Mr. Parisella had rented storage locker I8 at Diamond Mini Storage. Mr. Parisella was aware that Mr. Desire-Tesar had stolen the items from the O'Keefe residence and Mr. Parisella was aware that Mr. Desire-Tesar would either personally move these items to the storage locker or arrange to have others move these items to the storage locker.

[138] In my view, the Crown has proved that Mr. Parisella was in constructive possession of these items for the reasons indicated.

[139] I have also considered whether Mr. Parisella "aided and abetted" Beau Desire-Tesar in Mr. Desire-Tesar's possession of the stolen items. Aiding or abetting by a party pursuant to section 21(1) of the *Criminal Code* requires some act of assistance or encouragement of the principal "for the purpose of" aiding or

encouraging the principal's possession of the prohibited thing. See *R. v. Besito*, [2010] O.J. No. 5746 at para. 63. In this case, Mr. Parisella assisted Mr. Desire-Tesar by providing him a place to store the stolen items. In my view, Mr. Parisella is also a party to the offence pursuant to section 21(1) of the *Criminal Code*.

[140] François Parisella is guilty of possessing the stolen items contrary to section 354(1)(a) of the *Criminal Code*.

Garth Malakoe  
T.C.J.

Dated at Yellowknife, Northwest  
Territories, this 18<sup>th</sup> day of  
December, 2019.

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**IN THE TERRITORIAL COURT OF THE  
NORTHWEST TERRITORIES**

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**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**FRANÇOIS PARISELLA**

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**REASONS FOR DECISION  
of the  
HONOURABLE JUDGE GARTH MALAKOE**

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[Section 354(1)(a) of the *Criminal Code*]