

CITATION: R. v. Peters, 2025 ONSC 1481
COURT FILE NO.: CR-24-50000665
DATE: 20250307

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
HIS MAJESTY THE KING)
) *Ari Linds*, for the Crown
– and –)
)
Dexter Peters)
)
Defendant) *Michael Coristine and Samarra D’Souza*, for
) the Defence
)
)
) **HEARD:** November 12-15, 18-20, and 25,
) 2024 and January 2-3, 2025

REASONS FOR JUDGMENT

SPIES J. - Orally

Introduction

[1] On Sunday, October 23rd, 2022, shortly before 6 p.m., a woman whom I will refer to as C.M., was violently robbed at gunpoint by a youth, whom I will refer to as J.M., while parking her car in the parking lot behind the building at 90 Sherbourne Street (“Sherbourne”), Toronto, just south of Richmond Street East (“Richmond”). The defendant, Dexter Peters, is alleged to have conspired with J.M. to commit the robbery or at the very least is alleged to have been an accessory to that robbery pursuant to s. 21 of the *Criminal Code*. He is charged with robbery with a firearm, contrary to s. 344(1)(a) of the *Criminal Code*, disguise with intent contrary to s. 351(2)(a) of the *Criminal Code*, conspiracy to commit an indictable offence contrary to s. 465(1)(c) of the *Criminal Code*, unauthorized possession of a restricted firearm contrary to s. 91(3)(a) of the *Criminal Code*, possession of a restricted firearm knowing possession is unauthorized contrary to s. 92(3) of the *Criminal Code*, possession of a prohibited device knowing possession is unauthorized contrary to s. 92(3) of the *Criminal Code*, possession of a firearm in a motor vehicle contrary to s. 94(2)(a) of the *Criminal Code*, possession of a loaded restricted firearm contrary to s. 95(2)(a) of the *Criminal Code*, possession of a firearm obtained by crime contrary to s. 96(2)(a) of the *Criminal Code*, and fail to comply with release order contrary to s. 145(5)(a) of the *Criminal Code*.

[2] Mr. Peters elected trial by judge alone before me and pleaded not guilty to all charges.

[3] At the outset of his trial, Mr. Peters brought an application for an order declaring that his ss. 7, 8, 9, 10(a) and 10(b) rights, as set out in the *Canadian Charter of Rights and Freedoms* (“*Charter*”), were violated. He sought an order staying the proceedings pursuant to s. 24(1) of the *Charter* or in the alternative, excluding certain evidence and/or a substantial reduction of sentence, if necessary, pursuant to s. 24(2) of the *Charter*. Counsel agreed to proceed by a *voir dire* blended with the trial. At the conclusion of the Crown’s case, I dismissed the application; see *R. v. Peters*, 2024 ONSC 7247 (“*Charter Ruling*”).

[4] The Crown called several of the police officers involved in the detention and arrest of Mr. Peters and J.M. Unfortunately, two officers, PC Sean Clendinning and DC Alex Brooker, were on long-term leave and not available to testify. On consent, the evidence they gave at the Preliminary Inquiry for Mr. Peters in September 2023 was filed. Counsel also filed a comprehensive Agreed Statement of Facts (“ASF”) along with exhibits from the Preliminary Inquiry which included footage from body-worn cameras (“BWC”) worn by several of the officers and CCTV evidence of the robbery and other video evidence relied upon by both parties. Mr. Peters testified on the *voir dire* on the understanding that his evidence was only to be considered on his *Charter* application and would not impact his decision whether to elect to testify in his defence of the charges should a stay of proceedings not be ordered. After I dismissed his application, Mr. Peters elected not to testify.

The Issues

[5] There is no dispute that on October 23rd, 2022, C.M.’s vehicle, a white 2015 Mercedes sedan, was travelling eastbound on Adelaide Street East, Toronto, (“Adelaide”) and then northbound onto Sherbourne. At approximately 5:57 p.m. C.M. drove her vehicle into the parking lot behind the building situated at 90 Sherbourne. Video evidence from 90 Sherbourne (the “90 Sherbourne video”) provides two views of the robbery, one referred to as the “Garage Area” view and the other the “Back Door Camera” view.

[6] The 90 Sherbourne video shows a white SUV stopping on Adelaide, at the entrance to the driveway to this parking lot and J.M. and Mr. Peters exiting the rear passenger doors on each side of the vehicle while C.M. was parking her car. They entered the parking lot on foot. The white SUV continued down the street and did not return. It is admitted that Mr. Peters and J.M. can be observed on the 90 Sherbourne video and that the youth who can be seen assaulting and robbing C.M. is J.M., Mr. Peters’ younger half-brother.

[7] Both views from the 90 Sherbourne video show the movement of J.M. and Mr. Peters before and after the robbery of C.M. Mr. Peters walked to an alleyway called Cutter Lane, that exits from the parking lot onto Richmond, before the robbery, and he remained there until after the robbery. He would not have been able to see what was going on during the robbery. C.M. was sitting in her car when J.M. commenced the violent, gunpoint robbery. J.M. banged a firearm on the window of C.M.’s car and was yelling at her to get out of the car. When she did, he struck her on the head and then in the struggle it appears that he tried to drag her into the back seat of the vehicle. C.M. broke free and fled down the driveway towards Sherbourne. J.M. chased her as she ran, but she was able to escape. J.M. and Mr. Peters interacted in the laneway and then J.M. returned to C.M.’s car and stole a Chanel purse, while Mr. Peters remained in Cutter Lane. J.M. and Mr. Peters then walked down Cutter Lane, away from the parking lot, towards Richmond.

Although the 90 Sherbourne video shows that there were two or three possible interactions of some sort between J.M. and Mr. Peters during the incident, there is no direct evidence about anything that was said between them. C.M., and a resident who witnessed the incident from her balcony both called 9-1-1.

[8] After the robbery, police determined that a tracker had been installed on C.M.'s vehicle. The position of the Crown, based on the tracker and CCTV video evidence of the movement of C.M.'s vehicle before the robbery, is that the white SUV that J.M. and Mr. Peters arrived in had been following C.M.'s vehicle for about 10 minutes before the robbery until she arrived at 90 Sherbourne. Based on this evidence and what can be seen on the 90 Sherbourne video, it is the Crown's position that J.M. and Mr. Peters conspired to have J.M. rob C.M. and that during the robbery Mr. Peters was giving directions to J.M. and encouraging him to rob C.M. As such the Crown alleges that Mr. Peters is guilty of conspiracy to commit the robbery pursuant to s. 465(1)(c) of the *Criminal Code* and that by aiding and abetting J.M. in committing the robbery, he is guilty of the robbery with a firearm and possession of the firearm charges pursuant to ss. 21(1) (b) and (c) of the *Criminal Code*.

[9] The position of the defence is that although there was a tracker on C.M.'s vehicle, the evidence is that the tracker could not have been used to track C.M.'s vehicle before the robbery and that the CCTV evidence is not reliable evidence that the white SUV that J.M. and Mr. Peters were in was in fact using the tracker or following C.M.'s vehicle. The defence submits that there are competing reasonable inferences from what can be seen on the 90 Sherbourne video, consistent with Mr. Peters' innocence. It is submitted that there is no evidence of any act by Mr. Peters that assisted J.M. in the robbery and that to the extent J.M. and Mr. Peters may have communicated with each other, what can be seen on the 90 Sherbourne video is also consistent with Mr. Peters, in fact, discouraging J.M. from robbing C.M. On this basis, the defence argues that the Crown has not proven beyond a reasonable doubt that Mr. Peters conspired with J.M. or aided and abetted J.M. in committing the robbery in any way.

The Evidence and Preliminary Findings of Fact

The evidence of the police of their observations of J.M. and Mr. Peters following the robbery

[10] In my *Charter* Ruling, I set out in detail the evidence of the three officers from the community response unit ("CRU") of 51 Division from the Toronto Police Service ("TPS"); PC Hanson, PC Clendinning and PC Gholamali, who observed J.M. and Mr. Peters walking in the parking lot between Britain Street and Richmond, west of Sherbourne, behind the George Brown College campus ("George Brown") minutes after the robbery of C.M. They did not hear about the police radio call about the robbery at 6:03 p.m. but decided to follow J.M. and Mr. Peters because one of the officers observed them do a 180-degree turn after they saw the officers who were in uniform and on bicycles, which that officer found suspicious. Although the CRU officers were wearing body-worn cameras (BWCs), they failed to follow the TPS policy which required them to turn on their BWCs once they started following J.M. and Mr. Peters and so I only have their evidence as to what they observed once they decided to follow J.M. and Mr. Peters at around 6:05 p.m. They observed J.M. and Mr. Peters walking together towards Richmond and then turning west towards George Street ("George"). I found in my *Charter* Ruling, based on the evidence of PC Hanson, that J.M. and Mr. Peters were walking together at a normal pace.

The arrest of J.M.

[11] When J.M. and Mr. Peters reached the intersection of Richmond and George, the traffic light to walk across George was red. J.M. crossed the intersection at a sharp angle, against the red light, ending up a distance north of the intersection. Meanwhile, Mr. Peters stayed at the corner, waiting for the light to turn green.

[12] I set out the evidence of the arrest of J.M. in detail in my *Charter* Ruling. I found that the decision of PC Clendinning and PC Gholamali to investigate J.M. for jaywalking as an alleged infraction of the *Highway Traffic Act* was a ruse. While they were speaking to J.M., they heard over PC Hanson's police radio the description of a suspect that matched J.M., which resulted in them arresting him. It was during that arrest that they found the firearm that J.M. brandished during the robbery of C.M.

The firearm in the possession of J.M.

[13] The ASF sets out that the firearm found on J.M. is a Glock semi-automatic handgun with a barrel length of 114mm ("Glock handgun") and that its serial number was obliterated. It meets the definition of a "restricted firearm" according to ss. 2 and 84 of the *Criminal Code*. The firearm also had an extended detachable box cartridge handgun magazine capable of holding more than 10 cartridges of ammunition. The magazine meets the definition of a "prohibited device", according to s. 84 of the *Criminal Code*. Nine cartridges of ammunition were seized and some of them were test-fired using the Glock handgun. It is also admitted that they meet the definition of "ammunition", according to s. 84 of the *Criminal Code*.

The arrest of Mr. Peters

[14] PC Hanson and PC Clendinning both testified that once the light turned green, Mr. Peters crossed George and was walking west on Richmond, but they were not sure where he went because a building obstructed their view. As I set out in my *Charter* Ruling, Mr. Peters walked to the entrance to the Petro Canada station located on the north side of Richmond and was standing by a hydro box when the officers found him.

The Evidence of C.M.

[15] On September 11, 2023, C.M. testified at the Preliminary Hearing. A lengthy summary of her evidence was entered as part of the ASF. Her evidence that has some relevance to the issues before me is as follows.

[16] C.M. was employed at the time in a criminal lawyer's office as a paralegal student. In this role, she completed procedural appearances and appeared as an agent in court, scheduled court dates in set date court and filed documents for a criminal lawyer. She had worked on and observed trials involving gun offences.

[17] C.M. testified that on the Friday night before the robbery; October 21st, she went to a shisha lounge in Woodbridge. She was wearing a real fur coat and expensive jewelry including a Rolex, a couple of Cartier bracelets with diamonds and pearl earrings. She was also carrying a very expensive Chanel purse with an estimated current value of \$13,000. She drove to the lounge in her

car, a white Mercedes C-Class, SC3000 model that she estimated was valued at \$60,000 when it was new. She parked in the relatively large parking lot facing the shisha lounge which was part of a strip mall which included a Tim Hortons, a furniture store and two restaurants in the plaza. When C.M. left the lounge at 3:00 am she left her car parked there because she had been drinking.

[18] C.M. spent Saturday at home. On Sunday, C.M. went with her boyfriend to pick up her car at 3 p.m. She stayed in Woodbridge for a little bit after retrieving her vehicle. She then proceeded downtown to 90 Sherbourne where her boyfriend lived. She recalled arriving at about 5 p.m. Upon arriving, she met her boyfriend downstairs who provided her with some money to buy groceries. C.M. testified that she then left and went straight to the Longo's grocery store at the "Air Canada Centre" [what is now identified as Maple Leaf Square or Scotiabank Arena]. She parked in the underground parking lot, on the first level, right beside the entrance to get into the lot. After doing some grocery shopping, C.M. started driving back to 90 Sherbourne. She was alone in her vehicle but was on the phone with a friend using Bluetooth through the car's built-in microphone and speaker.

[19] C.M. testified that there are two entrances to the outdoor parking lot at 90 Sherbourne, one from Richmond and one from Sherbourne. She entered the parking lot from Sherbourne and parked in one of the visitor parking spots. There was a back door nearby to access the building. She had planned on messaging her boyfriend to come down to help her with the bags of groceries she had purchased.

[20] When C.M. arrived at the parking lot, she was still talking to her friend on the phone via the car's audio system. She did not notice anything out of the ordinary. When she parked, she was still on the phone with her friend. C.M. recalled rolling up the driver's side window after she threw a cigarette butt out of the window. Her car was on and in park when she was about to send a text message to her boyfriend. She was looking down at her phone in the central console when she heard a noise and realized somebody was at her window trying to open the driver's side door. She saw what she described as "a gun in my face" and a masked male telling her to: "Open the fucking door, open the fucking door." She recalled her friend telling her to try to drive. She attempted to put the car in reverse because she wanted to get away, but she believed the male started hitting her window multiple times with the gun – hard – "like he wanted to break the window." She opened the car door. It had been locked.

[21] C.M. recalled observing that the male looked very scared and that she could see the fear in his eyes. She explained she believed this to be the case because of the way his eyes looked, and he looked like he was scared. She thought that maybe he was going to shoot her if she didn't do what he wanted. He was young and "his eyes looked juvenile." She did not see his face.

[22] When C.M. opened the car door, she tried to run. She recalled that the male grabbed her by her hair, hither over the head with the gun and dropped her to the ground. She recalled being grabbed by the hair and hit over the head twice and dragged around by her hair which caused her pain. She believed at that point the male was trying to put her back into her vehicle because he was opening the back door and telling her to get back in the car. C.M. testified that the gun was real and heavy and not a fake. She felt it when the male hit her over the head with it.

[23] C.M.'s friend was still on the phone while all of this was occurring. She believes this is why she was able to get away because the male may have thought that there was someone else in the car. She recalled that after the male was distracted, she was able to run. The male was chasing her with the gun, and she was screaming. C.M. testified that the male yelled: "Where the fuck are your keys? Where the fuck are your keys?" She responded: "They're in the fucking car."

[24] C.M. testified that when she looked back as she ran away, she saw the male running behind her with the gun pointed at her. She ran towards Sherbourne and the front of the building. C.M. recalled running past the other entrance to the 90 Sherbourne parking lot from Richmond and seeing an individual standing there:

So I ran past the entrance to Richmond and at that point I noticed there was an individual standing there [Mr. Peters]. I was screaming. And this person just didn't have any care for the fact that someone was screaming ... Because they were just looking in the other direction, not turning their head towards me. And I was making commotion. So I had reason to think they were together ... I was screaming about the keys ... Yelling, and I was running, and I ran past where – like the street where this person was standing. And they just, like, were stuck looking in the other direction, did not turn around once.

[25] C.M. did not remember shouting "help me" or anything about the gun as she ran by. C.M. recalled that the hands of the male in the laneway were down at his side. She had a clear unobstructed view of him as she ran by – "a straight line." She could not see the individual in the alleyway from her car but "I went from my car down a straight path, and then at the end of the alleyway made a right." She was running and being chased. She did not stop at the alleyway. She agreed it was very fast.

[26] C.M. believed the man in the alleyway was in on it:

I mean, if someone is – like prior to me even running and screaming, there was a commotion going on, and this person was standing in an alleyway which is pretty unusual, looking in one direction, not on a phone call, not doing anything, just standing there, and there's commotion going on and you don't even, like, turn and look back to see what exactly is going on?"

[27] C.M. testified that the male with the gun seemed like he didn't know what to do, and it seemed that whatever he was told to do didn't go as planned. She agreed, when asked, that she was speculating that the male with the gun was told to [do] what occurred.

[28] There is no dispute that this individual in Cutter Lane was Mr. Peters. C.M. described the location of Mr. Peters in the laneway as being more towards the parking lot but not close. C.M. was very firm in her evidence that Mr. Peters was looking in the other direction and did not turn around to see what the commotion was about. Because he didn't turn around to see what was going on, she felt that the two males were together. C.M. testified that she did not see the male with the firearm and the male in the alleyway interact.

[29] The chase ended when C.M. got closer to Sherbourne. She went upstairs to her boyfriend's unit and called the police – 911.

[30] Once officers were on scene, C.M. returned to her vehicle. It was still running with its doors still left open and the key was still in the ignition. C.M. recalled that she had the same Chanel purse she took to the shisha lounge with her in her vehicle at the time of the robbery. She believed the male with the gun had gone into her car and had taken the purse as it was returned to her with its contents after police arrived on scene. She did not believe any other items were taken from her vehicle.

[31] C.M.'s vehicle was taken by police for forensic testing. She recalled asking the police to look for a tracker because she felt like she was being tracked and followed. C.M. believed she may have been targeted at the shisha lounge because she was wearing expensive jewelry. The police did not locate anything of note on the vehicle but did recommend that she take it to a third party for further inspection.

The GPS tracker

[32] The ASF sets out admitted facts concerning a GPS tracker that was found by a mechanic underneath C.M.'s vehicle, hidden near her right tire. A production order granted in relation to this tracker yielded information set out in the ASF. The name and email address of the person the tracker was registered to are set out in the ASF but there is no evidence as to who that person is and no evidence suggesting any connection between this person and either J.M. or Mr. Peters.

[33] DC Kirk Strilec testified at trial that the raw data from the tracker he received as a result of the production order was given to a police analyst, Amy Carrique. She did not testify but she used the raw data from the tracker to plot various locations of the tracker on two maps. Her maps were entered into evidence as part of the ASF. DC Strilec testified that the raw data from the tracker included location, date, and time. DC Strilec believes the times in the raw data are accurate, but he did not confirm this. The raw data of some 39 pages was entered into evidence as information received by the officer but not for the proof of the contents.

[34] It is admitted in the ASF that the GPS tracker was active between the hours of 4:57 a.m. and 11:25 p.m. on October 22, 2022, the day before the robbery, in the area of Zenway Boulevard and Highway 27 in Woodbridge, Ontario and it appears that information was plotted on a map by Officer Carrique. Mr. Coristine did not take issue that this shows C.M.'s vehicle being in the parking lot by the shisha lounge.

[35] It is also admitted that the tracker was active on October 23, 2022, the day of the robbery, between the hours of 4:57 a.m. and 11:48 a.m. in the same area of Woodbridge; Maple or Vaughan between the hours of 11:52 a.m. and 1:21 p.m.; and Downtown Toronto, specifically the areas of York Street and Sherbourne Street between 2:01 p.m. and 5:38 p.m. and it appears that information was also plotted on a map by Officer Carrique. As Mr. Coristine pointed out if C.M.'s vehicle was moving between 11:52 a.m. and 1:21 p.m., this was before C.M. said that she picked up her vehicle. It may be that as Mr. Linds submitted, her recollection of timing was wrong. However, Mr. Coristine also submitted that the data from the tracker is unreliable and does not show C.M.'s vehicle in the area of 90 Sherbourne at the time of the robbery and so it is not possible that the tracker was being used to follow C.M.

The Audio Statement of Sohil Aziz

[36] According to the ASF, Sohil Aziz was interviewed by phone by police on October 24, 2022, at 6:58 p.m. In an unsworn audio statement, he stated that he was on the phone with C.M. at 5:55 p.m. He heard her screaming for help over the phone. He also heard banging in the background. The phone call ended shortly thereafter. He tried calling back multiple times but there was no answer. He did not testify at the Preliminary Hearing held in this matter in September 2023.

The Evidence of Tracey Frohlic:

[37] Tracey Frohlic testified under oath at the Preliminary Inquiry. A summary of her evidence is set out in the ASF. She recalled that on October 23, 2022, she had her window to her apartment open and she heard a woman screaming. She looked out the window and saw a woman (whom she did not recognize) running towards Sherbourne with a man chasing her. She recalled the female was screaming but could not understand what was being said. The man chasing her brought his arm up and he had a gun in his right hand. She did not get a good look at the gun. It was black. She believed the handle “stuck out” under 12 inches from the gunman’s right hand.

[38] Ms. Frohlic got her phone and called 9-1-1. Ms. Frohlic observed the man with the gun going back to the car, and rummaging through the front and the back, before running off. He went through the laneway between two buildings, to the west, which leads towards Richmond i.e., Cutter Lane. She did not at any point see anybody but the gunman and the victim of the robbery.

[39] As the man started to leave, it occurred to Ms. Frohlic to take some photos while on hold with 9- 1-1. She grabbed her cell phone and took a series of six photos from the south side of her apartment which looked out into the back parking lot which were entered into evidence at trial. They all show J.M. at C.M.’s vehicle.

The video from 323 Richmond

[40] The police also recovered CCTV surveillance from a nearby residential condominium at 323 Richmond (“Richmond video”). It is admitted that the video captured views of both Sherbourne looking north and south. At approximately 5:57 p.m., C.M.’s vehicle can be seen coming eastbound on Adelaide, followed by a white SUV, then northbound onto Sherbourne. The white SUV followed C.M.’s vehicle until J.M. and Mr. Peters exited the rear passenger doors on each side.

The video from 16 York Street

[41] The police also recovered CCTV surveillance from 16 York Street (“York video”), opposite the location of the Longo’s grocery store where C.M. went grocery shopping on October 23, 2022. It is admitted that the surveillance captured at approximately 5:47 p.m. C.M. exiting the underground parking garage located at 55 Bremner Street (“Bremner”). As C.M. approached York Street (“York”), a white Hyundai Venue SUV, can be observed driving eastbound on Lakeshore Boulevard, turning north on to York, stopping behind a vehicle in the shoulder lane, before proceeding towards Bremner Street. Upon approaching Bremner Street, the white SUV and C.M.’s white Mercedes are at the intersection. The white SUV turned eastbound onto Bremner Street, then did a U-turn to face westbound on Bremner St, leaving a vehicle between it and C.M.’s vehicle.

Both C.M. and the white SUV vehicle are last seen driving northbound on York. It is not admitted that the white SUV Mr. Peters exited from on Sherbourne was this white Hyundai SUV.

The 90 Sherbourne Video

[42] The 90 Sherbourne video is a crucial piece of evidence. Given there is no audio, I must consider the competing arguments made by counsel as to what the movements and gestures of J.M. and Mr. Peters that can be seen from the two views of the robbery reasonably mean. To do that, I was shown the video multiple times during the trial and closing arguments and I have carefully reviewed it as well during my deliberations. In setting out my findings I will not distinguish between the two views unless it is necessary. I have used them both to come to the following findings of fact as to what can be observed.

[43] C.M.'s vehicle can be seen turning into the parking lot behind 90 Sherbourne at about 17:57:10¹, having been travelling north on Sherbourne. She drove her vehicle to the far west end of the parking lot behind the building and parked along a low wall. Within seconds, the white SUV with J.M. and Mr. Peters in the back seat stopped at the main entrance to the parking lot. Based on the 90 Sherbourne video, I find that Sherbourne is two-way traffic and the white SUV also travelling north, stopped in the turning lane, just before the intersection with Richmond.

[44] J.M. who was seated in the passenger seat on the driver's side of the SUV can be seen opening his door even before the SUV was fully stopped. He got out of the vehicle and is almost at the sidewalk in front of the driveway to the 90 Sherbourne parking lot before Mr. Peters can be seen a couple of seconds later, getting out of the other side of the passenger seat. J.M. walked directly into the parking lot, but Mr. Peters walked south and cannot be seen on the video for a couple of seconds. Once Mr. Peters is visible again, he can be seen walking into the parking lot. Mr. Peters is wearing sunglasses and has his hoodie zipped up. J.M. was walking well ahead of Mr. Peters when they were walking into the parking lot and neither of them walked directly to C.M.'s vehicle.

[45] It is important to note that there is no sign at this point that J.M. has a large firearm in his possession. It was not visible at any time until he had it out just before the robbery of C.M. and at that time it would not have been visible to Mr. Peters.

[46] J.M. can be seen stopping next to a wall of a building, out of sight of C.M., and he turned back to look at Mr. Peters. J.M. then put his right hand and thumb into what I would describe as a position that looks like one used by a hitchhiker, pointing into the parking lot or perhaps in the direction of where C.M.'s vehicle went. With his right hand in this position, J.M. motioned to Mr. Peters by moving his hand back and forth twice ("thumb gesture"). Mr. Linds argues that this is the first interaction between J.M. and Mr. Peters and that J.M. was seeking direction from Mr. Peters. Mr. Peters does not appear to respond or acknowledge this gesture – there is no visible reaction from him at this time.

¹ This is the time adjusted to actual time as set out in the ASF.

[47] Mr. Peters does not wait to see where J.M. is going and can be seen walking into Cutter Lane where for the most part, he can be seen pacing back and forth in the laneway. He would not be able to see C.M.'s vehicle from this position and J.M. would not have been able to see where Mr. Peters was. J.M. can then be seen walking towards C.M.'s vehicle which was parked with the driver's door closed and the driver's window up. As J.M. reached C.M.'s vehicle, he had the gun out in his left hand and as he got to the vehicle, he can be seen trying to open the driver's side door. When he failed to do so he started banging the gun on the driver's side window as C.M. testified to.

[48] At about 17:02:10, the garbage view of the 90 Sherbourne video shows a man coming out of the rear door of the building. If Mr. Peters saw this man, he did not react in any way. Within seconds, C.M. opened the door of her car and J.M. pulled her out of the vehicle and the struggle between them that C.M. described in her evidence occurred. When J.M. appears to have been distracted, likely because, as C.M. believes, he heard her friend's voice on her phone, C.M. was able to run, and J.M. followed her with the gun out, running in the direction of the driveway out of the parking lot onto Sherbourne.

[49] I have carefully reviewed the video at the point when C.M. ran past the opening to Cutter Lane. It appears that Mr. Peters looked back over his shoulder for a split second, but I am not able to see which way he was looking and whether he would have seen C.M. and/or J.M. and in particular if he saw J.M. with the gun chasing C.M. After this, Mr. Peters had his back to the parking lot again. However, what is clear is that when J.M. gave up the chase, J.M. walked to Mr. Peters who was in Cutter Lane and J.M. was still holding the firearm. Given the size of the firearm, I find that at this point Mr. Peters was aware that J.M. was in possession of a firearm. They appear to have a brief conversation but there is no way of knowing what was said. Mr. Linds submitted that this was the second interaction.

[50] J.M. returned to C.M.'s car and after rummaging through the front and back seats for about one minute, he stole the Chanel purse. Mr. Peters remained in Cutter Lane during this time and would not have seen any of this. J.M. then ran back towards Mr. Peters with the purse in his hand but once he turned down the laneway, I am unable to see if he had the purse out where Mr. Peters could see it or not. By the time J.M. ran out onto Richmond, Mr. Peters was out of sight, presumably having turned left on Richmond. There is no further evidence of their movements until they are seen by the CRU officers.

The Relevant Legal Principles

Party Liability

[51] The Crown's theory is that Mr. Peters was the directing mind and conspired with J.M. to commit the robbery of C.M. Mr. Peters is alleged to have been an accessory to the robbery of C.M. and the firearms charges pursuant to ss. 21(b) and (c) of the *Criminal Code* in that it is alleged that he was aiding and abetting J.M. in committing the robbery. In short it is alleged that Mr. Peters was present at the robbery and was the directing mind of how the robbery should proceed.

[52] Before coming to my analysis, it is helpful to set out some general principles as to what the Crown must prove to establish party liability. Counsel provided a number of cases. The following set out the basic principles relevant to the circumstances of this case.

[53] In *R. v. Briscoe*, 2010 SCC 13 at paras. 14-16, the court set out what the Crown must prove in order to prove the *actus reus* and *mens rea* of aiding and abetting as follows:

14 The actus reus of aiding or abetting is doing (or, in some circumstances, omitting to do) something that assists or encourages the perpetrator to commit the offence. While it is common to speak of aiding and abetting together, the two concepts are distinct, and liability can flow from either one. Broadly speaking, "[t]o aid under s. 21(1)(b) means to assist or help the actor... . To abet within the meaning of s. 21(1)(c) includes encouraging, instigating, promoting or procuring the crime to be committed": *R. v. Greeyes*, [1997] 2 S.C.R. 825, at para. 26. ...

15 ... The aider or abettor must also have the requisite mental state or *mens rea*. Specifically, in the words of s. 21(1)(b), the person must have rendered the assistance for the purpose of aiding the principal offender to commit the crime.

16 The mens rea requirement reflected in the word "purpose" under s. 21(1)(b) has two components: intent and knowledge. For the intent component, it was settled in *R. v. Hibbert*, [1995] 2 S.C.R. 973, that "purpose" in s. 21(1)(b) should be understood as essentially synonymous with "intention". The Crown must prove that the accused intended to assist the principal in the commission of the offence. The Court emphasized that "purpose" should not be interpreted as incorporating the notion of "desire" into the fault requirement for party liability. It is therefore not required that the accused desired that the offence be successfully committed (*Hibbert*, at para. 35). ... [Emphasis added]

[54] The court in *Briscoe* went on to discuss the concept of wilful blindness, which Mr. Linds relies on, which I will come back to after considering whether the Crown has proven beyond a reasonable doubt the *actus reus* of aiding and/or abetting.

[55] In *R. v. Dunlop*, [1979] 2 S.C.R. 881 | [1979] 2 R.C.S. 881 | 1979 CanLII 20, the Supreme Court of Canada held that:

mere presence at the scene of a crime is not sufficient to ground culpability. Something more is needed: encouragement of the principal offender; an act which facilitates the commission of the offence, such as keeping watch or enticing the victim away, or an act which tends to prevent or hinder interference with accomplishment of the criminal act, such as preventing the intended victim from escaping or being ready to assist the prime culprit.

[56] In *R v Dooley*, 2009 ONCA 910, 257 OAC 150, leave denied, [2010] SCCA No 833, Doherty J.A. stated at para. 118:

The nature of the conduct that can amount to an act of aiding or abetting is coloured by the mental state accompanying that act. The Crown must prove that the alleged

aider or abetter acted "for the purpose" of aiding or abetting - meaning that they acted with the intention of aiding or abetting the perpetrator in the commission of the crime. This requirement can only be met if the aider or abetter has knowledge of the crime that the perpetrator intends to commit. Without that knowledge, the alleged aider or abetter cannot act "for the purpose" of aiding or abetting the perpetrator in the commission of the crime: *Criminal Code*, ss. 21(1)(b), (c); [Citations omitted, emphasis added]

[57] Mr. Linds relies heavily on the Ontario Court of Appeal decision in *R. v. Skeete*, [2012] O.J. No. 5916, 2012 ONCA 874 in support of his position that Mr. Peters' presence at the robbery is analogous to the defendant in that case. I will consider that argument once I make my final findings of fact.

Circumstantial Evidence

[58] The Crown's case consists substantially of circumstantial evidence. There is no issue between counsel as to the relevant law in this regard. Many cases were referred to, but I begin with the decision from the Supreme Court of Canada in *R v. Villaroman*, [2016] 1 S.C.R. 1000, 2016 SCC 33, where, at paras. 35-42, and 50, the court set out the governing law about drawing inferences from circumstantial evidence:

[35] ... The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.

[36] ... a reasonable doubt, or theory alternative to guilt, is not rendered "speculative" by the mere fact that it arises from a lack of evidence. ... A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

[37] When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt: [citations omitted]. I agree with the appellant that the Crown thus may need to negative these reasonable possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, 1971 CanLII 13 (SCC), [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

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

[39] I have found two particularly useful statements of this principle.

[40] The first is from an old Australian case, *Martin v. Osborne* (1936), 55 C.L.R. 367 (H.C.), at p. 375:

In the inculpation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed. [Emphasis added in original]

[41] While this language is not appropriate for a jury instruction, I find the idea expressed in this passage -- that to justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative -- a helpful way of describing the line between plausible theories and speculation.

[42] The second is from *R. v. Dipnarine*, [2014 ABCA 328](#), [584 A.R. 138](#), at paras. 22 and 24-25. The court stated that "[c]ircumstantial evidence does not have to totally exclude other conceivable inferences"; that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.

...

[50] When dealing with the defence position, the judge correctly stated the law, in my opinion. The judge properly noted that "the accused cannot ask this Court to rely on supposition or conjecture, that flows from a purely hypothetical narrative to conclude that the Crown has not proven he is guilty of the offences with which the Crown has charged him": para. 47. ... The judge's citation of *McIver* was intended to make the same point, i.e., that a reasonable doubt cannot arise from speculation or conjecture. This is perfectly correct. As the Court said in *Lifchus*, "a reasonable doubt must not be imaginary or frivolous"; need not be proof to an absolute certainty; and must be based on "reason and common sense": paras. 31 and 36. The burden on the Crown does not extend to "negating every conjecture": *R. v. Paul*, [1977] 1 S.C.R. 181, at p. 191. [Emphasis added]

[59] If there are multiple exculpatory inferences arising from the evidence or absence of evidence, they must explain the evidence as a whole. In other words, a single exculpatory inference that does not explain the evidence as a whole cannot ground an acquittal. This principle was stated by the Court of Appeal in *R. v. Wu*, [2017] OJ No 3868, 2017 ONCA 620, where at para. 15 the court stated:

It is also important to note that where evidence is circumstantial, the standard of proof beyond a reasonable doubt applies only to the final evaluation of innocence or guilt by the trier of fact. It does not apply piecemeal to individual items of evidence. Here, having regard to the manner in which the case was put to us by the

appellant, the words of this Court in *R. v. Uhrig*, [2012 ONCA 470](#), at para. 13 are particularly apt:

When arguments are advanced, as here, that individual items of circumstantial evidence are explicable on bases other than guilt, it is essential to keep in mind that it is, after all, the cumulative effect of all the evidence that must satisfy the standard of proof required of the Crown. Individual items of evidence are links in the chain of ultimate proof: *R. v. Morin*, [1988] 2 S.C.R. 345, at p. 361. Individual items of evidence are not to be examined separately and in isolation, then cast aside if the ultimate inference sought from their accumulation does not follow from each individual item alone. It may be and very often is the case that items of evidence adduced by the Crown, examined separately, have not a very strong probative value. But all the evidence has to be considered, each item in relation to the others and to the evidence as a whole, and it is all of them taken together that may constitute a proper basis for a conviction: *Cote v. The King* (1941), 77 C.C.C. 75 (S.C.C.), at p. 76. [Emphasis added]

[60] In *R. v. N.Y.*, 2012 ONCA 745 at para. 31, Blair J.A. stated that he found the observations of McEachern C.J.B.C. in *R. v. To*, [1992] B.C.J. No. 1700, 1992 CanLII 913 (C.A.), at para. 41, concerning the assessment of competing inferences, apt:

It must be remembered that we are not expected to treat real life cases as a completely intellectual exercise where no conclusion can be reached if there is the slightest competing possibility. The criminal law requires a very high degree of proof, especially for inferences consistent with guilt, but it does not demand certainty.

Analysis and Conclusions

[61] With these general legal principles in mind, I turn to my findings of the primary facts to see what reasonable inferences can be drawn from the whole of the evidence.

[62] Mr. Linds relies cumulatively on a number of factors in support of his position that Mr. Peters was the directing mind of the robbery of C.M. or at the very least was assisting J.M. and encouraging him to rob C.M., as follows:

- a) The robbery of C.M. was “bookended” by the arrival and departure of J.M. and Mr. Peters together.
- b) They both left the scene of the robbery together and as set out in my *Charter* Ruling, PC Hanson observed J.M. and Mr. Peters walking side by side along the fence behind George Brown.
- c) PC Clendinning observed J.M. and Mr. Peters do a 180-degree turnaround when they saw the police.

- d) PC Hanson found the purse stolen by J.M. along the route they walked, which J.M. must have discarded while he was walking with Mr. Peters.
- e) Based on the York video Mr. Linds argues that the white SUV that Mr. Peters and J.M. were in is the white Hyundai Venue SUV, that followed C.M.'s vehicle after she left the Longo's until she arrived at the parking lot at 90 Sherbourne and that is why the white SUV stopped where it did seconds after C.M. entered the parking lot behind 90 Sherbourne.
- f) On the York video the white Hyundai Venue SUV can be seen doing a U-turn to face westbound on Bremner, leaving a vehicle between it and C.M.'s vehicle, which maneuver was done to follow C.M.'s vehicle until they were both on York Street.
- g) Although there is no evidence as to who was driving the white SUV, Mr. Peters was in the vehicle for a period of time before he and J.M. arrived at the entrance to the parking lot behind 90 Sherbourne.
- h) Mr. Linds submitted that the only reasonable inference is that the tracker was put on C.M.'s vehicle when she left it parked before the robbery in an unsecure parking lot for 36 hours and that the tracker was used to follow her vehicle.
- i) The tracker was put on C.M.'s vehicle because she was targeted given the expensive jewelry that she was wearing at the shisha lounge the Friday night before the robbery.
- j) Mr. Peters is the older half-brother of J.M.
- k) J.M. consulted with Mr. Peters at least three times while he was committing the robbery and Mr. Peters remained in the laneway and did not leave the scene.
- l) There is no evidence that Mr. Peters was shocked by what was happening even though he would have heard C.M. screaming. He was "actively ignoring" what was happening, and he did not react to this or to the fact that J.M. had a firearm.
- m) Mr. Peters was attempting to hide his identity by having a hoodie over his head and wearing sunglasses although it is admitted that unlike J.M., he was not wearing a Covid mask.

[63] Mr. Coristine argues that the Crown has not proven that C.M.'s vehicle was being followed by the white SUV that J.M. and Mr. Peters exited from, and he takes issue with Mr. Linds' characterization of what can be seen in the 90 Sherbourne video. He has argued that each piece of evidence that the Crown relies upon is either not supported by the inference the Crown seeks to draw or that there are competing reasonable inferences consistent with innocence. It is his position that submits considering the evidence cumulatively, there are reasonable inferences inconsistent with Mr. Peters' guilt and that the Crown has not proven its case beyond a reasonable doubt.

[64] As I have set out, it is clear that circumstantial evidence is not to be evaluated piece by piece but rather cumulatively. Although it will be the cumulative effect of all the evidence that must satisfy the standard of proof required of the Crown, individual items of evidence are links in the chain of ultimate proof. As Justice Nakatsuru observed in *Abshir, supra*, at para. 18, in a case like this I must consider individual pieces of evidence just as counsel have done in their

submissions, before I consider the cumulative effect of the whole of the evidence in determining whether the Crown has proven its case beyond a reasonable doubt.

[65] I turn then to the factors relied upon by Mr. Linds, and the position of Mr. Coristine in response.

[66] Mr. Linds relies on the fact that Mr. Peters is J.M.'s older half-brother. Mr. Coristine relies on this fact as well in support of Mr. Peters' defence. I have no evidence about the relationship between Mr. Peters and J.M. other than the fact that they are half-brothers. I do not know if they grew up together, lived together or are close. All I know is that they arrived at the entrance to the 90 Sherbourne parking lot in the same vehicle and they left together after the robbery and were seen walking together before J.M. was arrested.

[67] Although this fact is one piece of the puzzle, as was clear from closing submissions, it can work both to support and undermine the Crown's position. On the one hand, Mr. Linds argues that as the older brother, Mr. Peters was the directing mind and was coaching J.M. in how to complete the robbery. On the other hand, Mr. Coristine points out how botched this robbery was and submits that Mr. Peters was not involved in any way but as the older brother, he felt he could not abandon J.M. because he was so young and he did not want J.M. to get into trouble and get caught, even though J.M. did something reprehensible.

[68] In this regard, Mr. Linds also relied on C.M.'s evidence that she believed J.M. was scared, the fact that J.M. was only 17 at the time, that he was not sure of what he was doing and that he easily got distracted by a voice in the car. J.M. was wielding a loaded firearm, so I hope he would be scared. That does not mean, however, that Mr. Peters gave him any direction or encouragement to complete the robbery. In fact, after J.M. made the thumb gesture, he would not have been able to see if Mr. Peters even remained at the scene or was nearby. The fact that the robbery was clearly not well executed is more consistent with the fact that Mr. Peters, the older and wiser brother was not part of the plan, and that the robbery of C.M. was spontaneously decided by J.M.

[69] For these reasons I do not find it significant on its own that J.M. and Mr. Peters arrived together at the 90 Sherbourne parking lot before the robbery of C.M. or that they left together afterwards and were seen walking together. What is important is what they both did, as can be seen on the 90 Sherbourne video, after they exited the white SUV.

[70] The fact that someone intended to track C.M.'s vehicle is clear given the presence of the tracker. Mr. Linds submitted that it is reasonable to infer that C.M. was targeted for a robbery when she was at the shisha lounge on the Friday night before the robbery given what she was wearing including expensive jewelry and carrying an expensive purse. In addition, she left her vehicle in an unsecure parking lot for about 36 hours. He submits that it is reasonable to infer that this is when someone put the tracker on her vehicle. I agree that it is a reasonable inference, but the important question is whether the white SUV that J.M. and Mr. Peters were in as passengers was using the information from the tracker to follow C.M. It is the position of Mr. Linds that the people in the white SUV used the information from the tracker to follow C.M. from the time she left the Longo's grocery store to the point where J.M. and Mr. Peters were dropped off.

[71] On its own, there is no evidence to suggest that Mr. Peters or J.M. had anything to do with the tracker found on C.M.'s vehicle unless I can draw a reasonable inference that they were knowingly using the data from the tracker to follow her vehicle from the Longo's to 90 Sherbourne while they were in the white SUV that dropped them off at the entrance to the 90 Sherbourne parking lot.

[72] With respect to the evidence from the tracker, as I have already stated, the raw data from the tracker does show that on the day before the robbery, C.M.'s vehicle was in the vicinity of the parking lot by the shisha restaurant C.M. had been to. In closing submissions Mr. Coristine submitted that the data from the tracker is not reliable. I agree, certainly with respect to its reliability on the day of the robbery. I find that on the day of the robbery, the data shows C.M.'s car in the downtown area from 2:01 p.m. to 5:43 p.m. It is admitted that she was at the Longo's until approximately 5:47 p.m. Instead of showing her vehicle heading east to 90 Sherbourne, the map plotting the raw data from the tracker shows what presumably is C.M.'s vehicle travelling west on Lakeshore to the Eglinton Avenue and Weston Road area, which is nowhere near the place of the robbery. C.M.'s vehicle is shown being in the west end of the city until 6:03 p.m. rather than at the location of the robbery. There is no explanation for this but clearly, the driver of the white SUV and J.M. and Mr. Peters who were passengers in the white SUV could not have been using information from the tracker to follow C.M.'s vehicle even if the driver had access to the data from the tracker. For these reasons, in my view the data from the tracker does not assist the Crown in proving that the tracker was being used to follow C.M.'s vehicle before the robbery.

[73] Mr. Linds submits that even without this evidence, based on the evidence from C.M. as to where she drove shortly before the robbery and based on the Richmond and York videos, the evidence is that C.M.'s vehicle was in fact being followed by a white Hyundai Venue SUV. Mr. Linds argues that the white Hyundai Venue SUV that is seen on the York video, that was driving eastbound on Lakeshore Boulevard, turning north on to York, turning eastbound on Bremner, then making a U-turn to face westbound on Bremner, leaving a vehicle between it and C.M.'s vehicle and then following C.M. driving northbound on York is in fact the white SUV that dropped J.M. and Mr. Peters off at the entrance to the parking lot behind 90 Sherbourne.

[74] It is not admitted that the white SUV Mr. Peters exited from on Sherbourne was a white Hyundai Venue SUV or that it was the Hyundai Venue SUV seen in the York video. I found in my *Charter* ruling that DC Gill was not being truthful with the court when he testified that he could tell from the 90 Sherbourne video that the white SUV that stopped at the entrance to the parking lot behind 90 Sherbourne was a white Hyundai Venue SUV. In my view, it is not possible to determine this given the quality of the 90 Sherbourne video.

[75] Even if I could find that the white SUV Mr. Peters exited from was in fact a white Hyundai Venue, without reliable tracking evidence, I could not conclude that it was the same vehicle seen in the York video given the prevalence of white SUVs on the road, and the fact that much of C.M.'s trip from the Longo's to 90 Sherbourne is not captured on any CCTV videos. There is about a ten-minute gap between the time the white Hyundai Venue SUV is seen in the York video behind C.M.'s vehicle until C.M.'s vehicle is seen on the Richmond video.

[76] It is admitted that at approximately 5:57 p.m., C.M.'s vehicle was travelling eastbound on Adelaide, followed by a white SUV, then northbound onto Sherbourne until it stopped to let out

J.M. and Mr. Peters. Given there is no evidence that C.M.'s vehicle was being tracked, although it may be that the white SUV Mr. Peters and J.M. were in was intentionally following C.M.'s vehicle on Adelaide, given the short period of time observed, that may also have been a coincidence.

[77] Finally, even if I could find that the white SUV Mr. Peters exited from on Sherbourne was the Hyundai Venue SUV seen in the York video, that on its own would not mean he was part of any plan by J.M. to rob C.M. Given the 10-minute gap in the video evidence and given that J.M. and Mr. Peters were passengers in the white SUV, there is no evidence as to where and when J.M. and Mr. Peters entered the white SUV seen in the Richmond video. They could have been picked up any time, either together or separately before the white SUV they were in was captured on the Richmond video. If there was a plan to follow and rob C.M., it may be that it was made between J.M. and the driver of the white SUV and it was not discussed while Mr. Peters was in the vehicle.

[78] It is true, as submitted by Mr. Linds, that J.M. and Mr. Peters arrived together before the robbery of C.M., and they left together afterwards. However, as I have set out, based on the 90 Sherbourne video, although both J.M. and Mr. Peters were together in the back passenger seat of the white SUV, and they both exited the vehicle when it stopped at the entrance to the 90 Sherbourne parking lot, it is not clear that Mr. Peters was aware that they were stopping to get out of the vehicle as he exited after J.M. was already out of the vehicle and crossing the live lane of traffic to the sidewalk. Also, Mr. Peters did not directly follow J.M. into the parking lot. He appears to have walked south on Sherbourne before turning around. Even if J.M. had been planning to rob C.M. before he exited the white SUV, this conduct is consistent with the fact that Mr. Peters may have had no idea of this plan.

[79] There is also no evidence about the white SUV that stopped on Sherbourne long enough for J.M. and Mr. Peters to exit. I do not know who the owner of the vehicle was, who was driving or if there were any other passengers in the vehicle besides J.M. and Mr. Peters. There is no evidence to connect either J.M. or Mr. Peters to the vehicle or the owner or driver of the vehicle. All that is known is that they were both in the back seat of the vehicle.

[80] Mr. Linds submitted that the driver of SUV was involved in the conspiracy agreement between J.M. and Mr. Peters to rob C.M. but there is no evidence of that given I cannot find the driver was using the tracker or otherwise following C.M. As Mr. Coristine submitted, the white SUV could have been an Uber, and the driver could simply have dropped J.M. and Mr. Peters off at this location. Mr. Linds submitted that it is not possible given they were dropped off in a live lane of traffic, but there is no evidence before me to suggest that an Uber driver cannot drop passengers off where Mr. Peters and J.M. were dropped and in any event, given the nature of Uber, I do not accept that submission.

[81] I have considered whether the robbery of C.M. might have been a random or last-minute decision because of the vehicle she was driving. That could explain why the white SUV stopped where it did and why J.M. clearly anticipated the stop of the vehicle given how quickly he opened the door and exited. In addition to the fact that the white SUV stopped in live traffic, J.M. immediately went into the parking lot behind 90 Sherbourne. There is certainly no other obvious reason for the stop, such as a retail outlet.

[82] It could also be the case that J.M. had no intention to rob C.M. until after he walked into the parking lot and that J.M. had intended to head to Cutter Lane to get to Richmond, rather than wait until the white SUV completed the turn. Although I have no evidence as to which way the white SUV went, given it was in the turning lane it could be that it was waiting to turn left onto Richmond. In that case it may be that J.M. made a spontaneous decision once he was in the parking lot to carjack or rob C.M. especially if he saw that C.M. did not immediately get out of her vehicle. As I will come to, that might explain the meaning of the thumb gesture J.M. made that Mr. Linds referred to as the first interaction between J.M. and Mr. Peters. If J.M. came up with the plan on his own spontaneously, then Mr. Peters might not have been aware of it until sometime during the robbery of C.M. That might also explain the poor execution of the robbery by J.M.

[83] Whatever the reason for the white SUV stopping where it did on Sherbourne, given the lack of evidence that the white SUV was actively following C.M. after she left the Longo's, based on the evidence to this point, there is no evidence upon which I could draw a reasonable inference that Mr. Peters got out of the white SUV knowing that J.M. planned to rob C.M. or with the intent of assisting J.M. with a robbery of C.M. This finding is strengthened by the fact that unlike J.M. who walked directly into the parking lot, Mr. Peters did not get out of the white SUV immediately and when he did, he walked south and cannot be seen on the video for a couple of seconds. Mr. Peters may have assumed that they got off at this location to go somewhere else. He then presumably saw where J.M. was headed, and he turned around to follow him. Furthermore, J.M. was walking well ahead of Mr. Peters and was a good distance ahead of Mr. Peters when Mr. Peters turned to follow him into the parking lot and neither of them walked directly to C.M. Again, this is inconsistent with the theory that J.M. had made an earlier plan to carjack or rob C.M. before he exited the white SUV, because he would not have known how long C.M. was going to remain in her vehicle and presumably, he would have wanted to execute the plan before she left the vehicle. This is corroborated by the fact that he was demanding her keys, suggesting that he intended a carjacking.

[84] Once Mr. Peters was visible again on the 90 Sherbourne video, walking into the parking lot, he was wearing sunglasses, and he had his hoodie zipped up and his hood was over his head. Mr. Linds argued that Mr. Peters zipped his hoodie up after he got out of the white SUV. That may be but I do not accept Mr. Linds' submission that he did so to hide his identity. The fact that Mr. Peters had his hood up and his jacket zipped up and had sunglasses on could simply have been due to the fact that he had just exited a vehicle, and it was late October. I have no evidence as to the weather that day. Certainly, if Mr. Peters had planned to be part of a robbery and wanted to hide his identity, putting on a Covid mask like J.M. was wearing would have been an obvious choice. Furthermore, Mr. Peters was wearing a hoodie with a distinctive white pattern down the sleeves, also not consistent with someone planning a robbery. For that matter, if this robbery was planned before J.M. and Mr. Peters exited the white SUV, it makes absolutely no sense that J.M. would wear such distinctive clothing to complete it. Not only was he wearing camouflage pants, but the front crotch area of his pants had what appears to be the design of shark teeth - something quite unique. It was the uniqueness of J.M.'s clothing that resulted in J.M.'s arrest soon after the robbery. J.M., however, was doing a good job of concealing the firearm that he must have had on his person in the white SUV. As he walked into the parking lot, it cannot be seen.

[85] Turning to what Mr. Linds calls the first interaction – the thumb gesture, I do not accept Mr. Linds' submission that J.M. was looking for approval and direction from Mr. Peters because

he was scared. First, the gesture J.M. made is more consistent with letting Mr. Peters know that he was going in the direction of C.M.'s vehicle. If there was a plan and Mr. Peters knew J.M. was going to rob C.M., there was no need for J.M. to make this thumb gesture. Furthermore, if J.M. was looking for direction, as submitted by Mr. Linds, it would have been easy for him and Mr. Peters to have a quick conversation beside the building out of the sight of C.M. Certainly, if J.M. was looking for direction from Mr. Peters, he did not get any as Mr. Peters does not appear to respond or acknowledge this thumb gesture – there was no visible reaction from him at this time.

[86] Although it may be that after the thumb gesture by J.M., Mr. Peters had some idea of what J.M. planned to do, it is also possible that he did not. The firearm in J.M.'s possession was still not visible. Mr. Peters walked into Cutter Lane where for the most part, he simply paced back and forth in the laneway waiting for J.M. In that location, he would not have been able to see J.M. or C.M.'s vehicle. In fact, it is possible that J.M. may not have even known that Mr. Peters was pacing in Cutter Lane. J.M. could not see where Mr. Peters was, and it is also possible that J.M. thought that Mr. Peters had simply kept walking. It is also significant that because Mr. Peters remained out of sight of C.M., he did not let her know he was there to assist J.M. Had C.M. known J.M. was not alone, that might have discouraged her from running away and assisted J.M. in whatever his objective was. Even if Mr. Peters knew by this time that J.M. was going to rob C.M., he had no duty to try to physically stop him or to rescue C.M.

[87] Mr. Coristine also relies on the fact that it is clear from the 90 Sherbourne video that once Mr. Peters walked into Cutter Lane and started to pace back and forth, that even if he knew of J.M.'s intentions, he would have no way of knowing how it was going to unfold as he could not see C.M.'s vehicle. He might have known something was about to happen and simply wanted to stay in the area and wait for J.M. Mr. Coristine submitted that as the older half-brother, it is certainly one reasonable inference that Mr. Peters did not want to abandon his brother even if he realized what he was going to do at that moment and he wanted to stay out of it. I agree.

[88] I have set out what can be observed of J.M.'s actions after the thumb gesture to Mr. Peters. There would not have been any noise that might have caught the attention of Mr. Peters or anyone else in the area until J.M. started banging his gun on the driver's side window as C.M. testified to. She would obviously have started screaming loudly at that point. That would likely have drawn Mr. Peters' attention to the fact that something was happening although I note that around this time a man can be seen coming out of the rear door of the building and Mr. Peters arguably saw him. This man does not seem to react to what can be heard. Certainly as Mr. Coristine submitted if Mr. Peters was assisting J.M. as a lookout, he did not do anything to avoid this man intervening to help C.M. or calling the police. It is also significant that Mr. Peters never moved into a position out of the laneway to see what was happening even after he must have heard C.M. screaming. He did not take steps to help C.M. but he also did not look to see if J.M. needed help.

[89] I have set out what Mr. Peters may have observed when C.M. ran past the opening to Cutter Lane escaping to Sherbourne. Mr. Peters did look over his shoulder for a split second, but as I have said, I cannot tell which way he was looking and whether he would have seen J.M. with the gun in his hand chasing C.M. I do find however that certainly by this time he knew that J.M. was attempting to rob or assault a woman in the parking lot.

[90] Once J.M. gave up the chase, he walked to Mr. Peters who was still in Cutter Lane. J.M. was still holding the firearm. As I have said, there is no evidence that Mr. Peters could have seen the firearm in J.M.'s possession at any point after they got out of the white SUV but clearly at this point, he must have known J.M. had a firearm in his possession. It does not matter to my ultimate conclusions, but there is no evidence to infer from the fact that Mr. Peters saw the firearm at this point that he would have known that it was real or anything about it as he did not examine it. He would not have known it was loaded as it was never fired, and there is no way, given how it was being held by J.M., that for the second or so he saw it, that he would have known that the serial number was removed or known that it was obtained by crime.

[91] Mr. Linds argues that when J.M. gave up the chase of C.M. and went to Mr. Peters in the laneway, it was their second interaction. He submits that Mr. Peters had no expression of surprise at seeing the firearm. He argued that as the older brother Mr. Peters would have coached J.M. and been aware of the fact that he had a firearm and was therefore not shocked when he saw it.

[92] It is difficult to see from the video whether J.M. and Mr. Peters spoke, but if they did, I could not determine what was said. I agree with Mr. Linds that there is no obvious visible reaction by Mr. Peters to the fact that J.M. was holding a firearm when he was standing next to him, save that Mr. Peters started walking towards Richmond without waiting for J.M. and J.M. followed him. It appears that at this time J.M. hid the firearm again in his waist band under his sweatshirt. It was no longer visible as he followed Mr. Peters down the laneway.

[93] I do not accept Mr. Lind's submission that because of what can or cannot be seen in terms of Mr. Peters' reaction at this point, that the only reasonable inference is that Mr. Peters knew that J.M. had the firearm in his possession while they were in the white SUV together and that he was going to use it to rob C.M. In my view, if Mr. Peters did not know that J.M. possessed a firearm, while they were in the white SUV, without knowing more about their relationship, Mr. Peters' earlier exposure to firearms and matters of that nature, I could not determine how to expect him to have reacted. He could well have said some words of disapproval to J.M. and that was why he turned around and started walking down the laneway towards Richmond again without waiting for J.M.

[94] Mr. Coristine argued that if Mr. Peters was the directing mind of this robbery, it would have made more sense for him to send J.M. back to C.M.'s car immediately, once he realized that J.M. had not obtained anything from the robbery so they could get out of there before the police arrived. As Mr. Coristine submitted, the fact that they walked to the end of the lane before J.M. turned back makes it more likely that Mr. Peters was not the directing mind of this robbery and that it was solely J.M.'s decision to turn around and go back to C.M.'s car. I agree that that is the more likely inference.

[95] When J.M. turned back, Mr. Peters stopped and resumed pacing in the laneway. As Mr. Coristine submitted, he may not have wanted to leave his younger brother as he wanted to get him out of there before the police arrived. J.M. did stop in the laneway, and he turned back, walked to Mr. Peters who was by now at or on the sidewalk on Richmond and when he reached Mr. Peters they had a short conversation by the sidewalk – the third interaction. It is impossible to know what their brief conversation was about. I have already set out why it is less likely that Mr. Peters was instructing J.M. to go back to C.M.'s car at this point. Mr. Coristine submitted that if J.M. was in

fact working with the driver of the SUV and J.M. screwed up, it is possible that Mr. Peters said let's go and J.M. said he couldn't because he had to go back to the car. As there is no evidence about the white SUV or the driver, I think that is speculation, but certainly the inference that Mr. Peters was discouraging J.M. from going back is just as reasonable as what Mr. Linds submitted. In fact, that could explain J.M.'s hesitation when he looked back towards Mr. Peters momentarily. He may have known that Mr. Peters did not want him going back and wanted to leave. I do not agree, as submitted by Mr. Linds, that this was a fourth interaction because it does not appear that J.M. and Mr. Peters had a conversation at this time nor were there any gestures.

[96] I accept that Mr. Peters and J.M. left the scene of the robbery together although Mr. Peters may have gone a little ahead at first as he left Cutter Lane. As set out in my *Charter Ruling*, PC Hanson observed J.M. and Mr. Peters walking side by side along the fence behind George Brown. J.M. must have had the purse he took from C.M.'s vehicle at the time the CRU officers first saw him and Mr. Peters, because PC Hanson found the purse stolen from C.M. in the parking lot behind George Brown near the fence at 6:41 p.m., after the arrest of J.M. and the firearm was found when J.M. was arrested and searched.

[97] The Crown alleges that Mr. Peters must have known that J.M. stole the purse. I accept that submission as it seems that J.M. hid it under his hoodie as he was walking back to Mr. Peters. It is significant, however, that if Mr. Peters had directed him to go back to C.M.'s vehicle and look for something of value, that he does not appear to have had J.M. open or look into the purse, and there is no evidence that J.M. ever gave him the purse or any of its contents. It is true that Mr. Peters did not do anything to intervene to prevent J.M. from robbing C.M., but he had no legal obligation or duty to do so.

[98] Clearly J.M. discarded the purse while he was walking with Mr. Peters in the George Brown parking lot, presumably after they turned around having seen the CRU officers. Mr. Peters may or may not have seen him do so. Although the CRU officers were observing and following J.M. and Mr. Peters, none of them observed J.M. discard the purse. It is possible J.M. disposed of it earlier before he saw the officers, but even if Mr. Peters saw this, he had no duty to take the purse to the police or report J.M. for stealing the purse. There is no evidence that J.M. or Mr. Peters had any property of C.M. on their person when they were arrested.

[99] Mr. Linds submitted that Mr. Peters must have known that J.M. was concealing a firearm given what happened after they exited the white SUV, but that presumes that Mr. Peters knew of J.M.'s plan to rob C.M. and that he planned to do so with a firearm. When J.M. exited the white SUV, the firearm must have been in his possession, but it was not visible. There is no evidence to suggest that he would have shown the driver and Mr. Peters that he had a firearm in his possession while they were in the white SUV, unless they were in on a plan to rob C.M.

[100] I have dealt with what can be inferred as to what, if anything, Mr. Peters knew of J.M.'s plan to rob C.M. based on the evidence Mr. Linds relies upon. I have found, based on the 90 Sherbourne video, that after leaving the white SUV, Mr. Peters would not have seen the firearm in J.M.'s possession until after J.M. ran to him in Cutter Lane, having given up the chase of C.M. The trained CRU officers who were watching and following J.M. and Mr. Peters did not see J.M. walking in a manner that would suggest he had a heavy handgun at his waist, and that it is the type of behaviour they certainly would have been concerned about even before hearing that a person

with J.M.'s description was wanted by police. Even when investigating J.M. for the alleged jaywalking offence, the officers did not suspect he was carrying a firearm. It was only once they heard the police description and decided to arrest J.M. because he matched the description that they found the firearm when they did a search incident to arrest. There is, therefore, no evidence that Mr. Peters would have seen the firearm in J.M.'s possession in the white SUV or at any time until J.M. walked back up to him carrying the firearm after the chase of C.M. unless he knew that J.M. planned to rob or carjack C.M. using a firearm. The fact that Mr. Peters saw the gun immediately after the initial robbery by J.M. of C.M. does not mean he knew about it beforehand or that he knew J.M. had it in his possession in the car. Once Mr. Peters saw that J.M. had a firearm, he had no duty to try to take the firearm away from J.M. and that would obviously not have been a wise move. There is no evidence that Mr. Peters had any control over the firearm at any time.

[101] Mr. Linds relies on *R v. Skeete*, 2012 ONCA 874 where the Court of Appeal held that a jury finding that the appellant was guilty as a party by aiding in the commission of a robbery was not unreasonable. One of the factors referred to by the court at para. 6 was the appellant's failure to react when the gun was brandished. I find that case to be clearly distinguishable from the facts in this case. Without the evidence at trial, we do not have all the facts, but it is clear from para. 6 that the court relied on much more than the lack of reaction to the firearm, namely that the appellant had contact with the driver of the car that blocked the complainant's car while another person, with whom he had been standing with, brandished a gun and attempted the carjacking. The court was not persuaded that the jury's finding was unreasonable.

[102] Mr. Coristine relies on *R. v. Abshir*, [2023] O.J. No. 3383, a decision of Nakatsuru J. where he considered whether the Crown had proven the charges beyond a reasonable doubt in a circumstantial case. At paras. 10-13, Justice Nakatsuru reviewed *Villaroman* and other decisions including *Morin*, referred to in *Wu*, above. Mr. Coristine submitted that the facts in *Abshir* were stronger than the facts of this case.

[103] Considering the whole of the evidence relied upon by the Crown, Mr. Linds argued that the rapid chain of events concerning the robbery of C.M. could have only occurred with Mr. Peters' knowing participation. I do not accept that submission. Mr. Peters did not do anything obvious to assist in the robbery. I appreciate that Mr. Linds did not argue that Mr. Peters was acting as a lookout but that would have been an obvious way for him to assist J.M. if that was his intention. However, he clearly did not do anything consistent with being a lookout. Mr. Peters was not standing in the main driveway into the parking lot as a lookout and in the laneway when he likely saw others, he did not do what might be expected of a lookout. He took up a position where he could not see what J.M. was doing and in a laneway that was clearly not the main entrance to the parking lot. J.M. would not even have necessarily known, after he gave the thumb gesture to Mr. Peters, that he was even going to stay and wait for him as Mr. Peters was out of sight. Mr. Peters did not knowingly give J.M. any moral support. When other vehicles and people entered the parking lot, he did nothing to alert J.M. to their presence, nor did he try to distract those people and vehicles. As for the robbery of C.M. itself, he did not make his presence known to her which might have made C.M. more cooperative, nor did he stand by to catch her should she decide to flee as she did, nor did he assist in the chase of C.M. Apart from the "interactions" Mr. Linds relies on, that I have reviewed, which are subject to multiple interpretations, Mr. Peters was simply in the parking lot waiting while J.M. attempted to complete whatever plan he had. Mr. Linds did not argue that Mr. Peters had an obligation to physically intervene and stop J.M. if, once he was in the

parking lot, he knew what he was planning or once he knew what he had done. Mr. Peters clearly had no duty to physically take possession of the firearm or report J.M. to the police. Mr. Linds conceded that he was not arguing that if Mr. Peters did not know of J.M.'s plan that he had an obligation to take the firearm from him or run from the scene.

[104] The law is clear that mere presence at the scene of a crime is not sufficient to ground culpability. Something more is needed. The only additional evidence the Crown relies upon to argue that Mr. Peters was encouraging or providing some sort of direction to J.M. is the three alleged interactions I have reviewed. In my view, considering the evidence as a whole, it would be speculation to find that the directions Mr. Linds submitted were being given by Mr. Peters to J.M. were in fact what was happening. Furthermore, nothing Mr. Peters did assisted J.M. in committing the offence. He was not even a passive observer of what occurred. He did not keep watch or distract C.M. or prevent her from running away. If anything, Mr. Peters seemed disinterested in what was happening. He certainly did not appear to be ready to assist J.M. in any way.

[105] Given my findings of what can and cannot be concluded from the evidence of the individual "links in the chain", relied upon by the Crown, and considering the cumulative effect of all the evidence, and the gaps in the evidence, I find that Mr. Linds' theory that Mr. Peters was the directing mind of the plan to rob C.M. is only one possible theory of what occurred. I find that even considered cumulatively, the inferences he seeks to draw from the evidence are not reasonable. Too many things that Mr. Peters did or did not do are inconsistent with the Crown theory.

[106] Even if I was satisfied that, looking cumulatively at the evidence, there is a reasonable inference of what occurred before, during and after the robbery of C.M. that is consistent with the guilt of Mr. Peters as submitted by Mr. Linds, there are other reasonable inferences consistent with Mr. Peters' innocence. In my view, all of the circumstantial evidence, viewed logically and in light of human experience and common sense, is reasonably capable of supporting an inference that Mr. Peters was in the white SUV with J.M., that he was unaware that J.M. was in possession of a firearm and unaware of any plan J.M. may have had then to rob C.M., that he got out of the white SUV when J.M. did because they were travelling somewhere together, that he waited for J.M., pacing back and forth in Cutter Lane after J.M. signaled to him that he was going to walk further into the parking lot, that he did not observe the robbery, that he decided not to intervene once he heard C.M. screaming, that he did not know that J.M. had a firearm in his possession until he saw it after J.M. walked up to him after C.M. fled the scene and that he did not aid or abet J.M. in the commission of the robbery at any time in any way. I find it is a reasonable inference that when they did speak, Mr. Peters spoke to J.M. disapprovingly or at least out of concern that J.M. would be caught by police for the offence he had just committed and that he only remained on the scene while J.M. went back to steal C.M.'s purse and left the scene with J.M. because he was J.M.'s older brother and he did not want J.M. to get into trouble and get caught, even though J.M. did something reprehensible. In my view considering the evidence cumulatively these are not speculative inferences as submitted by Mr. Linds.

[107] Having found that the Crown has not proven the actus reus of Mr. Peters aiding and abetting in the robbery of C.M. with a firearm, it is unnecessary to consider whether the principles set out in *Briscoe supra* on the issue of wilful blindness might apply in this case.

[108] Considering these conclusions, and turning to the indictment, with respect to counts # 1, 2 and 3, having found that it is reasonable to infer that Mr. Peters was unaware of any plan J.M. had to rob C.M. with a firearm and that he did not aid or abet J.M., I find that the Crown has not proven beyond a reasonable doubt that Mr. Peters conspired with J.M. by agreeing to rob C.M. or that he aided or abetted J.M. in robbing C.M. I should add that with respect to count #3, under any circumstances it is ridiculous to suggest that Mr. Peters had his face masked with the intent to commit any offence simply because he had his hood up and was wearing sunglasses.

[109] With respect to counts 4, 5, 6, 7, 8, 9, and 10, I find that the Crown has not proven beyond a reasonable doubt that Mr. Peters knew or ought to have known that J.M. had a firearm in his possession until after the robbery of C.M.

Disposition

[110] Mr. Peters would you please stand.

[111] For all of these reasons I find you not guilty of each of the ten charges set out in the Indictment.

_____ *Spies J.* _____

SPIES J.

Date: March 7, 2025

Written decision released: March 24, 2025.

CITATION: R. v. Peters, 2025 ONSC 1481
COURT FILE NO.: CR-24-50000665
DATE: 20250307

ONTARIO

SUPERIOR COURT OF JUSTICE

HIS MAJESTY THE KING

– and –

Dexter Peters

REASONS FOR JUDGMENT

SPIES J.

Released: March 7, 2025