Citation: R v Buckels, 2020 MBCA 124 Date: 20201218
Docket: AR20-30-09423

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Madam Justice Karen I. Simonsen
Madam Justice Lori T. Spivak

B E T W E E N :

	)	***W. G. Marks***
	)	*for the Appellant*
HER MAJESTY THE QUEEN	)	*(via videoconference)*
	)	
Respondent	)	***A. M. Parashin*** *and*
	)	***J. Kim***
	)	*for the Respondent*
- and -	)	*(via videoconference)*
	)	
	)	*Appeal heard and*
EDWARD MORRIS WILLIAM BUCKELS	)	*Decision pronounced:*
	)	***December 11, 2020***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***December 18, 2020***

COVID-19 NOTICE: As a result of the COVID-19 pandemic and pursuant to r 37.2 of the MB, *Court of Appeal Rules*, MR 555/88R, this appeal was heard remotely by videoconference.

MONNIN JA (for the Court):

[1] After a trial in the Provincial Court, the accused was convicted of possession of cocaine and methamphetamine for the purpose of trafficking, possession of the proceeds of crime and two breaches of probation. He received a sentence of five and one-half years in prison. He appealed both conviction and sentence. After hearing the appeal, we denied leave to appeal

sentence and dismissed the conviction appeal with reasons to follow. These are those reasons.

[2] The accused was arrested along with his girlfriend and sister while leaving a residence in Winnipeg. He had two cell phones and $2,100 in $100 bills on him. His sister was found with three cell phones and $320.

[3] The police executed a search warrant at the residence. In an upstairs bedroom, they found an unlocked safe containing drugs in quantities and packaged in a manner suggesting mid-level trafficking. This was confirmed by expert evidence introduced at trial.

[4] In the same bedroom, the police seized gang-support clothing hanging in the closet, multiple weapons (a sword, knife, axe and Samurai sword) and five Correctional Service Canada photo identification cards in the accused's name. In cross-examination at trial, the police officer conducting the seizures at the scene agreed that there might have been female items or accessories in the room, and that he was unsure whether the photographs presented to him of the clothing that was not seized was male or female. In addition, he confirmed that the photo identification cards had been laid out for him in the upstairs bedroom, but was not able to confirm the exact location in the house where they were found.

[5] The drug expert called by the Crown, after confirming that the amount of drugs seized suggested trafficking at a mid-level, opined that the presence of two cell phones and a large quantity of cash on the accused, particularly in $100 bills, confirmed his view that the accused was involved at that level.

[6] On his appeal against conviction, the accused raises two grounds. On the first ground, he argues that the trial judge misapprehended the evidence which played an essential part in the reasoning process resulting in the conviction. Alternatively, he argues that the verdict was unreasonable and could not be supported by the evidence.

[7] As to the first ground, the test was articulated in *R v Lohrer*, 2004 SCC 80 as follows (at para 2):

> . . . The misapprehension of the evidence must go to the substance rather than to the detail. It must be material rather than peripheral to the reasoning of the trial judge. Once those hurdles are surmounted, there is the further hurdle (the test is expressed as conjunctive rather than disjunctive) that the errors thus identified must play an essential part not just in the narrative of the judgment but "in the reasoning process resulting in a conviction".

[8] As to the ground of an unreasonable verdict, the question is whether a properly instructed jury, acting judicially, could reasonably have rendered the verdict on the evidence. It is not whether this Court would have convicted the accused, but whether the evidence was reasonably capable of supporting a finding of guilt (see *R v Green*, 2019 MBCA 53 at paras 49-50).

[9] Given that this was a case where the evidence was circumstantial, we must defer to any findings of fact made by the trial judge, but consider whether the trier of fact could reasonably be satisfied that the accused's guilt was the only reasonable conclusion available on the totality of the evidence (see *R v Villaroman*, 2016 SCC 33; and *R v Hall*, 2018 MBCA 122 at paras 164-65).

[10] We are all of the view that the appeal must fail on both grounds.

[11] The main thrust of the accused's argument on the misapprehension of evidence relates to the use made by the trial judge of the clothing found in the upstairs bedroom. The accused argues that it was not necessarily male clothing, meaning that it might not belong to the accused. As well, the two phones and significant cash found on the accused's person could not be used as evidence to support the conclusion that the accused was involved in trafficking drugs until it was confirmed that they were his drugs. The expert indicated that his opinion as to the meaning of the phones and cash in the accused's possession required an initial finding that the accused was the owner of the drugs.

[12] We disagree. On the basis of the evidence before the trial judge, it was open for him to draw the inference that a male was occupying the upstairs bedroom. The identification cards could lead to a reasonable inference that the accused was a resident at the premises. The expert's evidence about the role of the cell phones and cash in drug trafficking was available to the trial judge to draw conclusions on the issue of possession. There is no merit to the ground that the trial judge misapprehended the evidence and engaged in faulty reasoning based upon that misapprehension.

[13] As to the second ground, namely, that of an unreasonable verdict, we are satisfied that the inferences drawn by the trial judge leading him to conclude that the accused was the occupant of the upstairs bedroom, allowed him to also reach the conclusion that, on the totality of the evidence, the accused had knowledge and control of the safe and its contents. While certain pieces of evidence taken individually could be consistent with other explanations apart from the accused's guilt, when looking at the totality of the

evidence, it was sufficient for the trial judge to make a finding of possession for the purpose of trafficking.

[14] For these reasons, we dismissed the appeal as to conviction.

[15] As to the sentence appeal, we are all of the view that, given the accused's lengthy related record and the circumstances of the offences, the sentence is well within the range for a mid-level trafficker. The trial judge clearly took into account the various mitigating factors and the sentence was not demonstrably unfit. Therefore, we denied leave to appeal.

"Monnin JA"

"Simonsen JA"

"Spivak JA"