

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Madam Justice Freda M. Steel  
Mr. Justice Christopher J. Mainella  
Madam Justice Karen I. Simonsen

***BETWEEN:***

<b><i>HER MAJESTY THE QUEEN</i></b>	)	<b><i>K. D. Morgan</i></b>
	)	<i>for the Appellant</i>
<i>Respondent</i>	)	
	)	<b><i>S. L. Thomas</i></b>
<i>- and -</i>	)	<i>for the Respondent</i>
	)	
<b><i>SING CHEUNG CHAN</i></b>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>	)	<b><i>April 2, 2019</i></b>

**SIMONSEN JA** (for the Court):

[1] The accused appeals his convictions for break and enter with intent to commit an indictable offence and mischief over \$5,000, and seeks a new trial.

[2] He raises essentially two grounds of appeal: the verdicts are unreasonable; and the trial judge erred in assuming that the value of the property that was the subject of the mischief conviction exceeded \$5,000.

[3] The circumstances of the offences are that, on May 19, 2017, the accused, a landlord, having previously been unsuccessful in obtaining an order of possession of a rental residence, took matters into his own hands. Together with a crew that he had engaged, he entered the residence, and

removed the personal belongings of the tenants and scattered them in a haphazard manner on the lawn.

[4] At trial, the central issue was the lawfulness of the accused and his crew's entry into the residence. He testified that he entered, in his capacity as landlord, to inspect and clean. He said that he had given the requisite notice to the tenants on May 17, 2017.

[5] This was a case that turned on credibility. After reviewing and assessing the evidence, the trial judge found that the accused had not entered the residence to inspect and clean, but had entered unlawfully for the purpose of clearing out the tenants' possessions. Having concluded that the accused had committed a break and enter, the trial judge appropriately applied the presumption in section 348(2)(a) of the *Criminal Code*, as explained in *The Queen v Proudlock*, [1979] 1 SCR 525, that he did so "with intent to commit an indictable offence therein", absent evidence to the contrary. She then concluded that the presumption had not been rebutted.

[6] The accused's arguments on unreasonable verdict all relate to the trial judge's credibility assessments, findings of fact and inferences drawn, which are entitled to deference, absent palpable and overriding error. There was no such error in this case. As such, there is no basis upon which this Court can intervene.

[7] On review of the entirety of the evidence at trial, a trier of fact, properly instructed, could reasonably have found the accused guilty of break and enter with intent to commit an indictable offence and mischief.

[8] With respect to the second ground of appeal, based on a review of the entire record, it was, in our view, open to the trial judge to find that the value of the tenants' property exceeded \$5,000.

[9] In the result, the appeal is dismissed.

Simonsen JA

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Steel JA

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Mainella JA

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