Citation: R v Ong, 2020 MBCA 14 Date: 20200206
Docket: AR18-30-09142

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice William J. Burnett
Mr. Justice Christopher J. Mainella
Madam Justice Karen I. Simonsen

B E T W E E N :

HER MAJESTY THE QUEEN	)	***K. L. Jones***
	)	*for the Appellant*
	)	
Respondent	)	***J. A. Hyman*** *and*
	)	***E. D. Atkin***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
	)	*Decision pronounced:*
JASON MORRIS ONG	)	***January 31, 2020***
	)	
	)	*Written reasons:*
(Accused) Appellant	)	***February 6, 2020***

On appeal from 2016 MBQB 197; and *R v Devloo and Ong*, 2017 MBQB 180

SIMONSEN JA (for the Court):

[1] The accused appeals his convictions for conspiracy to traffic in cocaine, three counts of trafficking in cocaine and three counts of possession of proceeds of crime. He appeals on the grounds that the trial judge erred in dismissing his *Charter* application challenging his arrest (see the *Canadian Charter of Rights and Freedoms* (the *Charter*)), the verdicts are unreasonable, and the trial judge materially misapprehended the evidence.

[2] The charges arose out of Project Distress, an investigation conducted by the Manitoba Integrated Organized Crime Task Force that employed a civilian agent with a history of drug trafficking. The agent

negotiated three drug transactions using a mobile phone equipped with Pretty Good Privacy (PGP) software and communicating with a person who went by the PGP address "ChicagoCubs".

[3] Several months after the three transactions had taken place, the accused was arrested in possession of the ChicagoCubs phone.

[4] The accused made a *Charter* challenge to that arrest, and sought to exclude the ChicagoCubs phone under section 24(2). He alleged that the police did not have reasonable grounds to believe that he was ChicagoCubs. Similarly, at trial, the central issue was whether the Crown had proven beyond a reasonable doubt that the accused was ChicagoCubs.

[5] On the *Charter voir dire* and at trial, the evidence was circumstantial. In her reasons for decision on the *voir dire*, the trial judge found that, when viewed in its totality, the amount of information which supported the conclusion that the accused was ChicagoCubs was "substantial" (at para 35). She was "easily satisfied" (*ibid*) that reasonable grounds existed to support his arrest. We are satisfied that her conclusion is supported on the record (see *R v Shepherd*, 2009 SCC 35 at para 20).

[6] At trial, the evidence was more detailed and included testimony from investigators about physical and electronic surveillance used by police to link the accused to the ChicagoCubs phone. The accused did not testify. The trial judge was satisfied that "the only reasonable inference to be drawn from all this is that [the accused] was Chicagocubs" (at para 50), and found him guilty of all crimes charged.

[7] The accused contends that the verdicts are unreasonable, but makes no submission as to why they are unreasonable in the absence of alleged

misapprehension of evidence or error in the treatment of circumstantial evidence. On careful review, we are not persuaded that the trial judge materially misapprehended the evidence or made any error in connection with the circumstantial evidence. We are also not convinced that the verdicts were unreasonable. It was for the trial judge to draw the line between speculative and reasonable inferences; in our view, she could reasonably have come to the decision she reached. In summary, based on our review of the entire record through the lens of judicial experience, we are satisfied that the trial judge did not reach any of the verdicts by illogical or irrational reasoning and that each verdict was one that a properly instructed trier of fact, acting judicially, could reasonably have rendered (see *R v Fedyck*, 2018 MBCA 74 at paras 22-26; and *R v Sinclair*, 2011 SCC 40).

[8] Therefore, the appeal is dismissed.

Simonsen JA

Burnett JA

Mainella JA