

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Michel A. Monnin  
Madam Justice Diana M. Cameron  
Mr. Justice Christopher J. Mainella

***BETWEEN:***

	) <b><i>S. R. Segal</i></b>
	) <i>for the Appellant</i>
<b><i>HER MAJESTY THE QUEEN</i></b>	)
	) <b><i>M. V. P. Cornick and</i></b>
<i>Respondent</i>	) <b><i>E. D. Atkin</i></b>
	) <i>for the Respondent</i>
- and -	)
	) <i>Appeal heard and</i>
<b><i>PETER LOEWEN PENNER</i></b>	) <i>Decision pronounced:</i>
	) <b><i>January 30, 2019</i></b>
<i>(Accused) Appellant</i>	)
	) <i>Written reasons:</i>
	) <b><i>February 1, 2019</i></b>

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

**Introduction**

[1] The accused was convicted of possessing cocaine and marihuana for the purpose of trafficking and possessing proceeds of crime. He appealed his convictions on the basis that the judge erred in concluding that his warrantless arrest, and the resulting search of his vehicle, were not contrary to the *Canadian Charter of Rights and Freedoms*. The appeal turned on the lawfulness of the arrest. At the conclusion of the appeal, it was dismissed with reasons to follow. These are those reasons.

## Background

[2] The arrest occurred in Winkler, Manitoba on June 4, 2014. That afternoon, a confidential informant (the CI) advised police that the accused and Chadwin Klyne would be selling cocaine together in Winkler that evening. The CI was a drug user familiar with both men. The CI had given information to police ten times previously in the prior year; one time resulting in arrests where drugs and drug monies were seized. The lead investigator testified that, while not all of the CI's previous information could be confirmed, none of it was found unreliable or untrue, and much of it was consistent with other sources of reliable information.

[3] Surveillance was conducted over the dinner hour on the accused and Klyne. While that was occurring, the CI advised police that the two men were presently selling cocaine. After witnessing the accused and Klyne attend to three brief meetings believed to be drug deals, the two men were arrested and drugs and drug monies were seized.

[4] A lawful warrantless arrest pursuant to section 495(1)(a) of the *Criminal Code* has both a subjective and objective component. The officer who makes the decision to arrest must subjectively have reasonable and probable grounds on which to base the arrest and those grounds must be objectively justifiable to a reasonable person placed in the position of the officer (see *R v Storrey*, [1990] 1 SCR 241 at 250-51; and *R v Latimer*, [1997] 1 SCR 217 at para 26). The appropriate standard of proof is one of reasonable probability, not proof beyond a reasonable doubt or a prima facie case (see *R v Debot*, [1989] 2 SCR 1140 at 1166). In applying that standard, the trial judge must assess the totality of the circumstances in a practical, non-technical and common-sense way, mindful of the knowledge, experience and training

of the officer (see *R v Sinclair*, 2005 MBCA 41 at para 14; and *R v McKay*, 2009 MBCA 121 at para 30).

[5] In this case, only the objective component of the arrest is in dispute. Because the arrest rested on information from an informant, the judge considered the *Debot* factors (see p 1168): how compelling was the information; was the CI a credible source; and was the information sufficiently corroborated by police. He concluded that there was an objective basis to the arrest because the information was “quite compelling” as it was detailed, recent and firsthand; the CI had “proven to be reliable”; and the information was corroborated by observations of three interactions “consistent with the sale of drugs.”

#### Standard of Review and Analysis

[6] The judge’s factual findings are owed deference; however, whether the facts he found amount at law to reasonable and probable grounds is a question of law reviewable on a standard of correctness (see *R v Shepherd*, 2009 SCC 35 at para 20).

[7] The accused argues that the judge made a “constellation of errors” as to how he scrutinised and weighed the circumstances as to the *Debot* factors relating to the credibility of the CI and the degree of corroboration of the CI’s tip and, in particular, how much weight should have been placed on the lead investigator’s evidence interpreting the meaning of the three brief meetings after the second tip from the CI.

[8] We disagree. Our role is not, as counsel encouraged us to do, to reach a different conclusion about the evidence as to whether objective grounds for the arrest existed (see *R v Lloyd*, 2019 BCCA 25 at para 9). Also,

important to remember is that, under the *Debot* analysis, a weakness in one area may, to some extent, be compensated for by strengths in the other two (see *Debot* at p 1168). In cases such as here, where a tip is compelling and comes from a proven reliable informant, corroboration of the information is of less concern (see *Debot* at p 1172; *R v Pilkington (C)*, 2016 MBCA 80 at para 24; and *R v Pilbeam*, 2018 MBCA 128 at para 17).

[9] The judge did not misdirect himself in determining whether there was an objective basis to the arrest in light of the totality of the circumstances. It was open to him to place reliance on the CI's information and what it meant in light of the extensive drug investigation experience of the lead investigator (see *R v Wilson*, 2012 BCCA 517 at paras 21-27, leave to appeal to SCC refused, 35237 (17 October 2013)).

[10] In our view, the combination of reliable information that the accused would be trafficking on the same day he was observed likely doing just that is sufficient in law to amount to a reasonable belief that objectively justified the arrest.

### Disposition

[11] In the result, the appeal was dismissed.

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Mainella JA

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Monnin JA

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Cameron JA