Citation: R v Peters, 2020 MBCA 33 Date: 20200306
Docket: AR19-30-09355

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Madam Justice Janice L. leMaistre
Madam Justice Karen I. Simonsen

B E T W E E N :

HER MAJESTY THE QUEEN	)	***C. A. D. Olson***
	)	*for the Appellant*
Respondent	)	
	)	***R. L. Rankin***
- and -	)	*for the Respondent*
	)	
KEVIN VINCENT PETERS	)	*Appeal heard and*
	)	*Decision pronounced:*
(Accused) Appellant	)	***March 6, 2020***

On appeal from 2019 MBPC 41

LEMAISTRE JA (for the Court):

[1] The accused appeals his convictions for possession of crystal methamphetamine (crystal meth) and oxycodone for the purpose of trafficking contrary to section 5(2) of the *Controlled Drugs and Substances Act*.

[2] The accused was the front-seat passenger in a vehicle stopped by police for a traffic violation. Police determined that there was an outstanding warrant for the accused's arrest and asked him to exit the vehicle. When the front passenger door opened, one of the officers saw a bag on the floor between the accused's feet that contained crystal meth. A subsequent search of the vehicle revealed a lunch kit under the front passenger seat containing, among other items, 80 tablets of oxycodone with acetaminophen, 1.6 grams of crystal meth and packaging material. Police also seized marihuana and

"dime baggies" from the driver and found other drug paraphernalia and packaging material in the vehicle.

[3] At the time of his arrest, the accused said that he had used "meth" 45 minutes prior to the traffic stop and, according to the arresting officer, he was under its influence. He also demonstrated knowledge of items in the vehicle including the "meth".

[4] The only issue at trial was whether the Crown had proven beyond a reasonable doubt that the accused was in possession of the drugs. The trial judge rejected the accused's argument that the driver had exclusive possession of the drugs seized and the accused was unaware of the presence of the drugs at his feet. In doing so, she concluded that this assertion was "speculative beyond the evidence . . . and implausible" (at para 36).

[5] The accused appeals his convictions on the basis that the trial judge misapprehended the evidence and that the verdicts were unreasonable.

[6] We have not been persuaded that the trial judge misapprehended the evidence. For the most part, the accused's argument invites an interpretation of the evidence that is different than that of the trial judge. A different interpretation of the evidence does not amount to a misapprehension of the evidence. In our view, when considered in context, and not in isolation, the trial judge's findings of fact and inferences are amply supported by the evidence (see *R v Whiteway BDT et al*, 2015 MBCA 24 at paras 32, 69).

[7] We have also not been persuaded that the trial judge erred when she determined that the accused's guilt was the only reasonable conclusion on the totality of the evidence (see *R v Villaroman*, 2016 SCC 33 at para 55). The

trial judge understood that she needed to consider other available inferences inconsistent with guilt and that proof of possession required a measure of control over the drugs. She considered the alternative inferences raised by the accused and, in our view, made no error when she found these inferences to be "speculative" and "implausible" (at para 36). Nor did she engage in an illogical or irrational reasoning process (see *R v Giesbrecht*, 2019 MBCA 35 at paras 96-97). Moreover, the accused did not testify or call any evidence that would support alternative inferences inconsistent with guilt (see *R v Green*, 2019 MBCA 53 at para 67). In our view, a properly instructed jury or a judge could reasonably have rendered the guilty verdicts on the whole of the evidence (see *R v Ackman*, 2020 MBCA 24 at para 7).

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

leMaistre JA

Cameron JA

Simonsen JA