

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Madam Justice Freda M. Steel
Madam Justice Karen I. Simonsen

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>J. H. Youn</i>
)	<i>for the Appellant</i>
<i>Respondent</i>)	
)	<i>J. W. Avey</i>
<i>- and -</i>)	<i>for the Respondent</i>
)	
<i>RONALD JAMES LEE WILLIAMS</i>)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>)	<i>May 3, 2019</i>

SIMONSEN JA (for the Court):

[1] The accused appeals his convictions for attempted robbery and breach of probation order by failing to keep the peace, asserting that the verdicts are unreasonable because the trial judge convicted him on the basis of unreliable identification evidence.

[2] The attempted robbery occurred on December 15, 2017 when the complainant, who was outside a Manitoba Housing building where he worked and carrying his master key to the building, was aggressively approached three times by an individual who demanded his keys.

[3] The complainant was unable to identify the perpetrator, except to provide a generic description and indicate that he had a tattoo under his right eye. The incident was, however, recorded by video surveillance cameras. At

trial, Detective McLean testified that, based on his previous dealings with the accused, he immediately recognised him as the perpetrator from the surveillance videos, and later from a still image taken from one of the videos. Detective McLean explained that he had daily contact with the accused for two to three years between 1999 and 2004 when the accused was an inmate at an institution where Det. McLean was a correctional officer, and was also familiar with the accused because he took a two-hour video-recorded statement from him in 2008. Detective McLean's recognition led to a name being associated with the perpetrator. After Det. McLean made his identification through recognition, Det. Quilty was able to identify the accused by comparing the surveillance videos and the still image taken from the surveillance video to two police file photographs of him.

[4] On a review of the whole of the record, we see no basis for appellate intervention. The trial judge, in careful and thorough reasons, was alive to the dangers and frailties of eyewitness identification evidence. She rightly noted weaknesses in the complainant's evidence and indicated that, "At the end of the day, [the complainant's] evidence doesn't make out the case before me because he couldn't identify the person who accosted him." However, she went on to consider his testimony together with the evidence of the two police officers, which she accepted. The key testimony, from the trial judge's perspective, was understandably that of Det. McLean which we agree was recognition evidence, rather than typical eyewitness identification evidence by a person who was a stranger to the accused prior to the offence (see *R v Bob*, 2008 BCCA 485 at paras 12-13; and *R v Geary*, 2010 MBCA 33 at paras 15, 17-18). The trial judge also found that the complainant's generic description of the perpetrator was consistent with the appearance of the

accused in court, and that the tattoo the complainant had observed under the right eye of the perpetrator was confirmed by the police file photographs of the accused.

[5] We do not agree with the accused that the trial judge's reasoning was flawed. The trial judge was aware of and applied the correct legal principles, and she made no palpable and overriding error in her assessment of credibility, findings of fact and inferences drawn. We are satisfied that the verdicts are ones that a properly instructed jury, acting judicially, could reasonably have rendered.

[6] Therefore, the appeal is dismissed.

Simonsen JA

Chartier CJM

Steel JA
