IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
                     Mr. Justice Christopher J. Mainella
                     Madam Justice Janice L. leMaistre

B E T W E E N :

HER MAJESTY THE QUEEN	)	*L. C. Robinson*
	)	*for the Appellant*
Respondent	)	
	)	*K. S. J. Elgert*
- and -	)	*for the Respondent*
	)	
JAMES JOSEPH MASON	)	*Appeal heard and*
	)	*Decision pronounced:*
(Accused) Appellant	)	*December 11, 2018*

LEMAISTRE JA (for the Court):

[1]   The accused was convicted, after a trial in Provincial Court, of trafficking in five rocks of crack cocaine to an undercover police officer. The accused appeals his conviction and seeks an acquittal or, in the alternative, a new trial.

[2]   The accused advances two grounds of appeal: 1) the trial judge erred in her application of the law in relation to eyewitness identification; and 2) the verdict is unreasonable.

[3]   We are not persuaded that the trial judge erred in her application of the law in relation to eyewitness identification. In her reasons, the trial judge properly cautioned herself about the frailties of eyewitness identification evidence and determined that, because the photo line-up procedure conducted

by the police was deficient, it had limited evidential value. She also gave little weight to the in-dock identification of the accused by the undercover police officer.

[4]   She carefully considered the circumstances, including the police officer's training to conduct undercover operations, his opportunity to observe and the description he provided which was specific with unique identifying features.

[5]   Ultimately, the trial judge found that the undercover police officer's testimony regarding the description of the male who sold him the crack cocaine was credible and reliable and the description matched the photograph of the accused in the photo line-up and the appearance of the accused in court. Accordingly, she found the evidence established the identity of the accused beyond a reasonable doubt. In our view, she was entitled to do so and committed no error in doing so.

[6]   Regarding the second ground of appeal, the trial judge's conclusion that the undercover police officer's description of the male who sold him the crack cocaine matched the photograph of the accused and the accused in court was reasonably open to her on the evidence. We are not convinced that the verdict is unreasonable taking a cumulative consideration of the relevant factors and, in particular, the distinguishing features noted in the undercover police officer's description as to the accused's scar between his eyes and his neck tattoos (see *R v Tat* (1997), 117 CCC (3d) 481 (Ont CA)).

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

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leMaistre JA

Monnin JA

Mainella JA

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