Citation: R v O'Hanley, 2024 MBCA 29
Date: 20240308
Docket: AR23-30-09902

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Janice L. leMaistre
Mr. Justice James G. Edmond
Mr. Justice David J. Kroft

***B E T W E E N**:*

	)	***B. S. Newman** and*
HIS MAJESTY THE KING	)	***M. R. Merriott***
	)	*for the Appellant*
Respondent	)	
	)	***A. Y. Kotler** and*
- and -	)	***M. M. Desautels***
	)	*for the Respondent*
CHELSEA LYNNE O'HANLEY	)	
	)	*Appeal heard and*
(Accused) Appellant	)	*Decision pronounced:*
	)	***March 8, 2024***

On appeal from *R v Sinkovits, Narvey, O'Hanley and Hall*, 2022 MBQB 154 [*O'Hanley*]

LEMAISTRE JA (for the Court):

Introduction

[1] Chelsea O'Hanley (the accused), Jonathan Narvey (Narvey), Kyle Sinkovits (Sinkovits) and Bobbi-Lyne Hall (Hall) were charged with murdering Gerhard Reimer-Wiebe (the victim) and indecently interfering with his remains. The accused and Hall were also each charged with being an accessory after the fact to murder. Prior to trial, Narvey and Sinkovits pleaded

guilty to second degree murder, and Hall pleaded guilty to being an accessory after the fact to murder.

[2] After a trial by a judge alone, the accused was convicted of second degree murder, indignity to human remains and being an accessory after the fact to murder. The trial judge imposed the following sentences:

1) Second degree murder: life in prison without eligibility for parole for twelve years;

2) Indecently interfering withs human remains: four years concurrent; and

3) Accessory after the fact to murder: six years concurrent.

[3] The accused appealed her convictions. Following the hearing, we dismissed the appeal with reasons to follow. These are those reasons.

Background

[4] Shortly after Hall claimed that she had been sexually assaulted by the victim, Narvey and Sinkovits assaulted, confined and tortured the victim in the basement of the residence they shared with the accused and Hall (the residence). The initial assault, which occurred three or four days prior to the victim's death, was "brutal and bloody from the start" (*O'Hanley* at para 409). The victim was taped to a wooden chair in the basement and his mouth was covered with several layers of the same tape. At times the tape was taken off to move the victim, and then he was re-taped to the chair. The victim also had "a dog collar around his neck with a leash to control his movements" (*ibid* at para 412).

[5] On June 19, 2020, the victim was near death due to the extensive trauma inflicted by Narvey and Sinkovits. He was taken to the kitchen of the residence and placed face down on a tarp, where he died. Prior to the victim's death, Narvey sat on him and posed for photographs, described by counsel as "trophy photograph[s]" (the trophy photographs) because Narvey was also posing the victim's body; for instance, by grabbing his hair to hold his head up.

[6] The injuries discovered during the autopsy included trauma inflicted post-mortem. The victim was found to have severe cranial trauma with evidence of a possible gunshot wound, sharp force injuries to his extremities and torso, blunt force injuries to his extremities and a fractured jaw. Several of the victim's fingers had been amputated, some of them after his death.

[7] After the victim died, he was wrapped in the tarp and placed in the accused's SUV. The accused drove the vehicle, accompanied by Narvey, Sinkovits and Hall, to a residence in Portage la Prairie. There the victim's body was disposed of first by burning it with gas and then by partially burying the remains.

[8] The accused testified at trial. Her evidence was that, despite witnessing the initial assault and living in the residence, she was unaware that the victim was being confined and tortured in the basement. She also denied knowing that the victim's body was in her SUV when she drove the others to Portage la Prairie. Finally, she claimed to have been completely unaware of their efforts to incinerate and bury the body. The trial judge described the accused's defence as "she saw no evil, she did no evil, she heard no evil and she spoke no evil" (*O'Hanley* at para 352).

[9] The trial judge categorically rejected the accused's testimony. He found "she is a skillful and clever liar who provides some elements of truth in her deceptive and dishonest story" (*ibid* at para 367). The trial judge made other key findings, including that: the accused witnessed Narvey and Sinkovits assault the victim three to four days before they disposed of the body, she knew that the victim was confined and tortured in the basement of the residence, the victim was still alive when he was taken to the kitchen, the accused took the trophy photographs (and later attempted to delete them), the victim died after she took the trophy photographs, and the accused knew they were going to Portage la Prairie to dispose of the body.

[10] After considering the totality of the evidence, the trial judge concluded that, despite there being "no direct evidence that [the accused] ever touched [the victim] while he was confined and tortured at [the residence]" (*ibid* at para 439), the accused was a party to murder pursuant to ss 21(1)(b), 21(1)(c) and 21(2) of the *Criminal Code*, RSC 1985, c C-46 [the *Code*]. In doing so, he found:

1) The accused aided the murder by preparing the kitchen and by being "a key part of the plan to get rid of the body" (*O'Hanley* at para 441).

2) The accused abetted the murder by taking the trophy photographs while the victim was still alive, thereby encouraging the offence.

3) The accused knew about the initial assault, she was a party to the confinement and the acts of torture committed by Narvey and Sinkovits, and she assisted with disposing of the victim's body. Thus, she had a common intention to commit murder.

Discussion

[11] The accused raises two grounds of appeal:

1) The trial judge failed to apply the test from *R v Villaroman*, 2016 SCC 33 [*Villaroman*] and drew unreasonable factual inferences, resulting in an unreasonable verdict.

2) The trial judge erred when assessing the accused's credibility by relying on myths or stereotypes, and by ignoring and improperly weighing the expert evidence.

Whether the Trial Judge Failed to Apply the Test from Villaroman and Whether the Verdict was Unreasonable

[12] We are not persuaded that the trial judge failed to apply the test from *Villaroman*. The trial judge is presumed to know the law, and any ambiguities in his reasons should be interpreted based on a presumption that he correctly applied the law (see *R v CLY*, 2008 SCC 2 at para 11). Moreover, there is no requirement for a formulaic approach where the evidence of the offence is purely circumstantial, as long as the trial judge understands the need to find that guilt has been established beyond a reasonable doubt (see *Villaroman* at paras 17-22).

[13] In addition, we note that, in his reasons, the trial judge referred to *R v Calnen*, 2019 SCC 6 [*Calnen*]. In *Calnen*, the Supreme Court of Canada examined whether the judge had properly instructed the jury "that proof 'beyond a reasonable doubt' meant that a conviction could rest on circumstantial evidence only if they were satisfied there was no rational

inference inconsistent with guilt" (at para 28). Although the trial judge was referring to the use that could be made of after-the-fact conduct, he articulated an awareness of the need to consider alternate explanations for conduct inconsistent with guilt. He stated: "The trier of fact must be cautious about inferring guilt when the conduct might be motivated by panic, embarrassment, and fear of false accusation or some other innocent explanation" (*O'Hanley* at para 36).

[14] The accused takes issue with three inferences that were key to the trial judge's finding that the accused was a party to the offence of murder: 1) the victim was still alive when he was taken to the kitchen, placed on the tarp and "finished off" (*ibid* at para 431); 2) the accused assisted in the preparation of the kitchen by placing the tarp on the kitchen floor; and 3) the accused took the trophy photographs. These inferences, in addition to the accused's participation in the plan to dispose of the victim's body, grounded the trial judge's conclusion that the accused was a party to the murder.

[15] The accused argues that the trial judge failed to consider other plausible inferences available on the evidence, that these inferences were clearly wrong and that these errors led to an unreasonable verdict. We disagree.

[16] A trial judge's inferential reasoning is entitled to deference on appeal. As explained by Mainella JA in *R v Turner*, 2023 MBCA 40 [*Turner*], "an appellate court must not retry the case by looking at the evidence in an 'alternative way' as it is for the trier of fact to decide whether, and to what degree, a given inference is plausible or speculative" (at para 5). This Court's role is to assess the reasonableness of the trial judge's decision that "guilt was

the only reasonable conclusion available on the totality of the evidence" (*Villaroman* at para 55; see also *Turner* at para 38). It is not our role to retry the case.

[17] Thus, the impugned inferences are reviewable on the standard of palpable and overriding error (see *Housen v Nikolaisen*, 2002 SCC 33 at paras 19-25; see also *R v McIvor*, 2021 MBCA 55 at paras 41-46).

[18] In this case, there were multiple paths available to the trial judge to find the accused guilty on the basis of party liability (see *Turner* at para 32). In our view, the inference that the victim was still alive when he was placed on the tarp was reasonably available on the evidence. The evidence which supports this inference includes the movement of the victim's body in the trophy photographs from one photograph to the next; the presence of the leash and gag, which the trial judge found was being used to control the victim and keep him silent; and the presence of blood around the victim's head and body.

[19] The evidence also supported the inference that the accused took the trophy photographs. The trophy photographs were taken with her phone. The evidence on the phone supported the trial judge's inferences that she was the primary user and established that she was consistently using the phone on June 19, 2020. In addition, there was no evidence that Sinkovits or Hall had used the phone that day or that there was some other third-party suspect who may have taken the trophy photographs. The trial judge's finding that the accused abetted the murder by taking the trophy photographs was reasonable on the evidence.

[20] While the inference that the accused assisted in the preparation of the kitchen by placing the tarp on the kitchen floor may have been weak, in

our view, the evidence reasonably supported the finding that the accused aided the offence by participating in the plan to dispose of the victim's body. There was evidence of her involvement, including the witness testimony from Darryl Ducharme and Christine Roulette, as well as the video evidence. Moreover, it was also open to the trial judge to find that the accused aided the offence by taking the trophy photographs.

[21] In our view, the impugned inferences were reasonably supported by the evidence (see *HL v Canada (Attorney General)*, 2005 SCC 25 at para 74). We see no palpable and overriding error in the trial judge's inferential reasoning, and there was ample support in the evidence for his finding of guilt on the basis of ss 21(1)(b) and 21(1)(c).

[22] We also are of the view that the trial judge's finding of liability pursuant to the doctrine of common intention under s 21(2) of the *Code* was reasonably open to him. The evidence established that Narvey and Sinkovits forcibly confined and tortured the victim in the residence, and that the accused was a party to those offences. The evidence also established that the accused had a subjective awareness of the risk of death: she knew that the victim was being confined and tortured for several days, and she assisted with the torture after the victim had already been seriously injured and was near death.

Whether the Trial Judge Erred When Assessing the Accused's Credibility

[23] Finally, we see no palpable and overriding error in the trial judge's assessment of the accused's credibility (see *R v Kruk*, 2024 SCC 7 at paras 97-98; *R v CAM*, 2017 MBCA 70 at para 37). Although the trial judge assumed that "[a]n uninvolved person, even an abused spouse, would not stumble onto the scene and remain to take photographs; they would run from the house

screaming" (*O'Hanley* at para 440), this assumption was not material to his finding that the accused was a "skillful and clever liar" (*ibid* at para 367).

[24] The trial judge carefully reviewed the accused's testimony in the context of the other evidence. There is no indication in his reasons that he relied on prohibited myths or stereotypes, or engaged in propensity reasoning. We agree with the Crown that the trial judge rejected the accused's testimony based "on her well-established pattern of dishonesty, the significant contradictions between her claims and the other evidence in the case and the inherent implausibility of her version of events".

[25] Nor is there any indication that the trial judge ignored Dr. David Kolton's expert evidence. To the contrary, he referred to it repeatedly and relied on it. Dr. Kolton testified that a victim of domestic violence might exaggerate the abuse in order to establish a defence to a crime. The trial judge relied on this testimony when he found the accused had exaggerated the abuse when testifying in this case. Furthermore, the trial judge was entitled to weigh the evidence as he saw fit.

Conclusion

[26] In conclusion, we were not persuaded that the verdict was unreasonable or that the trial judge erred when assessing the accused's credibility. Therefore, the appeal was dismissed.

leMaistre JA

Edmond JA

Kroft JA