

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Christopher J. Mainella  
Mr. Justice David J. Kroft  
Madam Justice Anne M. E. Turner

***BETWEEN:***

<b><i>HIS MAJESTY THE KING</i></b>	)	<b><i>A. K. Gowenlock</i></b>
	)	<b><i>for the Appellant</i></b>
	)	
	)	<b><i>E. D. Atkin</i></b>
	)	<b><i>for the Respondent</i></b>
<b><i>- and -</i></b>	)	
	)	<b><i>Appeal heard and</i></b>
<b><i>CORY JASON CARVAJAL</i></b>	)	<b><i>Decision pronounced:</i></b>
	)	<b><i>January 27, 2026</i></b>
<b><i>(Accused) Appellant</i></b>	)	
	)	<b><i>Written reasons:</i></b>
	)	<b><i>February 9, 2026</i></b>

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

[1] The accused appealed his convictions on three counts of possessing controlled substances for the purpose of trafficking and one count of possession of property obtained by crime under \$5,000 (the proceeds offence) on the grounds that the trial judge’s reasons for conviction were insufficient; the trial judge improperly drew an adverse inference against the accused; and the verdicts were unreasonable. After hearing the appeal, we allowed it in part, with reasons to follow, which now do.

[2] Before addressing the main grounds of appeal, there is a preliminary matter to address in relation to the conviction for the proceeds offence.

[3] The Crown conceded that, on October 18, 2024, during a *voir dire*, the Crown (not counsel appearing on the appeal) advised unambiguously of its intention to enter a stay of proceedings on the proceeds offence but to rely on the evidence giving rise to it on the three drug-trafficking offences. Unfortunately, that stay of proceedings was never recorded in the record of the Court—save for the transcript (see *Criminal Code*, RSC 1985, c C-46, s 579(1) [the *Code*])—and both counsel and the trial judge later overlooked the Crown’s intention during the trial.

[4] On November 20, 2024, before the trial judge delivered her reasons for judgment, both counsel advised the trial judge that they did not have a note of the proceeds offence being stayed. Both counsel mistakenly advised the trial judge that the proceeds offence was still in play and required a verdict. The trial judge did not correct this mutual error.

[5] This is a case of an honest oversight during the hustle and bustle of a busy trial court where everyone is trying to perform their respective functions in good faith—nothing more. We agree with the Crown that the interests of justice demand that the conviction for the proceeds offence be set aside. The Crown can, at its earliest convenience, enter a stay of proceedings on the information when the proceeds offence returns to the trial court.

[6] In our view, this procedural irregularity is fully addressed by section 686(1)(b)(iv) of the *Code*. As was explained in *R v Esseghaier*, 2021 SCC 9, “our law does not demand procedurally perfect justice, but fundamentally fair justice” (at para 10, citing with approval *R v O’Connor*, 1995 CanLII 51 at para 193 (SCC)). The trial court in the present case had

jurisdiction over all the offences in question and, in our opinion, the accused suffered no prejudice from this procedural irregularity.

[7] In terms of the first argument raised by the accused, we are not persuaded that the trial judge's reasons failed to provide a discernible pathway to the route she took to the convictions when read in context (see *R v Ramos*, 2020 MBCA 111 at para 47, aff'd 2021 SCC 15). The trial judge's verdicts were based on inferences she drew from the uncontested circumstantial evidence and acceptance, in part, of the opinion evidence of an expert called by the Crown as to the drug trade.

[8] We also reject the next submission that the trial judge improperly commented on the accused's failure to testify in her analysis of the circumstantial evidence (see *Canada Evidence Act*, RSC 1985, c C-5, s 4(6)). The mere statement by a trial judge that the Crown's evidence is uncontradicted does not amount to an impermissible comment on the accused's failure to testify (see *R v Banayos and Banayos*, 2018 MBCA 86 at paras 21-27 [*Banayos*]; *R v Noble*, 1997 CanLII 388 at paras 79, 82 (SCC) [*Noble*]).

[9] Finally, we are not persuaded that the trial judge's verdicts on the three drug-trafficking offences were unreasonable based on the accused's argument that a trier of fact, acting judicially, could not reasonably be satisfied that guilt on each of those offences was the only reasonable conclusion available on the totality of the evidence (see *R v Villaroman*, 2016 SCC 33 at para 55 [*Villaroman*]).

[10] The relevant facts can be stated briefly. On the evening of September 10, 2023, the accused was stopped by Winnipeg police for riding

a bicycle on a sidewalk. When an officer approached the accused to discuss the matter, the accused discarded a plastic baggie containing 5.05 grams of methamphetamine that he took out of his waistband. The officer saw this and arrested the accused. In a satchel on his person, the accused had two working mobile phones; a disguised taser weapon; a lockbox containing a plastic bag with 0.53 grams of methamphetamine; a plastic bag containing 3.29 grams of fentanyl; and two plastic bags containing 0.86 and 1.03 grams of cocaine, respectively. On his person, the accused had \$395 in Canadian currency. Police located no drug-user paraphernalia.

[11] In his testimony, the drug expert provided a detailed explanation of the manner in which street-level trafficking of methamphetamine, fentanyl and cocaine occurs. He provided his opinions regarding the significance of what the police did and did not seize in terms of the purpose for which the accused possessed the three controlled substances. Defence counsel skilfully cross-examined the expert witness, causing him to qualify some of his opinions but not his overall view that this was a situation of a street-level trafficker connecting with customers through a mobile phone, commonly called a “dial-a-dealer operation.”

[12] In its submissions on the appeal, the Crown highlighted that *Villaroman* makes clear that a trier of fact must ultimately concern themselves with inferences that are reasonable—not just those that are possible—from the evidence or its absence. We agree.

[13] In our view, the accused’s effort to raise, rhetorically, alternative inferences to guilt does not assist him where the trial judge reasonably decided that an alternative was unreasonable given the evidence and the absence of

evidence, assessed logically, and in light of human experience and common sense (see *ibid* at para 37).

[14] The drawing of the line between inferences that are speculative and those that give rise to a reasonable doubt is the responsibility of the trier of fact alone (see *ibid* at paras 37-38). The role of this Court is not to decide if an alternative way of looking at the case is reasonable enough to raise a reasonable doubt, but only to decide if the trial judge could reasonably have come to the decision that she did (see *ibid* at paras 55-56, 67, 71; *R v Sinclair*, 2025 MBCA 51 at para 12).

[15] Proof of the intention to traffic for the purposes of section 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c 19, is a question to be decided by the trier of fact looking at all the relevant circumstances cumulatively. As Martin JA observed in *Regina v Oakes* (1983), 2 CCC (3d) 339 at 363-64, 1983 CanLII 1850 (ONCA), aff'd 1986 CanLII 46 (SCC):

In cases where narcotics are possessed for the purpose of trafficking, the quantity is usually such as to indicate that the possession of the drug is not for personal use. Frequently . . . the drugs are packaged in such a way as to indicate that they are intended to be distributed. Commonly, where substantial quantities of a narcotic are found in the possession of an accused other *indicia* of trafficking are also found, such as packaging material, bags, scales and records; such evidence is, of course, sometimes supplemented by surveillance, including electronic surveillance.

Where the possession of a narcotic drug is of such a nature as to be indicative of trafficking, the common sense of a jury can ordinarily be relied upon to arrive at a proper conclusion.

[16] The trial judge considered the submission by the accused that his possession of the three controlled substances may have been for the purposes of a drug binge and he just happened to be caught by the police, cycling from purchasing the controlled substances to his home to consume them. She rejected this inference and called it “speculative” based on several factors, such as the variety and quantity of the controlled substances, the manner of their packaging, the absence of drug-user paraphernalia and the accused having possession of items that are often the tools of the trade for a drug trafficker. The trial judge also commented on the fact that items often found in connection with drug traffickers, such as scales and packaging materials, were not found by the police. She found the absence of such items did not, in her view, “detract from the positive indicators of trafficking.” The trial judge also was not prepared to draw an inference against the accused based on the amount of currency seized because she accepted that it could have been a bank withdrawal, as the denominations were not typical for street-level trafficking.

[17] The trial judge properly weighed the significance of the absence of drug-trafficking paraphernalia that might point to an intention to traffic in the context of the evidence (see *R v Khan*, 2017 BCCA 101 at para 21).

[18] As well, the trial judge found important the fact that there was an absence of drug-user paraphernalia; the fact that there was a significant amount of fentanyl and methamphetamine (roughly thirty-three and fifty-five individual doses); and the lack of explanation for the accused having two mobile phones, other than the expert’s evidence that traffickers often employ the “avoidance technique” of having a “work phone [for] their drug dealing” and a “personal phone” for their personal affairs. We are satisfied that these features of the case provide a sufficient evidentiary basis to support the trial

judge's conclusion that the accused possessed the three controlled substances for "sale and not for his own personal consumption."

[19] Also noteworthy for us is that, in the face of the circumstantial case that, standing alone, would support a conclusion of guilt beyond a reasonable doubt, the accused did not testify. While his silence is not a piece of evidence to justify an inference of guilt, it is indicative of an absence of exculpatory evidence in assessing the claim of an unreasonable verdict (see *R v Hall*, 2018 MBCA 122 at para 201 [*Hall*]; *Banayos* at para 24; *Noble* at para 86). As was explained in *R v Green*, 2019 MBCA 53, "The failure of the accused to testify can be taken by this Court to mean that there is no innocent explanation regarding the evidence that associates him to" drug trafficking (at para 67, quoting *Hall* at para 202).

[20] While another trier of fact may have come to a different conclusion on the evidence, we see nothing in the approach taken by the trial judge that draws into question the reasonableness of the inferences she was prepared to make in this case.

[21] In summary, with respect to the three drug-trafficking offences, we are not persuaded that the trial judge reached her verdicts by an illogical or irrational reasoning process, nor are we convinced that these three verdicts were unreasonable within the meaning of section 686(1)(a)(i) of the *Code*. Moreover, we see no prejudice to the accused arising from the procedural irregularity as to the proceeds offence. The evidence of the currency seized was admissible regardless of whether the proceeds offence was stayed or not and, at the end of the day, the trial judge did not rely on the currency evidence in coming to her verdicts on the three drug-trafficking offences.

[22] In the result, the appeal was allowed in part. The conviction for the proceeds offence was quashed; the remainder of the appeal was dismissed.

Mainella JA

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Kroft JA

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Turner JA

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