Citation: R v Harder, 2026 MBCA 89
Date: 20261105
Docket: AR25-30-10282

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Jennifer A. Pfuetzner
Madam Justice Karen I. Simonsen
Mr. Justice David J. Kroft

B E T W E E N:

	)	***M. P. Cook***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***M. Moorthy***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
FRANZ HARDER	)	*Decision pronounced:*
	)	***October 27, 2026***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***November 5, 2026***

SIMONSEN JA (for the Court):

[1] The accused was convicted of possession of a firearm knowing its possession was unauthorized, possession of a firearm contrary to an order and intentional discharge of a firearm while being reckless as to the life or safety of another person. He received a total sentence of five-and-one-half years in custody. He appealed his convictions and sought leave to appeal the sentence, and, if granted, appealed the sentence.

[2] At the hearing, we dismissed the conviction appeal and denied leave to appeal the sentence, with written reasons to follow. These are those reasons.

[3] In convicting the accused, the trial judge accepted the evidence of the accused's wife at the time of the offences, Michelle Sawatzky (Sawatzky), and her friend, Joannie Richardson (Richardson). Sawatzky testified that the accused and his friend, Abraham Peters (Peters), had been involved in some kind of altercation and that the accused was "rattled up" about Peters being parked in his truck (the truck) at the entrance to the accused's property. The accused told Sawatzky he was going to shoot at Peters because he wanted him gone. Sawatzky further testified that she and Richardson walked towards the truck in an attempt to have Peters leave the property due to the altercation that had occurred between him and the accused. Both women described hearing two shots fired in their direction, with the first hitting the truck and the second hitting a tree. Sawatzky indicated that the first shot went right by her head.

[4] Shortly after hearing the second shot, the women walked back towards the house. Sawatzky testified that she saw the accused holding a gun with a black barrel and brown stock that was a few feet long. She explained that the gun was a rifle that belonged to the accused's father. According to Sawatzky, she said to the accused, "What the [heck]? Like, you shot at me", to which the accused replied, "I don't shoot to miss. If I wanted you dead, you'd be dead." Richardson testified that she overheard the accused respond to Sawatzky, "I don't shoot to miss", and that she saw him, in an area lit by the house porch light, holding a black gun that was two to three feet long.

[5] Sawatzky also testified that Peters then drove the truck further onto the accused's property. She stated that the accused ran in Peters' direction, pulled him out of the driver's seat and began physically fighting with him for a few minutes until the fight suddenly ended and "it was like they were best friends." Richardson's evidence was that she saw the accused and Peters

shaking hands, and the accused saying something to the effect "it was just a misunderstanding".

[6] The police were not called about the incident until much later, and there were no police witnesses at the trial.

[7] The accused admitted to bringing out a gun, but denied discharging it or bringing it out due to the confrontation that had occurred between him and Peters. The trial judge rejected the accused's denials in large part because of his attitude towards Sawatzky, which the trial judge found was "bitter and resentful and tailored to do everything possible to undermine her, and Ms. Richardson to a lesser extent."

[8] The trial judge considered this to be a circumstantial case, as Sawatzky and Richardson did not actually see the accused discharge the gun because they had their backs turned towards him. The trial judge concluded that the only reasonable inference, on the evidence that she did accept, was that the accused discharged a weapon that met the definition of a firearm.

[9] The accused challenges the trial judge's inference that he was the one who fired the shots and her inference that the gun Sawatzky saw was a firearm as defined in the *Criminal Code*, RSC 1985, c C-46 [the *Code*]. The accused contends that these inferences were made despite a lack of evidence and led to unreasonable verdicts.

[10] In *R v Fedyck*, 2018 MBCA 74 at paras 23-24, this Court set out the applicable standard of review:

> A verdict is reasonable if it is one that a properly instructed jury acting judicially could reasonably have rendered (see *R v Biniaris*,

> 2000 SCC 15). The Supreme Court of Canada, in *R v Villaroman*, 2016 SCC 33, further refined the test when the conviction is based upon circumstantial evidence, stating (at para 55): "Where the Crown's case depends on circumstantial evidence, the question becomes whether the trier of fact, acting judicially, could reasonably be satisfied that the accused's guilt was the only reasonable conclusion available on the totality of the evidence".
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> The role of an appellate court, in reviewing a conviction based on circumstantial evidence, is to focus on "the question of whether the inferences drawn by the trial judge, having regard to the standard of proof, were reasonably open to him" (*Villaroman* at para 67).

[11] Given the trial judge's acceptance of the testimony of Sawatzky and Richardson, as well as the accused's evidence that he brought out a gun, we see no reversible error in her inference that it was the accused who discharged the gun that Sawatzky saw.

[12] Nor do we see any basis to intervene with respect to the trial judge's inference that the gun Sawatzky saw was a firearm as defined by the *Code*. Section 2 of the *Code* defines a firearm as follows:

Definitions **2** In this Act, ***firearm*** means a barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm; (*arme à feu*)[.]	**Définitions** **2** Les définitions qui suivent s'appliquent à la présente loi. ***arme à feu*** Toute arme susceptible, grâce à un canon qui permet de tirer du plomb, des balles ou tout autre projectile, d'infliger des lésions corporelles graves ou la mort à une personne, y compris une carcasse ou une boîte de culasse d'une telle arme ainsi que toute chose pouvant être modifiée pour

> être utilisée comme telle. (*firearm*)[.]

[13] The accused argues that this definition was not met because there was no evidence of any firearms, bullets, bullet casings or bullet fragments being seized; Richardson testified that she initially thought the gun in the accused's hand was a BB gun and only changed her mind when she "was made aware that that's not what that was"; no gunshot residue tests were performed; and there was no evidence confirming the type of gun Sawatzky saw, in particular, no expert evidence was tendered.

[14] A trial judge can reasonably infer, based on the totality of evidence, that an item is a firearm as defined in the *Code* (see *R v Guzzo*, 2007 CanLII 36639 at para 16 (ONSC); *R v Carlson*, 2002 CanLII 44928 at para 16 (ONCA)). Statements by an accused to shoot a victim are relevant to assessing whether an item is a firearm (see *R v Ranieri*, 2009 ONCA 6 at paras 2-3).

[15] In our view, there was ample evidence to support the inference that the gun Sawatzky saw met the definition of a firearm: the verbal altercation between the accused and Peters; the accused saying, in relation to Peters, that he was going to shoot at him; Sawatzky and Richardson hearing two shots; them seeing the accused with a long-barrelled black gun moments after the two shots were discharged; Sawatzky, who had a valid firearms possession and acquisition licence and is familiar with guns, identifying the rifle as one that belonged to the accused's father; the accused's admission that he brought out a gun; and the accused's comments to Sawatzky: "I don't shoot to miss. If I wanted you dead, you'd be dead".

[16] For these reasons, we are not persuaded that the trial judge made any reversible error in the inferences she drew or that the verdicts are unreasonable.

[17] Turning to the sentence appeal, at the sentencing hearing, the Crown and the accused (represented by different counsel than on appeal) suggested total sentences of nine years and five years, respectively. On appeal, the accused argues that the five-and-one-half-year sentence, only six months longer than he had suggested to the trial judge, "could have been definitely less" and that a provincial sentence was a possibility. He asserts that the trial judge erred in principle by failing to give reasonable weight to the mitigating factors relating to his personal circumstances, which led to an unfit sentence.

[18] In our view, the trial judge considered the mitigating factors and gave them reasonable weight. She found, as mitigating, the accused's positive and lengthy employment history, supports within the community, and rehabilitative efforts to address his substance abuse issues. The trial judge noted the accused's diagnosis for attention-deficit hyperactivity disorder and medium risk to reoffend.

[19] The trial judge also found the accused's moral culpability to be high. She noted that he had a prior record involving convictions for firearms, he was subject to an order prohibiting him from having firearms and it was statutorily aggravating that Sawatzky was his spouse. The trial judge took into account that there were children in the accused's house at the time of the incident and that Sawatzky was traumatized when the accused fired the gun.

[20] These were very serious offences. While intoxicated and prohibited from possessing a firearm, the accused twice discharged a firearm in the area

of three people, including his wife. He did so after stating he was going to shoot at one of them.

[21] In all of the circumstances, the accused has not persuaded us that he has an arguable case that the trial judge erred in principle or imposed a sentence that was demonstrably unfit (see *R v Friesen*, 2020 SCC 9 at paras 26-27).

[22] For the foregoing reasons, we dismissed the conviction appeal and denied leave to appeal the sentence.

Simonsen JA

Pfuetzner JA

Kroft JA