Citation: R v Meier, 2025 MBCA 74
Date: 20250818
Docket: AR24-30-10090

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Mr. Justice Marc M. Monnin
Madam Justice Anne M. E. Turner

B E T W E E N:

	)	***A. Y. Kotler*** *and*
HIS MAJESTY THE KING	)	***A. D. Gingera***
	)	*for the Appellant*
Appellant	)	
	)	***B. J. Gladstone***
- and -	)	*for the Respondent*
	)	
NATHYN RALPH MEIER	)	*Appeal heard:*
	)	***January 24, 2025***
(Accused) Respondent	)	
	)	*Judgment delivered:*
	)	***August 18, 2025***

TURNER JA

Introduction

[1] The accused was acquitted of firearms-related charges under sections 87, 92, 94, 95 and 117.01(1) of the *Criminal Code*, RSC 1985, c C-46 [the *Code*] after a trial in the Provincial Court. The Crown's case against him consisted entirely of circumstantial evidence, which the trial judge found left her with a reasonable doubt as to his guilt.

[2] The Crown appeals the acquittals, saying that the trial judge addressed each piece of evidence individually without going on to consider the cumulative effect of the totality of the evidence presented. It says that the

"piecemeal" treatment of the evidence was an error of law and, therefore, the acquittals should be overturned and a new trial should be ordered.

[3] The accused asserts that, while the trial judge addressed and weighed each piece of evidence individually, when her reasons are read as a whole, she did consider their totality in concluding that she had a reasonable doubt as to the accused's guilt.

[4] For the reasons that follow, I would dismiss the appeal.

Facts

[5] I am mindful of the fact that the Crown does not have a right of appeal of an acquittal on a question of fact (I will discuss the standard of review further below). Therefore, the following facts were either not disputed or were as found by the trial judge.

[6] The matter proceeded as a two-day trial in Provincial Court. The evidence was called on the first day and submissions were completed the morning of the second day. The trial judge returned with an oral decision later in the afternoon of the second day.

[7] Some of the events occurred at the McPhillips Station Casino in Winnipeg (the casino) between approximately 2:30 a.m. and shortly after 3:00 a.m. on July 21, 2023. Those events were captured on surveillance videos.

[8] Between approximately 2:30 a.m. and 3:00 a.m., the accused followed a man and a woman, both wearing white (the couple in white),

through the casino. Close to 3:00 a.m., the couple in white exited the casino, at which time the accused followed them outside.

[9] Once outside, a confrontation quickly ensued. The accused approached the couple in white and pulled an object out of his satchel (the object). The trial judge found that the accused held the object like one would hold a firearm and that the object was consistent with the appearance of a handgun. The accused pointed the object at the couple in white. The couple saw the object, appeared frightened and ran away from the accused. There was, however, no reaction from any of the bystanders. The accused followed the couple in white around the driveway area of the casino, pointing the object at them several times.

[10] Constable Neil Jonathan Whitney (Cst. Whitney), testified that, on his review of the video, it appeared that the accused "racked" the object when he was standing close to a garbage can that can be seen on the video. He explained that, by "racked", he meant that the accused appeared to pull the slide back, which would eject a bullet from a gun if there was a bullet in the chamber. This would also move a new bullet into the chamber. At trial, the Crown agreed that, on the surveillance video, one could not see if a bullet fell from the object. It was also agreed that no shots were fired, which led to a stay of proceedings of the charge of discharging a restricted firearm under section 244(1) of the *Code*.

[11] The trial judge did not reject Cst. Whitney's testimony regarding what would happen when a firearm was "racked", but found that it was not clear on the video what exactly the accused was doing with his hands at the time.

[12] Ultimately, a vehicle in which the accused was a passenger was captured on video leaving the area of the casino.

[13] The couple in white did not make statements to the police, nor were any statements taken from bystanders who were in the area of the incident.

[14] Shortly after 3:00 a.m., members of the Winnipeg Police Service were dispatched to an alleged firearms-related offence outside of the casino. They were told to be on the lookout for a red Chevrolet Impala with a particular licence plate (the Impala).

[15] Cst. Whitney, driving a marked police vehicle, heard the dispatch and saw the Impala travelling eastbound on Sutherland Avenue as he was driving westbound on the same street. He completed a U-turn to follow the Impala. While completing the U-turn, he briefly lost sight of the Impala. He next saw it turning from Sutherland Avenue, northbound onto King Street.

[16] Cst. Whitney caught up to the Impala and followed it until it was parked in the back lane behind a residence. The accused was seated in the rear passenger-side seat. The three occupants got out of the vehicle. Cst. Whitney placed all three occupants under arrest.

[17] The accused and the two other occupants of the vehicle were searched. The vehicle itself was also searched. No handgun or object with the appearance of a handgun was found.

[18] At approximately 4:30 a.m., Constable Arek Balcerzak was directed to attend to the casino to seize a bullet that casino security had found. He seized the bullet from near the garbage can seen on the video where the

accused did what Cst. Whitney described as racking. The bullet was a .40-calibre Winchester brand. The trial judge held that Winchester ammunition is a very common brand of ammunition and that nothing about the bullet distinguished it from other Winchester ammunition. She also found that there was no evidence to establish how long the bullet was in the location where it was found.

[19] At approximately 7:40 a.m., Constable Jeff Tuininga was assigned to search for a black handgun along the route taken by the Impala. He found a black handgun, with a Winchester .40-calibre bullet in the chamber, on the south side of Sutherland Avenue. The handgun was not overgrown by grass, which the trial judge found was of some assistance in evaluating how long the gun had been there, "but only in a very generalized sense." The trial judge also found that Sutherland Avenue is a well-travelled road and one of the main routes away from the casino. In addition, the trial judge noted that the gun was "located in a field beside the road in a location where Constable Whitney briefly lost sight of the vehicle as he followed it. This [was] perfect time to throw the firearm out the window."

[20] The trial judge found that the fact that the bullet found in the gun was the same type as the bullet found outside the casino was unhelpful given the commonality of the Winchester brand.

[21] As detailed further below, the trial judge ultimately found that, after applying the analysis set out in *R v Villaroman*, 2016 SCC 33 [*Villaroman*], the circumstantial evidence presented by the Crown did not satisfy her of the accused's guilt beyond a reasonable doubt.

Issue and Standard of Review

[22] The Crown can only appeal an acquittal on a question of law (see the *Code*, s 676(1)(a)). As stated in *R v Abdelrahman*, 2022 ONCA 798 at para 6:

> The trial judge's assessment of the evidence and her determination of the inferences to be drawn from circumstantial evidence attract considerable deference on appeal, subject to reversible error. Absent a legally flawed approach to the evidence, the Crown is precluded from arguing that an acquittal is unreasonable because that position is incompatible with the presumption of innocence . . .. Rather, the Crown has the heavy onus of demonstrating with a reasonable degree of certainty that the trial judge's analytical approach amounted to legal error that might reasonably and realistically be thought to have had a material bearing on the acquittal . . ..

[23] The Crown asserts that the trial judge failed to weigh the evidence in its totality when considering whether the Crown had proven the charges against the accused beyond a reasonable doubt. It submits that weighing evidence in a piecemeal fashion and failing to assess evidence in its totality is an error of law and, therefore, the standard of review is correctness (see *ibid* at para 7; see also *R v JK*, 2015 NLCA 14 at para 5).

[24] The accused submits that, while the trial judge analyzed the individual pieces of evidence and identified their frailties, she then went on to consider whether all the evidence satisfied her of the accused's guilt beyond a reasonable doubt. Therefore, he argues she did not commit an error of law in her assessment of the evidence as alleged by the Crown.

[25] These arguments must be considered in light of the Supreme Court of Canada's many recent cautions that "[a]ppellate courts must review a trial judge's reasons generously and as a whole, bearing in mind the presumption that trial judges know the law" (*Barendregt v Grebliunas*, 2022 SCC 22 at para 104; see also *R v Hodgson*, 2024 SCC 25 at para 68; *R v Lindsay*, 2023 SCC 33 at para 2; *R v Gerrard*, 2022 SCC 13 at para 2; *R v GF*, 2021 SCC 20 at para 79).

Analysis

[26] As noted above, the evidence at trial was completed in one day and submissions were made the next morning. The trial judge returned later in the afternoon of the second day with her decision to acquit the accused, which she delivered orally.

[27] The parties agreed, as do I, that, for the accused to be convicted of the firearms-related charges in this case, the Crown had to prove beyond a reasonable doubt that the object seen in the accused's possession on the surveillance video from the casino was the firearm seized from the south side of Sutherland Avenue. Otherwise, while the circumstances seen on the video outside of the casino may have been suspicious, the element of the offences requiring that the object meet the definition of a "firearm" under section 2 of the *Code* would not have been met.

[28] As this Court has previously noted, the duty to give reasons does not require a judge to meet a standard of perfection. The decision must show an understandable path to the result reached, given the context of the case. There is no requirement to articulate every thought the trial judge had, provided that

the reasons respond to the live issues and the key arguments (see *R v TJF*, 2024 SCC 38 at para 49; *R v Ramos*, 2020 MBCA 111 at para 47).

[29] There is no doubt that the Crown's case against the accused was based on circumstantial evidence and that the trial judge was alive to that, acknowledging that both parties were "[relying] on *R. v. Villaroman*, [2016] 1 SCR 1000, as directing considerations of the evidence in [the] matter."

[30] During submissions, the requirement that the trial judge look at the evidence as a whole or in its totality was discussed by both the Crown and defence counsel multiple times, as well as the trial judge raising the issue herself. At the end of the Crown's submissions in reply, the following exchange occurred:

> [CROWN]: The circumstantial evidence here just -- a conviction can be found just on the circumstantial evidence we have. It's a very strong inference and they can be used in conjunction with one another to create those inferences.
>
> [TRIAL JUDGE]: And that's the totality that you're referring to?
>
> [CROWN]: The totality, yes. So those are my only comments.
>
> [TRIAL JUDGE]: So from the Crown perspective, once suspicious circumstance cobbled together with another -- another suspicious circumstances, together can strengthen the inference that can be drawn by the Court?
>
> [CROWN]: Absolutely. So all of the -- all of the circumstantial evidence can work in conjunction to create those inferences.

[31] Rarely will a circumstantial case turn on a single piece of evidence. As such, a trial judge must look at the totality of the evidence, rather than examining each piece of evidence individually. This point was made by the Nova Scotia Court of Appeal in *R v Downey*, 2018 NSCA 33 at para 100:

> What the trier of fact (whether judge or jury) is obliged to do is have regard to the whole body of evidence in its totality and decide whether the essential elements of the offence have been proven beyond a reasonable doubt. It is a serious error of law for the decision-maker to isolate every particular piece of evidence and examine it forensically through the lens of criminal proof beyond a reasonable doubt.

See also *R v McIvor*, 2021 MBCA 55 at paras 43-46.

[32] The trial judge summarized the individual pieces of evidence in her review of what was presented at trial:

- at the casino, the accused was in possession of an object that appeared to be, and was pointed like, a handgun;
- although the video was not exactly clear, the accused did something to the object while standing by the garbage can in front of the casino (and Cst. Whitney explained that, if the accused was racking a firearm, a bullet would be ejected and another bullet moved into the chamber);
- a Winchester .40-calibre bullet was found beside the garbage can where the accused had been standing;
- a handgun loaded with Winchester .40-calibre bullets (with one in the chamber) was located along the route the accused

travelled, on the same side of the Impala where he was sitting and corresponding to the area where Cst. Whitney, in a marked vehicle, lost sight of the Impala after passing it; and

- the accused was not found with the object seen in the casino surveillance video when he was arrested.

[33] In her decision, the trial judge noted that she had to "consider the context as a whole"; that, in the Crown's view, "all the pieces of the circumstances . . . fit together neatly and reasonably"; and that she had to consider "the totality of [the] features".

[34] In the end, the trial judge stated:

> I conclude that the item in [the accused's] right hand that he extended and pointed at the [couple] in white from the camera distance had the appearance of a handgun and his behaviour with it certainly would confirm the impression of a handgun, *however the evidence is not sufficiently strong to connect [the accused] with the handgun seized considering my other comments on the strength of the evidence.*
>
> [emphasis added]

[35] The trial judge went on to turn her mind to *Villaroman*, stating:

> However, considering the analysis required of the Court as directed in *Villaroman*, the presumption of innocence and the requirement that I find the evidence rise to the level of proof beyond a reasonable doubt, I find the evidence in this case does not rise to that level and accordingly [the accused] is acquitted of all charges before the Court.

[36] While the trial judge did not explicitly set out the test in *Villaroman*, the Crown and defence counsel explained it in detail during their submissions.

[37] When the trial judge's decision is read as a whole and together with the submissions of counsel, I do not think that the trial judge only considered the evidence in a piecemeal fashion. Though she did comment on the weight of each piece of evidence, she was also clearly alive to the fact that each piece had to be considered within a view of the totality of the evidence.

[38] While another judge may have viewed the totality of the evidence differently, the trial judge was entitled to come to the conclusion that she did—that the Crown's evidence, as a whole, did not satisfy her of the accused's guilt beyond a reasonable doubt.

Disposition

[39] For these reasons, I would dismiss the Crown's appeal.

Turner JA

I agree: Beard JA

I agree: Monnin JA