

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Madam Justice Jennifer A. Pfuetzner
Madam Justice Lori T. Spivak

BETWEEN:

	)	<i>C. L. Antila and</i>
	)	<i>R. Sitarik</i>
<i>HIS MAJESTY THE KING</i>	)	<i>for the Appellant</i>
)	
	)	<i>J. A. Hyman and</i>
	)	<i>J. Kim</i>
<i>- and -</i>	)	<i>for the Respondent</i>
)	
<i>WILLIAM GEORGE SINCLAIR</i>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>	)	<i>May 13, 2025</i>
)	
	)	<i>Written reasons:</i>
	)	<i>May 23, 2025</i>

SPIVAK JA (for the Court):

[1] The accused appealed his convictions for possession of cocaine for the purpose of trafficking, possession of proceeds obtained by crime under \$5,000 and weapons offences. The charges arose out of the execution of a search warrant (the warrant) at a house on Manitoba Avenue in the City of Winnipeg (the house), which was operating as a crack shack. The accused and a co-accused (the co-accused) were the only persons inside the house at the time of the search and were jointly tried and convicted.

[2] The accused submits that the trial judge erred by inferring guilt when there were other reasonable inferences consistent with his innocence and by failing to arrive at separate verdicts for each accused.

[3] At the hearing, we dismissed the appeal with reasons to follow. These are those reasons.

[4] The police had surveilled the house for several days prior to the search of the house and arrest of the accused. During that time, a number of people were seen entering the house and then leaving after several minutes. In observing the house for over an hour and one-half just prior to the execution of the warrant, police saw two people attend at different times and then leave after a short while. Before entering the house, the police announced their presence on a loudspeaker, breached a window and gave repeated demands for any occupants to leave the house. After receiving no response, they breached the front door, whereupon the accused and the co-accused exited the house together and were arrested.

[5] A search of the house found scales, razor blades, tinfoil and a bank card, all contaminated with trace amounts of cocaine, in the kitchen. Crack cocaine and two rounds of ammunition were found inside the main floor toilet bowl. A loaded handgun with eleven rounds of ammunition was located under that washroom sink. In a kitchen drawer, there was a garbage bag with two magazine cartridges loaded with ammunition and loose rounds of ammunition. The accused had \$220 on his person, while the co-accused had a cellphone and \$30. A fingerprint belonging to the co-accused was found on one of the magazines. The house was sparsely furnished with few personal items.

[6] At trial, the Crown called a drug trafficking expert as a witness, who testified that, based on the surveillance and the items seized, the house was operating as a crack shack. The expert further opined that the cash found on the accused was consistent with the cash-based drug business and proceeds of drug trafficking. Neither accused called any evidence.

[7] Before the trial judge, the accused and the co-accused argued that the Crown had not proven beyond a reasonable doubt that each of them was in possession of the illicit items and that there were reasonable inferences inconsistent with guilt. In convicting both accused, the trial judge found that each of them had the requisite knowledge and control of the items seized in the search. He inferred that both accused were involved in concealing the drugs, ammunition and weapons in the minutes after the police announced their presence and before both accused emerged from the house and that they were both involved in this drug operation. Recognizing that this was a case involving circumstantial evidence, the trial judge was satisfied that the two accused were in joint possession of the illicit items and that their guilt was the only reasonable inference.

[8] The accused submits that the verdict was unreasonable because the trial judge did not consider a reasonable inference that supported a conclusion other than the accused's guilt, namely that the guns, ammunition and drugs could have been solely in the possession of the co-accused. The accused also contends that the trial judge erred in failing to analyze the evidence individually for each accused when making his finding of guilt.

[9] The standard of review for an allegation of an unreasonable verdict is whether the verdict, based on the whole of the evidence, is one that a

properly instructed jury, acting judicially, could reasonably have rendered (see *R v Bannatyne*, 2024 MBCA 40 at para 17 [*Bannatyne*]; *R v Biniaris*, 2000 SCC 15 at para 36). Where a Crown's case depends on circumstantial evidence, an appellate court must determine "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" (*R v Villaroman*, 2016 SCC 33 at para 55 [*Villaroman*]; see also *Bannatyne* at para 18). A trial judge's factual inferences are afforded significant deference and can only be set aside if there is palpable and overriding error (see *R v Ballantyne*, 2023 MBCA 38 at para 6; *R v MacLeod (JM)*, 2013 MBCA 48 at para 16 [*MacLeod*]).

[10] The trial judge correctly recognized that the Crown's case against the accused was entirely circumstantial and that an inference of guilt could only be made where it is the only reasonable inference available on all of the evidence. He understood that mere occupancy was insufficient to establish knowledge and control (see *MacLeod* at para 33). He properly appreciated that he had to consider other alternative reasonable inferences inconsistent with guilt, but that this did not include mere speculation. He was aware of the argument made by the co-accused during submissions: that he could not exclude possession by only one of the parties. In his reasons, he considered but rejected various alternative inferences put forward by both accused, including the primary suggestion that they were mere occupants of the house who were in the "wrong place at the wrong time".

[11] Contrary to the accused's suggestion, this case is unlike *MacLeod*, where this Court overturned the conviction of two accused for possession of a gun found buried in the snow in their home's dog run with no evidence

linking the dog or that area to either accused. In *MacLeod*, this Court held that the trial judge's inference that *one or more of the residents* had possession of the gun could not lead to the conclusion that both possessed it because there was an equally rational inference that only one of them was in possession (see para 44).

[12] Moreover, and importantly, our role is not to retry the case. An appellate court can only interfere if the trial judge's conclusion that the evidence excluded any reasonable alternative to guilt was itself unreasonable (see *R v Banayos*, 2018 MBCA 86 at para 34). It is fundamentally for the trier of fact to decide if any alternative way of looking at the case is reasonable enough to raise a doubt. A verdict is not unreasonable simply because the alternatives do not raise a doubt for the trier of fact. The trier of fact is not bound to give effect to that alternative just because it is impossible to exclude it entirely (see *Villaroman* at paras 55-56; *R v Dipnarine*, 2014 ABCA 328 at para 22).

[13] In our view, the trial judge's inference that both accused had knowledge and control and were in joint possession of the illicit items was amply supported by the evidence. This included that the house was an operating crack shack and not a regular place to live; both accused were inside the house for at least one and one-half hours prior to the execution of the warrant with brief attendances by persons consistent with drug transactions; items for processing and distributing the drugs were in plain view; the illicit items were concealed and found in common areas; both accused ignored police commands and delayed exiting; there was an attempt to destroy and conceal evidence; and both accused came out together with cash in their pockets. From all this, it was clearly open for the trial judge to infer that both

accused were involved in concealing the illicit items and were working in this drug operation. Having drawn the inferences he did without any reversible error, his conclusion that the totality of the evidence excluded any reasonable alternative to guilt was reasonable.

[14] We are also not persuaded by the accused's assertion that the trial judge erred in failing to consider each accused separately. He specifically stated that the issue before him was whether the Crown had proven that the two accused had the requisite knowledge and control of the items located during the search. Furthermore, save for the co-accused's fingerprint found on one of the magazines, which the trial judge acknowledged, the rest of the evidence was the same against each accused. As just highlighted, in totality, this was compelling evidence that the accused and the co-accused were in joint possession of the illicit items found in the house and involved in this drug operation.

[15] In the result, the appeal was dismissed.

Spivak JA

Cameron JA

Pfuetzner JA