On appeal from a decision of the Provincial Court of Manitoba.

Date: 20241213
Docket: CR 24-01-39981
(Winnipeg Centre)
Indexed as: R. v. Sebuwufu
Cited as: 2024 MBKB 183

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING	)	
respondent,	)	Vuk Mitrovic
- and -	)	for the Crown
CHRISTOPHER SOLOMON LUWAGA SEBUWUFU,	)	Adam Hodge
	)	for the appellant
appellant	)	
	)	Judgment Delivered:
	)	December 13, 2024

TOEWS J.

INTRODUCTION

[1] This is an appeal by Christopher Solomon Luwaga Sebuwufu (the appellant), following a half day trial before The Honourable Judge Kantor of the Provincial Court (the trial judge). The appellant was convicted of the impaired operation of a conveyance and sentenced to a fine of $2000.

[2] The appellant appeals pursuant to ss. 813 and 822 of the ***Criminal Code***. He submits in his written brief and argument before me that:

a) The trial judge failed to follow the ruling of the Supreme Court of Canada in ***R. v. Villaroman***, 2016 SCC 33 (CanLII); and

b) The verdict is unreasonable as there was a complete lack of evidence regarding identification.

[3] The appellant asks that the conviction be set aside, and an acquittal entered, or in the alternative, a new trial ordered.

[4] It is the Crown's position that there was no error in law for failing to follow ***Villaroman*** nor was the conviction unreasonable. However, it is the Crown's position that the court can order a new trial if there is an error of law for failing to follow ***Villaroman*** while it should enter an acquittal if it finds the verdict is unreasonable.

[5] The Crown submits the standard of review is correctness for the first issue while for the second issue, the standard of review is palpable and overriding error. The appellant takes the position that the standard of review in respect of both issues is correctness.

[6] Based on the caselaw cited in the briefs and the oral arguments made before me, I am satisfied that the standard of review in respect of both grounds and the appropriate remedy for either is as argued by the Crown. (See ***R. v. Green***, 2019 MBCA 51)

THE FACTS

[7] The Crown called two witnesses in advancing its case against the appellant. One witness was a City of Winnipeg police officer while the second was a civilian, a Mr. Davis, who encountered the appellant after a vehicle collided with several parked vehicles and

the structural pillar of an apartment building at 1792 Pembina Highway. The defence did not call evidence.

[8] The officer testified he was dispatched to the accident scene noting that there were six parked vehicles which were impacted and damaged by a white Dodge Ram truck. The truck ultimately collided with a structural pillar attached to the apartment building and it later caught fire. The trial judge accepted the testimony of the officer as to the general driving conditions, the officer's opinion as to how the collision unfolded, and that the airbags for both the driver and front passenger seats were deployed. He noted that the Dodge Ram truck was registered to an individual other than the appellant.

[9] In summary, Mr. Davis testified that he resided at the apartment block on the lower level next to where the collision occurred. He had 25 years' work experience in the transportation sector with many of those years being the owner and operator of a towing company in South Africa. He had attended many scenes involving motor vehicle collisions. He stated that at approximately 2:30 to 2:40 AM, on November 27, 2022, he was awakened by a loud bang outside of his apartment. He got dressed and within two to three minutes from hearing the bang he was outside where he observed the Dodge Ram truck resting against the apartment building.

[10] At that time, he saw two black male individuals who were two to three feet from the truck walking away from the vehicle. The appellant was one of those males. The appellant told the second unidentified male to go into the apartment building and approached Mr. Davis stating: "I'm fucked drunk. I made a fuck up." There was no one else in the immediate vicinity of the truck.

[11] After the witness appeared to change his testimony during his cross-examination from the evidence he had provided in chief, Mr. Davis was asked on re-examination by the Crown: "Did you hear the person who said, I fucked up. I'm drunk? Did you hear that person saying I'm the driver?" (Trial transcript volume 1 T61 lines 4-5) In response the witness said with reference to the words "yes, I'm fucked up. I'm -- I'm fucking -- I'm drunk. I fucked up", that those comments "came from the person who said they were the driver of the vehicle". (Trial transcript volume 1 T61 lines 11-16)

[12] In his reasons, the trial judge held he was not satisfied that the appellant said to Mr. Davis that he was the driver, but that Mr. Davis believed the appellant was the driver of the truck and may have been mistaken about the appellant saying he was the driver. However, the trial judge was satisfied that the appellant told Mr. Davis he was drunk and that he made a mistake.

[13] The appellant produced a driver's licence when Mr. Davis asked him for his identification. The driver's licence produced by the appellant included a photograph of the appellant, his name and the address of the apartment block, 1792 Pembina Highway. Mr. Davis took a photograph of the licence, and the photograph was tendered as an exhibit in the trial. The trial judge found that the image on the licence appeared to be that of the appellant.

[14] Mr. Davis's description of the appellant's condition included that he smelled liquor on him and that the appellant stumbled and that he grabbed the appellant's arm to help him.

THE DECISION OF THE TRIAL JUDGE

[15] The position of the appellant is that without the comment "I was the driver" and without evidence of anyone seeing the appellant in the driver's seat, there is a reasonable doubt that the appellant drove the truck. In rejecting that argument, the trial judge held:

> - Mr. Davis was outside within two to three minutes after hearing the loud bang;
> - Upon exiting the apartment building, Mr. Davis saw [the appellant] and one other male within two to three feet of the truck walking away from the vehicle and there were no other individuals within the immediate vicinity;
> - [The appellant] approached Mr. Davis and said he was drunk, and he made a mistake or fucked up;
> - [The appellant] provided Mr. Davis with his driver's licence;
> - The address on his driver's licence was the same as where the collision occurred;
> - A person exited the apartment building with a fire extinguisher and [the appellant] using the extinguisher tried to extinguish the fire; and
> - After considering all of the evidence I am satisfied, beyond a reasonable doubt, that [the appellant] was the driver of the truck which collided into the pillar.
>
> (See Reasons for Judgment, p. T5, lines 6 – 25)

[16] In respect of the issue as to whether the appellant's ability to operate the vehicle was impaired by alcohol, the trial judge held that together with the way in which the accident occurred, the appellant was impaired by alcohol based on:

- The appellant admitted to Mr. Davis that he was drunk;
- The smell of alcohol came from the appellant's body; and
- The appellant stumbled to the point that Mr. Davis grabbed his arm to prevent him from falling.

THE APPELLANT'S ARGUMENT

[17] The appellant argued that in concluding that the appellant was the driver of the Dodge Ram truck, the trial judge considered several factors that were not logically

connected between the factor and the ultimate finding of the trial judge. Furthermore, he argues that the trial judge failed to consider relevant factors that may point to the other male with the appellant at the accident scene as being the driver.

[18] The appellant argues that the statement that he "fucked up" or made a mistake is not an admission of driving and that the comments taken into consideration by the trial judge do not support the inference that he was the driver of the vehicle. Accordingly, the possibility that the other black male present at the accident scene is the driver cannot be excluded on the evidence.

[19] In respect of whether the verdict is unreasonable, the appellant advances a related, yet distinct argument. The appellant argues that the test in this context is whether "… the verdict is one that a properly instructed jury or a judge could reasonably have rendered." (See: ***R. v. P.R.***, 2012 SCC 22 at para. 9)

[20] The appellant states that there is no evidence that the male interacting with Mr. Davis was the appellant. He submits the trial judge did not undergo any assessment to determine whether the evidence before the court could satisfy him beyond a reasonable doubt that the male interacting with Mr. Davis was in fact the appellant.

THE CROWN'S ARGUMENT

[21] The Crown agrees that while trial judges must apply the correct legal test in their decisions, it notes that the court in ***Villaroman*** rejected the idea that a special instruction or formula is necessary in cases involving circumstantial evidence. The Crown submits that the appellant's complaint about the assessment of circumstantial evidence here is

really an argument that the verdict was unreasonable. This, the Crown notes, involves a different standard of review than that of correctness as is the case with an error of law.

[22] It is the Crown's position that the finding by the trial judge that the appellant was the person who interacted with Mr. Davis is reasonably supported by the evidence. Furthermore, the Crown submits, the finding by the trial judge that the appellant drove the Dodge Ram truck was not unreasonable.

[23] The Crown argues that based on the evidence, it was reasonable for the trial judge to conclude that the only rational inference was that the appellant was the driver of the truck who told Mr. Davis he was drunk, that he said he had made a mistake and then gave his identification to Mr. Davis. The Crown states that while there are other theories that might arise, it was up to the trial judge to decide whether these were enough to raise a reasonable doubt.

[24] The Crown submits that the question is not whether this court would also have convicted the appellant or whether every other trier of fact would have done the same; rather, it is whether the decision of the trial judge was the only reasonable conclusion was itself reasonable. The Crown submits it was reasonable.

ANALYSIS AND DECISION

[25] In respect of the first issue, that is, the consideration of circumstantial evidence, the ***Villaroman*** case does not appear to have been specifically cited. However, in my opinion the test was properly stated without specific reference to ***Villaroman*** in the Crown's argument at the conclusion of the evidence at trial. In that respect, the Crown's submissions to the trial judge included the following submissions:

> • So the Crown submits that this is a case of circumstantial evidence. And the evidence should be considered in its totality.
>
> (See trial transcript volume 1 T65 lines 11-12)
>
> • … the only reasonable conclusion that can be drawn in this case is that Mr. Sebuwufu was driving impaired …
>
> (See trial transcript volume 1 T65 lines 23-25)

[26] Furthermore, counsel for the appellant at the trial, stated in her submissions to the trial judge that the evidence demonstrated another reasonable inference the court could draw other than a conclusion that the Crown had proven beyond a reasonable doubt that the appellant was guilty of the offence. (Trial transcript volume 1 T71 lines 15 – 27)

[27] In my opinion, it is clear from counsel's submissions that the trial judge had been properly advised by counsel as to the law in respect of circumstantial evidence without specifically being referred to the ***Villaroman*** case or using any particular formulation of that test in the reasons he provided. As Crown counsel points out in his argument, ***Villaroman*** specifically rejected the idea that a special instruction or formula is necessary in cases involving circumstantial evidence. As the court held in ***Villaroman*** at para. 18:

> 18 … It is now settled that no particular form of instruction to the jury is required where the evidence on one or more elements of the offence is entirely or primarily circumstantial. As Charron J. writing for a majority of the Court put it in *R. v. Griffin*, 2009 SCC 28, [2009] 2 S.C.R. 42, at para. 33:
>
> > We have long departed from any legal requirement for a "special instruction" on circumstantial evidence, even where the issue is one of identification: *R. v. Cooper*, 1977 CanLII 11 (SCC), [1978] 1 S.C.R. 860. The essential component of an instruction on circumstantial evidence is to instill in the jury that in order to convict, they must be satisfied beyond a reasonable doubt that the only rational inference that can be drawn from the circumstantial evidence is that the accused is guilty. Imparting the necessary message to the jury may be achieved in different ways: *R. v. Fleet* (1997), 1997 CanLII 867 (ON CA), 120 C.C.C. (3d) 457 (Ont. C.A.),

> at para. 20. See also *R. v. Guiboche*, 2004 MBCA 16, 183 C.C.C. (3d) 361, at paras. 108-10; *R. v. Tombran* (2000), 2000 CanLII 2688 (ON CA), 142 C.C.C. (3d) 380 (Ont. C.A.), at para. 29.
> [Emphasis added.]

[28] In reviewing the reasons of the trial judge, I note that the trial judge properly identified the main elements of the offence that the Crown was required to prove beyond a reasonable doubt, stating:

> The main issues before me are:
> (1) Whether the Crown has proven, beyond a reasonable doubt, that Mr. Sebuwufu was the driver of the vehicle which ultimately collided with a pillar attached to the apartment building; and
> (2) If I find Mr. Sebuwufu was the driver, whether the Crown has proven, beyond a reasonable doubt, that Mr. Sebuwufu's ability to operate the vehicle was impaired by alcohol.
> (Reasons for Judgment T2 lines 19-27)

[29] In respect of the first issue the trial judge held:

> After considering all of the evidence, I am satisfied, beyond a reasonable doubt, that Mr. Sebuwufu was the driver of the truck, which collided into the pillar.
> (Reasons for Judgment T5 lines 24-25)

[30] In respect of the second issue the trial judge held:

> I am satisfied, beyond a reasonable doubt, that Mr. Sebuwufu's ability to operate a conveyance was impaired by alcohol.
> (Reasons for Judgment T6 lines 24-25)

[31] Counsel for the appellant directed the trial judge to the consideration of the evidence and whether it demonstrated another reasonable inference that the court could draw other than a conclusion that the Crown had proven beyond a reasonable doubt that the appellant was guilty of the offence.

[32] In my opinion, the trial judge was aware of the requirements of the law and there was no error of law in respect of the way the trial judge considered the circumstantial

evidence here. Although he did not use any particular formulation of words in considering the circumstantial evidence, his reasons demonstrate that he understood that to convict the appellant he had to be satisfied beyond a reasonable doubt that the only rational inference that can be drawn from the circumstantial evidence is that the appellant is guilty.

[33] In respect of the appellant's submission that the verdict was unreasonable, I am mindful that in considering this issue this court must apply a deferential standard. As the Manitoba Court of Appeal observed in ***Green*** at para. 51:

> [51] Because this is a circumstantial case, this Court must assess the reasonableness of the jury's use of inferential reasoning. The question is "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). In *Hall*, Mainella JA explained the approach (at para 166):
>
> > Deference plays an important part in evaluating the inferential reasoning of the jury. The reviewing court does not draw its own inferences; rather, it considers whether the inferences drawn by the jury were "reasonably open" to it in light of the standard of proof (*Villaroman* at para 67). Drawing the line between inferences that are speculative and those which give rise to a reasonable doubt is the responsibility of the jury alone (see *Villaroman* at para 71).

[34] In concluding that the Crown had proven both that the appellant was the driver of the Dodge Ram truck involved in the accident and that his ability to operate the truck was impaired by alcohol, the trial judge succinctly sets out in his reasons for judgment the specific factors which led him to those conclusions. He is clear that in coming to each of the two main conclusions that he satisfied himself beyond a reasonable doubt that the appellant was the driver of the vehicle and that his ability to operate a conveyance was impaired by alcohol.

[35] Specifically, I agree with the submission of the Crown that having regard to the evidence and argument at trial, the trial judge's conclusion that it is the appellant who interacted with the witness Mr. Davis at the accident scene and who appeared in court to face the charge is the same person, was reasonable.

[36] Contrary to the submissions of the appellant, the trial judge did not ignore gaps in the Crown's case, but rather specifically referred to them in his reasons. It is my opinion it was reasonable for the trial judge to conclude on the evidence before him that the driver of the white truck was the person who said he was drunk, that he had made a mistake and then gave his identification to Mr. Davis.

[37] While there may be other theories that might arise, as the court held in ***Villaroman***, drawing the line between inferences that are speculative and those which give rise to a reasonable doubt is the responsibility of the trial judge alone. In my opinion it was open for the trial judge to decide on the evidence that the only reasonable inference here was consistent with the guilt of the appellant beyond a reasonable doubt. In this case he drew the line between speculative inferences and inferences which give rise to a reasonable doubt. In my opinion his verdict was reasonable based on the whole of the evidence.

[38] Based on the forgoing reasons, I dismiss the appeal.

_____ J.