
CANADA / JUDGMENT

R. v. Bartley

2007 BCCA 251

COURT

British Columbia Court of Appeal

DECIDED

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2007 BCCA 251 R. v. Bartley

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Bartley,

2007 BCCA 251

Date: 20070501

Docket: CA034292

Between:

Regina

Respondent

And

Wilbert Douglas Bartley

Appellant

Before:

The Honourable Madam Justice Rowles

The Honourable Madam Justice Prowse

The Honourable Mr. Justice Lowry

E. Warren

Counsel for the Appellant

R. Prior

Counsel for the Respondent

Place and Date of Hearing:

Vancouver, British Columbia

18 April 2007

Place and Date of Judgment:

Vancouver, British Columbia

1 May 2007

Written Reasons by:

The Honourable Madam Justice Rowles

Concurred in by:

The Honourable Madam Justice Prowse

The Honourable Mr. Justice Lowry

Reasons for Judgment of the Honourable Madam Justice Rowles:

I. Overview

- [1] This is an appeal from conviction by a jury on a charge of possession of a controlled substance, i.e., methamphetamine, for the purpose of trafficking. The quantity of drugs found on the appellant was 443.5 grams. The theory of the Crown was that the appellant was a drug courier. A Crown expert testified that the quantity and composition of the drug was consistent with possession for the purpose of trafficking and not with personal use. The expert acknowledged, however, that the circumstances under which the appellant was found in possession of the drug were inconsistent with his acting as a courier. In his testimony, the appellant described how and where he had found the cell phone box containing the drug but denied having knowledge of the nature of its contents. The live issues at trial were knowledge and intention.
- [2] The trial was short. The judge gave his charge after the lunch recess on the second day. During the afternoon, the jury asked three questions. The appellant takes no issue with the judge's charge or with his instructions in response to the first two questions. The appeal is advanced on the ground that the answer to the third question constitutes reversible error because it invites conviction on less than the criminal standard of proof.
- [3] In my opinion, the judge's response to the third question could not have resulted in any misapprehension on the part of the jurors about the standard of proof they were required to apply before they could convict the appellant of the offence charged. My reasons for reaching that conclusion follow.

II. Background

- [4] On 25 January 2005 at about 1:15 a.m. the appellant was hitchhiking on a dark, desolate stretch of Highway 1 near Chilliwack, British Columbia, when Constable Styles approached him in his marked police car. It was cold that night and the appellant was shivering. Being concerned for the appellant's safety, Constable Styles offered to drive him the 20 kilometres into Hope.
- [5] Constable Styles asked the appellant for some identification. Upon checking it, he discovered there was an outstanding warrant for the appellant's arrest. After arresting the appellant, the constable searched his gym bag and discovered a clear plastic bag containing the methamphetamine and a glass pipe. The plastic bag and the pipe were inside a white cardboard cellular telephone box bearing a Telus logo. The pipe was of the kind used by people to consume methamphetamine. The appellant had no other drug paraphernalia or other items indicative of either the use or sale of drugs. He had no money or tickets or other such items on him.
- [6] When Constable Styles found the plastic bag with the methamphetamine, the appellant stated that the substance was Epsom salts. The appellant later told the constable that he had observed two males near a dumpster against the rear wall of the Petcetera store in Chilliwack and that after they left, he found the Telus box between the wall and dumpster. He said that without looking inside, he picked it up and put it in his bag.
- [7] The Crown called two witnesses, Constable Styles and Sergeant John Furac. Sergeant Furac gave opinion evidence in relation to the pricing, packaging, distribution, and consumption of methamphetamine. His experience included approximately 100 methamphetamine investigations. It was Sergeant Furac's opinion that the quantity of drug found on the appellant was consistent with trafficking, either as a courier or as a trafficker directly, and inconsistent with possession alone. He testified that the methamphetamine in the appellant's bag was from close to the source, "if not directly from the lab once removed from a supplier or the wholesaler." Sergeant Furac stated that bulk methamphetamine is broken down for sale to consumers at the street level and at street level it is usually sold in "points" (i.e., one-tenth of a gram), or in "eight balls" (i.e., three and one-half grams). With respect to what the appellant was carrying Sergeant Furac said:

This item here is, in my opinion from my experience, is [sic] at the wholesale level. This is a large amount of methamphetamine and it has not yet reached or worked its way down into the street level distribution.

That package, if it was sold by the pound, would be approximately six to \$8000 and the prices I'm using are referred to in the Surrey area of British Columbia. When you remove further from the source or a lower - larger areas, the prices get higher.

[8] Sergeant Furac testified that a heavy user of methamphetamine could use a gram a day, but that this could only be sustained for five or six days in a row. He said that the vast majority of methamphetamine users are what are known as "acquire and use", in that they immediately use what they obtain. He identified the glass pipe found with the drugs as one commonly used by street level users of methamphetamine.

[9] With respect to the appellant, who was found walking along a highway with a substantial quantity of drugs but with nothing else indicative of trafficking, Sergeant Furac stated:

It's consistent in the portion where we refer to as peoples' [sic] being mules or delivery people. They're an integral portion of an organization that requires the movements of commodities from one point to another, say from a seller or supplier to a buyer, and that product has to be somehow transported from one location to another or from one person to another, and a lot of times what they use is mules or individuals and they either pay in cash and/or the drug, portion of the drug, or both.

[10] In cross-examination, however, Sergeant Furac said he had never personally encountered anyone hitchhiking with such a large amount of drugs. He agreed it would be "very stupid" for a drug trafficker to let "his guy" hitchhike with drugs worth \$8,000.00.

[11] The appellant, who was 46 years old at the time of trial, was the only defence witness. He admitted he was a long-time drug user and that he had used methamphetamine for the past six or seven years. He said he supports himself by stealing.

[12] The appellant testified he had found the box containing the drugs in Chilliwack. His evidence was that he saw two men, who appeared very paranoid, in a parking lot. He followed them to see what they were doing. They went to an area enclosed by chain fences that contained dumpsters. The men squatted down beside a dumpster but when they saw the appellant, they immediately got up and left. The appellant said he walked over to where they had been and saw the box beside a wall underneath a dumpster. He picked up the box, put it in his bag, and walked away. He had no idea what was inside. He did not look inside, as he wanted to get away as quickly as he could. The appellant started hitchhiking to Kamloops and obtained a ride. After being dropped off he started walking and continued to walk until Constable Styles came along. He told Constable Styles the substance in the plastic bag was Epsom salts, because it looked like Epsom salts, even though he did not think it was.

[13] The appellant denied being a mule or courier. He said that if had he known the box contained methamphetamine he would have gone somewhere to use the drug. He stated that while he is a thief, he is "not in the drug trade, for selling and trafficking or any of that."

III. The judge's opening remarks and his charge to the jury

[14] When the trial began, the judge gave instructions to the jury about a number of matters including the presumption of innocence, the burden of proof, the difference between direct and circumstantial evidence and the drawing of inferences. Each juror was given a typewritten copy of the judge's opening remarks and a binder into which to insert them. In his charge, the judge asked the jury to refer to the written version of his opening instructions. The following extracts are taken from that written version:

Presumption of Innocence and Proof Beyond a Reasonable Doubt

The presumption of innocence is perhaps the most fundamental principle in our criminal law. Every person charged with a criminal offence is presumed to be innocent until the Crown proves guilt beyond a reasonable doubt. The accused, Mr. Bartley, does not have to prove that he is innocent. You are to presume that he is innocent throughout your deliberations. You may only find him guilty if, after you consider all the evidence, you are satisfied that the Crown has proved its case beyond a reasonable doubt.

Let me put this another way. Mr. Bartley does not have to prove anything. It is up to the Crown to prove its case beyond a reasonable doubt.

When I use words such as "the Crown must prove" or "the Crown must establish" or "the Crown must show" or "you must be satisfied", please understand that these words mean proof by the Crown beyond a reasonable doubt.

Reasonable doubt is probably the question most pondered by juries and one that requires some explanation, although it is a relatively simple concept. A reasonable doubt is the doubt which may arise after consideration of all the evidence, or the absence of evidence. It is extremely important that you appreciate that this doubt must arise from the evidence or lack thereof. It cannot be a doubt entirely unconnected with the evidence, which I would call a capricious or fanciful doubt. It is not based on sympathy or prejudice.

* * *

Caution - Use of Circumstantial Evidence

As you can see, you must be careful when dealing with circumstantial evidence because of the possibilities of error. Before basing a verdict of guilty on circumstantial evidence, you must be satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference to be drawn from the proven facts.

Drawing an Inference

I should also caution you that an inference is a much stronger kind of belief than conjecture or speculation. If there are no proven facts from which an inference can be logically drawn, it is impossible to draw an inference; at best you would be speculating or guessing - and that is not good enough. An accused must not be convicted on a guess, no matter how shrewd that guess may be.

- [15] In her closing address to the jury, defence counsel told the jurors they would have to decide two questions, namely, "did Mr. Bartley know that it was crystal meth in that box; and if he did know, did the Crown prove beyond a reasonable doubt that it was for the purpose of trafficking". In urging an acquittal, defence counsel drew the jury's attention to the appellant's denial of knowledge of the contents of the box, the lack of any fingerprints, and the lack of any evidence that he was a drug courier.
- [16] Crown counsel urged the jury to reject the explanations given by the appellant both to Constable Styles and at trial. He submitted to the jury that, as a matter of common sense, they should find that a person carrying a large and valuable amount of drugs has knowledge of it. Referring to Sergeant Furac's evidence, Crown counsel pointed out that a drug user would take two years to consume that much methamphetamine. He said "the best that could be said for the circumstances, and in fact the theory that was proffered by [the officer] is that Mr. Bartley was a courier".
- [17] The trial judge charged the jury after the lunch recess on the second day of the trial. After providing counsel and the jury with written copies of his charge, he told the jurors they could put the charge into the binder containing his opening remarks. The judge began his charge by saying:

When this trial commenced, I provided you with a book which I think you have brought out containing my opening remarks that I felt would assist you in both understanding your role as judges of the facts, and in assessing all of the evidence. I commend those opening instructions to you now and also tell you that some things bear repeating.

...

You will recall in my opening remarks that I told you all accused are to be presumed innocent unless the Crown puts forward a body of evidence sufficient to displace that presumption and permit a finding of guilt.

The accused is presently presumed to be innocent. An Indictment is nothing more than an allegation that starts proceedings. I remind you of the onus resting upon the Crown which I explained in my opening. I am going to repeat much of what I said in my opening about reasonable doubt, because this is a very important concept. So you will find that commencing, and I think it is page 7 of my initial instructions to you.

[18] The jurors were then asked to turn to his opening remarks and the judge read, although not verbatim, what he had previously said regarding the presumption of innocence and the onus of proof being on the Crown. In repeating his earlier instruction he told the jury, in part:

The accused, Mr. Bartley, does not have to prove that he is innocent. You are to presume that he is innocent throughout your deliberations and you may only find him guilty if, after you consider all of the evidence, you are satisfied that the Crown has proved its case beyond a reasonable doubt. Put another way, Mr. Bartley does not have to prove anything. It is up to the Crown to prove its case beyond a reasonable doubt.

[19] The following instructions were given regarding the Crown's theory:

It is the Crown's theory that the accused was a courier, transporting the drug for either the manufacturer or the first level wholesaler. That invokes s. 21 of the Criminal Code, which states that:

Every one is a party to an offence who:

- (b) does or omits to do anything for the purpose of aiding any person to commit it; or
- (c) abets any person in committing it.

A courier would be considered a person who is either "aiding" or "abetting" the manufacturer or person for whom he was transporting the drug. Thus, he can be guilty of the underlying offence which here is trafficking if all elements of the offence have been proved beyond a reasonable doubt.

The Crown of course is obliged to prove each element of the offence set forth in the Indictment. May I suggest that while the identification of the accused, the date, time and place, the drug found, are all elements that must be proved, there is no issue in this case respecting those elements. The issue here is knowledge. Has the Crown established beyond a reasonable doubt that the accused knew what was in his bag and was courieriing it for someone else?

[Emphasis added.]

[20] After referring to the definition of "possession" in the Criminal Code, R.S.C. 1985, c. C-46 the judge told the jury:

The key ingredient for our purposes today is knowledge. The Crown must prove that the accused knowingly possessed the drug and further, that he knowingly possessed it for the purpose of trafficking.

[21] After referring briefly to Sergeant Furac's evidence that the amount of methamphetamine would not be for personal use but for trafficking, the judge said:

There is not any suggestion here that it would be for anything else; rather, the issue is whether the Crown has proved knowledge on the part of Mr. Bartley.

[22] Near the conclusion of his charge, the judge gave this instruction:

Clearly the Crown says that a pound of meth[amphetamine] can only be for the purpose of trafficking and Sergeant Furac agreed with that proposition. Again, there is no issue about the quantity found or its composition, rather, the focus is upon the issue of knowledge. Has it been proved beyond a reasonable doubt that Mr. Bartley was employed as a courier, knowing full well what he was transporting and thus is guilty? Or has it been proved that he at least knew what was in his knapsack, assuming he found it in the manner he told you about, in which case he would be guilty of simple possession? Or has the Crown failed to prove any offence, in which case he must be acquitted?

[Emphasis added.]

[23] The only post-charge comment came from Crown counsel who expressed concern that the charge appeared to place an onus on the Crown to prove that the appellant was "a courier". However, Crown counsel said he would "live with it the way it is" and the judge gave no further instructions to the jury.

IV. The questions from the jury and the judge's instructions in response

[24] The first question the jury asked was this:

If you are transporting from point A to point B without being employed as a courier while knowingly having possession. Does this constitute trafficking.

[25] After conferring with counsel, the judge answered the jury's question as follows:

I think you might be confusing "travelling" and "trafficking". Traffic in this sense has got nothing to do with cars and moving or anything else. Trafficking I define[d] for you and the short answer is no. If a person buys, say, a small quantity of marihuana in downtown New Westminster, takes it home in Surrey or North Vancouver or somewhere and they're stopped somewhere along the way, that's not trafficking. Because they're moving it, doesn't mean they're trafficking.

It's the quantity and the intent with respect to the item or the drug that is important, and I spent some time talking to you about clearly if it's established that he was transporting it for - as a courier for someone he knows it's going to be used for selling and all that sort of thing. But if that isn't established, then merely moving it does not amount to trafficking.

[26] The jury's second note contained these questions:

- (1) Do you have to be employed as a courier to be trafficking?
- (2) If you are not a courier and have intent to sell, is that trafficking?

[27] The trial judge again conferred with counsel. Crown counsel objected to the judge's proposal to instruct the jury that if the appellant was not a courier, then there was no evidence that he had the drugs for the purpose of trafficking. In response to the jury's second question, the judge gave the following instruction:

I have your question. The first one is:

Do you have to be employed as a courier to be trafficking?

And the answer to that is no. The second question is:

If you are not a courier and have intent to sell, is that trafficking?

The answer to that is yes, but I don't want you to speculate, because I'm suggesting to you that there's no evidence here that if he is not a courier, that he had it for the purpose of trafficking. So while the answer to the second question is yes, there is that "but".

All right? Does that help? I'll tell you what, why don't you retire and I'm just going to sit here. And if you have any more questions, I won't go - I won't go anywhere.

[28] The third and final question from the jury came along shortly thereafter:

Please re-explain the last question about the exception rule "But" in regards to inference of intent to sell.

[29] The judge conferred with counsel about the response to be given to the third question.

Crown counsel again submitted that the jury must be struggling with the notion that even though they were satisfied the appellant possessed the drugs for the purpose of trafficking they could only convict if they found he was a courier. He went on to state that while the Crown is required to prove the elements of an offence, it is an error in law to hold the Crown to a specific theory. Crown counsel pointed out that the Crown's expert witness had testified that the amount of methamphetamine was far more than anyone could use personally, and that this itself was indicative of an intention to sell. It was, therefore, wrong to tell the jurors there was no evidence from which they could infer an intention to traffic.

[30] Defence counsel stated she was satisfied with the answer that had already been given to the jury but said that if the judge proposed to refer to the expert's evidence, then the reasonable doubt standard should also be mentioned.

[31] The judge's instruction in response to the jury's third question was as follows:

Well, obviously I didn't do a very good job last time, so let me try again. The question is:

Please re-explain the last question about the exception rule "but" in regards to inference of intent to sell.

I guess all I can say is that although it's the Crown's theory that he's a courier, and if you find he's not a courier, but possessed the methamphetamine then you could infer that he possessed it for the purpose of trafficking if there is some evidence of this. So you have to examine the evidence.

I say again, what evidence is there? There's no evidence that he had score sheets, addresses or any of the paraphernalia that would place him as a trafficker as the expert explained, but the expert said the quantity suggested trafficking. Again, the expert said he's never heard of somebody hitchhiking with this amount of - as a courier, hitchhiking with this amount. The

accused himself told you the story about it and how he found it, and so you have to look at all of that and ask can it be said that on all of that evidence, that it can be inferred that he was trafficking? I don't know what else I can do for you on that score.

[Emphasis added.]

[32] The error alleged in the judge's instructions in response to the jury's third question focuses on the use of the word "can" and the absence of any reference to the criminal standard of proof. The appellant submits that the use of the word "can" in reference to an inference of trafficking is in error for it suggests that it was open to the jury to convict without being satisfied beyond a reasonable doubt that the appellant possessed the drug for the purpose of trafficking. Appellant's counsel agreed that if the words "beyond reasonable doubt" had been included after the words "can be inferred" there would be no basis for complaint.

V. Analysis

[33] That correct, full and careful responses ought to be given to questions from a jury has been emphasized in a number of cases. An important rationalization for that emphasis was referred to by Donald J. A. in *R. v. Alexis* (2002), 163 C.C.C. (3d) 387, 2002 BCCA 103:

[39] The importance of answering jury questions in "a careful, complete and correct manner" has been stressed in a number of cases primarily because the questions reveal in a focused way the difficulty that the jury is having with the case: see *R. v. S.(W.D.)*, [1994] 3 S.C.R. 521 at p. 528, 93 C.C.C. (3d) 1, and *R. v. Brydon*, [1995] 4 S.C.R. 253, 101 C.C.C. (3d) 481 at p. 489.

[Emphasis added.]

[34] In his factum, the appellant advanced the following argument about the objective of the jury's third question and the instruction the judge ought to have given:

By the time the jury had asked the third question, the jury was clearly considering simple possession versus possession for the purposes of trafficking. They seemed to have rejected the crown's theory that the appellant was a courier. There is then no evidence as to what the appellant intended to do with the drug. The jury ought to have been advised at this point that they were not to speculate, and that in the absence of evidence, the benefit must go to the appellant.

[35] I disagree with the appellant's argument about the import of the jury's third question and, in particular, the assertion that the jury's question showed that "the jury was clearly considering simple possession versus possession for the purposes of trafficking."

[36] Based on the nature and sequence of the three questions asked by the jury, I am of the view that the jury was seeking clarification of the legal effect of a finding that the appellant was not acting as a courier.

[37] Although it was the Crown's theory that the appellant was a courier, the jury was not required to make such a finding in order to convict. Regardless of whether the jury found that the appellant was a courier, or was undecided as to his role in any drug distribution

scheme, the jury was entitled to convict if satisfied that the essential elements of the offence charged had been proven beyond reasonable doubt: *R. v. Ranger* (2003), 178 C.C.C. (3d) 375 (Ont. C.A.) at paras.134-135 and *R. v. Bengert* (No. 5) (1980), 53 C.C.C. (2d) 481 (B.C.C.A.) at 516, leave to appeal refused, [1980] 2 S.C.R. v.

[38] In this case, before the jury could convict the appellant of the offence charged the jury had to be satisfied beyond reasonable doubt that the appellant knew he had the methamphetamine (the knowledge component) and that he had possession of it for the purpose of trafficking (the intention component).

[39] In view of the judge's instructions set out in paragraph 19 of these reasons, it is unsurprising that the jury required further clarification on the law to be applied if they found or doubted that the appellant was acting as a courier.

[40] For ease of reference I will repeat the questions. The first question was:

If you are transporting from point A to point B without being employed as a courier while knowingly having possession. Does this constitute trafficking.

[41] By that question, the jury was asking whether it is trafficking when someone who is not a courier knowingly transports drugs from one place to another. The question is pertinent if the jury had already reached the conclusion that the appellant knew there was methamphetamine in his bag.

[42] Having been instructed that merely moving drugs is not trafficking, the jury deliberated further, and then asked:

(1) Do you have to be employed as a courier to be trafficking?

(2) If you are not a courier and have intent to sell, is that trafficking?

[43] By those questions, the jury was asking whether it is trafficking when someone who is not a courier has the intent to sell drugs. Those questions are pertinent if the jury found that the appellant had knowledge of the drugs and that he intended to sell them.

[44] Not understanding the qualification in the judge's answer to the questions in its second note, the jury sought further clarification:

Please re-explain the last question about the exception rule "But" in regards to inference of intent to sell.

[45] The third question indicates that the jury was still looking for guidance on the law applicable to a finding of fact that the appellant, although not a courier, had knowledge of the drugs, and intended to sell them.

- [46] When read in sequence, the jury's questions reveal what was troubling them. One of the instructions in the judge's charge was that in order to convict, the jury had to find that the appellant was a courier, that is, that he was moving the drugs for someone else. From other parts of the charge, the jury apparently recognized that a finding that the appellant was a courier might not be required to found a conviction for possession for the purpose of trafficking.
- [47] The questions the jury asked were aimed at clarifying the law that applied to the issue of intention. The judge's earlier instruction which had wrongly limited the foundation for a finding of intention was ultimately corrected in the judge's response to the jury's third question. The judge's instructions in response to the first two questions fell short of the clarification the jury was seeking but, in the end, the judge made clear that it was not necessary for the jury to find that the appellant was a courier and that the issue was whether the appellant "possessed [the methamphetamine] for the purpose of trafficking."
- [48] Having clarified the correct law to be applied, the judge then pointed out to the jury that they would have to examine the evidence and briefly referred to the evidence of intent. The judge's references to the evidence on that issue, including the fact that no trafficking-related paraphernalia had been found, were almost entirely favourable to the appellant and he cannot and does not complain about the judge's instructions in that regard.
- [49] I come now to the appellant's assertion of error. The judge concluded his instruction in response to the third question by saying "so you have to look at all of that and ask can it be said that on all of that evidence, that it can be inferred that he was trafficking?" The essence of the appellant's submission is that the use of the word "can", without any reference being made to the criminal standard of proof, opened the door to conviction on a lesser standard.
- [50] I am unable to agree with that argument.
- [51] In *R. v. Ramos-Paz* (1998), 118 B.C.A.C. 309, a not dissimilar question arose. Following a two-day trial, a jury convicted the accused of trafficking in cocaine. The trial judge defined reasonable doubt in his opening remarks, and provided the jurors with a typed copy. However, he did not repeat the instruction in his charge. In upholding the conviction, Prowse J.A. stated:
- [5] In my view, the trial judge should have repeated his instructions on reasonable doubt to the jury during the course of his charge at the conclusion of the trial. In this case, however, I am not persuaded that his failure to do so resulted in reversible error. His initial definition of reasonable doubt, and its relationship to the presumption of innocence, was accurate and complete. In the event the jury had any questions with respect to it, they had the benefit of the typed notes of the judge in the jury room, and they also had the option of returning to the court and asking for clarification. This was a short trial, and the evidence was uncomplicated. In the circumstances, I find it inconceivable that the jury could have forgotten the trial judge's instructions to them on reasonable doubt, or failed to realize the significance of it. I would dismiss this ground of appeal.

[52] The reasoning in Ramos-Paz applies with even greater force in the case at bar. The jury would have been aware of the presumption of innocence and the requirement that the Crown prove guilt beyond a reasonable doubt from the judge's opening remarks and from his charge. Those instructions were given on the morning of the first day of the trial before the jury heard any evidence, and again on the afternoon of the second day before they began their deliberations. The jury received those instructions both orally and in writing and each juror had a written copy to which reference could be made during the jury's deliberations.

[53] Just before commencing its deliberations on the afternoon of the second day, the jury was given this instruction:

The accused, Mr. Bartley, does not have to prove that he is innocent. You are to presume that he is innocent throughout your deliberations and you may only find him guilty if, after you consider all of the evidence, you are satisfied that the Crown has proved its case beyond a reasonable doubt. Put another way, Mr. Bartley does not have to prove anything. It is up to the Crown to prove its case beyond a reasonable doubt.

[54] The jury's questions that came after the charge were directed at clarification of the law that applied to the facts. Nothing in the questions the jury asked suggests that the jury had forgotten or failed to recognize the significance of the judge's instructions to them on the presumption of innocence and on the onus and standard or proof.

[55] In the circumstances I have described, it would be unrealistic and unreasonable to think that the judge's answer to the jury's third question could have led the jury to ignore the full and repeated instructions they had received that proof beyond reasonable doubt was required for conviction on the offence charged.

[56] I would not accede to the ground of appeal the appellant has advanced and would therefore dismiss the appeal.

"The Honourable Madam Justice Rowles"

I Agree:

"The Honourable Madam Justice Prowse"

I Agree:

"The Honourable Mr. Justice Lowry"

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