
CANADA / JUDGMENT

R. v. Camille

2020 BCCA 32

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 32 R. v. Camille

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Camille,

2020 BCCA 32

Date: 20200127

Docket: CA45529

Between:

Regina

Respondent

And

Gordon Paul Camille

Appellant

Before:

The Honourable Madam Justice Bennett

The Honourable Mr. Justice Harris

The Honourable Mr. Justice Goepel

On appeal from: An order of the Supreme Court of British Columbia, dated
March 13, 2018 (R. v. Camille, 2018 BCSC 478, Kamloops Docket 101253).

Counsel for the Appellant:

K.M. Walker, Q.C.

K. Thorsteinson

Counsel for the Respondent:

E. Campbell

Place and Date of Hearing:

Kamloops, British Columbia

October 3, 2019

Place and Date of Judgment:

Vancouver, British Columbia

January 27, 2020

Written Reasons by:

The Honourable Madam Justice Bennett

Concurred in by:

The Honourable Mr. Justice Harris

The Honourable Mr. Justice Goepel

Summary:

Mr. Camille was convicted of manslaughter after being found to have caused the death of Dennis Adolph. The Crown's case was circumstantial, and the trial judge ruled out accidental or deliberate self-harm as reasonable, alternative inferences to guilt. Mr. Camille appeals his conviction on the basis that the trial judge erred in concluding that the only reasonable inference was that he caused the death of Mr. Adolph. He also alleges that the trial judge improperly drew inferences in the absence of expert evidence. Held: Appeal dismissed. The trial judge did not err in finding the alternative inferences to be speculative, nor did she improperly draw inferences where expert evidence was necessary. Her conclusions were available on the evidence and the verdict was reasonable.

Reasons for Judgment of the Honourable Madam Justice Bennett:

[1] Gordon Camille appeals his conviction for manslaughter for causing the death of Dennis Adolph. Mr. Adolph died as a result of blood loss from a stab wound. Mr. Camille argues that the trial judge erred in concluding that the only reasonable inference from the circumstantial evidence was that he caused the death of Mr. Adolph.

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

Factual overview

- [3] The grounds of appeal relate to the inferences drawn by the trial judge from her findings of fact. Thus, I will set out the evidence in detail.
- [4] On January 26, 2016, Dennis Adolph died at the age of 49 years from exsanguination, or loss of blood, as a result of a single stab wound to his abdomen. In the two months preceding his death Mr. Adolph had been living at the Four Seasons Motel in Kamloops, B.C. and sharing a room with Mr. Camille.
- [5] On January 25, 2016, Mr. Adolph and Mr. Camille returned to their room together at 8:15 p.m. During that evening, witnesses heard loud voices and music emanating from the room, but nothing in the nature of a dispute. Mr. Adolph and Mr. Camille remained alone throughout the night and into the following morning.
- [6] Surveillance cameras on the motel property captured video footage of the comings and goings of Mr. Adolph and Mr. Camille between January 25, 2016 and January 26, 2016.
- [7] The footage confirmed that from 8:15 p.m. on January 25, 2016 to 6:15 a.m. the next morning, only Mr. Adolph and Mr. Camille could have been in the room--no one else.
- [8] Similarly, from 6:15 a.m. to 11:30 a.m. on January 26, 2016, nobody left or entered the room other than Mr. Adolph and Mr. Camille in the following instances:
- a) At 6:15 a.m., Mr. Adolph attended the office of the motel manager, Mr. Vinepal, and then returned to his room.
 - b) At 6:52 a.m., Mr. Camille left the room and proceeded towards Mr. Vinepal's office. After knocking on the door and receiving no response, he returned to the room.
 - c) At 11:15 a.m., Mr. Camille left the room and reported Mr. Adolph's death to Mr. Vinepal.
- [9] Following Mr. Camille's report, first responders attended the room and found Mr. Adolph's body lying in a perpendicular position on one of the two beds, with his legs draped over the edge and into the area between the two beds. He was dressed in pajama pants only and covered by a blanket. A wound to his abdomen was clearly visible once the blanket was removed. The first responders moved Mr. Adolph to the floor and conducted various resuscitative procedures, until ultimately discontinuing at 11:40 a.m.
- [10] A kitchen knife was found tucked under a pair of eyeglasses in the drawer of a nightstand just a few feet from Mr. Adolph's body. The knife's blade, measuring approximately five inches in length, had blood on the tip. The blood was determined by DNA testing to be Mr. Adolph's blood. The trial judge found that this was the knife used to stab Mr. Adolph. A red washcloth was also found hanging from the handle of the same nightstand.

- [11] Aside from what was on the knife, there was little blood at the scene other than a small stain on the blanket beside Mr. Adolph's body. No blood was found in the drawer of the nightstand or in any part of the room, nor was blood found outside. The Crown's forensic pathologist, Dr. Lisa Steele, explained that Mr. Adolph's wound was plugged by a stopper of fat that directed his blood to flow internally.
- [12] There were no indications of a struggle having taken place.
- [13] Several bottles of alcohol were seized from the room. Some were open, others were closed. Many were spread across the floor.
- [14] An attending officer at the scene testified that Mr. Camille had an odour of alcohol on his breath, as if he had been drinking previously, but he did not appear to be intoxicated.
- [15] The Crown's DNA expert, Shaun Neudorf, confirmed that the blood on the knife from the drawer was Mr. Adolph's, although he could not determine when it was first applied to the blade. He agreed that DNA may be removed from an object by washing it off, or it may remain for years.
- [16] The handle of the knife was submitted for genetic testing but not examined for fingerprints. Results indicated mixed DNA from only two male sources. Mr. Neudorf gave statistical evidence to suggest that Mr. Camille and Mr. Adolph were likely the donors.
- [17] The source of the DNA on the knife's handle was unknown; it could have been from skin cells, blood, or some other bodily substance. Mr. Neudorf could not determine when the DNA taken from the knife's handle was first applied. He agreed that two people's DNA could be on most objects in a room shared for a period of months.
- [18] Dr. Steele was qualified to give opinion evidence on the causes, mechanisms and physical processes of death. She described the fatal wound as a single incision immediately to the left of the umbilicus. As noted above, a stopper of fat plugged the wound and directed close to a litre of blood into Mr. Adolph's abdominal cavity and soft tissues. Mr. Adolph also suffered from two small cuts to the back of his left hand.
- [19] Dr. Steele could not indicate a precise time of death, but she noted that death would have ensued in a matter of minutes. When the first responders arrived at approximately 11:30 a.m., rigor mortis had just begun and Mr. Adolph's body was still warm. This suggested a time of death between two and six hours earlier. Given the evidence that Mr. Adolph was alive at 6:15 a.m., she indicated that his time of death was likely between 6:15 a.m. and 9:30 a.m. She readily acknowledged that her conclusions were not certain in this regard.
- [20] Dr. Steele testified that the nature and limited extent of blood flow to the exterior of the wound, and the lack of blood found elsewhere in the room, suggested that Mr. Adolph was lying down when he was stabbed, in the position where his body was found. For instance, there was bleeding from the abdominal wound to the side of Mr. Adolph's body, as though he were lying flat. Furthermore, in that position, the blood stain found on the blanket beside

Mr. Adolph's body corresponded with the path of oozing blood from his abdomen. The limited vertical blood trails on Mr. Adolph's abdomen indicated that he may have tried to sit up.

- [21] Dr. Steele acknowledged that Mr. Adolph could have been standing when he was stabbed, and the stopper of fat would have still kept the majority of blood in his abdomen from leaking out. It was also possible that Mr. Adolph could have walked after receiving the fatal blow. However, more blood would likely have been found in the room if Mr. Adolph had been standing.
- [22] Dr. Steele described the characteristics of the abdomen wound. It was about one inch in length at the surface, and between two and three inches deep (less than the length of the blade of the knife seized from the nightstand). The angle of the wound suggested that the sharp end of the knife was oriented upwards and to the left when the incision was made, while the blunt end was oriented downwards. Dr. Steele indicated that the knife was likely not inserted to the level of its hilt, or there would have been an abrasion mark left on Mr. Adolph's abdomen.
- [23] Dr. Steele could not quantify the amount of force required to inflict the wound; however, she did note that the area of the body that was penetrated has no resistant structures. Furthermore, Mr. Adolph was very slender and had little subcutaneous fat or additional soft tissue to be penetrated before a knife could reach the abdominal cavity.
- [24] Dr. Steele acknowledged that the alignment of the two cuts on the back of Mr. Adolph's left hand was consistent with a single slice. She stated that the cuts could have been sustained if Mr. Adolph's hand was in the path of the stab to his abdomen, or if he raised his left hand and obstructed the path of another potential stabbing. Either way, they were not indicative of him having grabbed the knife as if it was coming towards him.
- [25] With the exception of the cuts on his left hand, Dr. Steele indicated that there were no physical signs on Mr. Adolph's body--such as bruising or lacerations--that he had been in a fight or had tried to defend himself.
- [26] Crown counsel also examined Dr. Steele regarding the possibility that Mr. Adolph inflicted the fatal wound on himself. She testified that she did not observe any indicia consistent with suicide or past attempts of suicide.
- [27] A small plastic keychain that was identified as a Minecraft toy was found in the cuff of Mr. Adolph's pajama pants during the autopsy. Those pants had a single pocket with a one-inch hole in it.
- [28] Samples of Mr. Adolph's urine, blood, and vitreous fluid were analyzed by Heather Dinn, a Forensic Specialist of the RCMP. Her toxicology report was jointly admitted into evidence at trial. She did not testify.

[29] Mr. Adolph's blood alcohol concentration ("BAC") at the time of his death was measured at 400 mg%. While this extraordinarily high level is often associated with death by acute alcohol poisoning, Dr. Steele opined that Mr. Adolph was alive when he was stabbed given the profuse bleeding into his abdomen. In any event, the toxicology report described the physiological effects of such a high BAC:

A BAC of 400 mg% is generally associated with severe intoxication. Signs and symptoms which may be present include: very slurred to incomprehensible speech, extremely poor balance (e.g. swaying while standing, staggering while walking with reeling and lurching when called upon to make sudden turns or to carry out unexpected movements and possibly inability to stand or walk), mental confusion, emotional instability, disorientation, gross muscular incoordination, vomiting, incontinence of urine or faeces, impaired consciousness or stupor. However, in a small percentage of the drinking population a significant degree of tolerance to alcohol concentrations at and above 400 mg% may be acquired through chronic consumption of alcohol. As a result of this tolerance, the symptoms characteristic of a particular BAC will be delayed until much higher BAC's.

[30] Dr. Steele agreed that a person with a BAC of 400 mg% would have impaired walking, fine motor skills, and judgment.

[31] There was, however, no expert evidence before the trial judge on the issue of how impairment would affect a person's pain response and reflexes in reaction to that pain response.

[32] Mr. Adolph's BAC was declining at the time of his death, which led the toxicologist to the conclusion that he had not consumed any significant amount of alcohol within the preceding 30 minutes.

[33] Mr. Camille did not testify.

[34] At trial, the question of a third-party perpetrator was argued as a major issue. The issue on appeal was narrowed to whether Mr. Camille stabbed Mr. Adolph, or whether Mr. Adolph stabbed himself.

Issues on appeal and positions of the parties

[35] Mr. Camille raises several related grounds of appeal dealing with the inferences the trial judge drew from the evidence. He submits that the trial judge erred by wrongly filling in gaps in the evidence, that she ignored other reasonable inferences available on the evidence, and that the verdict was unreasonable or unsupported by the evidence. He also says that the trial judge erred by relying on common sense when expert evidence was required. The Crown concedes this last issue, but seeks to apply the curative provision, s. 686(1)(b)(iii), arguing that there was no substantial wrong or miscarriage of justice.

[36] In my view, the trial judge did not err in her assessment of the circumstantial evidence, and I do not agree with the Crown's concession with respect to the trial judge's analysis. I return to these points below.

Discussion

Legal framework

[37] In *R. v. Villaroman*, 2016 SCC 33, the Court settled the test to be applied when assessing circumstantial evidence, drawing inferences from the evidence or absence of evidence, and determining if guilt is proved beyond a reasonable doubt.

[38] The concern regarding circumstantial evidence is that a jury may "unconsciously fill in the blanks" or bridge gaps in the evidence to draw the inference the Crown seeks: *Villaroman* at para. 26. Or, in other words, "jumping to unwarranted conclusions in circumstantial cases": *Villaroman* at paras. 26-27. The jury instruction regarding circumstantial evidence is given in order to alert it to the concerns regarding the path of reasoning in relation to drawing inferences from circumstantial evidence: at para. 29.

[39] In *Villaroman*, Cromwell J., writing for the Court, examined the applicable reasoning when there is an absence of evidence raised to support an alternative theory to guilt, offering the following guidance at para. 36:

[36] I agree with the respondent's position that a reasonable doubt, or theory alternative to guilt, is not rendered "speculative" by the mere fact that it arises from a lack of evidence. As stated by this Court in *Lifchus*, a reasonable doubt "is a doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence": para. 30 (emphasis added). A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

[38] Of course, the line between a "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty.

[Emphasis added.]

[40] Finally, the Court identified "useful statements" of the principle:

[40] The first is from an old Australian case, *Martin v. Osborne* (1936), 55 C.L.R. 367 (H.C.), at p. 375:

In the inculcation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed.

...

[42] The second is from *R. v. Dipnarine*, 2014 ABCA 328, 584 A.R. 138, at paras. 22 and 24-25. The court stated that "[c]ircumstantial evidence does not have to totally exclude other conceivable inferences"; that the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.

[Emphasis added by Cromwell J.]

[41] I now turn to the application of these principles in the context of the appeal issues.

Did the trial judge incorrectly apply the approach to circumstantial evidence and "fill in the gaps and blanks" in the evidence?

[42] The trial judge concluded that Mr. Camille stabbed Mr. Adolph. The question is whether there was another reasonable inference available on the evidence, namely, that Mr. Adolph stabbed himself, either intentionally or accidentally. Mr. Camille submits that the evidence relied on by the trial judge could not lead her to only one reasonable inference. The evidence of how Mr. Adolph died was circumstantial, and by concluding that it was Mr. Camille who struck the fatal blow, the trial judge improperly filled in the gaps of the evidence.

[43] The Crown has summarized the evidence that was available to the trial judge to rest her conclusion. It is convenient to set it out here:

The following are the trial judge's relevant findings of fact:

- Mr. Adolph died as a result of a stab wound to his abdomen;
- Mr. Adolph and the appellant were alone and together in their motel room at the time of the stabbing and until Mr. Adolph died of his wound;
- Emergency personnel found Mr. Adolph lying across one of the beds with the lower portion of his legs hanging over the bed to the floor;
- Mr. Adolph's body and head were covered by a blanket;
- A blood stain on the blanket under Mr. Adolph's left side was the only blood found in the room or in the vicinity of the room;
- Close to a litre of blood accumulated in Mr. Adolph's abdominal cavity, in part because the wound was plugged by some fat tissue;

- At the time of his death, Mr. Adolph had a blood alcohol concentration of 400 mg% and analysis indicated that he had not consumed alcohol in the preceding 30 minutes;
- A concentration of 400 mg% is associated with symptoms ranging from gross muscular incoordination to unconsciousness to death;
- Mr. Adolph was obviously heavily intoxicated when he went to the office at 6:15 a.m., as demonstrated by his stumbling and staggering while walking;
- The knife that caused the wound was the one found in the nightstand drawer;
- The knife was found in the nightstand drawer under a pair of eyeglasses. The drawer contained personal items but no other kitchenware; and
- Although Dr. Steele acknowledged that Mr. Adolph could have walked with his wound, the limited external bleeding, the nature and location of that bleeding, and the lack of blood elsewhere in the room led Dr. Steele to conclude that Mr. Adolph was lying down when he was stabbed.

[References omitted.]

- [44] In her analysis, the trial judge reviewed the evidence relied on by the Crown, which was broken down into four areas: scene evidence, DNA evidence, expert evidence and video evidence. Much of the evidence addressed whether a third-party had committed the killing-- a theory abandoned on appeal.
- [45] The trial judge did not, as argued by Mr. Camille, find that this evidence supported an inference of guilt before considering the evidence that would permit an inference inconsistent with Mr. Camille's guilt.
- [46] Rather, she examined the evidence advanced to support the alternative theory, and concluded that neither accidental nor deliberate self-harm by Mr. Adolph were reasonable inferences to draw.
- [47] She then turned to assess the whole of the evidence to determine whether the Crown had proved its case beyond a reasonable doubt. She considered Villaroman, and was alive to the correct approach to circumstantial evidence. Setting aside the third-party perpetrator, there were two other theories put forward. One was reasonable, one was not. As noted in Villaroman, at para. 42, the circumstantial evidence does not have to totally exclude other conceivable inferences. Alternative inferences, however, must be reasonable, not just possible.
- [48] There was, in my view, strong evidence supporting the conclusion that Mr. Camille stabbed Mr. Adolph: Mr. Adolph was most likely lying down when he was stabbed, he would have died within minutes, not hours, he likely did not walk after being stabbed, yet the knife was found in a nightstand drawer, neatly tucked under a pair of glasses. If Mr. Adolph had stabbed himself, the knife would most likely have fallen to the ground. He would not have

had the ability to place it in the nightstand. There is no evidence supporting a contention that Mr. Adolph stabbed himself, and Mr. Camille put the knife away. It also makes no sense that Mr. Camille would find Mr. Adolph dead, but carefully place the knife in the nightstand drawer.

[49] The trial judge did not "fill in the gaps or blanks" in the evidence. The facts she found, and the reasoning she applied fully supports her conclusion that the only reasonable inference was that Mr. Camille stabbed Mr. Adolph.

[50] In light of the foregoing, I would not accede to this ground of appeal.

Did the trial judge err in drawing inferences in the absence of expert evidence?

[51] Mr. Camille argued that the trial judge improperly relied on common sense when assessing the pain response of a highly intoxicated person. The Crown, in its factum, agreed:

46. While finding the appellant's theory to be implausible, the trial judge commented on a person's pain response. She reasonably applied common sense to say that a person would generally respond to a knife accidentally breaking their skin by pulling the knife back rather than plunging it in to a depth of two to three inches. However, the trial judge went on to consider how Mr. Adolph's level of impairment may have affected this pain response.
47. The appellant chose not to elicit evidence of his alternate theory from the toxicologist through cross-examination. Accordingly, there was no expert evidence before the trial judge on the issue of how impairment would affect a person's pain response and reflexes in reaction to that pain response. In the absence of such expert evidence, the trial judge's consideration of the issue should not have been a part of her reasoning to reject the alternate inference.

[References omitted.]

[52] A careful review of the trial judge's reasons does not, in my opinion, reflect such an error. The defence argued that Mr. Adolph may have been trying to use the knife to manipulate the Minecraft toy that was found by the pathologist in the cuff of his pajama bottoms. He submitted that the knife could have slipped and caused the wound, given his high state of intoxication. In response to that argument, the trial judge said this, at para. 78 of her reasons:

[78] In ordinary circumstances, a suggestion that a person could accidentally stab themselves to a depth of between two and three inches with an ordinary kitchen knife would run markedly counter to common sense and experience. The natural human reflex and response to pain would intervene with the initial penetration and would cause the person to quickly stop it.

[53] This observation is well-within the confines of human experience and common sense. She then correctly framed the question, and evaluated the suggested inference against the backdrop of how intoxicated the parties were, or likely were, at the relevant time:

- [79] The question is whether the suggested inference is a reasonable one in light of the evidence of Mr. Adolph's extreme intoxication, coupled with the likelihood (based on the number and location of empty bottles in the room) that Mr. Camille too was very intoxicated and potentially unaware or Mr. Adolph's plight or unable to assist.
- [54] The trial judge (at para. 80) was alive to the fact that there was no expert evidence addressing "the effect of extreme intoxication on reflexes or reactions to pain or other signals of damage to the body." She did not rely on Mr. Adolph's ability--or lack thereof--to assess pain as part of her reasoning to conclude that he did not accidentally stab himself.
- [55] Instead, she reviewed the evidence tendered that set out general symptoms of a person as highly intoxicated as Mr. Adolph, relied on the extent of the wound, and concluded (at para. 81) that "it was far from obvious that a person using the knife to fiddle with something like the Minecraft key chain could accidentally cause the type of wound Mr. Adolph sustained."
- [56] In my view, the judge did not err.

Did the trial judge ignore logical inferences from the evidence

- [57] Mr. Camille says that the trial judge ignored accidental and deliberate self-harm as logical inferences which were available on the evidence.
- [58] This argument essentially repeats what was made at trial. The trial judge was fully aware of the alternate theories presented by the defence. She analyzed the evidence that supported the Crown's theory and the alternate theories. She concluded that the alternate theory was not a reasonable inference that she could draw from the evidence, and that the Crown had proved that Mr. Camille struck the blow that caused Mr. Adolph's death.
- [59] I would not give effect to this argument.

Unreasonable verdict

- [60] In *Villaroman*, the Court articulated the test for assessing the reasonableness of a verdict based on circumstantial evidence at para. 55:
- [55] A verdict is reasonable if it is one that a properly instructed jury acting judicially could reasonably have rendered: *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381. Applying this standard requires the appellate court to re-examine and to some extent reweigh and consider the effect of the evidence: *R. v. Yebes*, [1987] 2 S.C.R. 168, at p. 186. This limited weighing of the evidence on appeal must be done in light of the standard of proof in a criminal case. 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: *Yebes*, at p. 186; *R. v. Mars* (2006), 205 C.C.C. (3d) 376 (Ont. C.A.), at para. 4; *R. v. Liu* (1989), 95 A.R. 201 (C.A.), at para. 13; *R. v. S.L.R.*, 2003 ABCA 148; *R. v. Cardinal* (1990), 106 A.R. 91 (C.A.); *R. v. Kaysaywaysemat* (1992), 97 Sask. R. 66 (C.A.), at paras. 28 and 31.

- [61] The only live issue on appeal is whether Mr. Camille stabbed Mr. Adolph. Although there was no direct evidence on the point, it is my view that the circumstantial evidence set out above, and considered as a whole, supported the trial judge's conclusion that Mr. Camille had struck the blow.
- [62] In applying the question of 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, the answer is yes.

Conclusion

- [63] The trial judge's reasons are not to be parsed with a scalpel, but read as a whole, and in the context of the evidence, the issues and arguments at trial, "together with an appreciation of the purposes or functions for which they are delivered": Villaroman at para. 15.
- [64] In my view, the trial judge's reasons, when read as a whole, do not contain any errors, and the verdict was reasonable and supported by the evidence.
- [65] I would dismiss the appeal.

"The Honourable Madam Justice Bennett"

I AGREE:

"The Honourable Mr. Justice Harris"

I AGREE:

"The Honourable Mr. Justice Goepel"

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