
CANADA / JUDGMENT

R. v. Coffey

2020 BCCA 75

COURT

British Columbia Court of Appeal

DECIDED

25 February 2020

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2020 BCCA 75 R. v. Coffey

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Coffey,

2020 BCCA 75

Date: 20200225

Docket: CA45765

Between:

Regina

Respondent

And

Peter Gerard Coffey

Appellant

Before:

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Harris

The Honourable Mr. Justice Grauer

On appeal from: An order of the Provincial Court of British Columbia, dated
December 22, 2017 (R. v. Coffey, 2017 BCPC 449, Abbotsford Docket 84711-1).

Oral Reasons for Judgment

Counsel for the Appellant:

C.R. Terepocki

Counsel for the Respondent:

M. Loda

Place and Date of Hearing:

Vancouver, British Columbia

February 21, 2020

Place and Date of Judgment:

Vancouver, British Columbia

February 25, 2020

Summary:

In this appeal from conviction of unlawful possession of cannabis (marihuana) exceeding 3 kg. for the purpose of trafficking and unlawful production of cannabis (marihuana), the appellant contended that the judge erred by failing to consider the reasonable possibility the appellant had considered the growing of the plants (4,200) in a marihuana grow operation, was lawful as being appropriately licensed for medicinal purposes. Held: Appeal dismissed. The case, entirely circumstantial, dealt with a large volume of evidence including documents, carefully reviewed by the judge. The judge understood the accused contended he thought all plants grown were lawfully grown, but did not accept his evidence and on the basis of the totality of the evidentiary record, convicted. There is no basis to interfere with his rejection of exculpatory reasonable possibilities.

- [1] SAUNDERS J.A.: Peter Gerard Coffey appeals from convictions by Judge Solomon, in Abbotsford, British Columbia, in the Provincial Court of British Columbia, in December 2017, of: (1) one count of unlawfully possessing a controlled substance, cannabis (marihuana), in an amount exceeding 3 kilograms for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19; and (2) unlawfully producing a controlled substance, cannabis (marihuana), contrary to s. 7(1) of the Controlled Drugs and Substances Act.
- [2] The convictions were based upon a large body of circumstantial evidence. The issue on this appeal is whether the judge erred in failing to consider all reasonable inferences to be drawn from the circumstantial evidence.
- [3] Mr. Coffey resided on a seven acre rural property in Deroche, British Columbia, owned but not occupied by his brother. The property was the location of a marihuana grow operation. Mr. Coffey testified that he did not have any involvement in the grow operation beyond plants permitted to be grown under three licences relating to medical marihuana, one of

them in his name. Those permits covered 530 plants. On executing a search warrant at the premises, the police located approximately 4,200 marihuana plants throughout nine growing rooms that also contained marihuana growing paraphernalia. The undisputed expert evidence established, and the judge found, that this was a commercial marihuana grow operation for profit which had significant potential revenue from the sale of the finished product and that the number of 4,200 plants was beyond personal use.

- [4] The marihuana grow operation was in greenhouses located on the southern part of the property, separated by a fence with barbed wire on top. When the police arrived, the southern compound with the growing buildings and related rooms was padlocked. The grow buildings and rooms also had locks or were locked at the time of police entry. There were 46 security cameras in and around the property.
- [5] Mr. Coffey was not found in possession of any keys or access cards that would allow him access to the southern compound or the grow areas and his fingerprints were not located on any grow equipment.
- [6] Mr. Coffey testified at trial. He admitted to living at the address in a residence on the northern portion of the property. He denied responsibility for the presence of the unlicensed plants on the property. He testified that he thought his brother and another person developed a business plan to grow medical marihuana in the buildings but he was not involved in the application for that, although he agreed he was present for some of the meetings that had to do with the business plan. He testified that his movements within the compound were restricted and he required an escort to visit his own plants, towards the back of a building that had a divider between them and other marihuana plants. He denied knowledge of any illegal grow operation, knowledge of the scale of the grow operation, and control over it. He testified in relation to what has been termed an 'accounting' document that appeared to contain an accounting of a business transaction involving a number of parties, saying that the document concerned an unsuccessful berry business he had with others.
- [7] There was a large body of circumstantial evidence, including documents seized from the appellant's residence on the property. The judge reviewed the documents in detail. They included several documents in which "Peter Coffey" applied for marihuana-related licences. They also included several pages of the accounting document including a document that appeared to allocate business revenue.
- [8] The judge summarized the material pieces of circumstantial evidence tying the appellant to the illegal marihuana production and the offences charged as follows at para. 87:
 - 1. He has been associated with the property since the year 2009 when he went on the Hydro account. That was October 1, 2009.
 - 2. His name went on the second Hydro account from September 9, 2011, and this was the Hydro account in relation to the greenhouses.

3. Some Hydro bills were found in [the appellant's] bedroom dresser including ones paid from MPC Corp at a time that he was a director of the corporation.
4. Exhibit 7, tab 7, page 113, ADT Services Canada invoice dated February 26, 2013 to Peter Coffey.
5. Exhibit 7, tab 7, page 114, property tax statements addressed to Pete Coffey at the residence.
6. Exhibit 7, tab 12, page 182, there is a sticky note that says "double-check all calendars, Pete". "Done, Lynn." I infer from this that Pete, the accused, was giving instructions to Lynn. I also infer that Lynn is an employee of the grow operation from page 180 which lists her duties that include calendars. I do not accept the accused's explanation regarding this document that perhaps it was in relation to him simply being asked to do a check of calendars as a task. This is inconsistent with his evidence that he only dealt with his personal grow operation.
7. Exhibit 11, page 5 of 13, there is the Mark Emery poster pinned up in a common area of the grow operation utility room that says:

"To Pete, Free at last. Plant the seeds of freedom. Overgrow the government. January 15, 2015."

8. The MPC Corp. issue.

Mr. Coffey became the sole director on March 1, 2014. This is important because MPC Corp. paid some of the large Hydro bills for the greenhouse.

One can infer that, and I do infer, that MPC Corp. was actively involved in the business plan for the commercial licence for medicinal marihuana.

[The judge then went on to say that the appellant's explanation as to why he was being paid by MPC Corp. made no sense].

9. The accounting papers at tab 13, pages 193 to 198.
- [9] In respect to the accounting document at tab 13 referred to in point 9 above, the judge identified Mr. Coffey as the author, referred to his evidence that the document was related to berries and a business deal that "went south", and said:
- [88] At the very least, or at the best, what I can say about the answers [given concerning the accounting document] is that they are perplexing. It makes no sense whatsoever that this document is related to a berry business or that Troy is somehow involved and/or drafted this document. It is clearly a document prepared by Mr. Pete Coffey and in response he was written a letter by "Gary". There are a number of difficulties explaining this letter in any other way.

- [89] First, the suggestion that "28.5" and "16" refer to prices per pound is inconsistent with what is written. There are no dollar signs or any suggestion this is per pound. If that was the cost of buying berries, the total of \$93,600 would be an expense as opposed to an accounting of where revenue was going. \$93,600 is clearly revenue from which a number of items were deducted, including Kirk who, for some reason, receiver "5" and Mike the electrician, received "7".
- [90] This document only makes sense in the contest of the balance of the evidence in which it is found. To suggest that a person, Troy, wrote this document or that Mr. Coffey is just a peacemaker between parties makes absolutely no sense He is clearly extensively involved in this enterprise.
- [10] The judge did not believe Mr. Coffey. He said the berry business explanation "makes no sense" (at para. 93) and held:
- [94] The evidence of the accused essentially is that he had no knowledge of anything illegal happening on this grow operation, that his access was extremely limited, he was not in possession of any keys or access cards and his attendance in the compound where the grow operation was located required an escort. I do not accept this evidence. In my view, it is completely unreasonable that a person in Mr. Peter Coffey's position of being the Hydro subscriber, being connected with the property since 2009, having his own MMAR licence to produce marihuana in the compound, being the brother of the owner of the property and being actively involved in the application for an MMPR licence to produce marihuana would somehow be restricted on the property. It makes no sense and accordingly I reject the evidence for all the reasons stated above.
- [11] The judge correctly identified the elements of the offences charged and found he was satisfied beyond a reasonable doubt that the appellant was in possession of the approximately 4,200 marihuana plants, that he knew of their existence, and that he had an element of control over them. He also concluded that Mr. Coffey was actively involved and participated in the growing of the prohibited plants. In the alternative, he found Mr. Coffey was clearly aiding and abetting the grow operation. He said:
- [96] In the case at bar, I find that the Crown has proven that this accused was in possession of the substance, the marihuana, the 4200 plants, he knew of its existence and had an element of control over it, as evidenced by the numerous documents and his association to the property.

I find that the Crown has proved beyond a reasonable doubt that Mr. Peter Coffey was actively involved and participated in the growing of the prohibited plants.

[97] In my view, alternatively perhaps, because I believe in this case the evidence suggests Mr. Coffey is a principal of this grow operation, he clearly was aiding and abetting the operation. He provided the Hydro account under his name, he paid some of the Hydro bills through his corporation or had others pay it for him and he was there to assist, as indicated by the number of records and documents in relation to this property that have his name on it.

[98] I find as a fact that the only reasonable inference to be drawn from the circumstantial evidence is the guilt of this accused beyond a reasonable doubt. There is no other rational alternative explanation for the body of circumstantial evidence presented in this case through the documents and through the other evidence taken.

[Emphasis added.]

[12] The judge addressed the onus of proof and the principles in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, saying:

[99] This is a case where the accused testified and the onus of proof never shifts to him. The principles of *W.D.* are applicable. In the event that a court believes the accused, the accused must be acquitted. In this case, I do not believe the accused. His evidence is not credible and, at times, as indicated by reference to the transcripts, is beyond perplexing, makes no sense whatsoever, and is inconsistent with any rational conclusion except with his participation in this illegal grow operation. In any case, I do not believe the evidence of the accused or his denials of involvement in this grow operation.

[100] Secondly, the question is whether his evidence raises a reasonable doubt in the context of the evidence taken as a whole. In my view, it does not raise a reasonable doubt. It is not reasonable. It is not consistent with the body of circumstantial evidence that is overwhelming in this case.

[101] Third, even if I do not believe the accused or his evidence does not raise a reasonable doubt, I must look at the entirety of the evidence to determine whether or not the Crown's case proves the elements of the offences beyond a reasonable doubt. In this case, the Crown's case is overwhelming in support of the only rational conclusion that Mr. Coffey is guilty of the offences of production and possession for the purpose of trafficking, as alleged on the Information.

[Emphasis added.]

[13] The error alleged by Mr. Coffey is put to us as one of a failure by the judge to overtly consider all the other reasonable possibilities. In particular, he complains that the judge did not consider the reasonable possibility that he, Mr. Coffey, did not know the majority of marihuana plants were illegal, that is, that they were not covered by medical marihuana licences.

- [14] At trial, the main thrust of submissions by the defence on the circumstantial nature of the case were that a number of persons could have been responsible for the illegal marihuana grow operation, and that he, Mr. Coffey, was duped by an unknown person who might have controlled the enterprise. During submissions by defence counsel, the judge confirmed with defence counsel that it was Mr. Coffey's evidence that any plants that were grown on the property, to his knowledge, were by way of a legal licence, such that his assistance with the illegal grow operation would be inadvertent.
- [15] It seems to me that there are two issues before us. First, did the judge correctly recognize the task before him in considering the circumstantial nature of the evidentiary record when determining whether the elements of the offence were proved? In *R. v. Villaroman*, 2016 SCC 33, Justice Cromwell confirmed:
- [38] 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.
- [16] In making that assessment, the judge must look to all of the evidence, and a doubt may arise from lack of evidence: *Villaroman* at para. 36.
- [17] The second questions is whether there was evidence from which the trial judge could draw an inference that the appellant was guilty, that is, from which he or she can conclude that guilt was the only reasonable conclusion? In terms of the place of these questions in a conviction appeal, Mr. Justice Harris explained in *R. v. Vickers*, 2016 BCCA 98:
- [22] In my view, the substance of this appeal is better seen as an argument that the verdict is unreasonable because the evidence left open reasonable inferences that were inconsistent with guilt. In relation to this question, the law is clear. Section 686(1)(a)(i) of the Criminal Code, R.S.C. 1985, c. C-46, provides that a conviction may be set aside on the grounds that "it is unreasonable or cannot be supported by the evidence." The issue under s. 686(1)(a)(i) is whether, on the whole of the evidence, the verdict is one which a properly instructed trier of fact, acting judicially, could have reached. In reviewing the verdict, this Court may engage in a re-examination and reweighing of the evidence, through the lens of judicial experience, for the limited purpose of deciding whether the verdict is reasonable. We do not substitute our view of the evidence for that of the trial judge. We defer to the trial judge's findings of fact and factual inferences, interfering only if the judge made a palpable and overriding error. The analysis is the same whether the case is based on direct or circumstantial evidence: *R. v. Ngo*, 2009 BCCA 301 at paras. 6-7, 60, 65; *R. v. Munif*, 2009 BCCA 451 at paras. 9-12.

- [23] The proper approach, as the judge recognized here, is not to examine each individual circumstance in isolation. Rather, the question is whether all of the evidence taken together proves an accused's guilt and is inconsistent with any other rational conclusion: Ngo at paras. 53-57. Although the burden of proving guilt always rests on the Crown, that burden does not include an added burden of negating every speculative conjecture consistent with innocence: *R. v. Tahirsylaj*, 2015 BCCA 7 at para. 39.
- [18] In considering this ground of appeal from the perspective of an appellate court, we must recognize that it is for the trier of fact to decide if any proposed alternative way of looking at the case is reasonable enough to allow a doubt: *Villaroman*, citing at para. 56 *R. v. Dipnarine*, 2014 ABCA 328, 584 A.R. 138:
- [i]t is still fundamentally for the trier [of] fact to decide if any proposed alternative way of look at the case is reasonable enough to raise a doubt.
- [19] At its heart, the question of Mr. Coffey's appreciation of the illegal nature of the grow operation is a question relating to the element of knowledge. Having confirmed the theory of the defence in respect to illegality of the plants, the judge found that the element of knowledge was satisfied.
- [20] In reaching his conclusion that the two offences were proved beyond a reasonable doubt, the judge rejected the proposition that reasonable inferences inconsistent with Mr. Coffey's guilt could be drawn from the circumstantial evidence. While he did not specifically address the proposition put to us - that based only on the circumstantial evidence, it was a reasonable possibility that Mr. Coffey did not know there was no licence for most of the plants on the property, he had clarified Mr. Coffey's proposition with defence counsel during submissions and rejected Mr. Coffey's evidence that he did not know anything illegal was happening (at para. 94).
- [21] In my view, the possibility contended for now is not viable in light of the judge's comprehensive consideration of the circumstantial evidence, including the inferences he drew from the accounting document and the documents relating to care of plants in the context of the calendar; the limited number - three - of medical marihuana licences found on the premises and limited number of plants allowed by them; Mr. Coffey's participation in meetings with a law firm and records of payment to the law firm, in connection with applications for licences that would allow MPC Corp. or others to produce medical marihuana; the absence of any licence found on the property allowing for such production; and his status as the only director of MPC Corp. after March 1, 2014. Given the abstract nature of the possibility proposed to us, in the context of the record before us, I do not consider the judge erred by failing to find other reasonable possibilities apart from Mr. Coffey's guilt.
- [22] I see no basis upon which to interfere with the verdict. I would dismiss the appeal.
- [23] HARRIS J.A.: I agree.

[24] GRAUER J.A.: I agree.

[25] SAUNDERS J.A.: The appeal is dismissed.

"The Honourable Madam Justice Saunders"

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