

CANADA / JUDGMENT

R. v. Louis

2020 BCCA 219

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 219 R. v. Louis

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Louis,

2020 BCCA 219

Date: 20200729

Docket: CA45834

Between:

Regina

Respondent

And

Rommy Romeo Louis

Appellant

Before:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Willcock

The Honourable Mr. Justice Butler

On appeal from: An order of the Supreme Court of British Columbia, dated November 6, 2016 (R. v. Louis, 2016 BCSC 2726, New Westminster Registry Docket X077141-4).

Counsel for the Appellant,

appearing via videoconference:

J.D. Oppal

Counsel for the Respondent,

appearing via videoconference:

J.B. McKinley

Place and Date of Hearing:

Vancouver, British Columbia

July 14, 2020

Place and Date of Judgment:

Vancouver, British Columbia

July 29, 2020

Written Reasons by:

The Honourable Madam Justice Newbury

Concurred in by:

The Honourable Mr. Justice Willcock

The Honourable Mr. Justice Butler

Summary:

Appeal from conviction on four counts of fraud dismissed in connection with a cross-border scheme in which appellant had participated in Canada. Trial judge had not erred in applying the law of circumstantial evidence or in finding mens rea of fraud had been proven by Crown.

Reasons for Judgment of the Honourable Madam Justice Newbury:

- [1] This is a fact-driven case in which the appellant was convicted of four counts of fraud after the court below found he had participated in a cross-border scheme in which innocent individuals in the U.S. were defrauded of funds by persons operating in Canada. The innocent victims were led to believe they had won "lotteries" but that they were required to pay "taxes", usually by wire transfer, before their winnings could be released to them. They received cheques purporting to reimburse them for the "taxes", but in fact those cheques were bogus and were ultimately dishonoured. The victims' own cheques were cashed in Canada by "runners" instructed by the appellant, and he received the resulting funds. It is perhaps unnecessary to add that the victims had not won any lotteries at all.
- [2] The trial judge, Mr. Justice Armstrong, described the scheme at the outset of his reasons as follows:

Between August 30, 2009, and March of 2010, five residents of the United States were sent letters inducing them to believe they would receive large sums of money constituting the proceeds of either a lottery or some prize system they had been selected to receive. There was a condition attached to each of these letters requiring the parties to send money to several people in Canada to deal with taxes that were related to these sums of money.

Each complainant received their letter, ("bait letters") informing them that they qualified to receive these monies, and also informing them that to perfect their entitlement, they were required to pay various taxes. Included with the letters were cheques to reimburse them for those expenses, and in each case the complainants were instructed to telephone another person who then informed them how to make the payments. Each complainant deposited cheques from the sender into their own bank accounts and sent their own cheques for similar (but not always the same amounts) to a person identified to them.

Each confirmation letter came from a corporate sender and directed the complainants to contact people named in the bait letters, (sometimes described as tax agents), at phone numbers also contained in the letters. These contacts instructed the complainants to pay the money through Western Union or MoneyGram Wire Services to specified people and confirmed that the lottery funds would be sent to the complainants promptly.

Each victim sent the requested sum of money through Western Union or MoneyGram to the specific person, at times in these reasons will be referred to as the runner or the runners, who collected the money. The complainants' payments that came through wire service transfers were sent before the letter sender's cheques were dishonoured by the recipients' banks. No lottery prize or money was ever sent to the complainants and each lost the money he or she had paid in expectation of the prize. [At paras. 1-4.]

- [3] Taken individually, the amounts lost by the victims were not large; but the victims could ill afford to lose the "taxes", and some were duped more than once. In one instance, an 82-year-old woman sent several cheques totaling almost \$150,000. She never recovered her money.
- [4] As noted in Crown's factum, the appellant played a pivotal role in this scheme:
 - (1) He recruited and instructed individuals as "runners" to receive the wire transfers from the victims;
 - (2) He obtained the names of the runners which were ultimately provided to the victims;
 - (3) He provided the runners with the information they needed from the victims, i.e., their name and transaction or MTC [money transfer company] number for the wire transfer; and
 - (4) He received the money from the runners or directed to runners to deposit monies to the bank accounts of other persons.

In instructing the runners, the appellant provided false explanations as to why he could not cash the cheques himself; and in some instances, he suggested stories they should make up if questioned by the cheque-cashing institution. He also warned the runners not to disclose to

anyone else what they were doing and to erase all text messages between him and them. Indeed, one of the runners testified that the appellant threatened to kill her if she ever spoke of the scheme to others. (The resulting charge of threatening was dismissed due to the poor memory of the complainant.) The appellant was convicted of four charges of fraud; corresponding charges of theft were dismissed on the basis of the Kineapple principle.

- [5] I do not propose to recount the individual circumstances testified to by each of four runners who testified at trial. For this information I refer the reader to paras. 15-153 of the trial judge's detailed reasons. The appellant argued below that there was no evidence to link him directly with any complainant, nor any reliable evidence he had received money from the runners. Thus he submitted that the *actus reus* of fraud had not been made out. In addition, he argued that even if he had received such funds, the Crown had not proven he had had knowledge of the fraudulent nature of the transactions, with the result that the requisite *mens rea* was also lacking. (At paras. 154-7.)
- [6] Beginning at para. 202, the trial judge reviewed the law with respect to the elements of fraud and the necessary *mens rea*, including the circumstances in which an accused's subjective knowledge of fraud may be inferred. He cited in particular *R. v. Théroux* [1993] 2 S.C.R. 5, *R. v. Laronde* 2010 BCCA 430 and *R. v. Kirkwood* (1983) C.C.C. (3d) 393 (Ont. C.A.). He also noted *United States of America v. Yamba* 2015 BCSC 798 in connection with party liability: see para. 212. After reviewing the arguments advanced by the parties in connection with each count, the judge found that fraud had been proven on Counts 2, 4, 8, and 12 of the indictment.
- [7] In each instance, Armstrong J. inferred that Mr. Louis had been aware that the funds sent by the victims had been obtained by fraud on those victims and that he had had the requisite *mens rea*. In the case of the complainant Ms. Hammond, for example, the judge concluded:

I am satisfied that the accused directed Ms. Logan and Mr. Dada to attend Western Union offices to collect more than \$5,000 sent by Ms. Hammond, and that he provided them with the MTCNs [money transfer credit numbers] which enabled him to complete the transaction and that they collected the monies and delivered the monies to him.

The totality of the evidence confirms this conclusion and I have no reasonable doubt that the pattern followed by them fulfilled the fraud scheme.

I am also satisfied that the accused's actions in communicating Ms. Hammond's name and the MTCNs to Ms. Logan and Mr. Dada were essential parts of the fraud scheme, and that he knew that neither he nor the runners had any lawful interest in the money that they had obtained, and that the sender was could have been deprived when the monies were received by him. There is no evidence that the accused was aware of the contents of the bait letters, but his participation in this scheme involving these simple actions of contacting the runners, providing the data to the runners, and receiving the funds from the runners satisfies me that the accused had the *mens rea* to commit the offence and that the *actus reus* of the offence has been proved. [At paras. 273-5; emphasis added.]

With respect to the complainant Ms. Geir, the judge found:

I have no doubt that Ms. Geir sent monies through Western Union to Ms. Logan, and I am satisfied on the documentary evidence, including the consistency between the Western Union records, the personal details attested to by Ms. Logan, that her evidence can be believed. The telephone record corroborates Ms. Logan's evidence that she was in communication with the accused on March 23, before she collected Western Union funds sent by Ms. Geir. This also corroborates Ms. Logan's testimony that the accused would usually communicate with her by phone when he wanted her to pick up funds, and this is supported by that evidence.

Because it is not necessary that confirmatory evidence implicate the accused in the offence, I find that the evidence is sufficiently consistent, persuasive, and valuable that I am able to trust Ms. Logan's testimony concerning the funds received from Ms. Geir. I am convinced that, notwithstanding shortcomings in her evidence, she was truthful in her description of her interaction with the accused concerning those funds.

I am satisfied that the accused possessed the requisite mens rea, because when he gave Ms. Geir's data, name and the MTC number to her and requested Ms. Logan to collect the funds and to deliver the funds to him, that he was aware that the money did not belong to him or Ms. Logan, and that he was aware that the monies were obtained by a fraud on Ms. Geir, and that he had committed the actus reus of the offence in his role as being the conduit of information to Ms. Logan and the recipient of the money that had been obtained by fraud from Ms. Geir. [At paras. 290-3.]

And in the case of the complainant Mr. Cooper, the Court stated:

The funds were sent to Western Union. They were sent because of the fraudulent communication sent to Mr. Cooper. In my view on the facts pertaining to this count, it is inconceivable that Mr. Louis did not have knowledge that when these funds arrived at Western Union, they were the property of the sender, that neither he nor Mr. Dada had any interest in them, and that when he received the money, he was participating in a fraud on Mr. Cooper.

In the result, I find that the Crown has met the burden of proof, both of the mens rea and actus reus of the offence, and I find the accused guilty on Count 12. [At paras. 319-320; emphasis added.]

As already noted, the appellant was convicted on four counts of fraud.

On Appeal

[8] Mr. Louis' primary ground of appeal is that the trial judge erred in his application of the law of circumstantial evidence in that he had "failed to consider inferences other than the accused's guilt as arising from the evidence". Relying on Thérout, the appellant notes that the actus reus of fraud may be established by proof of:

- (i) the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means;

(ii) deprivation caused by the prohibited act, which may consist of actual lies or the placing of the victim's pecuniary interests at risk.

Correspondingly, as the Court stated in *Théroux*, the mens rea of fraud requires proof of:

- (i) subjective knowledge of the prohibited act; and
- (ii) subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in the knowledge that the victim's pecuniary interests are put at risk). [At 20.]

[9] The appellant referred us to the seminal case of *R. v. Villaroman* 2016 SCC 33, where the Court held that it is no longer necessary in circumstantial cases for conclusions other than guilt to be based on inferences drawn from "proven facts". Rather, a reasonable doubt or conclusion other than guilt may arise from evidence or the absence of evidence where the inference is a reasonable one. In the words of Cromwell J. for the Court:

When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies] and "other reasonable possibilities" which are inconsistent with guilt: *R. v. Comba*, [1938] O.R. 200 (C.A.), at pp. 205 and 211, per Middleton J.A., aff'd [1938] S.C.R. 396; *R. v. Baigent*, 2013 BCCA 28, 335 B.C.A.C. 11, at para. 20; *R. v. Mitchell*, [2008] QCA 394 (AustLII), at para. 35. I agree with the appellant that the Crown thus may need to negative these reasonable possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation. [At para. 37; emphasis by underlining added.]

[10] Applying these principles to the case at bar, counsel for the appellant emphasizes that there was "no evidence" connecting Mr. Louis to the 'bait letters', no evidence that he knew of their contents, no evidence as to how he came into possession of the information that was provided to the runners, and no evidence that the victims ever interacted with him. He argues that without evidence of a direct connection to the preparation of the bait letters, it could not be said beyond a reasonable doubt that the appellant had had the necessary mens rea for fraud. On the other hand, counsel submits there was evidence that "pointed to other individuals being involved" in the scheme. In his submission, the Crown was required to prove the appellant knew he was receiving money "from the people targeted in the frauds particularized in the indictment". The appellant's factum continues:

Based on the evidence accepted and the findings made, it is not an unreasonable inference to draw that the targets, from Mr. Louis' perspective, were actually just American versions of the Canadian "runners" (Mr. Dada and Ms. Logan, for instance). That is, individuals who were similarly tasked with receiving money and then sending it. This set of circumstances would make the individuals named in the indictment as victims to be co-conspirators rather than victims.

It is submitted that there is nothing in the evidence, or in human experience, to suggest that the Appellant had to know that the targets were in fact targets, rather than similarly employed runners in a larger laundering scheme.

[11] In my opinion, this argument cannot succeed. As counsel conceded, it is not our role to retry the facts or to decide whether the verdict of guilty was one we would have reached. The standard of review in circumstantial cases is similar to that in non-circumstantial cases: we may not interfere if the verdict is one that a properly instructed jury could reasonably have rendered. As this court stated in *R. v. Robinson* 2017 BCCA 6, aff'd 2017 SCC 52:

It is not open to a court of appeal to conceive of inferences or explanations that are not reasonable possibilities; nor to attempt to revive evidence or inference is that the trial judge reasonably rejected. If an appellant is to succeed, an inference other than guilt must be "reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense." (Villaroman, at para. 36.)

[At para. 38.]

[12] The trial judge found that Mr. Louis "knew that neither he nor the runners had any lawful interest in the money that they had obtained" and that each sender would have been "deprived" when the monies were received by the appellant. For each complainant, he found that the appellant received the monies knowing that that he was participating in a fraud. (See para. 275 and paras. 290-3, 301-2, 317-9.) The Crown was not required to prove that the appellant knew the identity of the victims -- only that the effect of the scheme in which he was participating would have been to deprive someone of funds. The suggestion that the victims may have been "similarly employed runners in a larger laundering scheme" is completely speculative, and in my view, beyond the bounds of reasonableness in the circumstances of this case. I see no error in the trial judge's conclusion that it was "inconceivable" the appellant did not know he was participating in a fraudulent scheme. This was a reasonable conclusion and indeed the only conclusion that was available given "the evidence and the absence of evidence" in this case.

[13] I would therefore not accede to the first ground of appeal.

[14] It is unnecessary to deal at length with the second ground, which concerned wilful blindness. With respect to one of the fraud counts, the appellant submitted that the judge relied on the doctrine of wilful blindness when he stated at para. 319 that it was "inconceivable Mr. Louis did not have knowledge" he was participating in a fraud on one of the complainants. As I read the reasons, however, the Court's finding that it was "inconceivable that Mr. Louis did not have knowledge" was a finding that actual knowledge had been proven beyond a reasonable doubt. Wilful blindness was not engaged.

[15] It follows that I would dismiss the appeal, with thanks to counsel for their able submissions.

"The Honourable Madam Justice Newbury"

I AGREE:

"The Honourable Mr. Justice Willcock"

I AGREE:

"The Honourable Mr. Justice Butler"

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