

CANADA / JUDGMENT

R. v. Soper

2023 BCSC 427

COURT

Supreme Court of British Columbia

DECIDED

21 March 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 427 R. v. Soper

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Soper,

2023 BCSC 427

Date: 20230321

Docket: 108943

Registry: Kamloops

Rex

v.

Amanda Aileen Soper

Before: The Honourable Justice Hori

On appeal from: An order of the Provincial Court, dated May 19, 2021 (R. v. Manuel and Soper, Clearwater Registry File No. 108943).

Reasons for Judgment

Counsel for Appellant:

B.R. Anderson

Counsel for the Crown:

S.L. O'Connor

Place and Date of Trial/Hearing:

Kamloops, B.C.

January 17, 2023

Place and Date of Judgment:

Kamloops, B.C.

March 21, 2023

Introduction

- [1] The appellant, Amanda Aileen Soper, also known as Kanahus Manuel, appeals her conviction for theft of a padlock from the Trans Mountain Corporation ("Trans Mountain") on September 30, 2019, in Blue River, British Columbia.
- [2] There was no direct evidence that the appellant committed the theft. The trial judge convicted the appellant on circumstantial evidence by finding that the appellant had the exclusive opportunity to steal the padlock during the relevant time.

Issues on Appeal

- [3] The appellant appeals her conviction on the following grounds:
- a) The trial judge erred in law by failing to apply the circumstantial evidence test to the facts of the case;
 - b) The trial judge erred in law by concluding that the appellant had the exclusive opportunity to take the padlock; and
 - c) The verdict is unreasonable because it is based on the appellant's non-exclusive opportunity to commit the offence and because the Crown failed to prove the offence as particularized in the information.
- [4] In my view, this appeal turns on whether the trial judge erred in concluding that the appellant had the exclusive opportunity to steal the padlock.

The Evidence

- [5] On September 30, 2019, Gina Bowie was a security guard employed by the Simpcw Resource Group ("SRG") to provide security services at the Trans Mountain facility in Blue River, B.C. The Trans Mountain facility in Blue River included a pumphouse, machinery and an office, all of which was enclosed by wire fencing. The facility had three entrances. Entry to the facility required passage through locked gates.
- [6] On September 30, 2019, Gina Bowie was in the area outside the west gate to the facility when two vehicles approached her. When the approaching vehicles stopped, two people got out of one of the vehicles and initiated an interaction with Gina Bowie. One of those individuals was the appellant and the other was Nicole Manuel. There is no evidence that any other occupants in the vehicles got out.

- [7] The west gate to the Trans Mountain facility locks with two padlocks that secure a chain threaded through the webbing of the fencing. One of the padlocks was for the Trans Mountain workers who had their own keys. The other padlock was for SRG personnel.
- [8] On September 30, 2019, Gina Bowie left one of the padlocks unlocked. She explained that the padlock was usually locked but, on this occasion, she left it unlocked because she was waiting for other workers to leave the site. She described the lock as "just hanging like dummy locked on the - hanging on the fence, unlocked."
- [9] Shortly after the vehicles arrived, Gina Bowie called her supervisor, Darren Bonang, for backup. Darren Bonang arrived while Nicole Manuel and the appellant were continuing their interactions with Gina Bowie. When he arrived, Darren Bonang began recording the interactions on video.
- [10] The video evidence showed the following:
- a) Between 1 minute, 35 seconds (1:35) into the video and 1 minute, 50 seconds (1:50) into the video, the gate in question is in view. During this period of time, the video shows the presence of 2 padlocks hanging off a chain attached to the gate. One of the padlocks is open and is threaded through one of the chain links.
 - b) The two locks come back into view at 4 minutes, 22 seconds (4:22) into the video.
 - c) At 4 minutes, 35 seconds (4:35) into the video, the appellant is shown approaching the gate but the camera pans away from the appellant until she reappears walking away from the gate 6 seconds later.
- [11] After the appellant and Nicole Manuel left the facility, Gina Bowie noticed that one of the padlocks was missing from the gate. Gina Bowie searched for the missing padlock but did not find it. Gina Bowie also denied that she had lost the padlock.
- [12] Darren Bonang denied taking the padlock as did Nicole Manuel.
- [13] Darren Bonang testified that there were no other parties onsite between the time the two locks were there and the appellant and Nicole Manuel left the facility.

The Trial Judgment

- [14] The trial judge made the following findings of fact:
- a) When the appellant and Nicole Manuel first arrived at the facility, the appellant was recording the events. However, before the appellant approached the gate, Nicole Manuel took over the task of recording the events and took the appellant's bag;
 - b) At the end of the video, the front pocket of the appellant's hoody was hanging lower than it had been at the beginning of the video recording;
 - c) The padlock was present and visible when Darren Bonang arrived at the site;

- d) The padlock was not present after the appellant departed;
 - e) No one else had the opportunity to remove the padlock from the gate; and
 - f) Nicole Manuel asserted that she did not take the padlock.
- [15] On these findings, the trial judge concluded that the appellant took the padlock from the gate and convicted her of the offence charged.

Standard of Review

- [16] The standard of review on appeal varies depending on the nature of the question under appeal. *Housen v. Nikolaisen*, 2002 SCC 33, identifies four types of questions on appeal and provides a summary of the standards of review relevant to each. I will summarize the principles from *Housen*:
- a) Questions of law are reviewed on the standard of correctness giving the appeal court broad scope to review matters of law;
 - b) Questions of fact are reviewed on a deferential standard. The appeal court may not reverse findings of fact unless the trial judge made a "palpable and overriding error".
 - c) Inferences of fact are reviewed on the deferential standard of "palpable and overriding error". However, the appellate review may involve a review of the underlying facts supporting the inference as well as the inference drawing process itself; and
 - d) Questions of mixed law and fact involve the application of a legal standard to a set of facts. Where an error is attributed to the application of an incorrect legal standard or a failure to consider an element of a legal test, the error may be characterized as an error of law to which the standard of correctness applies. However, where the error involves an interpretation of the evidence it is a question of fact and should be reversed only if the trial judge made a palpable and overriding error.

Exclusive Opportunity

- [17] The trial judge found that no one, other than the appellant, had the opportunity to remove the padlock from the gate. This finding is simply another way of stating that the appellant had the exclusive opportunity to remove the padlock.
- [18] It is implicit in this conclusion that the trial judge accepted the evidence of Nicole Manuel, Darren Bonang and Gina Bowie that they did not remove the padlock from the gate.
- [19] The appellant's position is that the trial judge erred when reaching this conclusion on two grounds:
- a) A bare denial by the other individuals does not convert an accused's opportunity to commit an offence to an exclusive opportunity to do so; and

- b) The evidence does not support the conclusion because there were other individuals who also had an opportunity to remove the padlock.
- [20] The appellant frames the first aspect of this ground of appeal as a question of law. If that is the case, then the standard of review is the standard of correctness.
- [21] The appellant submits that the bare denial of another individual with equal or similar opportunity to have committed the act does not generally convert an accused's opportunity to an exclusive opportunity to commit the crime. The appellant relies upon the following passage from *R. v. Chubey*, 1999 CarswellMan 379 (C.A.), para. 26, in support of her position:
- [26] I am not prepared to go as far as saying that, in a case such as this, where the only evidence against the accused is the opportunity to commit the crime, the opportunity cannot be shown to be an exclusive one by calling all those others with an opportunity to say that they did not commit the crime. As a general rule, however, where there is nothing else to implicate the accused, I think it would be dangerous and unreasonable to create an exclusive opportunity for the accused to have committed the crime by eliminating others with a similar opportunity on the strength of no more than their bare denials and the perceived unlikelihood of any of them being the guilty party.
- [22] I do not interpret the decision in *Chubey* in the same way as the appellant. The first sentence in the passage quoted above clearly indicates that the Court in *Chubey* was not establishing a legal principle for general application. In fact, in the first sentence of the passage, the Court rejected the notion that the denial of others with opportunity to commit the offence was not sufficient to establish the exclusive opportunity of the accused to commit the offence.
- [23] Further, the general caution that follows the opening sentence of this passage includes the limiting words "where there is nothing else to implicate the accused".
- [24] Based on my interpretation of *Chubey*, the trial judge committed no error of law by eliminating Nicole Manuel, Darren Bonang and Gina Bowie as other individuals who had opportunity to remove the padlock.
- [25] Further, the trial judge had other evidence that implicated the accused. The video recording shows the padlock in place on the gate, the accused approaching the gate and then walking away from it 6 seconds later. The padlock was missing from the gate after the accused left the facility and no other parties were onsite during the relevant time.
- [26] These facts are significantly different from the facts in *Chubey* where a locked bag, from which the stolen items were missing, was:
- a) left in a vault to which others had access from 2:45 p.m. to 3:24 p.m.;
 - b) taken by a security guard at 3:24 p.m. to another premises;
 - c) not open until the next day when it was discovered that items in the bag were missing.

- [27] Therefore, I find that the trial judge did not err in accepting the denials of Nicole Manuel, Darren Bonang and Gina Bowie to eliminate them as individuals with equal or similar opportunity to remove the padlock.
- [28] On the second aspect of this ground of appeal, the appellant submits the evidence does not support the trial judge's conclusion that no one other than the accused had an opportunity to remove the padlock. On this aspect of the appeal, the alleged error must be that the trial judge erred in a finding of fact. Accordingly, the standard of review is whether the judge made a palpable and overriding error.
- [29] I have already dealt with the appellant's arguments related to the trial judge's reliance on the denials of Nicole Manuel, Darren Bonang and Gina Bowie. The trial judge was entitled to accept the evidence of these individuals to conclude that they did not remove the padlock.
- [30] However, the appellant argues that workers for Trans Mountain were present at the compound and would have left the facility through the gate in question. Therefore, the appellant submits that these other Trans Mountain workers had the opportunity to remove the padlock.
- [31] In support of this submission, the appellant relies on the evidence of Gina Bowie. However, in my view, her evidence does not go as far as the appellant suggests. Gina Bowie testified that she left the padlock unlocked because she was "waiting for the other workers to leave the site". There is no evidence that the workers were in the process of leaving when these events occurred.
- [32] The relevant period of time to assess who had the opportunity to remove the padlock is the period between when the video evidence shows the padlock on the fence and when Gina Bowie noted that it was missing. Darren Bonang testified that during this period of time, there were no other parties onsite.
- [33] Accordingly, the conclusion of the trial judge that no one other than the accused had the opportunity to remove the padlock from the gate is supported by the evidence.
- [34] Therefore, I find no error in the trial judge's conclusion that the appellant had the exclusive opportunity to remove the padlock.

The Circumstantial Evidence Test

- [35] The appellant seeks to set aside her conviction on the basis that the trial judge failed to refer to the test for making findings of guilt on circumstantial evidence.
- [36] The Crown agrees that the case against the appellant was based on circumstantial evidence. The Supreme Court of Canada in *R. v. Villaroman*, 2016 SCC 33, set out the test for proving an essential element of an offence on circumstantial evidence. Proof beyond a reasonable doubt requires that the guilt of the accused is the only reasonable inference to be drawn from the circumstantial evidence.

[37] In finding the appellant guilty because she had the exclusive opportunity to steal the padlock, the trial judge was applying the circumstantial evidence test. It is implicit in that finding that no reasonable inference, other than the guilt of the appellant, could be drawn from the evidence. Therefore, there was no need for the trial judge to explicitly refer to the circumstantial evidence test or to explicitly state that there was no other reasonable inference.

[38] Therefore, I find no error in the trial judge not referring to the circumstantial evidence test.

Unreasonable Verdict

[39] The appellant argues that the verdict of the trial judge is unreasonable because:

- a) it is based on the appellant's non-exclusive opportunity to commit the offence; and
- b) because the Crown failed to prove the offence as particularized.

[40] I must reject the first aspect of this ground of appeal for the same reasons that I concluded that the trial judge did not err in finding that the appellant had exclusive opportunity to commit the offence.

[41] On this ground of appeal, the appellant also relies on other aspects of the evidence that she submits makes the verdict unreasonable. Those aspects of the evidence are:

- a) That it is improbable that the appellant un-threaded a metal padlock from a metal chain without making any sound;
- b) That it is improbable that the appellant could remove a padlock and start walking away from the gate in 6 seconds;
- c) That neither Darren Bonang nor Gina Bowie observed the appellant remove the padlock;
- d) That Nicole Manuel did not see the padlock in the appellant's possession.

[42] In my view, none of these aspects of the evidence establish any reasonable inference that is inconsistent with the appellant's guilt. Once the trial judge accepted that Nicole Manuel, Darren Bonang and Gina Bowie did not remove the padlock and that there was no one else in the area at the relevant period of time, the trial judge was left with the appellant as the only person who had the opportunity to remove the padlock during the relevant period of time.

[43] The second aspect of this ground of appeal is that the verdict of the trial judge is unreasonable because the Crown did not prove that the padlock was the property of Trans Mountain. The information reads:

Amanda Aileen SOPER, on or about the 30th day of September, 2019, at or near Blue River, in the Province of British Columbia, committed theft of a lock, the property of Trans Mountain Corporation, of a value not in excess of five thousand dollars (\$5,000.00) contrary to Section 334(b) of the Criminal Code.

- [44] The appellant submits that the evidence of Gina Bowie was that the padlock in question was the property of her employer, SRG.
- [45] The appellant made no argument for an acquittal at trial on the basis that the Crown had failed to prove that Trans Mountain owned the padlock as charged in the information. The appellant appears to have raised this argument for the first time at this appeal.
- [46] In any event, I do not accede to this ground of appeal on the authority of *R. v. Little*, [1976] 1 S.C.R. 20. In *Little*, the Crown charged the accused with theft of diamond rings, the property of Westwood Jewellers Limited. The evidence established that the accused took the rings from a store known as Westwood Jewellers which was owned and managed by Mr. Nuytten. The trial judge acquitted the accused because the Crown had charged that Westwood Jewellers Limited owned the rings but had proven ownership in Mr. Nuytten.
- [47] The Manitoba Court of Appeal allowed the Crown's appeal of the acquittal and entered a conviction. The Supreme Court of Canada dismissed the accused's appeal and confirmed the conviction.
- [48] On the issue of proving ownership of the property stolen, the majority of the court held that if the information mentions the owner of the stolen property, the Crown must prove such ownership unless there are no other circumstances to indicate to the accused the true nature of the charge. At para. 17 of the reasons, Justice De Grandpre, stated the law as follows:
- [17] There is no doubt that, if the owner of the object allegedly stolen is mentioned in the indictment and if his ownership is not proven and there are no other circumstances to indicate to the accused the true nature of the charge, an acquittal should be entered. However, when, as in the present case, there cannot be any possibility for the accused to fail to identify the transaction about which they are charged, there is no reason to discharge the accused for the sole reason that the owner mentioned in the indictment has not been mentioned in the evidence.
- [49] In this case the transaction giving rise to the charge was clear. There was no possibility that the appellant would be unable to identify the circumstances of the charge or the stolen item. Whether the Trans Mountain or SRG owned the padlock would not cause any confusion for the appellant in meeting the case against her.
- [50] Accordingly, I must dismiss this ground of appeal.

Conclusion

[51] I have not accepted any of the grounds upon which the appellant appeals her conviction. Therefore, the appeal is dismissed and the conviction affirmed.

"D.K. Hori J."

HORI J.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/04/2023BCSC0427.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-soper-2023>

Prepared on 29 October 2026 · Esheria