

CANADA / JUDGMENT

R. v. Sorenson

2022 BCSC 2101

COURT

Supreme Court of British Columbia

DECIDED

1 December 2022

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2022 BCSC 2101 R. v. Sorenson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Sorenson, 2022 BCSC 2101 Date: 20221201 Docket: 32967-3 Registry: Vancouver Rex v. Steven Sean Sorenson Before: The Honourable Justice Fitzpatrick Reasons for Judgment (No Evidence Application) Counsel for the Crown: P. Sebellin The Accused, Steven Sorenson, appearing in person: S. Sorenson Amicus Curiae: T. Arbogast Place and Date of Application: Vancouver, B.C. November 18 and 21, 2022 Place and Date of Ruling with Written Reasons to Follow: Vancouver, B.C. November 21, 2022 Place and Date of Written Reasons: Vancouver, B.C. December 1, 2022

Introduction

- [1] In this jury trial, the accused, Steven Sean Sorenson, is charged with two counts of arson. He is alleged to have damaged two restaurants in Burnaby, BC by fire in the early morning hours of April 11, 2020, contrary to s. 434 of the Criminal Code, R.S.C. 1985, c. C-46. Count 1 relates to the Jang Mo Jib restaurant and Count 2 relates to the Sushi Oyama restaurant.
- [2] The trial commenced November 14, 2022 before a jury. On November 18, 2022, the Crown closed its case.
- [3] After the Crown closed its case, Mr. Sorenson made an application to dismiss the charge under Count 2 by which he is alleged to have committed arson with respect to the Sushi Oyama restaurant.
- [4] On November 21, 2022, I dismissed the no-evidence application, with written reasons to follow. These are those reasons. Relevant Legal Test
- [5] The Crown's case is largely circumstantial.
- [6] The relevant test in relation to circumstantial cases was recently discussed and summarized in R. v. A.S.D., 2021 BCCA 119. In that case, the court upheld the decision of this Court in applying the approach set out in R. v. Arcuri, 2001 SCC 54 at para. 23. Per Arcuri, a trial judge must engage in a "limited weighing" of circumstantial evidence to assess whether it is reasonably capable of supporting the inferences the Crown seeks to have drawn.
- [7] The court in A.S.D. stated:

- [99] In my view, there is no dispute that the test to be applied on a defence no-evidence motion in a circumstantial evidence case is the Shephard/Arcuri test. The Supreme Court of Canada was clear in Arcuri that the test for a no-evidence motion/directed verdict is the same test that governs committal following a preliminary inquiry: Arcuri at para. 21. The judge must ask whether there is any evidence upon which a reasonable trier of fact, following the law, could return a verdict of guilty. That exercise involves a limited weighing of the circumstantial evidence to assess whether it is reasonably capable of supporting the inferences the Crown asks the trier of fact to draw. However, the judge asks only whether the Crown evidence, if believed, could reasonably support an inference of guilt. A judge may not engage in weighing for the purpose of assessing whether the only rational inference to be drawn from the evidence is the accused's guilt. That type of weighing is done at the end of the trial in determining whether the Crown has met its burden of proof.
- [103] Similarly, in *R. v. Fraser*, 2016 BCCA 89 at para. 64, Madam Justice MacKenzie stated: "In a case where an element of the offence is not established by direct evidence, the judge must decide whether, assuming the circumstantial facts are proved, it would be 'reasonable' to make the inference needed to establish the element in issue." As held in *R. v. Sazant*, 2004 SCC 77 at para. 18, in the context of a committal for trial following a preliminary hearing, "where more than one inference can be drawn from the evidence, only the inferences that favour the Crown are to be considered."
- [8] Accordingly, on this application, I must not engage in a full weighing of the evidence on such an application, as that is within the purview of the jury. A limited weighing of the evidence only requires that the Crown establish at this stage that the circumstantial evidence could, if believed, reasonably support the inference of guilt that the Crown says arises. Background Facts
- [9] There is no eyewitness testimony as to identity of the person who set fire to the Sushi Oyama restaurant.
- [10] The Crown has introduced various video recordings taken in the morning hours of April 11, 2020 at the Sushi Oyama restaurant, located at 5152 Kingsway Avenue in Burnaby. In addition, the Crown has introduced video recordings at two other locations also from the morning hours of April 11, 2020. These are video recordings from a 7-11 store located in the same block as the restaurant and Royal Oak station, a BC Transit SkyTrain station (the "SkyTrain Station"), located a short distance from the restaurant.
- [11] The significant issue at this trial is the identity of the perpetrator, namely whether the person depicted in the video recordings at the restaurant is Mr. Sorenson.
- [12] The approximate timeline for the events in the video recordings is as follows:
- a) 2:48-2:49 a.m. - a person arrived at the 7-11 store;

- b) 5:22 a.m. - a person approached and climbed the stairs leading up to the Sushi Oyama restaurant and left almost immediately thereafter;
 - c) 5:23 a.m. - an item burst into flames at the top of the stairs at the Sushi Oyama restaurant and a fire started; and
 - d) 7:26 a.m. - a person arrived at the SkyTrain Station and continued onto the Columbia and Gateway stations.
- [13] The Crown's evidence includes a bulletin or Request to Identify that was sent out by the Burnaby RCMP shortly after the fire (the "Request"). The Request included two screenshots from the video footage at the 7-11 and SkyTrain Station.
- [14] On May 14, 2020, Cst. Bryce Sinclair identified Mr. Sorenson as the person shown in the screenshots in the Request based on his arrest of Mr. Sorenson for an unrelated reason just days earlier on May 9, 2020.
- [15] On November 14, 2022, in a voir dire, I ruled that the recognition evidence of Cst. Sinclair of the Burnaby RCMP was admissible. In his evidence at trial, Cst. Sinclair confirmed his identification of Mr. Sorenson in the screenshots found in the Request, and also identified him in certain clips from the 7-11 and SkyTrain footage. Discussion
- [16] As a result of this body of evidence, the Crown's theory is that the video recordings at the 7-11 and SkyTrain Station put Mr. Sorenson in the immediate area where the fires occurred both before and after the fire at the Sushi Oyama restaurant.
- [17] The video recordings taken at the Sushi Oyama restaurant show a person approaching the stairs to the restaurant, although the image is not very clear. It was dark outside. It is difficult to make out the facial features of the person. Yet the video recordings depict a person with something on their head who approaches the stairs with a square object in their left hand and show that person going up the stairs to the restaurant. Just after the person comes down the stairs and leaves, an object can be seen burning at the top of the stairs just at the doorway to the restaurant.
- [18] The Crown will suggest to the jury that a reasonable inference arises that this person was Mr. Sorenson, when comparing the footage at the restaurant to the distinctive clothing seen on Mr. Sorenson in the 7-11 and Skytrain footage. This distinctive clothing on the person is very visible in the 7-11 and SkyTrain footage and includes:
- a) white shoes;
 - b) jeans;
 - c) a long three-quarter trench coat; and

- d) a dark hoodie (with the hood over the person's head in the SkyTrain footage but behind the head in the 7-11 footage). The hoodie has a distinctive pattern on the front; namely a white box around "JOR" on top and "DAN" on the bottom and a white stripe between the "JOR" and "DAN" with "Air" on it.
- [19] The Crown suggests that the only reasonable inference that arises is that this was Mr. Sorenson given that the person in the footage at the restaurant is wearing the same distinctive clothing evident from the video recordings at the 7-11 and the SkyTrain Station. In addition, the Crown argues that Mr. Sorenson has a distinctive limp, as is said to be evident from the SkyTrain footage, that is consistent with the manner in which the person walked up to and approached the Sushi Oyama restaurant just before the fire.
- [20] Mr. Sorenson argues that this evidence is insufficient to establish that the only reasonable inference that arises is that he is the person in the footage at the Sushi Oyama restaurant.
- [21] Mr. Sorenson says the video recordings at the Sushi Oyama restaurant are very blurry and unclear. He says someone cannot even make out that the person has shoes on. He suggests that the jury cannot make out the distinctive features from the clothing of that person. Finally, he suggests that no limp is visible in the video footage at the restaurant in terms of the person's gait and may, in any event, have been caused by external factors at the restaurant.
- [22] The test for whether a conviction can be justified asks whether the circumstantial evidence, assessed in light of human experience, can exclude any other reasonable alternative: *R. v. Villaroman*, 2016 SCC 33 at para. 41. This test is to be applied by the jury. Mr. Sorenson's argument invites me, as the judge in this jury trial, to engage in a full weighing of the evidence before application of the Villaroman test, on the very issue that is before the trier of fact, namely Mr. Sorensen's guilt on Count 2. That is exactly what the court in *A.S.D.* has stated I am not to do on a no-evidence motion, as I may only engage in limited weighing at this stage, to ensure that the circumstantial evidence is capable of supporting the inferences sought by the Crown: paras. 94 and 101.
- [23] At this stage, I am satisfied from a limited weighing of the evidence presented by the Crown that the jury may reasonably consider this evidence as capable of supporting a guilty verdict in respect of Count 2. If the jury accepts the Crown's evidence, then it would be reasonable for them to conclude, under the Villaroman test, that the only reasonable inference that arises from all of the evidence is that Mr. Sorenson is the person in the Sushi Oyama restaurant video recordings and that he set the fire and damaged the restaurant.
- [24] Mr. Sorenson's arguments may succeed at the end of the day in relation to Count 2, but ultimately, it is a question for the jury, once properly instructed on the law, not me as the judge.

Conclusion

[25] Mr. Sorenson's application to dismiss the arson charge under Count 2 relating to the Sushi Oyama restaurant is dismissed. "Fitzpatrick J."

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