

CANADA / JUDGMENT

## R. v. Venneri

2012 SCC 33

### COURT

Supreme Court of Canada

### DECIDED

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R. v. Venneri

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[2012] 2 SCR 211

Case number

34523

Judges

McLachlin, Beverley; LeBel, Louis; Deschamps, Marie; Fish, Morris J.; Rothstein, Marshall; Cromwell, Thomas Albert; Moldaver, Michael J.

On appeal from

Quebec

Subjects

Criminal law

Notes

SCC Case Information: 34523

Decision Content

SUPREME COURT OF CANADA

Citation: R. v. Venneri, 2012 SCC 33, [2012] 2 S.C.R. 211

Date: 20120706

Docket: 34523

Between:

Her Majesty The Queen

Appellant

and

Carmelo Venneri

Respondent

Coram: McLachlin C.J. and LeBel, Deschamps, Fish, Rothstein, Cromwell and Moldaver JJ.

Reasons for Judgment:

(paras. 1 to 60)

Fish J. (McLachlin C.J. and LeBel, Deschamps, Rothstein, Cromwell and Moldaver JJ. concurring)

R. v. Venneri, 2012 SCC 33, [2012] 2 S.C.R. 211

Her Majesty The Queen Appellant

v.

Carmelo Venneri Respondent

Indexed as: R. v. Venneri

2012 SCC 33

File No.: 34523.

2012: April 16; 2012: July 6.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Rothstein, Cromwell and Moldaver JJ.

on appeal from the court of appeal for quebec

Narcotics — Possession for purpose of trafficking — Constructive or joint possession — Trial judge finding that accused conspired with others to engage in drug trafficking — Whether accused jointly possessed cocaine seized at co-conspirators' homes — Whether possession of cocaine was foreseeable consequence of conspiring to traffic in cocaine — Whether conviction of accused amounted to unreasonable verdict within meaning of s. 686(1) (a)(i) of Criminal Code, R.S.C. 1985, c. C-46 — Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 5(2) .

Criminal law — Criminal organization — Instructing commission of offence for criminal organization — Accused purchasing drugs from and supplying drugs to large drug-trafficking organization — Degree of organization or structure required to support finding that group constitutes “criminal organization” — Whether trial judge erred in finding that accused was member of criminal organization — Criminal Code, R.S.C. 1985, c. C-46, s. 467.1 “criminal organization”, s. 467.13 .

Criminal law — Criminal organization — Commission of offence for criminal organization — Accused purchasing drugs from and supplying drugs to large drug-trafficking organization — Whether trial judge erred in finding that accused operated in association with criminal organization when he acted as its client and its supplier — Meaning of phrase “in association with” in s. 467.12 of Criminal Code, R.S.C. 1985, c. C-46 .

A police investigation called “Operation Piranha” revealed that D was operating a large drug-trafficking network in the Montréal area. The wiretap and physical surveillance eventually led to two large seizures of cocaine in October of 2005, from the homes of two accomplices of D. Following the seizures, D turned to V for assistance when his previous source refused to supply him with additional cocaine. It was then that V, who previously had purchased drugs from D, began to supply D instead. This arrangement ended in March of 2006 when V was arrested following a search of his home, where the police seized, among other things, nine grams of cocaine, a firearm, and a large sum of cash. The trial judge convicted V of eight offences, including the commission of an offence for a criminal organization (count 3), instructing the commission of an offence for a criminal organization (count 5), and possession of cocaine for the purpose of trafficking (count 4). The majority of the Court of Appeal entered acquittals for both criminal organization offences. It found that V was not a member of a criminal organization and had not trafficked in cocaine “for the benefit of” or “in association with” a criminal organization. It also quashed V’s conviction for possession of cocaine for the purpose of trafficking.

Held: The appeal should be allowed for the sole purpose of setting aside V’s acquittal on count 3.

The Crown failed to prove that the drugs seized bore any relation to the conspiracy of which V was a part. Absent that evidence, V’s conviction on the count of possession of cocaine for the purpose of trafficking amounts to an unreasonable verdict.

To secure a conviction under s. 467.13 of the Criminal Code , the Crown must prove, as a preliminary matter, the existence of a “criminal organization”, as defined in s. 467.1 , and membership in it. By insisting that criminal groups be “organized”, Parliament has made plain that some form of structure and degree of continuity are required to engage the organized crime provisions that are part of the exceptional regime it has established under the Criminal Code . Courts must not limit the scope of the provision to the stereotypical model of organized crime. In this case, V was an associate of D rather than a member of his criminal organization. V operated with a high degree of independence and showed little or no apparent loyalty to D and his associates. They did not share mutual clients. Nor did V have any real stake or financial interest in D’s organization. The dealings between V and D were autonomous transactions between

like-minded criminals, each guided by their own self-interest. At all times, V was only a client or supplier of the organization — an independent opportunist. He played no role within the organization.

The fact that V was not a member of D's organization does not preclude a finding that V operated "in association with" the organization when he acted as its client and its supplier contrary to s. 467.12 of the Criminal Code . The phrase "in association with" captures offences that advance, at least to some degree, the interests of a criminal organization. It requires a connection between the predicate offence and the organization, as opposed to simply an association between the accused and the organization. The Crown must also demonstrate that an accused knowingly dealt with a criminal organization. There is ample evidence that V knew that D was operating a large drug-trafficking organization — or made himself wilfully blind to that obvious fact. And the evidence leaves no room for doubt as to the required nexus between D's organization and the offence of trafficking committed by V. The organization received a direct benefit from the commission of the offence.

### Cases Cited

Distinguished: *Zanini v. The Queen*, [1967] S.C.R. 715; referred to: *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381; *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869; *R. v. Atkins*, 2010 ONCJ 262 (CanLII); *R. v. Speak*, 2005 CanLII 51121; *R. v. Sharifi*, [2011] O.J. No. 3985 (QL); *R. v. Battista*, 2011 ONSC 4771; *R. v. Terezakis*, 2007 BCCA 384, 223 C.C.C. (3d) 344; *R. v. Lindsay*, 2005 CanLII 24240; *R. v. Drecic*, 2011 ONCA 118, 276 O.A.C. 198; *R. v. Lindsay* (2004), 70 O.R. (3d) 131, aff'd 2009 ONCA 532, 245 C.C.C. (3d) 301.

### Statutes and Regulations Cited

Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 5(2) .

Criminal Code, R.S.C. 1985, c. C-46, ss. 21 , 465(1) , 467.1 "criminal organization", 467.12, 467.13, 686(1)(a)(i).

### International Documents

United Nations Convention against Transnational Organized Crime, 2225 U.N.T.S. 275, arts. 2(a) "Organized criminal group", (c) "Structured group", 5.

### Authors Cited

Canada. House of Commons. Standing Committee on Justice and Human Rights. Evidence of the Standing Committee on Justice and Human Rights, 1st Sess., 37th Parl., May 8, 2001 (online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=652649&Language=E&Mode=1&Parl=37&Ses=1>).

Grand Robert de la langue française (electronic version), "organisation", "organiser".

Hastie, Miles. “The Separate Offence of Committing a Crime ‘In Association with’ a Criminal Organization: Gang Symbols and Signs of Constitutional Problems” (2010), 14 Can. Crim. L. Rev. 79.

Orlova, Alexandra V., and James W. Moore. “‘Umbrellas’ or ‘Building Blocks’?: Defining International Terrorism and Transnational Organized Crime in International Law” (2005), 27 Hous. J. Int’l L. 267.

Shorter Oxford English Dictionary on Historical Principles, 6th ed., vol. 2. Oxford: Oxford University Press, 2007, “organized”.

APPEAL from a judgment of the Quebec Court of Appeal (Beauregard, Rochon and Duval Hesler JJ.A.), 2011 QCCA 1957, [2011] J.Q. no 15190 (QL), 2011 CarswellQue 11387, setting aside in part the convictions entered by St-Cyr J.C.Q., 2009 QCCQ 1916, [2009] J.Q. no 1712 (QL), 2009 CarswellQue 1865. Appeal allowed in part.

Marc Cigana and Gaston Paul Langevin, for the appellant.

Marie-Hélène Giroux, Clément Monterosso and Vincent Desbiens, for the respondent.

The judgment of the Court was delivered by

Fish J. —

## I

- [1] The respondent, Carmelo Venneri, was tried jointly with two other alleged members of a criminal organization on a multi-count indictment. The trial judge convicted Venneri of eight offences, including the commission of an offence for a criminal organization, contrary to s. 467.12 of the Criminal Code, R.S.C. 1985, c. C-46 (count 3); instructing the commission of an offence for a criminal organization, contrary to s. 467.13 of the Code (count 5); and possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 (count 4) (2009 QCCQ 1916 (CanLII)).
- [2] The Quebec Court of Appeal entered acquittals on counts 3 and 5, which both alleged criminal organization offences. For the majority, Beauregard J.A. found that Venneri was not a member of a criminal organization and had neither trafficked nor instructed anyone to traffic in cocaine “for the benefit of” or “in association with” a criminal organization, within the meaning of ss. 467.12 and 467.13 of the Code (2011 QCCA 1957 (CanLII)).
- [3] The Court of Appeal also quashed Venneri’s conviction for possession of cocaine for the purpose of trafficking (count 4). The majority held, correctly in my view, that the evidence failed to demonstrate that Venneri jointly possessed the cocaine seized at the homes of two unindicted co-conspirators in October of 2005.
- [4] In dissent, Duval Hesler J.A. (as she then was) found that the verdicts rendered by the trial judge were supported by the evidentiary record.

- [5] I agree with Beauregard J.A. that the Crown failed to prove that Venneri was a member of a criminal organization. Unlike Beauregard J.A., however, I am satisfied that Venneri trafficked in cocaine “in association with” a criminal organization, as alleged in count 3 of the indictment.
- [6] I would therefore affirm the acquittals entered by the Court of Appeal on counts 4 and 5, but restore Venneri’s conviction on count 3.

## II

- [7] The charges against Venneri arose out of a police investigation called “Operation Piranha”, which lasted nine months and, in March of 2006, resulted in the arrests of 23 individuals. During the course of the investigation, the police obtained two wiretap authorizations, pursuant to which they intercepted over 137,750 telephone conversations.
- [8] The investigation revealed that Louis-Alain Dauphin was operating a large drug-trafficking network in the Montréal area. At the direction of Dauphin, an accomplice, Michael Russell, would transport the drugs from British Columbia to Quebec, where they were then stored at the homes of two other co-conspirators, Jean Bilodeau and Robert Marchand.
- [9] The surveillance revealed as well that in the summer and fall of 2005, Venneri regularly purchased cocaine from Dauphin for the purpose of trafficking.
- [10] The wiretap and physical surveillance eventually led to two large seizures of cocaine in October of 2005, from the homes of Marchand and Bilodeau. Following the seizures, Dauphin turned to Venneri for assistance when his previous source refused to supply him with additional cocaine. It was then that Venneri, who previously had purchased drugs from Dauphin, began to supply Dauphin instead.
- [11] The trial judge found that Venneri then became [translation] “an important pillar” in securing Dauphin’s supply (para. 95). This arrangement ended in March of 2006 when Venneri was arrested following a search of his home, where the police seized, among other things, nine grams of cocaine, a firearm, and a large sum of cash.
- [12] The trial judge found as well that Venneri had conspired with several others to engage in drug trafficking between July of 2005 and March of 2006. He based this conclusion on numerous intercepted telephone conversations, during which Venneri and others used coded language to negotiate prices and arrange deliveries of cocaine (paras. 55-57 and 104-11).
- [13] Finally, with respect to the criminal organization offences, the trial judge concluded that Venneri was a member of Dauphin’s organization and had instructed one of his co-accused, Jean-Daniel Blais, to traffic in drugs on the organization’s behalf (para. 370).

- [14] In the result, the trial judge convicted Venneri of conspiracy to traffic in narcotics; trafficking in narcotics; committing an offence for a criminal organization; possession of cocaine for the purpose of trafficking (two counts); instructing the commission of an offence for a criminal organization; possession of a prohibited weapon; and, possession of a restricted firearm.

### III

- [15] The Crown seeks to have Venneri's conviction on count 4 restored.
- [16] The Court of Appeal quashed that conviction on the ground that it was unreasonable within the meaning of s. 686(1)(a)(i) of the Code. I agree with that conclusion: No properly instructed jury acting judicially could reasonably have rendered that verdict: *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381, at para. 36.
- [17] The only evidence linking Venneri to the drugs seized at the homes of Marchand and Bilodeau was the presence of symbols and expressions on the cocaine packaging that were consistent with expressions used by Venneri in telephone conversations concerning drug deals. But nothing indicates that those symbols were not used in other drug transactions completely unrelated to Venneri. In oral argument, the Crown conceded that there were no intercepted communications which explicitly linked Venneri to the drugs seized in 2005.
- [18] The Crown contends that Venneri's conviction can be upheld pursuant to s. 21(2) of the Code because possession of cocaine was a foreseeable consequence of conspiring to traffic in cocaine.
- [19] In this regard, the Crown relies on *Zanini v. The Queen*, [1967] S.C.R. 715, where, on the basis of s. 21(2), the accused was found guilty of possessing housebreaking instruments. *Zanini* formed a common intention with two others to carry out a break and enter, and then waited in a car with the motor running while his accomplices broke into the home with a screwdriver. The trial judge instructed the jury that they could find the accused guilty pursuant to s. 21(2) if they found that he knew or ought to have known that his accomplices would possess the tools necessary to carry out their joint purpose — the burglary they were found committing.
- [20] On its facts, *Zanini* is plainly distinguishable from this case. In *Zanini*, there was a clear nexus between the housebreaking instruments found on the co-conspirators and the burglary they committed. As the Court explained, the housebreaking instrument in question, a screwdriver, "was in fact used to break in by the back door" (*Zanini*, at p. 720). In the present matter, no such nexus was established between the conspiracy involving Venneri and the drugs seized from the homes of Marchand and Bilodeau in 2005. Venneri was not Dauphin's only customer and the Crown failed to prove that the drugs seized bore any relation to the conspiracy of which he was a part.

- [21] Absent that evidence, Venneri's conviction on count 4 amounts to an unreasonable verdict, a conclusion supported by the absence in the judgment at trial of any reasons to support a finding that Venneri had constructive or joint possession of the cocaine seized in 2005: see *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at paras. 34 and 38.
- [22] The Crown also argues that the conviction can be upheld solely on the basis of the conspiracy between Venneri and others to traffic in cocaine. In essence, the Crown maintains that the ongoing communications between Venneri and other members of the conspiracy demonstrate that he must have possessed cocaine, alone or in common with others, at some point between July of 2005 and March of 2006. In my view, the Crown is not relieved of proving the elements of possession simply by establishing the existence of a conspiracy to traffic in cocaine.

#### IV

- [23] I turn now to consider the criminal organization offences alleged against Venneri.
- [24] The Crown maintains that Venneri, as a member of Dauphin's organization, instructed another individual to traffic in cocaine for the "benefit of, at the direction of, or in association with" the organization, contrary to s. 467.13 of the Code. Section 467.13 provides:

467.13 (1) Every person who is one of the persons who constitute a criminal organization and who knowingly instructs, directly or indirectly, any person to commit an offence under this or any other Act of Parliament for the benefit of, at the direction of, or in association with, the criminal organization is guilty of an indictable offence and liable to imprisonment for life.

- (2) In a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that
- (a) an offence other than the offence under subsection (1) was actually committed;
  - (b) the accused instructed a particular person to commit an offence; or
  - (c) the accused knew the identity of all of the persons who constitute the criminal organization.

- [25] To secure a conviction under s. 467.13, the Crown must prove, as a preliminary matter, the existence of a criminal organization and Venneri's membership in it. "Criminal organization" is defined in s. 467.1 as follows:

467.1 (1) . . .

*"criminal organization" means a group, however organized, that*

- (a) is composed of three or more persons in or outside Canada; and

- (b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

It does not include a group of persons that forms randomly for the immediate commission of a single offence.

- [26] The parties disagree as to the degree of organization or structure required to support a finding that a group of three or more persons constitutes a criminal organization under the Code.
- [27] Some trial courts have found that very little or no organization is required before a group of individuals are potentially captured by the regime: see *R. v. Atkins*, 2010 ONCJ 262 (CanLII); *R. v. Speak*, 2005 CanLII 51121 (Ont. S.C.J.). Others, properly in my view, have held that while the definition must be applied “flexibly”, structure and continuity are still important features that differentiate criminal organizations from other groups of offenders who sometimes act in concert: see *R. v. Sharifi*, [2011] O.J. No. 3985 (QL) (S.C.J.), at paras. 37 and 39; *R. v. Battista*, 2011 ONSC 4771, at para. 16.
- [28] In *R. v. Terezakis*, 2007 BCCA 384, 223 C.C.C. (3d) 344, Mackenzie J.A. explained in these terms the need for flexibility in applying the statutory definition of “criminal organization”:
- The underlying reality is that criminal organizations have no incentive to conform to any formal structure recognized in law, in part because the law will not assist in enforcing illegal obligations or transactions. That requires a flexible definition that is capable of capturing criminal organizations in all their protean forms. [para. 34]
- [29] I agree with Mackenzie J.A. that a flexible approach favours the objectives of the legislative regime. In this context, flexibility signifies a purposive approach that eschews undue rigidity. That said, by insisting that criminal groups be “organized”, Parliament has made plain that some form of structure and degree of continuity are required to engage the organized crime provisions that are part of the exceptional regime it has established under the Code.
- [30] Qualifying “organized” in s. 467.1 by “however” cannot, as a matter of language or logic, be taken to signify that no element of organization is required at all. “Organized” necessarily connotes some form of structure and co-ordination, as appears from the definition of “organized” in the Shorter Oxford English Dictionary on Historical Principles (6th ed. 2007), vol. 2:

Formed into a whole with interdependent parts; coordinated so as to form an orderly structure; systematically arranged. [Emphasis added; p. 2023.]

In French, the definitions in *Le Grand Robert de la langue française* (electronic version) are consistent with this: it defines the noun “organisation” as the [translation] “[a]ction of organizing (something); the result of such an action” and the verb “organiser” as “[t]o give a specific structure or composition, order, or method of functioning or administration to” (emphasis added).

[31] “However” and “organized” — the two words read together, as they are written — are complementary and not contradictory. Thus, the phrase “however organized” is meant to capture differently structured criminal organizations. But the group must nonetheless, at least to some degree, be organized. Disregarding the requirement of organization would cast a net broader than that intended by Parliament.

[32] The United Nations Convention against Transnational Organized Crime, 2225 U.N.T.S. 275, also suggests that some degree of structure is required of a group before the statutory scheme is triggered. Canada has an obligation under the Convention to establish criminal offences which target participation in the activities of an “organized criminal group” (see Art. 5). The Convention defines “organized criminal group” this way:

(a) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

...

(c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure; [Art. 2]

[33] The similarities between the definition of “criminal organization” in the Code and the definition of “organized criminal group” in the Convention are self-evident. And, notably, while the Convention does not require a “developed structure”, an “organized criminal group” must nonetheless be “structured”.

[34] Comments made by the Minister of Justice and Attorney General of Canada during the enactment of Bill C-24 confirm that its target was organized crime. As the then-Minister explained:

One of the major initiatives of Bill C-24 addresses participation in the activities of criminal organizations in a new and powerful way. First, we have proposed a new definition of “criminal organization” with new offences and sentencing regimes, which will make it easier to target and punish organized criminal activity. [Emphasis added.]

(Hon. Anne McLellan, Evidence of the Standing Committee on Justice and Human Rights, No. 11, 1st Sess., 37th Parl., May 8, 2001, at 8:45)

- [35] The structured nature of targeted criminal organizations also sets them apart from criminal conspiracies: see Sharifi, at para. 39. Stripped of the features of continuity and structure, “organized crime” simply becomes all serious crime committed by a group of three or more persons for a material benefit. Parliament has already criminalized that activity through the offences of conspiracy, aiding and abetting, and the “common intention” provisions of the Code (see, e.g., ss. 21 and 465(1) ). The increased penalties and stigma associated with the organized crime regime distinguish it from these offences.
- [36] Working collectively rather than alone carries with it advantages to criminals who form or join organized groups of like-minded felons. Organized criminal entities thrive and expand their reach by developing specializations and dividing labour accordingly; fostering trust and loyalty within the organization; sharing customers, financial resources, and insider knowledge; and, in some circumstances, developing a reputation for violence. A group that operates with even a minimal degree of organization over a period of time is bound to capitalize on these advantages and acquire a level of sophistication and expertise that poses an enhanced threat to the surrounding community.
- [37] Counsel for Venneri suggests that the criteria outlined in *R. v. Lindsay*, 2005 CanLII 24240 (Ont. S.C.J.), and considered in Battista, should be accepted by this Court as a means by which to gauge whether a given group has the necessary attributes of a criminal organization (see paras. 854-62). The “common” characteristics of criminal organizations identified in *Lindsay* may well be “common” to highly sophisticated criminal entities, such as notorious motorcycle gangs, Colombian drug cartels, and American “crime families”.
- [38] Care must be taken, however, not to transform the shared attributes of one type of criminal organization into a “checklist” that needs to be satisfied in every case. None of these attributes are explicitly required by the Code, and a group that lacks them all may nonetheless satisfy the statutory definition of “criminal organization”.
- [39] The difficulty and disadvantage of setting out what may be perceived as a prescriptive “checklist” is aptly described by Alexandra Orlova and James Moore in the following passage:

It is notable that while the definition of an “organized criminal group” refers to some elements that characterize such groups, other equally valid elements, frequently discussed in legal and academic debates, are omitted. For example, no references are made to the potential for the utilization of violence and corruption, which are arguably some of the most commonly utilized methods by organized criminal entities. In part, the omissions are understandable as it is rather difficult and arguably not that useful to create a “check-list” definition of organized crime that incorporates all possible elements of organized criminal groups. The challenge of creating a comprehensive “check-list” stems in part from the lack of consistency between organized criminal groups as well as their constantly changing and evolving nature as a response to changes in legitimate societal structures. [Emphasis added; footnotes omitted.]

(“‘Umbrellas’ or ‘Building Blocks’?: Defining International Terrorism and Transnational Organized Crime in International Law” (2005), 27 Hous. J. Int’l L. 267, at p. 284)

- [40] It is preferable by far to focus on the goal of the legislation, which is to identify and undermine groups of three or more persons that pose an elevated threat to society due to the ongoing and organized association of their members. All evidence relevant to this determination must be considered in applying the definition of “criminal organization” adopted by Parliament. Groups of individuals that operate on an ad hoc basis with little or no organization cannot be said to pose the type of increased risk contemplated by the regime.
- [41] Courts must not limit the scope of the provision to the stereotypical model of organized crime — that is, to the highly sophisticated, hierarchical and monopolistic model. Some criminal entities that do not fit the conventional paradigm of organized crime may nonetheless, on account of their cohesiveness and endurance, pose the type of heightened threat contemplated by the legislative scheme.
- [42] In the present matter, the trial judge found that Dauphin operated a large drug-trafficking organization in the Montréal area. This finding is not seriously contested. The more contentious issue is whether Venneri was a member of that organization, exposing him to conviction under s. 467.13 of the Code. In this regard, I agree with Beauregard J.A. that Venneri was an associate of Dauphin rather than a member of his organization.
- [43] Venneri was an autonomous, albeit regular, customer of Dauphin in the summer and fall of 2005. But Dauphin was not his sole supplier. Venneri operated with a high degree of independence and showed little or no apparent loyalty to Dauphin and his associates. They did not share mutual clients. Nor did Venneri have any real stake or financial interest in Dauphin’s organization. These strike me as the most relevant factors in the circumstances of this case.
- [44] Moreover, Russell, Bilodeau and Marchand all took direction from Dauphin and performed clearly defined functions. Venneri, on the contrary, operated at arm’s length from the organization. Nothing in the record indicates that Dauphin exercised any measure of control over Venneri. While Dauphin did at times ask Venneri to provide drugs to other sub-distributors, he did so only when Venneri was unable to sell the drugs quickly to satisfy his debt. In those circumstances, Dauphin was simply diverting the drugs Venneri could not sell to a more solvent customer.
- [45] Venneri’s later activity as a supplier to Dauphin was nothing more than an arm’s length, mutually beneficial arrangement. Venneri did not provide Dauphin with drugs out of loyalty or direct interest in the viability of Dauphin’s business. Venneri simply exploited a business opportunity brought about by Dauphin’s misfortune.

- [46] In sum, the dealings between Venneri and Dauphin were autonomous transactions between like-minded criminals, each guided by their own self-interest. At all times, Venneri was only a client or supplier of the organization — an independent opportunist. He played no role within the organization. With respect, the trial judge erred in law in concluding, on the facts as he found them, that Venneri was a member of Dauphin's criminal organization.
- [47] In the alternative, the Crown contends that even if Venneri was not a member of Dauphin's larger criminal organization, Venneri, Dauphin, Gauthier and Blais constituted a separate and overlapping criminal organization whose sole purpose was to traffic in cocaine.
- [48] I agree with Beauregard J.A. that the Crown has failed to show that these four individuals were part of a criminal organization within the meaning of the Code. On the evidence accepted by the trial judge, Gauthier and Dauphin may well have operated as "a gang of two". Venneri, on the other hand, appears to have acted independently and has not been shown to have constituted, with Gauthier and Dauphin, a "gang of three". Finally, the trial judge was not persuaded that Blais had conspired with Dauphin, Russell or Venneri.
- [49] The Crown's alternative submission fails essentially for these reasons.

## V

- [50] The Crown contends that Venneri trafficked in drugs "for the benefit of, at the direction of, or in association with" Dauphin's criminal organization, contrary to s. 467.12 of the Code.
- [51] The fact that Venneri was not a member of Dauphin's organization does not preclude a conviction on this count. And, in my view, the evidence fully supports the trial judge's finding that Venneri operated "in association with" the organization when he acted as its client and its supplier.

- [52] Section 467.12 of the Code provides:

467.12 (1) Every person who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of, or in association with, a criminal organization is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

- (2) In a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that the accused knew the identity of any of the persons who constitute the criminal organization.

- [53] The phrase "in association with" should be interpreted in accordance with its plain meaning and statutory context. It is accompanied here by the terms "at the direction of" and "for the benefit of". These phrases are not mutually exclusive. On the contrary, they have a shared purpose and will often overlap in their application. Their common objective is to suppress organized crime. To this end, they especially target offences that are connected to the activities of criminal organizations and advance their interests.

[54] Considered in this light, the phrase “in association with” captures offences that advance, at least to some degree, the interests of a criminal organization — even if they are neither directed by the organization nor committed primarily for its benefit. As noted by Miles Hastie:

The phrase “in association with” should capture, like its siblings, an interest of the criminal organization in the predicate offence. The accused need not carry out the predicate offence exclusively for the criminal organization: the accused may (and, as an organization member, will usually) entertain other selfish motives. But offences committed for wholly selfish purposes should not generate liability. On some level, the offence must only capture actions with and for the criminal organization. [Emphasis added; emphasis in original deleted; footnote omitted.]

(“The Separate Offence of Committing a Crime ‘In Association with’ a Criminal Organization: Gang Symbols and Signs of Constitutional Problems” (2010), 14 Can. Crim. L. Rev. 79, at p. 91)

[55] The phrase “in association with” requires a connection between the predicate offence and the organization, as opposed to simply an association between the accused and the organization: see *R. v. Drecic*, 2011 ONCA 118, 276 O.A.C. 198, at para. 3. In *R. v. Lindsay* (2004), 70 O.R. (3d) 131 (S.C.J.), *aff’d* 2009 ONCA 532, 245 C.C.C. (3d) 301, the trial judge, correctly in my view, interpreted the phrase “in association with” as follows:

The phrase “in association with” is not impermissibly vague. The phrase is intended to apply to those persons who commit criminal offences in linkage with a criminal organization, even though they are not formal members of the group. The Oxford English Dictionary (10th ed.) defines the phrase “associate oneself with” to mean, “allow oneself to be connected with or seen to be supportive of”. The phrase “in association with” requires that the accused commit a criminal offence in connection with the criminal organization. Whether the particular connection is sufficient to satisfy the “in association with” requirement will be for a court to determine, based on the facts of the case. [Emphasis added; para. 59.]

[56] As mentioned earlier, an offender may commit an offence “in association with” a criminal organization of which the offender is not a member. Membership in an organization, however, remains a relevant factor in determining whether the required nexus between the offence and the organization has been made out (see *Drecic*, at para. 3).

[57] The Crown must also demonstrate that an accused knowingly dealt with a criminal organization. The stigma associated with the offence requires that the accused have a subjective mens rea with respect to his or her association with the organization (see *Lindsay* (2004 S.C.J.), at para. 64).

[58] There is ample evidence that Venneri knew that Dauphin was operating a large drug-trafficking organization — or made himself wilfully blind to that obvious fact. And the evidence leaves no room for doubt as to the required nexus between Dauphin’s organization and the offence of trafficking committed by Venneri. The organization received a direct benefit from the commission of the offence.

[59] This was particularly evident after the 2005 seizures of cocaine when, as noted by the trial judge, Venneri became [translation] “an important pillar” in terms of supply. The evidence establishes that Dauphin was unable to secure cocaine without the assistance of Venneri. Manifestly, Venneri trafficked “in association with” the organization when he secured for it a source of supply following the 2005 seizures.

## VI

[60] For all of these reasons, as stated at the outset, I would allow the appeal for the sole purpose of setting aside Venneri’s acquittal on count 3, and otherwise affirm the judgment of the Court of Appeal.

Appeal allowed in part.

Solicitor for the appellant: Poursuites criminelles et pénales du Québec, Montréal.

Solicitors for the respondent: Monterosso Giroux, Montréal.

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