
CANADA / JUDGMENT

R. v. Zoraik

2012 BCCA 283

COURT

British Columbia Court of Appeal

DECIDED

26 June 2012

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

2012 BCCA 283 R. v. Zoraik

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Zoraik,

2012 BCCA 283

Date: 20120626

Docket: CA038561

Between:

Regina

Respondent

And

Malcolm Zoraik

Appellant

Corrected Judgment: The first paragraph has been corrected on August 24, 2012. The word "convicted" has been substituted with "found guilty" and the following sentence inserted immediately thereafter: "A judicial stay of proceedings was entered on the count of obstruction of justice, applying R. v. Kineapple, [1975] 1 S.C.R. 729, and convictions were entered on the remaining two counts."

Before:

The Honourable Madam Justice Ryan

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Groberman

On appeal from: Provincial Court of British Columbia, June 14, 2010

(R. v. Zoraik, Victoria Docket Number 147561)

Counsel for the Appellant:

P. Firestone

Counsel for the Respondent:

D. Scanlan

Place and Date of Hearing:

Victoria, British Columbia

February 22, 2012

Place and Date of Judgment:

Vancouver, British Columbia

June 26, 2012

Written Reasons by:

The Honourable Madam Justice Saunders

Concurred in by:

The Honourable Madam Justice Ryan

The Honourable Mr. Justice Groberman

Reasons for Judgment of the Honourable Madam Justice Saunders:

- [1] Mr. Zoraik was found guilty by Judge Brooks on June 14, 2010, on three counts: public mischief contrary to s. 140(2) of the Criminal Code, R.S.C. 1985, c. C-46; obstruction of justice contrary to s. 139(2) of the Code; and fabrication of evidence contrary to s. 137 of the Code. A judicial stay of proceedings was entered on the count of obstruction of justice, applying *R. v. Kineapple*, [1975] 1 S.C.R. 729, and convictions were entered on the remaining two counts. He appeals from those convictions on numerous grounds relating to the learned judge's treatment of and conclusions drawn from several pieces of evidence on the issue of identity, which was the central issue at trial. As I will explain, I am not persuaded that the reasons for judgment demonstrate error. I consider the matters he raises on appeal address conclusions drawn by the judge acting within his proper purview as trier of fact, and do not provide a basis for us to interfere with the verdicts he reached.

The Circumstances

- [2] At the time of the events giving rise to the present appeal, Mr. Zoraik was a lawyer who had practiced law in the Victoria area for several years. In April 2009 Mr. Zoraik acted as counsel for the plaintiff in an action for damages arising from an accident many years previous in which the plaintiff, now an adult but at the time of the accident a seven-year old child, was struck by a motor vehicle. The case was tried before a judge and jury. The trial concluded with a verdict finding no liability on the part of the defendant, arrived at by the jury after a mere 20 minutes of deliberations. Immediately after the jury delivered its verdict Mr. Zoraik asked the judge to decline to enter judgment because of the brevity of the jury's deliberations. That application was adjourned to May 13, 2009, with submissions to be filed by May 11, 2009. The hearing of the motion was later adjourned by the judge to a date in July 2009.
- [3] The events giving rise to the charges against Mr. Zoraik occurred on May 6, 2009. On that day an envelope containing a letter alleging jury tampering was found on a counter in a small alcove beside the Court Registry. The alcove, referred to as Room 218, contains a counter, two computers, a desk and a photocopier, all for the use of members of the public in searching files. The letter in the envelope found in Room 218 purported to be from the husband of a juror on a civil action alleging that his wife had been "offered money for her vote in the court". The description of the case set out in the letter matched the civil case on which Mr. Zoraik had acted as plaintiff's counsel and in respect to which his application to refuse to enter judgment remained outstanding. There was, in fact, no truth to the statement in the letter but its existence required investigation. In the result Mr. Zoraik was charged with creating and depositing the letter in the courthouse in a way that contravened the sections of the Criminal Code identified above.
- [4] The trial of the charges against Mr. Zoraik focused heavily upon evidence relating to a fingerprint found on the envelope, and evidence of video footage captured on May 6, 2009 by security cameras in the Victoria courthouse. As well, the court heard evidence of media interviews given by Mr. Zoraik on the short deliberations of the jury in the civil trial, evidence of his financial situation, evidence from Mr. Zoraik denying any involvement in the creation or deposit of the envelope, and evidence as to Mr. Zoraik's good character (evidence of general reputation).
- [5] The hard drive containing the video footage was admitted into evidence, along with a single video recording compiled from portions of the raw footage showing Mr. Zoraik's movements within the courthouse on the morning in question. The various cameras captured images of the entrance, the fifth floor on which the library is located and, significant to this appeal, Room 218. The footage revealed Mr. Zoraik entering the courthouse prior to the discovery of the envelope, walking by Room 218 where two persons were present at the counter, moving away from that area to the elevators, attending at the library on the fifth floor, and returning to Room 218, now occupied by only one other person seated at the desk with his back to the counter. The video footage of Room 218 was captured by a camera that makes a 74 second

revolution and does so at the slowed rate of 6 frames per second. These two features mean the footage is not a complete record of everything that occurred while Mr. Zoraik was in Room 218. The footage of Room 218 shows the counter clear of objects, and then the appearance of a white object upon it. The object was found by the judge to be the envelope containing the letter. At the time the envelope is first visible in the video footage, Mr. Zoraik is present in Room 218 with his back to the camera. The footage does not show Mr. Zoraik touching the envelope.

- [6] The fingerprint evidence concerned a print found on the back flap of the envelope. Opinion evidence was tendered from two witnesses qualified as expert in fingerprint identification. The witness who first dealt with the fingerprint initially concluded that Mr. Zoraik was excluded as the source of the print. He later re-examined the evidence and revisited that opinion. On his re-examination the witness referred to an image of the fingerprint showing more detail than the image upon which his first opinion had been based. Comparisons made using this more detailed image led him to conclude the print had come from Mr. Zoraik's left index finger. The witness then sought an independent opinion of the fingerprint analysis from a member of an outside police force. The second expert also concluded the fingerprint found on the envelope had come from Mr. Zoraik's left index finger.
- [7] At trial, counsel on behalf of Mr. Zoraik urged the judge to find a reasonable doubt based upon the first expert's initial opinion, and argued for the rejection of the opinion of the second expert. The judge found the evidence of the first expert to be flawed and accepted the "expertise, methodology and reliability" of the second expert. On that basis he did not accept either opinion of the first expert and accepted the opinion of the second expert that the print on the envelope was a fingerprint from Mr. Zoraik's left hand. As to the initial opinion of the first expert, the judge said, "As rejected evidence it can form no part of the reasoning process leading to a verdict".
- [8] Mr. Zoraik also urged the judge to find a reasonable doubt on the basis of the absence of evidence of post offence conduct suggesting that he was the source of the letter; the "tunnel vision" of police in focussing upon him as a suspect to the exclusion of other theories; the absence of a proven motive for him to commit the offences; and the evidence of his good character. The judge rejected these submissions and further found that Mr. Zoraik was not a credible witness. Addressing Mr. Zoraik's evidence, he referred to *R. v. W.D.*, [1991] 1 S.C.R. 742, 3 C.R. (4th) 302, and concluded that he was satisfied beyond a reasonable doubt that Mr. Zoraik is the person who deposited the envelope in Room 218.

Grounds of Appeal

- [9] Mr. Zoraik advances numerous grounds of appeal. He says:
1. the judge erred in accepting the fingerprint opinion evidence from the second expert and in failing to find a reasonable doubt based upon the initial opinion of the first expert;

2. the judge erred in law in finding that the compilation of video footage satisfies the test for admissibility of videotape evidence set out in *R. v. Nikolovski*, [1996] 3 S.C.R. 1197, 141 D.L.R. (4th) 647;
 3. the judge erred in law in finding that the envelope and letter are the items seen in the video footage in circumstances in which continuity of the items was not proved;
 4. the judge erred in identifying him as the person who deposited the letter on the counter by relying upon an edited version of the video footage and by misconstruing the evidence of the police officer who compiled that version;
 5. the judge erred in law in respect to post offence conduct;
 6. the judge erred in law in respect to the absence of motive for the offences alleged and drew conclusions as to motive that were speculative at best; and
 7. the judge erred in law in his treatment of evidence of his good character and in making an adverse finding in respect to his credibility.
- [10] The Crown contends the grounds of appeal amount to an invitation to this court to substitute our view of the evidence for that of the trial judge. That is, I consider, a fair description of the grounds of appeal when viewed globally. In essence Mr. Zoraik submits that the judge's findings, based largely on the video footage and the fingerprint analysis, are unreasonable and that the judge erred in respect to three other aspects of the case: the rejection of his evidence and the finding it did not raise a reasonable doubt; the failure to give weight to the absence of a proven motive and accordingly to find a reasonable doubt; and the failure to find a reasonable doubt based upon evidence of his good character.
- [11] This court is constrained in deciding appeals that challenge findings of fact and credibility made by the trial judge. In *R. v. Yebes*, [1987] 2 S.C.R. 168 at 185, 43 D.L.R. (4th) 424, for example, the Supreme Court of Canada addressed the role of an appellate court in determining the reasonableness of a verdict, quoting from *Corbett v. The Queen*, [1975] 2 S.C.R. 275:
- [C]urial review is invited whenever a jury goes beyond a reasonable standard ... [T]he test is "whether the verdict is one that a properly instructed jury acting judicially, could reasonably have rendered".
- [12] The trier of fact, of course, occupies a special position in relation to the assessment of credibility that is not enjoyed by an appellate court. Our limitations in interfering with a trial judge's view of credibility are explained in *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621:

- [20] Assessing credibility is not a science. It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events. That is why this Court decided, most recently in H.L., that in the absence of a palpable and overriding error by the trial judge, his or her perceptions should be respected.
- [13] Bearing in mind our proper role, I turn to the individual grounds advanced by Mr. Zoraik.

Ground 1 - Treatment of the Fingerprint Evidence

- [14] Mr. Zoraik contends that the judge erred in accepting the opinion evidence of the second fingerprint analyst. He says that such acceptance amounted to "cherry picking" the evidence in an unacceptable manner because the first expert had initially excluded him as the source of the fingerprint. He contends that the judge erred by rejecting all of the first expert's evidence and says it was not open to the judge to reach a conclusion that did not factor in the evidence provided by that witness. In the result, says Mr. Zoraik, the judge failed to give full effect to the instruction on reasonable doubt provided by R. v. W.D.
- [15] With respect, I do not agree that the judge's reasons on this issue fail to fully reflect the law on reasonable doubt. The first expert on fingerprint analysis had diametrically changed his opinion and explained that his revised conclusion (that the fingerprint came from a finger on Mr. Zoraik's left hand) was based upon a more detailed image of the print found on the envelope than that which provided the basis for his first opinion. It was open to the judge to reject or accept this explanation or, as he did, to find that the expert's work was too unreliable to give it any weight. Had the first expert's opinion been the only fingerprint evidence before the Court, the case would have proceeded on the basis that there was no reliable evidence identifying the print on the envelope, and therefore the letter, as having come from Mr. Zoraik. But that was not the case. The second expert was found to be reliable and the judge accepted his opinion as he was entitled to do.
- [16] Mr. Zoraik says the judge's statement, replicated earlier that "[a]s rejected evidence [the first expert's initial opinion] can form no part of the reasoning process leading to a verdict" demonstrates an error of law, as a verdict must be reached on the basis of all the evidence. Had I read this statement as a statement of law, I would agree that the judge overreached. However, in the context of the case as a whole, the statement appears to reflect a determination of the weight to be given to that witness' initial opinion, namely none. It was open to the judge to reach a conclusion on the weight to be assigned to this evidence and in light of his determination that both of the first expert's opinions were unreliable, to base his conclusion as to the identity of the print on the opinion of the second expert whose opinion he fully accepted. The judge's conclusion on this issue is unassailable in my view.

Grounds 2 and 4 - Use of the Composite Video and Reliance Upon the Composite Video

- [17] As earlier described, the video footage of Mr. Zoraik in the Victoria courthouse on May 6, 2009, was gathered into a composite video and introduced into evidence. Mr. Zoraik contends that the composite video is misleading because it is made of footage from several cameras and because several cycles of the camera trained on Room 218 during the critical time are missing. With respect to the compilation of footage into one sequence, he contends the criteria for admission established by *R. v. Nikolovski* are not met.
- [18] In *Nikolovski* the Supreme Court of Canada addressed the admissibility of videotape evidence. Justice Cory for the majority held that videotape is admissible provided it is of good quality, gives a clear picture of the events in issue, and has not been changed or altered.
- [19] Mr. Zoraik does not dispute the admissibility of the raw footage from the cameras, but argues that the composite videotape was not admissible and should not have been relied upon by the judge. He complains that the reasons for judgment do not refer to the fact that in order to see what happened in Room 218 one must view two full cycles of the camera, the whole length of which was not included on the composite video. This, he says, demonstrates impermissible altering of the videotape contrary to the requirements for its admission as described in *Nikolovski*. He says the failure to comment on this need for two full cycles of the camera in the reasons for judgment renders them inadequate and the decision reversible.
- [20] I would not accede to this submission. In addition to the composite video, the complete videotapes from the relevant cameras were in evidence. The trial judge commented on similar submissions as follows:
- [25] ... Several frailties of the compilation were pointed out by the defence. The effect of those frailties was, in the defence view, to render the video misleading. Three of those frailties require specific mention. First the defence points out, the focusing on the activities of Mr. Zoraik deprive the court of a complete picture of all the events at the relevant times. Exhibit 6 does not contain footage that may be relevant to all that happened at the court house the morning of May 6, 2009. It is, in short, devoid of necessary context. Second, the defence notes the operation of the camera outside room 218 does not capture all that happens in room 218. That camera is on the ceiling of the hallway directly outside the door of room 218. The camera rotates 360 degrees. It takes approximately 74 seconds to do so. Therefore the camera misses a considerable amount of activity as it pans its circular route. Third, the defence notes that the cameras record at approximately 6 frames per second. To capture events so they appear the same as if you were watching them 'live' you would need to see 30 frames per second.

- [26] These frailties are significant and must be borne in mind when weighing the evidence as provided by the video cameras. I intend to do so at any point in these reasons where I am referring to the video evidence. Yet the frailties do not impact on the admissibility of the videos, specifically Exhibits 6 and 14. I say that for the following reasons. While the compilation does focus on the activities of Mr. Zoraik, the entire hard drive is entered into evidence and is available to correct any unfairness to Mr. Zoraik. Second, the fact that the camera outside 218 does not capture everything that occurred at the time the letter was dropped off may well lead to a reasonable doubt. So long as the operation of the camera and what it does and does not show is kept in mind there is no unfairness to Mr. Zoraik. As to the frames per second, it is essential to remember that technical limitation when focusing on specific movements shown in the video; it is not a reason to ignore the video.
- [21] In that passage the judge amply demonstrated his consideration of Mr. Zoraik's criticisms of the compiled video and his recognition that although the images are unaltered, they are but a portion of the footage on the hard drive, also in evidence. In the end result the judge described what is shown in the footage of Room 218:
- [31] ... The camera shows Mr. Zoraik coming down the hall and approaching room 218. The movement of the camera puts Mr. Zoraik out of view for a few seconds. He is next seen with his pant leg shown just inside the room. At this point he is closer to the entrance to the room rather than the far wall of the room where the envelope is eventually seen. The camera then shows Mr. Zoraik walking toward the far wall of the room at the end of the counter. The counter itself is obscured by the back of Mr. Zoraik. As he reaches the far end of the counter, his back no longer obscures the counter and the envelope is seen on the counter. Mr. Zoraik's right hand is extended in the direction of the envelope. His left hand is by his side holding his briefcase ...

Later on he says:

- [136] To understand Mr. Zoraik's evidence it is necessary to summarize what the video shows as it pans inside and outside of room 218. To give the sequence of what is shown I have created a chronology and have included times as I have recorded them. Obviously the times are the best I am able to do after several viewings of the video and must be taken as approximate times.

10:00:09 The camera is pointed to the counter at where the envelope is ultimately to be found. It is not there.

10:00:13 The camera moves away from the counter and begins to pan outside room 218.

10:00:49 Mr. Zoraik is first seen by this camera approaching room 218.

10:00:53 Mr. Zoraik is near the door of room 218 but moves out of the camera's view which is still in the hallway.

10:00:59 The camera is still not pointed into room 218.

10:01:03 The camera is moving inside the room and Mr. Zoraik's pant leg can be seen in the room near the door in the area of the computers.

10:01:06 Camera loses sight of Mr. Zoraik for approximately one second.

10:01:07 Mr. Zoraik can again be seen in the counter area of room 218.

10:01:11 The camera shows Mr. Zoraik's back. He is next to the counter but facing to the back of the room. The area where the envelope is ultimately seen is blocked by Mr. Zoraik's back.

10:01:13 The envelope is first seen on the counter toward the back wall of the room. Mr. Zoraik has his briefcase in his left hand and his right hand is extended in the direction of the envelope. His hand is within inches of the envelope.

Mr. Zoraik then turns and leaves the room. He is out of sight at 10:00:15. [This time notation is clearly in error.]

[22] At the hearing of this appeal we viewed the compiled video footage. The judge's description of it in the above paragraph accurately summarizes its contents at the time Mr. Zoraik was in Room 218. I do not consider that the fact of compilation into a single exhibit, accompanied by the limiting description given by the judge, takes the exhibit outside the criteria for admissibility: there is no suggestion the video portions assembled were altered in any fashion; there is no error demonstrated in the judge's description of the evidence; and there is no demonstrated misunderstanding of the nature of the composite exhibit.

[23] Throughout Mr. Zoraik has contended that someone else dropped the letter on the counter at a time not captured on the video footage. The judge rejected this submission, saying:

[143] I am satisfied that the video accurately describes exactly what happened on May 6, 2009. Bearing in mind the legal test that I am to apply and which I have already referred to, Mr. Zoraik's evidence raises no reasonable doubt as to what happened in room 218. The fact that there is no movement of the envelope means only that the dropping of the envelope can not be tied directly to the actions of Mr. Zoraik. But when the totality of his actions is coupled with the appearance of the envelope there is no other conclusion to be drawn than it was Mr. Zoraik who dropped off the envelope. The Crown submitted that if the inference that Mr. Zoraik dropped off the letter was not drawn, it would mean that an unknown person entered room 218 without being captured on any video camera or seen by any witness. That unknown person had the knowledge of the case to write the letter and possessed an envelope with the accused's fingerprint on it and chose to leave the envelope there within approximately a minute of Mr. Zoraik being in that room. I agree with that submission.

[144] I am satisfied that there is no other rational conclusion to draw from the video evidence and the totality of the evidence than that Mr. Zoraik dropped off Exhibit 2 and 3 [the envelope and the letter] at the Court house as alleged.

- [145] Mr. Zoraik testified that the fingerprint found on Exhibit 2 was not his fingerprint. The defence raised, alternatively, that there was some possible cross contamination. I do not find any reasonable doubt raised by either point. I have already referred to Mr. Zoraik's overarching lack of credibility. There is no evidentiary basis to find an innocent placing of Mr. Zoraik's fingerprint on Exhibit 2. It could not have happened the morning of May 6th in room 218 given that Mr. Zoriak had his briefcase in his left hand at all times that he was near the envelope. His left index fingerprint could not have gotten on the envelope in those circumstances. I find that Mr. Zoraik's fingerprint got on Exhibit 2 as a result of a handling of the envelope prior to its arrival in room 218.
- [24] On my reading of the reasons for judgment the judge carefully considered Mr. Zoraik's submissions, and demonstrated an awareness of the limits of the information captured by the cameras. It was open to the judge to draw from the video evidence the inferences he did, and I see no error in the judge's handling of this evidence.

Ground 3 - Continuity of the Envelope and Letter

- [25] Citing *R. v. Fehr*, 2000 BCSC 1634, Mr. Zoraik contends that the judge erred in his conclusion that the envelope from which the fingerprint was taken (with the letter) are the same as the white object on the counter of Room 218 depicted on the videotape, and from which a print matching his left index finger was extracted.
- [26] The continuity of evidence is an issue of fact for the determination of the trial judge. Unlike the trial judge in *Fehr*, the trial judge in the present case found continuity to be present. This conclusion was amply reasonable on the evidence before the Court. I would not accede to this ground of appeal.

Ground 5 - Post Offence Conduct

- [27] Mr. Zoraik also contends the judge erred in failing to find that the absence of post offence conduct consistent with his guilt, or put another way, the existence of evidence that he acted appropriately in the civil action, was circumstantial evidence supporting the existence of a reasonable doubt. Relying on *R. v. Minhas* (1986), 29 C.C.C. (3d) 193, 53 C.R. (3d) 128 (Ont. C.A.), he says the judge erred in considering, as a discrete issue, whether this circumstance raised a reasonable doubt.
- [28] Again I would not accede to this ground of appeal. The judge addressed the issue of post offence conduct, responding to the issue as it was put to him, that the conduct of Mr. Zoraik after the commission of the offences raised a reasonable doubt. He held, as the trier of fact, that it did not. Further, he instructed himself:
- [114] ... It is the totality of the evidence which I bear in mind even though I will be dealing with aspects of the evidence separately ...

[29] The judge gave full reasons for his conclusions that the components of the evidence, individually and taken as a whole, did not cause him to have a reasonable doubt. His treatment of post offence conduct, in particular, does not in my view reveal a reviewable error.

Ground 6 - The Absence of a Proven Motive

[30] Mr. Zoraik also challenges the judge's treatment of the motive issue. He says the judge was wrong in law and made findings unsupported by the evidence. He relies upon *R. v. Lewis*, [1979] 2 S.C.R. 821, 98 D.L.R. (3d) 111, and *R. v. White* (1996), 29 O.R. (3d) 577, 108 C.C.C. (3d) 1 (Ont. C.A.).

[31] The judge said, on the issue of motive:

[98] I reject the submission of the defence that they have proven an absence of motive for three reasons.

[99] The assumption of the defence evidence is that the motive for Mr. Zoraik was financial and only financial. I do not take that to be self evident. There could be many motives in a case such as this. For example, the *Stanton v. Miller* case was one of a seven year old boy who was struck by a car and suffered a very serious leg injury. The loss of the case may have created a profound sense of injustice in Mr. Zoraik. It may have created anger at the conduct of the trial. All of these may work as a motive to want to over turn the jury verdict. I do not say any of these things to suggest that I have accepted them as the motives in this case. I only put them forward as reasonable hypotheses as what the motive in this case may involve. To say that the only motive which may exist in this case is financial is simply not so ...

[100] Even if my analysis of motive as I have just referred to it is in error, I am still left with evidence which is wholly inadequate to prove there was no financial motive ...

[101] Finally, the defence submits that there was 'no way' Mr. Zoraik would commit this offence for the limited financial gain that was in issue in this case. I took this to mean that the potential cost of committing these offences far exceed any consideration of the benefits. This reasoning rests on the footing that motives for committing offences are logical and rational. As the Crown said in their written submission, "Most crimes are irrational regarding the offender's best interests. Many are committed by intelligent, educated people with much to lose and yet they occur all the time." ...

And:

[103] I have considered the issue of motive in this case. While I accept that the amount of money to be gained by Mr. Zoraik from the *Stanton* case was not large it was still some money to a person who was near the end of his line of credit. The evidence tends more to there being a motive than not. However, taking the totality of the evidence on this point into account, I am unable to conclude that there has been proven a motive by the Crown.

[32] Reading these passages one sees that the judge did not find there to be a motive; he simply rejected the proposition that there was a proved absence of motive. That, again, was a finding open to the judge on the evidence before him. In any case, the judge's conclusion does not undermine his determination that the offences were proved beyond a reasonable doubt. Motive is not an essential element of an offence, nor does its absence provide a defence. It is simply a circumstance that may support, or not, the identity of the accused as the offender. I see no error in the judge's handling of this issue.

Ground 7 - Evidence of Good Character

[33] On this ground of appeal Mr. Zoraik contends the judge erred in his assessment of evidence of good reputation by unduly emphasizing a prior incident in which he participated in a diversion program for an offence of either theft or fraud, and by discounting the evidence of character witnesses on the basis the witnesses were unaware of the diversion.

[34] The judge said:

[113] What then is left of the character evidence in this case? First of all I have no doubt whatsoever as to the witnesses themselves. They fairly and honestly put their evidence before the Court. There is no question that they like the accused and think highly of him. Their evidence as to his general reputation however, is on a very narrow footing. Their knowledge of what others specifically think of Mr. Zoraik's honesty, integrity and professionalism is extremely limited. That is not in any way intended as a criticism of these individuals. It is recognition that in the busy day to day world of these people that there is no exchange of views on reputation. Much is assumed and taken on faith. The result is that the foundation on which character evidence rests does not exist in this case. It most certainly does not raise a reasonable doubt of the guilt of the accused.

[35] On my reading of the reasons for judgment, the judge's assessment of the character evidence was not based upon the prior incident for which Mr. Zoraik was diverted, but rather was based on the substance of the witnesses' views and the narrow foundation upon which they were based. Notwithstanding Mr. Zoraik's submissions to the contrary, I consider the judge's view of the evidence of general reputation given by the character witnesses was reasonable and solidly founded on the limitations of their evidence. I see no basis upon which to interfere with the judge's conclusion on this issue.

[36] Mr. Zoraik also challenges the judge's conclusion that he was not a credible witness. Evidence of good character may be used in determining the credibility of a witness where the witness has testified. The judge in this case found:

[149] . . . the credibility problems with the evidence of Mr. Zoraik are so great that the character evidence in this case is of no assistance. Although I have considered the character evidence as it relates to the credibility of Mr. Zoraik I must reject its utility on the facts of this case.

[37] Mr. Zoraik does not point to any evidence misstated by the judge, or other basis upon which we could interfere with this credibility assessment. Recognizing our limited role in reviewing an assessment of credibility as discussed in Gagnon, this conclusion is one with which we may not interfere.

Conclusion

[38] Notwithstanding the vigorous submissions made on behalf of Mr. Zoraik, I conclude he has not established error on the part of the judge that would permit this court to interfere with the verdicts. Although he has submitted that the convictions are unreasonable, the case against Mr. Zoraik was firmly grounded in compelling evidence which, when accepted by the judge, formed a solid evidentiary basis for the convictions entered on the three counts. Accordingly, I would dismiss the appeal.

"The Honourable Madam Justice Saunders"

I AGREE:

"The Honourable Madam Justice Ryan"

I AGREE:

"The Honourable Mr. Justice Groberman"

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/CA/12/02/2012BCCA0283cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-zoraik-2012>

Prepared on 27 October 2026 · Esheria