



SUPREME COURT OF CANADA

CITATION: R. v. Vernelus, 2022
SCC 53

APPEAL HEARD: December 6, 2022
JUDGMENT RENDERED: December 6,
2022
DOCKET: 40072

BETWEEN:

Mikerlson Vernelus
Appellant

and

His Majesty The King
Respondent

OFFICIAL ENGLISH TRANSLATION

CORAM: Côté, Brown, Martin, Kasirer and O’Bonsawin JJ.

UNANIMOUS
JUDGMENT READ Kasirer J.
BY:
(paras. 1 to 8)

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Mikerlson Vernelus

Appellant

v.

His Majesty The King

Respondent

Indexed as: R. v. Vernelus

2022 SCC 53

File No.: 40072.

2022: December 6.

Present: Côté, Brown, Martin, Kasirer and O’Bonsawin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Criminal law — Appeals — Unreasonable verdict — Accused charged with possession of loaded restricted firearm and failure to comply with condition of recognizance — Firearm found by police in bag belonging to accused in back seat of car in which there were also two other individuals — Trial judge finding that accused’s testimony that he did not know firearm was in his bag was not credible — Accused convicted — Accused appealing on ground that verdict was unreasonable — Majority of Court of Appeal dismissing appeal — Convictions upheld.

Cases Cited

Referred to: *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000; *R. v. W.(D.)*, [1991] 1 S.C.R. 742.

APPEAL from a judgment of the Quebec Court of Appeal (Pelletier, Schragar and Moore JJ.A.), 2022 QCCA 138, [2022] AZ-51826418, 480 D.L.R. (4th) 623, 424 C.C.C. (3d) 272, [2022] Q.J. No. 413 (QL), 2022 CarswellQue 20272 (WL), affirming the convictions of the accused for possession of a loaded restricted firearm and failure to comply with a condition of a recognizance. Appeal dismissed.

David Leclair and Mustapha Mahmoud, for the appellant.

Jean-Philippe MacKay and Robert Benoit, for the respondent.

English version of the judgment of the Court delivered orally by

[1] KASIRER J. — The Court is of the view that the appeal should be dismissed for the reasons given by Moore J.A. for the majority of the Court of Appeal.

[2] We agree with the majority that it was reasonable for the trial judge to conclude that the evidence as a whole excluded all reasonable alternatives to guilt (see *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at para. 71, cited by the majority in this case at para. 41 of its reasons).

[3] All of the grounds of appeal are without merit.

[4] First, the trial judge made no error in applying the test set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, at p. 758. She wholly rejected the defence evidence while concluding that it did not raise a reasonable doubt. Finding that there was strong circumstantial evidence relating to possession, the judge was faced with a lack of evidence that could counter the inference of guilt reasonably arising from the Crown's evidence. Nothing in the judge's reasons suggests that she used the rejection of the defence evidence as positive evidence of guilt. The majority of the Court of Appeal made the same observation at para. 36 of its reasons, finding that [TRANSLATION] "the judge's rejection of the appellant's testimony, due to its inconsistencies, became determinative of and fatal to the outcome of his defence".

[5] Second, the majority of the Court of Appeal did not err in applying *Villaroman*. The "only reasonable inference" criterion obviously does not mean that guilt had to be the only possible or conceivable inference.

[6] The dissenting judge on appeal stressed that it was [TRANSLATION] "reasonable and not speculative to infer that Mr. Daniel may have placed the firearm in the bag" (para. 28 (footnote omitted)). This is indeed a plausible theory given the fact that Mr. Daniel was sitting beside the bag and that his DNA was found on the firearm. However, as the majority of the Court of Appeal noted, whether or not it was the appellant who placed the firearm in the bag [TRANSLATION] "is immaterial" (para. 38). Insofar as the prosecution established that the firearm had not been placed

there without the appellant's knowledge or against his will, all of the elements of possession were present. The trial judge could therefore conclude that the only reasonable inference was that the firearm had been concealed in the bag with the appellant's full knowledge.

[7] Third, the trial judge did not err in referring to the appellant's calm reaction when he was arrested for possession of a firearm. As the majority noted, the judge did not use this to evaluate the appellant's credibility during his testimony, but rather to assess, as one element of the circumstantial evidence, the appellant's knowledge of the fact that the firearm was in his bag (majority reasons, at para. 37).

[8] For these reasons, the appeal is dismissed.

Judgment accordingly.

Solicitors for the appellant: David Leclair, avocat, Montréal; LEMN Avocats, Montréal.

Solicitor for the respondent: Director of Criminal and Penal Prosecutions, Montréal.