In the Court of Appeal of Alberta

Citation: R v Mendoza, 2026 ABCA 294

Date: 20260911
Docket: 2503-0074A
Registry: Edmonton

Between:

His Majesty the King

Respondent

\- and -

Sherwin Hadji Latiph Mendoza

Appellant

The Court:

The Honourable Justice Bernette Ho
The Honourable Justice Tamara Friesen
The Honourable Justice Joshua B. Hawkes

Memorandum of Judgment

Appeal from the Conviction by
The Honourable Justice R. A. Jerke
Convicted on the 17th day of May, 2024
Docket: (220718399Q1)

Memorandum of Judgment

The Court:

Introduction

[1] The appellant was convicted of four offences arising from an arson. He was convicted as a party by aiding the principals to the offence. He appeals contending the trial judge erred by failing to consider available exculpatory inferences arising both from the evidence and absence of evidence. In particular, he challenges the findings made in relation to alternative explanations for the purchases at Princess Auto, alternative explanations for the rental of the U-Haul, and discrepancies in the markings visible on CCTV of the vehicle leaving the scene of the fire. He also contends that the reasons given by the trial judge for rejecting other available inferences inconsistent with guilt were conclusory and inadequate.

[2] For the reasons that follow, the appeal is dismissed.

Background

[3] On May 16, 2020, the Full Force Fitness gym in Edmonton burned down. There is no question the fire was set deliberately. The sole issue was who started the fire. The appellant and two other persons were charged. All three were convicted. The evidence regarding the appellant was circumstantial and included the following.

[4] On May 13 and 14, the appellant purchased a total of 22 jerry cans (sixteen 20-litre cans, and six 25-litre cans) and three 9 ½ - litre containers of kerosene. Twenty-two jerry cans in the same sizes were recovered at the scene of the fire. Twelve kerosene containers were also found there. The jerry cans and three of the kerosene containers had matching SKU numbers from Princess Auto. The appellant does not dispute that he purchased these items and they were recovered at the scene of the fire. Rather, he advances alternative explanations that the co-accused may have purchased or acquired these items from the appellant in the course of their ordinary business relationship.

[5] The trial judge also found a reasonable inference could be drawn that Mr. Diehl, one of the co-accused, placed a wrecking bar on the checkout counter at the same store with the other co-accused, Mr. Whiteford. Whiteford was identified by CCTV completing that purchase along with a nylon rope. Both items were recovered from the scene of the fire.

[6] The same bank card used to purchase the fuel cans was used to rent a 15-foot U-Haul truck. The appellant's phone number, but not his name, was provided on rental documents. A 15-foot U-Haul truck was driven to the gym on the night of the arson, where it stayed for two hours and departed approximately five minutes before the fire began. When the truck was returned to the rental depot after the arson, U-Haul issued a refund. The person returning the truck signed for the refund using a signature very similar to the appellant's.

[7] The appellant knew the two individuals who were found guilty of the arson. He had done automotive work for them, and had contact information for them in his phone, although there was no evidence of noteworthy messages between them.

[8] The trial judge found there was insufficient evidence to place the accused at the scene of the arson. He held the only reasonable inference available on the evidence was that the appellant purchased the fuel cans to assist the arsonists, and had also facilitated the rental of the U-Haul truck to assist the arsonists. He found the appellant guilty of aiding and abetting the arson.

Grounds of Appeal

[9] The appellant argues the trial judge failed to negate all reasonable exculpatory inferences and failed to address alternative inferences that were reasonable on the record. He also advanced a subsidiary related argument that the reasons given by the trial judge for rejecting alternative explanations were conclusory and inadequate.

Standard of Review

[10] The standard of review in a circumstantial evidence case is whether the trier of fact, acting judicially, could reasonably be satisfied on the totality of the evidence that guilt was the only reasonable conclusion.[1] This is a deferential standard.[2] As recently summarized in *R v Mohamed,* 2026 ABCA 94 at para 16:

> …The trier of fact must apply common sense, human experience and logic to determine the probability of outcomes: It is for the trier of fact to draw the line that separates reasonable doubt from speculation and that assessment can be set aside only where it is unreasonable: A verdict is not unreasonable simply because the alternatives do not raise a doubt in the judge's mind: Nor is a verdict reviewable merely because the appeal court concludes that the circumstantial evidence, including gaps, gives rise to competing inferences: (Citations Omitted)

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[1] *R v Villaroman*, 2016 SCC 33 at para 55.

[2] *R v Lugela*, 2025 ABCA 194 at para 26.

Analysis

[11] The appellant argues the trial judge made the same error identified by this court in *R v Bremner*[3], by rejecting exculpatory arguments or inferences as speculative based solely on a lack of evidence. The appellant submits there were alternative explanations with respect to the rental of the U-Haul truck, the use of a truck in the offence, and the purchase of the fuel cans by the appellant inconsistent with the appellant's guilt. The appellant argues that in rejecting these exculpatory inferences, the trial judge committed the error identified in *Bremner*.

[12] We find this argument unpersuasive for several reasons. First, the analogy to *Bremner* is not sound. The key error identified in *Bremner* was that the trial judge concluded there was no evidence to support theories inconsistent with guilt and rejected exculpatory inferences on that basis. He fell into the error described at paragraph 36 of *Villaroman* which recognizes that alternatives inconsistent with guilt could also arise from the absence of evidence. There was nothing in the balance of the reasons or the record in *Bremner* that corrected this legal error. Here, the trial judge expressly noted that alternative inferences could arise from the absence of evidence. He mentioned this several times in his reasons. He also raised the issue with counsel during closing submissions. The reasons overall reflect the correct approach to circumstantial evidence described in *R v Stewart*, 2022 ONCA 726 at para 27:

> …[t]he references [to absence of evidence] formed part of his explanation of the evidentiary picture based on which he made his findings. He made case specific findings based on the totality of the evidence and absence of evidence in this specific case.

[13] The trial judge cautioned himself regarding the risks that can arise in circumstantial cases from a desire to fill in the gaps and minimize differences that do not fit with the case advanced by the Crown. He reviewed the applicable authorities in his oral reasons.

[14] Second, the appellant in effect seeks to apply the ultimate standard of proof to individual facts and inferences, and in doing so commits the error identified in *R v Morin*, 1988 CanLII 8 (SCC) at paras 31-33. Both the reasons of the trial judge and the case law appropriately distinguish between findings of individual facts or inferences and the application of the ultimate burden of proof. As noted by the trial judge, relying on the decision of the Ontario Court of Appeal in *R v Hudson*, 2021 ONCA 772 at para 70:

> The assessment of circumstantial evidence, whether by triers of fact at first instance or by an appellate court on a review for unreasonableness, does not involve an examination of individual items of circumstantial evidence in isolation and separately from the rest, adjudging them against the criminal standard of proof and

[3] 2026 ABCA 77 at para 11.

> rejecting them if they are found wanting, as surely they will be. No individual item of circumstantial evidence is ever likely to do so. They are the building blocks of proof, not the final product. It is commonplace that individual items of evidence adduced by the Crown examined separately and in isolation, have not a very strong probative value. But all the pieces have to be considered. Each one in relation to the whole. And it is the whole of them, taken together, whose cumulative force must be considered and may constitute a basis for conviction: *Coté v. The King* (1941), 1941 CanLII 348 (SCC), 77 C.C.C. 75 (S.C.C.), at p. 76.

[15] There are several decisions from this and other appellate courts to the same effect. See e.g. *R v Anny,* 2021 ABCA 394 at para 57; *R v Ngo*, 2009 BCCA 301 at para 54. We find no reviewable error in the trial judge's approach to the evidence.

[16] The appellant acknowledged these authorities in oral argument but contended the inference drawn by the trial judge that the U-Haul in question was undoubtedly a 15-foot vehicle, and consistent with the U-Haul rented earlier was the essential link in the reasoning chain implicating the appellant. The reasons of the trial judge, when considered holistically and in context do not support that interpretation. Rather, the trial judge cited a constellation of factors, including the appearance of the vehicle at the scene, that in totality satisfied the threshold of proof beyond a reasonable doubt as articulated in *Villaroman.*

[17] Finally, the appellant's arguments do not reflect the proper approach to appellate review in circumstantial evidence cases. The appellant invites this Court to retry the case and substitute our own view of the available inferences for those of the trier of fact. That is not our role;[4] and we decline to do so. The evidence at trial is summarized above. The trial judge found the only reasonable inference from the evidence was that the appellant had aided and abetted the arson by purchasing gas cans and kerosene, and using the bank card to rent the U-Haul used in the arson. The trial judge appropriately recognized there were gaps in the evidence, but that no reasonable doubt about the appellant's involvement arose from the evidence or the absence of evidence. We find no reviewable error in the conclusions drawn by the trial judge.

[18] We are also satisfied that the lengthy oral reasons delivered by the trial judge clearly delineate why alternative explanations for some of the evidence did not raise a doubt when he applied the requisite standard of proof to the entirety of the evidence. When taken in the context of the evidence and the submissions of counsel, these reasons amply demonstrate how and why the trial judge arrived at his conclusions.

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[4] See e.g. *R v McIvor*, 2021 MBCA 55 at paras 19, 36-37; *Villaroman* at paras 69-71; *Lugela* at paras 14-16.

Conclusion

[19] The appeal is dismissed.

Appeal heard on September 2, 2026

Memorandum filed at Edmonton, Alberta
this 11th day of September, 2026

Ho J.A.

Friesen J.A.

Hawkes J.A.

Appearances:

K.A. Joyce
for the Respondent

Z. Al-Khatib
for the Appellant