SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-36-009219-190
(M.C. 115-063-778)

DATE: MARCH 26, 2021

PRESIDED BY THE HONOURABLE PIERRE LABRIE, J.S.C.

BENJAMIN MASON
APPELLANT-Accused
v.
HER MAJESTY THE QUEEN
RESPONDENT-Prosecution

JUDGMENT

INTRODUCTION

[1] The appellant, Mr. Benjamin Mason, appeals from a judgment rendered on February 20, 2019, by the Municipal Court of Montreal (The Honourable Nathalie Haccoun, j.m.c.) finding him guilty on two counts under Section 445(1)a) of the *Criminal Code* (willfully and without lawful excuse, killing, maiming, wounding, poisoning or injuring an animal) and on one count under Section 445.1(1)a) of the *Criminal Code* (willfully

causing or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal).

THE CONTEXT

[2] In the summer of 2014, the appellant began living with Ms. Jacqueline Aguilar in her apartment.

[3] At the time, Ms. Aguilar owned a dog named Trixi Peanut.

[4] The appellant wanted a second dog but Ms. Aguilar did not.

[5] On October 31, 2014, they purchased another dog, a Yorkshire named Sombrero.

[6] According to Ms. Aguilar, Sombrero looked like she had been abused before she was purchased and she was a nervous dog. However, she was not stressed, she did not shy away from people and she did not sit awkwardly.

[7] Some days after, the appellant and Ms. Aguilar took Sombrero to the Pierrefonds Veterinarian Hospital (the **Clinic**) to be treated for diarrhea.

[8] The appellant and Ms. Aguilar had a rocky relationship. They had several breakups where the appellant would move out of Ms. Aguilar's apartment.

1. The December 7, 2014 event

[9] During the evening of December 7, 2014, Ms. Aguilar had a migraine and was resting in her bedroom with Trixi Peanut.

[10] Before she went to bed, Sombrero was sleeping in the kitchen.

[11] At some point, the appellant came into the bedroom and shouted that something was wrong with Sombrero and that he did not know what it was.

[12] Ms. Aguilar noticed that the dog had some of her fur coming off her leg and that there was blood dripping from her leg.

[13] She picked up Sombrero and took her to the bedroom where she wrapped her in a blanket. She filmed a video of her injuries.

[14] Ms. Aguilar showed the video to the appellant and asked him what he did. She had to pressure him in order to obtain an explanation. The appellant finally told her that he was washing the dishes and that he had started the kettle to boil water for hot chocolate. He said that he filled a glass with hot water, that he knocked it over and that the water spilled on Sombrero.

[15] The appellant and Ms. Aguilar took Sombrero to the Clinic where she was treated for second-degree burns on 75% of her body.

[16] Sombrero was kept at the Clinic and the appellant and Ms. Aguilar returned home. Upon her return, Ms. Aguilar noticed fur from Sombrero in the garbage and she confronted the appellant about it.

[17] Sombrero was discharged from the Clinic on December 9, 2014 in the evening. Ms. Aguilar did not have the financial means to pay for the balance owed to the Clinic and they had to borrow money from the appellant's mother.

[18] According to Ms. Aguilar, after Sombrero returned home, the appellant was jealous and mad because she was constantly with both dogs.

[19] Ms. Aguilar had doubts about the appellant's explanation for the burning of Sombrero because he never used to wash the dishes and also, because the glass he showed her was too small to possibly have caused such injuries to the dog.

[20] On or about December 12, 2014, the appellant and Ms. Aguilar broke up and he left her apartment. Sombrero stayed with Ms. Aguilar.

[21] Between December 7, 2014 and January 2, 2015, the appellant and Ms. Aguilar broke up at least twice and, each time, he would leave her apartment.

2. <u>The January 2, 2015 event</u>

[22] On January 2, 2015, the appellant and Ms. Aguilar were back together.

[23] In the afternoon, they went grocery shopping.

[24] At 3:00 p.m., the appellant drove back alone to the apartment to unload the groceries.

[25] Ms. Aguilar had stayed at the grocery store to buy a treat for Sombrero. The appellant came back to pick her up.

[26] According to Ms. Aguilar, they were both back at the apartment at 3:13 p.m.

[27] Once in the apartment, Ms. Aguilar noticed that Sombrero's head was tilting to the side. Her tongue was sticking out and she was making a very odd sound. The appellant told her that the dog probably had a seizure.

[28] The same day, in the evening, they went to the Clinic.

[29] Sombrero arrived at the Clinic in a comatose state.

[30] According to Dr. Mylène Borduas, who treated the animal, the most logical diagnosis was a trauma to the head caused by abuse. Given the bruising on the dog's neck and eyes, she considered the strangling of the dog a plausible explanation. She concluded that the animal was suffering. During that same visit, Sombrero was euthanized.

[31] According to Dr. Fanny Dessureault, who testified as an expert in animal pathology, the multiple traumas found on Sombrero indicated that she had endured physical abuse.

[32] Dr. Dessureault expressed the opinion that the injuries could not have been accidental or self-inflicted. According to her, one of the traumas was a sign of strangulation.

[33] She also noted that some of the injuries were caused within hours or days from the animal's death.

THE TRIAL JUDGE'S JUDGMENT

[34] At trial, the prosecution presented four witnesses:

- Ms. Jacqueline Aguilar;
- Dr. Mylène Borduas;
- Dr. Fanny Dessureault;
- Sergeant-Detective Nancy Charette.

[35] The appellant did not testify.

[36] After reviewing the evidence, the trial judge concluded as follows:

> The Court concludes that the testimony of the witness, the first witness, was credible, logical and I believe (*sic*) testimony. It was not contradicted on any essential element and like I mentioned was credible.
>
> As for the testimony of the expertise, their assessment and opinion were not challenged in a way to affect their conclusion. No counter-expertise, nothing or no questions did in any way contradict themselves regarding their conclusion or offer the possibility of another conclusion[1].

[37] The trial judge noted that she was faced with circumstantial evidence and she referred to the principles stated by the Supreme Court of Canada in *R*. v. *Villaroman*[2].

[38] The trial judge then concluded as follows:

> The Court must make a logical inference on evidence presented and cannot

[1] Transcript of the judgment rendered on February 20, 2019, pp. 12, 13.
[2] 2016 SCC 33 (CanLII) (***Villaroman***).

> speculate things or scenarios that are not in evidence. The evidence in front of this Court is that the dog was injured while alone with the defendant both times. No inference in the evidence can suggest that anybody else could have inflicted the wounds. There is no other reasonable inference that this Court can conclude to.
>
> The expert testimony also hearing and listening to the expert testimony also brings the Court to this same conclusion. The Court can only, in this case, after assessing all the evidence that was presented in front of it, in front of this Court, followed (*sic*) the guidelines that have been taught to us when we're dealing with circumstantial evidence and in the case at bar, the Court concludes that the injuries were caused by the defendant in this case[3].

THE GROUNDS OF APPEAL

[39] The appellant raises the following grounds of appeal:

(1) The judge erred in law in convicting the appellant for the charges related to the accident of on or about December 7, 2014, because there was a complete lack of the requisite evidence on one of the essential elements of the offense;

(2) The judge erred in law in convicting the appellant for the charges related to the incident of on or about January 2, 2015, because there was a complete lack of the requisite evidence on the essential elements of the offense;

(3) The judge erred in law and in fact because, from what was circumstantial evidence only, other than appellant's guilt, the judge failed to consider other reasonable inferences;

(4) The judge erred in law because she did not consider all the relevant evidence;

(5) The judge erred in law because the judgement fails to deliver adequate reasons, and reasoning, and fails to provide the basis for meaningful appellate review of the correctness of the judge's decision;

(6) The judge erred in law in dismissing appellant's motion for a stay of proceedings because of the violation of appellant's right to be tried within a reasonable time as guaranteed by s. 11 (b) of the *Canadian Charter of Rights and Freedoms',*

(7) The judge erred in law because she failed to be impartial;

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[3] Transcript of the judgment rendered on February 20, 2019, p. 15.

ANALYSIS

1. The standard of review

[40] In *Benhaim* v. *St-Germain*[4], the Supreme Court of Canada stated the following:

> [36] The standard of review is correctness for questions of law, and palpable and overriding error for findings of fact and inferences of fact: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 10 and 19; *St-Jean*, at paras. 33-36. Causation is a question of fact, and so the trial judge's finding on causation is owed deference on appeal: *St-Jean*, at paras. 104-5; *Clements v. Clements*, 2012 SCC 32, [2012] 2 S.C.R. 181, at para. 8; *Ediger v. Johnston*, 2013 SCC 18, [2013] 2 S.C.R. 98, at para. 29.
>
> [37] It may be useful to recall the many reasons why appellate courts defer to trial courts' findings of fact, which were described at length in *Housen*, at paras. 15-18. Deference to factual findings limits the number, length and cost of appeals, which in turn promotes the autonomy and integrity of trial proceedings. Moreover, the law presumes that trial judges and appellate judges are equally capable of justly resolving disputes. Allowing appellate courts free rein to overturn trial courts' factual findings would duplicate judicial proceedings at great expense, without any concomitant guarantee of more just results. Finally, according deference to a trial judge's findings of fact reinforces the notion that they are in the best position to make those findings. Trial judges are immersed in the evidence, they hear *viva voce* testimony, and they are familiar with the case as a whole. Their expertise in weighing large quantities of evidence and making factual findings ought to be respected. These considerations are particularly important in the present case because it involves a large quantity of complex evidence.
>
> [38] It is equally useful to recall what is meant by "palpable and overriding error". Stratas J.A. described the deferential standard as follows in *South Yukon Forest Corp. v. R.*, 2012 FCA 165, 4 B.L.R. (5th) 31, at para. 46:
>
> > Palpable and overriding error is a highly deferential standard of review . . . . "Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.
>
> [39] Or, as Morissette J.A. put it in *J.G. v. Nadeau*, 2016 QCCA 167, at para. 77 (CanLII), [TRANSLATION] "a palpable and overriding error is in the nature not of a needle in a haystack, but of a beam in the eye. And it is impossible to confuse these last two notions."

[4] 2016 SCC 48 (***Benhaim***).

[41] The Court of Appeal of Quebec stated the following, with respect to the standard of review before an appellate court[5]:

> [6] Les normes d'intervention applicables en appel sont bien connues.
>
> [7] D'une part, à l'égard des pures questions de droit, notre Cour n'interviendra que si la partie appelante parvient à démontrer l'existence d'une telle erreur et que cette erreur a influé sur l'issue du litige.
>
> [8] D'autre part, rappelons ce qu'est une erreur « manifeste et déterminante », soit la norme d'intervention à l'égard des questions de fait, ou mixtes de fait et de droit :
>
> a) une erreur est « manifeste » lorsque le plaideur peut l'identifier « avec une grande économie de moyens, sans que la chose ne provoque un long débat de sémantique, et sans qu'il soit nécessaire de revoir des pans entiers d'une preuve documentaire et testimoniale qui est partagée et contradictoire, … »; c'est une erreur « that is obvious », qui peut être « montrée du doigt » et qui tient « non pas de l'aiguille dans une botte de foin, mais de la poutre dans l'œil »;
>
> b) une erreur manifeste est « déterminante » lorsqu'elle a un impact « fatal » sur une conclusion de fait, ou mixte de fait et de droit, lorsqu'elle « fait obstacle, de manière dirimante, à la conclusion du juge sur une question de fait et qu'elle est de nature à influer sur l'issue du litige»; pour démontrer une telle erreur, le plaideur ne doit pas se limiter à « … pull at leaves and branches and leave the tree standing. The entire tree must fall».
>
> (Nos soulignements)
>
> [9] Il n'appartient donc pas à une cour d'appel de refaire le procès, ce à quoi les appelants nous invitent en l'espèce. Les juges Iacobucci et Major le rappelaient comme suit pour la majorité dans l'arrêt *Housen c. Nikolaisen* :
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> > 18. Le juge de première instance est celui qui est le mieux placé pour tirer des conclusions de fait, parce qu'il a l'occasion d'examiner la preuve en profondeur, d'entendre les témoins de vive voix et de se familiariser avec l'affaire dans son ensemble. Étant donné que le rôle principal du juge de première instance est d'apprécier et de soupeser d'abondantes quantités d'éléments de preuve, son expertise dans son domaine et sa connaissance intime du dossier doivent être respectées.
>
> [10] Enfin, est-il besoin de rappeler que c'est la partie appelante qui porte le lourd fardeau de démonstration d'une erreur révisable.
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> [References omitted]

[5] *Gercotech inc.* c. *Kruger inc. Master Trust (CIBC Mellon Trust Company)*, 2019 QCCA 1168.

2. The grounds of appeal

a) Grounds of appeal number 1, 2, 3, 4 and 5:

(1) The judge erred in law in convicting the appellant for the charges related to the accident of on or about December 7, 2014, because there was a complete lack of the requisite evidence on one of the essential elements of the offense;

(2) The judge erred in law in convicting the appellant for the charges related to the incident of on or about January 2, 2015, because there was a complete lack of the requisite evidence on the essential elements of the offense;

(3) The judge erred in law and in fact because, from what was circumstantial evidence only, other than appellant's guilt, the judge failed to consider other reasonable inferences;

(4) The judge erred in law because she did not consider all the relevant evidence;

(5) The judge erred in law because the judgement fails to deliver adequate reasons, and reasoning, and fails to provide the basis for meaningful appellate review of the correctness of the judge's decision;

[42] Addressing these grounds of appeal, the appellant submits that the trial judge erred in law because:

- There was absence of evidence on the essential elements of the offence (December 7, 2017 and January 2, 2015 events);
- She misdirected herself on how to draw inferences;
- She did not consider all the relevant evidence;
- She failed to deliver reasons and reasoning.

[43] Regarding the December 7, 2014 event, the appellant submits that the trial judge erred in law because she failed to recognize and address the crucial evidence that the cup of hot water was spilled on Sombrero by accident.

[44] In this regard, the appellant refers to the testimony of Ms. Aguilar who said that he told her that he had knocked over the cup of hot water by accident.

[45] According to the appellant, Ms. Aguilar admitted in cross-examination that the incident with Sombrero was an accident.

[46] He also refers to her testimony that he ran into the room and was agitated and said he had knocked over a cup of hot water on Sombrero.

[47] The appellant also refers to the fact that at the Clinic, on December 8, 2014, Ms. Aguilar stated “They know that it was a large mug of hot water on the counter that fell on her (…)”[6].

[48] The appellant further submits that there is no direct evidence that he intentionally poured the cup of hot water on Sombrero.

[49] According to the appellant, the trial judge erred in law and in fact in her assessment of the circumstantial evidence for three reasons.

[50] First, he submits that she erred in law by stating :

> The Court must make a logical inference on evidence presented and cannot speculate things or scenarios that are not in evidence. The evidence in front of this Court is that the dog was injured while alone with the defendant both times. No inference in the evidence can suggest that anybody else could have inflicted the wounds. There is no other reasonable inference that this Court can conclude to[7].

[51] Referring to *R*. v. *Villaroman*[8], the appellant submits that “In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts.”

[52] Second, the appellant submits that the trial judge patently and unreasonably erred in fact in stating there was no evidence that he accidently caused the hot water to spill on Sombrero.

[53] Third, he argues that the trial judge erred in law by misdirecting herself on how to draw inferences and that, even if there had been no evidence of an accident, it was incumbent upon the trial judge to consider all reasonable explanations or alternatives to guilt.

[54] Referring again to *Villaroman*[9], the appellant points out that if there are reasonable inferences other than guilt, the prosecution’s evidence does not meet the standard of proof beyond a reasonable doubt.

[55] Furthermore, referring *R*. v. *Youssef*[10], he points out that in a circumstantial evidence matter, in the context of the evidence and the arguments at trial, all other potential explanations or reasonable alternatives to guilt cannot be ignored.

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[6] Exhibit D-2, appellant’s factum, volume 2, p. 59.
[7] Transcript of the judgment rendered on Februay 20, 2019, p. 15.
[8] *Villaroman*, *supra*, note 2, par. 37.
[9] *Ibid.*
[10] 2018 SCC 49 (CanLII).

[56] According to the appellant, the inference that he intentionally spilled hot water on Sombrero is drawn from an evidentiary vacuum and it is contradicted by the evidence that it was an accident. The appellant argues that this inference constitutes mere conjecture or speculation.

[57] The appellant submits that the trial judge erred in ignoring the reasonable alternative to guilt, namely, the accident.

[58] He further submits that given the evidence and the arguments at trial, the inference, or explanation, of the accident is a reasonable alternative consistent with his innocence and therefore, the prosecution's evidence does not meet the standard of proof beyond a reasonable doubt.

[59] With respect to the January 2, 2015 event, the appellant submits that there are no eyewitness accounts, confessions or other direct evidence that he was in Ms. Aguilar's apartment at the relevant time and/or caused any intentional injury to Sombrero.

[60] The appellant first refers to the contextual background and evidence he claims the trial judge ignored and failed to consider.

[61] The appellant questions the findings of Dr. Dessureault regarding the origin of Sombrero's fractures and suggests they could have occurred before the dog was purchased.

[62] He also refers to the testimony of Ms. Aguilar that Sombrero appeared to have been physically abused before being acquired by them. He points out that days after Sombrero was acquired, she had to be treated for diarrhea and that she had a severe dental disease.

[63] The appellant also refers to the timeline regarding the January 2, 2015 event.

[64] According to him, Ms. Aguilar gave three different versions.

[65] First, there would have been a period of four minutes of non-travel time between 3:00 and 3:13.

[66] Second, he would have been alone in Ms. Aguilar's apartment with Sombrero for thirteen minutes.

[67] Third, he refers to a two-hour version based on a letter from Dr. Dessureault where she wrote that Ms. Aguilar stated that she was gone for several hours.

[68] According to the appellant, the trial judge's assessment of the facts for the January 2, 2015 event fails to consider and/or explain the evidence on these three different versions.

[69] The appellant submits that these three versions are patently contradictory and that they are mutually exclusive. According to him, the threshold of doubt raised is therefore manifestly exculpatory.

[70] According to the appellant, the inference drawn by the trial judge that he was at Ms. Aguilar's apartment on January 2, 2015 between 3:00 and 3:13 is mere speculation and as such constitutes an error in law.

[71] The appellant submits that :

- The trial judge viewed the evidence with a distorting lens;
- Her assessment of the evidence constitutes a palpable and overriding error of fact and law;
- Her failure to consider other reasonable inferences, other than guilt, constitutes a violation of the presumption of innocence, and as such, the prosecution's evidence does not meet the standard of proof beyond a reasonable doubt.

[72] The appellant also raises arguments with respect to Ms. Aguilar's credibility.

[73] According to him, she materially contradicted herself fifteen times and, on thirty occasions, she stated that she did not recall or could not remember.

[74] The appellant also submits that her explanations for being late at Court were patently not credible.

[75] According to the appellant, the trial judge committed a palpable and overriding error in failing to consider significant inconsistencies and contradictions in Ms. Aguilar's testimony.

[76] He also submits that the trial judge's reasons as to Ms. Aguilar's credibility are so generic that they amount to no reasons at all and constitute a palpable and overriding error.

[77] Furthermore, about the January 2, 2015 event, the appellant submits that there are three reasonable alternatives that are consistent with his innocence, namely that Sombrero's injuries arise from one or a combination of the following alternatives:

- Abuse by the previous owner;
- Sombrero bumping into walls while wearing a cone around her neck;
- Abuse by Jacqueline Aguilar.

[78] According to the appellant, by failing to consider these alternatives and ignoring them, the trial judge erred in law.

[79] Concerning his argument on the abuse by the previous owner, the appellant relies on the fact that Ms. Aguilar admitted that Sombrero appeared to have been abused before being acquired by them.

[80] The appellant also relies on the fact that Sombrero was likely to be a mill dog.

[81] The appellant also raises several issues that, according to him, could affect the conclusion that some of Sombrero's fractures were estimated at four to six weeks before her death.

[82] The appellant submits that, according to the testimonies of Ms. Aguilar and Dr. Dessureault, some of Sombrero's injuries are consistent with her bumping into walls while wearing the cone around her neck.

[83] Concerning the argument of the abuse by Ms. Aguilar, the appellant submits that it is a reasonable inference because Ms. Aguilar had motive and opportunity and because she is not credible.

[84] The appellant argues that the inferences drawn by the trial judge regarding the events of December 7, 2014 and January 2, 2015 relied on scant circumstantial evidence and that the judge ignored reasonable alternatives consistent with his presumption of innocence.

[85] The appellant therefore submits that the prosecution's evidence, on all counts, does not meet the standard of proof beyond a reasonable ground.

[86] For the following reasons, these grounds of appeal must be dismissed.

[87] Concerning the December 7, 2014 event, the trial judge did consider evidence that the hot water could have been spilled by accident. She referred to the testimony of Ms. Aguilar who said that she was informed that hot water fell on the dog while hot chocolate was being made.

[88] The trial judge had to determine whether that incident occurred by accident or whether the appellant intentionally poured boiling water on Sombrero.

[89] The trial judge noted that the veterinarian testified to the fact that the dog had 75% of its body burned by boiling water.

[90] She also noted that, at the time of the incident, the appellant was alone with the dog.

[91] It is also in evidence that the appellant had to be confronted by Ms. Aguilar before he spoke about spilling hot water on the dog.

[92] Ms. Aguilar found some of the dog's fur in the garbage.

[93] She also testified that the glass showed by the appellant was not big enough to have caused such injuries.

[94] In his brief, the appellant submits that Ms. Aguilar admitted that the incident on December 7, 2014 was an accident.

[95] To support this, the appellant refers to the cross-examination of Ms. Aguilar.

[96] The transcripts clearly show that it's the appellant's attorney who used the term "accident" in his questions instead of "incident".

[97] This could have misled Ms. Aguilar. In fact, when she was asked directly if the appellant had told her that it was an accident, she did not recall him saying that.

[98] To determine whether the spilling of the water was accidental or intentional, the trial judge had to make findings of fact.

[99] In her judgement, contrary to what the appellant claims, the trial judge never stated that there was no evidence that the appellant accidently caused the hot water to spill on Sombrero. But she did state that the dog's injuries were caused by the appellant.

[100] The Court finds that there are no palpable and overriding errors in the trial judge's findings of fact.

[101] The trial judge's findings of fact are not unreasonable and they are supported by the evidence.

[102] With respect to the January 2, 2015 event, the appellant submits that the trial judge ignored the contextual background and evidence and that there are three reasonable alternatives that are consistent with his innocence.

[103] With respect to the contextual background and the evidence, the appellant refers to Sombrero's injuries and health, to the timeline of the January 2, 2015 event and to the credibility of Ms. Aguilar.

[104] Concerning Sombrero's injuries, the trial judge noted that both expert witnesses concluded that the injuries sustained by the animal could not have been self-inflicted and were compatible with abuse.

[105] She also noted that the experts' assessment and opinion were not challenged in a way to affect their conclusions and that no counter-expertise, or no questions did, in any way, contradict their conclusions or offer the possibility of another conclusion.

[106] The appellant submits that Dr. Dessureault's testimony, in general, is unreliable because:

- Her observations as to the genesis of the fractures were estimates;
- She could not be precise to the minute;
- The freezing of an animal after death can complicate the interpretation and can cause changes;
- For some fractures, it may be more difficult to determine when they occurred.

[107] The respondent rightfully points out that these elements are taken out of context.

[108] Although the oldest fractures were estimated to have occurred four to six weeks prior to the dog's death, some were very recent. Dr. Dessureault specified "hours or days before her death". It is in that context that she mentioned that she was unable to be precise to the minute.

[109] With respect to the changes caused by the freezing of the animal, she was specifically referring to the hemorrhages.

[110] Finally, when Dr. Dessureault said that "some fractures may be more difficult to define when they occurred", she was referring to the oldest fractures.

[111] The appellant also submits that Sombrero appeared to have been physically abused before being acquired by him and Ms. Aguilar.

[112] Again, there is evidence that some of the fractures occurred within hours or days from the dog's death.

[113] The Court finds that the trial judge made no palpable and overriding errors in the findings of fact with respect to injuries and health of Sombrero. These findings of fact are not unreasonable and they are supported by the evidence.

[114] With respect to the January 2, 2015 event, the appellant also submits that Ms. Aguilar gave three different versions about the length of time he would have been alone with Sombrero.

[115] According to the appellant, the trial judge failed to consider and/or explain a four-minute version, a thirteen-minute version and a two-hour version.

[116] Ms. Aguilar testified that the appellant left at 3:00 and that they were both back to the apartment at 3:13.

[117] In her judgment, the trial judge quotes Ms. Aguilar's testimony where she said that she was gone for 13 minutes.

[118] The amount of time the appellant would have been alone with the dog is not a decisive factor.

[119] The important factors are that the appellant is the only one who had access to the apartment during the time Ms. Aguilar was at the store, the fact that Sombrero was fine when Ms. Aguilar left the apartment and the fact that the dog was injured when she came back.

[120] The trial judge made no palpable and overriding errors by referring to the testimony of Ms. Aguilar that she was gone for thirteen minutes.

[121] The appellant submits that Ms. Aguilar contradicted herself and that on numerous occasions, she stated that she did not recall or could not remember what she was asked.

[122] In her judgment, the trial judge concluded that Ms. Aguilar's testimony was credible, logical and that she believed her testimony. The trial judge stated that her testimony was not contradicted on any essential element.

[123] An appellate court must show deference to the assessment of the credibility of a witness by a trial judge[11].

[124] The trial judge is in a much better position to assess the credibility of a witness[12].

[125] In this case, the Court finds that there are no palpable and overriding errors in the assessment of the credibility of Ms. Aguilar by the trial judge.

[126] The appellant submits that the trial judge failed to consider and ignored three reasonable alternatives that are consistent with his innocence, namely that Sombrero's injuries arise from one or a combination of:

- Abuse by the previous owner;
- Sombrero bumping into walls while wearing a cone around her neck;
- Abuse by Ms. Aguilar.

[127] The Court is of the view that the expert evidence on the dog's wounds, as stated above, calls for the dismissal of the appellant's submissions that these wounds were caused by the previous owner or were self-inflicted.

[128] By adopting the expert's conclusions, the trial judge could not consider these two alternatives submitted by the appellant.

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[11] *Benhaim*, supra, note 4, par. 37.
[12] *Ibid.*

[129] With respect to the third alternative, the abuse of the dog by Ms. Aguilar, it is inconsistent with the judge's conclusions with respect to Ms. Aiguilar's testimony.

[130] It is also obvious from the trial judge's reasons that she rejected the possibility that Ms. Aguilar could have physically abused the dog.

[131] The appellant further submits that the trial judge erred by stating:

> The Court must make a logical inference on evidence presented and cannot speculate things or scenarios that are not in evidence. The evidence in front of this Court is that the dog was injured while alone with the defendant both times. No inference in the evidence can suggest that anybody else could have inflicted the wounds. There is no other reasonable inference that this Court can conclude to[13].

[132] In this regard, the appellant submits that in assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts.

[133] In her judgment, the trial judge refers to the following passages from *R*. v. *Villaroman*[14]:

> […] The Supreme Court case in the case of Oswald Oliver Valorama (ph) teaches us that, and I read:
>
> > "The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there is a reasonable inference, other than guilt, the Crown's evidence does not meet the proof beyond a reasonable doubt standard. A certain gap in the evidence may result in inferences other than guilt but those inferences must be reasonable given the evidence and the absence of evidence assessed logically in light of human experience and common sense. When assessing circumstantial evidence, the trier of fact should consider other plausible theories and other reasonable possibilities which are consistent... which are inconsistent with guilt."
>
> At page 1001, judge Cromwell teaches us also:
>
> > "The central component of an instruction on circumstantial evidence is to instill in the jury that in order to convict, they must be satisfied beyond a reasonable doubt that the only rational inference that can be drawn from circumstantial evidence is that the accused is guilty."
>
> The same principle is taught and reminded to us in page 1002 where, of course, the inference that this Court draws from the evidence must satisfy it

[13] Transcript of the judgment rendered on Februay 20, 2019, p. 15.
[14] *Villaroman*, *supra*, note 2.

> beyond a reasonable doubt that the accused committed the offence with which the Crown has charged him[15].

[134] These passages indicate that the trial judge was alive to the principle that "a certain gap in the evidence may result in inferences other than guilt, but those inferences must be reasonable given the evidence and the absence of evidence assessed logically in light of human experience and common sense"[16].

[135] The trial judge did not state that, in assessing circumstantial evidence, inferences consistent with innocence have to arise from proven facts as suggested by the appellant.

[136] The trial judge referred to the "evidence presented" which does not necessarily amount to proven facts.

[137] Considering the references she made to *Villaroman*[17], by referring to the "evidence presented", one can logically infer that she would consider any absence of evidence.

[138] Furthermore, when she states that she "cannot speculate things or scenarios that are not into evidence", it must be read bearing in mind her reference to *Villaroman*[18] where it is mentioned that, when assessing circumstantial evidence, the trier of fact should consider other plausible theories and other reasonable possibilities which are inconsistent with guilt.

[139] It is also stated in *Villaroman*[19]:

> [37] […] I agree with the appellant that the Crown thus may need to negative these *reasonable* possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.
>
> [Our emphasis]

[140] The Court is of the view that the trial judge was referring to these principles.

[141] Finally, it must also be considered that in the excerpt quoted from the trial judge's judgment, in which the appellant claims that she erred, the trial judge was referring to

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[15] Transcript of the judgment rendered on February 20, 2019, pp. 13, 14, 15.
[16] *Ibid.*, pp. 13, 14.
[17] *Villaroman*, *supra*, note 2.
[18] *Ibid.*
[19] *Ibid.*

the fact that “no inference in the evidence can suggest that anybody else could have inflicted the wounds”[20].

[142] Therefore, this was solely in relation to the exclusive opportunity that the appellant had to commit the offences and not with respect to the causes of the wounds.

[143] The Court sees no palpable and overriding errors in those conclusions.

[144] Furthermore, the trial judge made no error in law with respect to the applicable legal principles in matters based on circumstantial evidence.

[145] The appellant also submits that the trial judge failed to deliver adequate reasons and reasoning.

[146] More specifically, the appellant argues that the trial judge’s assessment of the facts on the incident of January 2, 2015 manifestly fails to consider and/or explain the evidence on the three versions of the timeline referred to by the appellant as the “paradox”.

[147] As stated earlier, the evidence from Ms. Aguilar is that she was at the grocery store at 3:00 and that she came back to the apartment at 3:13.

[148] The appellant also submits that the trial judge’s inference, that he was at Ms. Aguilar’s apartment between 3:00 and 3:13, was mere speculation and constituted an error in law.

[149] The fact of the matter is that the trial judge never drew that inference in her judgment. However, she did conclude that the appellant was alone with the animal when both events occurred.

[150] The appellant also submits that the trial judge’s reasons as to Ms. Aguilar’s credibility are so generic that they amount to no reasons at all and constitute a palpable and overriding error.

[151] In her summary of the facts, the trial judge considered the essential elements of Ms. Aguilar’s testimony that were relevant to the accusations. She concluded that her testimony was credible and logical and that it was not contradicted on any essential element.

[152] In *R*. v. *Dinardo*[21], the Supreme Court of Canada stated the following:

> [25] *Sheppard* instructs appeal courts to adopt a functional approach to reviewing the sufficiency of reasons (para. 55). The inquiry should not be conducted in the abstract, but should be directed at whether the reasons

[20] Transcript of the judgment rendered on February 20, 2019, p. 15.
[21] [2008] SCC 24.

respond to the case's live issues, having regard to the evidence as a whole and the submissions of counsel (*R. v. D. (J.J.R.)* (2006), 215 C.C.C. (3d) 252 (Ont. C.A.), at para. 32). An appeal based on insufficient reasons will only be allowed where the trial judge's reasons are so deficient that they foreclose meaningful appellate review: *Sheppard*, at para. 25.

[26] At the trial level, reasons "justify and explain the result" (*Sheppard*, at para. 24). Where a case turns largely on determinations of credibility, the sufficiency of the reasons should be considered in light of the deference afforded to trial judges on credibility findings. Rarely will the deficiencies in the trial judge's credibility analysis, as expressed in the reasons for judgment, merit intervention on appeal. Nevertheless, a failure to sufficiently articulate how credibility concerns were resolved may constitute reversible error (see *R. v. Braich*, [2002] 1 S.C.R. 903, 2002 SCC 27, at para. 23). As this Court noted in *R. v. Gagnon*, [2006] 1 S.C.R. 621, 2006 SCC 17, the accused is entitled to know "why the trial judge is left with no reasonable doubt":

> 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.
>
> This does not mean that a court of appeal can abdicate its responsibility for reviewing the record to see whether the findings of fact are reasonably available. Moreover, where the charge is a serious one and where, as here, the evidence of a child contradicts the denial of an adult, an accused is entitled to know why the trial judge is left with no reasonable doubt. [paras. 20-21]

[153] Furthermore, in *R.* v. *R.E.M.*[22], the Supreme Court of Canada stated:

[55] The appellate court, proceeding with deference, must ask itself whether the reasons, considered with the evidentiary record, the submissions of counsel and the live issues at the trial, reveals the basis for the verdict reached. It must look at the reasons in their entire context. It must ask itself whether, viewed thus, the trial judge appears to have seized the substance of the critical issues on the trial. If the evidence is contradictory or confusing, the appellate court should ask whether the trial judge appears to have recognized and dealt with the contradictions. If there is a difficult or novel question of law, it should ask itself if the trial judge has recognized and dealt with that issue.

[56] If the answers to these questions are affirmative, the reasons are not deficient, notwithstanding lack of detail and notwithstanding the fact that they are less than ideal. The trial judge should not be found to have erred in law for failing to describe every consideration leading to a finding of credibility, or

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[22] [2008] SCC 51 [***R.E.M.***].

> to the conclusion of guilt or innocence. Nor should error of law be found because the trial judge has failed to reconcile every frailty in the evidence or allude to every relevant principle of law. Reasonable inferences need not be spelled out. For example if, in a case that turns on credibility, a trial judge explains that he or she has rejected the accused's evidence, but fails to state that he or she has a reasonable doubt, this does not constitute an error of law; in such a case the conviction itself raises an inference that the accused's evidence failed to raise a reasonable doubt. Finally, appellate courts must guard against simply sifting through the record and substituting their own analysis of the evidence for that of the trial judge because the reasons do not comply with their idea of ideal reasons. As was established in *Harper v. The Queen*, [1982] 1 S.C.R. 2, at p. 14, "[a]n appellate tribunal has neither the duty nor the right to reassess evidence at trial for the purpose of determining guilt or innocence. . . . Where the record, including the reasons for judgment, discloses a lack of appreciation of relevant evidence and more particularly the complete disregard of such evidence, then it falls upon the reviewing tribunal to intercede."
>
> [57] Appellate courts must ask themselves the critical question set out in *Sheppard*: Do the trial judge's reasons, considered in the context of the evidentiary record, the live issues as they emerged at trial and the submissions of counsel, deprive the appellant of the right to meaningful appellate review? To conduct meaningful appellate review, the court must be able to discern the foundation of the conviction. Essential findings of credibility must have been made, and critical issues of law must have been resolved. If the appellate court concludes that the trial judge on the record as a whole did not deal with the substance of the critical issues on the case (as was the case in *Sheppard* and *Dinardo*), then, and then only, is it entitled to conclude that the deficiency of the reasons constitute error in law.

[154] The Court is of the view that the trial judge's reasons, considered with the evidentiary record, the submissions of counsel and the live issues at the trial, reveals the basis for the verdict reached[23]. The trial judge's reasons, considered in the context of the evidentiary record, the live issues as they emerged at trial and the submissions of counsel, do not deprive the appellant of the right to meaningful appellate review[24].

b) Ground of appeal number 6: Did the trial judge erred in law in dismissing the motion for a stay of proceedings based on Section 11b) of the *Canadian Charter of Rights and Freedom*[25]?

[155] The appellant submits that the trial judge erred in subtracting from the total delay of 687 days a period of 175 days.

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[23] *R.E.M.*, *supra*, note 22, par. 55.
[24] *Id*., par. 57.
[25] *Canadian Charter of Rights and Freedoms*, s. 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

[156] According to the appellant, the trial judge erred in subtracting the period of 175 days because first, the respondent had to disclose evidence to his attorney and second, she erred in concluding that there was an implicit waiver by him.

[157] The appellant also submits that an additional delay of 202 days incurred after his Charter application until the end of the trial on May 8, 2018 should be considered by this Court.

[158] To sum up, the appellant submits that the net delay is above the 18-month ceiling stated in *R*. v. *Jordan*[26].

[159] According to the *R*. v. *Jordan*[27] and *R.* v. *Cody*[28] framework, a court must establish the entire delay between the laying of the charges and the anticipated end of the trial. Second, it must subtract the delays which were caused by the accused's actions or waivers. Third, if the total of this subtraction exceeds the ceiling of 18 months, the delay will be presumed to be unreasonable and the prosecution has the burden of proving the contrary according to the principles stated in *Jordan*[29] and *Cody*[30].

[160] In *R*. v. *Rice*[31], the Court of Appeal of Quebec stated the following on the standard of review on appeal of a decision concerning Section 11b) of the Charter:

> [29] Au moment d'écrire mes motifs, beaucoup d'eau a coulé sous le pont Jordan/Cody. Néanmoins, je m'attarde brièvement aux grands principes.
>
> [30] Les principes juridiques pour l'évaluation du respect du droit à un procès dans un délai raisonnable ont été simplifiés par la Cour suprême. D'une part, elle a fait savoir que le cadre d'analyse appliqué jusqu'alors avait entraîné les tribunaux dans une exégèse inefficace des différents facteurs avec la conséquence que ce cadre était devenu difficile d'application. Avec son nouveau cadre d'analyse, la Cour suprême exprime le souhait de mettre un terme aux microcalculs inefficaces et pointilleux : *R. c. Jordan*, [2016] 1 R.C.S. 631, par. 37, 111; *R c. Vassell*, [2016] 1 R.C.S. 625, par. 3.
>
> [31] Le défi est donc grand pour les juges et peut-être encore plus pour les juges d'appel, de qui la Cour suprême requiert la déférence envers « l'expertise », ou pourrait-on dire, l'expérience, des juges de procès : *R. c. Cody*, 2017 CSC 31 par. 31, 64; *R. c. Jordan*, [2016] 1 R.C.S. 631, par. 71, 174.
>
> [32] L'approche préconisée est rigoureuse, mais fondée sur des concepts généraux. Le juge doit respecter le cadre d'analyse pour déterminer s'il y a violation, sous peine de voir sa décision révisée par un tribunal d'appel qui constatera alors une erreur de droit.

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[26] [2016] SCC 27 (***Jordan***).
[27] *Id.*
[28] [2017] SCC 31 (***Cody***).
[29] *Jordan*, *supra*, note 26.
[30] *Cody*, *supra*, note 28.
[31] [2018] QCCA 198 [***Rice***].

> [33] Toutefois, il appartient aux juges d'instance d'évaluer les situations. Sous ce rapport, les tribunaux d'appel doivent faire preuve de déférence. À défaut de démontrer que le juge a tiré une inférence ou une conclusion clairement erronée, qui n'est pas fondée sur la preuve ou clairement déraisonnable ou encore une autre erreur manifeste et déterminante ayant un impact sur la décision finale, les tribunaux d'appel ne doivent pas intervenir : *R. c. Clark*, [2005] 1 R.C.S. 6, par. 9.
>
> [34] Cette intervention limitée évitera de nous ramener à la situation antérieure où les nuances de gris n'en finissent plus, de sorte que la ligne à ne pas franchir s'y fond et s'y perd.
>
> [35] Une cour d'appel doit nécessairement laisser la discrétion au juge d'instance d'évaluer les différentes situations. Il connaît sa cour, son fonctionnement, son milieu et les acteurs. Entre autres, le juge d'instance bénéficie d'une connaissance privilégiée des affaires comparables qui ne font ni l'objet d'appel ni d'analyse particulière, mais qui agissent néanmoins comme des points de repère indéniables.

[161] The trial judge considered a total delay of 22 months and 14 days as stated in the appellant's application.

[162] According to the appellant, if the trial judge had not considered a period of 175 days as a waiver by him, the total delay would be 22 months and 14 days. The appellant further submits that if we consider the delay incurred after his Charter application until the end of the trial (202 days), the total delay would be 29.3 months.

[163] In both scenarios, according to the appellant, the delay is above the 18-month ceiling.

[164] The trial judge subtracted a delay of 175 days for which she considered that there was a waiver by the appellant.

[165] In order to reach that conclusion, the trial judge listened to the recording of the hearing when the postponement was granted on August 4, 2015 and the fact that the Municipal Court's record indicates that there was a waiver by the appellant for that period of 175 days.

[166] There is no indication to suggest that the postponement was requested because the respondent had to disclose evidence to the appellant.

[167] The Court is of the view that in the circumstances of this case, the trial judge's inference that the appellant's attorney waived the delay is not unreasonable.

[168] As stated in *R*. v. *Rice*[32], an appellate court must allow the trial judge to apply his or her discretion in his or her evaluation of situations. The trial judge is in a privileged position to know his court, its operation and the parties concerned.

[169] Concerning the additional delay between the decision of the trial judge on the appellant's application under Section 11b) of the Charter (October 17, 2017) and the end of the trial (May 8, 2018), the Court refers to *R*. c. *Masson*[33]:

> [112] Lorsque la juge d'instance a rendu son dispositif, le procès devait prendre fin en septembre 2016. Les délais supplémentaires postérieurs à sa décision sont une situation nouvelle qui aurait nécessité que l'appelant, s'il l'estimait à propos, demande à la juge de réviser sa décision à la lumière de ces éléments nouveaux, et que les parties fassent leurs représentations sur ces nouveaux délais. L'appelant reproche à la juge de ne pas avoir changé *proprio motu* le ratio de sa décision. Il lui appartenait de saisir la juge de la nouvelle situation et de démontrer que le délai était déraisonnable. Cependant, le délai total dans ce cas était de 16 mois et compte tenu des circonstances, il s'agissait d'un délai raisonnable, tout en étant inférieur au plafond de 18 mois pour une accusation jugée devant une cour provinciale.
>
> [113] Conséquemment, l'appelant n'ayant pas démontré sur la question des délais déraisonnables, d'erreur de droit de nature à requérir l'intervention du Tribunal, son appel sur ce moyen doit être rejeté.

[170] These principles apply in this case.

[171] These grounds of appeal are therefore dismissed.

c) Ground of appeal number 7: Did the trial judge err in law by failing to meet the requirement of impartiality?

[172] The appellant submits that the trial judge's bias is gleaned from the Court's record.

[173] According to him, the trial judge made biased interventions during cross-examination by his counsel.

[174] He also refers to the language used by the trial judge, most notably when she told his attorney that he was acting like a child.

[175] The appellant also refers to repeated interventions on matters of evidence.

[176] The appellant submits that throughout the duration of the trial, the judge clearly and repeatedly displayed an aggressive contempt for the Defence to the point that a

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[32] *Rice*, s*upra*, note 31.
[33] [2019] QCCS 2953.

reasonable person would conclude that the judge could not review and consider the evidence with an open mind.

[177] According to the appellant, the judgment's glaring omissions of facts in evidence demonstrate that the trial judge failed to review and consider the evidence with an open mind.

[178] In *R*. v. *R.D.S.*[34]*,* the Supreme Court of Canada stated the following with respect to the necessity for judicial impartiality:

> [99] If actual or apprehended bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction. See *Curragh*, *supra*, at para. 5; *Gushman*, *supra*, at para. 28. This excess of jurisdiction can be remedied by an application to the presiding judge for disqualification if the proceedings are still underway, or by appellate review of the judge's decision. In the context of appellate review, it has recently been held that a "properly drawn conclusion that there is a reasonable apprehension of bias will ordinarily lead inexorably to the decision that a new trial must be held": *Curragh*, *supra*, at para. 5.
>
> [100] If a reasonable apprehension of bias arises, it colours the entire trial proceedings and it cannot be cured by the correctness of the subsequent decision. See *Newfoundland Telephone*, *supra*, at p. 645; see also *Curragh*, *supra*, at para. 6. Thus, the mere fact that the judge appears to make proper findings of credibility on certain issues or comes to the correct result cannot alleviate the effects of a reasonable apprehension of bias arising from other words or conduct of the judge. In the context of an application to disqualify a judge from sitting in a particular lawsuit, it has been held that where there is a reasonable apprehension of bias, "it is impossible to render a final decision resting on findings as to credibility made under such circumstances": *Blanchette* v. *C.I.S. Ltd.*, [1973] S.C.R. 833, at p. 843. However, if the words or conduct of the judge, viewed in context, do not give rise to a reasonable apprehension of bias, the findings of the judge will not be tainted, no matter how troubling the impugned words or actions may be.
>
> […]
>
> [111] The manner in which the test for bias should be applied was set out with great clarity by de Grandpré J. in his dissenting reasons in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at p. 394:
>
> > [T]he apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. . . . [The] test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. . . ."
>
> This test has been adopted and applied for the past two decades. It contains a two-fold objective element: the person considering the alleged bias must be

[34] [1997] S.C.R. 484.

reasonable, and the apprehension of bias itself must also be reasonable in the circumstances of the case. See *Bertram*, *supra*, at pp. 54-55; *Gushman*, *supra*, at para. 31. Further the reasonable person must be an informed person, with knowledge of all the relevant circumstances, including "the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold": *R. v. Elrick*, [1983] O.J. No. 515 (H.C.), at para. 14. See also *Stark*, *supra*, at para. 74; *R. v. Lin*, [1995] B.C.J. No. 982 (S.C.), at para. 34. To that I would add that the reasonable person should also be taken to be aware of the social reality that forms the background to a particular case, such as societal awareness and acknowledgement of the prevalence of racism or gender bias in a particular community.

[112] The appellant submitted that the test requires a demonstration of "real likelihood" of bias, in the sense that bias is probable, rather than a "mere suspicion". This submission appears to be unnecessary in light of the sound observations of de Grandpré J. in *Committee for Justice and Liberty*, *supra*, at pp. 394-95:

> I can see no real difference between the expressions found in the decided cases, be they 'reasonable apprehension of bias', 'reasonable suspicion of bias', or 'real likelihood of bias'. The grounds for this apprehension must, however, be substantial and I entirely agree with the Federal Court of Appeal which refused to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".
>
> [Emphasis added.]

Nonetheless the English and Canadian case law does properly support the appellant's contention that a real likelihood or probability of bias must be demonstrated, and that a mere suspicion is not enough. See *R. v. Camborne Justices, Ex parte Pearce*, [1954] 2 All E.R. 850 (Q.B.D.); *Metropolitan Properties Co. v. Lannon*, [1969] 1 Q.B. 577 (C.A.); *R*. v. *Gough*, [1993] 2 W.L.R. 883 (H.L.); *Bertram*, *supra*, at p. 53; *Stark*, *supra*, at para. 74; *Gushman*, *supra*, at para. 30.

[113] Regardless of the precise words used to describe the test, the object of the different formulations is to emphasize that the threshold for a finding of real or perceived bias is high. It is a finding that must be carefully considered since it calls into question an element of judicial integrity. Indeed an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice. See *Stark*, *supra*, at paras. 19-20. Where reasonable grounds to make such an allegation arise, counsel must be free to fearlessly raise such allegations. Yet, this is a serious step that should not be undertaken lightly.

[…]

[117] Courts have rightly recognized that there is a presumption that judges will carry out their oath of office. See *R. v. Smith & Whiteway Fisheries Ltd.* (1994), 133 N.S.R. (2d) 50 (C.A.), and *Lin*, *supra*. This is one of the reasons why the threshold for a successful allegation of perceived judicial bias is high. However, despite this high threshold, the presumption can be displaced with

> "cogent evidence" that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias. See *Smith & Whiteway*, *supra*, at para. 64; *Lin*, *supra*, at para. 37. The presumption of judicial integrity can never relieve a judge from the sworn duty to be impartial.
>
> […]
>
> [152] The remarks are worrisome and come very close to the line. Yet, however troubling these comments are when read individually, it is vital to note that the comments were not made in isolation. It is necessary to read all of the comments in the context of the whole proceeding, with an awareness of all the circumstances that a reasonable observer would be deemed to know.

[179] For the following reasons, this ground of appeal must be dismissed.

[180] The trial judge's interventions during the trial are not sufficient to rebut the presumption of judicial integrity.

[181] Even if she had presented some signs of impatience or used a certain language, it is not sufficient to dismiss the presumption of impartiality[35].

[182] The trial judge was not disobliging in regard to the quality of the appelant's lawyer's competence.

[183] The examples appearing in the appellant's Schedule C are not likely to raise serious concerns about bias.

[184] Furthermore, the appellant fails to elaborate precisely on how these interventions had an impact in the trial's context, which is essential when analyzing the possible partiality of a judge[36].

[185] The transcripts of the trial show that many of the trial judge's interventions were triggered by the appellant's counsel and that the trial judge was often being interrupted by him.

[186] The appellant's argument that the trial judge was arguing the case for the prosecution is unfounded, not to say unfair.

[187] For these reasons, this ground of appeal must be dismissed.

CONCLUSIONS

[188] None of the grounds of appeal raised by the appellant justify the intervention of this Court.

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[35] *R*. c. *Belleville*, [2018] QCCA 960, par. 109 [***Belleville***]; *R*. c. *Lecompte*, [2019] QCCS 5099, par. 139.
[36] *Belleville*, *Id*., par. 117.

[189] The appeal must be dismissed.

FOR THESE REASONS, THE COURT:

[190] **DISMISSES** the appeal.

_____
PIERRE LABRIE, J.S.C.

Me Daniel Cooper
Marcil and Cooper
Attorney for the APPELANT-Accused

Me Aline Ramy
Ville de Montréal
Prosecutor for the RESPONDENT-Prosecution

Hearing date: In the context of the COVID-19 pandemic, the parties agreed that this appeal be decided on the basis of the written submissions without a hearing. The parties were given the opportunity to submit additional arguments by writing and jurisprudence. They did so on April 15 and April 28, 2020. The Court took this case under advisement on April 28, 2020.