SUPERIOR COURT
(Criminal Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-36-009845-218
(CM: 119-089-142)

DATE : FEBRUARY 1, 2022

IN THE PRESENCE OF THE HONOURABLE MYRIAM LACHANCE, S.C.J.

TIARRA MORSANI
APPELLANT-accused

v.

HER MAJESTY THE QUEEN
RESPONDENT-prosecutor

JUDGMENT

---

1. OVERVIEW

[1] On January 29, 2021, in an oral decision[1], the appellant was convicted in the Municipal Court of Montreal (Mr. Justice Francis Paradis) of having, on the 28th of April 2019, wilfully caused unnecessary pain, suffering or injury to a dog, committing thereby an offence punishable on summary conviction contrary to section 445.1 1) a) of the *Criminal Code*.

---

[1] Transcript, January 29, 2021, p. 102 to p. 113.

[2] The appellant argues that the verdict is unreasonable considering her complete denial of the alleged offence and that her identification, based exclusively on circumstantial evidence, was not the only reasonable conclusion.

[3] After a careful analysis, the verdict appeal must be dismissed.

2. ISSUE IN DISPUTE

[4] Did the trial judge reach an unreasonable verdict considering the evidence before him?

3. THE FACTS

[5] On April 28, 2019, in Montreal, between 8 p.m. and 10 p.m., Tecla Cesta and Paul Awad were sitting on their balcony when they heard a commotion coming from across the street.

[6] From their second-floor balcony, they both saw, on their right, a man and a woman standing in front of a duplex located at 4651, Clanranald, in Montreal.

[7] The woman was holding a baby car seat and was standing in front of the duplex while the man was further away near the street.

[8] Both witnesses heard the woman saying “I dropped the baby” and saw her turn towards a dog. She kicked it multiple times with great force. It was a medium-sized dog that just came out of the apartment on the right of the duplex.

[9] The woman then took the car seat and headed inside the same apartment followed by the man and the dog before closing the door.

[10] Both Ms. Cesta and Mr. Awad confirmed that they had never seen these people before or after that night. They were not able to identify the appellant in the courtroom.

[11] The day after the incident, Ms. Cesta and Mr. Awad informed the Société protectrice des animaux (SPA) of what happened.

[12] On May 6, 2019, the SPA obtained a search warrant to search the 4651, Clanranald.

[13] Marie-Michèle Dupuis-Lanthier, one of the SPA agents on file, testified that she identified the appellant and the man living with her at 4651, Clanranald, with their identification documents.

[14] The prosecution filed these photographs and those from the dog seized at the same address. Ms. Cesta and Mr. Awad were not able to positively confirm that it was the same dog.

[15] The SPA took custody of the dog, and on May 7, 2019, Dr. Guy Beauregard analyzed its X-ray imaging. He determined that there was no evidence of any actual or former fractures nor any injuries or lesions that resulted from a previous trauma.

[16] The appellant testified for her defence and explained she did not remember any particular event on April 28, 2019, as it was an ordinary day.

[17] She admitted having a medium-size dog, a Pitbull named Honcho, but denied having ever been violent with it. She said that other dogs were wandering around her apartment and that there was another one in her duplex.

[18] She confirmed that she was residing at 4651, Clanranald, on April 28, 2019, with her boyfriend, her eight-month-old baby, and her dog Honcho.

[19] At trial, the disputed issue was the reliability of the witnesses and the identification of the appellant.

4. ANALYSIS

4.1 The Standard for Intervention

[20] Before considering the trial judge's reasons, I will first deal with the standard for intervention on appeal, specifically in a case where the identification relied on circumstantial evidence.

[21] Section 686(1)a) of the *Criminal Code* stipulates that an appeal may be allowed if the decision of the trial judge was (1) unreasonable or could not be supported by the evidence; (2) was wrong on a question of law; or (3) resulted in a miscarriage of justice.

[22] The standard of review is correctness for questions of law, and palpable and overriding error for findings of facts and inferences of facts[2].

[23] Appellate courts show deference to a trial judge's findings of facts since they are in the best position to make these findings[3].

[24] However, "[i]t has long been recognized that it is an error of law to make a finding of fact for which there is no supporting evidence"[4].

[25] An error of law also arises where "the legal effect of findings of fact or of undisputed facts raises a question of law" and where there is "an assessment of the evidence based on a wrong legal principle"[5].

[26] These two types of errors "address errors where the trial judge's application of the legal principles to the evidence demonstrates an erroneous understanding of the law, either because the trial judge finds all the facts necessary to meet the test but errs in law in its application, or assesses the evidence in a way that otherwise indicates a misapprehension of the law"[6].

[27] Also, "[a]ppellate courts must not finely parse the trial judge's reasons in a search for error" as "they must assess whether the reasons, read in context and as a whole, in light of the live issues at trial, explain what the trial judge decided and why they decided that way in a manner that permits effective appellate review"[7].

---

2 *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, at paras 8, 10 and 19.
3 *Id*, at paras 15-18 and *Benhaim v. St-Germain*, [2016] 2 S.C.R. 352, at para 37.
4 *R. v. J.M.H.*, [2011] 3 S.C.R. 197, at para 25 referring to *Schuldt v. The Queen*, [1985] 2 S.C.R. 592, at p. 604.
5 *R. v. Chung*, 2020 SCC 8, at para 11 referring to *R. v. J.M.H.*, supra note 4, at paras 28-30.
6 *Ibid*.
7 *R. v. G.F.*, 2021 SCC 20, at para 69.

[28] Regarding the standard of review where the verdict's reasonableness is raised, it was explained by Cromwell J in *Villaroman*. He specified that in a case based on circumstantial evidence, "the question becomes whether the trier of fact, acting judicially, could reasonably be satisfied that the accused's guilt was the only reasonable conclusion available on the totality of the evidence"[8].

[29] Appellate courts cannot intervene when identification evidence "support[s] an inference of guilt beyond a reasonable doubt". That being said, "the standard of review itself is not lowered in cases involving eyewitness testimony"[9].

[30] "The review for unreasonableness is wider for verdicts of judges sitting without a jury for the practical reason that judges give reasons for their findings which an appellate court may consider as part of its analysis", but as Schrager J wrote for the Court of Appeal of Quebec in *A.N.*, "the Court of Appeal should not intervene merely because it has a doubt when the trial judge did not"[10].

[31] In *Bigsky*[11], the Court of Appeal for Saskatchewan set out a list of factors that an appellate court can consider when determining whether it should intervene because the trial judge would have failed to address the frailties of eyewitness evidence :

> [41] In the judge-alone cases, when a court of appeal will intervene depends on a variety of factors: (i) whether the trial judge can be taken to have instructed himself or herself regarding the frailties of eyewitness testimony and the need to test its reliability; (ii) the extent to which the trial judge has reviewed the evidence with such an instruction in mind; (iii) the extent to which proof of the Crown's case depends on the eyewitness's testimony or, in other words, the presence or absence of other evidence that can be considered in determining whether a court of appeal should intervene; (iv) the nature of the eyewitness observation including such matters as whether the eyewitness had previously known the accused and the length and quality of the observation; and (v) whether there is other evidence which may tend to make the evidence unreliable, i.e., the witness's evidence has been strengthened by inappropriate police or other procedures between the time of the eyewitness observation and the time of testimony.[12]

[32] The Court of Appeal of Quebec in *Guimond* underlined the necessity to analyze all the facts pertaining to the identity of the accused that supported the guilty verdict and not only the frailties of the eyewitness' identification :

> [28] Bien entendu, il faut également se demander s'il existe d'autres éléments de preuve tendant à renforcer la valeur probante de la preuve d'identification ou à démontrer autrement la culpabilité de l'accusé. C'est là, à mon avis, ce qui distingue le présent appel des arrêts précédemment cités.
>
> [29] Il est vrai que la valeur probante des témoignages d'identification est, dans la plupart des cas, très faible sinon inexistante, particulièrement ceux, et il s'agit de la grande majorité, rendus par des témoins qui identifient l'appelant pour la première fois en salle d'audience, après avoir vu sa photographie dans les médias. De plus, plusieurs de ces témoins se

---

8 *R. v. Villaroman*, [2016] 1 S.C.R. 1000, at para 55.
9 *R. v. Letendre*, 2019 ABCA 179, at para 7 referring to *R. v. Hay*, [2013] 3 S.C.R. 694, at para 41.
10 *A.N. c. R.*, 2015 QCCA 1109, at para 73 referring to *R. v. W.H.*, [2013] 2 S.C.R. 180, at para 28.
11 *R. v. Bigsky* (2007), 2006 SKCA 145.
12 *Ibid*.

> contredisent entre eux quant à la description des événements. Néanmoins, j'estime que la preuve, considérée dans son ensemble, permet de conclure, de façon raisonnable, à la culpabilité de l'appelant.[13]

[33] With these various nuances in mind, I now turn to the trial judge's reasons with respect to the substance of this appeal.

4.2 Did the Trial Judge Reach an Unreasonable Verdict Considering the Evidence Presented?

[34] The appellant argues that the trial judge reached an unreasonable verdict by making a finding of fact unsupported by the evidence regarding her identification as the perpetrator of the offence.

[35] She underlines the inconsistencies in the Crown's evidence, the absence of direct identification, and her complete denial of being implicated in the alleged event.

[36] In order to decide if it was reasonable to conclude that the appellant's guilt was the only reasonable conclusion available on the totality of the evidence, I will divide my analysis in two parts: the impact of the general denial of the appellant and the other conceivable inferences.

4.2.1 The General Denial of the Appellant

[37] The appellant argues that the trial judge completely ignored her testimony.

[38] She first admits that a general denial has limited value, but she claims it was an ordinary day, and hence there was nothing to remember.

[39] In the face of a bare denial, there was little the trial judge could say as to why her version was ultimately rejected, other than to explain why he accepted the Crown's evidence[14].

[40] I went through the trial judge's reasons, and it appears to me that an appropriate assessment of the three Crown witnesses was conducted.

[41] As I will further detail in the following section, the trial judge noted some frailties and inconsistencies, but overall, he concluded that Ms. Cesta's and Mr. Awad's evidence was credible and reliable when combined with the SPA officer's testimony which contradicted the appellant's bare denial :

> Now, the inspector also testified. I won't go over her testimony because when you testified, and you did testify for your defence, you recognized living there, having Jonathan as your boyfriend. You recognized having a dog, being the owner of the dog and having a baby at the time. Well, at least, an eight-month-old child at the time.[15]
>
> […]
>
> Well, even if Ms. Cesta may not be a reliable witness, at least for certain parts of her testimony, the Court does find her credible. Mr. Awad, I find more reliable, of course, not on

---

13 *Guimond c. R.*, 2007 QCCA 1215, at paras 28-29, leave to appeal denied, January 31, 2008, n° 32357.
14 *R. v. Kromah*, 2019 ABCA 255, at para 6.
15 Transcript, January 29, 2021, p. 103, l. 7-13.

> all questions, but that's normal. Much has been said regarding certain discrepancies or what we find them as discrepancies, such as... like the distance between themselves and your duplex. Neither witnesses were really questioned about their knowledge of measuring or of distancing.
>
> And I do find that something did occur, the event that I've already said regarding a dog and even if both witnesses did not recognize you in court, that is not something that will be (inaudible) in my decision. First of all, I found them to be in good faith. When they did not recognize something or someone, they said so. When they did not know the answer to a question, they said so. Neither seemed to just guess answers to fill gaps or to please the Court.
>
> It's also explainable because they were testifying at trial 17 months after the incident. They were testifying on facts that they perceived from across the street, from where they were at the time. They were testifying, at least in regards to identification, to people who they did not know at the time, nor before, nor afterwards for that matter.[16]

[42] It follows that the trial judge rejected the appellant's denial and that, while "not implausible", it did not raise a reasonable doubt[17].

[43] In *Conway*, the Court of Appeal of British Columbia specified that "[a] denial or defence that relies heavily on the accused's evidence may be rejected "based on a considered and reasoned acceptance beyond a reasonable doubt of the truth of conflicting credible evidence"[18].

[44] The situation is the same "even where the evidence of the accused, standing alone, "does not raise any obvious problems"[19].

[45] In *Vuradin*, Karakatsanis J. referred to *R.E.M*. where the Supreme Court "explained that a trial judge's failure to explain why he rejected an accused's plausible denial of the charges does not mean the reasons are deficient as long as the reasons generally demonstrate that, where the complainant's evidence and the accused's evidence conflicted, the trial judge accepted the complainant's evidence. No further explanation for rejecting the accused's evidence is required as the convictions themselves raise a reasonable inference that the accused's denial failed to raise a reasonable doubt"[20].

[46] This being said, there is not much left for an appellate court to intervene where the trial judge rejected the appellant's denial and that, as in this case, while "not implausible", it did not raise a reasonable doubt because of the credible and reliable evidence adduced at trial.

---

16 Transcript, January 29, 2021, p. 109, l. 14 to p. 110 l. 18.

17 *R. v. M.D.*, 2021 BCCA 339, at para 81.

18 *R. v. Conway*, 2021 BCCA 460, at para 75 referring to *R. v. D. (J.J.R.) (2006)*, 215 C.C.C. (3d) 252, at para. 53, 2006 CanLII 40088 (Ont. C.A.), leave to appeal refused, [2007] S.C.C.A. No. 69; *R. v. Redden*, 2021 BCCA 230, at para. 81 and *R. v. G.C.*, 2021 ONCA 441, at paras. 13 and 15.

19 *R. v. Conway*, supra note 18, at para 75 referring to *R. v. G.C.*, supra note 18, at para. 15, citing *R. v. R.A.,* 2017 ONCA 714, at para. 55, aff'd 2018 SCC 13.

20 *R. v. Vuradin*, [2013] 2 S.C.R. 639, at para 13.

4.2.2 The Other Conceivable Inferences

[47] The appellant contends that the trial judge erred by failing to consider the other plausible inferences than that she was the person who kicked the dog, because the circumstantial evidence on identification was too frail.

[48] Before examining the identification evidence, it is appropriate to remember that the trial judge was convinced beyond a reasonable doubt that a woman had caused pain to a dog without necessity during the evening of April 28, 2019, within the meaning of the law and of the jurisprudence[21].

[49] Furthermore, the trial judge accepted the evidence of the prosecution witnesses and he noticed that they were partially corroborated by the appellant's own testimony concerning her home address, the people living with her, and the fact that she owned a Pitbull dog at the time of the alleged offence.

[50] His reasons reveal that before reaching his conclusion, the judge kept in mind that visual identification had been seen as a serious source of judicial errors in the past[22]. He mentioned this :

> Touching upon the questions that I have to answer, I also want to stress that judges are aware of the great caution they must exercise regarding eyewitness identification evidence. An inquiry made in 2001 showed that misidentification played a significant part in 81 of the cases where judicial errors were made. This is an inquiry by Peter De Corey and regarding the Thomas Sofilal (ph) affair. Eyewitness testimony is, in effect, opinion evidence, the basis of which is very difficult to assess. In other words, even if a witness is considered credible, his account 1 of an event may not be reliable, making reliability assessment, a key component to weighing the probative value of eyewitness testimony, especially when it comes to identifying a defendant.[23]

[51] Obviously, the trial judge was aware of the frailties of eyewitness identification, and of the inconsistencies between the witnesses' evidence as well.

[52] He also correctly mentioned that the absence of an in-Court identification by a witness who had no previous acquaintance with the person to be identified[24] had low probative value.

[53] Therefore, the identification evidence was considered circumstantial evidence, and the trial judge properly referred to the leading decision of the Supreme Court in *Villaroman* before convicting the appellant :

> And the following paragraph, 56, the Supreme Court states that:
>
> "Most importantly, it is still fundamentally for the trier of fact to decide if any proposed alternative way of looking at the case is reasonable enough to raise a doubt."
>
> Well, as things span, they do not and I just want to insist that the worst thing that could happen to a judge is to convict someone wrongfully, on identification. So, before I came to this

---

21 See *Regina v. Menard*, 1978 CanLII 2355 (QC CA); *R. v. Adams*, 2018 ABPC 66, at paras 199-124 and *R. v. Galloro*, 2006 ONCJ 263, at para 10.

22 *Guimond c. R*, supra note 13.

23 Transcript, January 29, 2021, p. 105 line 14 to p. 106 line 5.

24 Transcript, January 29, 2021, p. 106 l. 2-12. See *R. v. Hibbert*, [2002] 2 S.C.R. 445, at paras 44-53.

> conclusion, I did not see any other reasonable way that could explain the facts that I have summarized and that I have accepted as evidence.[25]

[54] In *Villaroman*, the Supreme Court stated 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, and in light of human experience and common sense"[26].

[55] The appellant acknowledges that a gap in the circumstantial evidence does not automatically result in an acquittal, but argues that the trial judge cherry-picked the evidence that pointed towards her guilt as opposed to considering the evidence as a whole, including alternative inferences.

[56] I do not agree.

[57] Even if it was dusk at the time of the alleged offence, that the two main witnesses were not accurate in their description of the offender (height and hair color), and the description of the dog and the distance from where they observed the incident, the trial judge concluded that there was still sufficient natural light and details in the evidence to conclude that they were reliable about what happened.

[58] Indeed, there were numerous circumstantial elements corresponding to the appellant's description when combined with the rest of the evidence. These uncontradicted facts are the following :

1) A woman was carrying a baby car seat, and was accompanied by a tanned skin man;
2) The woman kicked a dog with excessive force several times so that the dog "was pinned up against the railing" o and made a sound like "a bark, a yell, a screech";
3) The woman with the baby, the man and the dog all came from the same address (4651, Clanranald) and all of them immediately went back inside;
4) Mrs. Cesta and Mr. Awad described a medium-size dog with the same characteristics as Honcho, as shown in the picture tendered by the respondent during the trial;
5) Mr. Awad said that the dog kicked was "sort of a Pittbull".

[59] The appellant opposes that there was another medium-size dog living in her duplex and that there was a dog park nearby, and thus many dogs were wandering the streets.

[60] This argument had no bearing on the final decision since the dog and the woman came from, and returned to, the same apartment (4651, Clanranald).

[61] It would have been illogical to conclude that another dog wandering around voluntarily followed its aggressor inside the apartment at the end of the incident.

---

25 Transcript, January 29, 2021, p. 112 line 13 to p. 113 line 3.
26 *R. v. Villaroman*, supra note 8, at para 36.

[62] The appellant maintains that Ms. Cesta was uncertain as to which duplex door the woman went after the event and that anyone could access both apartments from the porch after climbing a few steps.

[63] This submission does not consider that Ms. Cesta went to look at the duplex the next day and was positive about the address (4651, Clanranald).

[64] Likewise, Mr. Awad later confirmed the same address (associated with the right door).

[65] Besides, this finding of fact was reasonable and supported by the evidence, thus barring any intervention on appeal.

[66] Once the trial judge was convinced that the offence occurred, even if the two eyewitnesses were unable to positively identify the appellant, it was reasonable to conclude that the appellant's guilt was the only reasonable conclusion available on the totality of the evidence, including the issue of her identification.

[67] The standard of review for an assertion of unreasonable verdict summarized by the Alberta Court of Appeal in *Dipnarine*[27] was echoed in *Villaroman* :

> [56] The governing principle was nicely summarized by the Alberta Court of Appeal in Dipnarine, at para. 22. The court noted that "[c]ircumstantial evidence does not have to totally exclude other conceivable inferences" and that a verdict is not unreasonable simply because "the alternatives do not raise a doubt" in the jury's mind. Most importantly, "[i]t is still fundamentally for the trier [of] fact to decide if any proposed alternative way of looking at the case is reasonable enough to raise a doubt"[28].
>
> [Underlined added]

[68] The weighing of circumstantial evidence does not mean "the need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused"[29].

[69] This implies that "[o]ther 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"[30].

[70] "[A] "plausible theory" and "speculation" is not always easy to draw. But the basic question is whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty"[31].

[71] This task belongs to the trial judge[32].

---

27 *R v. Dipnarine*, 2014 ABCA 328, at para 22.
28 *R. v. Villaroman*, supra note 8, at para 56.
29 *Id.*, at para 37 referring to *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8.
30 *Id.*, at para 37.
31 *Id.*, at para 38.
32 *Grenier c. R., 2021 QCCA 867,* at para 7 referring to *Bouzaiene-Kais c. R.,* 2020 QCCA 1398, 32.

[72] Consequently, the reasons read as a whole show no reversible error. The judge correctly stated the law in relation to circumstantial evidence and properly assessed the facts.

[73] The trial judge's conclusions that the appellant was the person who kicked the dog was reasonable. It was for him to decide whether the identification evidence, when considered in light of human experience, and in light of the evidence as a whole (as well as the absence of evidence), excluded all reasonable inferences other than guilt.

[74] That conclusion was reasonable, and concluding otherwise on appeal would impermissibly lead to retrying the case.

[75] Therefore, after having re-examined "and to some extent reweigh and consider the effect of the evidence", my conclusion is that the impugned verdict is reasonable because a properly instructed judge acting judicially could reasonably have rendered it[33].

5. CONCLUSION

[76] The central matter in this file concerns the identification of the offender who caused unnecessary pain and suffering to a dog.

[77] The trial judge considered the inconsistencies in the Crown's evidence, explained why they did not cause him to reject Ms. Cesta's and Mr. Awad's evidence, and cautioned himself regarding eyewitness identification.

[78] He concluded that despite the poor identification of the eyewitnesses, there were other uncontradicted facts which strengthened the identification of the appellant as the offender, to wit :

1) On April 28, 2019, a medium-size dog was kicked several times with great force by a woman in front of a duplex situated at 4651, Clanranald;
2) The woman just went out and immediately returned to the apartment located at 4651, Clanranald, as did the dog;
3) When the event occurred, the woman was carrying a baby car seat and was accompanied by a man who went out and immediately returned to the apartment located at 4651, Clanranald;
4) On April 28, 2019, the appellant was residing at 4651, Clanranald, with a man, her eight-month-old baby and her Pitbull dog.

[79] In a nutshell, the appellant's general denial of the offence was insufficient to raise a reasonable doubt despite some frailties in the two eyewitnesses' evidence. This evidence was reliable when combined with the rest of the evidence.

[80] In *Ménard*, the Court of Appeal of Quebec noted that a general denegation can be insufficient to raise a reasonable doubt :

---

[33] *R. v. Villaroman*, supra note 8, at para 55 referring to *R. v. Biniaris*, [2000] 1 S.C.R. 381 and *R. v. Yebes*, [1987] 2 S.C.R. 168, at p. 186.

> [7] Dans ce cas-ci, la version des faits proposée par l'appelant n'a pas été retenue par le juge du procès puisqu'elle était beaucoup trop vague et succincte et ne permettait pas de lui conférer une crédibilité suffisante pour qu'elle puisse soulever un doute raisonnable.[34]

[81] I am of the opinion that the "case was considered with the appellant's denial in mind, and the trial judge concluded, as he was entitled to do, that [her] denial did not raise a reasonable doubt"[35].

[82] Accordingly, after reviewing the evidence, I conclude that the trial judge, acting in a reasonable and judicious manner, could have convicted the appellant.

FOR THESE REASONS, THE COURT:

[83] **DISMISSES** the appeal;

[84] Without costs.

_____
MYRIAM LACHANCE, J.C.S.

M[e] Julien Montpetit
Counsel for the APPELLANT-accused

M[e] Martin Tessier
Counsel for the RESPONDENT-prosecutor

Date of Hearing: January 25, 2022.

---

[34] *Ménard c. R.*, 2019 QCCA 1701, at para 7.
[35] *R. v. Vuradin*, supra note 20, at para 28.