

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Ali-Greig, 2014 ONCA 241

DATE: 20140401

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Rosenberg, Cronk and Jursansz JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Shalima Ali-Greig

Appellant

Bernadette Saad, for the appellant

Jason Balgopal, for the respondent

Heard: March 25, 2014

On appeal from the conviction entered on February 25, 2013 by Justice L. Theodore G. Collins of the Ontario Court of Justice, sitting without a jury.

ENDORSEMENT

[1] The appellant appeals her conviction by Collins J. on one charge of fraud. At the conclusion of submissions by Ms. Saad, the court dismissed the appeal with reasons to follow. The appellant was the bookkeeper for Emery Silfurtun Incorporated, a company owned by Fredrik Jonsson. Cheques had to be signed by the appellant and Mr. Jonsson. The charge against the appellant was based on four cheques payable to the appellant and cashed by her. After the cheques

were issued the payee was changed on the company's computer system to show some other entity in the accounts, usually one with which the firm had some relationship. Mr. Jonsson was often away from Canada for extended periods of time and would leave signed blank cheques with the appellant. The cheques were discovered by the new chief financial officer, Mr. Frank, after the appellant was dismissed.

[2] The main ground of appeal is that the conviction was unreasonable. The appellant did not testify or offer any defence evidence. The theory of the defence was that there were other possible explanations for the four cheques; for example, that the appellant had used her own funds to pay a firm expense after the signed cheques had all been used up but before Mr. Jonsson had returned to Canada. Thus the impugned cheques were merely used to repay expenses that the appellant had incurred on behalf of the firm. The conviction was not unreasonable. In the absence of some other evidence, not just speculation, the Crown's case was uncontradicted and there was no alternative theory to support an acquittal. There was no evidence to support the defence theories.

[3] The appellant also submits that the trial judge failed to adequately deal with the credibility of the two principal Crown witnesses. In her careful argument, Ms. Saad showed that there were inconsistencies between the evidence of Mr. Frank and Mr. Jonsson, and also inconsistencies in Mr. Jonsson's own evidence. The appellant submits that the Crown witnesses had a reason to fabricate a

charge against the appellant because she had filed a human rights complaint. The trial judge noted this argument but did not deal with the various inconsistencies. In some cases, this submission could be a basis for setting aside the conviction. But, in this case, the conviction did not turn on the credibility of the Crown witnesses. It turned on the cheques that were made out by the appellant and endorsed and cashed by her at a time when she had access to the company records.

[4] There was no error by the trial judge in his treatment of the burden of proof. The fact that the trial judge, after identifying the fact that the cheques were made out to the appellant and cashed by her, pointed out there was “no meaningful explanation before the court” did not place the burden of proof on the appellant. It was simply an observation, in effect, that the Crown’s case was uncontradicted. As we have said, this was correct.

[5] Finally, trial judge’s reasons were brief but they dealt with the live issue in the case. The trial judge did not need to deal with issues that were based on speculation.

[6] Accordingly, the appeal from conviction is dismissed.

“M. Rosenberg J.A.”

“E.A. Cronk J.A.”

“R.G. Juriansz J.A.”