COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Ibrahim, 2014 ONCA 355
DATE: 20140502
DOCKET: C54017

Hoy A.C.J.O., MacPherson and Blair JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Maher Ibrahim

Appellant

Diane Condo, for the appellant

Gavin MacDonald, for the respondent

Heard and released orally: April 28, 2014

On appeal from the decision entered by Justice McNamara of the Summary Conviction Appeal Court, dated July 14, 2011.

By the Court:

[1] The appellant seeks leave to appeal from the July 14, 2011 order of the Summary Conviction Appeal Judge dismissing his appeal against the convictions imposed by the trial judge and reducing the global sentence imposed by the trial

judge to nine months in jail. The appellant also brings an application to introduce fresh evidence pursuant to s. 683 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[2] Section 839 of the *Criminal Code* provides that an appeal against a decision of a Summary Conviction Appeal Judge may, with leave of this court, be taken on any ground that involves a question of law alone. Leave is, however, granted sparingly. The court may grant leave: 1) where the merits of the proposed question of law are arguable and it has significance to the administration of justice beyond the specifics of the case; or 2) where there appears to be a clear error of law and the interests of justice require that this court review the decision: *R. v. R.R.*, 2008 ONCA 497, 90 O.R. (3d) 641.

[3] The appellant argues that this appeal falls within the second category of cases where leave may be granted. The appellant submits that the Summary Conviction Appeal Judge made two clear errors of law. First, he erred in concluding that the trial judge had not properly applied *R. v. W.(D.)*, [1991] 1 S.C.R. 742. Second, he applied the wrong test in considering whether the trial judge erred in finding that there was evidence adduced with respect to each of the essential elements of the offences of criminal harassment.

[4] We are not persuaded that the Summary Conviction Appeal Judge erred in either respect. We agree with the Summary Conviction Appeal Judge that there was no merit to the appellant's argument that the trial judge failed to apply the

principles in *W.(D.).* Further, the Summary Conviction Appeal Court Judge properly undertook an unreasonable verdict analysis in response to the appellant's argument that the trial judge erred in finding that there was insufficient evidence to prove beyond a reasonable doubt that the complainants were criminally harassed.

[5] Leave to appeal conviction is accordingly denied.

[6] In our view, the reduced sentence imposed by the Summary Conviction Appeal Court Judge was fit and disclosed no error of law and therefore leave to appeal sentence must also be refused.

[7] Nor are we satisfied that the proposed fresh evidence could reasonably be expected to change the verdict, and is admissible under the test set out in *R. v. Palmer*, [1980] 1 S.C.R. 759.

[8] The appellant was convicted of criminal harassment of Elie Abourgeili and his wife Antoinette Abourgeili; uttering a threat to cause death to Elie Abourgeili; causing Antoinette Abourgeili to receive a threat to cause death to Elie Abourgeili; and failure to comply with a recognizance. The harassment occurred from the fall of 2007 to the end of March 2008. The appellant suspected that Elie Abourgeili was conducting an affair with the appellant's estranged wife. The trial judge wrote, "Whether or not [Elie Abourgeili and the appellant's estranged

spouse] were engaged in an extra marital affair is in my view irrelevant to the issues before the court."

[9] The proposed fresh evidence consists of affidavits of the appellant's daughter and the appellant. The appellant's daughter recounts that Antoinette Abourgeili subsequently told her she had discovered that Elie Abourgeili and the appellant's estranged wife were in fact engaged in an extra marital affair. The appellant attaches a copy of Telus Account Information showing that the cell phone number 613-875-9099 registered to Elie Abourgeili was cancelled February 17, 2008, and cell phone number 613-889-0889 registered to Elie Abourgeili was cancelled only on June 11, 2009.

[10] The evidence of the appellant's daughter only goes to why the appellant was harassing the complainants. It is, as the trial judge wrote, irrelevant to the issue of whether the appellant harassed the complainants. It does not bear upon a decisive issue at trial, namely whether the appellant engaged in the harassment alleged. Antoinette Abourgeili did not tell the appellant's daughter that she had lied at the trial when testifying to persistent and unwanted communications from the appellant.

[11] The appellant adduces the Telus records to discredit Antoinette Abourgeili. At trial, Ms. Abourgeili testified that she changed her cellular phone number three times to discourage the appellant from calling her, but that the calls continued.

The appellant argues that the account information that he now seeks to adduce establishes that she changed her cell phone number once.

[12] We are not persuaded that this evidence calls Ms. Abourgeili's credibility into question such that it could reasonably be expected to change the verdict. It in fact confirms Ms. Abourgeili's evidence that she changed her phone number because of the appellant's continued calls. And the timing of the cancellation follows what Ms. Abourgeili testified was a particularly upsetting call on Valentine's Day, during which the appellant threatened the life of her husband. Further, the evidence also contradicts the appellant's own evidence at trial that the only number that he had ever used to reach Ms. Abourgeili had never been changed.

[13] The appellant's application for the admission of fresh evidence is accordingly also dismissed.

RELEASED: "AH" "MAY 2 2014"

"Alexandra Hoy A.C.J.O."
"J.C. MacPherson J.A."
"R.A. Blair J.A."