

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Chaing, 2014 ONCA 870

DATE: 20141204

DOCKET: C57045

Watt, van Rensburg and Pardu JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Chhay Chaing

Appellant

David Ian Anber, for the appellant

Christopher G. Walsh, for the respondent

Heard and released orally: December 1, 2014

On appeal from the conviction entered on January 31, 2013 and the sentence imposed on April 16, 2013 by Justice Colin D.A. McKinnon of the Superior Court of Justice, sitting without a jury.

ENDORSEMENT

[1] The appellant was convicted, after trial by judge alone, of possession for the purpose of trafficking approximately 26 pounds of marijuana. The marijuana was found in the trunk of a car he was driving westbound on Highway 401 from Quebec. It was conceded at trial and on appeal that if the Crown proved the

appellant was aware of the marijuana in the trunk, conviction for the possession for the purpose of trafficking offence would follow.

[2] The appellant appeals his conviction and sentence.

[3] First, he asserts that the trial judge supported a finding of guilt based on the appellant's knowledge of a small amount of marijuana in the vehicle, including in the console between the driver and front passenger seats.

[4] We disagree. The trial judge recited all of the circumstantial evidence he considered and concluded the appellant had knowledge of what was in the trunk. Although the marijuana in plain view in the vehicle was part of the circumstantial evidence considered by the trial judge, it was not determinative.

[5] Second, the appellant contends that the verdict was unreasonable because a properly instructed trier of fact could not have concluded that his knowledge of the drugs in the trunk had been proven beyond a reasonable doubt.

[6] Again, we do not give effect to this ground of appeal. The appellant's challenge is based on a compartmentalized and isolated analysis of each strand of circumstantial evidence. The question is whether the cumulative effect of all of the evidence, that is each part of the evidence when considered together, meets the standard of proof beyond a reasonable doubt: *R. v. Uhrig*, [2012] O.J. No. 3011.

[7] Taken together, the circumstances outlined by the trial judge, including the appellant's behaviour before and after he was stopped by the police, supported the inference that he knew about the marijuana in the trunk.

[8] The appeal from conviction is accordingly dismissed.

[9] The sentence was fit and not disproportionate having regard to the amount of drugs seized. We would grant leave to appeal sentence and dismiss the appeal.

"David Watt J.A."

"K. van Rensburg J.A."

"G. Pardu J.A."