

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Antrobus, 2020 ONCA 455

DATE: 20200710

DOCKET: C68003

Benotto, Fairburn and Jamal JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Jason Mark Antrobus

Appellant

Jason Mark Antrobus, acting in person

David Parry, as duty counsel

Rebecca De Filippis, for the respondent

Head: July 6, 2020 by teleconference

On appeal from the conviction entered on November 15, 2019 by Justice Maureen D. Forestell of the Superior Court of Justice, with reasons reported at 2019 ONSC 6552.

REASONS FOR DECISION

[1] The appellant was convicted of two firearm-related offences. He was given a global sentence of three years incarceration before credit. He appeals the

convictions on the grounds that identification was not established beyond a reasonable doubt.

[2] The police breached the door of an apartment building in order to execute a *Feeney* warrant. Several police officers watched as an occupant threw a package from the balcony. The package was recovered and contained a Smith & Wesson handgun.

[3] Although one of the officers testified that he recognized the appellant as the person who threw the package off the balcony, the trial judge did not rely on his identification evidence. Instead, she concluded, based on the circumstantial evidence, that the only reasonable inference was that the appellant threw the package from the balcony.

[4] The appellant submits that there were reasonable inferences other than that it was the appellant who threw the package from the balcony, meaning that the Crown's circumstantial identification evidence did not meet the standard of proof beyond a reasonable doubt: *R. v. Villaroman*, 2016 SCC 33, at para. 35.

[5] We do not agree.

[6] As officers entered the apartment, there was a loud bang which was temporally connected to when the officers outside of the apartment saw the package being thrown from the balcony.

[7] In satisfying herself beyond a reasonable doubt that it was the appellant who had thrown the package, the trial judge accepted and relied on the circumstantial evidence that:

1. After the door was breached, officers had an immediate view of the apartment;
2. There was only one person on the balcony;
3. P.C. DaSilva (who was outside) saw the person throw the item;
4. P.C. Moore called for the appellant by name;
5. P.C. Riegert and P.C. Christodoulou were watching the balcony door and saw the appellant come through to the apartment.

[8] The trial judge also found that there was insufficient time for any of the other persons in the apartment to have thrown the package from the balcony and to have re-entered the apartment.

[9] We also conclude that the trial judge was entitled to find that the only reasonable inference was that the appellant knew that the package contained a prohibited firearm when he threw it, that he had the requisite knowledge and control of the firearm, and that he was in possession of it. She found that the appellant threw the gun from the balcony to avoid it being found by the police, and that the shape and weight of the gun would have been evident to anyone handling

it. She also found that there would have been no reason to throw away a BB gun to avoid its detection.

[10] Under these circumstances, it was open to the trial judge to conclude that the only reasonable inference available is that the appellant had possession of the gun and threw it over the balcony.

[11] The appeal against conviction is dismissed.

“M.L. Benotto J.A.”

“Fairburn J.A.”

“M. Jamal J.A.”