COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Rootenberg, 2024 ONCA 493
DATE: 20240618
DOCKET: C70214

Trotter, Favreau and Gomery JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Shaun Rootenberg

Appellant

Bryan Badali, for the appellant

Owen Goddard, for the respondent

Heard: June 14, 2024

On appeal from the conviction entered on July 19, 2019, and the sentence imposed on September 30, 2020 by Justice Beth A. Allen of the Superior Court of Justice, sitting without a jury.

REASONS FOR DECISION

[1] The appellant was found guilty of one count of fraud over $5,000. He was sentenced to six years' imprisonment less time served.

[2] The complainant was the appellant's intimate partner for approximately one and a half years. When the appellant and the complainant met, he presented himself as a wealthy and successful business investor. In reality, he was using a

false name and already had a criminal record for fraud, including defrauding his family members.

[3] A couple of months after the beginning of the relationship, the complainant gave the appellant $160,000 to invest in a new business he claimed to be developing. Approximately one month later, she gave him $435,000 to invest in second mortgages. These amounts were her life savings. Instead of making the investments, the appellant deposited these funds into a friend's business account, after which the amounts were disbursed back to him. He used these funds for his own benefit, including to buy a luxury car and pay off various debts.

[4] The appellant appeals his conviction and sentence. At the conclusion of the hearing, we dismissed the appeal with reasons to follow. These are the reasons.

[5] The appellant raises two issues on his conviction appeal.

[6] First, the appellant submits that the verdict was unreasonable. He argues that the trial judge's conclusion that he dishonestly diverted the funds from the purpose for which the complainant gave them to him was inconsistent with her finding that the complainant did not have any expectation or understanding of how the funds she provided were to be invested or used. We do not accept this argument. The evidence overwhelmingly supported a finding that the appellant committed a fraud. The complainant gave him her money, expecting that he would invest it for her benefit. There was never any such investment. Instead, the

appellant took the money and used it for his own benefit. This was clearly a fraud and the trial judge committed no error in finding the appellant guilty.

[7] On the second issue, the appellant argues that the trial judge erred in refusing to grant a stay because of strip searches to which he was subjected while in custody at the Toronto South Detention Centre awaiting trial. Most of the strip searches occurred before and after every time he left the Detention Centre for a court appearance or other reason. They also occurred before and after his shifts working in the kitchen at the Detention Centre. The appellant does not dispute that the correctional officers were authorized to conduct strip searches on these occasions. However, he takes issue with the way in which the searches were conducted. He says that most of the strip searches were conducted in open cubicles at the Detention Centre, which did not give him enough privacy, notably from female correctional staff and other inmates.

[8] We see no error in the trial judge's analysis and conclusion that the appellant's section 8 *Charter* rights were not violated. These were authorized strip searches conducted for the purpose of ensuring the safety of people at the detention centre. The trial judge acknowledged that there was room for improvement in how the searches were conducted, but that this did not rise to the level of a *Charter* breach. These findings were open to her on the evidence. Moreover, we agree with the trial judge's conclusion that, even if the appellant's *Charter* rights had been violated, this is not one of the "clearest of cases" that

would warrant a stay of proceedings: *R. v. Babos*, 2014 SCC 16, [2014] 1 S.C.R. 309, at para. 31; *R. v. O'Connor*, [1995] 4 S.C.R. 411 at p. 45I.

[9] We also see no error in the sentence imposed by the trial judge. The appellant argues that he should have received additional credit to reflect the harsh conditions during his pre-trial custody, especially to reflect the strip searches. We see no legal error in the trial judge's analysis. Her decision not to accord any additional credit for pre-custody conditions fell within her discretion.

[10] Moreover, the six-year sentence was not demonstrably unfit having regard to the nature of the offence and the appellant's circumstances. The appellant had already been convicted of fraud over $5,000 more than once, and received a sentence of four years for his previous conviction. He committed this latest offence shortly after being released from jail on previous fraud charges. The emotional and financial impact on the complainant was devastating.

[11] Accordingly, we dismiss the appeal from conviction. We grant leave to appeal the sentence, but dismiss the sentence appeal.

"Gary Trotter J.A."
"L. Favreau J.A."
"S. Gomery J.A."