

In the Court of Appeal of Alberta

Citation: R v Yatchotay, 2026 ABCA 255

Date: 20260729
Docket: 2503-0161A
Registry: Edmonton

Between:

His Majesty the King

Respondent

- and -

Stewart Malcolm Yatchotay

Appellant

The Court:

**The Honourable Justice Michelle Crighton
The Honourable Justice Bernette Ho
The Honourable Justice William T. de Wit**

Memorandum of Judgment

Appeal from the Conviction by
The Honourable Justice J.T. Neilson
Convicted on the 9th day of December, 2024
(Docket: 230803264Q1)

Memorandum of Judgment

The Court:

[1] On August 6, 2023, RCMP responded to a house fire and an investigation into a suspected arson was conducted. During the investigation, firearms were found. The appellant was convicted of one count of careless storage of a firearm in relation to several shotguns, one count of careless storage of a firearm in relation to a handgun, and one count of possession of a loaded restricted firearm in relation to the same handgun: *Criminal Code*, RSC 1985, c C-46, ss 86(1), 95(1).

[2] The appellant appeals his conviction arguing the trial judge rendered an unreasonable verdict and erred by providing insufficient reasons when he dismissed the appellant's *Charter* application following a *voir dire*.

[3] We dismiss the appeal for the following reasons.

Background

[4] Early in the morning on August 6, 2023, RCMP responded to a house fire. When they arrived, a house-sitter and several dogs were safely outside.

[5] The appellant arrived some time later and moved towards the burning house before being stopped by Constable Riddell for safety reasons. The appellant stated he did not own the house, but he owned the contents. The appellant indicated he was last at the house at approximately 10pm the night before.

[6] The appellant was suspected to be a victim of arson and was given a consent form. Constable Riddell went through the contents of the form with the appellant and told him the form would allow a fire investigator to conduct an investigation. The appellant had no questions and signed the form.

[7] The fire investigator found firearms inside the house and reported this to Constable MacDonald. Constable MacDonald entered the house to secure the firearms. At some point, the fire inspector had the appellant sign a second consent form. Once the sawed-off shotgun was discovered, Constable MacDonald directed that the fire investigation be terminated because a criminal investigation was required.

[8] Constable MacDonald prepared an information to obtain a search warrant (ITO). A warrant was granted and a search was conducted on August 7, 2023. Several firearms were located including a loaded Glock handgun with a magazine containing nine rounds of ammunition stored in a small bag. The appellant's government identification was in a different pocket of the same

bag. Two unloaded 12-gauge shotguns were found in the furnace room and a loaded sawed off-shotgun was found elsewhere in the house. A total of five firearms were found.

Analysis

The trial judge did not render an unreasonable verdict

[9] In convicting the appellant, the trial judge found that all the firearms were located in the house by RCMP while executing the search warrant, and each was stored carelessly. The trial judge found the appellant was not authorized or licensed to possess firearms. The trial judge also found the appellant had constructive possession of the firearms, and it is this last finding that the appellant submits gives rise to an unreasonable verdict.

[10] Since the Crown's case was circumstantial, the trial judge had to determine whether constructive possession was the only reasonable conclusion that could be reached based on the evidence considered as a whole and assessed logically in accordance with common sense: *R v Villaroman*, 2016 SCC 33 at paras 35-56. With respect to constructive possession specifically, the trial judge noted that constructive possession is established if an accused:

(1) has knowledge of the character of the object, (2) knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and (3) intends to have the object in the particular place for his "use or benefit" or that of another person.

R v Morelli, 2010 SCC 8 at para 17, citing *Criminal Code*, s 4(3)(a).

[11] The appellant does not take issue with the trial judge's statement of the law, or other authorities relied on: *R v Choudhury*, 2021 ONCA 560 at para 19. Rather, the appellant submits that the trial judge fundamentally misapprehended the evidence regarding the last time the appellant had been in the house. There was no evidence that the appellant was inside at 10 pm the night before the fire, nor was there any other evidence about the last time the appellant had been inside the house, and the verdict was unreasonable as a result.

[12] In his summary of the evidence, the trial judge stated: "[the appellant] was last at the house at 10 pm the previous evening. He had smoked two cigarettes outside". The trial judge also noted where each firearm was in the house when he reviewed the testimony of different RCMP officers. Though there was a suggestion some of the firearms had been moved from their original location in the house, the record nevertheless established that the Glock was found in a small bag on a

counter-top, several shotguns were located in or near the furnace and the butt-end of the sawed-off shotgun was initially photographed behind a piece of furniture but was later photographed leaning up against a washer/dryer unit.

[13] The trial judge was ultimately satisfied the evidence was sufficient to establish the firearms were in the constructive possession of the appellant. The trial judge considered the appellant's statement that he owned the contents of the house. Regarding the Glock handgun, the trial judge noted it was found inside a small bag described by one officer as a "fanny pack" and another as a handbag, with an Alberta Health Care card and birth certificate bearing the appellant's name in a side pocket of that bag. Given these facts, the trial judge was satisfied it was reasonable to conclude the appellant previously had possession of the bag containing the Glock handgun.

[14] The trial judge also specifically considered whether there was any other reasonable inference that could be drawn to explain the presence of the firearms in the house, having regard for defence counsel's submission that the house-sitter placed the firearms in the house or permitted others to do so. In considering this submission, the trial judge referred to the fact the house-sitter was the only other person known to be in the house and there was no evidence of other persons entering the residence. As noted by the Ontario Court of Appeal in *R v SBI*, 2018 ONCA 807 at paragraph 138, a trial judge's reference to the absence of evidence does not necessarily signal a *Villaroman* error or a misplacement of the burden of proof.

[15] The trial judge also considered the possibility that someone else had placed the firearms in the house and the likelihood of that occurring between 10 pm and when the RCMP arrived approximately six hours later. At trial, neither the Crown nor the appellant called the house-sitter to testify. As was noted by this Court in *R v Smith-Lowe*, 2025 ABCA 409 at paragraph 63, while an accused need not lead evidence, a trial judge is entitled to find hypothetical alternative explanations advanced by an accused to be speculative due to a lack of evidence. Here, the trial judge concluded, "[i]t is not reasonable to infer that the house-sitter or other persons unknown would have entered the residence and placed the five firearms where they were found during the span of a few hours at most."

[16] As to the trial judge's reasoning that the window of opportunity to place firearms in the residence was limited to the six-hour period (despite there being no evidence that the appellant was physically inside the house at that time), it is uncontroverted that the appellant was last "at the house" at 10 pm the night prior to the fire. The trial judge's reference to this fact served as a logical consideration. Importantly, the trial judge also considered the location of each firearm in the house to be significant, as well as the appellant's identification found in the small bag containing the Glock. The six-hour time frame was not considered by the trial judge in isolation.

[17] On the record before him, the trial judge was reasonably satisfied the appellant's guilt was the only reasonable conclusion available based on the totality of the evidence. As confirmed in *Villaroman*, a verdict is not unreasonable simply because "the alternatives do not raise a doubt" in the trier's mind, and "[i]t is still fundamentally for the trier [of] fact to decide if any proposed alternative way of looking at the case is reasonable enough to raise a doubt": *Villaroman* at para 56, quoting *R v Dipnarine*, 2014 ABCA 328 at para 22. A high level of deference is owed to a trial judge's conclusion that there are no reasonable alternative inferences other than guilt, and an appellate court may only interfere with the trial judge's conclusion that the evidence excluded any reasonable alternative if such conclusion is unreasonable: *SBI* at para 139. We are of the view that it was open to the trial judge to conclude the totality of the evidence excluded all reasonable alternatives to guilt and there is no basis to interfere with his verdict. This ground of appeal is dismissed.

The trial judge provided sufficient reasons

[18] A *voir dire* was held to determine whether the appellant's *Charter* rights were breached. The appellant argued that the second consent form he signed purportedly in furtherance of the fire investigation was invalid and his section 8 rights were breached when Constable MacDonald entered his residence. He also argued that his section 9 and 10 *Charter* rights were breached because he was unlawfully detained at the scene without being informed of and given a right to counsel.

[19] The trial judge found the appellant provided informed and voluntary consent when he signed the first consent form to facilitate the fire investigation. The fire investigator was not acting as a police agent. The trial judge agreed that the appellant's section 8 rights were violated when Constable MacDonald entered the residence without a warrant. As a remedy, the ITO was excised to remove references to Constable MacDonald entering the premises, such that the ITO only referred to information provided to Constable MacDonald by the fire investigator.

[20] The trial judge determined no breach of sections 9 and 10 of the *Charter* occurred because the appellant was not detained: *R v Le*, 2019 SCC 34 at paras 25-31. The appellant was not the focus of a criminal investigation at the time the firearms were located. There was no physical contact, and he was free to come and go.

[21] On appeal, the appellant submits the trial judge's *voir dire* reasons were inadequate because they do not explain why or how he made his findings of fact given the different versions of events given by Constable MacDonald and the fire investigator. Specifically, the fire investigator testified he saw the three shotguns in the house before interrupting his investigation to inform Constable

MacDonald or having the appellant sign the second consent form. In contrast, Constable MacDonald testified that the fire investigator first advised her about two shotguns. Constable MacDonald then went inside the house to secure the firearms before going outside to discuss them with the appellant. While Constable MacDonald was discussing the matter with the appellant, the fire inspector came back outside and informed her he had found something else. They went back inside and the fire inspector showed Constable MacDonald a third firearm – the sawed-off shotgun. The appellant submits the different versions of events gave rise to the possibility that the second consent form was signed before the third firearm was seen, and therefore, the second consent form was invalid because the appellant was not aware of the jeopardy he faced at the time he signed.

[22] Specific to the timing of events, the trial judge concluded three firearms were found by the fire investigator during his investigation pursuant to the first consent form the appellant signed. While the trial judge did not explain why he rejected Constable MacDonald’s testimony on when the firearms were found, his finding that the fire investigator saw three firearms (including the sawed-off shotgun) before the second consent form was signed was available on the record and is owed deference. While Constable MacDonald provided a different order of events on some points, she testified she did not see the second consent form get signed and was not aware of it until she read the fire inspector’s report. The only evidence before the court on when the second consent form was signed was that of the fire inspector, who stated it was signed after all three shotguns were found.

[23] The trial judge elsewhere accepted Constable MacDonald’s testimony in determining the appellant was not detained at the time the Constable and the appellant spoke because the appellant was not yet the subject of a criminal investigation. This in itself is not an error. A trial judge is permitted to accept parts of a witness’s testimony while rejecting other aspects of that same witness’s testimony: *R v Hardy*, 2019 ABCA 160 at para 45, citing *R v François*, 1994 CanLII 52 (SCC), [1994] 2 SCR 827 at 837. Moreover, insufficient or poorly expressed reasons do not constitute a “stand alone” ground of appeal where they are factually and legally sufficient in the context of the entirety of the record: *R v GF*, 2021 SCC 20 at paras 68, 70, citing *R v REM*, 2008 SCC 51 at paras 38-40; *R v Sheppard*, 2002 SCC 26 at paras 46, 55.

[24] In the circumstances of this case, we do not agree that the trial judge’s reasons, when read functionally and contextually in light of the record and the submissions of the parties, are unintelligible or otherwise frustrate appellate review: *GF* at paras 68-79; *R v Saddleback*, 2026 SCC 18 at para 23. As a result, this ground of appeal is dismissed.

Conclusion

[25] The appeal is dismissed.

[26] We understand the sentencing judge imposed a community sentence order on the appellant following conviction. Subject to further order, the appellant is required to abide by the terms of the community sentence order commencing within five days of the release of this decision.

Appeal heard on May 8, 2026

Memorandum filed at Edmonton, Alberta
this 29th day of July, 2026

Authorized to sign for: Crighton J.A.

Ho J.A.

de Wit J.A.

Appearances:

K.A. Joyce
for the Respondent

A. Nurani
for the Appellant