

TOP FIVE 2017

Each year at OJEN's Toronto Summer Law Institute, former Ontario Court of Appeal judge Stephen Goudge presents his selection of the top five cases from the previous year that are of significance in an educational setting. This case summary and related questions, based on his comments and observations, is appropriate for discussion and debate in the classroom.

R v VILLAROMAN, 2016 SCC 33, [2016] 1 SCR 1000

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<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16078/index.do>

Facts

Oswald Villaroman brought his laptop to a repair shop to have the power button and the battery fixed. The laptop was not password protected. Mr. Villaroman provided his contact information and he authorized the repair work. After troubleshooting, the repair technician performed a random check of the software to see if it was working properly, and accidentally discovered child pornography in the music folders of the iTunes library. The repair technician called the police, who seized the computer. A forensic analysis established that only one user account (named "oswaldvillaroman") had been set up on July 1, 2007, and that the computer was used almost every day from then until a few days before the computer was brought to the repair shop on November 9, 2009. In response to his charge for possessing child pornography, the defendant claimed that the police had breached his Charter rights by seizing the computer without first obtaining a warrant and argued that this breach should result in the evidence found there being excluded.

Procedural History

The respondent was found guilty at trial for possession of child pornography, with no violation of his ss.8 right against unreasonable search or seizure under the Charter of Rights and Freedoms.

He appealed, citing again the Charter grounds as well as arguing that the evidence against him was too circumstantial to prove his guilt beyond a reasonable doubt. The Court of Appeal for Alberta set aside the conviction, stating that the trial judge had not applied the proper tests to the circumstantial evidence to prove guilt beyond a reasonable doubt.

As the Court of Appeal entered an acquittal the court did not need to consider the Charter issues. The Crown appealed this decision to the Supreme Court of Canada (SCC).

Canadian Charter of Rights and Freedoms

8. Everyone has the right to be secure against unreasonable search or seizure. 24. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Issues

1. Did the trial judge make a legal error when he considered the use of circumstantial evidence given that proof of Mr. Villaroman's offence relied mostly on circumstantial evidence?

Decision

The appeal was allowed and the acquittal was set aside. The case was returned to the British Columbia Court of Appeal to address the Charter issues raised by Mr. Villaroman. The SCC found that the trial judge had not made a legal error in his reasons about circumstantial evidence.

Ratio

To prove guilt beyond a reasonable doubt, the Crown does not have to disprove every single explanation that could be drawn from circumstantial evidence and could support a finding of innocence. This is especially true if explanations are not reasonable or are rely on speculation. In assessing circumstantial evidence, inferences that are consistent with innocence do not have to arise from proven facts. However, a trial judge does not make an error simply because he or she does not consider reasonable inferences that are inconsistent with guilt that could have arisen from a lack of evidence. Inferences may be drawn from circumstantial evidence but must be considered in light of all of the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

Reasons

In order to establish possession of child pornography, the Crown had to prove the following elements of the offence beyond a reasonable doubt:

1. The defendant knew the nature of the material;
2. The defendant had the intention to possess it; and
3. The defendant was able to exercise control over it.

Direct evidence (for example, a video of Mr. Villaroman saving the files or a credible witness testifying that Mr. Villaroman had admitted guilt to them) of this crime would be very difficult to obtain. The evidence against him was circumstantial in that nothing in it proved definitively that Mr. Villaroman had knowingly come to possess it. While it is possible to imagine ways that the illegal materials came to be on Mr. Villaroman's computer without his knowledge, there was nothing in the evidence to support such a conclusion, meaning that these explanations would only be speculative. Although all the evidence before the trial judge was circumstantial, all three elements of the offence could be proven beyond a reasonable doubt. The court explained the relationship between proof by circumstantial evidence and the requirement of proof beyond reasonable doubt.

Reasonable doubt is a state of mind. The reasonable doubt instructions that judges give to jurors are all directed to describing how sure they must be of guilt in order to convict.

The issues about relying on circumstantial evidence focus, instead, on the dangers of the path of reasoning involved in drawing conclusions from circumstantial evidence. In assessing circumstantial evidence, explanations that suggest innocence do not have to arise from proven facts; that approach would put an improper obligation on the defendant to prove facts.

A good way for the trier of fact to consider making an inference of guilt from circumstantial evidence (while guarding against overlooking reasonable alternative inferences) is if the inference of guilt drawn from circumstantial evidence is “the only reasonable inference”.

The SCC found that the Court of Appeal incorrectly assumed that the trial judge had made a mistake by not considering reasonable inferences that were consistent with innocence, which could have been drawn from the gaps in evidence. Put another way, the kinds of explanations that the Court of Appeal found the trial judge should have considered were unreasonable given the circumstantial evidence in this case: that Mr. Villaroman had control of the computer, that only one user profile had used the computer, that the username for that profile was similar to the defendant’s and that the files had been organized and accessed.

In this case, the facts and contextual factors that could infer the three elements of the offence, listed above included: an analysis of how much the laptop was used with the specific account; how long the defendant was in possession of the laptop when comparing the download data; and whether anyone other than Mr. Villaroman had potential access to the laptop. On the facts of this case all reasonable inferences other than guilt were excluded.

In June of 2018, the Court of Appeal for Alberta ruled on Mr. Villaroman’s Charter application. It found that while the police seizure and search did violate his rights under s. 8 of the Charter, the seriousness of this violation was outweighed by the public interest in prosecuting a serious crime and his appeal was dismissed.

DISCUSSION

1. In your opinion, how strong was the evidence against Mr. Villaroman?
2. What is the difference between direct and circumstantial evidence? Give an example of each to support the statement, "it rained today".
3. If you bring a computer in for repairs and leave it in the shop, do you still have a reasonable expectation of privacy about the information it might contain about you?
4. Why might direct evidence be difficult to come by in a case like this one?
5. What is the difference between a reasonable and a speculative explanation? Give a hypothetical example of each that could account for the presence of the illegal files on Mr. Villaroman's computer without him engaging in criminal activity.