

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY MONTREAL
OF

No.: 500-10-002799-045
(500-01-015996-025)

DATE: September 11, 2006

**CORAM: THE HONOURABLE ALLAN R. HILTON, J.A.
FRANÇOIS DOYON, J.A.
PAUL VÉZINA, J.A.**

HENRY WITTMANN
APPELLANT – Accused
v.

HER MAJESTY THE QUEEN
RESPONDENT – Prosecutrix

JUDGMENT

[1] THE COURT; - On appeal from a judgment rendered on April 7, 2004 by the Honourable Jean-Pierre Bonin of the Court of Quebec, Criminal and Penal Division, district of Montreal, which convicted the appellant of break and enter, assault with a weapon, pointing a firearm, possession of a restricted weapon without licence, and knowingly occupying a motor vehicle that contained a loaded restricted weapon;

[2] After having examined the file, heard the parties, and on the whole deliberated;

- [3] For the reasons of Doyon J.A., with which Hilton and Vézina JJ.A. agree:
- [4] ALLOWS the appeal;
- [5] SETS ASIDE the judgment rendered on April 7, 2004; and
- [6] ORDERS a new trial.

ALLAN R. HILTON, J.A.

FRANÇOIS DOYON, J.A.

PAUL VÉZINA, J.A.

Mtre Hanan Mrani
Brouillard, Bibeau, Gariépy & Associés
Counsel for the appellant

Mtre John-Denis Gerols
Crown prosecutor
Counsel for the respondent

Date of hearing: March 7, 2006

REASONS OF DOYON J.A.

[7] The appellant was convicted of break and enter, assault with a weapon, pointing a firearm, possession of a restricted weapon without licence, and knowingly occupying a motor vehicle that contained a loaded restricted weapon.

[8] All of these offences were allegedly committed on October 28, 2002, during the course of events involving the complainant, the appellant's girlfriend.

[9] The evidence reveals a tumultuous and sometimes ambivalent relationship between the complainant and the appellant. A short summary follows.

THE FACTS

[10] The appellant and the complainant met in 1996-1997 and their relationship became more intimate in 1999. In 2002 the appellant left his spouse, and between May and September of that year he lived with the complainant.

[11] The versions of this period of their life together are contradictory. I will return to this subject.

[12] On September 3, the appellant moved out of their common residence after a disagreement.

[13] He returned on October 28. That is when the events that form the basis of the charges took place, over a period of several hours. Given the discrepancies between the two versions, the two testimonies regarding these incidents will be related separately. A fairly complete summary of the two versions is also necessary, for two main reasons: first, because the appellant faults the trial judge for having failed to consider the inconsistencies and contradictions in the complainant's testimony and second, because it will provide a better understanding of the unusual nature of the events that led to the charges.

The complainant's version

[14] The complainant testifies that on October 28, she arrived home around 5:30 p.m. Upon entering, she saw that the appellant was there as he emerged from the closet in her bedroom. In his hand, which was covered in a latex glove, he was holding a gun and pointing it at her.

[15] She stepped toward him and grabbed the barrel of the gun. They then moved to the kitchen, each of them holding on to the gun. They sat down at the table and drank a beer.

[16] They had a discussion, during which he reproached her for having cheated on him with a certain Renato and told her that he could not live without her. They talked about various things, and he confided that he had bought the gun in the United States. One hour later, she suggested that they take a walk and he agreed. He then returned to the closet and took out a bag-like case to store the gun. The complainant rolled the gun up in a piece of cloth that he gave her, and she herself put it in the case on which he placed a padlock.

[17] She carried the case as they left the apartment. They walked to the appellant's automobile. He unlocked the trunk and she put the case inside.

[18] They then walked to a restaurant located across the street from a neighbourhood police station. It was approximately 7:00 p.m. She was hoping that he would go to the bathroom during the meal so that she would be able to escape. Unfortunately, he did not, and they left the restaurant around 8:15 p.m.

[19] They entered a metro station but the complainant, who was still hoping to get help at a police station, convinced him to leave the metro station and have a coffee at another restaurant nearby. They walked in front of the police station again, but she did not dare make a break for it because it was evening and she did not know whether they would let her in quickly. They therefore went to another restaurant to have a coffee.

[20] They then took the metro and the bus. She wanted to get rid of the appellant but did not know how to do it without being rude to him, which would lead to more trouble. They continued their walk, returning to the neighbourhood where the complainant lived. She suggested that they have a drink at a bar that she knew, La Skala.

[21] They entered La Skala around 10:00 p.m. and he went to the bathroom. She took advantage of his absence to alert an employee, telling her that the appellant had a weapon in his car and asking her to call the police. She believed that the employee, who was anglophone, did not totally understand what she was telling her but that she did hear the word police.

[22] The appellant returned from the bathroom and sat down at their table. They ordered their drinks. In the meantime, the employee told a client about the incident.

[23] A few minutes later, the client signalled to the complainant to get her attention. The complainant looked at her and went to the bathroom, the client following her. After briefly explaining the situation, the complainant asked her to call the police. The client did not seem to want to do it, but she gave the complainant her business card.

[24] The complainant returned to her table. A man approached and said, "May I sit with you?" "No," she replied, adding that she was having a personal conversation with the appellant. "Is everything okay?" he asked, adding, "I think I'll sit down anyway, since you asked the waitress to call the police. There must be a problem."

[25] The complainant could not take it anymore. Now that the appellant knew what her intentions were, there was no longer a reason to be secretive. She stood up and stated that she was going to call the police. She then did so, using the telephone at the bar.

[26] The police arrived a few moments later, around midnight, and the complainant hurried to their car. They asked her to go with them to the appellant's automobile to get the weapon. The evening concluded with the appellant's arrest.

The appellant's version

[27] He went to the complainant's home around 5:30 p.m. on October 28 to give her the rent cheque for the month of November that he had with him, keeping the promise he had made her when they separated to pay rent until November because of her precarious financial situation. He also wanted to take this opportunity to settle some business related to the car he was driving that day. This car had been leased by the complainant until they purchased it together; so far he had kept it with her consent.

[28] He rang but there was no answer. He walked around the house, saw a light inside, returned to the front and knocked on the door. Still no answer. He was about to use the key that he still had in his possession ("after all, I was paying rent," he says), when the door opened. The complainant was standing before him.

[29] They sat down at the kitchen table and she signed the document.

[30] During the discussion that followed, he told her that he had been hurt by his discovery of her relationship with a certain Renato. He added that he had tried to commit suicide. This was not true, but he wanted to see whether she was capable of compassion and to express his suffering and humiliation.

[31] He showed her copies of e-mails that proved the relationship with Renato. He also showed her some nude photos of her, which he had sent to Renato in vengeance.

[32] Finally, he told her that he wanted to go back to his wife, which seemed to bother the complainant.

[33] They left the residence and went to the automobile to retrieve a copy of the keys that belonged to the complainant. She had given him a bag of clothes that he had left behind when he moved out, and he now put this bag in the trunk of the car. She looked inside the trunk to see whether it contained anything of hers.

[34] She discovered a cloth bag containing a heavy object and asked him what it was. He decided to lie and tell her that it was the gun he had wanted to use to commit suicide.

[35] He testifies that he received this gun from a friend, a second-hand dealer, who gave it to him as a gift in early September. His friend had told him that it was not a real weapon but an imitation, a reproduction of an antique weapon. Indeed, the weapon looks like guns used in the War of Secession. Being a collector of antiques, he accepted the gift and placed it in the trunk of his car. He never touched it again and had in fact forgotten all about it until October 28.

[36] Intrigued, the complainant picked up the bag, opened it—the padlock was not locked—and examined the weapon. She then placed it back in the bag. The appellant did not have the key for the padlock with him, but he locked it before putting the bag back in the trunk of the car.

[37] They continued their walk, passing in front of a restaurant. The complainant was not hungry and they continued on their way, passing in front of a police station and stopping in front of a bistro. He went to the bathroom and she waited outside. When he returned, they went back the way they had come, walking in front of the police station again and finally going inside the restaurant around 7:30 p.m.

[38] The banking receipt establishes that they left the restaurant at 8:15 p.m. They continued their walk. They passed by the police station a third time, had a coffee at a bistro, walked past the police station one last time, and went to the metro. They saw some police officers there. They took the metro and then the bus before going to La Skala bar, where they arrived at 9:30. They ordered drinks and talked about their relationship.

[39] At one point the complainant got up and went to speak to some people and then returned. A man came to sit with them. She answered with a rather aggressive tone of voice that he had no right to sit there and that she was in the middle of a conversation with the appellant.

[40] The man sat down anyway and asked them, “Where is the gun?” She answered that there was a gun in the appellant’s car and that he had wanted to use it to commit suicide.

[41] The appellant told the man that his friend was making it up and that it was a joke. She stood up, saying that it was enough and that she was going to call the police. She then did so, using the telephone at the bar.

[42] The appellant dutifully waited for the police officers, who arrived a few moments later and asked him to follow them outside. He did so and was placed under arrest.

GROUND OF APPEAL

[43] The appellant raises four grounds of appeal, which he presents as follows:

[TRANSLATION]

- 1) Did the trial judge err in law in his assessment of the credibility and reliability of the main witness for the prosecution (the complainant) by failing, for reasons that are clearly unreasonable and not based on the evidence, to consider the various pieces of evidence that seriously question the credibility and reliability of this testimony?
- 2) Did the trial judge incorrectly apply the teachings of the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 R.C.S. 742 by considering the appellant's testimony to be devoid of all credibility, for reasons that are manifestly unreasonable and not based on the evidence?
- 3) Did the trial judge err in law by noting the existence of evidence of the appellant's good reputation but completely failing to consider this evidence in his assessment of the appellant's credibility and the likelihood that he committed the acts of which he is charged?
- 4) Did the trial judge err in law by convicting the appellant on counts four and five of the charges?

[44] These grounds allege the unreasonableness of the verdict and the trial judge's error of law in his assessment of the evidence and his failure to comply with the rule against multiple conviction. Before we consider the value of these grounds, an analysis of the judgment of first instance is needed.

TRIAL JUDGMENT

[45] The judge first summarized the evidence on the relationship between the complainant and the appellant and on various incidents that took place during their relationship. He then related the testimonies dealing with the events of October 28, 2002.

[46] Applying the principles set out by the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, he correctly noted that he must not choose between the two versions and that he must acquit the accused if he believes him or, even if he does not believe him, if his testimony raises a reasonable doubt.

[47] He concluded that he did not believe the testimony of the accused, writing that he found it to be untrue. He also concluded that this testimony is not likely to raise a reasonable doubt. He listed nine reasons for arriving at this conclusion.

[48] Immediately proceeding with a consideration of the evidence as a whole, in accordance with the third stage in *W.(D.)*, he merely stated the following:

[TRANSLATION]

After having heard all of the evidence and taken it under advisement, the Court finds that it is persuaded, beyond a reasonable doubt, that the accused committed the five indictable offences he is charged with in the indictment.

Accordingly, I find him guilty.

[49] In other words, the judge simply expressed his conclusion without explaining how he arrived at it or his reasoning, and without spending any time on certain elements of the evidence that are nevertheless rather troubling.

[50] In *R. v. Sheppard*, [2002] 1 S.C.R. 869, Binnie J. writes the following:

28 It is neither necessary nor appropriate to limit circumstances in which an appellate court may consider itself unable to exercise appellate review in a meaningful way. The mandate of the appellate court is to determine the correctness of the trial decision, and a functional test requires that the trial judge's reasons be sufficient for that purpose. The appeal court itself is in the best position to make that determination. The threshold is clearly reached, as here, where the appeal court considers itself unable to determine whether the decision is vitiated by error. Relevant factors in this case are that (i) there are significant inconsistencies or conflicts in the evidence which are not addressed in the reasons for judgment, (ii) the confused and contradictory evidence relates to a key issue on the appeal, and (iii) the record does not otherwise explain the trial judge's decision in a satisfactory manner. Other cases, of course, will present different factors. The simple underlying rule is that if, in the opinion of the appeal court, the deficiencies in the reasons prevent meaningful appellate review of the correctness of the decision, then an error of law has been committed.

[51] In the present case, the trial judge provides general reasons which, applying the third stage in *W.(D.)*, could be applied indiscriminately to all judgments in criminal matters; therefore, given the circumstances of the present case, to which I shall return below, it prevents a meaningful consideration of the appeal.

[52] In *Sheppard*, Binnie J. adds the following:

39 More recently, the Court has explored circumstances where, short of finding a verdict to be unreasonable, the trial judge's failure to articulate reasons in relation to a key issue in circumstances which require explanation could be characterized as an error of law, giving rise to a new trial (rather than, as is the case with an unreasonable verdict, an acquittal).

[53] After analyzing the judgments on such matters, Binnie J. summarizes his interpretation of the case law on the need to give reasons when the evidence is confused and contradictory on a key issue:

55 My reading of the cases suggests that the present state of the law on the duty of a trial judge to give reasons, viewed in the context of appellate intervention in a criminal case, can be summarized in the following propositions, which are intended to be helpful rather than exhaustive:

...

5. Reasons perform an important function in the appellate process. Where the functional needs are not satisfied, the appellate court may conclude that it is a case of unreasonable verdict, an error of law, or a miscarriage of justice within the scope of s. 686(1)(a) of the *Criminal Code*, depending on the circumstances of the case and the nature and importance of the trial decision being rendered.
6. Reasons acquire particular importance when a trial judge is called upon to address troublesome principles of unsettled law, or to resolve confused and contradictory evidence on a key issue, unless the basis of the trial judge's conclusion is apparent from the record, even without being articulated.

[54] In *R. v. R. (D.)*, [1996] 2 S.C.R. 291, Major J. recalls the principle whereby the absence of reasons may in some cases constitute an error of law:

54 It is my view that the trial judge erred in law by failing to address the confusing evidence, and failing to separate fact from fiction. ...

55 ...Equally, in cases such as this, where there is confused or contradictory evidence, the trial judge should give reasons for his or her conclusions. The trial judge in this case did not do so. She failed to address the troublesome evidence, and she failed to identify the basis on which she convicted D.R. and H.R. of assault. This is an error of law necessitating a new trial.

[55] Major J. had earlier noted that the trial judge had not dealt with bizarre and contradictory evidence. I find that this remark made by Major J. applies in the present case. With respect for the trial judge, I am of the view that he erred in law by failing to address the inconsistencies and contradictions in the prosecution's case that were likely to affect the complainant's credibility. As Binnie J. noted in *R. v. Braich*, [2002] 1 S.C.R. 903:

23 Non-existent or inadequate reasons with respect to credibility may justify appellate intervention....

[56] While the role of an appellate court is not to carry out its own assessment of the evidence, “what an appellant may demand, however, with regard to evidence filed at the trial and particularly evidence that may be favourable to the appellant, is that the trial judge take it into consideration. The trial judge’s failure to do so justifies the intervention of a court of appeal”: *R. v. Polo*, [1994] A.Q. No. 249, affirmed by the Supreme Court of Canada, [1995] 4 S.C.R. 44; see also *R. v. Harper*, [1982] 1 S.C.R. 2.

[57] In *R. v. Gagnon*, 2006 SCC 17, Bastarache and Abella JJ. wrote the following regarding *Sheppard*:

13 Eight years later, in *Sheppard*, a case in which the trial judge’s reasons were virtually non-existent, this Court explained that reasons are required from a trial judge to demonstrate the basis for an acquittal or conviction. Failure to do so is an error of law. Finding an error of law due to insufficient reasons requires two stages of analysis: (1) are the reasons inadequate; (2) if so, do they prevent appellate review? In other words, the Court concluded that even if the reasons are objectively inadequate, they sometimes do not prevent appellate review because the basis for the verdict is obvious on the face of the record. But if the reasons are both inadequate and inscrutable, a new trial is required.

[58] In this case, the reasons are inadequate in that they are non-existent with regard to why the prosecution’s case is credible and persuasive, when in actual fact it reveals many contradictions. In addition, they prevent appellate review because, given the contradictions and inconsistencies of the evidence, the verdict is not clearly well founded.

[59] It appears to me that the trial judge did not take into account several elements of the evidence that were favourable to the appellant by failing to consider aspects that seriously question the complainant’s credibility and the reliability of her version. Credibility was a central issue in the case; nevertheless, the judge did not say why he believed the complainant. This question needed to be addressed; what was needed in particular was an indication that he had considered the troublesome aspects of her testimony. In the present case, the appellant, who has no criminal record and who was 65 years old at the time of the events, was entitled to expect that the judge would consider the evidence referred to below. Unfortunately, however, this was not done.

[60] As for his obligation to consider the evidence as a whole, the trial judge merely made a simple statement that the evidence was sufficiently persuasive, without analysis or additional explanation. In the circumstances, it is legitimate to wonder whether he found the accused guilty simply because he did not believe him and rejected his version, especially since some of the reasons he provided for rejecting his testimony required taking the complainant’s version as proved. The only possible motivation is that he rejected the accused’s version. There is no other reason to explain why the complainant’s version was accepted.

[61] Certain significant aspects of the complainant's testimony were worrisome, and the judge needed to address them in his explanation of his decision. In other words, given the contradictions, the evidence alone was not sufficient to clearly indicate why the judge accepted the complainant's version, and the reasons for his conclusion are not apparent from the record.

[62] I shall now address a few of the contradictions and inconsistencies that the trial judge did not deal with and, with respect, should have dealt with, to determine whether the prosecution's case was sufficiently persuasive.

ANALYSIS OF THE EVIDENCE

Beginning of the period of cohabitation

[63] The complainant states that she did not agree with the appellant's suggestion in April that they live together. According to her version, when he announced that he was leaving his wife Diane to live with her, she said that it was out of the question and that she hoped he would change his mind. When he brought it up again a few days later, she refused again, telling him to reconcile with his wife [TRANSLATION] "because you're not coming with me". He nevertheless continued to pressure her. He told her that he had finally left his wife but had nowhere to live. At first she stood her ground, but she finally gave in because, she says, [TRANSLATION] "I took pity on him, and I agreed that he could come, that he could come to my place".

[64] According to the appellant's version, it was the complainant who asked him to live with her. He testified that in April she had become impatient because he had not told his wife about his choice quickly enough.

[65] The trial judge made absolutely no mention of several pieces of written evidence that confirm that it was in fact the complainant who suggested that they live together or, at the very least, that could form the basis to conclude that it was not true that she welcomed him because she "took pity".

[66] For example, on April 30, 2002, a few days before they began living together, she sent him the following e-mail:

[TRANSLATION]

You weren't expecting to get an e-mail from me today. I'm on your computer.
Just to tell you I love you.

[67] On May 1, he wrote that he loved her "a (swearword) of a lot" and she answered him the next day:

[TRANSLATION]

Well, me too, a (swearword) of a lot! I can't wait for Thursday night.

[68] On May 8, she wrote him again:

[TRANSLATION]

Someone here wanted to tell you that she loves you.

BIG KISS!!!

[69] In addition, what she wrote in the welcome card she left for the appellant when he moved in reads as follows:

[TRANSLATION]

My dear Henri,

Welcome!

To this too-small 3 ½.

Your Gypsy Wife

XXX

[70] Other letters exchanged demonstrate that the complainant appeared to be much more attached to the appellant than she wanted to admit.

[71] In addition, in mid-May, they opened a joint bank account and a few days later bought the automobile that she had been leasing. Finally, in mid-June, she told her landlord that there would now be two people living in the apartment.

[72] These facts contradict the complainant's statements that she had no interest in living with the appellant and that she was persuaded to take him in because of the pity she felt for him. These remarks were not insignificant, as they set the stage for her version that she later threw the appellant out of the apartment and that he did not agree, leading him to commit the acts with which he was charged.

[73] The trial judge said nothing in this regard and made no comment about the impact of these facts on the credibility of the complainant and the probative value of the prosecution's case.

The attitude of the appellant, who allegedly constantly controlled her comings and goings

[74] The complainant states that, starting in the month of June, the appellant followed her constantly and went with her everywhere, controlling her movements at all times. In July, the situation got worse: he opened her mail, went through her personal belongings, and even concealed a message about a job she had applied for so that she would not be able to work outside the home. It all came to a head at the end of August. She finally ordered him to leave, which he did on September 2.

[75] According to the appellant, it was the complainant who was excessively jealous and who wanted him to cut all ties with his wife. He decided to break up with the complainant when she threw a fit about the sale of the house he owned with his wife, which had not yet been finalized. In his version, she issued too many ultimatums and, unable to take anymore, he decided to move out.

[76] Once again, the documentary evidence appears to contradict the complainant's version and confirm the appellant's. For example, on August 20, she wrote him the following note about his relationship with his wife:

[TRANSLATION]

When are you going to call Diane to tell her that you are going to pack your stuff when she's gone?

When are you going to call a lawyer to find out what your rights are? (O.K. you just did that). Do I have to throw a fit for each of the other items?

What deadline are you going to give Diane for an answer about the \$40,000 that she owes you?

When are you going to call to tell her about that deadline?

What deadline are you going to give Diane for her to begin taking steps to take out a loan to pay you back?

If nothing happens, when are you going to bring proceedings. With which lawyer? [Emphasis added.]

[77] These are not the statements of a person who can no longer stand the control the appellant exerts over her and is therefore about to kick him out (on the last Wednesday in August, according to her). On the contrary, they confirm her fit of temper and the attitude the appellant that describes in his testimony.

[78] Again, the trial judge did not mention these statements and did not address this troublesome question.

The behaviour of the complainant at the La Skala bar

[79] According to the complainant, for the seven hours or so they spent walking around, she was too afraid, panic-stricken, even terrified, to escape or seek help except when they were at the La Skala bar. She explained that she was waiting for just the right moment and that the presence of several clients at the bar encouraged her to act then, adding that the intervention of the man who came to ask how she was may also have been a trigger.

[80] She testifies that she first spoke to an employee, after which she spoke to a client (Ms. St-Laurent) and asked her to call the police. The meeting with the client took place in the bathroom, but Ms. St-Laurent did not seem to want to get involved. The complainant went back to her table and a man approached (we later learned that he was Mr. Robitaille, Ms. St-Laurent's friend). Still according to the complainant, he wanted to sit down at the table but she refused because she was in the middle of a discussion with the appellant. The man insisted and told her that he knew that she had asked for the police to be called. That is when the complainant, realizing that the appellant now knew that she had tried to ask for help, made up her mind, stood up, and said, "That's enough, I'm calling the police." She then did so.

[81] Mr. Robitaille, however, was called by the defence to testify. He describes his intervention as follows.

[82] Learning from Ms. St-Laurent that the complainant had said that she was being held against her will by an armed man, he looked at the couple and saw that the man did not look aggressive. He therefore went over to their table to help, but he received a curt refusal from the complainant. "Listen, we don't need you. Get out of here," she said aggressively. He went back to his friend. They both moved closer to the table where the complainant and the appellant were sitting and sat down at a neighbouring table. They stayed there for about twenty minutes. He saw the complainant go to the telephone and began a conversation with the appellant that lasted several minutes. The appellant was calm, even when Mr. Robitaille told him that the complainant was probably calling the police.

[83] The complainant's behaviour, particularly her scathing response to Mr. Robitaille's offer of help, is another element of evidence relevant to the assessment of the complainant's credibility, since it is likely to show that she was not really afraid of the appellant and that she did not really want a third party to become involved. What is more, it contradicts her testimony that she could not move around freely within the bar and that the man's intervention is what made her realize that the appellant now knew her intentions and that it was preferable to call the police right away. The judge makes no reference to this evidence, however.

The moment the complainant saw the weapon for the first time

[84] The complainant states that the appellant was carrying a weapon and that he threatened her with it at her apartment. The appellant denies this statement and states that he first showed her the weapon when he put the bag of clothes in the trunk of his car, falsely telling her that it was the weapon he had wanted to use to kill himself.

[85] There was in fact one person's testimony that could confirm the appellant's version and thereby contradict the complainant's, but the judge made no mention of it. This was the testimony of Ms. St-Laurent, witness for the prosecution.

[86] Ms. St-Laurent believes that she remembers the complainant telling her that she had been shown a knife at her apartment but that the appellant only showed her the firearm once they went to the car and looked inside the trunk. In other words, this testimony was likely to demonstrate that, at the very scene, at the La Skala bar, while the offences were being committed, the complainant made a statement that in a way confirmed the appellant's testimony that the weapon was not used at the apartment and that he only showed it to her later.

[87] The judge did not mention this testimony, which was adduced by the prosecution. He therefore did not consider its impact on the quality of the evidence in either the complainant's or the appellant's version, particularly with regard to the absence of the firearm at the apartment and the fact that he did not know that it was a real gun.

CONCLUSION

[88] To reiterate the comments of this Court in *R. v. Polo, supra*, [TRANSLATION] "Applying the principles set out in Harper and Morin to the present case, it appears to this Court that the trial judge did not consider all of the evidence relating to the final question to be tried" as regards the testimony of the appellant and the other witnesses and with respect to the material evidence. Again, with respect for the trial judge, I find that his reasons demonstrate that he failed to grasp certain important aspects of the evidence or chose to disregard them. In either case, this constitutes an error of law that caused the appellant serious harm, which leads me to conclude that the verdict was not one which the trier of fact could reasonably have reached: *R. v. Burns*, [1994] 1 S.C.R. 656 at 664-665.

[89] Contrary to the appellant's request, however, I do not believe that this is a case justifying the Court's entering of an acquittal. Indeed, the evidence, "correctly analyzed by a judge, could be sufficient to justify the appellant's conviction": *Côté v. R.*, J.E. 2004-1078 (C.A.).

[90] For these reasons, I would allow the appeal and order a new trial.

FRANÇOIS DOYON J.A.