COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Tran, 2019 ONCA 919
DATE: 20191122
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Watt, Huscroft and Trotter JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Jenny Tran

Appellant

Jenny Tran, acting in person

Kevin Rawluk, for the respondent

Heard: November 6, 2019

On appeal from the convictions entered on January 23, 2015 and the sentence imposed on April 2, 2015 by Justice Kelly P. Wright of the Superior Court of Justice, with reasons reported at 2015 ONSC 534.

REASONS FOR DECISION

Introduction

[1] After a trial that spanned more than 70 days, the appellant was convicted of two counts of fraud over $5000 (*Criminal Code*, R.S.C. 1985, c. C-46, s. 380(1)(a)), two counts of fraud under $5000 (s. 380(1)(b)), one count of attempting to obstruct justice (s. 139(2)), one count of forgery (s. 366(1)(a)), and

one count of causing someone to use a forged document (s. 368(1)(b)). She was sentenced to 14 months in jail. She appeals her convictions.

[2] The appellant commenced proceedings in this court as a self-represented litigant. Her appeal was eventually converted to a solicitor appeal. Counsel perfected the appeal and filed a 43-page factum. The appellant discharged her counsel shortly before the appeal was scheduled to be heard. The appellant's application for an adjournment of the appeal hearing, and her request that *amicus curiae* be appointed, were dismissed.

[3] At the appellant's request, a Cantonese interpreter was present in court for the hearing. However, as was her right, the appellant chose to make her submissions in English, and did so without any apparent difficulty.

[4] After the hearing, the appeal was dismissed with reasons to follow. These are our reasons. We consider Ms. Tran's oral submissions, and the arguments raised in the factum filed on her behalf.

Factual Background

[5] The appellant held herself out as a qualified heath care provider. She performed and billed for services that she was not qualified to perform (i.e., massage and acupuncture). The appellant billed her clients' insurance companies for services that she never performed. She submitted false claims for some of her clients' spouses and children who had never attended the clinic. If

an insurance claim was denied, the appellant would often report the client's unpaid bills to a collection agency. She sued two of her clients for refusing to pay.

[6] The Crown led the evidence of five of the appellant's clients. The trial judge found their evidence to be compelling. The Crown also relied on the evidence of an insurance company employee, the Director of Professional Misconduct for the Ontario College of Massage Therapy, and a naturopathic doctor. The appellant testified in her own defence, and called two other former clients as witnesses. The trial judge rejected all of the appellant's evidence. In detailed reasons, she found the appellant guilty on the seven counts set out above.

Grounds of Appeal

[7] The appellant submits that the trial judge erred in refusing to grant her request for an adjournment of the trial after she discharged her counsel. The appellant had been placed in custody because she had failed to attend court for her trial as directed by the trial judge.

[8] Ms. Tran relied on letters from four doctors who asserted that she was too ill to conduct her trial. The trial judge was not content to proceed on the basis of the letters alone and requested that two of the doctors testify on the application. Both doctors expressed concerns about Ms. Tran's self-reported mental health

concerns. The trial judge rejected their evidence. As she said, “I find that both doctors demonstrated a complete abdication of their medical opinions, without hesitation and without confirmation, by adopting Ms. Tran’s self-reported illnesses.” The trial judge also rejected the appellant’s evidence that she was too unwell to conduct her own trial. She found that Ms. Tran was malingering.

[9] The trial judge properly exercised her discretion to refuse the adjournment request. The appellant had already obtained numerous adjournments as she hired and fired multiple lawyers. The trial judge carefully considered the appellant’s claims of mental distress, as well as her assertions that she was unable to present her own defence. The long and tortured history of the case amply justified the trial judge’s decision to refuse Ms. Tran’s request: see *R. v. Patel*, 2018 ONCA 541, at para. 3.

[10] After she denied Ms. Tran’s adjournment request, the trial judge took all reasonable steps to ensure that the appellant received a fair trial. She explained the rules of evidence and offered to assist the appellant in framing her questions for the witnesses. Moreover, the trial judge appointed very experienced defence counsel as *amicus curiae* who effectively assisted the appellant throughout the trial. The trial judge allowed *amicus* counsel wide latitude, including permitting her to question the two defence witnesses.

[11] This was an extremely difficult trial to conduct and keep on track. The trial judge did everything reasonably possible to accommodate the appellant's seemingly endless demands. On one occasion when the appellant complained about the trial process, the trial judge said:

> [A]s I reflect on this trial every single request you have made has been addressed and accommodated with the exception of more recently the highlighter issue and from the very distant past, the French fry and the coffee request. Those are the only things that I can think of that you've not been accommodated on.
>
> Everyone involved in this trial has done everything they can to assist you in every way they can. In my view, you have been given more resources than any other individual I know who has been in a trial at the Superior Court or even the Ontario Court level.

[12] This ground of appeal is dismissed.

[13] The appellant argues that the trial judge erred in ordering the appellant's detention to ensure her attendance at trial. The trial judge's decision was well supported by the appellant's previous failures to appear in court, which resulted in delays in the trial. Moreover, the appellant did not seek to review her detention order.

[14] This ground of appeal fails.

[15] The appellant submits that counts four through eight of the indictment are "void for vagueness" and that her convictions on these counts are unreasonable and not supported by the evidence. There is no merit in either claim.

[16] The counts in question were framed in a manner that sufficiently informed the appellant of the nature of the allegations made against her. Moreover, there was a firm evidentiary basis for the trial judge's findings of guilt on counts four through eight. The verdicts were not unreasonable.

[17] This ground of appeal is dismissed.

[18] Lastly, the appellant submits that the trial judge reversed the burden of proof. We disagree. The trial judge properly instructed herself in accordance with *R. v. W.(D.)*, [1991] 1 S.C.R. 742, and her reasons demonstrate that she properly applied these principles. Accordingly, we reject this ground of appeal.

Conclusion

[19] The appeal from conviction is dismissed. The appellant originally appealed her sentence. However, she made no submissions on the issue and the sentence has long since been served. The appeal from sentence is dismissed as moot.

"David Watt J.A."
"Grant Huscroft J.A."
"Gary Trotter J.A."