COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *R. v. Lai,*
2012 BCCA 202

Date: 20120511
Docket: CA039194

Between:

Regina

Respondent

And

Tri Thuc Lai

Appellant

Before: The Honourable Mr. Justice Donald
The Honourable Mr. Justice Lowry
The Honourable Madam Justice Neilson

On appeal from: Provincial Court of British Columbia, June 1, 2011
(*R. v. Lai, Tri Thuc and Ly, Buu Minh*, Quesnel Docket 23829)

Counsel for the Appellant:	J. I. Solomon
Counsel for the (Crown) Respondent:	T. C. Gerhart
Place and Date of Hearing:	Vancouver, British Columbia April 19, 2012
Place and Date of Judgment:	Vancouver, British Columbia May 11, 2012

Written Reasons by:
The Honourable Mr. Justice Donald

Concurred in by:
The Honourable Mr. Justice Lowry
The Honourable Madam Justice Neilson

Reasons for Judgment of the Honourable Mr. Justice Donald:

[1] This is an appeal from a conviction for production of marihuana contrary to s. 7(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, recorded on 1 June 2011 in the Provincial Court.

[2] The Crown brought a case of circumstantial evidence against the appellant. He was found sleeping in a house in Quesnel used as a marihuana grow operation. His motor vehicle was outside. A vial of pills with his name on it was on the kitchen counter. There was no other evidence that he was involved in the production of marihuana. The house was registered to someone else, as was the B.C. Hydro contract.

[3] The appellant did not testify. His co-accused, who was also found sleeping in the home when the police executed a search warrant, gave evidence. The trial judge disbelieved his story that he and the appellant were there to pick up his motor vehicle and stayed over because they were tired from the drive from Surrey where they lived. The trial judge did believe that they had recently arrived from Surrey prior to the arrest.

[4] The judge convicted both accused of production. He inferred participation in the operation from their being found in what he classified as a “bunker”, that is, a dwelling almost entirely dedicated to the growing of marihuana. He decided that only someone maintaining the operation would sleep there. The judge found that the operation was automated and did not require the fulltime attendance for feeding and watering, presumably to deal with the fact that the accused were from Surrey.

[5] The principal contention of the appellant is that this was an unreasonable verdict under s. 686(1)(a)(i) of the *Criminal Code*. Having engaged in the process described in *R. v. Yebes*, [1987] 2 S.C.R. 168 at para. 25, that is, to “re-examine and to some extent reweigh and consider the effect of the evidence”, I have concluded the evidence is too weak to support a conviction for production of marihuana.

[6] The case against the appellant comes down to his temporary presence in a house used to grow marihuana. Maintenance of the operation is not the only inference; he could have slept over for a number of reasons. There is no circumstantial evidence that he did anything to "produce", including "cultivating, propagating or harvesting", marihuana: *Controlled Drugs and Substances Act*, s. 2(1).

[7] That the judge disbelieved the story of the appellant's co-accused does not enhance the prosecution's case against him. Contrary to the judge's opinion, I am of the view that the web of circumstances is not so compelling that the appellant had to provide an answer or stand condemned.

[8] I would allow the appeal and set aside the conviction.

"The Honourable Mr. Justice Donald"

I agree:

"The Honourable Mr. Justice Lowry"

I agree:

"The Honourable Madam Justice Neilson"