

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Cady, 2024 ONCA 64

DATE: 20240126

DOCKET: COA-22-CR-0176

Hourigan, Zarnett and Monahan JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Michael Cady

Appellant

Nicholas A. Xynnis, for the appellant

Scott Clarke, for the respondent

Heard: January 25, 2024

On appeal from the convictions entered by Justice Kathleen E. Cullin of the Superior Court of Justice on July 25, 2022, with reasons reported at 2022 ONSC 4372, and the sentence imposed on October 3, 2022, with reasons reported at 2022 ONSC 5637.

REASONS FOR DECISION

[1] After hearing from the appellant, we indicated that the appeal was dismissed for reasons to follow. These are those reasons.

[2] The appellant's wife, Karen Cady, pleaded guilty to and was convicted of fraud over \$5000 and possession of a forged document. The appellant was

convicted of possession of property obtained by crime and laundering proceeds of crime.

[3] Mrs. Cady was a bookkeeper at Henninger's Diesel Ltd. She committed fraud against her employer in 136 transactions, totaling over \$1 million. Mrs. Cady would deposit the proceeds of her fraud into an account at Northern Credit Union ("NCU"). The account was opened by Mrs. Cady on July 29, 2015. The appellant was added to the account on February 10, 2016. Although Mrs. Cady was the principal user of the account, the appellant made several withdrawals, deposits, and electronic money transfers from the NCU account to his personal bank account.

[4] The appellant's evidence was that he was not specifically aware of his wife's income, other than knowing she earned more than him. At the time, he worked as a heavy equipment operator and intermittently received Employment Insurance benefits. There was evidence of several purchases and transactions involving the NCU bank account that related to assets registered or owned by the appellant, including a residence, several vehicles – a trailer, jet ski, snowmobile, and boat – various home improvements, trips to the Caribbean, and concert tickets.

[5] The main issue at trial was whether the appellant had knowledge of the origin of the funds in the NCU account. The trial judge made the following findings with regard to the appellant's knowledge:

- He knew that Mrs. Cady was convicted of committing fraud on a prior employer on December 8, 2016;
- He knew that Mrs. Cady had declared bankruptcy twice prior and had bad credit;
- He knew that when they purchased their first home, they had to use a high-interest lender because, due to their credit, they could not get a mortgage elsewhere; and
- He knew about several large payments being made from the NCU account with no explanation as to the source of the funds.

[6] The trial judge concluded that the appellant either knew that the funds were illegally obtained by Mrs. Cady or was wilfully blind as to their origin. She noted there were a number of red flags, and that he should have inquired into the origins of the funds before withdrawing money and making purchases. She concluded that the circumstances did not and could not support the appellant's decision "to turn a blind eye to the extremely unusual and large disbursements of cash ...[and]...cumulative spending...in the absence of a plausible, legal source of income to support them".

[7] The appellant submits that the trial judge erred in finding him guilty even after accepting his evidence that he deferred to his wife's financial management and that he believed her in handling the family finances. We are not persuaded by this submission.

[8] Contrary to the submission of the appellant, the trial judge's finding that he believed his wife is not inconsistent with a finding of wilful blindness. While it is unclear from the trial judge's reasons what information was conveyed by Mrs. Cady that the appellant believed, the trial judge made no finding that Mrs. Cady provided information that explained how the couple was able to fund their purchases. Given Mrs. Cady's previous fraud conviction and low credit score, the ability to make several lavish purchases and expenses was clearly incompatible with the lifestyle they previously lived. Further, on one occasion, the appellant admitted to the police that at one point he suspected his wife of committing fraud but chose to give her the "benefit of the doubt."

[9] The doctrine of wilful blindness "imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but *deliberately choses* not to make those inquiries": *R. v. Briscoe*, 2010 SCC 13, [2010] 1 S.C.R. 411, at para. 21 (emphasis in original). It was open to the trial judge to conclude that the appellant knew inquiries should be made but chose not to do so.

[10] The appeal is dismissed. The appellant filed a notice of abandonment regarding his sentence appeal. Therefore, his sentence appeal is dismissed as abandoned.

"C.W. Hourigan J.A."

"B. Zarnett J.A."

"P.J. Monahan J.A."