

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Yousuf, 2025 ONCA 441

DATE: 20250618

DOCKET: COA-23-CR-0413 & COA-23-CR-0529

Fairburn A.C.J.O., Roberts and Madsen JJ.A.

BETWEEN

COA-23-CR-0413

His Majesty the King

Respondent

and

Khalid Yousuf

Appellant

AND BETWEEN

COA-23-CR-0529

His Majesty the King

Respondent

and

Adrian Myles Puentes-Reed

Appellant

Lance Beechener, for the appellant Khalid Yousuf

Nathan Gorham and Breana Vandebek for the appellant Adrian Myles Puentes-Reed

Jay Pelletier, for the respondent (COA-23-CR-0413)

Allyson Ratsoy, for the respondent (COA-23-CR-0529)

Heard: May 26, 2025

On appeal from the convictions entered by Justice F. Bruce Fitzpatrick of the Superior Court of Justice on February 24, 2023, with reasons reported at 2023 ONSC 1336.

Fairburn A.C.J.O.:

Overview

[1] After a judge-alone trial in Thunder Bay, the appellants were each convicted on eight counts involving possession for the purpose of trafficking, possession of proceeds of crime, and possession of prohibited and restricted firearms and devices. Mr. Puentes-Reed received a nine-year global sentence and Mr. Yousuf received an eight-year global sentence. Both received credit for pre-sentence custody.

[2] They both appeal from conviction.¹ Mr. Puentes-Reed emphasizes what are alleged to be errors arising from misapprehensions of evidence, and Mr. Yousuf emphasizes what is said to be an unreasonable verdict. For the reasons that follow, I would dismiss the appeals.

Background Facts

[3] Expert evidence was led at trial suggesting that Thunder Bay had become somewhat of a hub for drug trafficking, a place where various drugs were sold at higher-than-average prices. The expert testified that drug dealers from outside of Thunder Bay were known to have taken over residential premises in Thunder Bay and were using them in two ways. First, they had “trap houses”, where drugs were sold to customers. Second, they had “safe houses”, where drug traffickers could safely store their supplies and money, as well as rest in the privacy and security of a home. When it came to “safe houses”, access was limited to other mid-level and higher-level drug traffickers that were doing business at the homes.

[4] The appellants were the only two people present in the home where they were arrested. The police entered a short time after receiving information from the landlord that he had entered the residence to make a repair and discovered firearms in plain view. When the police entered the residence, they found it bursting

¹ While Mr. Puentes-Reed’s notice of appeal also suggests he is appealing against sentence, this appeal was not advanced in either writing or in oral submissions.

with drugs and drug paraphernalia, cash, and firearms. Some of the items included:

- quantities of cannabis and crack cocaine sitting on the kitchen counter;
- a Glock firearm sitting on the kitchen counter;
- over \$90,000 in cash sitting on the kitchen counter;
- over \$27,000 in cash sitting in a bag in the kitchen;
- a loaded magazine for the Glock sitting on a coffee table in the living room;
- a .380 calibre Browning handgun sitting on the same coffee table;
- a Brevete handgun sitting on the same coffee table;
- over 800 grams of cocaine in a bag lying on top of a couch in the living room;
- over \$400,000 in cash in a duffle bag in the main bedroom closet; and
- over \$75,000 in cash sitting in shoe boxes in the main bedroom closet.

[5] There were also scales, hydromorphone pills and over 800 oxycodone pills discovered in the residence, along with a money counter and envelopes of cash.

[6] The police found the appellants asleep on the third floor of the residence. Mr. Puentes-Reed was asleep in the main bedroom and Mr. Yousuf was asleep in another one. There was little dispute that they were both in a drug-induced state at the time of arrest.

[7] The critical issue at this judge-alone trial was whether the appellants were in possession of the proceeds of crime, drugs, and firearms. The trial judge concluded that they were and entered convictions.

The Reasons for Judgment

[8] The trial judge correctly stated the law relating to possession, including reciting the test for constructive possession from *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at para. 17, as follows:

Constructive possession is established where the accused did not have physical custody of the object in question, but did have it “in the actual possession or custody of another person” or “in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person”. Constructive possession is thus complete where the accused: (1) has knowledge of the character of the object, (2) knowingly puts or keeps the object in a particular place, whether or not that place belongs to him, and (3) intends to have the object in the particular place for his “use or benefit” or that of another person. [Citations omitted.]

[9] There is no dispute that the trial judge also correctly noted that tenancy or occupation of the place where contraband is found does “not create a presumption of possession”: *R. v. Choudhury*, 2021 ONCA 560, at para. 19.

[10] In this case, the trial judge had no difficulty accepting that the home where the arrests were made was a “safe house”, given the sheer quantity of contraband found strewn around the home.

[11] Mr. Puentes-Reed testified. He explained that he was in Thunder Bay with the goal of building and operating a hip-hop studio. He tried to distance himself from the safe house, claiming that it was not his intention to build his hip-hop business from there. Indeed, he claimed that he was not even staying in the home on this visit to Thunder Bay.

[12] Mr. Puentes-Reed's explanation as to how he got there was described by the trial judge as "completely incredible and not capable of belief." Specifically, he maintained that Chudier Reat – a 17-year-old from whom he occasionally purchased drugs – had taken him and Mr. Yousuf to the residence while they were already in a drug-induced state. According to Mr. Puentes-Reed, he had very little recollection of having been transferred by Mr. Reat or of how he ended up in the residence. Even so, he recalled waking up at some point to find himself being pushed out of the bed he shared with Mr. Yousuf, after which he moved to a different bed.

[13] When the police arrived at the safe house, they found Mr. Puentes-Reed asleep in the main bedroom. In the closet of that room were numerous items, including over \$450,000 in cash. He said that his presence in the bedroom, along with the cash in the closet, was just a coincidence.

[14] Rejecting that evidence as entirely incapable of belief, the trial judge concluded that it was Mr. Puentes-Reed's intention to fully occupy and control the

safe house, using it both for his music business and for participating in the drug trade. He based this conclusion on numerous things, including compelling evidence connecting Mr. Puentes-Reed to the safe house. Specifically, Mr. Puentes-Reed's passport was found in a dresser drawer in the main bedroom; there were numerous other documents directly connected to him found in the residence, including Canada Revenue Agency ("CRA") remittance, registration and account documents; and a jacket was hanging up in the bedroom with Mr. Puentes-Reed's credit card in the pocket. Taking into account the evidence as a whole, including the clear and obvious nature of the significant amounts of contraband in plain view at the safe house, the trial judge concluded that the Crown had proven possession beyond a reasonable doubt.

[15] As for Mr. Yousuf, the case against him was not as strong as it was against Mr. Puentes-Reed. Unlike Mr. Puentes-Reed, Mr. Yousuf did not testify and instead relied upon the evidence of Mr. Puentes-Reed as to how he ended up in the safe house. As previously noted, the trial judge rejected this explanation, finding that it lacked credibility.

[16] The trial judge concluded that the Crown had also met its burden as it related to Mr. Yousuf. That conclusion was largely based upon the state of the residence, the expert evidence and the circumstances surrounding Mr. Yousuf's presence in the home. Specifically, Mr. Yousuf was left in the home with only Mr. Puentes-

Reed present – given the condition of the residence, that would not have happened unless Mr. Yousuf was connected to the drug operation.

Conviction Appeal

(1) Mr. Puentes-Reed

[17] Mr. Puentes-Reed maintains that the trial judge misapprehended the evidence, including evidence showing that other people were in control of the residence, which may have meant that various contraband was left in the safe house without Mr. Puentes-Reed's knowledge.

[18] First, Mr. Puentes-Reed points to evidence suggesting that Ms. Kiana Adams leased the apartment. While there was an outstanding warrant for her arrest on similar charges, she had not been apprehended by the time of trial. The trial judge's treatment of this evidence, including his mention that Ms. Adams was "not on trial here", is said to demonstrate a misapprehension of evidence.

[19] Second, the appellant maintains that the trial judge erred when it came to Mr. Reat, who is said to have been centrally involved in the drug operation. Mr. Reat had originally been charged with these offences; however, after pleading to an unrelated matter, the charges in relation to this matter were stayed. By the time of trial, Mr. Reat had been murdered. It is said that the trial judge ignored the clear evidence of Mr. Reat's knowledge and control over the drugs, firearms and proceeds of crime. For instance, a video was led in evidence at trial demonstrating

that Mr. Reat had been in the kitchen of the safe house with a large stack of money on his shoulder.

[20] Third, it is said that the trial judge improperly ignored the strong connection between Mr. Reat and the safe house, specifically a blue hair comb seen in Mr. Reat's hair on the video, which was located in the same dresser drawer as Mr. Puentes-Reed's passport. This is said to have been strong evidence of Mr. Reat's control over the residence, something that should have detracted from the suggestion that Mr. Puentes-Reed had control.

[21] The appellant maintains that the trial judge failed to give proper effect to this important evidence, which is consistent with the conclusion that other people were present and had potential control over the residence. The trial judge's failure to correctly deal with this evidence is said to constitute a misapprehension of the evidence.

[22] A misapprehension of evidence may arise from a failure to consider evidence relevant to a material issue, as well as a failure to appreciate the substance of evidence or a failure to give proper effect to evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.), at p. 538. The trial judge's reasons demonstrate that he did not commit any of these alleged errors. Respectfully, this ground of appeal is merely an attempt to reweigh the evidence that the trial judge assessed

and upon which he made findings. This exercise does not fall within the appropriate scope of appellate review.

[23] The trial judge understood and recognized that Ms. Adams was the lessee of the safe house. His comment that she was not on trial is simply a recognition of the reality of the situation: that Ms. Adams had not yet been apprehended. This observation did not mean that the trial judge discounted the fact that she was on the lease. Indeed, if she had been on trial, this no doubt would have constituted good evidence of her control.

[24] The fact remains that her role as the lessee did not preclude Mr. Puentes-Reed from having knowledge of the character of the contraband, knowingly having the contraband in the safe house, and intending to have the contraband in the safe house for both his own use and the use and benefit of others. This is where the trial judge focussed his analysis.

[25] This is equally true of the evidence pertaining to Mr. Reat. While it is true that the video of Mr. Reat holding a stack of cash was undoubtedly good evidence of his possession of the contraband, the fact of the video, or Mr. Reat's clear involvement in the crimes, did not detract from the fact that Mr. Puentes-Reed could also be in possession of those same items at the same time.

[26] To this end, the trial judge referred to the video and hair comb evidence but found as a fact that it did not overbear or detract from the circumstantial evidence indicating that Mr. Puentes-Reed was also in possession. It was open to the trial judge to arrive at this conclusion in the context of the evidence as a whole.

[27] As already reviewed, the circumstantial evidence pointing toward Mr. Puentes-Reed having constructive possession was strong. It included the following: he was sleeping in the master bedroom where there was over \$450,000 in cash in the closet; his jacket was hanging up in the bedroom with his credit card in the pocket; his passport was in a dresser drawer; and there were numerous pieces of documentation connecting him to the residence, including CRA documents.

[28] It is against that backdrop that the trial judge concluded that the evidence that Ms. Adams was the lessee and evidence of Mr. Reat appearing in the video and maybe having a hair comb in the main bedroom dresser drawer did not raise a reasonable doubt about Mr. Puentes-Reed's possession of contraband in the safe house.

[29] Mr. Puentes-Reed also argues that the trial judge erred in taking a piecemeal approach to the evidence rather than approaching each piece of evidence in the context of the evidence as a whole. For instance, he maintains that the trial judge

erred by failing to contextually consider what are said to be three critical facts that point away from his association to the home:

- when arrested, Mr. Puentes-Reed's wallet was found in the pocket of the pants he was wearing;
- Mr. Puentes-Reed's father testified that he was in Thunder Bay to start a music career; and
- Mr. Reat was connected to the residence and his hair comb was found in a drawer in the main bedroom.

[30] A contextual review of the reasons belies this argument: the trial judge considered each of these facts in their proper context and rejected them as having no meaningful significance.

[31] That the wallet was found in Mr. Puentes-Reed's pants is not significant, especially given his intoxicated state. In any event, even if the appellant is correct that one would expect that a person would necessarily remove their wallet from their pants when going to bed in a highly intoxicated state, especially when staying in a place over which they had control, the fact is that Mr. Puentes-Reed's passport and bank cards were in the room where he was sleeping. None of them were in his pants.

[32] In addition, although the trial judge considered and accepted some of the evidence that Mr. Puentes-Reed was in Thunder Bay for music, he rejected the suggestion that this precluded a finding that Mr. Puentes-Reed was also there for

purposes of trafficking in drugs. As the trial judge said, Mr. Puentes-Reed's "hip-hop career and his aspirations to operate a studio do not serve to explain away, justify or provide a reasonable alternative explanation for his presence in the Residence in a way that leaves me in a reasonable doubt about his possession of the items found there." In reaching this conclusion, the trial judge considered the cumulative effect of all the evidence and specifically addressed the hair comb that likely belonged to Mr. Reat.

[33] It is not for this court to reweigh the evidence or to make new factual findings. That was within the domain of the trial judge, and he properly approached his task.

[34] Mr. Puentes-Reed did not press his unreasonable verdict argument in oral submissions. For the reasons already articulated, there was ample evidence to demonstrate that this verdict was not reached illogically or irrationally and was entirely supported by the evidence: *R. v. Brunelle*, 2022 SCC 5, 2022 1 S.C.R. 25, at para. 7.

(2) Mr. Yousuf

[35] In oral submissions, Mr. Yousuf focussed on what is said to have been an unreasonable verdict. He maintains that there was insufficient evidence to prove anything other than the fact that he was found in a residence containing a significant amount of contraband. He argues that there was simply no evidence of knowledge because it was possible he ascended to the bedroom where he was

arrested without seeing the contraband strewn around the house. In any event, even if he saw it and was therefore vested with knowledge, there is said to be a lacuna in the evidence of control.

[36] Mr. Yousuf argues that the trial judge erroneously conflated presence in the home with possession of the contraband. Mr. Yousuf maintains that the Crown was not in a position to prove knowledge and control because reasonable inferences other than incriminatory ones were available on the evidence. For instance, it was an available inference that Mr. Yousuf was simply spending the night at the residence where he was arrested and, even if he knew that contraband was in the residence, there was nothing more than evidence of passive acquiescence to that state of affairs.

[37] In short, Mr. Yousuf maintains that, even though the trial judge summarized the law correctly, he erroneously applied the legal principles involving constructive possession. His error is said to be reflected in his presumption of possession from occupancy alone in that he conflated mere presence in the residence with constructive possession of the drugs, firearms, and proceeds of crime.

[38] While the case against Mr. Yousuf was undoubtedly a much different one than the case against Mr. Puentes-Reed, it cannot be said that the verdict is an unreasonable one.

[39] The trial judge specifically observed that “tenancy or occupation of a place where an object is found does not create a presumption of possession.” Having correctly stated this legal principle, the trial judge then went on to apply the law correctly.

[40] This case is unlike some of those relied upon by Mr. Yousuf where the error was found to be rooted in a presumption of possession from occupancy. For instance, the reversible error in *R. v. Watson*, 2011 ONCA 437, at paras. 11-12, rested on the trial judge’s finding that “Watson was legally deemed to have knowledge and be in possession of the drugs and gun unless he could rebut that presumption.” There is no such error made in this case.

[41] Here, the trial judge found that Mr. Yousuf’s presence at the safe house was a relevant factor in considering whether he was in possession of the contraband. Consistent with this approach, he found that it was only “part” of the reason why he found Mr. Yousuf was involved in operating the business from that location. At no point did the trial judge presume possession from occupancy. He merely found that one piece of circumstantial evidence informing possession was Mr. Yousuf’s presence at the time of arrest in the safe house.

[42] The trial judge also inferred from the sheer quantity of cash found in the residence (around \$750,000 in total) that only individuals involved in the drug operation would be left unsupervised in the safe house. He also inferred that, to access the bedroom where Mr. Yousuf was found sleeping, he would have had to walk by the drugs, cash and firearms, all in plain view. It was open to the trial judge to draw these inferences. He had the benefit of numerous exhibits from which he could draw inferences about what a person, even someone in an inebriated state, might have witnessed as they walked through this house, which was clearly used for the purpose of running a drug operation.

[43] The trial judge's reasons also demonstrate his correct legal approach to the question of control. Indeed, his finding that the large sum of cash found in the main bedroom closet – the room where Mr. Puentes-Reed was found – was possessed only by Mr. Puentes-Reed and not by Mr. Yousuf demonstrates the trial judge's understanding of control.

[44] It was open to the trial judge to conclude as follows:

Mr. Yousuf's state of intoxication such that he had to be awakened from his sleep is consistent with his treatment of the Residence as a "safe house". Mr. Yousuf could not have made it to the third floor bedroom where he was found without passing through the second floor of the Residence. On this second floor in plain view were drugs, guns and bundled cash. In my view Mr. Yousuf's proximity to these items having to pass them on the way up the stairs contributes to my finding that he had those items together with Mr. Puentes-Reed in their

constructive possession or custody. Further the fact that he was one of two people found in the Residence leads to the only logical conclusion he was in occupation of the Residence for the use or benefit of himself and of Mr. Puentes-Reed. I find given the nature of the items, obviously connected to the drug trade Mr. Yousuf had constructive possession of these items. He had knowledge of the character of the objects. He knowingly put or kept the objects in the Residence. Further he intended that the objects in the Residence were for his use or benefit and that of Mr. Puentes Reed.

[45] It was open to the trial judge to arrive at the verdict he reached. The trial judge concluded that this was a safe house, with all of the hallmarks of a high-level drug operation and with the contraband in plain view. Having made these findings, it was open to the trial judge to conclude that only involved people would be in the house unattended to.

[46] As the trial judge carefully explained in his reasons, this house served one purpose and one purpose only: it was a safe house, bursting at the seams with contraband covering many different genres. That is the context in which Mr. Yousuf was found sleeping with only one other person in the home.

[47] It is on this basis that the trial judge arrived at his conclusion that Mr. Yousuf was also in constructive possession.

Conclusion

[48] I would dismiss both appeals.

Released: "June 18, 2025 JMF"

"Fairburn A.C.J.O."
"I agree. Roberts J.A."
"I agree. L. Madsen J.A."