

Her Majesty The Queen (appellant) v. Carmelo Venneri (respondent)
(34523; 2012 SCC 33; 2012 CSC 33)

Indexed As: R. v. Venneri (C.)

Supreme Court of Canada
McLachlin, C.J.C., LeBel, Deschamps, Fish, Rothstein, Cromwell and Moldaver, JJ.
July 6, 2012.

Summary:

Venneri was tried jointly with two other alleged members of a criminal organization on a multi-count indictment. The trial judge, in a decision cited as 2009 QCCQ 1916, convicted Venneri of eight offences, including the commission of an offence for a criminal organization, contrary to s. 467.12 of the Criminal Code (count 3); instructing the commission of an offence for a criminal organization, contrary to s. 467.13 of the Code (count 5); and possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act (count 4). Venneri appealed.

The Quebec Court of Appeal, in a decision cited as 2011 QCCA 1957, entered acquittals on counts 3 and 5, which both alleged criminal organization offences. For the majority, Beauregard, J.A., found that Venneri was not a member of a criminal organization and had neither trafficked nor instructed anyone to traffic in cocaine "for the benefit of" or "in association with" a criminal organization, within the meaning of ss. 467.12 and 467.13 of the Code. The Court of Appeal also quashed Venneri's conviction for possession of cocaine for the purpose of trafficking (count 4). The majority held that the evidence failed to demonstrate that Venneri jointly possessed the cocaine seized at the homes of two unindicted co-conspirators. In dissent, Duval Hesler, J.A. (as she then was), found that the verdicts rendered by the trial judge were supported by the evidentiary record. The Crown appealed.

The Supreme Court of Canada allowed the appeal in part. The court agreed with Beauregard, J.A., that the Crown failed to prove that Venneri was a member of a criminal organization. However, the court was satisfied that Venneri trafficked in cocaine "in association with" a criminal organization, as alleged in count 3. The court therefore affirmed the acquittals entered by the Court of Appeal on counts 4 and 5, but restored the conviction on count 3.

Narcotic Control - Topic 578

Offences - Possession - General - Joint possession - The Quebec Court of Appeal quashed Venneri's conviction for possession of cocaine for the purpose of trafficking - The majority held that the evidence failed to demonstrate that Venneri jointly possessed the cocaine seized at the homes of two unindicted co-conspirators (Marchand and Bilodeau) -The Crown appealed, seeking to have the conviction restored - The Supreme Court of Canada agreed with the Court of Appeal that the conviction was unreasonable within the meaning of s. 686(1)(a)(i) of the Criminal Code - No properly instructed jury acting judicially could reasonably have rendered that verdict - The only evidence linking Venneri to the drugs seized at the homes of Marchand and Bilodeau was the presence of symbols and expressions on the cocaine packaging that were consistent with expressions

used by Venneri in telephone conversations concerning drug deals - Nothing indicated that those symbols were not used in other drug transactions completely unrelated to Venneri - There were no intercepted communications which explicitly linked Venneri to the seized drugs - See paragraphs 15 to 17.

Narcotic Control - Topic 578

Offences - Possession - General - Joint possession - The Quebec Court of Appeal quashed Venneri's conviction for possession of cocaine for the purpose of trafficking (count 4) - The majority held that the evidence failed to demonstrate that Venneri jointly possessed the cocaine seized at the homes of two unindicted co-conspirators (Marchand and Bilodeau) - The Crown appealed, seeking to have the conviction restored - The Crown contended that Venneri's conviction could be upheld pursuant to s. 21(2) of the Criminal Code because possession of cocaine was a foreseeable consequence of conspiring to traffic in cocaine - The Crown relied on *R. v. Zanini* (S.C.C.) - The Supreme Court of Canada affirmed the acquittal entered by the Court of Appeal on count 4 - In *Zanini*, there was a clear nexus between the housebreaking instruments found on the co-conspirators and the burglary they committed - No such nexus was established between the conspiracy involving Venneri and the drugs seized from the homes of Marchand and Bilodeau - Absent that evidence, Venneri's conviction on count 4 amounted to an unreasonable verdict, a conclusion supported by the absence in the judgment at trial of any reasons to support a finding that Venneri had constructive or joint possession of the seized cocaine - See paragraphs 18 to 21.

Narcotic Control - Topic 578

Offences - Possession - General - Joint possession - The Quebec Court of Appeal quashed Venneri's conviction for possession of cocaine for the purpose of trafficking - The majority held that the evidence failed to demonstrate that Venneri jointly possessed the cocaine seized at the homes of two unindicted co-conspirators (Marchand and Bilodeau) in October 2005 - The Crown appealed, seeking to have the conviction restored - The Crown argued that the conviction could be upheld solely on the basis of the conspiracy between Venneri and others to traffic in cocaine - The Supreme Court of Canada stated that "In essence, the Crown maintains that the ongoing communications between Venneri and other members of the conspiracy demonstrate that he must have possessed cocaine, alone or in common with others, at some point between July of 2005 and March of 2006. In my view, the Crown is not relieved of proving the elements of possession simply by establishing the existence of a conspiracy to traffic in cocaine" - See paragraph 22.

Narcotic Control - Topic 604

Offences - Possession - Evidence - Proof of possession - [See all **Narcotic Control - Topic 578**].

Criminal Law - Topic 2725

Attempts, conspiracies, accessories and parties - Participation in criminal organization - Criminal organization defined - "Criminal organization" was defined in s. 467.1 of the Code - The parties disagreed as to the degree of organization or structure required to

support a finding that a group of three or more persons constituted a criminal organization - The Supreme Court of Canada stated that "Some trial courts have found that very little or no organization is required before a group of individuals are potentially captured by the regime ... Others, properly in my view, have held that while the definition must be applied 'flexibly', structure and continuity are still important features that differentiate criminal organizations from other groups of offenders who sometimes act in concert ... a flexible approach favours the objectives of the legislative regime. In this context, flexibility signifies a purposive approach that eschews undue rigidity. That said, by insisting that criminal groups be "organized", Parliament has made plain that some form of structure and degree of continuity are required to engage the organized crime provisions that are part of the exceptional regime it has established under the Code" - See paragraphs 24 to 29.

Criminal Law - Topic 2725

Attempts, conspiracies, accessories and parties - Participation in criminal organization - Criminal organization defined - Section 467.1 of the Criminal Code provided that "'criminal organization' means a group, however organized, that" - The Supreme Court of Canada stated that "Qualifying 'organized' in s. 467.1 by 'however' cannot, as a matter of language or logic, be taken to signify that no element of organization is required at all. 'Organized' necessarily connotes some form of structure and co-ordination ... 'However' and 'organized' the two words read together, as they are written are complementary and not contradictory. Thus, the phrase 'however organized' is meant to capture differently structured criminal organizations. But the group must nonetheless, at least to some degree, be organized. Disregarding the requirement of organization would cast a net broader than that intended by Parliament" - See paragraphs 30 to 31.

Criminal Law - Topic 2725

Attempts, conspiracies, accessories and parties - Participation in criminal organization - Criminal organization defined - The Supreme Court of Canada stated that care had to be taken not to transform the shared attributes of one type of criminal organization into a "checklist" that needed to be satisfied in every case - The court stated that "It is preferable by far to focus on the goal of the legislation, which is to identify and undermine groups of three or more persons that pose an elevated threat to society due to the ongoing and organized association of their members. All evidence relevant to this determination must be considered in applying the definition of 'criminal organization' adopted by Parliament. Groups of individuals that operate on an ad hoc basis with little or no organization cannot be said to pose the type of increased risk contemplated by the regime. Courts must not limit the scope of the provision to the stereotypical model of organized crime that is, to the highly sophisticated, hierarchical and monopolistic model. Some criminal entities that do not fit the conventional paradigm of organized crime may nonetheless, on account of their cohesiveness and endurance, pose the type of heightened threat contemplated by the legislative scheme" - See paragraphs 37 to 40.

Criminal Law - Topic 2725

Attempts, conspiracies, accessories and parties - Participation in criminal organization - Criminal organization defined - The Supreme Court of Canada stated that the structured

nature of targeted criminal organizations set them apart from criminal conspiracies - "Stripped of the features of continuity and structure, 'organized crime' simply becomes all serious crime committed by a group of three or more persons for a material benefit. Parliament has already criminalized that activity through the offences of conspiracy, aiding and abetting, and the 'common intention' provisions of the Code (see e.g. ss. 21 and 465(1)). The increased penalties and stigma associated with the organized crime regime distinguish it from these offences" - See paragraph 35.

Criminal Law - Topic 2725

Attempts, conspiracies, accessories and parties - Participation in criminal organization - Criminal organization defined - The Crown maintained that Venneri, as a member of Dauphin's organization, instructed another individual to traffic in cocaine for the "benefit of, at the direction of, or in association with" the organization, contrary to s. 467.13 of the Criminal Code - To secure a conviction under s. 467.13, the Crown had to prove, as a preliminary matter, the existence of a criminal organization and Venneri's membership in it - The trial judge found that Dauphin operated a large drug-trafficking organization in the Montreal area - The more contentious issue was whether Venneri was a member of that organization, exposing him to conviction under s. 467.13 - The Supreme Court of Canada found that Venneri was an associate of Dauphin rather than a member of his organization - The court stated that "the dealings between Venneri and Dauphin were autonomous transactions between like-minded criminals, each guided by their own self-interest. At all times, Venneri was only a client or supplier of the organization an independent opportunist. He played no role within the organization. With respect, the trial judge erred in law in concluding, on the facts as he found them, that Venneri was a member of Dauphin's criminal organization" - See paragraphs 42 to 49.

Criminal Law - Topic 2726

Attempts, conspiracies, accessories and parties - Participation in criminal organization - Offence committed for the benefit of, at the direction of, or in association with, a criminal organization - Section 467.12(1) of the Criminal Code provided "Every person who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of, or in association with, a criminal organization is guilty of an indictable offence ..." - The Supreme Court of Canada stated that "The phrase 'in association with' should be interpreted in accordance with its plain meaning and statutory context. It is accompanied here by the terms 'at the direction of' and 'for the benefit of'. These phrases are not mutually exclusive. On the contrary, they have a shared purpose and will often overlap in their application. Their common objective is to suppress organized crime. To this end, they especially target offences that are connected to the activities of criminal organizations and advance their interests. Considered in this light, the phrase 'in association with' captures offences that advance, at least to some degree, the interests of a criminal organization even if they are neither directed by the organization nor committed primarily for its benefit. ... The phrase 'in association with' requires a connection between the predicate offence and the organization, as opposed to simply an association between the accused and the organization ... As mentioned earlier, an offender may commit an offence 'in association with' a criminal organization of which the offender is not a member. Membership in an organization, however, remains a relevant factor in

determining whether the required nexus between the offence and the organization has been made out ... The Crown must also demonstrate that an accused knowingly dealt with a criminal organization. The stigma associated with the offence requires that the accused have a subjective mens rea with respect to his or her association with the organization" - See paragraphs 50 to 59.

Criminal Law - Topic 2726

Attempts, conspiracies, accessories and parties - Participation in criminal organization - Offence committed for the benefit of, at the direction of, or in association with, a criminal organization - The Crown contended that Venneri trafficked in drugs "for the benefit of, at the direction of, or in association with" Dauphin's criminal organization, contrary to s. 467.12 of the Criminal Code - The Supreme Court of Canada held that the evidence fully supported the trial judge's finding that Venneri operated "in association with" the organization when he acted as its client and its supplier - The court stated that "There is ample evidence that Venneri knew that Dauphin was operating a large drug-trafficking organization or made himself wilfully blind to that obvious fact. And the evidence leaves no room for doubt as to the required nexus between Dauphin's organization and the offence of trafficking committed by Venneri. The organization received a direct benefit from the commission of the offence" - See paragraphs 58 to 59.

Statutes - Topic 1201

Interpretation - Construction where meaning is plain - General principles - [See first **Criminal Law - Topic 2726**].

Statutes - Topic 2614

Interpretation - Interpretation of words and phrases - Modern rule (incl. interpretation by context) - Legislative or statutory context - [See first **Criminal Law - Topic 2726**].

Words and Phrases

Criminal organization - The Supreme Court of Canada considered the definition of "criminal organization" s. 467.1 of the Criminal Code, R.S.C. 1985, c. C-46 - See paragraphs 25 to 41.

Words and Phrases

In association with - The Supreme Court of Canada considered the meaning of the phrase "in association with" in s. 467.12(1) of the Criminal Code, R.S.C. 1985, c. C-45 - See paragraphs 51 to 56.

Cases Noticed:

- R. v. Biniaris (J.), [2000] 1 S.C.R. 381; 252 N.R. 204; 134 B.C.A.C. 161; 219 W.A.C. 161; 2000 SCC 15, refd to. [para. 16].
- R. v. Zanini, [1967] S.C.R. 715, dist. [para. 19].
- R. v. Sheppard (C.), [2002] 1 S.C.R. 869; 284 N.R. 342; 211 Nfld. & P.E.I.R. 50; 633 A.P.R. 50; 2002 SCC 26, refd to. [para. 21].
- R. v. Atkins, 2010 ONCJ 262, refd to. [para. 27].
- R. v. Speak (T.E.), [2005] O.T.C. Uned. C30; 2005 CanLII 51121 (Sup. Ct.), refd to.

[para. 27].
R. v. Sharifi (E.), [2011] O.T.C. Uned. A42 (Sup. Ct.), refd to. [para. 27].
R. v. Battista, 2011 ONSC 4771, refd to. [para. 27].
R. v. Terezakis (A.) (2007), 245 B.C.A.C. 74; 405 W.A.C. 74; 223 C.C.C.(3d) 344; 2007 BCCA 384, refd to. [para. 28].
R. v. Lindsay (S.P.) et al., [2005] O.T.C. 583; 2005 CanLII 24240 (Sup. Ct.), refd to. [para. 37].
R. v. Drecic (Z.) (2011), 276 O.A.C. 198; 2011 ONCA 118, refd to. [para. 55].
R. v. Lindsay (S.P.) et al., [2004] O.T.C. 224; 70 O.R.(3d) 131; 182 C.C.C.(3d) 301 (Sup. Ct.), affd. (2009), 251 O.A.C. 1; 245 C.C.C.(3d) 301; 2009 ONCA 532, refd to. [para. 55].

Statutes Noticed:

Criminal Code, R.S.C. 1985, c. C-46, sect. 467.1 [para. 25]; sect. 467.12 [para. 52]; sect. 467.13 [para. 24].

Authors and Works Noticed:

Hastie, Miles, The Separate Offence of Committing a Crime "In Association with" a Criminal Organization: Gang Symbols and Signs of Constitutional Problems (2010), 14 Can. Crim. L. Rev. 79, p. 91 [para. 54].
McLellan, Hon. Anne, Evidence of Standing Committee on Justice and Human Rights, No. 11, 1st Sess., 37th Parl., May 8, 2001, at 8:45 [para. 35].
Orlova, Alexandra, and Moore, James, "Umbrellas" or "Building Blocks": Defining International Terrorism and Transnational Organized Crime in International Law (2004-2005), 27 Hous. J. Int'l L. 267, p. 284 [para. 39].

Counsel:

Marc Cigana and Gaston Paul Langevin, for the appellant;
Marie-Hélène Giroux, Clément Monterosso and Vincent Desbiens, for the respondent.

Solicitors of Record:

Poursuites criminelles et pénales du Québec, Montreal, Quebec, for the appellant;
Monterosso Giroux, Montreal, Quebec, for the respondent.

This appeal was heard on April 16, 2012, before McLachlin, C.J.C., LeBel, Deschamps, Fish, Rothstein, Cromwell and Moldaver, JJ., of the Supreme Court of Canada. The following judgment of the Supreme Court was delivered in both official languages by Fish, J. on July 6, 2012.

Appeal allowed in part.

Editor: Angela E. McKay

Narcotic Control - Topic 604

Offences - Possession - Evidence - Proof of possession - The Quebec Court of Appeal

quashed Venneri's conviction for possession of cocaine for the purpose of trafficking - The majority held that the evidence failed to demonstrate that Venneri jointly possessed the cocaine seized at the homes of two unindicted co-conspirators (Marchand and Bilodeau) - The Crown appealed, seeking to have the conviction restored - The Supreme Court of Canada agreed with the Court of Appeal that the conviction was unreasonable within the meaning of s. 686(1)(a)(i) of the Criminal Code - No properly instructed jury acting judicially could reasonably have rendered that verdict - The only evidence linking Venneri to the drugs seized at the homes of Marchand and Bilodeau was the presence of symbols and expressions on the cocaine packaging that were consistent with expressions used by Venneri in telephone conversations concerning drug deals - Nothing indicated that those symbols were not used in other drug transactions completely unrelated to Venneri - There were no intercepted communications which explicitly linked Venneri to the seized drugs - See paragraphs 15 to 17.

Narcotic Control - Topic 604

Offences - Possession - Evidence - Proof of possession - The Quebec Court of Appeal quashed Venneri's conviction for possession of cocaine for the purpose of trafficking (count 4) - The majority held that the evidence failed to demonstrate that Venneri jointly possessed the cocaine seized at the homes of two unindicted co-conspirators (Marchand and Bilodeau) - The Crown appealed, seeking to have the conviction restored - The Crown contended that Venneri's conviction could be upheld pursuant to s. 21(2) of the Criminal Code because possession of cocaine was a foreseeable consequence of conspiring to traffic in cocaine - The Crown relied on R. v. Zanini (S.C.C.) - The Supreme Court of Canada affirmed the acquittal entered by the Court of Appeal on count 4 - In Zanini, there was a clear nexus between the housebreaking instruments found on the co-conspirators and the burglary they committed - No such nexus was established between the conspiracy involving Venneri and the drugs seized from the homes of Marchand and Bilodeau - Absent that evidence, Venneri's conviction on count 4 amounted to an unreasonable verdict, a conclusion supported by the absence in the judgment at trial of any reasons to support a finding that Venneri had constructive or joint possession of the seized cocaine - See paragraphs 18 to 21.

Narcotic Control - Topic 604

Offences - Possession - Evidence - Proof of possession - The Quebec Court of Appeal quashed Venneri's conviction for possession of cocaine for the purpose of trafficking - The majority held that the evidence failed to demonstrate that Venneri jointly possessed the cocaine seized at the homes of two unindicted co-conspirators (Marchand and Bilodeau) in October 2005 - The Crown appealed, seeking to have the conviction restored - The Crown argued that the conviction could be upheld solely on the basis of the conspiracy between Venneri and others to traffic in cocaine - The Supreme Court of Canada stated that "In essence, the Crown maintains that the ongoing communications between Venneri and other members of the conspiracy demonstrate that he must have possessed cocaine, alone or in common with others, at some point between July of 2005 and March of 2006. In my view, the Crown is not relieved of proving the elements of possession simply by establishing the existence of a conspiracy to traffic in cocaine" - See paragraph 22.

Statutes - Topic 1201

Interpretation - Construction where meaning is plain - General principles - Section 467.12(1) of the Criminal Code provided "Every person who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of, or in association with, a criminal organization is guilty of an indictable offence ..." - The Supreme Court of Canada stated that "The phrase 'in association with' should be interpreted in accordance with its plain meaning and statutory context. It is accompanied here by the terms 'at the direction of' and 'for the benefit of'. These phrases are not mutually exclusive. On the contrary, they have a shared purpose and will often overlap in their application. Their common objective is to suppress organized crime. To this end, they especially target offences that are connected to the activities of criminal organizations and advance their interests. Considered in this light, the phrase 'in association with' captures offences that advance, at least to some degree, the interests of a criminal organization even if they are neither directed by the organization nor committed primarily for its benefit. ... The phrase 'in association with' requires a connection between the predicate offence and the organization, as opposed to simply an association between the accused and the organization ... As mentioned earlier, an offender may commit an offence 'in association with' a criminal organization of which the offender is not a member. Membership in an organization, however, remains a relevant factor in determining whether the required nexus between the offence and the organization has been made out ... The Crown must also demonstrate that an accused knowingly dealt with a criminal organization. The stigma associated with the offence requires that the accused have a subjective mens rea with respect to his or her association with the organization" - See paragraphs 50 to 59.

Statutes - Topic 2614

Interpretation - Interpretation of words and phrases - Modern rule (incl. interpretation by context) - Legislative or statutory context - Section 467.12(1) of the Criminal Code provided "Every person who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of, or in association with, a criminal organization is guilty of an indictable offence ..." - The Supreme Court of Canada stated that "The phrase 'in association with' should be interpreted in accordance with its plain meaning and statutory context. It is accompanied here by the terms 'at the direction of' and 'for the benefit of'. These phrases are not mutually exclusive. On the contrary, they have a shared purpose and will often overlap in their application. Their common objective is to suppress organized crime. To this end, they especially target offences that are connected to the activities of criminal organizations and advance their interests. Considered in this light, the phrase 'in association with' captures offences that advance, at least to some degree, the interests of a criminal organization even if they are neither directed by the organization nor committed primarily for its benefit. ... The phrase 'in association with' requires a connection between the predicate offence and the organization, as opposed to simply an association between the accused and the organization ... As mentioned earlier, an offender may commit an offence 'in association with' a criminal organization of which the offender is not a member. Membership in an organization, however, remains a relevant factor in determining whether the required

nexus between the offence and the organization has been made out ... The Crown must also demonstrate that an accused knowingly dealt with a criminal organization. The stigma associated with the offence requires that the accused have a subjective mens rea with respect to his or her association with the organization" - See paragraphs 50 to 59.