

*Case Name:*

**R. v.** [REDACTED]

**Between  
Her Majesty the Queen, and**

[REDACTED]  
[2011] O.J. No. 6702

Ontario Court of Justice  
Toronto, Ontario

**L.M. Budzinski J.**

Heard: July 28, 2011.  
Oral judgment: July 28, 2011.

(11 paras.)

**Counsel:**

D. Tice, Esq., Counsel for the Crown.

A. Stastny, Esq., Counsel for the Accused.

---

**REASONS FOR JUDGMENT**

**1** L.M. BUDZINSKI J. (orally):-- These are criminal charges, there are essentially six before me, three of which the accused has pled guilty to, three of which have been marked still for trial, and for the Court to decide the issues involved. The key issue really here is one of identity and reliability of evidence. It is a criminal charge, and of course the Court has to be satisfied beyond a reasonable doubt that the Crown has made out the elements of its case.

**2** For the record, reasonable doubt is something more, and I repeat the word for purpose, and for substance, it is something more, substantially more, substantially more than a balance of probabilities. It may fall just short of absolute certainty, but nothing in life, except taxes and death,

as Mark Twain said, is absolutely certain.

**3** Much of the focus is on the evidence of the victim in this matter, and the evidence of the accused, and the circumstances surrounding the accused's arrest. Suffice to say that there is some evidence of identity, which I will deal with in a moment. But there is also evidence of a circumstantial nature surrounding the accused's explanation, recent possession, and some consciousness of guilt.

**4** In evaluating the reliability of evidence, the Court looks at a number of factors, the key word being harmony. It is the harmony of a witness' evidence within itself, the harmony of a witness' evidence with other witnesses, and the harmony of the witness' evidence as seen within the concept of the total picture that evolves in the case.

**5** The defendant has testified in this case, and he indicates that he was hanging around with this fellow, Carlos, who allegedly is the potential perpetrator of the robbery. He knew Carlos to have a criminal background, and was a suspicious person, he believed Carlos' family were involved in crime. Notwithstanding that, the accused chooses to deal some drugs with him, sell him some drugs, and money, for taking what was obviously and clearly, a hot automobile.

**6** The defendant, in his evidence, speaks of fear of the criminal community in the area in which he lives, but it's very clear and concise that he chooses consciously to be a part of that criminal activity and criminal community. He refuses to identify a person he clearly knows, or chooses to protect Mr. Carlos. He chooses to protect the criminal conduct that clouds his own community. So, although in giving his own evidence, the picture he attempts to create is that he is a victim of this criminality of the community in which he lives, and he is fearful of it, he takes a very active part in promoting it, and foraging it, and allowing it to go forth.

**7** It is not part of the reality of the description of evidence as he gives it. His evidence is unbelievable and certainly lacks any aspect of remorse or reparation for the harm he's done. Yet there is another issue here, the ID. The ID witness or the victim of the robbery, in her evidence, creates an issue of ambiguity with respect to the identification of the accused. At times being certain as to his identity, and other times not, or identifying another person for committing the crime.

**8** It does create a suspicion that the person involved in the robbery may not be the accused before the Court, but that is not the only evidence, of course, there is the circumstantial evidence. The evidence of his flight from the police, the driving, in the direction of an officer in the flight, is consistent with being involved in the robbery of the car, but it is also consistent with the explanation that he gave, that he purchased a car knowing it to be stolen.

**9** The fast response to the question about the gun, and his possession of it, is highly suspicious, and there is a degree of irrationality to his explanation about it. But calling it a lie does not create positive evidence of identification. So, his response about the gun is not in a sense consciousness of guilt by itself, and does not create positive evidence of identity.

**10** So, in view of all that, what the Court is attempting to rationalize here, is that the accused is a liar, the accused portrays himself wrongly, and the evidence of the accused is highly suspicious. But that does not create positive evidence of identification. In view of that, I do have some reasonable doubt, and therefore the accused will be acquitted on those particular charges, the three that have gone to trial.

**11** Anything else Counsel wishes to say? Now, I can indicate at this time that there will be a conviction on the other three Counts that were indicated on the record yesterday.