

CITATION: R. v. Bychkov, 2011 ONCA 361

DATE: 20110506

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COURT OF APPEAL FOR ONTARIO

Doherty, Goudge and Armstrong JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Yury Bychkov and Andrei Voitishin

Appellants

Sonya Shikhman, for the appellant, Bychkov

Aaron Wine, for the appellant, Voitishin

Emile Carrington, for the respondent

Heard: May 5, 2011

On appeal from the convictions entered by Justice J. Fairgrieve of the Ontario Court of Justice dated June 17, 2009 and the sentences imposed on September 4, 2009.

APPEAL BOOK ENDORSEMENT

[1] In our view, the convictions are unreasonable. Absent some admissible explanation about the operation of the equipment used and its capacity to gather the financial information necessary to be used in the commission of a fraud on the bank, the verdicts were unreasonable. Officer Rochon could give evidence identifying the objects seized but was not qualified to offer evidence as to how the equipment operated so as to permit capture of the financial data.

[2] The appeal is allowed. The convictions are quashed and acquittals entered.

[3] Having regard to the acquittal on the fraud charge and the trial judge's treatment of Mr. Bychkov's pre-trial bail conditions, we think an appropriate sentence on the driving while disqualified charge is time served (nine days). The probation order is set aside.

[4] The appeal is allowed and sentence varied accordingly.