

WARNING

**THIS IS AN APPEAL UNDER THE
YOUTH CRIMINAL JUSTICE ACT
AND IS SUBJECT TO:**

110. (1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

111. (1) Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

138. (1) Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published), 118(1) (no access to records unless authorized) or 128(3) (disposal of R.C.M.P. records) or section 129 (no subsequent disclosure) of this Act, or subsection 38(1) (identity not to be published), (1.12) (no subsequent disclosure), (1.14) (no subsequent disclosure by school) or (1.15) (information to be kept separate), 45(2) (destruction of records) or 46(1) (prohibition against disclosure) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985,

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
- (b) is guilty of an offence punishable on summary conviction.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. A.W., 2012 ONCA 778

DATE: 20121114

DOCKET: C51645

Laskin, Juriensz and Tulloch JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

A.W.

Appellant

Daniel C. Santoro, for the appellant

Marcella Henschel, for the respondent

Heard and released orally: November 1, 2012

On appeal from the finding of guilt entered on December 15, 2009 and the disposition imposed on January 12, 2010 by Justice Lloyd M. Budzinski of the Ontario Court of Justice.

ENDORSEMENT

[1] We called on the Crown on two of the appellant's grounds of appeal. The first ground concerns Mr. Jones' evidence that the appellant told him the incident was a "misunderstanding". The trial judge relied on Jones' testimony to support the complainant's identification evidence. In effect, the trial judge inferred from Jones' evidence that the appellant was at the scene when the incident occurred.

[2] The appellant submits that this inference was not reasonably available. We disagree. In the context of all of Jones' evidence, the inference the trial judge drew was a reasonable inference. This ground of appeal fails.

[3] The second ground of appeal concerns the finding of guilt for pointing a firearm. The Crown fairly acknowledges that the trial judge erred in law in finding that an imitation firearm could support a conviction for this offence. Nonetheless, she relies on the proviso to say that the error caused no substantial wrong or miscarriage of justice. We do not accept the Crown's position. The evidence is not clear enough for us to say that the verdict would necessarily have been the same but for the error.

[4] Accordingly, we set aside the conviction for pointing a firearm. We order a new trial on this count. However, in deciding whether to proceed with a new trial the Crown will no doubt take into account that the appellant, a young offender at the time, has already served his sentence.

[5] For these reasons, the appeal against the conviction for possession of a dangerous weapon and assault with a weapon is dismissed. The appeal against the conviction for pointing a firearm is allowed, that conviction is set aside and a new trial is ordered.

“John Laskin J.A.”
“R.G. Juriansz J.A.”
“M. Tulloch J.A.”