COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Skeete, 2012 ONCA 874
DATE: 20121212
DOCKET: C54142

Simmons and Epstein JJ.A. and Speyer J. (*ad hoc*)

BETWEEN

Her Majesty the Queen

Respondent

and

Adrian Skeete

Appellant

Sam Goldstein, for the appellant

Mabel Lai, for the respondent

Heard and released orally: December 5, 2012

On appeal from the conviction entered on June 9, 2011 by Justice Michael G. Quigley of the Superior Court of Justice, sitting with a jury.

ENDORSEMENT

[1] Following a jury trial, the appellant was convicted of robbery with a firearm. The Crown's theory was that the appellant was a party to an attempted carjacking. The appellant contends that his conviction amounts to an unreasonable verdict because there was insufficient evidence linking him to the attempted theft of the car and to establish the weapon involved in the event was a real firearm.

[2] Notably, the appellant raises no objections to the trial judge's instructions to the jury, which we view as a model of fairness. Nor does he raise any objection to any other rulings or aspects of the conduct of the trial.

[3] We do not accept the appellant's submission that the conviction for robbery was unreasonable.

[4] The complainant identified the appellant as one of three males standing at the northeast corner of an intersection at about eleven o'clock at night. At the time, the complainant was driving his car in an easterly direction and was in the process of making a left turn to proceed in a northerly direction. A black Acura pulled in front of his vehicle blocking his way. The appellant, who had been standing on the street corner, walked over and spoke to the driver of the Acura. Meanwhile, a man in a blue shirt brandishing a gun approached the complainant and yelled at him to get out of the car. The complainant attempted to reverse his vehicle to escape. In the interval, an S.U.V. appeared behind him and blocked his way. The appellant escaped by driving up on the curb and around the Acura.

[5] The appellant testified and disputed aspects of the complainant's story. For example, the appellant claimed he was on the street corner with a friend who left at some point in advance of these events and that he did not know anyone else who may have been on the street corner. Moreover, he claimed he spoke to the driver of the Acura for the sole purpose of giving him directions. As they were

entitled to do, the jury rejected these aspects of the appellant's evidence. The appellant did acknowledge, however, that he saw a man approach the complainant holding what appeared to be a gun.

[6] Having regard to the appellant's presence with two others on the street corner, the actions of the driver of the Acura in cutting off the complainant's car, the appellant's conduct in approaching the Acura, and the failure of the appellant to react when the gun was brandished, we are not persuaded that the finding that the appellant was a party to an attempted carjacking, that is a robbery, was unreasonable.

[7] Turning to the firearm, while we think it is a close call, we are not persuaded there was sufficient evidence to make the finding that it was real on a beyond a reasonable doubt standard.

[8] In the circumstances, we allow the appeal in part, set aside the conviction for robbery with a firearm, and substitute a conviction for robbery.

[9] We did not receive extensive submissions on how our disposition of the appeal should affect the sentence imposed. The appellant suggests it should be varied to one year imprisonment, the Crown, 18 months. In all the circumstances,

we set aside the sentence imposed and substitute a sentence of 12 months imprisonment.

“Janet Simmons J.A.”

“Gloria Epstein J.A.”

“C.M. Speyer J. (*ad hoc*)”