

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Jensen, 2012 ONCA 878

DATE: 20121213

DOCKET: C56198

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

BETWEEN

Her Majesty the Queen

Respondent

and

Mark Jensen

Applicant/Appellant

Daniel F. Moore and Graham D. Jenner, for the appellant

Matthew Asma, for the respondent

Heard and released orally: December 3, 2012

On appeal from the decision of the Summary Convictions Appeal Court dated June 13, 2012 by Justice Robert G.S. Del Frate of the Superior Court of Justice, allowing the appeal and quashing the acquittal entered on September 22, 2010 by Justice Lawrence Klein of the Ontario Court of Justice.

ENDORSEMENT

[1] Leave to appeal is denied.

[2] The trial judge rejected the appellant's defence of non-insane automatism because the appellant failed to lead expert evidence capable of supporting that defence as required by *R. v Stone*, [1999] 2 S.C.R. 290. Further, there was no

evidence at trial capable of establishing that the appellant was tricked into consuming alcohol or that he did not know that the substance he was consuming was alcohol.

[3] In the absence of such evidence and in the face of the presumption created by *R. v. King*, [1962] S.C.R. 746, it was simply not open to the trial judge to entertain a doubt about whether the appellant's conduct in consuming alcohol was voluntary: see *R. v. King*, [1982] 38 O.R. (2d) 346, at para. 10.

[4] In the circumstances, this case does not raise an issue of sufficient merit or importance to warrant granting leave to appeal.

“Janet Simmons J.A.”

“Alexandra Hoy J.A.”

“C.M. Speyer J. (*ad hoc*)”