

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Lima, 2014 ONCA 155

DATE: 20140227

DOCKET: C52979

Laskin, Juriansz and Watt JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Jose Alberto Lima

Appellant

Robert Sheppard, for the appellant

Alison Wheeler, for the respondent

Heard: February 25, 2014

On appeal from the conviction entered on February 11, 2010 and the sentence imposed on February 11, 2010 by Justice Kelly A. Gorman of the Superior Court of Justice, sitting with a jury.

APPEAL BOOK ENDORSEMENT

[1] The appellant's sentence appeal is dismissed as abandoned.

[2] On his conviction appeal, the appellant argues that the trial judge made two errors in her jury charge: first, the use of the word "some" in her charge on s. 21(2); and second, the use of the phrase "ought to have known" in her charge on possession under s. 4(3).

[3] In our view, the phrase "some evidence" would not have misled the jury in the light of the trial judge's repeated instructions both general and specifically tailored to the facts of this case, that the Crown must prove the crimes against the accused beyond a reasonable doubt.

[4] The Crown acknowledges that "ought to have known" is not a basis for liability as a principal under s. 4(3). However, we agree with the Crown that the curative proviso applies. In the light of the photographs alone, the case against the appellant on the possession charges was overwhelming.

[5] The conviction appeal is dismissed.