

WARNING

The President of the panel hearing this appeal directs that the following should be attached to the file:

An order restricting publication in this proceeding under ss. 486(1), (2), or (3) of the *Criminal Code* shall continue. These sections of the *Criminal Code* provide:

486. (1) Any proceedings against an accused shall be held in open court, but the presiding judge or justice may order the exclusion of all or any members of the public from the court room for all or part of the proceedings if the judge or justice is of the opinion that such an order is in the interest of public morals, the maintenance of order or the proper administration of justice or is necessary to prevent injury to international relations or national defence or national security.

(2) For the purposes of subsection (1), the “proper administration of justice” includes ensuring that

(a) the interests of witnesses under the age of eighteen years are safeguarded in all proceedings; and

(b) justice system participants who are involved in the proceedings are protected.

(3) If an accused is charged with an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 212, 271, 272, 273, 279.01, 279.011, 279.02 or 279.03 and the prosecutor or the accused applies for an order under subsection (1), the judge or justice shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order. R.S., 1985, c. C-46, s. 486; R.S., 1985, c. 27 (1st Supp.), s. 203, c. 19 (3rd Supp.), s. 14, c. 23 (4th Supp.), s. 1; 1992, c. 1, s. 60(F), c. 21, s. 9; 1993, c. 45, s. 7; 1997, c. 16, s. 6; 1999, c. 25, s. 2(Preamble); 2001, c. 32, s. 29, c. 41, ss. 16, 34, 133; 2002, c. 13, s. 20; 2005, c. 32, s. 15, c. 43, ss. 4, 8; 2010, c. 3, s. 4; 2012, c. 1, s. 28.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Baranowski, 2014 ONCA 772

DATE: 20141105

DOCKET: C53938

Feldman, Epstein and Benotto JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Ronald Baranowski

Appellant

Ronald Baranowski, acting in person

Riun Shandler, for the respondent

Anil K. Kapoor, appearing as *amicus curiae*

Heard and released orally: October 8, 2014

On appeal from the conviction entered on September 22, 2009 and the sentence imposed on June 3, 2011 by Justice Alfred J. O'Marra of the Superior Court of Justice, sitting with a jury.

ENDORSEMENT

[1] Mr. Baranowski appeals from his conviction and sentence.

[2] The main issue at trial was identity. Evidence was given by an independent witness and an alleged accomplice.

[3] The trial judge gave extensive and detailed instructions to the jury regarding the independent witness. He referred to the frailties of her testimony and provided a stern, clear caution. The trial judge said that, standing alone, her evidence should be given little or no weight.

[4] With respect to the accomplice, the trial judge provided a warning about the dangers of relying upon his evidence in the absence of other independent evidence capable of confirming the important parts of his testimony.

[5] *Amicus* submitted that the trial judge erred by providing the jury with examples of evidence which, he submits, were not capable of confirming the testimony of the accomplice. The examples given by the trial judge included a clear explanation of their relevant frailties. The trial judge instructed the jurors that it was up to them to determine whether and to what extent, any of the evidence (including the cellphone records) was, in fact, capable of confirming the testimony and whether, and to what extent, it could be relied upon, if at all. We see no error in the trial judge's charge.

[6] Mr. Baranowski made separate submissions. He raised concerns about the identity issue, which we have dealt with above. He also raised concerns about the Crown's failure to adduce certain evidence at trial. There is no basis for this court to reconsider trial counsel's decision regarding the evidence presented.

[7] Lastly, Mr. Baranowski submits that the verdict was unreasonable. We do not agree. There was ample evidence upon which the jury could have arrived at its verdict.

[8] The sentence appeal relates to the designation of Mr. Baranowski as a dangerous offender as opposed to a long-term offender. The main issue was whether Mr. Baranowski was amenable to treatment. The medical evidence indicated that he was not. The trial judge considered the medical evidence and concluded on the basis of the correct test that Mr. Baranowski met the criteria of a dangerous offender and did not meet the criteria for long-term offender. We agree with the trial judge's analysis.

[9] For these reasons, the conviction appeal is dismissed. Leave to appeal sentence is granted. The sentence appeal is dismissed.

"K. Feldman J.A."

"Gloria Epstein J.A."

"M.L. Benotto J.A."