

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Tainsh, 2015 ONCA 679

DATE: 20151007

DOCKET: C60353

Sharpe J.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Kyle A. Tainsh

Appellant

Kyle A. Tainsh, in person

Erin Dann, duty counsel

Michelle Campbell, for the respondent

Heard: October 5, 2015

ENDORSEMENT

[1] This is an application for appointment of counsel pursuant to s.684 of the Criminal Code.

[2] The appellant was convicted of five counts of robbery involving convenience stores and similar locations. All of the robberies were captured on video surveillance. The defence at trial conceded that the evidence could be

applied across counts. There was no direct identification evidence but the trial judge convicted the appellant because of accumulation of factors including the following:

- (1) The appellant owned and drove a car similar to that shown in two of the videos.
- (2) The appellant's build and height resembled that of the person that committed the robberies.
- (3) The appellant resided in an apartment complex where a cash tray of one of the robberies was found.
- (4) A number of items, personal clothing and two pellet guns were found in the appellant's apartment, which corresponded to items worn and used by the robber.

[3] The focus of the s.684 application is on the evidence that the person who committed the robberies wore black running shoes with white stripes. The appellant was wearing Adidas Gazelle shoes with white stripes when he was arrested. A police officer testified that he had owned several pairs of Adidas Gazelle shoes and that the shoes worn by the robber in the video surveillance were Adidas Gazelle shoes.

[4] The submission is made that the trial judge erred in admitting this evidence without first qualifying the police officer as an expert.

[5] The crown concedes that the financial criteria for a s.684 application is met but resists the application on the grounds that the appeal is without merit and that it can be fairly argued without the assistance of counsel.

[6] Despite the very capable argument presented by Ms. Dann, I am not persuaded that a s.684 application should be granted. In my view, the issues in this appeal are relatively straight forward and of a nature that can be fairly and properly dealt with by this court, if it proceeds as an inmate appeal.

[7] The point about the evidence of the officer in relation to the shoes will be, I think, difficult to sustain. Case law including *R. v. Graat*, [1982] 2 S.C.R. 819, and the decision of this court in *R. v. Hill* (1986), 32 C.C.C. (3d) 314, hold that evidence very similar to this can be given by a lay witness.

[8] Moreover, in his reasons, the trial judge indicates that he made the finding that the shoes of the accused matched the shoes on the video, irrespective of the officer's testimony, although he adds that he did find that evidence compelling.

[9] Accordingly, the s.684 application is dismissed. Appeal to be argued November 30, 2015.

Robert J. Sharpe J.A.