SUPREME COURT OF CANADA

CITATION: R. *v.* Stevenson, 2024 SCC 41

APPEAL HEARD AND JUDGMENT RENDERED: November 8, 2024
REASONS FOR JUDGMENT: December 5, 2024
DOCKET: 41269

BETWEEN:

Thomas Stevenson
Appellant

and

His Majesty The King
Respondent

- and -

Independent Criminal Defence Advocacy Society
Intervener

CORAM: Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ.

JOINT REASONS FOR JUDGMENT: (paras. 1 to 7)
Martin, Kasirer, Jamal and O'Bonsawin JJ.

DISSENTING REASONS: Rowe J.
(paras. 8 to 11)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

Thomas Stevenson *Appellant*

v.

His Majesty The King *Respondent*

and

Independent Criminal Defence Advocacy Society *Intervener*

Indexed as: R. *v.* Stevenson

2024 SCC 41

File No.: 41269.

Hearing and judgment: November 8, 2024.
Reasons delivered: December 5, 2024.

Present: Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Criminal law — Evidence — Assessment — Unsavoury witness — Accused convicted of robbery and of having face masked with intent to commit indictable offence on basis of unsavoury witness testimony — Whether trial judge recognized dangers of

relying on evidence of unsavoury witness — Whether trial judge entitled to accept evidence of unsavoury witness without corroboration.

The accused was convicted at trial of robbery and having his face masked with the intent to commit an indictable offence. The robbery was recorded on a security camera video and revealed two participants, both of whom had their faces fully masked. The Crown's case hinged on the recognition evidence of a former gang associate of the accused, who identified him as a participant in the robbery. The trial judge found the former associate's evidence to be both credible and reliable and found the accused guilty. A majority of the Court of Appeal dismissed the appeal from conviction. The dissenting judge would have allowed the appeal and ordered a new trial on the basis that the trial judge erred in law in applying the requisite *Vetrovec* scrutiny to the evidence of the Crown's unsavoury witness.

Held (Rowe J. dissenting): The appeal should be dismissed.

Per **Martin**, **Kasirer**, **Jamal** and **O'Bonsawin** JJ.: There is no basis for appellate intervention. The trial judge recognized the *Vetrovec* dangers and applied the requisite scrutiny to the recognition evidence. She did not view the unsavoury witness as more worthy of belief because he had no motive to falsely implicate the accused. The trial judge did not err by finding that the unsavoury witness' evidence was consistent with the security camera video. She was entitled to accept the recognition evidence without corroboration because she was satisfied that it was true, and her factual determinations on credibility and reliability are entitled to deference.

Per **Rowe** J. (dissenting): The appeal should be allowed and a new trial ordered. The conviction arose from a failure to apply the requisite scrutiny to the *Vetrovec* witness' evidence. While it is open to a trier of fact to convict based solely on the testimony of a *Vetrovec* witness, a high degree of caution is warranted. In the instant case, the *Vetrovec* witness identified the accused from a short surveillance video where two robbers were masked and their respective heights indistinguishable, and the witness then told police that the accused had confessed. When such a confession is recounted only after the witness has identified the accused, the risk is enhanced that their testimony is contrived.

Cases Cited

By Martin, Kasirer, Jamal and O'Bonsawin JJ.

Referred to: *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811.

By Rowe J.

Vetrovec v. The Queen, [1982] 1 S.C.R. 811; *R. v. Kehler*, 2004 SCC 11, [2004] 1 S.C.R. 328; *R. v. Khela*, 2009 SCC 4, [2009] 1 S.C.R. 104; *R. v. Smith*, 2009 SCC 5, [2009] 1 S.C.R. 146; *R. v. Hurley*, 2010 SCC 18, [2010] 1 S.C.R. 637; *R. v. Sauvé* (2004), 182 C.C.C. (3d) 321.

APPEAL from a judgment of the Saskatchewan Court of Appeal (Kalmakoff and Drennan JJ.A. and Layh J. (*ad hoc*)), 2024 SKCA 40, 436 C.C.C. (3d) 279, [2024] S.J. No. 92 (Lexis), 2024 CarswellSask 138 (WL), affirming the convictions of the accused for robbery and having his face masked with the intent to commit an indictable offence. Appeal dismissed, Rowe J. dissenting.

Thomas Hynes and *Logan R. Marchand*, for the appellant.

Andrew S. Davis, for the respondent.

Tony C. Paisana and *Nikos Harris*, *K.C.*, for the intervener.

The following are the reasons for judgment delivered by

MARTIN, KASIRER, JAMAL AND O'BONSAWIN JJ. —

[1] The appellant was convicted at trial before a provincial court judge of the offences of robbery and having his face masked with the intent to commit an indictable offence. The robbery was recorded on a security camera video and revealed two participants, both of whom had their faces fully masked, in a sequence that lasted about a minute. The sole issue at trial was the appellant's identity.

[2] The Crown's case against the appellant hinged on the recognition evidence of C.S., a former gang associate of the appellant, who identified the appellant as a

participant in the robbery. The trial judge found C.S.'s evidence to be both credible and reliable and found the appellant guilty. A majority of the Court of Appeal for Saskatchewan dismissed the appeal from conviction. Drennan J.A., in dissent, would have allowed the appeal and ordered a new trial (2024 SKCA 40, 436 C.C.C. (3d) 279). The appellant now appeals to this Court as of right on the question of whether the trial judge erred in law in assessing the evidence of the Crown's unsavoury witness.

[3] We would dismiss the appeal. We agree with Kalmakoff J.A., for the majority, that the trial judge's reasons "amply demonstrate that she recognized the dangers of relying on C.S.'s evidence in a general sense and based on *Vetrovec* considerations" (para. 75, citing *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811).

[4] First, the trial judge did not view the evidence of C.S. as more worthy of belief on the basis that C.S. had no motive to falsely implicate the appellant. In our view, having self-instructed on the dangers associated with C.S.'s evidence and applied to it the requisite scrutiny, the trial judge was entitled to accept that evidence without corroboration because she was satisfied that it was true.

[5] Second, the trial judge did not engage in circular reasoning by finding that the evidence of C.S. was more credible because it was consistent with the contents of the security camera video. The trial judge simply found that the evidence of C.S. provided contextual details based on his personal knowledge and experience of the appellant, which supported the truthfulness of his testimony. The trial judge was best positioned to make this credibility determination.

[6] Lastly, we do not accept that the trial judge did not apply the requisite scrutiny to the reliability of C.S.'s recognition evidence. In our view, the trial judge understood and correctly applied the relevant legal principles bearing on reliability. Her factual determinations on reliability are entitled to deference, as Kalmakoff J.A. properly noted at para. 75 of his reasons.

[7] Accordingly, we see no basis for appellate intervention and we would dismiss the appeal.

The following are the reasons delivered by

ROWE J. —

[8] As a matter of law, it is open to a trier of fact to convict based solely on the testimony of a *Vetrovec* witness; yet, a high degree of caution is warranted, given the inherent weaknesses of such evidence (*Vetrovec v. The Queen*, [1982] 1 S.C.R. 811, at pp. 830-32; *R. v. Kehler*, 2004 SCC 11, [2004] 1 S.C.R. 328, at paras. 16-17; *R. v. Khela*, 2009 SCC 4, [2009] 1 S.C.R. 104, at paras. 2, 11 and 47; *R. v. Smith*, 2009 SCC 5, [2009] 1 S.C.R. 146, at para. 14; *R. v. Hurley*, 2010 SCC 18, [2010] 1 S.C.R. 637, at para. 12).

[9] In this case, the only evidence linking the accused to the offence was the testimony of a *Vetrovec* witness. This witness, while in custody for an unrelated offence, identified the accused from a short surveillance video where two robbers were

masked and their respective heights were indistinguishable. After identifying the accused from the video, the witness then told police that the accused had confessed to the robbery.

[10] Such an alleged confession by an accused can feature in the testimony of a *Vetrovec* witness (*R. v. Sauvé* (2004), 182 C.C.C. (3d) 321 (Ont. C.A.), at para. 76); when such a confession is recounted to police only after the *Vetrovec* witness has identified the accused, the risk is enhanced that the witness's testimony is contrived.

[11] I agree with Justice Drennan (in dissent) that the conviction arose from a "failure to apply the requisite scrutiny" to the *Vetrovec* witness's evidence (2024 SKCA 40, 436 C.C.C. (3d) 279, at para. 109). I would have allowed the appeal and ordered a new trial.

Appeal dismissed, ROWE J. *dissenting.*

Solicitors for the appellant: Pfefferle Law Office, Saskatoon; Ward Mischuk Thomson, Saskatoon.

Solicitor for the respondent: Office of the Attorney General for Saskatchewan, Regina.

Solicitors for the intervener: Peck and Company, Vancouver.