

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Truong, 2012 ONCA 91

DATE: 20120209

DOCKET: C51892

Rosenberg, Cronk and LaForme JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Khanh Truong

Appellant/Applicant

Zachary Kerbel, for the appellant

Ghazala Zaman, for the respondent

Heard and released orally: February 6, 2012

On appeal from the conviction entered on September 28, 2009 by Justice John D.G. Waugh of the Ontario Court of Justice, sitting without a jury.

ENDORSEMENT

[1] There is one issue on this appeal: did the trial judge err in law in his assessment of the appellant's credibility and that of one of the two involved police officers, Constable Jocko?

[2] We see no reversible error by the trial judge in his approach to the evaluation of either witness' credibility.

[3] It need hardly to be said that the assessment of the credibility of witnesses at trial falls squarely within a trial judge's domain. That assessment attracts significant deference from a reviewing court.

[4] In this case, the trial judge rejected the appellant's testimony on several bases. Chief among these was the fact that the appellant's version of events as recounted in his trial testimony stood in stark contrast to that of the senior police officer at the scene in several critical respects. In this context, it was open to the trial judge to take account of the fact that the version of events suggested by defence counsel in cross-examining the police officers was materially different than the appellant's account and to conclude that the appellant "was making much of his evidence up as he went along". The trial judge expressly confirmed in his reasons that this was the telling feature of the appellant's testimony that weighed "in very large measure" against the appellant's credibility. This was an entirely permissible approach to the assessment of the appellant's credibility. To the extent, therefore, that the trial judge relied on the rule in *Browne v. Dunn* in his consideration of the appellant's credibility, this reliance was of little, if any, moment.

[5] Nor do we see any error in the trial judge's treatment of Constable Jocko's testimony. Constable Jocko was a police trainee. He had no independent recollection of the events at issue, few notes of what occurred and very limited experience as a police officer, let alone as a police witness in judicial

proceedings, at the relevant times. Contrary to the appellant's submission, these were highly relevant and proper considerations in the assessment of his credibility and, more importantly, the reliability of his testimony. Moreover, given these factors, the trial judge was fully justified in attaching more weight to the testimony of the senior police officer than he accorded to that of Constable Jocko.

[6] The appeal is dismissed.

"M. Rosenberg J.A."

"E.A. Cronk J.A."

"H.S. LaForme J.A."