

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v*. George-Nurse, 2019 SCC 12, [2019] 1 S.C.R. 570 | **Appeal Heard:** February 15, 2019  **Judgment Rendered:** February 15, 2019  **Docket:** 38217 |

Between:

**Devante George-Nurse**

Appellant

and

Her Majesty The Queen

Respondent

- and -

**Criminal Lawyers’ Association**

Intervener

**Coram:** Abella, Moldaver, Karakatsanis, Côté and Rowe JJ.

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| **Reasons for Judgment:**  (paras. 1 to 4) | Moldaver J. (Abella, Karakatsanis, Côté, and Rowe JJ. concurring) |

R. *v.* George-Nurse, 2019 SCC 12, [2019] 1 S.C.R. 570

Devante George-Nurse Appellant

v.

Her Majesty The Queen Respondent

and

Criminal Lawyers’ Association Intervener

**Indexed as: R. *v.*** George-Nurse

2019 SCC 12

File No.: 38217.

2019: February 15.

Present: Abella, Moldaver, Karakatsanis, Côté and Rowe JJ.

on appeal from the court of appeal for ontario

*Criminal law — Appeals — Unreasonable verdict — Circumstantial evidence — Accused not testifying at trial and convicted by jury — Evidence at trial establishing strong case to answer — Court of Appeal entitled to consider accused’s silence in assessing reasonableness of verdicts as indicative of absence of exculpatory explanation or innocent inference — Trial judge’s instructions to jury clear that accused’s silence could not be used against him — Convictions upheld.*

**Cases Cited**

**Referred to:** *R. v. Noble*, [1997] 1 S.C.R. 874.

APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Hourigan and Miller JJ.A.), 2018 ONCA 515, 362 C.C.C. (3d) 76, 47 C.R. (7th) 175, [2018] O.J. No. 3013 (QL), 2018 CarswellOnt 8833 (WL Can.), affirming the convictions of the accused for intentionally discharging a firearm while being reckless as to the life or safety of another person and occupying a motor vehicle while knowing there was a firearm in the vehicle. Appeal dismissed.

Brian Snell, for the appellant.

Leslie Paine, for the respondent.

Michael Dineen, for the intervener.

The judgment of the Court was delivered orally by

[1] Moldaver J. — We agree with the majority of the Court of Appeal that the circumstantial evidence presented against the appellant established a strong case to answer. In the words of the majority, which we accept, this was the “paradigm of a case to meet, far removed from ‘no case to answer’”: para. 34.

[2] That being so, it was open to the court on appeal to consider the appellant’s silence in assessing and ultimately rejecting his unreasonable verdict argument: see R. v. Noble, [1997] 1 S.C.R. 874, at para. 103.

[3] In so concluding, we note that the trial judge made it clear to the jury, on numerous occasions, that it could not consider the appellant’s failure to testify as a makeweight for the Crown’s case. In this regard, we do not endorse paras. 32 and 36 of the majority’s reasons, to the extent they may be taken as suggesting otherwise.

[4] In the result, we would dismiss the appeal.

*Judgment accordingly.*

Solicitor for the appellant: Brian Snell, Toronto.

Solicitor for the respondent: Attorney General of Ontario, Toronto.

Solicitor for the intervener: Michael Dineen, Toronto.