

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v*. Lee, 2010 SCC 52, [2010] 3 S.C.R. 99 | **Date** : 20101112  **Docket** : 33575 |

Between:

Christopher John Lee

Appellant

and

Her Majesty The Queen

Respondent

**Coram:** Binnie, LeBel, Deschamps, Fish, Abella, Charron and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 8) | The Court |

R. *v*. Lee, 2010 SCC 52, [2010] 3 S.C.R. 99

Christopher John Lee *Appellant*

v.

Her Majesty The Queen *Respondent*

**Indexed as:  R. *v*.** Lee

2010 SCC 52

File No.:  33575.

2010:  November 3; 2010:  November 12.

Present:  Binnie, LeBel, Deschamps, Fish, Abella, Charron and Cromwell JJ.

on appeal from the court of appeal for alberta

*Criminal law — Reasonable verdict — Accused convicted on charges of sexual assault with a weapon and unlawful confinement — Whether correct standard of review was applied — Whether evidence admissible — Whether test for assessing reasonable doubt applied properly.*

Held:  The appeal should be dismissed.

The verdict was one that a properly instructed jury acting judicially could reasonably have rendered. There was no basis for appellate intervention in relation to evidentiary matters, and the trial judge did not err in her application of the reasonable doubt standard to the whole of the evidence.

**Cases Cited**

**Referred to:**  *R. v. W. (D.)*, [1991] 1 S.C.R. 742; *Corbett v. The Queen*, [1975] 2 S.C.R. 275; *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381; *R. v. Lohrer*, 2004 SCC 80, [2004] 3 S.C.R. 732; *R. v. Yebes*, [1987] 2 S.C.R. 168.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, s. 691(1)(*a*).

APPEAL from a judgment of the Alberta Court of Appeal (McFadyen, Berger and Slatter JJ.A.), 2010 ABCA 1, 23 Alta. L.R. (5th) 76, 251 C.C.C. (3d) 346, 474 A.R. 203, 479 W.A.C. 203, [2010] 7 W.W.R. 613, [2010] A.J. No. 72 (QL), 2010 CarswellAlta 135, upholding the accused’s conviction. Appeal dismissed.

Deborah R. Hatch, for the appellant.

Troy L. Couillard, for the respondent.

The following is the judgment delivered by

1. The Court — In this appeal as of right brought under s. 691(1)(*a*) of the *Criminal Code*, R.S.C. 1985, c. C-46, the appellant appeals his conviction on charges of sexual assault with a weapon and unlawful confinement. Notwithstanding Ms. Hatch’s able arguments on behalf of the appellant, the appeal fails and must be dismissed.
2. The points of law on which a judge of the Alberta Court of Appeal dissented as set out in the Court’s order, and therefore the points in issue on the appeal, are that the majority of the Court of Appeal:
3. applied the incorrect standard of review;
4. applied the wrong test for the admissibility of the “running stride/gait” evidence; and
5. erred in finding that the trial judge had properly applied the test for assessing reasonable doubt set out in *R. v. W*. *(D.)*, [1991] 1 S.C.R. 742.
6. The basic facts are these. The female complainant, in the company of a male friend, encountered the appellant and his male friend outside an Edmonton nightclub in the early hours of the morning. The encounter quickly became hostile and the appellant gave chase to the complainant and her companion. While much of what happened after that was disputed at trial, it is clear that the complainant soon ended up engaging in oral sex with the appellant behind a nearby school and that within a short time after that, she appeared at the nearby home of a stranger, crying and distraught and complaining of a sexual assault. The complainant testified that the appellant forced her into the sexual act at knife point while the appellant testified that after the initial confrontation, he and the complainant became friendly and that she willingly accompanied him to engage in the sexual activity. The only live issue at the trial was the complainant’s absence of consent. The credibility of the complainant and the appellant was key.
7. The suggestion that the majority of the Court of Appeal erred in applying the test for unreasonable verdict set out in *Corbett v. The Queen*, [1975] 2 S.C.R. 275, and recently upheld in *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381, rather than the test for appellate intervention where there has been a misapprehension of evidence as in *R. v. Lohrer*, 2004 SCC 80, [2004] 3 S.C.R. 732, must be rejected. The majority of the Court considered, with one minor exception, that what the appellant alleged to be misapprehensions of the evidence were simply different interpretations of the evidence than those adopted by the judge. We agree. The majority view, other than a peripheral controversy about the precise time of the events, is supported by an attentive reading of the record. The timing issue, in our view, is of no consequence. The verdict was one that a properly instructed jury acting judicially could reasonably have rendered (*Corbett*, at p. 282; see also *R. v. Yebes*, [1987] 2 S.C.R. 168, at p. 185).
8. The second point concerns some evidence relating to footprints in the snow which to the police witness, a qualified tracking dog handler, suggested that the persons making the tracks – allegedly the appellant and the complainant – had been running. The police officer claimed expertise in the interpretation of the footprints, and this claim was not challenged by the defence.
9. The trial judge concluded that the physical evidence was not consistent with the appellant’s testimony and relied on this as one of 12 points as to why she neither believed nor was left in doubt by the appellant’s trial evidence. It is argued that aspects of this evidence went beyond the proper limits of opinion evidence. The defence made no objection to the admissibility of this evidence at trial and in fact relied on it as supporting the appellant’s testimony. The trial judge relied solely on the officer’s testimony based on his observations of the impressions in the snow that it was “as if there was somebody running from the others” (A.R., at p. 129). As Crown counsel put it in argument, any school child would deduce this from the tracks in the snow which the witness observed. There was, with respect, no basis for appellate intervention on this ground.
10. As for the trial judge’s application of the *W. (D*.*)* principle, a reading of her reasons as a whole does not support the conclusion of the dissenting judge that she erred in her application of the reasonable doubt standard to the whole of the evidence.
11. The appeal is dismissed.

*Appeal dismissed.*

Solicitors for the appellant:  Gunn Law Group, Edmonton.

Solicitor for the respondent:  Alberta Justice, Edmonton.