



Case in Brief: ***R. v. Metzger***

Judgment of February 14, 2023 (written reasons issued March 3, 2023) | On appeal from the Court of Appeal of Alberta
Neutral citation: 2023 SCC 5

The Supreme Court sets aside an Alberta man’s convictions for a 2017 home invasion robbery.

Shawn Metzger was convicted of offences arising from the home invasion robbery in June 2017, in the small town of Morningside, Alberta, near Red Deer. He was allegedly part of a group of three or four perpetrators who stole a truck. The truck belonged to Mr. Valentin Iten, one of the two victims of the robbery. The vehicle was found approximately 11 hours later, outside a bar in Red Deer.

Neither of the victims clearly saw the perpetrators during the robbery. At trial, the prosecution relied on two pieces of evidence to identify Mr. Metzger as one of the thieves. First, Mr. Metzger’s DNA was on a cigarette butt found in the stolen truck. Second, Mr. Iten testified that he may have heard someone say “Metzger” during the robbery. Mr. Metzger did not testify at his trial.

Based on this evidence, the trial judge concluded Mr. Metzger participated in the robbery. Alberta’s Court of Appeal dismissed Mr. Metzger’s appeal. It found the trial judge was correct in determining Mr. Metzger’s guilt in the robbery. One judge disagreed, which permitted Mr. Metzger to appeal his case to the Supreme Court of Canada as of right.

An appeal “as of right” is available in some criminal cases where one judge on the court of appeal has dissented on a point of law, as was the case here. This means the appellant does not need to apply to the Supreme Court of Canada for permission to have their case heard. The case can be heard if the appellant simply files a notice to this effect.

The Supreme Court has allowed the appeal, set aside the convictions and substituted acquittals.

Mr. Metzger’s convictions were unreasonable based on the evidence presented at trial.

Writing for a majority of the judges, Justice Malcolm Rowe found Mr. Metzger’s guilty verdicts were unreasonable based on the totality of the evidence. First, the DNA evidence on its own was insufficient to establish guilt beyond a reasonable doubt. It only established Mr. Metzger’s presence in the stolen truck at some point, rather than his participation in the actual robbery. Second, Mr. Iten’s testimony with respect to hearing the name “Metzger” was fraught with frailties. He had been struck on the head at the beginning of the robbery, and was fading in and out of consciousness throughout. During his testimony, Mr. Iten had questioned his own recollection of what he heard that night.

Justice Rowe also determined that Mr. Metzger’s decision not to testify at trial could not be raised against him. The evidence in this case was not such that it “cried out for an explanation that only [his] testimony could provide”.

For these reasons, Justice Rowe stated that “no trier of fact, acting judicially, could reasonably be satisfied that the accused’s guilt was the only reasonable conclusion available”.

Breakdown of the decision: **Majority:** Justice Malcolm [Rowe](#) allowed the appeal, set aside Mr. Metzger’s convictions, and substituted verdicts of acquittal (Justices [Martin](#) and [Kasirer](#) agreed) | **Dissenting:** Justice [Côté](#) would have dismissed the appeal and upheld Mr. Metzger’s convictions (Justice [O’Bonsawin](#) agreed)

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Lower court rulings: Decision (unreported) | [Appeal](#) (Court of Appeal of Alberta)

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