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***The Supreme Court orders a new trial because of the erroneous admission of an out-of-court statement at trial.***

This appeal concerns the admissibility in evidence of an out-of-court statement made by a trial witness.

Following an incident involving the accused and the complainant at the school they attended, the accused was charged with assault with a weapon, using an imitation firearm and uttering threats. At trial, the complainant testified that he had entered a washroom at the school and had felt something on his hip while washing his hands. When he turned around, he saw that it was a pistol held by the accused, being used to threaten him. Two other students were present at the time. One of them, who testified at the accused's trial, claimed to have no recollection of the events. The prosecution therefore requested a *voir dire*, seeking the admission into evidence of an out-of-court statement given by that witness to the police investigators the day after the events. A *voir dire* is a proceeding held in the absence of the jury during a criminal trial to allow the judge to consider, for example, the admissibility of evidence that a party wishes to present. The witness had been questioned by the police investigators for about an hour and had provided a written statement. Among other things, the witness admitted in his statement that he was in possession of two pellet pistols. The police conducted a search and recovered the pistols at the witness's residence.

The trial judge admitted the witness's out-of-court statement into evidence. The judge found that the only likely explanation for the statement was its truthfulness as to its material aspects, given the circumstances in which the statement was made and the seizure of pistols, which the judge considered to be corroborative evidence. Corroborative evidence is evidence that reinforces other evidence. Following the trial, the accused was found guilty of the three charges. The judge accepted the complainant's version of events, which was supported by a surveillance video and the witness's statement. A majority of the Court of Appeal upheld the trial judge's decision to admit the statement into evidence and dismissed the accused's appeal.

The Supreme Court of Canada has allowed the appeal and quashed the convictions. The Court has also ordered a new trial.

**The out-of-court statement did not have the indicia of reliability required to be admitted at trial.**

Writing for the majority of the Court, Justice Moreau determined that the trial judge had erred in finding that the witness's out-of-court statement had the required indicia of reliability and in admitting the statement into evidence at trial. The results of the search subsequently conducted at the witness's residence do not meet the criteria for corroborative evidence laid down by the Supreme Court in *R. v. Bradshaw*. Moreover, the circumstances surrounding the statement do not support a finding that threshold reliability is established. Finally, the majority of the Court of Appeal should not have relied on the complainant's testimony, given outside of the *voir dire*, to hold that the threshold reliability of the witness's statement was established.

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**Breakdown of the decision:** *Majority*: Justice Moreau allowed the appeal (Justices Karakatsanis, Martin and Jama agreed) | *Dissenting*: Justices Côté and Kasirer would have dismissed the appeal (Justice Rowe agreed).

**More information:** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [R. v. Charles](#) (Court of Québec) (not available online) | [Charles v. R.](#) (Court of Appeal for Québec) (in French only)

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