

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

BRIAN DOUGLAS COLDIN and JOHN CROPPER

Before Justice Jon-Jo A. Douglas

Heard on September 27, 28, 29, November 22, 29, 2010

January 25, March 1, July 5, September 28, 2011

Reasons for Judgment released on January 12, 2012

M. Newell, R. Charney, and Z. Green for the Crown
C. Ruby and N. Hassan for the Defendant Brian Douglas Coldin
The Defendant John Cropper on his own behalf

DOUGLAS J.:

1. INTRODUCTION

This decision addresses four issues.

The first is whether Mr. Coldin or Mr. Cropper were factually and legally “nude” at the places alleged in the information on the dates noted.

The second is what is the law to apply to those found facts.

The third is, on the application of the found law to the found facts, whether Mr. Coldin or Mr. Cropper are thus *apparently* guilty of one or more offences.

The fourth is whether the law, as found, in its application to the facts, as found, breaches one of two constitutional principles: being, first, the right to freedom of expression and, second, the right to security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice; and, if that law as applied breaches either of those principles, whether the law still is salvageable as demonstrably justified in a free and democratic society.

2. FINDINGS OF FACT RESPECTING NUDITY

Respecting Information 08-1161

Respecting B. Coldin, Count One – Ms. Kulchycki Picture on Highway 11, April 19, 2008

[1] Ms. Kulchycki was driving down Highway 11 when she stopped and photographed the Defendant Coldin walking on the side of the road, clearly in a public place. He was unclothed, in the sense of not wearing anything which covered his buttocks or genitals, but was not nude, in the sense noted below, in that he was wearing sandals. It is not clear why this woman stopped and photographed the Defendant Coldin, but she does appear to have had some concern about his practices and she noted that children on school buses could see him.

Respecting B. Coldin, Count Two – Ms. Marshall on Park Bridge, April 1, 2008

[2] Ms. Marshall saw the Defendant Coldin in High Falls Park, near the bridge. The Defendant Coldin crossed the bridge towards her and said hello. He was certainly unclothed, in the sense noted below, but not likely nude, as probably, again, wearing footwear and his phone.

[3] Ms. Marshall commented on his manner, noting that, to her, he was *'flaunt-*