



Case in Brief: *R. v. Cyr-Langlois*

Judgment of October 17, 2018 (written reasons issued December 6, 2018)

On appeal from the Court of Appeal of Quebec

Neutral citation: 2018 SCC 54

In a criminal case, “reasonable” doubt should be based on evidence, not speculation, the Supreme Court has confirmed.

In 2012, Mr. Cyr-Langlois was pulled over on suspicion of drunk driving. He was taken to a police station, where his blood alcohol level was tested with a breathalyzer device. Following standard procedure, two breath samples were taken about 20 minutes apart. The officer who took the samples didn't stay in the same room with Mr. Cyr-Langlois to watch him before each test. Another officer did. Mr. Cyr-Langlois blew over the legal limit for both samples. He was charged with driving under the influence of alcohol and driving with blood alcohol “over 80” (more than 80 mg of alcohol in 100 mL of blood). This appeal was about the “over 80” charge.

When the Crown (the prosecution) charges someone with a crime, it has to prove the person committed the crime beyond a “reasonable doubt.” This is a very high standard, but it is not absolute certainty (in law, as in life, very few things can be proven with 100% confidence). If a judge or jury thinks an accused person is “probably” guilty, they have to find the person *not* guilty. “Probably” is not enough. On the other hand, if a doubt is purely theoretical or imaginary, and not based on evidence, it is not “reasonable” doubt. This high standard is important because everyone—even police, lawyers, and judges—can make mistakes. But mistakes are less likely to happen when this high standard is met.

In a drunk driving case, the main evidence against a person is usually a blood alcohol test. A breathalyzer test is assumed to be trustworthy (that is, proving drunkenness beyond reasonable doubt) unless the accused person can show it isn't. They would have to show evidence that the device may not have been working properly, or was used incorrectly, *and* that this could affect the reliability of the results. This would be reasonable doubt. Unless the Crown had other evidence, the person would have to be found not guilty.

Mr. Cyr-Langlois didn't argue that the breathalyzer wasn't working. He said the police officer didn't use it properly, because the procedure wasn't followed exactly. He said a police officer had to wait and watch the suspected drunk person for 20 minutes, take a sample, wait 20 minutes, and take a sample again. The reason the officer was supposed to watch the person was to make sure nothing happened during that time that could affect the result. For example, burping or throwing up could bring traces of alcohol directly from the stomach into the mouth, which could change the result. Mr. Cyr-Langlois said the police officer who took the samples left the room. The officer wasn't sure if his colleague had watched Mr. Cyr-Langlois the whole time. Mr. Cyr-Langlois said this meant the procedure wasn't followed, so the test results couldn't be trusted. He said he should be found not guilty.

The summary conviction judge agreed with Mr. Cyr-Langlois, and found him not guilty. The Crown appealed to the Superior Court, which cancelled the not-guilty verdict and ordered a new trial. The Court of Appeal ruled for Mr. Cyr-Langlois, saying the not-guilty verdict should stand.

The majority at the Supreme Court canceled the not-guilty verdict and said there should be a new trial. Mr. Cyr-Langlois' arguments were speculation, not reasonable doubt. He didn't suggest that anything happened before the two samples that might have made the test less reliable, like a digestive issue. He argued it was enough that an officer might not have watched him the whole time, and *theoretically* something could have been missed. To raise reasonable doubt, he had to show concrete proof the incorrect use of the breathalyzer could have affected the results and made them untrustworthy. For example, he could have testified that he had burped before the samples were taken. He didn't testify, so it didn't matter if an officer was watching him for the whole time or not.

This decision was given from the bench on October 17, 2018. The Court released written reasons explaining it on December 6, 2018. The Court also released two other decisions involving breathalyzers about six weeks before this one: [*R. v. Gubbins*](#) and [*R. v. Awashish*](#).

Breakdown of the Decision: *Majority:* Chief Justice Richard [Wagner](#) allowed the appeal (Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Gascon](#), [Brown](#), [Rowe](#), and [Martin](#) agreed) | *Dissenting:* Justice Suzanne [Côté](#) said the fact the procedure wasn't followed raised reasonable doubt about the reliability of the test, and would have dismissed the appeal

More information (case # 37760): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: trial (Court of Quebec, not available online) | [appeal](#) (Superior Court of Quebec, in French only) | [appeal](#) (Court of Appeal of Quebec)
