



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *R. v. Moylett*, 2026 NLCA 22

Date: June 24, 2026

Docket Number: 202401H0022

BETWEEN:

ANDREW MOYLETT

APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: F.J. Knickle, K.J. O'Brien and G.L.C. Noel JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division, 202201G5008
(2024 NLSC 33)

Appeal Heard: February 20, 2026 and May 19, 2026

Judgment Rendered (Orally): May 19, 2026

Judgment Filed: June 24, 2026

Reasons for Judgment by: G.L.C. Noel J.A.

Concurred in by: F.J. Knickle and K.J. O'Brien JJ.A.

Counsel for the Appellant: Self-Represented

Counsel for the Respondent: Dana E. Sullivan

Authorities Cited:

CASES CITED: *R. v. Saddleback*, 2026 SCC 18; *R. v. R.V.*, 2019 SCC 41, [2019] 3 S.C.R. 237; *R. v. Hoyles*, 2015 NLCA 26; *R. v. Bouvette*, 2025 SCC 18.

STATUTES CONSIDERED: *Criminal Code*, RSC 1985, c. C-46, sections 686(1)(b)(iii), 686(2)(a); *Canada Evidence Act*, RSC 1985, c. C-5, sections 30(7), 30(10)(a)(i).

G.L.C. Noel J.A.:

INTRODUCTION

[1] Andrew Moylett appeals from his convictions following a trial by judge and jury. The jury found him guilty of armed robbery, possession of a weapon for the purpose of committing an offence, and being disguised with intent to commit an indictable offence.

[2] The appeal was heard over two days on February 20 and May 19, 2026. At the conclusion of the hearing on the latter date, the appeal was allowed, the convictions set aside, and a new trial ordered with reasons to follow. These are the reasons.

[3] The Crown acknowledged that the trial judge erred in law by allowing the Crown to adduce hearsay evidence of Mr. Moylett's address. The Crown submitted that the error was significant and the *curative proviso* could not be applied.

[4] Since the appeal was allowed and a new trial ordered, there is no need to consider Mr. Moylett's application for fresh evidence or his other grounds of appeal.

BACKGROUND

[5] The undisputed facts are that two people, wearing masks across the lower portion of their faces, entered the West End Club on Hamilton Avenue, St. John's, Newfoundland and Labrador, on December 11, 2020. After a few minutes, one went behind the bar, holding a knife, demanding that the bartender open the safe under the bar. There was then a scuffle between a customer and the other person. The

bartender fled to the washroom and locked the door. The robbers fled with the contents of the safe, including a quantity of cash.

[6] The only issue at trial was identity; that is, whether Mr. Moylett was one of the two people who committed the robbery. As was his right, Mr. Moylett did not testify or call evidence. His defence was that the Crown's case fell short of establishing proof beyond a reasonable doubt that it was Mr. Moylett who committed the robbery.

[7] The evidence that Mr. Moylett was involved was largely circumstantial. The only direct evidence was that of a police officer, who testified that he recognized Mr. Moylett from security footage recorded during the robbery.

[8] Mr. Moylett's DNA, along with that of four other people, was found on a lighter in the pocket of a jacket similar to one worn by a robber in the security video. The jacket was found a short distance from the robbery, in a laneway near 92 Springdale Street.

[9] At trial, the investigating police officer testified that he searched a police database, which "captures any times you have police involvement, anything from an accident to criminal charges" (Transcript, Volume IV, at 63). The officer testified that the database showed that Mr. Moylett was living at 141 Casey Street as of November 2020.

[10] The significance of whether Mr. Moylett was living at 141 Casey Street is that a person living in the neighbouring property at 143 Casey Street found a backpack in their backyard on December 24, 2020. Casey Street was near the scene of the robbery, and near the grey jacket that was found near 92 Springdale Street. One of the individuals captured on the security video was wearing a backpack like the one found at 143 Casey Street. The backpack contained materials which appeared to be connected to the robbery, including a box labelled "bar float" (Transcript, Volume III, at 25-28).

[11] Mr. Moylett's trial counsel objected to the Crown's contention that Mr. Moylett lived at 141 Casey Street. Mr. Moylett's position at trial and on appeal was that he never lived at that address and that the Crown failed to establish at trial that he did.

[12] The trial judge admitted the evidence of Mr. Moylett's address, without explaining to the jury that the evidence was hearsay evidence and that it could not be used to establish that Mr. Moylett lived at 141 Casey Street.

ISSUES

[13] Following the first date of the appeal hearing, on February 20, 2026, this Court raised two issues for the parties to address:

(1) Whether the trial judge erred in permitting the Crown to adduce hearsay evidence of Mr. Moylett's address in the police database for its truth; specifically, to establish Mr. Moylett lived at 141 Casey Street as of November 2020?

(2) If the trial judge permitted inadmissible hearsay evidence, can the Crown rely on the *curative proviso* in section 686(1)(b)(iii) of the *Criminal Code*, RSC 1985, c. C-46 to uphold the verdict?

ANALYSIS

[14] The trial judge erred in law by allowing hearsay evidence to be entered for the truth of its contents, without first assessing whether it could be admissible for this purpose. The *curative proviso* cannot apply in this case. The convictions should be set aside, and the appropriate order is a new trial.

(1) Error of law for the trial judge to permit inadmissible hearsay evidence

[15] It is an error of law, reviewable on a standard of correctness, for the trial judge to permit the Crown to adduce hearsay evidence, without first determining whether it is admissible (*R. v. Saddleback*, 2026 SCC 18, at para. 22).

[16] Hearsay evidence is an out-of-court statement tendered for the truth of its contents. It is defined "by the use to which the evidence is sought to be put: namely, to prove that what is asserted is true". Hearsay is presumptively inadmissible mainly because, without the declarant in court, it is often difficult to assess the truthfulness of the statement (*Saddleback*, at para. 20).

[17] The rule against hearsay has exceptions. A party seeking to rely on an out-of-court statement for the truth of its contents can attempt to have it admitted under one

of the common law exceptions, or under the more flexible principled exception. Under the principled exception, hearsay evidence can only be admitted when the party tendering that evidence demonstrates on a balance of probabilities that it is necessary and sufficiently reliable. A *voir dire* on the admissibility of hearsay evidence is normally held for this purpose (*Saddleback*, at para. 21).

[18] The Crown did not seek to adduce the police databank evidence under the common law business records exception or under the more flexible principled exception. The Crown also did not give the required notice to the accused to enter it as a business record pursuant to the statutory exception under section 30(7) of the *Canada Evidence Act*, RSC 1985, c. C-5, nor demonstrate that the record of Mr. Moylett's address on the databank was not made in the course of an investigation or inquiry pursuant to section 30(10)(a)(i).

[19] The trial judge was alive to certain concerns regarding this evidence of Mr. Moylett's alleged address and conducted a *voir dire* before declaring the evidence admissible. The trial judge gave a "bad character" instruction to the jury, that they must not use the evidence of Mr. Moylett's address in the police database to conclude that he is a bad person, and therefore more likely to have committed the offences. However, the *voir dire* did not address the hearsay nature of the evidence, did not consider exceptions that might have justified its admissibility, and did not address whether the evidence was being admitted for the truth of its contents.

[20] The trial judge's failure to address the hearsay nature of the evidence when he ruled the evidence admissible was an error of law.

(2) The Crown acknowledges the *curative proviso* cannot apply

[21] Section 686(1)(b)(iii) of the *Criminal Code*, known as the *curative proviso*, empowers the Court to dismiss an appeal, despite a finding of an error of law, where there has been "no substantial wrong or miscarriage of justice." The Crown is not relying on the *curative proviso* to uphold the verdict. The *curative proviso* cannot apply because (a) the error was not harmless or trivial; or (b) the other evidence at trial was not so overwhelming that the jury would inevitably have convicted Mr. Moylett (*R. v. R.V.*, 2019 SCC 41, [2019] 3 S.C.R. 237, at para. 85).

[22] Where identity was the central issue at trial, the admission of the hearsay evidence of Mr. Moylett's address was a significant error and may have affected the verdict. The jury may have reasoned that because the database stated that Mr.

Moylett lived adjacent to the address where items from the robbery were discovered, it was more plausible that he was the person who left those items and therefore was one of the robbers. This is not a speculative proposition.

[23] The Crown relied on the evidence of Mr. Moylett's address for its truth in the Crown's closing submissions to the jury. Furthermore, the trial judge in his final instructions to the jury repeated the Crown's reliance on this evidence.

The appropriate order is a new trial

[24] Mr. Moylett asks that acquittals be entered. The appropriate order is for a new trial rather than the entry of acquittals.

[25] Pursuant to section 686(2)(a) of the *Criminal Code*, a verdict of acquittal on appeal will be entered where there is no evidence upon which a properly instructed trier of fact could reasonably have convicted the accused (*R. v. Hoyles*, 2015 NLCA 26, at para. 3; *R. v. Bouvette*, 2025 SCC 18, at para. 6). That was not the case here, and no other basis for acquittal is applicable to Mr. Moylett's appeal.

DISPOSITION

[26] The convictions are quashed and a new trial is ordered.

G.L.C. Noel J.A.

I concur : _____
F.J. Knickle J.A.

I concur : _____
K.J. O'Brien J.A.