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**R. v. Tallon (Alta. C.A.)**

Between

Her Majesty The Queen, Respondent (Respondent), and  
James Ernest Tallon, Accused/Appellant (Appellant)

[1992] A.J. No. 977  
Appeal No. 9203-0172-A4

**Alberta Court of Appeal  
Edmonton Criminal Sitings  
Lieberman, Kerans and Conrad JJ.A.**

November 2, 1992  
(2 pp.)

On appeal from Wilson J.  
K.E. Tjosvold, for the Respondent.  
R.S. Prithipaul, for the Accused.

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MEMORANDUM OF JUDGMENT

**KERANS J.A.** (for the Court):— This is an appeal from Queen's Bench sitting as the summary conviction appeal court from a decision in Provincial Court. The Provincial Court convicted on a charge under s. 253(b) of the Criminal Code. The accused had led evidence at the trial in an attempt to raise a doubt about the Crown's case in terms of the breathalyzer readings. The accused had testified as to how much he had to drink and experts testified about extrapolations from that.

In his brief judgment, the learned Provincial Court Judge said at the outset, and I quote:

"In order for the accused to succeed the court must accept the evidence of the accused as to the amount he had to drink on the dates in question:"

After discussion then about the problem of disbelief on the grounds of false statements, deliberate false statements as opposed to disbelief on the grounds of honest mistake, the trial judge concluded his judgment saying, and again I quote:

"In the consideration of the evidence before this court, the court does not accept the evidence of the accused."

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The ground of appeal before us is that the learned trial judge in the first passage failed to direct himself as to the distinction between the acceptance of the evidence in the sense of meeting some evidentiary burden, and acceptance of the evidence in the sense that it offers grounds for reasonable doubt. Ordinarily we do not talk about accepting evidence in the sense of forming a ground for a reasonable doubt. That way of talking about the evidence is usually in the context of the discharge of some evidentiary burden. As a result, the court is concerned that the trial judge may never have asked himself if he had a reasonable doubt. We will order a new trial. I think that the best formulation for a trial judge is to ask himself expressly whether or not, having heard all of the evidence, including the evidence of the accused, he has any doubt as to guilt.

KERANS J.A.