NOVA SCOTIA COURT OF APPEAL

Citation: ***R. v. Bourassa***, 2004NSCA127

Date: 20041020
Docket: CAC 208198

Registry: Halifax

Between:

Peter Todd Bourassa

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Jamie W. S. Saunders

Appeal Heard: October 12, 2004

Subject: Robbery, s. 343(a) of the **Criminal Code**, or theft, s. 322? Reasonableness of the verdict, s. 686(1)(a)(i). "Mixing" evidence in a trial of a multi-count Indictment.

Summary: The appellant was tried on a three count Indictment, each count charging robbery contrary to s. 344, involving different financial institutions on separate dates. The first count was dismissed for want of prosecution. The appellant was acquitted on the second count. He was found guilty on the third count and sentenced to seven years imprisonment, reduced to 68 months after taking into account time spent on remand.

He appealed that conviction on the basis that the evidence presented at trial did not support a conviction for robbery, but rather only theft; that the verdict was unreasonable; and that the trial judge had erred by "mixing" the evidence from the other count(s), in disposing of the charge for which he was convicted.

Held: Appeal dismissed. Here, the question for the trial judge was to decide whether, on all of the evidence, the Crown had established beyond a reasonable doubt that the conduct of the offender amounted to using threats of violence. In coming to that determination, the trier of fact may well apply a partly subjective and partly objective test. **R. v. McClarty**, [1984] N.S.J. No. 327 (N.S.C.A., per Macdonald, J.A.). To simply isolate one or two actions of the thief as the appellant suggests, presents a distorted view. The better approach is to examine the entire sequence of events through the eyes of a reasonable observer who happened upon the scene. When assessing, objectively, whether such fear was reasonable, many features of the incident would be especially persuasive, for example: the individual had the hood of his jacket up over his head as he approached the wicket; then after putting his sunglasses on, and keeping his right hand in his pocket, passed the teller a note, and by some gesture and grunting sounds made it clear that he wanted the large bills. When the teller froze and was unable to react, he reached across the till, grabbed the money and fled. Having regard to the bank teller's testimony and the other evidence, the trial judge was correct in law to find that the offence of robbery as defined in s. 343(a) had been made out. Further, the guilty verdict - which in this case largely turned on the issue of identification - was reasonable. There was ample direct and circumstantial evidence tying Mr. Bourassa to the robbery, including witnesses who described pink coloured smoke coming from his jacket, and others who saw him subsequently hanging partly out of a motor vehicle, in a puff of red smoke, as paper floated in the air, and where a dye pack and loose money littering the ground were later found.

No application was made by the appellant, represented by counsel, to sever one or more of the three counts on the Indictment. No indication that the trial judge improperly used evidence from a count specifying a different robbery, to convict the appellant of this one.