

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Graves*, 2002 NSCA 157

**Date:** 20021204

**Docket:** CAC 177355

**Registry:** Halifax

**Between:**

Gary Hugh Graves

Appellant

v.

Her Majesty the Queen

Respondent

**Judges:** Roscoe, Bateman and Cromwell, JJ.A.

**Appeal Heard:** December 4, 2002, in Halifax, Nova Scotia

**Written Judgment:** December 5, 2002

**Held:** **Appeal allowed, conviction set aside and a new trial ordered per oral reasons for judgment of Bateman, J.A.; Roscoe and Cromwell, JJ.A.**

**Counsel:** Shannon L. Ingraham, for the appellant  
Laurel Halfpenny-MacQuarrie, for the respondent

Reasons for judgment:

[1] This is an appeal from a decision of Judge Robert White of the Provincial Court wherein he found Gary Hugh Graves guilty of aggravated assault contrary to s. 268 of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46, and sentenced him to a five year term of incarceration.

[2] We are unanimously of the view that the trial judge misplaced the burden of proof. The Crown must satisfy the trier of fact, beyond a reasonable doubt, that the accused was not acting in self defence. The decision reveals, most notably at paragraphs [59], [62] and [63], that the trial judge failed to appreciate that the accused was not required to affirmatively establish self defence.

[3] Accordingly, the appeal is allowed, the conviction set aside and a new trial is ordered.

Bateman, J.A.

Concurred in:

Roscoe, J.A.

Cromwell, J.A.