Date: 20010130
Docket: CAC 165942

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Schrader, 2001 NSCA 20]

Bateman, Flinn and Cromwell, JJ.A.

BETWEEN:

ANTHONY BLAINE SCHRADER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

Counsel:	Jean C. Morris for the appellant Dana W. Giovannetti, Q.C. for the respondent
Appeal Heard:	January 30, 2001
Judgment Delivered:	January 30, 2001
THE COURT:	Appeal allowed, conviction set aside and a new trial ordered per oral reasons for judgment of Cromwell, J.A.; Bateman and Flinn, JJ.A. concurring.

CROMWELL, JA.: (Orally)

[1] The appellant appeals his conviction by The Honourable Judge White on a charge of possession of stolen angle iron.

[2] From our review of the trial judge's reasons as a whole, we conclude that the length and the weight of the individual pieces of angle iron which formed the basis of the charge were central to his findings. They appear to have been key factors in his decision to reject, absolutely, the evidence of the defence witness, Romkey, and in his finding that the accused knew the angle iron was stolen.

[3] With respect to Romkey's evidence, the judge said as follows:

> Mr. Romkey's evidence is totally and absolutely incredulous [sic]. He's suggesting that a little car was going to carry 847 pounds divided by two, in two trips, that it ... that these 16-foot pieces stuck out of the trunk five to six feet and the trunk was two to three feet deep. I think that you only have to look at the photograph, it clearly shows the length of the pallet, shows the length of the .. of the .. of the angle iron. The suggestion also was that on that pallet were 700 or 73 pieces. While you can do a quick count, I came to well over 40 in counting but some of the pieces are doubled up. The suggestion was by Mr. Cochrane there were 73 pieces which means that each piece weighed over 100 pounds and that would be ... that would be reasonable, figuring the length, as suggested in the evidence by Mr. Ashley, were 16 feet in length.
> (emphasis added)

[4] With respect to the accused's knowledge that the goods were stolen the judge said as follows:

> ... there's not one scintilla of doubt in my mind that the accused was in possession of the stolen property, that there's not one scintilla of doubt in my mind that he knew that it was stolen... There is not one scintilla of doubt in my mind that... that there were five separate occasions, that there would have to be, to transport, in a small car, 16-foot lengths of aluminum angle iron. Each length would have had to weigh in excess of 100 pounds, based upon the evidence that there were 847 pounds of aluminum paid for and that each of them were ... were 16 feet in length.
> (emphasis added)

[5] Unfortunately, the judge was seriously mistaken as to the evidence on both the length and weight of the individual pieces. The evidence was that although the angle iron came in 16 foot lengths, the stolen ones had already been cut and it is common ground before us that they were nowhere near that length. As for weight, the evidence was that either 30 or 79 pieces were stolen and that the total weight was 847 pounds with the result that the weight of the individual pieces could be no where near the 100 pounds stated by the judge. The judge also appears not to have recognized a serious conflict in the evidence of the Crown witnesses as to the

number of pieces of angle iron which had been taken, and he seriously misstated the evidence of Mr. Cochrane in this respect.

[6] Of course, slips in reciting the evidence or failure to address every inconsistency do not constitute reversible error. In this case, the trial judge misapprehended aspects of the evidence which were critical to his findings of credibility and to the reasons he gave for finding the appellant guilty. These misapprehensions went to "... the very core of the reasoning process which culminated in the conviction.": **R. v. Morrissey** (1995), 97 C.C.C. (3d) 193 (Ont. C.A.) per Doherty, J.A. at p. 221. As in **Morrissey**, the appellant here "...has demonstrated significant errors in the trial judge's understanding of the substance of the evidence" and that "...those errors figured prominently in the reasoning process which led to crucial findings of credibility and reliability, and then to crucial findings of fact." Therefore, even though the evidence adduced at trial was sufficient to make a finding of guilt a reasonable verdict, the conviction entered by the judge was a miscarriage of justice within the meaning of s. 686(1)(a)(iii) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46, and must be set aside: see **Morrissey, supra** and **R.v. Miller** (1999), 173 N.S.R. (2d) 26 (C.A.).

[7] The appeal is allowed, the conviction set aside and a new trial ordered. It is not necessary to address the sentence appeal.

Cromwell, J.A.

Concurred in:

Bateman, J.A.

Flinn, J.A.