Date: 19981110 Docket: C.A.C. 145258

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Reynolds, 1998 NSCA 230

Glube, C.J.N.S.; Pugsley and Cromwell, JJ.A.

BETWEEN:

ROBERT MICHAEL REYNOLDS	)	Johanne L. Tournier
	)	for the Appellant
Appellant	)	
	)	
- and -	)	
	)	Kenneth W.F. Fiske, Q.C.
	)	for the Respondent
HER MAJESTY THE QUEEN	)	
	)	
Respondent	)	Appeal Heard:
	)	November 10, 1998
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	)	
	)	Judgment Delivered:
	)	November 10, 1998
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THE COURT: Appeal dismissed per oral reasons for judgment of Cromwell, J.A.; Glube, C.J.N.S. and Pugsley, J.A. concurring.

CROMWELL, J.A.: (Orally)

Robert Michael Reynolds appeals his conviction by the Honourable Judge Prince of the Provincial Court of Nova Scotia on a charge that he, between January 1, 1985 and September 15, 1996, committed an assault on Janet Lynn Reynolds contrary to s. 266(a) of the **Criminal Code of Canada**, R.S.C. 1985, c. C46. If the conviction appeal fails, Mr. Reynolds seeks leave to appeal and, if granted, appeals the sentence of one year in jail followed by 2 years of probation.

There are three main issues raised on the conviction appeal. We will address each in turn.

1. It is argued that the verdict is unreasonable because, on all of the evidence, the trial judge ought to have had a reasonable doubt.

The proper role of the Court of Appeal reviewing the reasonableness of a verdict was set out by the Supreme Court of Canada in **Yebes v. The Queen,** [1987] 2 S.C.R. 168. The appellate court is not to substitute its view for that of the trial judge but, having examined and to some extent reweighed and considered the effect of the evidence, determine whether the verdict is one that a properly instructed judge or jury acting judicially could reasonably have rendered. In applying this test, the appellate court must bear in mind the advantage possessed by the trier of fact in making findings relating to credibility

and also keep in mind that the trier of fact may quite properly deal with inconsistencies and possible motives to concoct evidence in various ways. The trier of fact may quite properly accept all, part or none of a witness' evidence. As McLachlin J said in **R. v. Francois**, [1994] 2 S.C.R. 827 at p. 837, the appellate court "...cannot infer from the mere presence of contradictory details or motives to concoct that the ... verdict is unreasonable."

The appellant argues that the delay in reporting the alleged assault and the fact that it was reported shortly after there had been a difficulty concerning access by the accused to the children of the marriage should have given rise to a reasonable doubt. As the appellant expresses it:

> ...the facts were clearly established that the two charges came to light, along with the allegation of child assault, after Mr Reynolds' difficulty in obtaining access... The learned trial judge should have taken this into account, along with the time lapse since the alleged spousal assaults had occurred, together then with the lack of previous criminal record on the part of the Appellant to conclude that there was a reasonable doubt as to whether the assaults had occurred as alleged."

The short answer to this submission is that the trial judge considered this possible motive to concoct evidence and rejected it. He refers to it at least 3 times in his reasons for judgment. He decided to accept the evidence of the complainant. This was a credibility finding he was entitled to make and it is supported by the evidence. There is no basis for this Court on appeal to interfere with it.

It is also submitted that the complainant's testimony was lacking in particulars and the trial judge confused the evidence relating to two of the incidents.

We agree with the Crown's submission in its factum that the general nature of some of the complainant's evidence is not surprising given the fact that her allegations were that she was regularly the victim of violence over the duration of her 11 year relationship with the appellant. She did, however, testify to several specific incidents, some of which were supported by other evidence and indeed, to some extent, by the evidence of the appellant himself. The trial judge did appear to confuse two incidents at one point in his reasons, but he relied on this particular evidence only to show the inconsistency between the appellant "trashing" the residence and yet characterizing himself as the "peacemaker" in the relationship. This slip of the trial judge is not such as to show that he so materially misapprehended the evidence that his findings were unreasonable. We reject this ground of appeal.

2. The appellant submits that the lack of dates and the general nature of the allegation against the appellant resulted in him not having sufficient knowledge of the particular allegations against him to enable him to make full answer and defence. There is no suggestion that the appellant did not obtain appropriate disclosure. There was no application for particulars or application to quash the Information. There was no argument raised at trial concerning inability to make full answer and defence. The appellant's evidence at the trial

does not indicate any inability to respond meaningfully to the allegations. We reject this ground of appeal.

3. The appellant submits that there was additional evidence of good character that was not adduced at the trial which would support his innocence and that there were additional factual circumstances, including facts which tend to show a bias on the part of the corroborating witness which were not adduced at trial and which would tend to support the innocence of the accused. No application has been made to adduce fresh evidence on appeal and no evidence provided to permit this Court to consider whether some or all of this material might be admissible as fresh evidence. It appears that all of the material referred to in the appellant's factum would have been available with due diligence at trial. The brief description of the available material placed before the Court in the appellant's factum does not persuade us that the material is so central to the issues at trial that failure to consider it could constitute an injustice. At most, it appears to relate to evidence that might have had some bearing on credibility which the defence decided not to call at trial. It is too late to revisit that decision now, absent compelling evidence that the interests of justice require it. We dismiss this ground of appeal.

The conviction appeal is, therefore, dismissed.

On the sentence appeal, the appellant submits that the trial judge failed

to give proper consideration to the principles of sentencing, over-emphasized general and specific deterrence and failed to take due account of the pre-sentence report.

This Court will intervene on a sentence appeal only if the sentencing judge failed to apply the correct principles, ignored relevant factors or imposed a sentence that is clearly excessive or inadequate: **R. v. Muise** (1994), 94 C.C.C. (3d) 119 (N.S.C.A.).

The sentencing judge considered that the appellant was a first offender. He also considered the importance of specific and general deterrence in cases of spousal violence and the fact that this was not an isolated incident but frequent acts of violence over an extended period. The sentencing judge referred to the pre- sentence report and specifically the results of the Domestic Violence Inventory which the appellant had taken. We do not find any error in principle in the judge's reasons. He did not fail to take relevant considerations into account and did not take irrelevant factors into account. The sentence is not clearly excessive. We grant leave to appeal but dismiss the appeal.

Cromwell, J.A.

Concurred in:

Glube, C.J.N.S.

C.A.C. No.145258

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

ROBERT MICHAEL REYNOLDS

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT BY:

CROMWELL, J.A.
(Orally)