

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Weagle, 2008 NSCA 122

Date: 20081223

Docket: CAC 286012

Registry: Halifax

Between:

Jason Weagle

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Roscoe

Appeal Heard: December 4, 2008

Subject: Criminal law, new evidence on appeal, ineffective assistance of counsel, unreasonable verdict, use of hearsay evidence

Summary: The appellant was convicted in Provincial Court of dangerous driving, using a motor vehicle as a weapon, failing to stop a motor vehicle while being pursued by a peace officer and assaulting a police officer in the exercise of his duty. He presented a defence of alibi at the trial. On appeal, he alleges ineffective assistance of counsel, that the trial judge erred in relying on hearsay evidence and that the verdict was unreasonable. He sought the admission of new evidence on appeal to support his submissions. The new evidence consisted of information that another person was driving the vehicle three hours after the police identified the appellant as the driver.

Issues:

1. Is the new evidence admissible to establish that trial counsel's performance was inadequate?
2. Was the appellant deprived of the effective assistance of counsel to the extent of causing a miscarriage of justice?
3. Did the trial judge's acceptance of the eye witness identification evidence lead to unreasonable verdicts?

4. Did the trial judge err in law by basing his decision on hearsay evidence?

Result: Appeal dismissed. The new evidence did not satisfy the test established in **Palmer v. The Queen**, [1980] 1 S.C.R. 759. The appellant did not discharge the burden of showing that he suffered any prejudice as a result of his trial counsel's conduct of the case. The verdict was not unreasonable and any error by the trial judge with respect to the hearsay evidence was innocuous. It was therefore appropriate to apply the curative provisions since there had been no miscarriage of justice.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.