

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. McAllister*, 2008 NSCA 103

Date: 20081029
Docket: CAC 292717
Registry: Halifax

Between:

William Randall McAllister

Appellant

v.

Her Majesty The Queen

Respondent

Judge: The Honourable Justice Linda Oland

Appeal Heard: October 9, 2008

Subject: Criminal law, right to cross-examine Crown witness, credibility, *Vetrovec* warnings, hostile witnesses, expert evidence, sentencing.

Summary: At the appellant's trial for break and enter into a Justice Centre and theft, the Deputy Sheriff testified that he and a police officer who had examined the scene thought that two people might have been involved. James Titus, who had a criminal record and himself had been a suspect, testified that the appellant had told him that he and Jeremy Williams had broken into a courthouse. When Mr. Williams, who was called by the Crown, refused to co-operate, the judge ruled him to be a hostile witness. Mr. Williams eventually testified that he had broken into the courthouse and that he did it by himself. Twice the judge considered citing him for contempt, but released the witness without sanction. He did not call upon defence counsel to cross-examine before allowing Mr. Williams to withdraw. Defence counsel did not object then nor when the hearing resumed five days later. The judge stated that Mr. Titus' evidence had the ring of truth and found that the appellant was involved with Mr. Williams in the break-in. He

sentenced him to three years' imprisonment.

Issues: Whether the judge erred in law by not permitting the defence to cross-examine the Crown witness, by relying on the evidence of a Crown witness with a criminal record who himself had been a suspect, by failing to give himself a *Vetrovec* warning, in declaring a witness hostile, or in accepting the opinion of the Deputy Sheriff as to the possible number of persons involved in the break in. Whether the judge erred in imposing a sentence that was demonstrably unfit in all the surrounding circumstances.

Result: Appeal against conviction dismissed; leave to appeal sentence granted but appeal dismissed. The right of an accused to cross-examine Crown witness is an essential component of the right to make full answer and defence. Where, however, after deliberation and for strategic reasons, defence counsel decided not to object or to insist on the right to cross-examine the Crown witness, the judge's oversight did not compromise trial fairness. The judge was alive to the difficulties with Mr. Titus' evidence and his criminal record. In the absence of palpable and overriding error, a trial judge's findings as to credibility are entitled to deference. In the circumstances, it was not essential that the judge verbalize the *Vetrovec* warning to himself. He did not err in declaring the witness hostile or in allowing a lay witness to testify in the form of an opinion. In sentencing the appellant, the judge considered the benchmark, the appellant's age, his criminal record, and the fact that this was his first offence as an adult. The sentence was not demonstrably unfit.

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 13 pages.