

Docket: CAC 155286
Date: 20000922

NOVA SCOTIA COURT OF APPEAL
[Cite as: R. v. Sparks, 2000 NSCA 105]

Glube, C.J.N.S.; Bateman and Cromwell, J.J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

RICARDO SPARKS and
TYRONE SINCLAIR DOWNEY

Respondents

REASONS FOR JUDGMENT

Counsel: Karen Bailey for the appellant
Roger A. Burrill for the respondent Sparks
D. Brian Newton, Q.C. for the respondent Downey

Appeal Heard: September 22, 2000

Judgment Delivered: September 22, 2000

THE COURT: Appeal dismissed per oral reasons for judgment of Bateman,
J.A.; Glube, C.J.N.S. and Cromwell, J.A. concurring.

BATEMAN, J.A.: (Orally)

[1] The Crown appeals the acquittals of the respondents who were jointly charged with possession of crack cocaine for the purpose of trafficking.

[2] Under s.676(1)(a) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46, the Crown's appeal from an acquittal is limited to a question of law alone.

[3] The trial judge found that she was unable to infer from the evidence that either respondent, alone, was in possession of the drugs and she was not satisfied that the evidence led to an inference of joint possession. The Crown has not satisfied us that in so doing the trial judge erred at law. Whether the guilt of an accused should be inferred from the evidence is a question of fact, not law. Here the Crown is, in essence, arguing that the acquittal is unreasonable. This is a question of fact or mixed law and fact from which a Crown appeal under s.676(1)(a) does not lie (**R. v. Biniaris** (2000), 143 C.C.C. (3d) 1.

[4] Nor are we persuaded, as urged by the Crown, that the judge found her inability to accept the evidence of either respondent a barrier to conviction on the balance of the evidence. The trial judge was clear in at least two places in her reasons that she did not find the Crown evidence sufficient to discharge the burden of proof.

[5] Accordingly, the appeal is dismissed.

Bateman, J.A.

Concurred in:

Glube, C.J.N.S.

Cromwell, J.A.