Date: 20001003
Docket: CAC 160162

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. H. (N.M.), 2000 NSCA 109]

Glube, C.J.N.S.; Chipman and Oland, JJ.A.

BETWEEN:

H. (N.M.)., a young offender

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

Counsel:	Thomas J. Feindel for the appellant Kenneth W. F. Fiske, Q.C. for the respondent
Appeal Heard:	October 3, 2000
Judgment Delivered:	October 3, 2000
THE COURT:	Appeal dismissed, per oral reasons for judgment of Glube, C.J.N.S.; Chipman and Oland, JJ.A. concurring.

Publishers of this case please take note that s. 38(1) of the **Young Offenders Act** applies and may require editing of this judgment or its heading before publication. Section 38(1) provides:

> "38(1) No person shall publish by any means any report
>
> (a) of an offence committed or alleged to have been committed by a young person, unless an order has been made under section 16 with respect thereto, or
>
> (b) of a hearing, adjudication, disposition, or appeal concerning a young person who committed or is alleged to have committed an offence
>
> in which the name of the young person, a child or a young person aggrieved by the offence or a child or a young person who appeared as a witness in connection with the offence, or in which any information serving to identify such young person or child, is disclosed."

GLUBE, C.J.N.S.: (Orally)

[1] On September 14, 1999, N.M.H. was convicted of two counts of robbery with violence contrary to section 344(b) of the **Criminal Code**.

[2] N.M.H. was not at the home of the victims at the time of the robbery. Rather she was implicated as a party to the robbery under s. 21 of the **Code**. Judge William J. Dyer, in a lengthy oral decision, found N.M.H. gave information to the two individuals, P.B. and S.C., which led them to go to the victims' home and commit the robbery against them with violence.

[3] In his decision, Judge Dyer assessed the evidence and determined the facts and the credibility of the several witnesses. Although he did not accept all of the evidence of P.B. and S.C. who testified against N.M.H., he accepted the essentials of their evidence. As he stated,

> ... on the evidence as a whole, at the crucial points where there is a divergence or conflict between [N]'s testimony and that of [C] and [B], I disbelieve her testimony.

[4] The court of appeal is to show great deference to the findings of facts and credibility by the trial judge. The test for whether or not a verdict is unreasonable is found in **Yebes v. R**. (1987), 36 C.C.C. (3d) 417

(S.C.C.) and in **R. v. Biniaris** (2000),143 C.C.C. (3d) 1 (S.C.C.). The court of appeal must re-examine and to some extent re-weigh and consider all of the evidence, and if the verdict is one which a properly instructed jury acting judicially could reasonably have rendered, then it should not be disturbed. In this case, the decision was by a judge alone and we cannot find a flaw in the trial judge's evaluation of the evidence or in his analysis which would justify reversal. (**Biniaris**, p. 21.)

[5] The appellant submits that the trial judge failed to adequately address and resolve all the inconsistencies in the evidence, citing **R. v. R. (D.)** (1996), 107 C.C.C. (3d) 289. However, that case only requires a trial judge to give reasons for his conclusions where there is confused and contradictory evidence. We find that the trial judge did make findings respecting much of the contradictory evidence and a number of the contradictions were not relevant to the role of the appellant in the robbery.

[6] In **R. v. Burns** (1994), 89 C.C.C. (3d) 193, McLachlin, J. speaking for the Court, dealt with insufficiency of reasons as follows at p. 199:

> The Court of Appeal's main concern was not that there was insufficient evidence to support the verdicts of guilty, nor that those verdicts were unreasonable, but that the trial judge's reasons failed to indicate that he had considered certain frailties in the complainant's evidence. Given the brevity of the trial judge's reasons, they could not be sure that he had properly considered all relevant matters.
>
> Failure to indicate expressly that all relevant considerations have been taken into account in arriving at a verdict is not a basis for allowing an appeal under s. 686(1)(a). This accords with the general rule that a trial judge does not err merely because he or she does not give reasons for deciding one way or the other on problematic points: see **R. v. Smith**, [1990] 1 S.C.R. 991, 109 A.R. 160, 111 N.R. 144; affirming 95 A.R. 304, 7 W.C.B. (2d) 374, and **MacDonald v. The Queen** (1976), 29 C.C.C. (2d) 257, 68 D.L.R. (3d) 649, [1977] 2 S.C.R. 665. The judge is not required to demonstrate that he or she knows the law and has considered all aspects of the evidence. Nor is the judge required to explain why he or she does not entertain a reasonable doubt as to the accused's guilt. Failure to do any of these things does not, in itself, permit a court of appeal to set aside the verdict.
>
> This rule makes good sense. To require trial judges charged with heavy case-loads of criminal cases to deal in their reasons with every aspect of every case would slow the system of justice immeasurably. Trial judges are presumed to know the law with which they work day in and day out. If they state their conclusions in brief compass, and these conclusions are supported by the evidence, the verdict should not be overturned merely because they fail to discuss collateral aspects of the case.

[7] We would find that the inconsistencies emphasized by the appellant did not result in an unreasonable verdict within the meaning of s. 686(1)(a)(i) of the **Code**.

[8] We are also unable to find that there is any basis to conclude that there was a miscarriage of justice in the decision of the trial judge (s. 686(1)(a)(iii)).

[9] The appeal is dismissed.

Glube, C.J.N.S.

Concurred in:

Chipman, J.A.

Oland, J.A.