

**NOVA SCOTIA COURT OF APPEAL**

**Citation: R. v. Paddon, 2009 NSCA 72**

**Date:** 20090623

**Docket:** CAC 300475

**Registry:** Halifax

**Between:**

Joshua Paddon

Appellant

v.

Her Majesty the Queen

Respondent

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**Judge:** The Honourable Justice Jamie W.S. Saunders

**Appeal Heard:** June 2, 2009

**Subject:** Aggravated Assault. Charge to the Jury. Answering the Jury's Question. *Browne v. Dunn* instruction. Standard of Review. Elements of the Offence. Defence of Accident. Reasonable Doubt. Standard of Proof. Standardized Jury Instructions.

**Summary:** This and a companion appeal, **The Queen v. Miller**, 2009 NSCA 71 were heard on the same day. Grounds of appeal, issues and argument were virtually identical. Ryan MacInnis was wounded as a result of going through the glass window of a door while being ejected for fighting from a bar in Antigonish by the appellant, Joshua Paddon and his fellow off-duty security guard Evan Miller. They were subsequently charged with aggravated assault. After a jury trial both were convicted and sentenced to 12 month conditional sentences.

Each appealed asking that his conviction be quashed and a new trial ordered. The appellants claimed that the trial judge:

erred in his charge by misapprehending the proper legal framework of the case causing him to misdirect the jury;

confused the jury with the content and sequence of certain portions of the charge such that his instructions did not engage the facts of the case;

erred by giving the jury a *Browne v. Dunn* instruction thereby prejudicing the appellants;

erred in his instructions as to how the jury might proceed in conducting its deliberations;

erred by not fully answering the jury's question on what constituted reasonable doubt.

**Held:** Appeals dismissed. Experienced defence counsel acting for both defendants grounded their whole theory of the case on the defence of accident. The trial judge did not misapprehend the nature of the case or the defence. His charge made it clear that this was the pivotal issue to be decided. The entire incident was recorded by a surveillance camera. The jury had the DVD and photographs to assist them during their deliberations. The jury did not require an elaborate review of the circumstances in order to fairly consider the evidence. No reasonable juror could have been confused by the trial judge's charge.

There was a sufficient basis for the trial judge to give a *Browne v. Dunn* instruction. His salutary direction was nothing more than a "gentle comment" reminding the jury of a factor they *could* take into account. The appellants were not prejudiced by the way in which the judge chose to deal with this issue.

The transcript of the judge's charge was not accurate. Reference to the audiotapes of his charge shows that what he did say to assist the jury in how to go about its deliberations was correct.

In the unique circumstances of this case the judge's recharge about reasonable doubt and the standard of proof sufficiently clarified the subject and offered a full and proper response to the jury's inquiry in all of its parts. There was no reasonable likelihood that the jury was under any misapprehension as to the meaning of reasonable doubt or the correct standard of proof to apply.

**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 2 pages.**