C.A.C. No. 129132

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Slauenwhite, 1997 NSCA 54

Clarke, C.J.N.S., Jones and Pugsley, JJ.A.

BETWEEN:

CHRISTOPHER GERALD SLAUENWHITE	)	
	)	John A. Black
	)	for the Appellant
Appellant	)	
	)	
- and -	)	
	)	William D. Delaney
	)	for the Respondent
HER MAJESTY THE QUEEN	)	
	)	
	)	
Respondent	)	Appeal Heard:
	)	February 6, 1997
	)	
	)	
	)	Judgment Delivered:
	)	February 6, 1997
	)	

THE COURT: Appeal allowed and the conviction set aside per oral reasons for judgment of Jones, J.A.; Clarke, C.J.N.S. and Pugsley, J.A. concurring.

The reasons for judgment of the Court were delivered orally by:

JONES, J.A.:

The appellant, Christopher Slauenwhite, was charged that he on or about the 7th day of January, 1996, at or near Bridgewater in the County of

Lunenburg, Province of Nova Scotia, did wilfully attempt to obstruct the course of justice in a judicial proceeding by intimidating a Crown witness contrary to s. 139(2) of the **Criminal Code**.

He was tried in Provincial Court before Judge Crawford at Bridgewater on May 17, 1996.

Lori McKinnon testified that on January 9, 1996 she was scheduled to appear in court pursuant to a subpoena by the Crown as a witness on a fraud charge against Kevin Corkum, Mr. Slauenwhite's best friend. On the preceding Saturday evening of January 6th Ms. McKinnon went with a friend, Rhonda, to the lounge in the Bridgewater Mall. They were there from 10:30 in the evening until 2:00 o'clock in the morning. Between 1:30 and 2:00 she said that she and Rhonda met up with the accused and Mr. Corkum. Mr. Corkum knew Rhonda and was speaking with her and Mr. Slauenwhite and Ms. McKinnon began talking. Ms. McKinnon stated that Mr. Slauenwhite mentioned about Mr. Corkum's upcoming trial. He said something like "he", that is Mr. Slauenwhite, "had had a good year, I don't care but I'll be wild if Kevin goes to jail", she says "he pointed at me, he was in my face" as she put it. She said she was scared because another friend, Trish Lake, had told her things about Mr. Slauenwhite and also because of Mr. Slauenwhite's telling her to "do the right thing" which she interpreted as his meaning that she should lie in order to keep Mr. Corkum from going to jail. She said she felt intimidated and that is borne out by the fact that the next morning she went to report the matter to the police.

The appellant and Kevin Corkum testified for the defence. Their evidence indicated that Lori McKinnon was present and involved in the fraud offence which included the use of a bank card. He admitted that he was upset and urged her to tell the truth. He denied that he had his finger in her face. The trial judge in entering a conviction stated "Kevin Corkum also gave evidence

which essentially corroborated both Ms. McKinnon's and Mr. Slauenwhite's version of what happened in the lounge. The issue then is not what was said, but the intent with which it was said".

After reviewing Mr. Slauenwhite's evidence she stated: "I do not accept Mr. Slauenwhite's version of his intent".

She continued:

> "Having found that I do not believe the defendant and that his version does not raise a reasonable doubt in my mind, he is guilty as charged."

The appellant has appealed his conviction. He abandoned his appeal against his sentence of three months imprisonment. The appellant contends that the trial judge did not properly assess the issue as to the appellant's credibility and that she erred in applying the burden of proof. The learned trial judge in rejecting the appellant's evidence did not expressly state that she accepted the complainant's evidence and was satisfied that the Crown had established beyond a reasonable doubt that the appellant was guilty on the balance of the evidence. The evidence of the defence witnesses only partially corroborated the evidence of the complainant. There were contradictions in the evidence. It was necessary to resolve those issues in order to enter a conviction. The ultimate burden was on the Crown and remained there until the end of the case. We are not satisfied that the trial judge properly assessed the evidence in that light. We would allow the appeal therefore and set aside the conviction. As the appellant has served the sentence this is not an appropriate case to order a new trial.

Jones, J.A.

Concurred in:

Clarke, C.J.N.S.

Pugsley, J.A.

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Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT BY:

JONES, J.A.