

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Barker, 1997 NSCA 90

Chipman, Jones and Freeman, JJ.A.

BETWEEN:

CHRISTOPHER DOUGLAS BARKER

Appellant

)
)
) James J. White
) for the Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

)
) Dana W. Giovannetti
) for the Respondent

)
) Appeal Heard:
) March 19, 1997

)
) Judgment Delivered:
) March 19, 1997

THE COURT:

Leave to appeal where necessary is granted and the appeal is dismissed as per oral reasons for judgment of Chipman, J.A.; Jones and Freeman, JJ.A., concurring.

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

CHIPMAN, J.A.:

The appellant was charged on an indictment containing four counts as

follows:

(1) On November 18, 1995, sexual assault on B.C.S. causing bodily harm, s. 272(c) of the **Criminal Code**.

(2) On November 18, 1995, confining B.C.S. without lawful authority, s. 279(2) of the **Code**.

(3) On November 18, 1995, threatening to cause serious bodily harm to B.C.S., s. 264.1(1)(a) of the **Code**.

(4) On November 19, 1995, storing a firearm in a careless manner, s. 86(3) of the **Code**.

The appellant was convicted on all four counts in Provincial Court. The convictions on the first three charges are in issue in this appeal.

The occurrence of sexual intercourse between the parties was not in issue at the trial. The appellant alleged it was consensual. Immediately following the argument of counsel, the trial judge gave brief oral reasons for his decision.

The appellant contends in this Court that there were errors of law by the trial judge in that:

(1) he did not properly address the evidence of the complainant with respect to her credibility and, in particular, with respect to perjured statements; and,

(2) made confusing remarks respecting the D.N.A. evidence.

We are satisfied that the issue of credibility was clearly before the trial judge by the submissions of counsel, and it is clear from his decision that he reviewed the evidence.

The trial judge's reasons, given orally at the conclusion of the argument, were brief. We are satisfied that notwithstanding some confusing phraseology, it is abundantly clear that the trial judge was satisfied beyond a reasonable doubt that the offences were proven by the Crown. Particularly, he made an unequivocal finding of acceptance of the complainant's version of the relevant events and a rejection of that of the appellant. He

referred to and accepted the evidence of two witnesses relating to the complainant's condition following the events at issue as corroborative of her testimony. He referred to photographs showing the complainant's injuries and concluded:

On the totality of the evidence I do not accept the evidence given by Mr. Chris Barker nor that of his brother Andrew Barker. Clearly, I accept the evidence given by [B.C.S.] as to what took place which I am satisfied is corroborated to a great degree by that of Mr. Canavan as well as Mr. Grant Burgess. Clearly, I am satisfied that the Crown has made out in totality the continuing events of the sexual assault by Mr. Chris Barker on [B.C.S.] and the injuries caused to her by him form a bodily harm and that he did confine her in the vehicle when these actions took place and that he threatened her on the return what would happen.

We are satisfied that the trial judge did not err in law in reaching his conclusions.

The appellant also submits that the verdict was unreasonable. Having reviewed the record and heard counsel's submissions, we are satisfied that the verdict was reasonable and was supported by the evidence.

Leave to appeal where necessary is granted and the appeal is dismissed.

Chipman, J.A.

Concurred in:

Jones, J.A.

Freeman, J.A.