

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Liberatore, 2010 NSCA 82

Date: 20101029

Docket: CAC 316092

Registry: Halifax

Between:

Michael Vincent Liberatore

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: October 7, 2010

Subject: Criminal law; Misapplying the burden of proof.

Summary: The appellant was found guilty of possession for the purpose of trafficking and of trafficking cocaine. The case was a case based on circumstantial evidence because the Crown's witnesses did not see drugs or money exchanged in what they categorized as a dial-a-dope transaction.

Issue: Did the judge err by failing to apply the principles set out in **R. v. W.(D.)** or by failing to consider whether he was satisfied beyond a reasonable doubt that the only reasonable inference that could be drawn from the proven facts was that the appellant was guilty?

Result: Appeal allowed and new trial ordered. The judge erred by rejecting the appellant's evidence solely because it was inconsistent with the Crown's evidence, which he preferred, and making a finding of guilt without further consideration of reasonable doubt in light of the whole of the evidence – thus treating the standard of proof as a simple credibility contest, contrary to **W.(D.)**. He also erred by failing to consider whether the guilt of the accused was the only reasonable inference to be drawn from the proven facts.

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 9 pages.