

**NOVA SCOTIA COURT OF APPEAL**

Cite as: R. v. Elliott, 1995 NSCA 193

**BETWEEN:**

**JAMES DOUGLAS ELLIOTT**

Appellant

- and -

**HER MAJESTY THE QUEEN**

Respondent

)  
) Louis M. Walsh  
) for the Appellant

)  
) Denise C. Smith  
) for the Respondent

)  
) Appeal Heard:  
) September 13, 1995

)  
) Judgment Delivered:  
) September 13, 1995  
)

**THE COURT:** Appeal dismissed, per oral reasons for judgment of Freeman, J.A., Jones and Pugsley, JJ.A. concurring.

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

**FREEMAN, J.A.:**

The appellant was convicted of impaired driving and appeals on grounds that the judgment was not supported by the evidence, was not in accordance with the doctrine of reasonable doubt, and that the trial judge failed to give reasons despite conflicting defence evidence and ignored evidence of abuse of process. The decision in its entirety is as follows:

Looking at all of the evidence in this matter and without going into it and reviewing it, I accept the evidence of the Crown in all material points, I reject the evidence of the accused in all material points, and I find the accused guilty.

The appellant admitted he was driving a camper van at the relevant time. Crown evidence included testimony of his fifteen-year-old daughter that she had been with him when he left a campground, late in the evening, after spending the evening drinking with others. Police officers, who stopped the vehicle after a complaint, testified to indicia of impairment, including weaving on the highway. The appellant testified that he had consumed a very small amount of beer and that the vehicle was hard to control on the road because of its mechanical characteristics. The appellant said that after the vehicle was stopped, he found a bottle of liquor in the back and drank a quantity of it while police were interviewing another adult who had been in the vehicle, and whom the appellant had indicated was the driver.

The test to be applied by this Court is not whether the trial judge, who is presumed to know the law, has expressed adequate reasons but whether the evidence is reasonably capable of supporting his conclusion. See **R. v. Burns** (1994) 89 C.C.C. (3d) 193 (C.C.C.); **R. v.**

**Yebes** (1987), 36 C.C.C. (3d) 417. Great deference must be paid to findings of credibility. See **R. v. W.(R)** (1992), 74 C.C.C. (3d) 134. We have re-examined, and to the necessary degree, reweighed the evidence and we are in agreement with the conclusion of the trial judge. The issue of abuse of process, suggesting that the evidence of the police officers was biased because laying of the information was delayed until it was necessary to proceed by way of indictment, was not supported by evidence and was not raised at the trial. It is without merit. The appeal is dismissed.

J.A.

Concurred in:

Jones, J.A.

Pugsley, J.A.

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REASONS FOR  
JUDGMENT BY:  
FREEMAN, J.A.  
(orally)

