

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
D.C.S., a young offender	- and -	HER MAJESTY THE QUEEN
Appellant		Respondent
C.A.C. No. 161208 J.A.	Halifax	ROSCOE,

[Cite as: R. v. D.C.S., 2000 NSCA 61]

APPEAL HEARD: April 14, 2000

JUDGMENT DELIVERED: May 12, 2000

SUBJECT: Criminal Law - Young Offenders Act -
Unreasonable Verdict - Burden of Proof

SUMMARY: The appellant, a young offender, was convicted of sexual assault with a weapon and assault causing bodily harm. The appellant and the complainant had dated and had previously had consensual sexual relations. The complainant alleged that the appellant sexually assaulted her and during the struggle, he stabbed her in the leg with a knife. The appellant agreed that he and N.S. had sexual intercourse, but testified that it was consensual and that he did not either carry a knife or stab her.

ISSUES: Was there a misapprehension of the evidence, an error in law in the application of the burden of proof, and an unreasonable verdict?

RESULT: Appeal allowed, new trial ordered. There was a misapprehension of critical evidence of the timing of certain events. In addition, the trial judge treated the case as being a matter of choice between the complainants' evidence on the one hand and the appellant's evidence on the other hand. This approach denied the appellant his right to be presumed innocent until proven guilty beyond a reasonable doubt. The trial judge failed to properly instruct himself as to the law as stated in **R. v. W.(D.)**, [1991] 1 S.C.R. 742.

Although there was an unreasonable verdict, using the criteria established in **R. v. Biniaris**, [2000] S.C.J. No. 16, there is the possibility that there is some evidence upon which a properly instructed trier of fact, might convict, therefore rather than enter acquittals, a new trial was ordered.

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Publishers of this case please take note that s.38(1) of the **Young Offenders Act** applies and may require editing of this judgment or its heading before publication. Section 38(1) provides:

- 38(1) No person shall publish by any means any report
- (a) of an offence committed or alleged to have been committed by a young person, unless or order has been made under section 16 with respect thereto, or
 - (b) of a hearing, adjudication, disposition or appeal concerning a young person who committed an offence

in which the name of the young person, a child or a young person aggrieved by the offence or a child or a person who appeared as a witness in connection with the offence, or in which any information serving to identify such young person, is disclosed."