NOVA SCOTIA COURT OF APPEAL
Citation: ***R. v. Izzard*****,** 2013 NSCA 88

Date: 20130719
Docket: CAC 405193
Registry: Halifax

Between:

Thomas Anthony Izzard
Appellant

v.

Her Majesty the Queen
Respondent

Judge: Beveridge, J.A.

Appeal Heard: June 13, 2013, in Halifax, Nova Scotia

Subject: Criminal law; misapprehension of evidence and trial process.

Summary: The appellant represented himself at trial. The appellant and four others were charged with breaking into five recreational homes on four separate properties and stealing property. Two of the accomplices testified at the appellant's trial. One did not implicate the appellant. The other gave somewhat conflicting accounts of the appellant's activities during the commission of the offences. During a *voir dire* to determine the admissibility of the appellant's statements to the police, the appellant recalled the latter accomplice. The testimony from this witness was at times favourable, but also inculpatory. The appellant nonetheless wanted the evidence as part of the trial. The judge permitted this, and relied on this evidence to convict the appellant of one of the break and enters and breach of probation. The judge sentenced the appellant to an additional two years' incarceration after credit for pre-sentence custody.

Issues: Did the trial judge misapprehend the evidence; is the verdict unreasonable or not supported by the evidence; was the trial

process tainted by unfairness; and is the sentence tainted by error or excessive?

Result: The trial judge's verdict was not unreasonable or otherwise unsupported by the evidence. The appellant did not demonstrate any misapprehension of the evidence by the trial judge. Although the trial process was unusual, it is obvious that the appellant wanted to question the accomplice further, claiming that he was not properly prepared when he first examined the witness. The record discloses that the appellant initially thought the examination was part of the trial; and when he understood it was part of the *voir dire*, he wanted it to be part of the trial. In hindsight, it was an unfortunate decision, but it was his tactical decision to make. It did not result in an unfair trial.

The sentence decision by the trial judge was not tainted by any error in principle, nor was it demonstrably unfit. Leave to appeal from sentence was granted, but the appeal from conviction and sentence was dismissed.

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 14 pages.