

NOVA SCOTIA COURT OF APPEAL

**Cite as: R. v. Webb, 1995 NSCA 30
Chipman, Jones and Freeman, JJ.A.**

BETWEEN:

BRENDA ANN WEBB)	Bradford G. Yuill
)	for the appellant
Appellant)	
)	
- and -)	Kenneth W.F. Fiske, Q.C.
)	for the respondent
HER MAJESTY THE QUEEN)	
)	
Respondent)	
)	Appeal Heard:
)	January 17, 1995
)	Judgment Delivered:
)	January 17, 1995
)	

THE COURT: Leave to appeal conviction granted and appeals against sentence and conviction are dismissed, per oral reasons for judgment of Freeman, J.A.; Jones and Chipman, JJ.A. concurring.

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

FREEMAN, J.A.:

The appellant, Brenda Ann Webb, who claims she was deliberately run into by the complainant and driven around a parking lot and several streets in Antigonish, N.S. on the hood of her car, has appealed against her conviction on a charge of mischief for causing property damage to the vehicle, contrary to s. 430(3)(b) of the **Criminal Code**. She also seeks leave to appeal from her sentence, which was suspended subject to six months probation and a \$100 restitution order.

The complainant, Kathleen Sorensen, had lived with the appellant's brother, John Simon, until he moved into the home of his mother, Rose Simon, after suffering brain damage in a motor vehicle accident in March 1993. No medical evidence was called as to his condition, and there was no evidence of legal guardianship. Mr. Simon's relationship with Ms. Sorensen ended after the accident and she does not appear to be on good terms with his family.

The appellant operates a store on the parking lot in Antigonish. John Simon and Rose Simon were walking toward it on July 5, 1993, when Ms. Sorensen appeared and asked Mr. Simon to get in her car so they could talk. He appeared willing to do so and left with her on foot while his mother continued on to Brenda Webb's store where she reported what had happened. Ms. Webb approached Ms. Sorensen's car, in which Mr. Simon was in the front passenger seat.

The appellant's factum states:

Kathleen Sorensen put the vehicle in motion. The appellant was injured and ended up on the hood of the car. Kathleen Sorensen proceeded to drive the vehicle through the parking lot onto Sydney Street, onto St. Mary's Street, ending at the corner of College Street and St. Mary's Street, with the appellant still on the hood.

Witnesses said Ms. Webb was agitated and upset. She had been heard shouting to her brother to get out of the car as Ms. Sorensen was going to kill him. She was pounding on the hood of the car with her fist and clinging to the windshield wipers. The hood was dented, the windshield cracked and the

wipers damaged.

Ms. Sorensen was convicted of dangerous driving, sentenced to a fine and probation, and deprived of her driver's license for two years.

The appellant raised eighteen grounds of appeal which were reduced to four issues plus the sentence. Allegations of legal error on the part of the trial judge include failure to consider the doctrines of necessity, self-defence, defence of another person, and legal justification or excuse. Allegations of errors of fact or mixed fact or law relate to the sufficiency of the evidence. It was urged that Ms. Webb was entitled to a stay or a discharge.

After considering the evidence of the Crown and the defence, the trial judge, His Honour Judge McEwan of the Provincial Court, made this key finding:

In my opinion here I accept the evidence of Kathy Sorensen and that this damage was done wilfully and I make a finding of that effect . . .

Ms. Sorensen had testified that she had moved her car forward toward Ms. Webb and was not sure if she had hit her. She was asked how fast she was going.

Not fast at all. It didn't register, crawl. I wasn't going fast at all. And I told her to get out of the way of the car again, she said no and this time she hit the hood of the car with her fist and she dented it. . . . Brenda leaned forward on to the car and she puts her hands where the windshield wipers meet at the base of the windshield and she held on to there and she started hitting the windshield with her fist and yelling at me and yelling at John. And I didn't know what else to do she . . . I went forward again and she said stop the car and I stopped the car and I said . . . get off my car and she said no. So then I went forward again a little bit and she cracked the windshield with her fist and she said stop the car and I stopped the car and I said get off the car and she wouldn't. . . . Every time she said stop the car I would stop the car and I would ask her to get off the, I would tell her to get off the car and she wouldn't.

This is part of the evidence, specifically accepted by Judge McEwan. His acceptance of Ms. Sorensen's evidence in preference to Ms.

Webb's effectively removes any evidentiary foundation for the various defences put forward by the appellant. In the absence of manifest error or clear injustice it is not the function of this court to interfere with the findings of a trial judge, particularly with respect to credibility. The verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered. See **Yeboes v. R.** (1987), 36 C.C.C. (3d) 417.

Leave is granted to appeal the conviction on questions of fact and mixed fact and law, and to appeal the sentence. We have not been persuaded the trial judge committed any error of principle with respect to the sentence. Therefore, the appeals are dismissed.

Freeman, J.A.

Concurred in:

Jones, J.A.

Chipman, J.A.