C.A.C. No. 109331

NOVA SCOTIA COURT OF APPEAL

**Chipman, Pugsley and Flinn, JJ.A.**

**Cite as: R. v. J.R.L., 1995 NSCA 143**

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| **BETWEEN:** | | |
| J. R. L. | | Michael G. Baker for the Appellant |
| | Appellant | |
| **- and -** | | |
| HER MAJESTY THE QUEEN | | William D. Delaney for the Respondent |
| | Respondent | |
| | | Appeal Heard: June 13, 1995 |
| | | Judgment Delivered: June 13, 1995 |

**THE COURT:** The appeal is dismissed as per oral reasons for judgment of Chipman, J.A.; Pugsley and Flinn, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

**CHIPMAN, J.A.:**

The appellant was convicted, following trial in Youth Court of a charge that he:

> ". . . on or about the 31st day of October, A.D., 1993, at, or near Chester, in the County of Lunenburg, in the Province of Nova Scotia, being a young person within the meaning of the Young Offenders Act did intentionally or recklessly cause damage by fire to a pile of logs, the property of Irene JOLLYMORE situate at the Government Wharf at Chester, Lunenburg County, Nova Scotia, contrary to Section 434 of the Criminal Code of Canada."

He appeals to this Court raising two issues:

(1) that the verdict is unreasonable;

(2) that the trial judge improperly instructed himself.

In determining whether the verdict was unreasonable, we must re-examine and to some extent reweigh and consider the effect of the evidence. In this case, credibility of witnesses, particularly that of the appellant, was a key factor. The following passage from the reasons of McLachlin, J. in **Regina v. W.(R.)** (1992), 74 C.C.C. (3d) 134 at 141 is pertinent:

> "It is thus clear that a court of appeal, in determining whether the trier of fact could reasonably have reached the conclusion that the accused is guilty beyond a reasonable doubt, must re-examine, and to some extent at least, reweigh and consider the effect of the evidence. The only question remaining is whether this rule applies to verdicts based on findings of credibility. In my opinion, it does. The test remains the same: could a jury or judge properly instructed and acting reasonably have convicted? That said, in applying the test the Court of Appeal should show great deference to findings of credibility made at trial. This court has repeatedly affirmed the importance of taking into account the special position of the trier of fact on matters of credibility: **White v. The King** (1947), 89 C.C.C. 148 at p. 151, [1947] S.C.R. 268, 3 C.R. 232; **R. v. M.(S.H.)** (1989), 50 C.C.C. (3d) 503 at pp. 548-9, [1989] 2 S.C.R. 446, 71 C.R. (3d) 257. The trial judge has the advantage, denied to the appellate court, of seeing and hearing the evidence of witnesses. However, as a matter of law it remains open to an appellate court to overturn a verdict based on findings of credibility where, after considering all the evidence and having due regard to the advantages afforded to the trial judge, it concludes that the verdict is unreasonable.
>
> I, therefore, conclude that the Court of Appeal did not err in re-examining and reweighing the evidence, as the appellant contends. That leaves, however, the question of whether, on all the evidence, the Court of Appeal was entitled to conclude that the judge could not reasonably have decided

that the accused was guilty beyond a reasonable doubt."

The trial judge's decision is brief and does not discuss legal concepts. However, in the circumstances, the following statement made by him is sufficient:

> "I therefore find that the accused and C.D. were in on this offence together. There is no question in my mind that this was planned ahead of time and told to many others who attended at the wharf when the fire took place. . ."

We refer to **R. v. Burns** (1994), 89 C.C.C. (3d) 193 where McLachlin, J. said at p. 199:

> "Failure to indicate expressly that all relevant considerations have been taken into account in arriving at a verdict is not a basis for allowing an appeal under s. 686(1)(a). This accords with the general rule that a trial judge does not err merely because he or she does not give reasons for deciding one way or the other on problematic points: see **R. v. Smith**, [1990] 1 S.C.R. 991, affirming (1989), 95 A.R. 304, and **MacDonald v. The Queen**, [1977] 2 S.C.R. 665. The judge is not required to demonstrate that he or she knows the law and has considered all aspects of the evidence. Nor is the judge required to explain why he or she does not entertain a reasonable doubt as to the accused's guilt. Failure to do any of these things does not, in itself, permit a court of appeal to set aside the verdict."

The trial judge did not believe the appellant's testimony. We are satisfied that he was convinced beyond a reasonable doubt of his guilt. We are also satisfied that, based on the trial judge's findings, the verdict was reasonable.

The appeal is dismissed.

Chipman, J.A.

Concurred in:

Pugsley, J.A.

Flinn, J.A.