

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Burke, 1994 NSCA 246
Matthews, Jones and Pugsley, J.J.A.

BETWEEN:

CHRISTOPHER P. BURKE

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

) Daniel A. MacRury
) for the Appellant
)

) William D. Delaney
) for the Respondent
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) Appeal Heard:
) November 24, 1994
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) Judgment Delivered:
) November 24, 1994
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THE COURT: Appeals against convictions be allowed; the convictions set aside and a new trial ordered per oral reasons for judgment of Matthews, J.A.; Jones and Pugsley, J.J.A. concurring.

ERRATUM

4th paragraph - sentence should read "The trial judge erred in law in applying the wrong "onus" rather than "ones".

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

MATTHEWS, J.A.:

On January 20, 1994, the appellant, after trial before a Provincial Court judge was found guilty of one count of assault causing bodily harm and two counts of assault. On April 14, 1994, he was sentenced to 18 months incarceration on the first count and 6 months concurrent on each of the other two counts, to be followed by a period of one year probation.

He now appeals against both convictions and sentence.

The Crown agrees with the appellant that the appeals against conviction should be granted and a new trial ordered.

The trial judge erred in law in applying the wrong onus of proof in respect to the issue of self-defence. An accused need only raise a reasonable doubt respecting the issue of self-defence to deserve an acquittal. Further, the trial judge appears to have confused the issues of consent and self-defence.

We allow the appeal against the convictions, set aside the convictions and order a new trial.

In consequence it is not necessary to consider the appeal against sentence.

J.A.

Concurred in:

Jones, J.A.

Pugsley, J.A.

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