

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Rowe*, 2004 NSCA 85

Date: 20040617

Docket: CAC 215769

Registry: Halifax

Between:

Deborah Lynn Rowe

Appellant

v.

Her Majesty the Queen

Respondent

Judge(s):

Glube, C.J.N.S.; Saunders and Oland, JJ.A.

Appeal Heard:

June 17, 2004, in Halifax, Nova Scotia

Held:

Appeal allowed and new trial ordered, as per reasons for judgment of Saunders, J.A.; Glube, C.J.N.S. and Oland, J.A. concurring.

Counsel:

Mr. Kelly J. Serbu, for the appellant
Mr. Peter Rosinski, for the respondent

Reasons for judgment:

[1] After reviewing the record and considering the submissions of counsel, we are unanimously of the view that the appeal ought to be allowed and a new trial ordered before a different judge.

[2] Immediately after hearing the testimony of eight witnesses, the judge delivered an oral decision. In its entirety that decision read:

Thank you. Deborah Rowe, along with four others were involved in this matter, three of whom have pleaded guilty to included offences and one, Godfrey Maloney, a warrant is out for his arrest for non-appearance, were charged with assault with a beer bottle on Vanessa Messina and Mike Messina, contrary to Section 267(a) and on wounding the both of them causing an aggravated assault, contrary to Section 268 of the *Criminal Code*.

Evidence indicates on that particular day, Vanessa Messina and Mike Messina ended up at the residence of Debbie Rowe. It's of little interest to the Court whether who invited who, but there was a drinking party went on, others showed up, more beer was purchased by, or gone for and purchased by Vanessa Messina and Mike Messina, and Vanessa Messina was advised that there was going to be an altercation involving her and I consider the evidence of the Messinas, together with the evidence of the co-accuseds, Syliboy and Kimberley Paul, to be more credible than that of the accused, Debbie Rowe, who I think was in her evidence was just trying to justify what went on rather than telling the whole picture. I'm satisfied beyond a reasonable doubt that she's guilty of the included offence of 267(b) which, on the second count, the same as to which the other co-accuseds pleaded guilty this morning and that I find her, and the first count is I find her not guilty of, and the matter's put over to Monday morning at 11:00 o'clock.

[3] With respect, these reasons are inadequate. They do not comply with the law. They do not provide the parties with a reasonably intelligible basis for the conviction, nor permit meaningful appellate review of the correctness of the trial judge's decision. **R. v. Sheppard**, [2002] 1 S.C.R. 869. Where, as here, there was contradictory evidence on material points, the judge's reasons, including conclusions of fact, ought to provide a window into the rationale behind those conclusions which, ultimately, led the judge to convict. **R. v. Hache** (1999), 175 N.S.R. (2d) 297 (C.A.).

[4] There is a further reason why this appeal should be allowed. The judge seriously erred in expressing himself with respect to assessing credibility and proof of guilt in a criminal case. He said:

. . . and I consider that the evidence of the Messinas, together with the evidence of the co-accuseds, Syliboy and Kimberly Paul, to be more credible than that of the accused, Debbie Rowe . . .

From this it may well be supposed that the trial judge convicted the appellant after merely comparing her version of events to that offered by the Crown witnesses, and favouring the latter.

[5] Such an approach hardly fulfills the analysis necessary when deciding whether the Crown has proven guilt to the required criminal standard. Having been critical of the appellant's testimony it was still incumbent upon the judge to ask himself whether he was left in any reasonable doubt by either Ms. Rowe's evidence, or the evidence as a whole. **R. v. W.(D.)**, [1991] 1 S.C.R. 742.

[6] Notwithstanding the judge's mention of the words "reasonable doubt," one cannot confidently conclude - given the paucity of reasons - that the judge actually engaged in a reasoning process that would determine guilt beyond a reasonable doubt having regard to all of the evidence presented at the trial.

[7] Having allowed the appeal and ordered a new trial, it is not necessary for us to consider the merits, if any, of the appellant's other grounds concerning self-defence, incompetence on the part of her trial counsel, or the sentence imposed.

Saunders, J.A.

Concurred in:

Glube, C.J.N.S.

Oland, J.A.