

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. D.E.S., 2005 NSPC 13

Date: 20050324

Docket: 1197275-1197280

Registry: Dartmouth

Between:

Her Majesty the Queen

v.

D. E. S.

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Judge: The Honourable Associate Chief Judge R. Brian Gibson,
J.P.C.

Heard: May 24, 2005 in Dartmouth, Nova Scotia

Summary: The accused was charged on an Information sworn at Dartmouth, Nova Scotia on July 4, 2002 with the commission of six Criminal Code offences, consisting of two counts contrary to S.255, two counts contrary to S.246.1, one count contrary to S.157 and one count contrary to S.245. These charges arose from alleged conduct in Germany between July 11, 1983 and November 1, 1985. During that time period the accused was a member of the Canadian Armed Forces and subject to the Code of Discipline set out in the National Defence Act.

The accused resided in Nova Scotia on July 4, 2002 when these charges were laid. The alleged victims are Canadian citizens, one of whom resided in Ontario, the other in Alberta, when these charges were laid.

Issue: Did the Provincial Court of Nova Scotia have jurisdiction to conduct a trial in respect of these Criminal Code charges.

Result:

Waiver of German jurisdiction to Canadian authorities, contemplated by Treaty Agreements between Canada and Germany had not been obtained. The provisions of S.273 of the National Defence Act that otherwise purport to grant extraterritorial jurisdiction to a Canadian Civil Court, including the Provincial Court of Nova Scotia, were thereby inoperative in this case. The Court concluded that it did not have jurisdiction to conduct a trial of these charges.

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