

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Langille-Buell, 2011 NSPC 109

**Date:** 20111216  
**Docket:** 2335764  
**Registry:** Pictou

**Between:**

Her Majesty the Queen

v.

Jonathan Lloyd Langille-Buell

**Judge:**

The Honourable Judge Del W. Atwood

**Heard:**

December 16, 2011, in Pictou, Nova Scotia

**Charge:** That on or about the 10<sup>th</sup> day of July, A.D., 2011, at or near Stellarton, Nova Scotia, did steal a portable Sony DVD player and a pair of mens shoes from Jeffery William Miner and at the time thereof did use violence to Jeffery William Miner, contrary to Section 344(b) of the **Criminal Code of Canada**.

**Counsel:**

William Gorman, for the Crown  
Rob Sutherland, for the Defence

**Orally:**

[1] I thank counsel for their submissions. The Court has for decision a trial matter involving Mr. Jonathan Lloyd Langille-Buell. Mr. Buell stands charged with an indictable offence alleging that on the 10<sup>th</sup> of July, 2011, at or near Stellarton, Nova Scotia, he did steal a portable Sony DVD player and a pair of men's shoes from Jeffrey William Miner, and at the time thereof, did use violence to Jeffrey William Miner, contrary to para. 344(b) of the *Criminal Code of Canada*. Mr. Langille-Buell elected trial in this Court and pleaded not guilty.

[2] Mr. Langille-Buell also pleaded guilty to counts of assault causing bodily harm on Mr. Miner, contrary to para. 267(b)CC, and breaching a recognizance, a violation of the keep-the-peace condition of a recognizance, pursuant to subsection 145(3)CC.

[3] With respect to the robbery trial, there is no dispute before the Court regarding the time, place and date of the occurrence. There is no doubt that Mr. Langille-Buell unlawfully used violence against Mr. Miner. In fact, as I noted a

moment ago, Mr. Langille-Buell admitted to that crime and has pleaded guilty to a para. 267(b) count.

[4] The issue in this particular case pertains to that element of the offence of robbery requiring proof of stealing. As has been pointed out by the prosecution, stealing is defined in section 2 of the *Criminal Code* as meaning “to commit theft” and theft is defined in section 322 of the *Criminal Code*.

[5] The Crown has referred the Court to *R. v. Bourassa*, which deals, to some extent, with the definition of stealing.<sup>1</sup>

[6] The leading decision in the Province of Nova Scotia with respect to the constituent elements of theft, specifically the component that deals with proof of fraudulent intent, was a decision out of the Appeal Division from the early 1980s involving a lady by the name of Ms. Dalzell. That decision had a long and storied history.

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<sup>1</sup>2004 NSCA 127 at para. 7.

[7] The trial of the Dalzell matter was heard by Randall J.P.C., Judge Randall acquitted Ms. Dalzell. The acquittal was appealed by the Crown to the County Court Judges' Criminal Court for District Number One and it was the late Judge Peter J. T. O'Hearn of that Court who heard the summary conviction appeal. Judge O'Hearn gave, well, I don't have the decision in front of me but Judge O'Hearn rendered a lengthy and scholarly review of the element of the offence of theft comprising fraudulent intent.<sup>2</sup>

[8] Judge O'Hearn found that Judge Randall had applied the law properly and that it was within Judge Randall's fact-finding role—proof of fraudulent intent being a finding of fact—and, so, well within Judge Randall's fact-finding authority to make the findings that he did, namely, that there was no fraudulent intent on Ms. Dalzell's part when she took merchandise from a retail grocer as part of her self-directed research into store security.<sup>3</sup>

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<sup>2</sup>*R. v. Dalzell*, [1982] N.S.J. No. 160, 54 N.S.R. (2d) 239, 3 C.C.C. (3d) 232, at paras. 23-53.

<sup>3</sup>*Id.* at para. 54.

[9] The summary conviction appeal decision was then appealed by the Crown to the Nova Scotia Supreme Court, Appeal Division. As I recall it, the appeal was heard in either 1983 or 1984 and there were highly instructive opinions written by Cooper J.A. and MacDonald J.A. ; the upshot of this was that the Appeal Division found essentially that the element of the offence of theft that requires proof of a fraudulent intent—and I would refer parenthetically to para. 322(1)(a) of the *Code*, which states:

Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

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—involves dishonestly appropriating property to one's own use.<sup>4</sup>

[10] In this particular case, that's clearly the issue. Did Mr. Langille-Buell steal the DVD player and the shoes from Mr. Miner?

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<sup>4</sup>[1983] N.S.J. No. 382, 57 N.S.R. (2d) 148, 6 C.C.C. (3d) 112 at paras. 19-26, 30 (2:1), Pace J.A. dissenting.

[11] The Court observes, first of all, that the principal actors in this case, Mr. Langille-Buell, Mr. Miner, Mr. Shakness and Mr. Horan are all persons with extensive histories with the criminal -justice system. The Court recognizes that individuals with those sorts of backgrounds typically do not interact with police or with courts in the same manner as individuals who do not have that sort of biography might do.

[12] I had the opportunity of observing the testimony of Mr. Miner, indeed, of all of the witnesses. Their testimony is fresh in my memory. I've also reviewed my notes. I've audited, using the Court log system, the *viva voce* testimony, so to speak, of the witnesses, which was recorded digitally by the court recording apparatus.

[13] With respect to the evidence of Mr. Miner, I found Mr. Miner to be, by and large, a witness of questionable credibility. Mr. Miner was asked on direct examination how he came into possession of the DVD player. Mr. Miner stated that it was a gift from a friend. The name of that friend he was reluctant to divulge. I find it highly incredible that anyone would be prepared to gift to someone such as

Mr. Miner, with the record that Mr. Miner bore into Court, a brand new Sony DVD player in, as noted by the Crown Attorney, the original packaging.

[14] I found Mr. Miner to be, in many respects, argumentative and confrontational when cross-examined by Mr. Sutherland; I find Mr. Miner's explanation of how he came into possession of that DVD player—basically, an electronics Samaritan who laid a brand new piece of electronic equipment in his hands—highly suspect and, in the Court's view, incredible.

[15] Now, with respect to Mr. Langille-Buell's explanation, supported as it was by Mr. Shakness, I might not be convinced entirely of what was offered to the Court but it does, indeed, raise in the Court's mind, a reasonable doubt and that reasonable doubt is reinforced because of the testimony of one particular witness and that was the testimony of Mr. Stanley Joseph Mayich.

[16] Mr. Mayich was an impartial bystander who observed what took place on the 10<sup>th</sup> of July of 2010. He observed the interaction between Mr. Langille-Buell and Mr. Miner; Mr. Mayich's evidence was very detailed. He clearly had a very good recall of what took place. I found him to be an impartial and reliable witness.

He clearly did not know well the people whom he observed fighting near his front yard, but he was very specific about things that were said and this was evidence that was elicited from Mr. Mayich on, indeed, direct examination by the Crown.

[17] Mr. Mayich quotes Mr. Miner as saying, “you stole my stuff. I want my stuff back. It’s mine. I’m keeping it. I’m going to have you charged with assault.” But then he goes on to state, at the 14:20:50 time marker on the Court Log record: “Mr. Buell picked up the plastic bag and proceeded to go home.” Question asked of Mr. Mayich by the Crown: “Did you hear Mr. Buell say anything?” Answer: “It’s my stuff. I’m taking my stuff.”

[18] This, in the Court’s view, supports the evidence of Mr. Buell that he was honestly claiming a property interest in the contents of that bag right from the beginning. It certainly raises a reasonable doubt in my mind that Mr. Shakness had dropped off that bag with the contents of the DVD player and the shoes for Mr. Buell. Whether it was left on Mr. Shakness’ deck or on Mr. Buell’s deck, I don’t believe that a great deal turns on that point. I do find that Mr. Buell believed that he had a property interest in that DVD player and in the contents of that bag.

[19] As to why Mr. Buell might have been vague or not told the full truth to the police when he was interviewed, I had the opportunity of observing the video recording. Mr. Buell has offered up an explanation that in my mind is credible. Whether Mr. Buell has a legitimate beef with the Stellarton Police, that's for somebody else to say. That's not for this Court to adjudicate, but I'm satisfied that Mr. Buell held back and wasn't completely co-operative with the police because of concerns that he might be labelled as a snitch or a rat.

[20] Ultimately, defence witness Horan lugged into Court today the DVD player, itself. I am well satisfied that this is the DVD player that Mr. Langille-Buell took from Mr. Miner. This is the DVD player that Stellarton police seized from the accused when he was arrested. This is the DVD player that the police returned to Mr. Miner after photographing it. Mr. Horan says he bought it from Mr. Miner after that point, and it is clear from Mr. Horan's evidence that Mr. Miner admitted to him that there was something not quite right about how he had come into possession of it.

[21] I observe, as well, that there's no evidence before the Court that Mr. Langille-Buell was surreptitious or secretive in any way in taking the bag with its

contents away from Mr. Miner. In fact, the taking was pretty conspicuous. I acknowledge that, for the purposes of determining whether a theft has been committed, pursuant to sub-s. 322(3)CC, a taking or conversion of anything may be fraudulent, notwithstanding that it is effected without secrecy or attempt at concealment. But that doesn't mean that the Court can't consider lack of secrecy or lack of evidence of an attempt at concealment in assessing whether there is a fraudulent intent.

[22] In the Court's view, Mr. Langille-Buell was declaring right from the beginning that Mr. Miner was a thief. He made no effort to conceal what he was doing in picking up the bag after he had laid the beating on Mr. Miner.

[23] Mr. Langille-Buell apologized to the bystanders as he walked away from the scene and all of this evidence certainly leaves the Court in a state of reasonable doubt as to whether the element of theft has been proven. In fact, what the Court is prepared to state, the Court finds it as probable that Mr. Langille-Buell had an ownership interest in the contents of that bag. I'm prepared to accept the version of what took place based on Mr. Langille-Buell's testimony and based on what was sworn to by the defence witnesses.

[24] Now, there may well be a legitimate question of how Mr. Shakness came into possession of that bag and its contents; but Mr. Shakness isn't on trial, Mr. Shakness is not charged with theft. I find as a fact that, indeed, Mr. Shakness did leave that bag for Mr. Langille-Buell on the accused's property or at least close to it, and Mr. Shakeness conveyed to Mr. Langille-Buell the clear intent that he was leaving that bag for Mr. Langille-Buell's own use.

[25] Accordingly, as the Court has found that the "theft" element of the offence of robbery has not been proven beyond a reasonable doubt and having made that finding, Mr. Langille-Buell is acquitted of the offence of robbery.

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JUDGE DEL W. ATWOOD, A JUDGE OF THE  
PROVINCIAL COURT FOR THE PROVINCE  
OF NOVA SCOTIA