

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R v Clough-Mallard*, 2025 NSPC 28

**Date:** 20250929

**Docket:** 8720218-8720219

**Registry:** Kentville

**Between:**

His Majesty the King

v.

Shannon Clough-Mallard

**TRIAL DECISION**

**Judge:** The Honourable Associate Chief Judge Ronda van der Hoek

**Heard:** September 10, 2025

**Decision:** September 26, 2025

**Charges:** Sections 140(2) x 2 of the *Criminal Code*

**Counsel:** Don Urquhart for the Crown  
Carbo Kwan for the Defence

**By the Court:**

*Introduction*

[1] A 911 operator took a report from a female caller claiming a man was assaulting a woman, and police patrolled the relevant area but found nothing. A second 911 call came in a few hours later also from a female caller reporting a man assaulting a woman this time with a weapon, on Jones Road, and providing a licence plate number. Using the plate number, police located Mr. Mil-wood only to determine there were no such assaults. He surmised his estranged wife, Ms. Clough-Mallard, was the likely caller, advised he had been in the Jones Road earlier that night where he argued with her, and provided police her phone number that would match that of the 911 callers. Ms. Clough-Mallard is charged with two counts of public mischief by making false statements and causing a police officer to enter into an investigation.

[2] The trial was quite brief, Constable Fahie, the investigating officer, and Mr. Romaine Mil-wood, the subject of the alleged false statement, testified for the Crown. The defence called no evidence.

[3] Defence counsel conceded the evidence supports all the elements of the offences, admits identity and the accuracy of the 911 recordings. But to be clear,

there was no admission Ms. Clough-Mallard was the 911 caller. So, identity of the caller is the focus of the trial.

[4] First, I appreciate counsel staying late to conclude witness testimony.

Closing submissions were set over to today, and I have now considered all of the evidence, the closing submissions, and the relevant case law. I do not propose to reiterate much of the evidence in this very brief trial but will instead provide an overview of my impressions of the evidence and focus on the points identified by counsel.

*Burden of proof in a criminal trial:*

[5] In a criminal trial the Crown bears the burden to prove the elements of the offence charged beyond a reasonable doubt. The Court listens carefully to the testimony of all the witnesses, applies even scrutiny, and makes findings of fact. In doing so, it can accept some, none, or all of what any witness says, and no witness, regardless of their station in life, is presumed to provide reliable and credible evidence. All human beings are fallible, as are their memories.

[6] In assessing reliability and credibility of witness testimony the Court considers whether the testimony was intrinsically consistent, things were said differently at different times, was it plausible and balanced, was the witness able to recall and communicate what was observed, and was that ability impacted by such

things as the passage of time, emotion, or other factors. I also considered whether a witness was being sincere, candid, biased, reticent, and/or evasive during testimony.

[7] Credibility and reliability of identification evidence are important but separate considerations. Credibility assesses whether the witness is truthful, biased, exaggerating or trying to tailor their evidence in some fashion. Reliability involves a consideration of the weight to be given to the evidence including an assessment as to whether the witness's opinion about identity is actually correct. The danger in identification cases is that a witness who firmly and honestly believes they have identified the voice, and are therefore very credible, may also be mistaken.

[8] In assessing the reliability of a witness's identification testimony, the court must look at why the witness believes it was the defendant. For example, was there something about the voice or what the person said? The court must also consider the witness's prior familiarity with the person's voice. Extensive previous contact increases the likelihood that the identification is reliable.

[9] So, the evaluation of the strength of a particular witness's testimony is unique and depends on a wide range of considerations. Other court decisions involving identification evidence are not particularly helpful in deciding whether

another witness in a different trial is reliable but will illustrate some of the considerations which may arise.

### **THE EVIDENCE AND FACTS**

[10] Cst. Fahie testified providing a substantial amount of narrative. I will parse that narrative down to its essence: while working in uniform late on July 28, 2023, he was dispatched to look for a black man and a white woman engaged in “intimate partner violence” in the Commercial Street area of New Minas. He left a different investigation to patrol for 20-25 minutes but found nothing.

[11] A few hours later at approximately 1:30 am, on July 29, 2023, he was once again dispatched in relation to a similar report, describing similar people, this time in the Jones Road area, and was also provided a connecting licence plate number.

[12] Cst. Fahie testified that the plate number “came up to” Romaine Mil-wood, and so he headed in the direction of Mr. Mil-wood’s home address. En route, he located a car bearing the relevant licence plate and stopped the vehicle. Cst. Fahie corrected himself, testifying that the white woman driving the car was actually the plate holder, and not Mr. Mil-wood.

[13] The occupants of the vehicle were “calm”, and while one officer spoke to the white female driver, Cst. Fahie says he spoke to Mr. Mil-wood who appeared shocked when Cst. Fahie outlined the reports from 911 – but “it was almost like he

was expecting it". Mr. Mil-wood, who is Black and Jamaican, testified that he received a call a short time before the traffic stop advising that the police were looking for him. He was not asked who provided the "heads up".

[14] While Cst. Fahie could not recall Mr. Mil-wood's exact verbal responses, he recalls him saying there was no assault, and suggested his estranged wife, Shannon Clough-Mallard, was involved in the false reports. Mr. Mil-wood explained that Ms. Clough-Mallard probably made the calls because they argued earlier on Jones Road when he was invited there to collect some belongings. Upon request, Mr. Mil-wood provided Ms. Cough-Mallard's phone number- (\*\*\*) \*\*\*- 0312, saved on his cell phone under the contact list under 'Shannon'. While the officer saw the contact, he could not recall if there was also a last name visible on the phone screen. He did not check to see if there was a history of calls between Ms. Mil-wood and that number.

[15] Cst. Fahie testified that he did have information about the phone numbers from which the 911 calls originated, but the name Clough-Mallard did ring a bell. So, concluding there was no criminal activity involving Mr. Mil-wood and the female driver, he left the area to complete his investigation.

[16] First, Cst. Fahie requested the 911 recordings that same day. Second, he located and arrested Ms. Clough-Mallard on July 30, 2023,

[17] Cst. Fahie received the 911 recordings on August 3, 2023, listened to them, recognized Ms. Clough-Mallard's voice, and noted the phone numbers attributed to both callers were the same and also the same as the phone number provided him by Mr. Mil-wood- (\*\*\*) \*\*\*-0312.

*The 911 calls:*

[18] The 911 calls were played in court and admitted by consent.<sup>1</sup> The first caller identified herself as Margaret Atwell, date of birth September 15, 1986, and the second caller identified herself as Leah Desjardin, date of birth September 15,

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<sup>1</sup> Summary of the 911 calls:

1<sup>st</sup>- I'm watching someone beating up on their girlfriend on connector in New Minas. He was doing it by the overpass. The connector road not sure of actual name to it. We were driving by, and he was kicking her and punching her. She had brownish hair, and he was a Jamaican with blue jeans on and a green shirt and white chaps, sneakers. Only reason I know is because my husband wears them. The girl looked pretty young- in 20s and he was late twenties earlier 30's. We stopped, he said 'get going its none of your business'. It happened 5 minutes ago. They looked like they were walking back to New Minas, on foot. Female was wearing blackish pants skinny jeans and a blue shirt. He had a pouch red, I think. He was also wearing a hat, but I was trying to get as much as I could but had to go because two kids in the car sleeping. Were they drinking? He was taking a drink from a little bottle and telling her she was stupid. This was all near the police station, near the gas station. The husband noticed a little knife on his side.

2<sup>nd</sup>- Hi, um I was just out walking from a friend's house. I come across this woman, not sure what going on, but I do I think she just caught her or whatever. He is yelling, it's just a bunch of shit. The male is a Jamaican male, jeans, blue shirt, and baseball hat, Black, 23-24, very skinny. He actually hit her, and she is white, and he is driving with a white girl too, in a van with a licence plate \*\*\*\*\*. I was trying to mind my business heard her saying please don't do this. She looked very pregnant; she is a white girl probably 32. He is under influence of drugs, I don't know, I smelled weed. Weapon? Yes, because he literally popped a knife and said he wished he did not get her pregnant and could just kill her. Probably about 10-15 ago, because I am walking home and it only takes me a few minutes. It was a black SUV. The pregnant woman was outside the vehicle. I am pretty sure she is injured because he punched her. They literally just drove by me. They are literally leaving right now, but don't know direction. Your address? I am at a hotel right now. Was a woman in the van with them? I don't think so, looked like he was running her down with the other woman in the vehicle.

1983. Both callers reported the same phone number. The calls were fairly lengthy, more so the second.

[19] Cst. Fahie did not investigate whether the names connected to real people, nor did he determine whether the respective dates of birth connected to those names. Nor did he investigate to determine whether the phone number was registered to Ms. Clough-Mallard. He neither called the number, nor obtained a *Production Order* for details regarding registration of the number.

[20] Now, the crux of the case, was it Ms. Clough-Mallard's voice on the 911 recordings? Cst. Fahie says it was because he recognized Ms. Clough-Mallard's voice. He testified it was "clearly Ms. Clough-Mallard because I have dealt with her on several occasions and her soft low voice distincted (sic) to be hers".

[21] He testified that he has dealt with Ms. Clough-Mallard on three or four occasions. The first when called to a noise complaint in North Kentville in late 2022 where he spoke to her for 15-20 minutes and she did most of the talking. The second occasion was early spring 2023 when he spoke to her for 15-20 regarding a broken engagement complaint, and once again she did most of the talking. The third time they interacted was on July 30, 2023, when he arrested her for the matter before the Court and he did most of the talking. He says she was calm whenever



they spoke, and there was no background noise impacting his ability to hear her voice. He listened to the 911 recordings a few days later on August 3, 2023.

[22] He provided a fair bit of unwavering detail about the previous interactions, attributable to - “I have a pretty [un]impeachable memory”.

[23] Cst. Fahie says Ms. Clough Mallard is soft spoken, with a low voice, like a baby. He agreed there can be a difference between how a voice sounds on the phone v. in person and acknowledged he has failed to recognize voices in the past- “yes, at least once”. He is confident the two 911 callers are the same and they are both Ms. Clough-Mallard. But he also fairly agreed that he has dealt with others whose voices share similar characteristics.

[24] Before evaluating his testimony, it is useful to set out the law.

*Voice identification evidence:*

[25] Voice identification evidence is similar to visual identification, and both must be treated with extreme caution and is even more fraught with dangers than eyewitness identification evidence. (*R v Dodd*, 2015 ONCA 286 at para. 79-81 citing *R. v. Clouthier*, [2012 ONCA 636](#), at para. [19](#)).

[26] When a witness testifies that they made their identification of a voice based on recognizing the voice from prior conversations, the court should carefully

consider the circumstances under which the identification was made and the basis for the witness's belief that they heard the same voice on the prior occasions.

[27] Many courts have suggested questions to consider when assessing such testimony. They include:

- Is there direct or circumstantial evidence the voice belongs to the defendant?
- Were the surrounding events consistent with the defendant being the speaker?
- Is there some "peculiarity or distinctiveness" to the voice?
- Did the speaker disclose facts known by, or only, the defendant?
- Is the "context and timing" of the conversation consistent with defendant being the speaker?
- Was the identity of the speaker tainted by the witness' expectation that she was the defendant?
- Was witness sufficiently familiar with the speaker's voice to be able to recognize it?

- Was there any delay between the times when the witness heard the person's voice and the identification for trial?
- What was the confidence level of the witness in purporting to make the identification? (Recognizing confidence does not necessary connect to the reliability analysis)

(*R v. Williams*, [1995 CanLII 695 \(ON CA\)](#), [1995] O.J. 1012 (ONCA), *R. v. Saddleback*, [2013 ABCA 250](#), and *R. v. Pinch*, [2011 ONSC 5484](#).)

[28] Defence counsel points to *R v Garafalo*, 2012 ONSC 6351 at para 111, cautioning such evidence is “fraught with problem[s] even more so when identified over a phone... a court must consider the clarity of the telephone transmission, the listeners familiarity with the voice, the ability to hear and discern, the distinctiveness of voice patterns and accents, the volume of the speech, or other factors that negate of support the identification.

*The positions of the parties:*

[29] The Crown says the quality of the 911 recordings was high. The defence says at times the call taker had difficulty hearing the caller and asked her to repeat something.<sup>2</sup>

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<sup>2</sup> Although I note the audio recorded 911 calls entered as an Exhibit at trial were very clear.

[30] The Crown says the officer had recent familiarity with Ms. Clough-Mallard and noted distinct aspects of her voice- low, soft, and baby-like. The defence says the officer agreed other people speak in such a manner, he has been mistaken about voices before while on the job, all previous communication with the defendant was face-to-face.<sup>3</sup>

[31] The Crown says the call details were unique and personal- Black man, Jamaican, white woman (Mr. Mil-wood and his friend matched the description); Mr. Mil-wood argued with Ms. Clough-Mallard on Jones Road earlier that day; the licence plate matched the car registered to and driven by his female friend that night; Jones Road is in the vicinity of Commercial Street in New Minas; the 911 calls came from the number in Mr. Mil-wood's contact list attributed to Ms. Shannon Clough-Mallard; two separate calls were made by the same voice purporting to be different people with a similar date of birth, save year- and the voices are the same person. Defence says maybe the caller did see an incident of violence in the Jones Road area that night, but that does not mean it was the defendant who called 911.

[32] The Crown says the officer reliably recognized the defendant's voice based on past, recent dealings. The defence says he had already arrested the defendant

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<sup>3</sup> Once again, the audio on the 911 calls was very clear.

before he heard the voices on the 911 calls and so was seeking confirmation of a previously reached conclusion.

*Findings:*

[33] Recognising a voice does not require expert testimony. People who know a person can often recognize their voice. There is always the risk of inherent frailties and even a confident witness can be mistaken. It is not unusual police officers testifying on identity under similar circumstances. Cst. Fahie says he is sufficiently familiar with Ms. Clough-Mallard's voice to recognize it. He had recent work-related interactions with her of some length, so his memory is recent. The peculiarity of a soft voice that is almost "baby like" is, I find, apparent on the 911 calls. The voice is somewhat distinct, that said, he did listen to those calls after already committing to a conclusion she was the caller. It is regrettable that the Crown did not play the 911 recordings for Mr. Mil-wood, who was certainly in the best position to recognize the voice of his wife. It is regrettable the police did not obtain a *Production Order*, but there is of course a connection to Ms. Clough-Mallard and events of the day- the argument on Jones Road matching the report of an incident on Jones Road, the quite particular physical descriptions of the man and woman, the plate number, phone numbers, etc. That is reliable and weighty circumstantial evidence.

[34] Cumulatively and with consideration, I find there is compelling evidence of identification in the context of all the evidence of the witnesses. I find Cst. Fahie's evidence was fair and balanced. He quickly corrected an error about the plate registration. It was clear he believed Mr. Mil-wood's account and, based on past dealings, recognized Ms. Clough-Mallard's voice on the 911 calls. I find his interactions with the defendant were often and long enough that he I find he would recognize her particular voice, and the near vicinity to the last few interactions before listening to the 911 recordings strengthens my finding that his voice recognition is reliable. Overall, his evidence was candid, truthful and I had no sense he was attempting to protect a decision previously made to arrest Ms. Clough-Mallard. I find his evidence is reliable given the very recent interactions with the defendant, even a few days before he heard the 911 recordings, and her distinct voice pattern.

[35] I also found Mr. Mil-wood equally truthful, balanced and without motive to mislead. He did not know the number used by the 911 callers and candidly admitted facts not favourable to him- an earlier argument on Jones Road. I was impressed that he made the connection to the complaint and Ms. Clough-Mallard based on objectively observable facts, not by guessing, nor due to animosity.

[36] I find that I can logically and reasonably draw an inference that the caller was Ms. Clough-Mallard. The content of the communication and strength of the officer's recognition are key. While there are some apparent frailties, the cumulative effect of the evidence satisfies me beyond a reasonable doubt that Ms. Clough-Mallard made those calls from the phone associated to her and to direct an investigation into her estranged husband following their argument on Jones Road. The voice identification evidence was pivotal to the case, reliable, and proven beyond a reasonable doubt.

[37] Judgment accordingly.

ACJ van der Hoek PCJ