

IN THE PROVINCIAL COURT OF NOVA SCOTIA
(Cite as: R. v. Dauphinee, 2002 NSPC 001)

HER MAJESTY THE QUEEN

VS

HARVEY DAUPHINEE

DECISION

Decision: **Delivered orally January 11th, 2002**

Judge: **The Honourable Judge C. H. F. Williams, JPC**

Counsel: **Mr. R. Woodburn, Crown Attorney**
 Mr. G. Allen, Defence Attorney

Introduction

Constable Aileen Mitchell-Halliday, was a member of the Vice Unit of the Halifax Regional Municipality Police Force. On September 27, 2000, she was on undercover duty acting as a prostitute in the area of Maynard and Roberts Streets, “a known stroll area,” in the Halifax Regional Municipality. At about 2105 hours, the accused, Harvey Cameron Dauphinee, when driving his truck, and ostensibly looking for a business establishment on Roberts Street, stopped his vehicle in the middle of the street near the location of the Constable who was then standing at the street corner.

She approached his vehicle on the passenger side and he opened that side door. Through the open door, she asked him: “Are you looking for something?” He responded: “Get in.” A dog was seated in the front passenger seat and to allow a place for the Constable to sit, the accused removed and put it in the back, behind the seat. When the Constable got into the vehicle she sat in the front passenger seat beside the accused, and, as they were driving away from the area, according to the Crown, the following conversation took place:

Mitchell-Halliday: What are you looking for?

Dauphinee: What are your prices?

M-H: That depends on what you want. I aim to please. Do you want a blow or a lay?

D: A blow and, do you do it without protection?

M-H: Without a condom it would be twenty-five dollars.

D: Okay.

M-H: Do you want to go to my room?

D: Where is it?

M-H: Just a few blocks from here on Macara Street

D: Okay.

The accused drove north on Agricola Street toward Macara Street as directed. When they arrived on Macara Street the Constable further directed him to stop and pull over to the curb and park his vehicle and that they would walk to her room. Again he followed her directions. After expressing some concerns about leaving the dog that was in the vehicle alone, and with the accused's assurances of the safety of the animal, the Constable and the accused walked together to an address on Macara Street. When they reached the address the accused was arrested and was charged with communicating with a person for the purposes of obtaining the sexual services of a prostitute.

At the time of his arrest, the accused declared, at trial, that he did not have on his person his wallet or any money. He also asserted, at trial, that when he spoke with the Constable his intention was not to obtain the sexual services of a prostitute. He was merely being inquisitive and was acting as a good Samaritan.

Issue

The issue here is whether the Crown has proven, in the circumstances of this case, that the accused's conduct, at the time of the communication, and subsequent, demonstrated his intention to obtain the sexual services of a prostitute.

Finding of Facts

On the evidence before me, I accept and find that the relevant and material facts are:

1. Constable Aileen Mitchell-Halliday, on September 27, 2000, was on duty acting as a prostitute in a known “stroll area” in the Halifax Regional Municipality.
2. Harvey Cameron Dauphinee, the accused, when driving his truck in the “stroll area” stopped and invited the Constable into his vehicle.
3. The accused thought that the undercover police officer was a prostitute.
4. They had conversations about the provision of a sexual service for an agreed upon price at an agreed and identified location.
5. The accused drove the Constable from the pick up point to the place agreed upon to consummate the transaction. He was arrested at the place of anticipated realization.
6. The accused was not confused about what he heard or what he discussed with the Constable.

Analysis

The Criminal Code s. 213(1)(c) states:

Every person who in a public place or in a place open to public view

(c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person

for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

The authorities are clear that without an intention to engage in sexual services no offence would have been committed under the **Criminal Code** s.213(1)(c). There must be something more than mere communication. However, the accused’s intention may be inferred from his conduct and circumstances. See: **R.v. Pake** [1995] A.J. No. 1152 (C.A.), 45 C.R.(4th) 117, 103 C.C.C. (3d) 524.

Here, we have an accused who was in a known “stroll area” that was habituated by prostitutes and their customers. In testimony, he stated that he stopped his vehicle only to allow “the lady to cross at the intersection.” However, to his surprise, she came up to his locked passenger side door, which he unlocked and opened, and asked him: “Do you want company?” He replied, “No.” She then asked him to give her a ride to her home on Macara Street. He agreed to do so. On the way to

Macara Street his passenger “propositioned [him] for sex.” He was not interested in any sexual encounters or services but nonetheless enquired about prices for sexual services. Arriving on Macara Street, she requested that he should park his vehicle and “walk her to her door.” He parked his vehicle as instructed, locked it, leaving his dog inside and walked behind his passenger toward an address on Macara Street. He was arrested at the address by other police officers.

Credibility is an issue and the accused has testified. He admitted that he realized that he was “dealing with a tramp.” Nonetheless, because he had some concerns for her safety he suggested that was the only reason why he decided to escort her to her room. Further, he suggested that having no money on his person was indicative of his lack of interest in procuring the sexual services of a prostitute. However, when I examine and weigh carefully his conduct, in the light of the total evidence, concluding that he was being truthful was difficult. There is no doubt that he was in the “stroll area.” I do not doubt that he stopped and invited a person whom he thought to be a prostitute into his vehicle. Further, I do not doubt that he discussed the price of obtaining the sexual services of a prostitute and agreed upon a price. In addition, his conduct by driving her to the anticipated location of consummation of the transaction, acting under her instructions, securing his vehicle, leaving it and walking with her toward her room, in my opinion, belies his innocent protestations.

From my observations, impressions and assessment of the witnesses and their testimonies in light of the total evidence, I conclude that the accused’s testimony was inconsistent and self-contradictory. Furthermore, I conclude that it was not in harmony, as stated by this court in *R.v. Rapin*, [1999] N.S.J. No. 219, at para 8, “with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in the circumstances . . .” In short, his version of events does not raise, in my mind, a reasonable doubt. Nonetheless, the Crown must still prove its case against him beyond a reasonable doubt.

In my opinion, on the total evidence, he had struck a bargain with a person whom he thought was a common prostitute for her sexual services and his entire conduct demonstrated his resolve to complete it. Despite some suggestions of a hearing disability that necessitated the presentation of the testimony of an expert in audiology on his behalf, the accused admitted that he was not confused about what was said and that he heard all that was said between him and the Constable.

Conclusion

In my opinion, this is not a case of innocent communication or association. The accused's conversation indicated his purpose for the communication. His words taken together with the words of the Constable and his conduct, in my view, lead to no other conclusion than that his communication was for the purpose of obtaining the sexual services of a prostitute. I therefore find that the Crown has proved beyond a reasonable doubt that the accused did, in a public place, communicate with a person for the purpose of obtaining the sexual services of a prostitute. In the result, I find him guilty as charged and will enter a conviction on the record.