

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Garland* 2014 NSSC 445

Date: 2014-12-19

Docket: S.H. No. 428447A

Registry: Halifax

Between:

Claudette Ellen Garland

Appellant

v.

Her Majesty the Queen

Respondent

- Judge:** The Honourable Justice Rosinski
- Heard:** December 3, 2014, in Halifax, Nova Scotia
- Subject:** Summary Conviction Appeal arising from conviction contrary to Section 125 of the *Motor Vehicle Act* [failing to yield to pedestrian in crosswalk]. Fresh evidence on appeal – Section 683(1)(d) *Criminal Code*.
- Summary:** Ms. Garland appealed on the basis of the trial judge had erred in her application of the analysis required by the Supreme Court of Canada decision in *R. v. W.D.* [1991] 1 SCR 742; failure to allow her to refresh her memory from her own notes; and finding inconsistencies in the officer's evidence to be of no consequence.
- Issues:**
- (1) Did the trial judge err in her application of the principles in *R. v. WD*?
 - (2) Did trial judge not permit Ms. Garland to refresh her memory from her notes, and if so, did she occasion a

miscarriage of justice thereby?

(3) Did the trial judge otherwise err in finding Ms. Garland guilty beyond a reasonable doubt?

Result:

(1) On the essential element of the identity of the offending vehicle and driver, there was no conflicting evidence between the officer and Ms. Garland. Therefore, the *WD* analysis did not apply

(2) Ms. Garland was sufficiently permitted to refresh her memory from her notes during her testimony. There was no miscarriage of justice.

(3) The trial judge did not otherwise err.

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