**IN THE SUPREME COURT OF NOVA SCOTIA**
**Citation:** R v. Norton, 2006 NSSC 359

**Date:** 20061107
**Docket:** S.K. 268924
**Registry:** Kentville

**Between:**

Her Majesty The Queen

Appellant

v.

Corey William Norton

Respondent

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| **Judge:** | The Honourable Justice Walter Goodfellow. |
| **Heard:** | November 7, 2006, in Kentville, Nova Scotia |
| **Written Release of Decision:** | November 27, 2006 |
| **Counsel:** | Darrell I. Carmichael, counsel for the Crown/appellant<br>Jonathan G. Cuming, counsel for the accused/respondent |

**By the Court:** (Orally)

[1] This is an appeal of a verdict of acquittal entered June 29, 2006, by Her Honour Judge Claudine MacDonald on a charge that Corey William Norton did on or about 27th April, 2005, at or near Ellershouse in the County of Hants, did having the care, charge or control of a vehicle that was involved in an accident with a vehicle, with intent to escape civil or criminal liability, fail to stop his vehicle and give his name and address contrary to s. 252(1.1) of the **Criminal Code**.

[2] The Crown filed its Notice of Appeal to the Supreme Court of Nova Scotia July 24, 2006, listing the ground of appeal as follows:

> that the learned trial judge erred in law in holding that the evidence did not establish that an 'accident' (as contemplated by section 252(1) of the Criminal Code) had occurred at the material time and place.

[3] The brief on behalf of the Crown commences under ISSUES:

> The learned trial judge acquitted the Respondent of failing to stop at the scene of an accident. It is not clear whether she:
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> (a) had a reasonable doubt with respect to whether what had happened was an accident, or
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> (b) found that what had happened was not an accident, or
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> (c) had a reasonable doubt with respect to whether the Respondent was aware of what had happened, or
>
> (d) all of the above.

The Crown goes on to say it will address only (b) and (c).

[4] I agree with the Crown's representations in its brief with respect to whether or not you need to have actual evidence of an impact. As I indicated in argument, you can have a car coming down the highway, crossing the road and forcing the car coming in the opposing direction off the road and that constitutes an accident. In other words, you do not have to establish a collision has taken place. The Crown's submission on this point starts with, "In this case there was a collision. There was evidence upon which the trial judge could have concluded a collision took place".

[5] What she said on this count four starts really at page 234:

> Sgt. Walkinshaw talked about examining the Norton vehicle to see if there was any damage. He was looking for any evidence of a hit and run. So he said he was looking for damage. He said after doing some searching he did notice that the driver's front tire looked like it had rubbed against something. On the Norton motor vehicle those scuff marks are, for want of a better word, they were at the same general location as where they were on the truck.
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> So in terms of damage, if I understand the evidence correctly, it's just that there were scuff marks that were left on the tires or tire, I suppose I should say, of the Musgrave vehicle. That's really what's alleged here.

The significance is in reciting that evidence she indicates what is alleged. Then at page 239:

> Then that brings the Count 4, and that's what we call the leaving the scene of the accident. He's charged that he did, having the care, charge or control of a vehicle that was involved in an accident with a vehicle, with intent to escape civil or criminal liability, fail to stop his vehicle and give his name and address contrary to s. 252 of the **Criminal Code**.
>
> Well, first, did Mr. Norton have the care, charge or control of a motor vehicle? Yes, clearly he did. But then move on. Was it involved in an accident? And I've given this matter some thought. I'm not sure it was involved in an accident. There were scuff marks on a tire, and maybe that constitutes an accident, maybe it doesn't. But it's not the sort of situation where a person obviously would know right away that something has happened here, I have to stop my vehicle, and, you know, and identify and do what have you. I mean it was scuff marks on a tire. And, in fact, Sgt. Walkinshaw when he was describing looking for signs of an accident, he described going around the vehicle and searching and what have you. It wasn't particularly clear.
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> So on this charge then, as I said, it's the leaving the scene of an accident with intent to escape civil or criminal liability, I have to reach the same conclusion. I'm just not certain beyond a reasonable doubt that that's what happened in this particular case. Maybe it is. You know, maybe Mr. Norton knew exactly, maybe he was driving and knew and maybe, maybe not. I just can't say based on the evidence. I mean there were no, as I said, it's not a situation where, for example, there are photographs that clearly show that there was some damage or something that would have at least put the driver of the other vehicle on notice that, look, you've got to stop. There was an accident here.
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> This isn't one of those situations. It's just not clear. . . .

She goes on to describe and she also makes reference to the fact Ms. Musgrave believed what she was saying, and when a trial judge indicates that a particular witness believes the evidence given, that is not a finding of fact at all. It seems to me that with respect to the ground of appeal indicated in the thing that, in essence, the only way I can interpret her decision is that she is not satisfied beyond a reasonable doubt that an accident took place.

[6] It is not for an appellate court to retry a matter and to be involved in a reassessment and interpretation of the evidence seen and heard by the trial judge.

[7] In addition to what the Crown refers to the second issue raised today, but I think also referred to in the decision where Judge Claudine MacDonald deals with the question of intent or knowledge, the Crown quite rightly points out the statutory presumption exists. But that statutory presumption arises when in the words of the Supreme Court of Canada there must be a *prima facie* case. It arises when the Court makes a finding of an accident. Once there is a finding of an accident and you're identified as a person being involved in it, then if you leave then the presumption arises. The presumption, in my view, does not arise unless or until you have a finding of an accident. I, therefore, have concluded that there is no error in law in the trial judge's decision and the appeal is dismissed.

Goodfellow, J.