SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Rowlings*, 2015 NSSC 356

Date: 2015-12-09
Docket: Halifax No. 441784
Registry: Halifax

Between:

John Stewart Rowlings

Appellant

v.

Her Majesty the Queen

Respondent

Judge:	The Honourable Justice James L. Chipman
Heard:	December 9, 2015, in Halifax, Nova Scotia
Counsel:	David A. Grant, for the Appellant Scott Morrison, for the Respondent

Orally by the Court:

Introduction

[1] On March 23, 2015, Provincial Court Chief Judge Pamela S. Williams convicted the appellant of the following offences:

1. Dangerous driving (s.249(1) of the *Criminal Code*);
2. Assault with a weapon (s.267(a) of the *Criminal Code*); and
3. Failure to stop at an accident (s.252(1) of the *Criminal Code*).

[2] The Notice of Summary Conviction Appeal was filed August 6, 2015. The five grounds of appeal were modified by the appellant in his brief filed November 2, 2015, and read:

1. Whether the learned trial judge applied the principles enunciated in *R. v. W.(D.)* or whether she erred by tying the convictions to credibility issues and failed to apply the overall consideration of reasonable doubt.
2. Whether the learned trial judge applied the proper definition of dangerous driving first with respect to the evidence of conduct on the road and secondly with respect to intention of the accused.
3. Whether the learned trial judge applied the proper definition of assault with a weapon first with respect to the evidence of conduct on the road and secondly with respect to intention of the accused.
4. Whether the learned trial judge applied the proper definition of leaving the scene first with respect to the evidence of conduct on the road and secondly with respect to intention of the accused.
5. Whether the learned trial judge violated the rule against multiple convictions arising out of the same delict as the fact relied on all three charges are the same.

[3] The appellant asks this Court to allow the appeal, set aside the convictions and enter acquittals. As for the respondent, the Crown asserts the grounds of appeal are without merit and the Court should therefore dismiss the appeal.

Standard of Review

[4] The scope of review of a Summary Conviction Appeal Court was set out by Cromwell, J.A., as he then was, in giving the Court's judgment in *R. v. Nickerson*, [1999] NSJ 210 as follows:

> [6] The scope of review of the trial court's findings of fact by the Summary Conviction Appeal Court is the same as on appeal against conviction to the Court of Appeal in indictable offences: see sections 822(1) and 686(1)(a)(i) and *R. v. Gillis* (1981), 60 C.C.C. (2d) 169 (N.S.S.C.A.D.) per Jones, J.A. at p. 176. Absent an error of law or a miscarriage of justice, the test to be applied by the Summary Conviction Appeal Court is whether the findings of the trial judge are unreasonable or cannot be supported by the evidence. As stated by the Supreme Court of Canada in *R. v. Burns*, 1994 CanLII 127 (SCC), [1994] 1 S.C.R. 656 at 657, the appeal court is entitled to review the evidence at trial, re-examine and reweigh it, but only for the purpose of determining whether it is reasonably capable of supporting the trial judge's conclusions. If it is, the Summary Conviction Appeal Court is not entitled to substitute its view of the evidence for that of the trial judge. In short, a summary conviction appeal on the record is an appeal; it is neither a simple review to determine whether there was some evidence to support the trial judge's conclusions nor a new trial on the transcript.

[5] This description has been repeatedly endorsed by the Nova Scotia Court of Appeal; for example: *R. v. RHL*, 2008 NSCA 100; *R. v. Francis*, 2011 NSCA 113; *R. v. MacGregor*, 2012 NSCA 18 and *R. v. Prest*, 2012 NSCA 45. This standard of review was repeated without reference to *R. v. Nickerson* in *R. v. Pottier*, 2013 NSCA 68.

[6] Given my review of the authorities it is fair to say that the responsibility of the Summary Conviction Appeal Court is to review the evidence at trial, re-examine and re-weigh it, but only for the purpose of determining whether it is reasonably capable of supporting the trial judge's conclusions.

[7] In so doing, I am mindful of the principles laid out by the Supreme Court of Canada in such cases as *R. v. Sheppard*, [2002] SCC 26 and *R. v. REM*, [2008] SCC 51.

The Evidence at Trial

[8] The trial took place during the morning of December 8, 2014 and afternoon of January 12, 2015. The evidence was followed by written argument and Chief Judge Williams rendered her oral decision on March 23, 2015.

[9] The Crown called Douglas Wayne Eldridge and Halifax Regional Police officer Cst. Amy Anstey. During Mr. Eldridge's direct examination, the Crown introduced Exhibit 1, a booklet of four photographs, depicting the appellant's vehicle involved in the June 17, 2013 collision.

[10] The Defence called Tammy Rowlings and her husband, the appellant. During Defence counsel's cross-examination of Mr. Eldridge, they introduced more photographs of the appellant's vehicle as Exhibits 2 and 3.

[11] The trial transcript is approximately 200 pages. In reviewing the transcript, it is clear the charges arise from a collision/road rage incident which occurred in Burnside on the afternoon of June 17, 2013. The incident involved Mr. Eldridge, who was driving his 2003 Volkswagen, and Mr. Rowlings, who was driving his 2003 Dodge Caravan. Ms. Rowlings was a front seat passenger in her husband's van. Cst. Anstey was the police officer who responded to Mr. Eldridge's 911 call. She met separately with Mr. Eldridge and the appellant – following the incident – on the afternoon of June 17, 2013.

[12] Chief Judge Williams certified her decision and the decision portion of the transcript was provided to the Court by the appellant on November 2, 2015. Her Honour accurately sets the stage in the opening paragraphs of her decision, as follows:

> …Mr. Rowlings is charged with dangerous driving, assault with a weapon, that is using his van to strike Mr. Eldridge's car, and leaving the scene of an accident alleged to have occurred in Burnside on June 17th, 2013. Date, time, jurisdiction and identification are not in dispute.
>
> The evidence is clear there was a minor collision between two vehicles in question and that Mr. Rowlings left the scene. The circumstances in issue are what led up to the collision and who caused the collision. So, at issue is whether or not Mr. Rowlings' manner of driving was dangerous, whether he used his van to strike Mr. Eldridge's car and whether Mr. Rowlings left the scene of the accident to avoid civil or criminal responsibility.
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> There are no independent third party witnesses aside from Cst. Anstey who, number one, observed the damage to Mr. Eldridge's vehicle and, number two, testified that Mr. Rowlings made the voluntary utterance to her that he did run into a car but that it was an accident and he was too scared to stop. Physical evidence of damage to vehicles is not determinative of the issues. The photos that were admitted as exhibits were of little assistance.
>
> There was obvious damage to Mr. Eldridge's front passenger side of his car and there were several dents and scratches to Mr. Rowlings' van, but it was difficult, if not impossible, to determine what was old damage and what could possibly have been new damage. Credibility of the parties figures centrally to the issues outlined above.

[13] Next, the trial judge provides a detailed and accurate review of the evidence at trial. Referring to the evidence of Mr. Eldridge, the appellant and his wife, the judge correctly states at p. 6, "So, certainly the version[s] of events are very different." Her Honour then says as follows:

> In assessing credibility I am guided by the test in *W.D.* If I accept the evidence of the Accused, then I must acquit. If I do not accept the evidence of the Accused, but nonetheless it leaves me a reasonable doubt that it could be true, then that benefit goes to the Accused and I must find him not guilty. If I reject his evidence outright, I must then look at the remaining evidence before the Court to determine whether or not the Crown has satisfied me beyond a reasonable doubt as to Mr. Rowlings' guilt.

[14] Chief Judge Williams goes on to provide a detailed review of the evidence at pp. 6-8 and then, referring to the appellant, states at lines 8-13 of p.8:

> The evidence simply is not credible and it's externally inconsistent. I reject his evidence outright. It does not leave me with a reasonable doubt that it could reasonably be true, so I must look at the remaining evidence to determine whether or not the Crown has proven its case beyond a reasonable doubt.

[15] The judge then reviews the remaining evidence and makes these findings:

> I find that Tammy Rowlings was attempting to bolster the evidence of her husband. I do accept that she was scared and in part this was due to the speed with which her husband was driving and, as she put it, her husband's foolish behaviour.
> (p.9, lines 15-19)
>
> …
>
> Mr. Eldridge, for his part, gave a detailed description of the events. I would say that he was measured in his responses.
>
> (p.10, lines 5-7)
>
> …
>
> Mr. Eldridge's evidence was internally and externally consistent, in my view, and I'm convinced beyond a reasonable doubt as to his version of the events. The evidence establishes that Mr. Rowlings' driving was dangerous in all of the circumstances, it took place in Burnside in the middle of an afternoon during a weekday, an area that often – has heavy traffic flow. Mr. Rowlings was

> attempting to pass in the oncoming lane and he was swinging in and out of his lane. He was on Mr. Eldridge's bumper, he was speeding at times excessively.
>
> We know that the *mens rea* for dangerous operation requires a marked departure from the standard of care expected of a reasonable person in the circumstances of the Accused. It is a modified objective test. In all of the circumstances I'm satisfied that there was a wanton, reckless disregard for the safety of both Mr. Eldridge, people in his vehicle and others who may have been on the road.
>
> I accept that Mr. Rowlings struck Mr. Eldridge's car, he therefore committed an assault with a weapon. "Assault" is defined in Section 265 as the striking or attempting to strike or threatening to strike. A "weapon" is defined in Section 2 of the *Criminal Code* as anything used to threaten or intimidate. Mr. Rowlings may not have intended to cause a collision, but I find that he intended at the very least to threaten and intimidate Mr. Eldridge by his manner of driving and swerving in and out of his lane and was reckless.
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> As for the charge of leaving the scene of an accident, it's obvious that Mr. Rowlings did leave the scene but not because he was scared, I find that it was to avoid criminal or civil liability. He knew, or should have known, there would be serious repercussions given his record of motor vehicle infractions that I heard about. I find that he struck Mr. Eldridge's vehicle, he knew he'd done so, he did not want to be held accountable, so he fled.
>
> His actions after the collision, as outlined above, lead me to this inescapable conclusion. I, therefore, find him guilty of dangerous driving, assault with a weapon and leaving the scene of an accident.
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> (pp.11-13)

Analysis and Disposition

Issue 1 – *W.(D.)*/Misapprehension of the Evidence

[16] At paragraph p.3 of his brief, the appellant alleges the trial judge failed to properly apply *R. v. W(D)*, and goes on to say, "She tied the findings of fact to credibility issues and in doing so misapprehended the effect of certain evidence or disregarded parts of the evidence in coming to her conclusion." Having said this, the appellant has not identified any instances where Chief Judge Williams reversed the burden of proof or ignored the presumption of innocence.

[17] In reviewing the decision, it is apparent that the trial judge recognized the requirement not to let a credibility contest affect the need to respect the concept of

proof beyond a reasonable doubt. As the above quoted passages from her decision attest, she was cognizant of applying the *R. v. W.(D.)*, [1991] 1 S.C.R. 742 analysis. In *R. v. J.P.*, 2014 NSCA 29, Justice Beveridge (Oland and Farrar JJ.A. concurring) had cause to review a trial judge's *W.(D.)* analysis and stated:

> [58] Frequently the resolution of criminal charges depends on the views taken by a trial judge about the weight of the evidence he or she has heard. By weight, I include both an assessment of the reliability and the credibility of the Crown's evidence, and the evidence, if any, proffered by the accused. As already described, that assessment, if conducted free of error, is entitled to a very high degree of deference.

[18] Justice Beveridge went on to note problems with the trial judge's application of *W.(D.)*, stating:

> [73] I agree with the appellant that the announced analytical path by the trial judge reversed the onus of proof. There is no requirement on an accused to convince the judge by his evidence—all that is needed is for a reasonable doubt to be raised. It is for the Crown's evidence to convince. Furthermore, mere doubt or even non-acceptance of the appellant's evidence on some point cannot be used to cast doubt on the credibility of his other evidence.

[19] I find no such problems with Chief Judge Williams' *W.(D.)* analysis as she not only found the appellant's evidence not credible, but properly examined the remaining evidence in determining the Crown proved its case beyond a reasonable doubt. Accordingly, I find the trial judge's assessment was conducted without error.

[20] In *J.P.*, Justice Beveridge, at paras.88-115, reviewed what may constitute a misapprehension of evidence. This was also earlier reviewed by our Court of Appeal in the two cases cited below.

[21] In *R. v. Delorey*, 2010 NSCA 65, Justice Oland (Beveridge and Farrar JJ.A. concurring) discussed the standard of review for a misapprehension of evidence. At para. 27, the Court adopted the standard described in *R. v. Peters*, 2008 BCCA 446:

> Material misapprehension of the evidence can justify appellate intervention. The standard is a stringent one: the misapprehension of the evidence must go to the substance rather than to the detail; it must be material to the reasoning of the judge and not peripheral; and the errors must play an essential part not only in the narrative of the judgment but in the reasoning process itself. If this standard is

> met, appellate intervention is justified, even if the evidence actually does support the conclusion reached.

[22] In *R. v. Deviller*, 2005 NSCA 71, Justice Cromwell (Chipman and Oland JJ.A. concurring) outlined the law generally with respect to misapprehension of evidence at paras. 10-12:

> [10] What is a misapprehension of the evidence? It may consist of "... a failure to consider evidence relevant to a material issue, a mistake as to the substance of the evidence, or a failure to give proper effect to evidence ...": *R. v. Morrissey*, (1995) 97 C.C.C. (3d) 193 (Ont. C.A.) at p. 218. A trial judge misapprehends the evidence by failing to give it proper effect if the judge draws an "unsupportable inference" from the evidence or characterizes a witness's evidence as internally inconsistent when that characterization cannot reasonably be supported on the evidence: *Morrissey* at p. 217; *R. v. C.(J.)*, 2000 145 C.C.C. (3d) 197 (Ont. C.A.) at para. 11. In *Morrissey*, for example, the trial judge stated that the evidence of two witnesses was "essentially the same", a conclusion not supported by the record. This was held to be a misapprehension of the evidence. In *C. (J.)*, the trial judge was found to have erred by characterizing the accused's evidence as "internally inconsistent" when this conclusion was not reasonably supported by the record: at para. 9.
>
> [11] Not every misapprehension of the evidence by a judge who decides to convict gives rise to a miscarriage of justice. A conviction is a miscarriage of justice only when the misapprehension of the evidence relates to the substance and not merely the details of the evidence, is material rather than peripheral and plays an essential part in the judge's reasoning leading to the conviction…
>
> [12] It follows, therefore, that to succeed on appeal, the appellant must show two things: first, that the trial judge, in fact, misapprehended the evidence in that she failed to consider evidence relevant to a material issue, was mistaken as to the substance of the evidence, or failed to give proper effect to evidence; and second, that the judge's misapprehension was substantial, material and played an essential part in her decision to convict.

[23] Having regard to Chief Judge Williams' assessment of the evidence and the test set forth by our Court of Appeal, I find no basis for the argument that she misapprehended the evidence. To the contrary, I find the trial judge's review of the evidence in her decision to be accurate. Further, the evidence is supportive of the inferences she drew. By way of example, whereas the appellant says the trial judge failed to properly analyze Mr. Eldridge's claim that something was thrown at his car, I refer to the judge's treatment of this issue (p. 21, lines 11-17):

> Mr. Eldridge, for his part, gave a detailed description of the events. I would say he was measured in his responses. By that I mean he indicated that he heard something hit his roof, he did not say that Mr. Rowlings threw something at his vehicle. Although he could have jumped to that conclusion, he certainly did not testify to that on the stand. He was able to provide details regarding the driving, as to what happened, where it happened, when it happened and who did what.

[24] Accordingly, Chief Judge Williams found that Mr. Eldridge was measured in his responses. She came to this conclusion by pointing to his reluctance to speculate that the appellant threw the item at his car.

Issue 2 – Assault with a Weapon

[25] The Appellant argues the trial judge erred in concluding there was sufficient evidence to prove the *mens rea* of assault with a weapon. In support of his argument, the appellant relies on *R. v. Butler*, 2015 NSSC 183, a decision of Justice Scaravelli. At para.13, the necessary considerations for the proof of *mens rea* for assault with a weapon are set out; namely:

1. Assault with a weapon is a general intent offence.
2. Where a person is alleged to have used an item that is normally considered a weapon, it must have been used or intended to have been used as a weapon.
3. The subjective intent of the user is at issue when determining whether or not they intended to use it as a weapon.

[26] Accordingly, I must examine whether or not the trial judge's findings with respect to the appellant's subjective intent to use his car as a weapon are unreasonable or cannot be supported by the evidence.

[27] When I review the transcript, I find ample evidence for the Chief Judge's conclusions that the appellant intended to use his vehicle to threaten Mr. Eldridge. For example, I refer to these transcript references, which the Crown has commended to the Court:

1. Mr. Eldridge's evidence that the driver of the van was on his bumper… using the gas and brake – p.208, lines 14-16.
2. Mr. Eldridge's evidence that the driver of the van sped up alongside him in the right-hand lane and was swinging in and out of the two lanes – p.208, lines 16-19.
3. The collision being a "solid hit" – p.216, line 5.

4. The collision pushing Mr. Eldridge's vehicle into the turning lane – p.216, lines 10-11.
5. The van turning right [after the collision] and speeding up – p.209, line 2.
6. The van travelling approximately 130 kilometres an hour and pulling away from Eldridge – p.209, lines 5-6.
7. The Judge's finding that Mr. Rowlings was upset that Mr. Eldridge would not let him in the line of traffic and giving him the finger – p.211, lines 17-19.
8. Mr. Rowlings' continued frustration and giving him the finger a second time – p.212, line 7.
9. Mr. Rowlings' admission that he ran into the other car – p.212, lines 12-13.
10. Mr. Rowlings' failure to call the police – p.213, lines 7-8.

Issue 3 – Conduct Meets the Criterion for Dangerous Driving

[28] In *R. v. Roy*, 2012 SCC 26, Justice Cromwell reviewed the earlier Supreme Court of Canada decision of *R. v. Beatty*, 2008 SCC 5 and stated as follows regarding the elements of dangerous driving:

> [33] The Court in *Hundal*, however, made it clear that the requisite *mens rea* may only be found when there is a "marked departure" from the standard of care expected of a reasonable person in the circumstances of the accused. This modification to the usual civil test for negligence is mandated by the criminal setting. It is only when there is a "marked departure" that the conduct demonstrates sufficient blameworthiness to support a finding of penal liability. One aspect of driving, "the automatic and reflexive nature of driving", particularly highlights the need for the "marked departure" requirement in a criminal setting. Cory J. described this aspect as follows (at pp. 884-85):
>
> > Second, the nature of driving itself is often so routine, so automatic that it is almost impossible to determine a particular state of mind of a driver at any given moment. Driving motor vehicles is something that is familiar to most adult Canadians. It cannot be denied that a great deal of driving is done with little conscious thought. It is an activity that is primarily reactive and not contemplative. It is every bit as routine and familiar as taking a shower or going to work. Often it is impossible for a driver to say what his or her specific intent was at any moment during a drive other than the desire to go from A to B.
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> [34] Therefore, as noted by Cory J., the difficulty of requiring positive proof of a particular subjective state of mind lends further support to the

> notion that *mens rea* should be assessed by objectively measuring the driver's conduct against the standard of a reasonably prudent driver. In addition, I would note that the automatic and reflexive nature of driving gives rise to the following consideration. Because driving, in large part, is automatic and reflexive, some departures from the standard expected of a reasonably prudent person will inevitably be the product, as Cory J. states, of "little conscious thought". Even the most able and prudent driver will from time to time suffer from momentary lapses of attention. These lapses may well result in conduct that, when viewed objectively, falls below the standard expected of a reasonably prudent driver. Such automatic and reflexive conduct may even pose a danger to other users of the highway. Indeed, the facts in this case provide a graphic example. The fact that the danger may be the product of little conscious thought becomes of concern because, as McLachlin J. (as she then was) aptly put it in *R. v. Creighton*, [1993] 3 S.C.R. 3, at p. 59: "The law does not lightly brand a person as a criminal." In addition to the largely automatic and reflexive nature of driving, we must also consider the fact that driving, although inherently risky, is a legal activity that has social value. If every departure from the civil norm is to be criminalized, regardless of the degree, we risk casting the net too widely and branding as criminals persons who are in reality not morally blameworthy. Such an approach risks violating the principle of fundamental justice that the morally innocent not be deprived of liberty.
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> [35] In a civil setting, it does not matter how far the driver fell short of the standard of reasonable care required by law. The extent of the driver's liability depends not on the degree of negligence, but on the amount of damage done. Also, the mental state (or lack thereof) of the tortfeasor is immaterial, except in respect of punitive damages. In a criminal setting, the driver's mental state does matter because the punishment of an innocent person is contrary to fundamental principles of criminal justice. The degree of negligence is the determinative question because criminal fault must be based on conduct that merits punishment.
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> [36] For that reason, the objective test, as modified to suit the criminal setting, requires proof of a *marked departure* from the standard of care that a reasonable person would observe in all the circumstances. As stated earlier, it is only when there is a marked departure from the norm that objectively dangerous conduct demonstrates sufficient blameworthiness to support a finding of penal liability. With the marked departure, the act of dangerous driving is accompanied with the presence of sufficient *mens rea* and the offence is made out. The Court, however, added a second important qualification to the objective test — the allowance for exculpatory defences.

[29] Returning to the case at Bar, Chief Judge Williams accepted that on account of road rage, the appellant deliberately swerved toward Mr. Eldridge's vehicle. In

my view, the trial judge correctly held that using one's vehicle on a public road to intimidate another driver amounts to more than simple negligence.

[30] In my view, manoeuvering two tonnes of metal in the direction of another vehicle in such an aggressive manner (as the evidence demonstrates Mr. Rowlings did) constitutes a deliberate course of action which places lives at risk. Indeed, the appellant's dangerous conduct caused physical and mental injuries to Mr. Eldridge. In all of the circumstances, I find that the trial judge's decision concerning dangerous driving is well-rooted in the evidence and law. Indeed, she has sent the message which must be endorsed, that such behaviour will not be tolerated and will be met with criminal sanction.

Issue 4 - The Evidence Shows There was Intent on the Part of the Appellant to Avoid Civil or Criminal Liability

[31] The appellant argues that the trial judge's decision with respect to the *mens rea* for the offence of failing to stop at the scene of an accident was unreasonable or not supported by the evidence. In *R. v. Sadler*, 2008 BCCA 491, Justice Smith (Prowse and Tysoe, JJ.A. concurring) stated as follows concerning the elements of this offence:

> [27] It is common ground that the appellant committed the *actus reus* of the offence by leaving the scene of the accident without offering assistance to the injured parties and without giving them his name or address. The *mens rea* for s. 252 requires proof beyond a reasonable doubt of an accused's specific intent to escape civil or criminal liability. This *mens rea* requirement is distinct from the modified objective test used to establish the *mens rea* for the offence of dangerous driving.
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> [28] Section 252(2) creates a rebuttable presumption that an accused intends to escape civil or criminal liability by leaving the scene of an accident. Evidence to the contrary that is not rejected by the trier of fact may rebut that presumption. Case law interpreting this section confirms that "evidence to the contrary" does not shift the burden of proof to an accused. Rather, it provides a basis whereby evidence which tends to show that an accused may not have possessed the specific intent required will support an acquittal verdict. See *R. v. Proudlock*, [1979] 1 S.C.R. 525; *R. v. Baker* (2006), 209 C.C.C. (3d) (Ont. C.A.), lv to appeal refused, [2006] S.C.C.A. No. 464; *R. v. Nolet* (1980), 4 M.V.R. 265 (Ont. C.A.); and *R. v. Adler* (1981, 59 C.C.C. (2d) 517 (Sask. C.A.). In contrast, evidence of impairment that does not amount to substantial or advanced intoxication will not be sufficient, on its own, to negate the presumption of specific intent for the purpose of rebutting the presumption in

> s. 252(2): *R. v. Lemouel*, [1989] N.W.T.R. 3 (S.C.); *R. v. Ford*,[1997] O.J. No. 220 (Ct. J. (Gen. Div.); and *R. v. Daley*, 2007 SCC 53 (CanLII), 3 S.C.R. 523.

[32] It is clear from the transcript that the appellant failed to perform any of the three statutory duties imposed by s.252. In this regard, he failed to stop, give his name or address, or offer assistance. Chief Judge Williams clearly rejected the appellant's explanations as to why he did not stop after the collision. At p.213, lines 5-18, she says as follows:

> He would have us believe that because there was almost no damage to his vehicle – in his words 'a tiny dent' – that it wasn't a big deal and he didn't need to call the police. He didn't show the dent to the police, and I do not accept that he had no opportunity to do so. He also commented that there wasn't much damage and he knew he had 24 hours to call the police, as if this was a justification for not having done so.
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> The evidence simply is not credible and it's externally inconsistent. I reject his evidence outright. It does not leave me with a reasonable doubt that it could reasonably be true, so I must look to the remaining evidence to determine whether or not the Crown has proven its case beyond a reasonable doubt.

[33] In my view, Her Honour's conclusions concerning the *mens rea* of this offence are supported by the evidence and therefore reasonable.

Issue 5 – *Kienapple* Principle

[34] The appellant argues that the trial judge failed to apply the *Kienapple* principle or the rule against multiple convictions. In *R. v. Smith*, 2007 NSCA 19, Justice Cromwell (Hamilton and Fichaud JJ.A. concurring) explained the *Kienapple* principle as follows:

> [146] The *Kienapple* principle is that a person must not be punished twice for the same wrong. How this principle applies was set out in *R. v. Prince*, [1986] 2 S.C.R. 480. The Court held that two offences will constitute the "same wrong" only if two conditions are met.
>
> [147] First, there must be a "factual nexus" between the charges: see p. 492. Generally, this means that there must be "...an affirmative answer to the question: Does the same act of the accused ground each of the charges? Second, there must be a "legal nexus" between the offences. This condition will be satisfied only "... if there is no additional and distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded by the *Kienapple* principle." *Prince* at p. 498.

[35] Dangerous driving is a *Criminal Code* offence targeted at the operation of motor vehicles. The *mens rea* for this offence involves a marked departure from the standard of care. By contrast, assault with a weapon is not a *Criminal Code* driving offence. The *mens rea* of assault with a weapon requires intention; in this case a specific intent to use a motor vehicle in a way that would characterize it as a weapon. Without question, *mens rea* based on a criminal negligence standard is entirely different from a *mens rea* based on specific intent. Accordingly, there is no legal nexus between the two offences. In the result, I find, as Chief Judge Williams did, that the *Keinapple* principle is not applicable.

Conclusion

[36] In conclusion, I find the appeal to be without merit. The trial judge dealt with credibility and competing evidence and made reasonable findings of fact. In the context of the authorities, and the body of evidence, she did so correctly. There was ample evidence to support the trial decision and I would not disturb it. Chief Judge Williams' decision is correct in law and provides the reader with a clear understanding of her reasons. In the result, I dismiss the appeal.

Chipman, J.