

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R v. Gould, 2008 NSSC 27

**Date:** 20080129

**Docket:** SN No. 275796

**Registry:** Sydney

**Between:**

Her Majesty the Queen

Respondent

v.

Duncan Francis Gould

Appellant

**Judge:**

The Honourable Justice Frank Edwards

**Heard:**

January 21, 2008, in Sydney, Nova Scotia

**Counsel:**

Richard J. MacKinnon, for the Respondent  
Vincent A. Gillis, for the Appellant

**By the Court:**

[1] This is an appeal from a decision of a Judge of the Provincial Court. The grounds of appeal are that the decision of the trial court was contrary to the evidence and therefore that the decision was perverse and unreasonable. The Appellant also claims that the Learned Judge misdirected himself by failing to consider any variation in testimony between the Crown witnesses and failed to properly weigh the evidence other than to find the Appellant guilty.

[2] The applicable law is succinctly summarized in *R v. Abourached*, 2007, Carswell NS 511, where Justice Fichaud said in part at paragraph 24:

“I hasten to add that appellate courts, in determining whether a trial judge's verdict is unreasonable, cannot substitute their own view of the facts for that of the judge or intervene on the ground that the judge's reasons ought to have been more fully or more clearly expressed. That is beyond the purview of an appellate court: [citations omitted]. But where reasons do exist, *a verdict cannot be reasonable within the meaning of s. 686(1)(a)(i) if it is made to rest on findings of fact that are demonstrably incompatible, as in this case, with evidence that is neither contradicted by other evidence nor rejected by the judge.*”  
(Emphasis added)

[3] In this case, the Provincial Court Judge heard from two witnesses called by the Crown. The Appellant did not testify. The Complainant testified that she was

pushed by the Appellant. The second Crown witness says he did not see the Complainant being pushed but he did hear her cry out in pain. When the witness interceded, he says the Appellant “sorta lunged to go after Ann as Ann was leaving the office.” (Transcript p. 139). The witness explained that he could not see the push because he was positioned behind the Appellant who “is very tall”. (Transcript p. 145)

[4] At trial, Defence Counsel cross-examined both Crown witnesses. She was able to demonstrate some inconsistencies particularly in the evidence of the complainant. In his decision, the Trial Judge acknowledged those inconsistencies but apparently decided they were inconsequential.

[5] He found that the Complainant’s evidence was clear that the Appellant pushed her. He considered the evidence of the second Crown witness and obviously felt that it supported the Complainant’s evidence. This he was entitled to do. Their evidence is entirely consistent with one another and is by no means “demonstrably incompatible.”

[6] As well, viewed in its entirety, the evidence of the Complainant is internally consistent. She never wavers from the fact that the Appellant pushed her. The Trial Judge's analysis of the evidence is logical and rational.

[7] The Appeal is without merit. I therefore dismiss the appeal.

Order accordingly.

J.