

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Halsey 2008 NSSC 192

**Date:** 20080417

**Docket:** CR. Am. 290629

**Registry:** Amherst

**Between:**

Her Majesty the Queen

v.

Jason Halsey

**Judge:** The Honourable Justice J. E. Scanlan

**Heard:** 16 & 17 April 2008, in Amherst, Nova Scotia

**Written Decision:** 19 June 2008

**Counsel:** Mr. Bruce Baxter, for the crown  
Ms. Stephanie Hillson, for the defence

**By the Court:**

[1] On October the 15<sup>th</sup>, 2006 at the Springhill corrections institution, where Mr. Halsey was an inmate, he was noted to have been in a section which is out of bounds in the institution. As a result of being noted out of bounds, the keeper had indicated that Mr. Halsey should be taken to the unit number three, strip searched and questioned as part of the regular protocol within that institution. Although Mr. Halsey knew that he was not supposed to be in the out of bounds area, he was noted as being an individual who really didn't necessarily respect the rules of the institution, even though he was told what the rules were. Certainly he knew that he shouldn't have been in the area where he was. I suppose a lack of respect for the rules might, in some way, translate to a lack of respect for the people that work there. By that, I am referring to the guards in the institution.

[2] In terms of the evidence as to what transpired after Mr. Halsey was taken from the gym area, it's clear from the evidence of Dion Kearley that Mr. Halsey was taken into the strip search area, which is basically a small room. On that day it had a table and at least one chair, perhaps some papers on top of the table. There was a clear plastic curtain in the room. There is no indication as to whether or not it was pulled. As directed, the two officers involved; that is Dion Kearley and Mark Joyce, were in the process of doing a strip search. Mr. Halsey was compliant up to a point in time, but as the strip search got underway, and specifically as he was taking his shirt off that changed. I accept the evidence of both officers that at that time when they indicated to Mr. Halsey that they didn't believe his story about his cigarette blowing out of his mouth over into the restricted area and him going to retrieve it, and one or both of them may have used the word "bullshit". Mr. Halsey obviously became somewhat upset that they didn't believe him, and using his own words he said, "If you don't believe me, then why keep questioning me?" As to what transpired at that point in time, the issue of self defence has been raised through counsel. The suggestion is that corrections officer Kearley, according to Mr. Halsey, put his hands up and pushed Mr. Halsey backwards into the wall, and Mr. Halsey says he struck his head, and as he bounced off the wall he came forward and punched corrections officer Kearley in the face twice, very quickly.

[3] Counsel for Mr. Halsey has correctly pointed out that the *R. v. (D. W.)* test applies in this case. I have to say, on the crucial issues, I simply do not believe your client, Mr. Halsey. I believe the evidence of both officers, in fact the many officers who testified. Most important, however, are Mark Joyce and Dion

Kearley. It's not a matter of simply choosing as between the crown and defence witnesses. In this case the accused is the only defence witness. Certainly as I review all of the evidence, I am satisfied beyond a reasonable doubt that the facts as alleged by the crown which make up the essence of this offence have all been proven beyond a reasonable doubt. I'm not going to go through and do the one, two, three step process that *R. v. (D. W.)* outlines, counsel. I have indicated I simply don't believe your client on the essential elements, Mr. Halsey, and I am satisfied beyond a reasonable doubt, based on the totality of the evidence that he is guilty.

[4] I just want to go through and explain my findings of the fact as it relates to the offence. First of all, in relation to section 34, I do not accept that he was assaulted by corrections officer Kearley. I accept the evidence of corrections officer Kearley that, as Mr. Halsey was asked about why he was in the off limits or out of boundary area, and was told that his concocted story about the cigarette butt was not believable, Mr. Halsey did in fact become upset. He did start to get into Dion Kearley's personal space, is how Mr. Kearley described it and I accept it. At the same time Mr. Halsey threw his t-shirt at the feet of or near the person of corrections officer Kearley. Corrections officer Kearley put his hands up, palms out, towards Mr. Halsey. He may or may not have touched him, but he certainly did not push him. His hands were either still at or near Mr. Halsey's chest, or moving down closer to corrections officer Kearley's waist when corrections officer Kearley was sucker punched in the face, twice. Certainly it was no accident. I suppose that's somewhat reflected in Mr. Halsey's bragging to all his prison buddies, as he was being escorted to the segregation unit. That is when he was bragging about having struck the corrections officer and hoping that he had broke his nose.

[5] I am satisfied as well as to the time, place, date, jurisdiction as well, counsel. I am satisfied that both officers Kearley and Joyce were peace officers engaged in the execution of their duty, and that it was an assault on corrections officer Kearley. I am satisfied that corrections officer Kearley was struck in the face, and he sustained a serious injury. That relates to count number 3, it was a serious bodily injury as required under section 267(b). I am satisfied that in spite of being injured, both in terms of his face and subsequently or at that time in relation to his back he tried to subdue Mr. Halsey. I am not sure exactly when the back injury occurred, but it occurred during the incident. I am satisfied that there was a struggle, and it took place over a matter of seconds or minutes, but a very brief

time. Corrections officer Kearley was clearly stunned as a result of being sucker punched in the face. It is obvious he had one eye that was closed shut at that time. He was bleeding profusely and was somewhat dazed. It wasn't really clear to him how long the struggle took. He could not describe everything that might have happened in terms of blow-by-blow description, but that is not unexpected, even if he wasn't injured, because it all occurred so fast. During the struggle, I am satisfied that as the two officers were trying to control Mr. Halsey and subdue him, Mr. Halsey was in fact struggling as best he could to resist in, I won't say his detention, because he was still clearly detained, but to resist in them gaining control over his person. He was flailing around with both his hands and feet, and certainly there was a point in time when at least one of his arms was underneath him, but his feet continued to flail, and his one or two arms at various times flailed until the one, two or three additional officers came in and helped with the leg irons. During that process, I am satisfied that Mark Joyce was struck as well as Mr. Halsey was flailing around for one purpose only, and that was to avoid being subdued by these two corrections officers. In doing that he had no regard whatsoever for either of the officers, in terms of who he struck or how he struck them. I accept the evidence of corrections officer Mark Joyce that during that process he was struck once in the stomach and at least once in the head. His glasses were knocked off early on in the process. Although he was struck, there is no allegation in the indictment that there was any bodily harm.

[6] Again, the issue as to self defence that was raised, I simply didn't believe it in the first place in relation to corrections officer Kearley. I can't see how it would be any more believable in relation to corrections officer Joyce. By the time corrections officer Joyce got involved, clearly he was working to subdue an inmate who had just assaulted, and from the blood around the room, had obviously injured very seriously another corrections officer. As I indicated in my comments a few moments ago, I am satisfied that during that process he was struck in the head and stomach, and that was done by the accused, Jason Halsey.

[7] As I said counsel, it is not necessary for me to go through the one, two, three step process in *R. v. (D. W.)*. I simply say, at the end of the day I am satisfied on all of the evidence and after weighing the evidence of the accused, who I didn't believe in the first place, but the evidence of all the other individuals as well, I am satisfied on all the elements that he is guilty beyond a reasonable doubt.

[8] Counsel, I said in relation to corrections officer Kearley that he was clearly in the execution of his duty. I wanted to make sure that that's understood in relation to corrections officer Mark Joyce as well. These are peace officers falling within the definition of the *Criminal Code*, and he was in the execution of his duty as well.

**J.**