IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. T.R.J., 2010 NSSC 233

Date: 20100526
Docket: Hfx No. 316881
Registry: Halifax

Between:

T.R.J.
(A Young Person Within the Meaning of the *Youth Criminal Justice Act)*

Plaintiff

v.

Her Majesty the Queen

Defendant

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Restriction on publication: Pursuant to the Youth Criminal Justice Act

Judge: The Honourable Justice Simon J. MacDonald

Heard: May 26, 2010, Halifax, Nova Scotia

Counsel: Chandra Gosine, for the Appellant
John Scott for the Respondent

By the Court:

[1] T.R.J. appeals from a findings of guilt by his Honour Chief Judge Patrick Curran, a Judge of the Youth Justice Court of Nova Scotia. The convictions were made on August 21, 2009 at Halifax, Nova Scotia.

[2] The appellant was convicted of the following offences:

> 1) **On or about** the 5th day of March, 2009 at Dartmouth did unlawfully and willfully obstruct Cst. Robert Oostveen, a Peace Officer, while engaged in the lawful execution of his duty, contrary to Section 129(a) of the Criminal Code;
>
> 2) **And further** that he at the same time and place aforesaid, being at large on his Undertaking given to a Justice on 13th day of January, 2009, and being bound to comply with a condition of that Undertaking directed by the said Justice, to wit, "Keep the Peace and be of Good Behaviour", did unlawfully fail to comply with that condition, contrary to Section 145(3) of the Criminal Code;
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> 3) **And further** at the same time and place aforesaid, being at large on his Undertaking given to a Justice on the 13th day of January, 2009, and being bound to comply with a condition of that Undertaking directed by the said Justice, to wit, "Keep the Peace and be of Good Behaviour" did unlawfully fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.
>
> 4) **And further** that he at the same time and place aforesaid, while bound by a Probation Order made by a Justice of the Youth Court in and for the Province of Nova Scotia on the 25th day of February, 2009, willfully fail to comply with such

> order, to wit, “Keep the Peace and be of Good Behaviour,” contrary to Section 137 of the Youth Criminal Justice Act.

[3] In his Notice of Summary Conviction Appeal the appellant sets forth the following Grounds of Appeal:

> 1) That the Youth Justice Court erred in law in instructing himself on the extent of police powers to arrest under s.31(1) and s. 9 of the Charter in the absence of an evidential basis lending an air of reality to that doctrine.
>
> 2) Such other grounds of appeal as may appear from a review of the record of the proceeding under appeal.

[4] Section 37(5) of the Youth Criminal Justice Act states:

> Appeals for summary conviction offences
>
> (5) An appeal in respect of an offence punishable on summary conviction or an offence that the Attorney General elects to proceed with as an offence punishable on summary conviction lies under this Act in accordance with Part XXVII (summary conviction offences) of the Criminal Code, which Part applies with any modifications that the circumstances require.

[5] A summary conviction appeal against conviction is governed by Section 686(1)(a) which states:

i. the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence;

ii. the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or

iii. on any ground that was a miscarriage of justice.

[6] In his factum before the court Mr. Gosine, on behalf of the appellant raises four points in issue and they are:

1) THAT the verdict is unreasonable.

2) THAT the verdict cannot be supported by the evidence.

3) THAT the judgment by the learned trial judge be set aside on the grounds of wrong decisions on questions of law, namely:

a. That the Youth Justice Court Judge erred in his application on the law of obstruction;

b. That the Youth Justice Court Judge erred in his lack of consideration of the decision in **R. v. W. (D) [D.W.],** [1991] 1 SCR 742;

4) AND such other grounds as may appear at the time of the hearing.

BACKGROUND:

[7] The charges against T.R.J. arose as a result of his being at the Alderney Gate Complex on March 5, 2009. He was there using the computer services at the Dartmouth Public Library which adjoined the complex.

[8] The Alderney Gate Complex is a public access area in which members of the public are invited to come to access the public library, the food court and the ferry terminal, among other facilities.

[9] On the above date the police had received information that another young person identified as R.C. was at the complex and reported to be in a possession of a knife.

[10] R.C. was found in the Alderney Complex by Cst. Lynch who retrieved a knife from his clothing. She was assisted by Cst. Philip MacKenzie. Cst. Oostveen was one of the police officers who also arrived at the scene and saw T.R.J. with a group of persons, some of whom were gesturing, yelling and some

using obscenities. The group consisted of young males and females and were in the “lobby area”.

[11] Cst. Oostveen told the group including T.R.J. to leave. They all did but T.R.J. He was arrested and charged with the offences under appeal.

[12] The issues raised by the appellant at the hearing can be summarized by his argument that the trial judge made findings of facts which were not supported by the evidence and therefore, the verdict is unreasonable. He argued the facts which he put forth were more in keeping with the evidence.

[13] Secondly, the appellant argues the Learned Youth Justice Court Judge mis-interpreted the law of obstruction and that he did not properly consider the applicability in his decision of **R. v. W.D.(D)**.

[14] The test in determining whether a verdict is reasonable or not was considered in **R. v. Matthews** 2008 NSCA 34 where Justice **E. A. Roscoe, J.** said at para. 13:

> [13] "On an appeal where it is alleged that the verdict is unreasonable, our role is to determine whether the findings essential to the decision are demonstrably incompatible with evidence that is neither contradicted by other evidence nor rejected by the trial judge and whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered. See: the analysis of R. v. Beaudry, [2007] 1 S.C.R. 190 in R. v. Abourached, 2007 NSCA 109, paras. 24-29."

[15] In **R. v. Laboucan** 2010 SCC 12 in discussing the principles of appellate review Charron J., wrote on behalf of the Supreme Court of Canada at paras., 16 and 17:

> [16] "An absolute rule as proposed would also be contrary to established principles or appellate review. It should now be regarded as trite law that a trial judge's reasons should be read as a whole, in the context of the evidence, the issues and the arguments at trial, together with "an appreciation of the purposes or functions for which they are delivered": **R. v. R.E.M.,** 2008 SCC 51, [2008] 3 S.C.R. 3, at para 16."

> [17] "In reviewing a trial judge's reasons for disbelieving the accused, a court should also be mindful of the useful distinction drawn by Doherty J.A. in **R. v. Morrissey** (1995), 97 C.C.C. (3d) 193 (Ont. C.A.), where he cautioned against reading a trial judge's reasons as if they were an instruction to a jury. The court has repeatedly endorsed his observations (at p. 204):

> > A trial judge's reasons cannot be read or analyzed as if they were an instruction to a jury. Instructions provide a road-map to direct lay jurors on their journey toward a verdict. Reasons for judgment are given after a trial judge has reached the end of that journey and explain why he or she arrived at a particular conclusion. They are not intended to be, and should not be read as a verbalization of the entire process engaged in by the trial judge in reaching a verdict.

> See for example **R.E.M.** at para. 18; **R. v. C.L.Y.**, 2008 SCC 2, [2008] 1 S.C.R. 5, at para. 11, where Abella J. Has endorsed this approach. Of course, it may be clear that a judge, in part of the reasons, is in fact describing the road-map or process he or she engaged in. Again here, any impugned passage in a trial judge's reasons must be read in the context of the entire reasons."

[16] A reading of the transcript of evidence and the decision of the trial judge clearly indicates he had an appreciation of the case before him. He reviewed the evidence in detail and commented upon same. The appellant is arguing the facts were not as those found by the trial judge. However, a reading of the transcript of evidence clearly indicates there was evidence presented upon which the trial judge could base his findings and conclusions.

[17] A simple review of pages 14, 15, 16 and 17 of the transcript clearly indicates there was a concern by Cst. Oostveen the group of persons of whom the appellant was one could interfere with the arrest of Mr. C. because of their behaviour. The evidence indicates they were gesturing, loudly talking with profanities and as Cst. Oostveen said it was coming directly from the mouth of T.R.J.

[18] He told the court there was finger pointing from the appellant toward the direction of where the arrest was being made and he concluded it was pointed toward the area of the police. The action and location of the youths including

T.R.J. was supported by the evidence of other police officers at the scene, such as Cst. Edwards and Cst. MacKenzie.

[19] Cst. Oostveen indicated to the court, it was a group of youths who were agitated. He based this upon his experience as a police officer in dealing with groups of people where things can escalate and can have serious, physical confrontation.

[20] It should be noted that Cst. Oostveen has 24 years experience as a police officer. He said as T.R.J. pointed towards the police officers with his finger he was shaking his hand and he was using profanities. He said T.R.J. used the “fuck” word on several different occasions. This was all done, according to Cst. Oostveen while Mr. C. was being placed under arrest.

[21] Mr. Gosine argues in his brief the distance the young group were away from the area where the arrest was taking place, was over 25 feet.

[22] Cst. Edwards said from the time T.R.J. was asked to leave to the time he was taken into custody was approximately a minute and half to two minutes.

[23] T.R.J. stated in the evidence at page 65 of the transcript that he was pointing towards where they had taken the knife from the pants of Mr. C. when asked if he was pointing it towards the police he answered “yes”. He said he was just talking to people. Cst. Oostveen came over and told him he had to leave. T.R.J. explained he was allowed back in the building, because even though he had been kicked out for 12 days, that time had gone by.

[24] He said he knew Cst. MacKenzie from other incidents he had. He tried to calm him down and told him he couldn’t arrest him for nothing. T.R.J. further said in his evidence he didn’t move away from the area as the others did when instructed by Cst. Oostveen because he felt he was allowed in the library and that was where he was going.

[25] He said he also understood the police could be concerned that people such as himself and others in the group might want to interfere with what was happening with Mr. C..

[26] When asked why he wouldn't move as the rest did he advised it was because he wanted to go back in the library because that was where he came from to see what was going on. T.R.J. would not leave.

[27] Thus, it was within Cst. Oostveen's perview to conclude and find in the circumstances presented to him and existing at the time that there was some risk the group or members of the group might interfere with the arrest of the youth with a knife, namely, Mr. C.. Chief Judge Curran concluded this was not an unreasonable conclusion and I concur after reading the transcript.

[28] The appellant argues the distances used by the police officers insofar as where the group was and the arrest of Mr. C. as being made was misconstrued by Chief Judge Curran when he concluded the distance was not far. The evidence from the officers indicated it was somewhere between 20 and 25 feet.

[29] At page 12 of the transcript Cst. Oostveen said the group was approximately 15 to 20 feet away from Cst. Jonothan Edwards and Cst. MacKenzie who were

dealing with Mr. C.. Mr. C. was the man who had the knife. Cst. MacKenzie's estimate was 8 to 10 feet away.

[30] Chief Judge Curran said at p. 120 of the transcript, in his decision, "the group were not far, they were not immediately beside. It wasn't as if they could from where they were, reach out and touch the youth being arrested at that moment but they were not far from there, it was just a matter of steps and moments away".

[31] I do not accept the distance argument of the appellant is of any significance to impact upon my review of the matter to say Chief Judge Curran was incorrect in his description as to the amount of time it would take for the group to become involved with the arrest of Mr. C..

[32] In short, it appears to me the appellant is arguing the findings of fact by the trial judge are different from the facts which the appellant would prefer the court to find.

[33] I am satisfied there were facts presented before the trial judge, for him to make the findings he did. As a trier of fact he was entitled to interpret or make the

findings from the totality of the evidence presented to him. That was his task and I find he performed such task.

[34] In **R. v. Clark (D.M.)**, [2005] 1 S.C.R. 6 at para. 9, Fish, J. set forth the rules to guide the review of factual findings by a court:

> "[9]...Appellate courts may not interfere with the findings of fact made and the factual inferences drawn by the trial judge, unless they are clearly wrong, unsupported by the evidence or otherwise unreasonable. The imputed error must, moreover, be plainly identified. And it must be shown to have affected the result. 'Palpable and overriding error' is a resonant and compendious expression of this well-established norm: see **Stein v. The Ship 'Kathy K',** [1976] 2 S.C.R. 802; **Lensen v. Lensen** [1987] 2 S.C.R. 672; **Geffen v. Goodman Estate**, [1991] 2 S.C.R. 353; **Hodgkinson v. Simms,** [1994] 3 S.C.R. 377; **Toneguzzo-Norvell (Guardian ad litem of) v. Burnaby Hospital,** [1994] 1 S.C.R. 114; **Schwartz v. Canada** [1996] 1 S.C.R. 254; **Housen v. Nikolaisen**, [2002] 2 S.C.R. 235; 2002 SCC 33."

[35] In his pre-hearing memoranda Mr. Gosine quoted the law on obstruction extensively from Chief Judge Curran's decision as follows:

> [11] Chief Judge Curran, after reviewing the evidence, stated [Appeal Book, Tab 6, p. 151]:
>
> "There's a decision from 1982 in the Provincial Court of Alberta, Judge Cioni, a case of R. v. Lykkemark and Funk. [(1982) Carswell Alta 11, 18 Alta. R. (2d) 48 (citation added)]. In paragraph 14 of that decision Judge Cioni wrote the following:

> "Generally speaking it is not or may well not be any offence to simply not do what one is told by a policeman. It may be prudent or helpful or courtesy to comply but it may not be otherwise necessary. To be culpable the request or demand must be rooted in a power of the officer, given by law, and the neglect wilful, that is deliberate and with understanding. It is not enough only that a general power, such as preservation of the peace or prevention of crime be claimed, it must be responsive to some need that is apparent, at least to the officer.

[36] And Judge Cioni went on to say a bit later in the same paragraph:

> I realize that these cases do not exist in a vacuum and that decisions and actions are often dictated by circumstances and in the midst of confusion. But the other side of the coin, vague and even misunderstood generalities do not provide policemen with powers to act.

Chief Judge Currran continued [at Appeal Book, Tab 6, p. 152]:

> In paragraph 17 Judge Cioni quoted from Lord Parker in the English case of Piddington v. Bates 3 AE R. 660 (QB) at page 663 [citation added]. I'm sorry it doesn't indicate here, but I believe that's in the All England Reports. Justice Parker said:

> It seems to me that the law is reasonable plain, first the mere statement by a constable that he did anticipate that there might be a breach of the peace is clearly not enough. There must exist proved facts from which a constable could reasonably have anticipated such a breach. Secondly it's not enough that his contemplation is that there is a remote possibility, but there must be a real possibility of a breach of the peace. Accordingly in every case it becomes a question of whether on the particular facts there were reasonable grounds on which a constable charged with his duty reasonably anticipated that a breach of the peace might occur.

13. Chief Judge Curran then stated [Appeal Book, Tab 6, p. 152]:

I would only add that in addition to having the obligation to ensure that there isn't a breach of the peace, the police officers also have other related duties. Under the Police Act of Nova Scotia, s.42(2) there is reference to responsibilities and duties of a member of a police force as including, maintaining law and order, the prevention of crime, apprehending criminals and offenders who may lawfully be taken into custody, which of course is what was going on when the circumstances here developed.

S.30 of the Criminal Code says:

Everyone who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal thereof and may detain any person who commits or is about to join or renew the breach of the peace,

and so forth.

S.31 says:

Every peace office who witnesses a breach of the peace and everyone who lawfully assists a peace officer is justified in arresting any person he finds committing a breach of the peace or people who he believes on reasonable grounds is about to join in or renew the breach of the peace.

It is also clear that it has been recognized at common law, altogether apart from the provisions of the Police Act and the Criminal Code, that police officers generally have that obligation to maintain the peace, to arrest those who are committing offences, at least if necessary to arrest them, and to be able to deal with persons whom they have arrested without interference from others.

Another decision I want to refer to because, like that of Judge Cioni in Lykkemark and Funk, it's another one in which the law related to obstruction was

canvassed both extensively and in a very clear way, and that is the decision of Judge Peter Ross of our own Provincial Court in the case of Fraser, supra which was decided in 2002. Paragraph 7 of that case Judge Ross said:

There's a line of cases which states that a person is not guilty of obstructing a peace officer merely by doing nothing unless there is a legal duty to act arising at common law or by statute.

Which is the other side, of course, of the second part of what's involved here. And the first question is whether the police officers had a right to order that T.R.J. and others leave the area. The second is whether T.R.J. had a duty to respond because of the police officer giving that direction.

And Judge Ross in paragraph 13 of his decision says three things have to be shown for obstruction to be proved. First of all, I guess obviously, that there was an obstruction, that something was done or not done which affected the police officer executing his or her duty. Secondly, well, that's it, that the obstruction affected the officer in the execution of a duty he was actually performing at the time and, thirdly, that the person obstructing did so wilfully.

Another case which was referred to by Judge Ross and which is often quoted in relation to this whole subject is that of another English case, Rice v. Connolly, [1966] 2 AE R 649,a 1966 [citation added] decision of the English Queen's Bench. The headnote in that case said:

The appellant was seen by police officers in the early hours of the morning behaving suspiciously in an area where on the same night breaking offences had taken place. On being questioned he refused to say where he was going or where he had come from. He refused to give his full name and address though he did give a name and a name of a road which were not untrue. He refused to accompany the police to a police box for identification purposes saying, 'if you want me you'll have to arrest me.' He was arrested and charged with wilfully obstructing the police.

And on appeal it says it was conceded that "willfully" imported doing something without lawful excuse. Again, in the headnote it says that:

> It was held that although every citizen had a moral or a social duty to assist the police, there was no legal duty to that effect in the circumstances of that case."

[37] The case of **R. v. Johnsgaard** [2003] A.J. 1234 where Fraser PCJ in discussing obstruction said at paras. 13 - 15:

> 13 " The law relating to obstruction of a peace officer was set out in my judgment of R. v. Amat, [2003] A.J. No. 165, referred to by both counsel. For ease of reference, I will set out the elements of the offence from Amat, found at paras. 9-13:
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> [para. 9] The elements that must be proven to make out a charge of obstruction are set out in R. v. Gunn (1997), 113 C.C.C. (3d) 174 (Alta. C.A.). They are:
>
> 1) there must be an obstruction;
>
> 2) the peace officer must be in the execution of his duty;
>
> [I would add as stated by the Ontario Court of Appeal in R. v. Tortolano, infra, it must be obstructing a duty that he was then executing.]
>
> 3) the person must be wilfully obstructing.
>
> The first two elements make up the actus reus. The third is the mental element or mens rea.
>
> [para. 10] As to what is an obstruction the Court stated as follows at page 181:

> "There is not, and likely cannot be, a precise legal definition of 'obstructs' as the word is used in s. 129(a). That reality is both a strength and a weakness of the section. Furthermore, any interpretation of 'obstructs' must respect the fact that there is in this country, a right to question a police officer. The cases demonstrate that courts have had difficulties measuring the interaction between individuals and peace officers and drawing the line between innocent and culpable conduct."
>
> [para. 11] In cases dealing with the offence of obstruction, the courts have been very careful to draw a distinction between conduct that actually obstructs and conduct that simply makes the job of the police more difficult. For instance, the refusal to identify oneself or answer questions in the absence of a legal obli-gation to do so will not amount to obstruction. However where there is an obliga-tion to identify oneself, the failure to respond to police requests for identification does constitute obstruction (see R. v. Moore(1978), 43 C.C.C. (2d) 83 (S.C.C.)).
>
> [para. 12] As to whether the officer is in the execution of his duty, more is required than merely being on duty or at work. However, the police officer does not have to be involved in the investigation of a specific crime to be in the execu-tion of his duty (see R. v. Noel (1995), 101 C.C.C. (3d) 183 (B.C.C.A.)). It is immaterial as to whether the officer was completely frustrated in carrying out his duty (see R. v. Tortolano et al (1975), 28 C.C.C. (2d) 562 (Ont. C.A.)).
>
> [para. 13] The mental element of wilfully obstructing has now been deter-mined by R. v. Gunn, supra, that only a general intent is required for section 129(a). This decision is based on the nature of the offence (it being in the minor category or of relatively low significance) its purpose, and its policy. The mens rea is present when an accused knows what he or she is doing, intends to do it and is a free agent (see R. v. Goodman (1951) 99 C.C.C. 366 (B.C.C.A.). The obstruction must be intentional and without lawful excuse (R. v. Guthrie (1982) 69 C.C.C. (2d) 216 (Alta. C.A.))."

[38] A reading of Chief Judge Curran's decision clearly indicates T.R.J. refused to leave the area when requested to do so by Cst. Oostveen. A review of T.R.J.'s

own evidence reveals he didn't move away after being told to do so by Cst. Oostveen.

[39] Cst. Oostveen was there with the other officers enforcing the provision of the Criminal Code in apprehending Mr. C. who was in possession of a knife. A breach of the peace by the group including, T.R.J. was feared by Cst. Oostveen. Other officers testified about the attitude and actions of the group, especially T.R.J. and confirmed to the court the situation, as described by Cst. Oostveen existed.

[40] Chief Judge Curran said as follows at p. 123 of his decision:

> "It is quite true, of course, as indicated in the cases that it isn't by any means always unlawful to refuse to do something that a policeman says. But you run the risk if you decide not to do what you've been directed by a police officer, you run the very clear risk of being found to have obstructed the officer if the officer had a valid reason related to his duties, which he was actually carrying out at the time for giving that direction."

[41] A reading of the trial judge's decision and the evidence at the trial leads me to the conclusion that is exactly what happened in this particular case.

[42] In short, Cst. Oostveen was there lawfully and on duty to assist in the arrest of Mr. C. for possession of a knife. He formulated his opinion there was a crowd a short distance away becoming agitated, shouting and hollering profanities in their direction. One of the crowd was T.R.J. He was singled out as using profanity and pointing toward the police. In these circumstances Cst. Oostveen concluded there was a very strong possibility the crowd could interfere with the arrest of Mr. C.. For those reasons he directed the crowd to disperse and leave.

[43] T.R.J. decided not to leave. He made that conscious decision himself and stayed there. As such, when one does that, as Chief Judge Curran said, given the circumstances that existed at the time, one runs the risk of obstructing the police, which is what happened in this particular case.

[44] The appellant claimed the Youth Justice Court Judge erred in his consideration of the decision of **R. v. W.D.** (supra) in that he dismissed the applicability of **R. v. W.D.** summarily.

[45] In his decision at p. 110 -111 Chief Judge Curran said as follows:

> "As I say, to me those were the essential facts that were involved here and I don't think there's any real dispute on those. This is not really a case where **W.D. (D)** has any great amount of application because it seems to me, as I have already said, that T.R.J. acknowledges, if not in so many words, at least by implication in his testimony, that he knew he had been directed to leave, but chose not to. That is what this trial is about."

[46] Mr. Gosine argues the judge did not set forth the steps as required in **R. v. W.D. (D)**. In **R. v. Dinardo** [2008] 1 SCR 788 speaking on behalf of the court Charron, J. rejected a formalistic approach in regard to the application of **R. v. W.D.(D)**. He went on to say that only the substance, not the form of **W.D.(D)** need be captured by a trial judge in rendering a decision.

[47] In **R. v. R.E.M.** [2008] 3 SCR 3, McLachlan C.J. said at paras. 42 and 43:

> 42. "In this case, the court of Appeal faulted the trial judge principally for not giving sufficiently precise reasons for accepting the complainant's evidence and rejecting the accused's evidence, as well as for not stating precisely what evidence he accepted and rejected in respect of each of the counts on which he found the accused guilty. Similarly, in **Dinardo**, the reasons of the trial judge were criticized for failing to engage in a detailed discussion of the process of assessing reasonable doubt recommended in **W.(D.)**. In both cases, the issue was how much detail the trial judge's reasons are required to provide - in this case on the facts, in **Dinardo** on the law.
>
> 43. The answer is provided in **Dinard** and **Walker** - what is required is that the reasons, read in the context of the record and the submissions on the live issues in the case, show that the judge has seized the substance of the matter. Provided this is done, detailed recitations of evidence or the law are not required."

[48] Chief Judge Curran presides over a busy criminal court and as Binnie, J. Said in **R. v. Sheppard** [2002] 1 SCR 869 at para. 55:

> "Regard will be had to the time constraints and general press of business in the criminal courts. The trial judge is not held to some abstract standard of perfection. It is neither expected nor required that the trial judge's reasons provide the equivalent of a jury instruction."

[49] In the case under appeal, it is clear Chief Judge Curran did not see any real need to apply the principles of **R. v. W.D.(D).** As I read his decision he indicated there was no credibility issue between the appellant and what the crown said he did insofar as the requirements for a conviction. T.R.J. himself said he knew he was told to leave. He said he didn't leave and remained there after being told to leave by Cst. Oostveen. Those facts are not in dispute.

[50] The issue boiled down to whether or not in the circumstances existing at the time Cst. Oostveen was authorized in law to order T.R.J. to leave the area in the first place. Chief Judge Curran found he was.

[51] I have re-examined and re-read the evidence presented at trial, along with the trial judge's decision and in my view the appellant has not identified any essential findings made by the trial judge that are demonstrably incompatible with evidence that was neither contradicted by other evidence or rejected by the trial judge.

[52] The appellant has not persuaded me the verdict of guilty is not one that a properly instructed jury, acting judiciously could reasonably have rendered. I find the verdict of the trial judge was not an unreasonable one.

[53] In his notice of summary conviction appeal, the appellant also appealed a two counts in the indictment for which he was found guilty of breaching an undertaking in s.145 (3) of the Criminal Code and another count of failure to comply with a probation order, contrary to s.137 of the **Youth Criminal Justice Act**.

[54] Mr. Gosine did not address any arguments to those particular counts and I conclude therefrom that the dismissal of his appeal on the s. 129(a) of the Criminal

Code count in the Indictment would also lead to a dismissal of an appeal on those counts as well.

[55] Chief Judge Curran, in his decision stated as follows on page 125 of the transcript:

> "The rest of the counts really flow from the conviction on either the first or the second. T.R.J. was charged that he breached a condition of an undertaking to keep the peace and be of good behaviour, an undertaking made January 13th and a further similar condition and an undertaking January 19th, and also a provision of a probation order made on the 25th of February, and those conditions were in place at the time, and by obstructing Cst. Oostveen T.R.J. did fail to keep the peace and be of good behaviour. So I find him guilty of those charges although they're of much less consequence.
>
> In the end I find T.R.J. guilty of counts 1, 3, 4 and 5; not guilty of count 2."

[56] I agree with him and the appeal of those convictions is dismissed as well.

[57] In conclusion therefore I have upheld the conviction of T.R.J. by Chief Judge Curran, on counts 1, 3, 4 and 5 in the Information which was the subject of the appeal.

J.