

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Swimm*, 2010 NSSC 251

Date: 20100531

Docket: Yar No. 321396

Registry: Yarmouth

Between:

Her Majesty The Queen

Appellant

v.

Nelson Ronald Swimm

Respondent

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Judge: The Honourable Justice M. Heather Robertson

Heard: May 31, 2010, in Yarmouth, Nova Scotia

Decision: May 31, 2010 (Orally)

Written Release: June 28, 2010

Subject: Appeal from the acquittal of the respondent, for assault causing bodily harm s. 267(b) of the *Criminal Code*.

Summary: Two brothers “faced one another down” and engaged in a punching and wrestling match over insults thrown.

Issue:

1. Did the trial judge err in finding the fight consensual?
2. Did the trial judge err by making unreasonable findings that the respondent had not intended bodily harm to his brother?

Result: The evidence was reasonably capable of supporting the trial judge’s findings on both issues. To interfere with his decision would be to erroneously substitute my interpretation of the facts. His finding of facts and law was reasonable and proper, when one considers the whole of the evidence.

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