

SUPREME COURT OF NOVA SCOTIA**Citation:** R. v. Francis, 2011 NSSC 140**Date:** 20110407**Docket:** SYDJC302487**Registry:** Sydney**Between:**

Her Majesty the Queen

Plaintiff

v.

Charles Ryan Francis, Tyler Joseph Francis
and Norman Sylliboy

Defendant

LIBRARY HEADING

Restriction on Publication: Sexual Assault Case**Judge:** The Honourable Justice Frank Edwards**Heard:** March 21, 22, 25, 30 and April 1, 4, and 5, 2011, Sydney
Nova Scotia**Written Decision:** April 7, 2001**Subject:** Criminal Law: Sexual Assault; Code s. 271(a); ss. 276,
276.1, 276.2, 276.3**Facts:** Two Accused charged with having non-consensual sex
with Complainant. Third Accused charged as party for
videotaping the encounter and threatening to put same on
internet. Complainant drinking heavily - had vague
recollection of what occurred.

Evidence contrary to s. 276 admitted without objection.

Issue: Whether Crown had proven case beyond a reasonable

doubt - application of W.D. - whether admission of evidence contrary to s. 276 could be cured by late s. 276.1 application.

Result:

All three Accused found not guilty. Complainant's evidence problematic - unable to determine exactly what had occurred. Although Evidence of Accused not accepted, it did raise a reasonable doubt. Accused charged as party: evidence of aiding and abetting not proven beyond a reasonable doubt - in any event, charge fails with acquittal of two principals.

S. 276 Issue: Crown did not seek mistrial and agreed with late s. 276.1 application. Evidence admitted but disbelieved.

Cases Noted:

R. v. W.(D). [1994] 3SCR 521

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