

SUPREME COURT OF NOVA SCOTIA

Citation: R v. Hamilton, 2011 NSSC 305

Date: 20110727

Docket: CRH 336711

Registry: Halifax

Between:

Her Majesty The Queen

Provincial Crown

v.

Benjamin Joseph Hamilton

Accused

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Judge: The Honourable Justice Peter P. Rosinski

Heard: July 25, 2011 in Halifax, Nova Scotia

Written Decision: July 27, 2011

Oral Decision: July 26, 2011

Subject: Evidence – *res gestae* – victim of assault / 911 calls.

Summary: Taxicab driver caused the Accused to cease his assault when he produced his cell phone, and then called 911. Crown submitting 911 call in its entirety, should be admitted for the truth of its contents as *res gestae*.

Issue: Are the preconditions for the admissibility of this 911 call as *res gestae* met?

Result: *Res gestae* is a specific exception to the hearsay rule and in some cases to the rule against the admission of prior consistent

statements. In this case the Court found that while the “excited utterances” of the taxicab driver constituted *res gestae*, nevertheless, the evidence is not admissible for the truth of its contents after a weighing of the probative value contrasted with the prejudicial effect upon the fair trial rights of the accused.

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