SUPREME COURT OF NOVA SCOTIA
Citation: *Snyder v. His Majesty the King*, 2024 NSSC 179

Date: 20240521
Docket: *CRBW*, No. 522361
Registry: Halifax

Between:

Wendell Snyder

Appellant

v.

His Majesty the King

Respondent

Judge:	The Honourable Justice Diane Rowe
Heard:	September 6, 2023, in Bridgewater, Nova Scotia
Oral Decision:	May 21, 2024
Counsel:	Nicholaus Fitch, for the Appellant Leigh-Ann Bryson, for the Crown Respondent

By the Court, orally:

[1] I am rendering this decision orally. Should it be released in written form, I reserve the right to edit it for grammar, structure and organization, as well as to provide complete citations and references, without changing the reasoning or the result.

Overview

[2] Mr. Snyder is appealing his summary conviction on the charge of uttering threats, pursuant to a decision of Judge Scovil, which was issued on February 9, 2023.

[3] The Appellant's grounds of appeal set out the following areas for appellate review: whether the Provincial Court judge erred in misapprehending the evidence leading to credibility findings in favour of the Crown; whether the Judge erred in failing to reconcile conflicting evidence and whether the Judge erred in providing insufficient reasons for conviction.

[4] Mr. Snyder requests as his remedy that the decision be overturned, with an order for either an acquittal or a new trial.

[5] The Respondent Crown slightly reframes the issues as: whether the Judge misapprehended the evidence; whether the Judge erred in law by misapplying the law concerning reasonable doubt as set out in *R v. W.(D.)* 1991 CanLII 93 (SCC), [1991] 1 SCR 742; and then whether the Judges' reasons are insufficient and fail to reconcile conflicting evidence. The Respondent submits that there was no error in relation to any of these grounds, and the decision should be affirmed.

Standard of Review, Remedy and Sufficiency of Reasons for Appellate Review

[6] This Court, on an appeal of a Summary Conviction decision, may review the evidence at trial and re-examine and re-weigh it, but only for the purposes of determining whether it is reasonably capable of supporting the trial Judge's conclusions.

[7] As was stated by Cromwell J.A. at para 6 in *R v. Nickerson* (1999) 178 NSR (2d) NSCA):

> [6] The scope of review of the trial court's findings of fact by the Summary Conviction Appeal Court is the same as on appeal against conviction to the Court of Appeal in indictable offences: see sections 822(1) and 686(1)(a)(i) and *R. v. Gillis* (1981), 1981 CanLII 3294 (NS CA), 60 C.C.C. (2d) 169 (N.S.S.C.A.D.) per Jones, J.A. at p. 176. Absent an error of law or a miscarriage of justice, the test to be applied by the Summary Conviction Appeal Court is whether the findings of the trial judge are unreasonable or cannot be supported by the evidence. As stated by the Supreme Court of Canada *in R. v. Burns*, 1994 CanLII 127 (SCC), [1994] 1 S.C.R. 656 at 657, the appeal court is entitled to review the evidence at trial, re-examine and reweigh it, but only for the purpose of determining whether it is reasonably capable of supporting the trial judge's conclusions. If it is, the Summary

> Conviction Appeal Court is not entitled to substitute its view of the evidence for that of the trial judge. **In short, a summary conviction appeal on the record is an appeal; it is neither a simple review to determine whether there was some evidence to support the trial judge's conclusions nor a new trial on the transcript.**
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> [emphasis added]

[8] Most recently, Justice Van den Eynden, in *R. v. M. (CJP)*, 2023 NSCA 73, at paras 34 -36 considered the standard of review for an unreasonable verdict as follows:

> [34] Standard of review for an unreasonable verdict: A complaint of an unreasonable verdict is viewed through the lens of (1) whether the verdict is one that a properly instructed jury or a judge could reasonably have rendered; and (2) whether the judge drew an inference or made a finding of fact essential to the verdict that is plainly contradicted by the supporting evidence, or is shown to be incompatible with evidence that has not otherwise been contradicted or rejected by the judge. (See R. v. C.P., 2021 SCC 19 at paras. 28-30 and R. v. Bou-Daher, 2015 NSCA 97 at para. 30).
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> [35] As CM's unreasonable verdict submissions challenge the judge's credibility findings it is important to note that in assessing credibility, trial judges hold the advantage over appellate courts and their findings are entitled to deference. That said, a verdict can be overturned based on credibility findings if an appellate court finds, upon a review of all the evidence and paying proper attention to the special position of the trial judge, the verdict is unreasonable. This was explained by the Supreme Court of Canada in R. v. W.(R.), [1991] 2. S.C.R. 122:
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> > [20] It is thus clear that a court of appeal, in determining whether the trier of fact could reasonably have reached the conclusion that the accused is guilty beyond a reasonable doubt, must re-examine, and to some extent at least, reweigh and consider the effect of the evidence. The only question remaining is whether this rule applies to verdicts based on findings of credibility. In my opinion, it does. The test remains the same: could a jury or judge properly instructed and acting reasonably have convicted? That said, in applying the test the court of appeal should show great deference to findings of credibility made at trial. This Court has repeatedly affirmed the importance of taking into account the special position of the trier of fact on matters of credibility: White v. The King, 1947 CanLII 1 (SCC), [1947] S.C.R. 268, at p. 272; R. v. M. (S.H.), 1989 CanLII 31 (SCC), [1989] 2 S.C.R. 446, at pp. 465-66. The trial judge has the advantage, denied to the appellate court, of seeing and

> hearing the evidence of witnesses. However, as a matter of law it remains open to an appellate court to overturn a verdict based on findings of credibility where, after considering all the evidence and having due regard to the advantages afforded to the trial judge, it concludes that the verdict is unreasonable.
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> [36] Further, the Crown also relied upon circumstantial evidence to establish CM's guilt. The judge's reliance on such evidence, is examined under the standard explained in R. v. Villaroman, 2016 SCC 33:
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> > [55] … Where the Crown's case depends on circumstantial evidence, the question becomes whether the trier of fact, acting judicially, could reasonably be satisfied that the accused's guilt was the only reasonable conclusion available on the totality of the evidence: [citations omitted].

[9] Further, in regards to the law concerning the remedy sought by the Appellant, the Court has considered *R v Prest* 2012 NSCA 45 at paras 30-32, where Farrar JA writes:

> [30] Section 686(2) applies to summary conviction appeals. It provides:
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> > 686(2) Where a court of appeal allows an appeal under paragraph (1)(a), it shall quash the conviction and
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> > (a) direct a judgment or verdict of acquittal to be entered; or
> >
> > (b) order a new trial.
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> [31] The proper exercise of the SCAC's discretion under ss. 686(2) of the Criminal Code was considered by Hamilton, J.A. of this Court in *R. v. MacNeil*, 2009 NSCA 46. In that case the test was formulated as follows:
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> > [10] ... where a conviction is quashed because of some mistake in the conduct of the trial, the SCAC judge should generally direct a new trial where there is admissible evidence upon which a properly instructed trier of fact could convict on a proper trial. Where there is no evidence on which a properly instructed trier of fact could convict, there should be an acquittal.
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> [32] The SCAC is not entitled to substitute its view of the evidence for that of the trial judge. A summary conviction appeal on the record is just that, an appeal. It is not a new trial on the transcript (see *R. v. Nickerson*, 1999 NSCA 168, para. 6). …

[10] The law concerning sufficiency of reasons was canvassed most recently in *R v Kitch*, 2023 NSCA 33 which both counsel for the Appellant and the Respondent relied upon. In *Kitch, supra*, the Court of Appeal set out the following at para 26-31:

> [26] Sheppard enumerated the assumptions engaged when assessing sufficiency of reasons:
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> - Judges are presumed to know the law.
> - Judges do not need to discuss all of the evidence put before them in providing the decision.
> - Judges do not need to identify each and every conclusion reached nor resolve each and every inconsistency in the evidence.
> - Judges do not need to take a formalistic approach to giving reasons.
> - Judges are not held to a standard of perfection in giving reasons.
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> [27] R. v. Braich, 2002 SCC 27 continued the Court's progressive perspective on a judge's task of providing reasons, echoed again the following year in R.E.M., when appellate courts were reminded that: ". . . [t]he object is not to show how the judge arrived at his or her conclusion, in a 'watch me think' fashion. It is rather to show why the judge made that decision" (para. 17). What the judge concluded must be linked to why it was concluded, and the connection between the two must be identifiable and understandable:
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> > [25] The functional approach advocated in Sheppard suggests that what is required are reasons sufficient to perform the functions reasons serve — to inform the parties of the basis of the verdict, to provide public accountability and to permit meaningful appeal. The functional approach does not require more than will accomplish these objectives. Rather, reasons will be inadequate only where their objectives are not attained; otherwise, an appeal does not lie on the ground of insufficiency of reasons.
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> > . . .
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> > [55] The appellate court, proceeding with deference, must ask itself whether the reasons, considered with the evidentiary record, the submissions of counsel and the live issues at the trial, reveals the basis for the verdict

> reached. It must look at the reasons in their entire context. It must ask itself whether, viewed thus, the trial judge appears to have seized the substance of the critical issues on the trial. If the evidence is contradictory or confusing, the appellate court should ask whether the trial judge appears to have recognized and dealt with the contradictions. If there is a difficult or novel question of law, it should ask itself if the trial judge has recognized and dealt with that issue.
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> [emphasis added]

[28] However, R.E.M. also emphasized the restraint to be exercised on appellate review:

> [56] If the answers to these questions are affirmative, the reasons are not deficient, notwithstanding lack of detail and notwithstanding the fact that they are less than ideal. The trial judge should not be found to have erred in law for failing to describe every consideration leading to a finding of credibility, or to the conclusion of guilt or innocence. Nor should error of law be found because the trial judge has failed to reconcile every frailty in the evidence or allude to every relevant principle of law. Reasonable inferences need not be spelled out. […] Finally, appellate courts must guard against simply sifting through the record and substituting their own analysis of the evidence for that of the trial judge because the reasons do not comply with their idea of ideal reasons. […]

[29] The Supreme Court of Canada reviewed Sheppard's functional approach in G.F. The Court's comments illustrate this functional approach to the inquiry into sufficiency of reasons continues (paras. 69 and 74).

[30] R v. Ramos, 2020 MBCA 111, aff'd 2021 SCC 15 offers a note of caution about confusing sufficiency of reasons with other errors. There, the issue concerned the trial judge's reasons in relation to how credibility concerns were resolved on the way to convictions for sexual assault and sexual interference. The Manitoba Court of Appeal reminds appellate courts about the distinct nature of sufficiency of reasons as a ground of appeal:

> [51] If the reasons are objectively inadequate, they may nevertheless not be inscrutable for the purpose of appellate review if the "basis of the trial judge's conclusion is apparent from the record, even without being articulated" (Sheppard at para 55; see also Dinardo at para 32).
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> [52] In deciding whether reasons are "sufficiently amenable to appellate review", the appellate court should not confuse the need for sufficient reasons with the examination of the sufficiency of the evidence which raises the separate issue of the reasonableness of the verdict (Gagnon at para 16).

> [53] The net effect of these legal principles is that the role of the appellate court in deciding a claim of insufficient reasons, while important, is also limited in its scope. The appellate court cannot substitute its own view of the evidence, and its significance, for that of the trial judge. Findings of fact, including findings relating to credibility, cannot be disturbed absent demonstration of palpable and overriding error (ibid at para 20; see also R v Jovel, 2019 MBCA 116 at paras 26-30). The appellate court cannot "mask" its disagreement with a trial judge by concluding the reasons provided were insufficient (Braich at para 41; see also R v HSB, 2008 SCC 52 at para 15). Equally true, the appellate court cannot reassess aspects of the case unresolved by the trial judge where the basis for his or her conclusion is not apparent from the reasons or the record (see Dinardo at para 32; and R v Black, 2017 ONCA 599 at para 40, rev'd 2018 SCC 10 at para 3).
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> [emphasis added]

> [31] As noted earlier, an examination of the sufficiency of a judge's reasons requires this Court to show deference in its review. "If deficiencies in the reasons do not, in a particular case, foreclose meaningful appellate review, but allow for its full exercise, the deficiency will not justify intervention . . ." (Sheppard, para. 25).

Analysis of the Decision and Record

[11] The elements of the offence that the Appellant was convicted upon are set out in s. 264.1(1)(a) of the *Criminal Code* which provides that every one commits an offense who, in any manner, knowingly utters, conveys or causes any person to receive a threat to cause death or bodily harm.

[12] In *R v Clemente* 1994 CanLII 49 at para 12, the Supreme Court of Canada stated that:

> Under the present section the actus reus of the offence is the uttering of threats of death or serious bodily harm. The *mens rea* is that the words be spoken or written as a threat to cause death or serious bodily harm; that is, they were meant to intimidate or to be taken seriously.

> **To determine if a reasonable person would consider that the words were uttered as a threat the court must regard them objectively, and review them in light of the circumstances in which they were uttered, the manner in which they were spoken, and the person to whom they were addressed.**
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> [emphasis added]

1. Misapprehension of Evidence

[13] The Appellant requests the Court to consider the trial record, and instances in which the trial judge misapprehended the evidence of the police officer who arrived on scene Cst. Hiltz, and the evidence of the complainants Mr. Cooper and Mr. Crouse.

[14] Specifically, the Appellant pleads that the evidence of the complainant Mr. Crouse displayed uncertainty on cross examination concerning the exact date when Mr. Snyder threatened to kill him if he “came across the road”, and was not reconcilable with his earlier evidence concerning the circumstances in July 2022 of Mr. Snyder making a threat. The Appellant submits that the judge was unreasonable in relying on Mr. Crouse’s evidence to convict as he had misapprehended it.

[15] Further, the Appellant submits that the trial Judge rejected the evidence of Mr. Snyder based on his preference for the evidence of Cst. Hiltz, and notes that Cst. Hiltz was not clear in her memory of the conversation with Mr. Snyder. Cst.

Hiltz' evidence, based on her recollection, was that Mr. Snyder had stated to her in regard to his neighbours "They better stay off my property or I'm going to get my gun."

[16] Mr. Snyder indicates that Mr. Cooper's evidence conflicted in material ways with the evidence of Mr. Crouse and Mr. Snyder and was unresolved. However, on this Court's review of the record, these inconsistencies are in regard to the location of where Mr. Cooper had received the threat.

[17] Mr. Cooper's evidence is that Mr. Snyder threatened to "shoot", and that Mr. Crouse's evidence was a threat to kill. Cst. Hiltz referenced hearing Mr. Snyder state, essentially, that he would shoot his neighbours if they stepped on his property.

[18] Whether the statements of the Crown witnesses were that Mr. Snyder had stated an intent about and to the complainants either "to shoot" or "to kill," it is reasonable to conclude that there was a threat to cause death or serious bodily harm, and, as per *R v Clemente*, *supra*, to intimidate.

[19] Mr. Snyder did take the stand in his own defence, and denied committing any element of the offence charged.

[20] Based on my review of the record the trial Judge did not misapprehend the evidence, or make a mistake material to the analysis of the evidence that was the basis for the charge. It does appear that this ground of appeal is a request for the summary conviction appeal court to re-engage with the evidence and make alternative findings, which is not within the scope of this review. It is apparent that the evidence at trial, is reasonably capable of supporting the trial Judge's conclusions to support a conviction.

2. Credibility and the test in *W.D., supra*

[21] Relatedly, this appeal questions whether the *W.D., supra,* analysis was fully engaged by the trial Judge or whether he had impermissibly engaged in preferring the evidence of the Crown's witnesses over the Accused.

[22] The trial judge correctly sets out the test in *R v W.D., supra,* in his brief decision at page 72, lines 5 to 19 of the Appeal book. It is open to the trial court to make findings of fact and to accord as much or as little weight as they see fit to the credibility factors, based on common sense and experience (*R v H.(W)*, 2013 SCC 22, para 32.)

[23] The matter was heard in under an hour. There were four witnesses, comprising the three Crown witnesses and the defendant Mr. Snyder. The credibility of the witnesses was integral to deciding the case.

[24] The trial Judge accepted the evidence of Cst. Hiltz, without any notes being tendered, as her evidence was that of her own recollection. The appellant appears to question the credibility assessment of the Judge by noting that there were no accompanying notes taken by Cst. Hiltz at the time she arrived at the scene and she then spoke with Mr. Snyder. The Appellant would have this Court then engage in revisiting the trial Judge's credibility findings in regard to Cst. Hiltz on the basis that she did not take contemporaneous notes. Frankly, it is within the trial Judge's purview to make credibility findings on Cst. Hiltz' direct *viva voce* evidence, unsupported by contemporaneous notes, and then to accordingly assign weight. It appears in this matter, that the trial Judge did so and assigned weight to her evidence that she heard the accused directly state he would "shoot" his neighbours.

[25] The record indicates that there was corroboration concerning Mr. Snyder uttering a threat to cause death, by either shooting or killing. The substance of the statements that the Crown witnesses heard, and Mr. Snyder's gesture of revealing a weapon to accompany the threat, would indicate that there was a threat to either cause death or bodily harm, objectively. Subjectively, the complainants' evidence

was that they took the threat seriously in the circumstances. This evidence was also corroborated by Cst. Hiltz' evidence concerning Mr. Snyder's demeanour on his arrest.

[26] The trial Judge did indicate in his decision that he had concerns with the credibility of the Appellant. While the trial Judge was terse in his comment that "I don't believe that", he had just minutes before set out the test in *W.D.*, *supra*, accurately in law, and then proceeded with his finding on Mr. Snyder's evidence and his credibility, as well as of the Crown witnesses.

[27] As the Court finds that there was no error in the application of the *R v W.D.*, *supra*, analysis by the trial Judge. It is therefore not entitled to substitute its view of the evidence for that of the trial judge. A summary conviction appeal on the record is just that, an appeal. It is not a new trial on the transcript (*Nickerson*, *supra*).

3. Insufficient Reasons

[28] As the Court considered this appeal, it considered whether this was a conclusory decision and whether it is apparent in reviewing the decision, and the record, whether it was sufficient and not just a stated preference for one side's evidence over the other.

[29] The Court is live to the circumstances of the matter. Trial Courts are busy, and this was a summary matter, heard in under an hour with a decision made on the bench by the trial Judge. While this does not mean that decisions incorrect in law or insupportable in evidence should be affirmed, it does indicate that in the circumstances sufficient reasons may very well not be "perfect" reasons.

[30] There is a presumption that the Judge knows the law and does not need to exhaustively restate it, for example in regard to restating the elements of the offence, as I have done so, and whether in making the decision on conviction once the elements are addressed on the record.

[31] As per *R v D (JJR)*(2006) 215 CCC (3d) 252 (ONCA) para 32, reasons "must be examined in the context of the entire proceeding, especially the nature of the evidence heard and the arguments advanced."

[32] The trial Judge references that he found the Crown witnesses to be "relatively straightforward" and that they admitted the record and were otherwise credible. The decision also recited the concerns that he had with Mr. Snyder's credibility while reviewing the areas where detail was not consistent on the day of the incident but they do indicate he was on the deck where at least one Crown witness had placed him in their evidence.

[33] The trial Judge's reasons are succinct, and no more than 5 pages in length. This decision, when paired with the record, indicate that the trial judge canvassed the Crown's evidence concerning the complainant's experiences of encountering Mr. Snyder with a firearm, as well as Mr. Snyder's own evidence, and then weighed it accordingly. The trial Judge stated that Mr. Snyder said that he was "going to shoot them if they came across the road", or, in other words, he found that Mr. Snyder did state to the complainants that if they came onto Mr. Snyder's property that he would use the firearm to harm them and thereby intimidate them. This statement in the trial Judge's decision addressed his findings on each of the elements of the offence, as set in context and in the record. It is brief, and not conclusory, as it is based on all of the evidence heard and is intelligible in the context of a very short trial, with limited witness evidence, that was heard under an hour.

[34] As was stated in *Sheppard*, *supra*, an examination of the sufficiency of a judge's reasons requires this Court to show deference in its review. "If deficiencies in the reasons do not, in a particular case, foreclose meaningful appellate review, but allow for its full exercise, the deficiency will not justify intervention . . ." (*Sheppard*, para. 25)

[35] This Court was able to engage in appellate review, and while the decision is terse the record is also correspondingly short and reflective of the proceedings and evidence set before the trial Judge. There are no gaps, nor is it unintelligible. In that sense, this Court will not engage in intervention on this ground.

Conclusion

[36] This Court dismisses the Appeal of the lower court's decision, and the conviction is affirmed.

Diane Rowe, J.