

SUPREME COURT OF NOVA SCOTIA
Citation: *Larkin v. Bourque*, 2026 NSSC 75

Date: 20260310
Docket: Yar, No. 539763
Registry: Yarmouth

Between:

Leona Larkin

Appellant

v.

Milton Bourque

Respondent

Decision

Judge: The Honourable Justice John P. Bodurtha
Heard: September 17, 2025, in Yarmouth, Nova Scotia
Written Decision: March 10, 2026
Counsel: Leona Larkin, Self-represented Appellant
Milton Bourque, No appearance for the Respondent

By the Court:

Introduction

[1] The appellant appeals from the summary conviction decision of Judge James Burrill where the defendant was found not guilty of section 3(1)(e) of the *Protection of Property Act*, R.S.N.S. 1989, C. 363. The appellant brought the proceeding as a private prosecution.

[2] The appellant requests that this court allow the appeal, set aside the verdict, and order a new trial.

[3] The appellant has failed to persuade me that appellate intervention is warranted. I would dismiss the appellant's appeal for the reasons that follow.

Facts

[4] On June 16, 2023, it was alleged that the respondent trespassed on the appellant's property where "no trespassing" and "private property" signs were posted. The respondent was there to serve a lawyer's letter on the appellant's spouse, Robert Larkin.

[5] The respondent went to the door of the home and either knocked or rang the doorbell. The appellant and her spouse came to the door and made it clear that the respondent was not welcome there. The respondent retreated to his vehicle.

[6] The trial judge found that there was history between the parties but nothing to indicate the appellant had revoked from the respondent any implied licence to knock on the door.

[7] The trial judge was not convinced beyond a reasonable doubt that there was a breach of the *Protection of Property Act*. Therefore, the respondent was found not guilty.

Issues

[8] Ms. Larkin raises the following grounds of appeal in her Notice of Summary Conviction Appeal which can be summarized as follows:

- (a) Did the trial judge commit a miscarriage of justice based on a reasonable apprehension of bias because he heard a recusal hearing in another matter involving the appellant's spouse?
- (b) Did the trial judge commit a miscarriage of justice based on insufficient reasons because the caselaw referenced in the decision was not comparable to the appellant's circumstances?
- (c) Did the trial judge err in law or err in misapprehending evidence?

Standard of Review

[9] The Nova Scotia Court of Appeal in *R. v. Nickerson*, 1999 NSCA 168, laid out the standard of review for a summary conviction appeal at paras. 5-6:

5 Unlike appeals to this Court in summary conviction matters, appeals to the Summary Conviction Appeal Court on the record may address questions of both fact and law. Hallett, J.A., for the Court, recently described the role of the Summary Conviction Appeal Court judge in *R. v. Miller* (1999), 173 N.S.R. (2d) 26 (N.S. C.A.) at pp. 27-29:

On an appeal to a summary conviction appeal court (in this Province, the Supreme Court of Nova Scotia), from a summary conviction, on the ground that the verdict is unreasonable or unsupported by the evidence, the duty of the Supreme Court judge as an appellate court is explained in *Yebe v. The Queen* (1988), 36 C.C.C. (3d) 417. McIntyre, J., for the Court, stated at p. 430:

...The function of the Court of Appeal, under s. 613(1)(a)(i) of the *Criminal Code*, goes beyond merely finding that there is evidence to support a conviction. The court must determine on the whole of the evidence whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered. While the Court of Appeal must not merely substitute its view for that of the jury, in order to apply the test the court must re-examine and to some extent reweigh and consider the effect of the evidence. The process will be the same whether the case is based on circumstantial or direct evidence. (emphasis added)

...

On an appeal from a conviction for a criminal offence on the ground that the guilty verdict is unreasonable, the appellate court judge is required to review, and to some extent, reweigh the evidence to determine if the verdict is unreasonable. Assessing whether a guilty verdict is unreasonable engages the legal concept of reasonableness (*Yebe*, supra at p. 427). Thus, the

appellate review, on the grounds set out in s. 686(1)(a)(i) of the *Code* entails more than a mere review of the facts. The appellate court has a responsibility, to some extent, to do its own assessment of the evidence and not to automatically defer to the conclusions of the trial judge which is what the appellate court judge seems to have done in this appeal.

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), 60 C.C.C. (2d) 169 (N.S. C.A.) 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. B. (R.H.)*, [1994] 1 S.C.R. 656 (S.C.C.) 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.

[10] In *R. v. Stanton*, 2021 NSCA 57, the Court of Appeal, referencing their decision in *R. v. Pottie*, 2013 NSCA 68, concisely stated the standard of review to be applied by a summary conviction appeal court judge:

47 This Court in *R. v. Pottie* 2013 NSCA 68 identified the two standards of review in play in summary conviction matters: the standard of review to be applied by the SCAC judge reviewing the trial decision, and the standard of review to be applied to the review by this Court of the SCAC judge's decision. *Pottie* describes these standards of review:

[16] The standard of review for the SCAC judge when reviewing the trial judge's decision, absent an error of law or miscarriage of justice, is whether the trial judge's findings are reasonable or cannot be supported by the evidence. In undertaking this analysis the SCAC court is entitled to review the evidence at trial, re-examine it and re-weigh it, but only for the purposes of determining whether it is reasonably capable of supporting the trial judge's conclusions. The SCAC is not entitled to substitute its view of the evidence for that of the trial judge.

...

[11] In *R. v. Young*, 2025 NSCA 41, at para. 7, the Court of Appeal reaffirmed the standard of review for a summary conviction appeal court.

Analysis

a) Did the trial judge commit a miscarriage of justice based on a reasonable apprehension of bias because he heard a recusal hearing in another matter involving the appellant's spouse?

[12] The background to this submission was the trial judge's refusal to recuse himself in another hearing involving the appellant's spouse. As a result, the trial judge allegedly should have recused himself from this hearing.

[13] After explaining the background to the court, the appellant abandoned this ground of appeal.

b) Did the trial judge commit a miscarriage of justice based on insufficient reasons because the caselaw referenced in the decision was not comparable to the appellant's circumstances?

[14] The appellant's assertion of insufficient reasons is based on the trial judge relying on jurisprudence that was allegedly not similar to the case bar. She argues that 1) the cases relied on by the trial judge involved RCMP officers and the respondent was not an RCMP officer; 2) the appellant had signs on their property in multiple locations; and 3) they had communicated to the respondent beforehand that he was not to be on their property.

[15] The appellant's argument about insufficient reasons is not how insufficient reasons has been defined in the caselaw. The majority of the Supreme Court of Canada in *R. v. G.F.*, 2021 SCC 20, addressed the sufficiency of reasons for appellate review:

(1) Appellate Review of Trial Reasons

68 The importance of trial reasons should not be understated. It is through reasoned decisions that judges are held accountable to the public, ensuring transparency in the adjudicative process and satisfying both the public and the parties that justice has been done in a particular case: *R. v. Sheppard* 2002 SCC 26, [2002] 1 S.C.R. 869, at paras. 15, 42 and 55; R. J. Sharpe, *Good Judgment: Making Judicial Decisions* (2018), at p. 134. However, this Court in *Sheppard* emphasized that, for the purposes of appellate review, "the duty to give reasons is driven by the circumstances of the case rather than abstract notions of judicial accountability": para. 42. On appeal, the issue is whether there is reversible error. What is required are reasons that are sufficient in the context of the case for which they were given.

69 This Court has repeatedly and consistently emphasized the importance of a functional and contextual reading of a trial judge's reasons when those reasons are alleged to be insufficient ... Appellate courts must not finely parse the trial judge's reasons in a search for error ... Their task is much narrower: they must assess whether the reasons, read in context and as a whole, in light of the live issues at trial, explain what the trial judge decided and why they decided that way in a manner that permits effective appellate review. As McLachlin C.J. put it in *R.E.M.*, "[t]he foundations of the judge's decision must be discernable, when looked at in the context of the evidence, the submissions of counsel and the history of how the trial unfolded": para. 17. And as Charron J. stated in *Dinardo*, "the inquiry into the sufficiency of the reasons should be directed at whether the reasons respond to the case's live issues": para. 31.

70 This Court has also emphasized the importance of reviewing the record when assessing the sufficiency of a trial judge's reasons. This is because "bad reasons" are not an independent ground of appeal. If the trial reasons do not explain the "what" and the "why", but the answers to those questions are clear in the record, there will be no error ...

71 The reasons must be both factually sufficient and legally sufficient. Factual sufficiency is concerned with what the trial judge decided and why: *Sheppard*, at para. 55. Factual sufficiency is ordinarily a very low bar, especially with the ability to review the record. Even if the trial judge expresses themselves poorly, an appellate court that understands the "what" and the "why" from the record may explain the factual basis of the finding to the aggrieved party: para. 52. It will be a very rare case where neither the aggrieved party nor the appellate court can understand the factual basis of the trial judge's findings: paras. 50 and 52.

...

74 Legal sufficiency requires that the aggrieved party be able to meaningfully exercise their right of appeal: *Sheppard*, at paras. 64-66. Lawyers must be able to discern the viability of an appeal and appellate courts must be able to determine whether an error has occurred: paras. 46 and 55. Legal sufficiency is highly context specific and must be assessed in light of the live issues at trial. A trial judge is under no obligation to expound on features of criminal law that are not controversial in the case before them. This stems from the presumption of correct application — the presumption that "the trial judge understands the basic principles of criminal law at issue in the trial": *R.E.M.*, at para. 45. As stated in *R. v. Burns*, [1994] 1 S.C.R. 656, at p. 664, "[t]rial judges are presumed to know the law with which they work day in and day out": see also *Sheppard*, at para. 54. A functional and contextual reading must keep this presumption in mind. Trial judges are busy. They are not required to demonstrate their knowledge of basic criminal law principles.

...

76 Despite this Court's clear guidance in the 19 years since *Sheppard* to review reasons functionally and contextually, we continue to encounter appellate court decisions that scrutinize the text of trial reasons in a search for error, particularly in sexual assault cases, where safe convictions after fair trials are being overturned not on the basis of legal error but on the basis of parsing imperfect or summary expression on the part of the trial judge. Frequently, it is the findings of credibility that are challenged.

...

79 To succeed on appeal, the appellant's burden is to demonstrate either error or the frustration of appellate review: *Sheppard*, at para. 54. Neither are demonstrated by merely pointing to ambiguous aspects of the trial decision. Where all that can be said is a trial judge may or might have erred, the appellant has not discharged their burden to show actual error or the frustration of appellate review. Where ambiguities in a trial judge's reasons are open to multiple interpretations, those that are consistent with the presumption of correct application must be preferred over those that suggest error: *R. v. C.L.Y.* 2008 SCC 2, [2008] 1 S.C.R. 5, at paras. 10-12, citing *R. v. Morrissey*, (1995), 22 O.R. (3d) 514 (C.A.), at pp. 523-25. It is only where ambiguities, in the context of the record as a whole, render the path taken by the trial judge unintelligible that appellate review is frustrated: *Sheppard*, at para. 46. An appeal court must be rigorous in its assessment, looking to the problematic reasons in the context of the record as a whole and determining whether or not the trial judge erred or appellate review was frustrated. It is not enough to say that a trial judge's reasons are ambiguous — the appeal court must determine the extent and significance of the ambiguity.

...

81 As *Slatter* demonstrates, a trial judge's findings of credibility deserve particular deference. While the law requires some articulation of the reasons for those findings, it also recognizes that in our system of justice the trial judge is the fact finder and has the benefit of the intangible impact of conducting the trial. Sometimes, credibility findings are made simpler by, for example, objective, independent evidence. Corroborative evidence can support the finding of a lack of voluntary consent, but it is of course not required, nor always available. Frequently, particularly in a sexual assault case where the crime is often committed in private, there is little additional evidence, and articulating reasons for findings of credibility can be more challenging. Mindful of the presumption of innocence and the Crown's burden to prove guilt beyond a reasonable doubt, a trial judge strives to explain why a complainant is found to be credible, or why the accused is found not to be credible, or why the evidence does not raise a reasonable doubt. But, as this Court stated in *Gagnon*, at para. 20:

Assessing credibility is not a science. It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events.

82 Credibility findings must also be assessed in light of the presumption of the correct application of the law, particularly regarding the relationship between reliability and credibility. The jurisprudence often stresses the distinction between reliability and credibility, equating reliability with the witness' ability to observe, recall, and recount events accurately, and referring to credibility as the witness' sincerity or honesty: see, e.g., *R. v. H.C.* 2009 ONCA 56, 244 O.A.C. 288, at para. 41. However, under a functional and contextual reading of trial reasons, appellate courts should consider not whether the trial judge specifically used the words "credibility" and "reliability" but whether the trial judge turned their mind to the relevant factors that go to the believability of the evidence in the factual context of the case, including truthfulness and accuracy concerns. A trial judge's determination to accept or believe inculpatory witness evidence includes an implicit assessment of truthfulness or sincerity and accuracy or reliability: *Vuradin*, at para. 16. Often, the term "credibility" is used in this broader sense to mean the believability of the evidence and it necessarily includes both truthfulness and accuracy: *McWilliams' Canadian Criminal Evidence* (5th ed. (loose-leaf)), vol. 3, at pp. 30-1 and 30-2. For example, *Black's Law Dictionary* (11th ed. 2019), at p. 463, defines credibility as "[t]he quality that makes something (as a witness or some evidence) worthy of belief" and model jury instructions include both truthfulness and accuracy within "credibility" assessments: G. A. Ferguson and M. R. Dambrot, *CRIMJI: Canadian Criminal Jury Instructions* (4th ed. (loose-leaf)). Provided trial judges turn their mind to these considerations, there is no requirement that they utter the word "reliable".

[Some citations omitted]

[16] The appellant is mistaken regarding this ground of appeal and how she frames the argument. I find no miscarriage of justice regarding the sufficiency of the trial judge's reasons. The trial judge's reasons are sufficient in the context of this case. The reasons explain what the trial judge decided and why he decided the way he did. This is all supported by the record.

[17] I shall address the appellant's remaining arguments in the next issue because the arguments are better placed under that issue.

c) Did the trial judge err in law or err in misapprehending evidence?

[18] The law regarding a member of the public approaching and knocking on the door of a residential dwelling was discussed in the Supreme Court of Canada decision in *R. v. Evans*, 1996 CarswellBC 996, [1996] 1 S.C.R. 8, Justice Sopinka commented on Justice Major's decision at para. 13:

13 I agree with Major J. that the common law has long recognized an implied licence for all members of the public, including police, to approach the door of a

residence and knock. As the Ontario Court of Appeal recently stated in *R. v. Tricker* 1995 21 O.R. (3d) 575, at p. 579:

The law is clear that the occupier of a dwelling gives implied licence to any member of the public, including a police officer, on legitimate business to come on to the property. The implied licence ends at the door of the dwelling. This proposition was laid down by the English Court of Appeal in *Robson v. Hallett*, [1967] 2 All E.R. 407, [1967] 2 Q.B. 939.

As a result, the occupier of a residential dwelling is deemed to grant the public permission to approach the door and knock. Where the police act in accordance with this implied invitation, they cannot be said to intrude upon the privacy of the occupant. The implied invitation, unless rebutted by a clear expression of intent, effectively waives the privacy interest that an individual might otherwise have in the approach to the door of his or her dwelling.

[19] Justice Major said, at para. 40:

40 It is my opinion that these arguments fail. Police officers, like any other citizen, are not prohibited from entering onto an individual's property to knock on the door. The common law has long recognized an implied licence to approach and knock for a lawful purpose. In *Robson v. Hallett*, [1967] 2 All E.R. 407, Lord Parker, C.J., said at p. 412:

What is said in this case, and this is really the foundation of counsel for the appellants' arguments, is that all three police officers were trespassers *ab initio*; having arrived at the garden gate, although up till then they were acting in the execution of their duty, making inquiries into an offence committed that night, yet the moment when they set foot onto the steps leading up to the front door they were all three trespassers. For my part, it is no doubt true that the law is sometimes said to be an ass, but I am happy to think that it is not an ass in this respect, because I am quite satisfied that these three police officers, like any other members of the public, had implied leave and licence to walk through that gate up those steps and to knock on the door of the house. We are not considering for this purpose the entering of private premises in the form of a dwelling-house, but of the position between the gate and the front door. *There, as it seems to me, the occupier of any dwelling-house gives implied licence to any member of the public coming on his lawful business to come through the gate, up the steps, and knock on the door of the house.* [Emphasis added in original.]

41 This principle has been recognized in Canadian courts: see *R. v. Bushman* 1968 4 C.R.N.S. 13 (B.C. C.A.); *R. v. Johnson* (1994), 45 B.C.A.C. 102. *Robson v. Hallett* stands for the simple proposition that no trespass is committed when an individual, including a police officer, crosses the threshold of property in order to seek permission to enter by knocking on the door. No-one in modern society can remain entirely isolated from the outside world.

[20] The issue is the appellant's interpretation of what is meant by a "lawful justification". The trial judge correctly discusses this in his Decision, at pp. 3-5. The appellant believes that this only permits police officers on the property or individuals serving legal documents which she described as "court issued".

[21] I disagree with her interpretation.

[22] The respondent attended the property to serve a lawyer's letter on the appellant's partner. The trial judge correctly applied the law and interpreted the decision of the Supreme Court of Canada. He found that "...no trespassing is committed, you're not breaching a "no trespassing" sign if you simply approach the door to knock for a lawful purpose.": Transcript, p. 5, lines 3-6. The appellant has failed to convince me that the trial judge committed an error of law.

[23] Our Court of Appeal in *R. v. N.M.*, 2019 NSCA 4 at para. 27 speaks about what constitutes a misapprehension of the evidence:

27 With respect to the misapprehension of evidence, Justice Watt recently explained in *R. v. Doodnaught*, 2017 ONCA 781 (Ont. C.A.):

71 A misapprehension of evidence may involve a failure to consider relevant evidence; a mistake about the substance of evidence; a failure to give proper effect to evidence or some combination of these failings: *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 (Ont. C.A.), at p. 218. To succeed before an appellate court on a claim of misapprehension of evidence, an appellant must demonstrate not only a misapprehension of the evidence, but also a link or nexus between the misapprehension and the adverse result reached at trial.

72 To determine whether an appellant has demonstrated that a misapprehension of evidence has rendered a trial unfair and resulted in a miscarriage of justice, an appellate court must examine the nature and extent of the misapprehension and its significance to the verdict rendered by the trial judge in light of the fundamental requirement of our law that a verdict must be based exclusively on the evidence adduced at trial. The misapprehension of evidence must be at once material and occupy an essential place in the reasoning process leading to the finding of guilt: *Morrissey*, at p. 221.

73 The standard set for misapprehension of evidence to warrant appellate reversal is stringent. An error in the assessment of the evidence will amount to a miscarriage of justice only if striking it from the judgment would leave the trial judge's reasoning on which the conviction is based on unsteady ground: *R. v. Sinclair*, 2011 SCC 40, [2011] 3 S.C.R. 3, at para. 56.

74 Where an appellant alleges a misapprehension of evidence, an appellate court should first consider the unreasonableness of the verdict rendered at trial. A verdict may be unreasonable because it is one that could not have been reached by a properly instructed trier of fact acting reasonably, or because it can be seen from the reasons of the trial judge that the verdict was reached illogically or irrationally, in other words, due to fundamental flaws in the reasoning process: *Sinclair*, at paras. 4, 44.

75 Where an appellant succeeds in establishing that a verdict is unreasonable, an appellate court will enter an acquittal. On the other hand, where the appellate court is satisfied that the verdict is not unreasonable, the court must determine whether the misapprehension of evidence occasioned a miscarriage of justice. An appellant who shows that the error resulted in a miscarriage of justice is entitled to a new trial: *Morrissey*, at p. 219.

[24] The appellant argues that because she had visible signage on the property indicating they did not want people on the property, the respondent was not permitted to be on the property.

[25] The trial judge agreed that the appellant had visible signage on the property that said, “private property” and “no trespassing”: Decision, at p. 2, lines 18-20. The trial judge was live to this fact and took it into consideration in his application of the law.

[26] The appellant argues that the respondent had been told on multiple occasions not to come on the property.

[27] The trial judge found that the parties had a history, but he was not satisfied beyond a reasonable doubt that there were conversations where the appellant revoked any implied licence to come on their property: Decision, at p. 5, lines 8-14.

[28] The respondent was there that day engaged in his duties as a process server to serve a legal document. These findings of the trial judge are indisputable. The trial judge took into consideration the signage on the property, the relationship between the parties, and whether the implied licence had been revoked. The finding by the trial judge that the respondent had legal justification to be on the property is reasonable and suggested by the evidence. The appellant has failed to demonstrate that the trial judge misapprehended the evidence.

Conclusion

[29] I find the trial judge's findings reasonable and supported by the evidence. No error has been established. The summary conviction appeal is dismissed without costs.

Bodurtha, J.