

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation: R. v. Scott 2004 NSSC 12**

**Date:** 2004/01/19

**Docket:** Cr. No. 200210

**Registry:** Kentville

Between:

**Her Majesty The Queen**

**v.**

**Jennifer Madeline Scott**

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**LIBRARY HEADING**

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**JUDGE:** The Honourable Justice A. David MacAdam

**HEARD:** November 25, 26, 27, 28, 2003, December 1, 2, 3, 4 and 5, 2003 in Kentville, Nova Scotia.

**DECISION:** December 5, 2003

**SUBJECT:** Criminal Law - Jury trial - Pre-judgment by Jury - Communications with Jury.

**SUMMARY:** Following selection of the twelve person jury, with two alternates, the jury was dismissed for one week while a number of *voir dire*s were heard. On their return one juror sent a note advised that during the week he had been spoken to by a lady who repeated to him what she said she was told by the accused on the day of the jury selection. The juror was removed and the first alternate added to the jury. The police were asked to investigate and report further. After a number of days of testimony, the Crown reported that the lady in question confirmed speaking to the former juror, as he had reported, but also indicated in her statement that the juror had said it didn't matter as the jury had already decided the accused was guilty. Defence counsel advised the Court he had spoken to the former juror and believed his denial that he had ever made such a statement. The Court decided to have both the former juror and the lady in question brought into Court to state, under oath or affirmation, their position on the alleged statement by the former juror. Each repeated their previously stated position. The trial then continued.

Prior to the conclusion of the evidence portion of the trial the Court decided to conduct its own inquiry by asking, first the deputies who had had contact with the jurors on the day of jury selection, and then the individual jurors separately, whether they had overheard any discussions by any members of the jury as to the guilt or innocence of the accused.

**ISSUE:** Was it appropriate to question the jurors on whether they had overheard any member of the jury discuss the innocence or guilt of the accused on the day of jury selection? Should there be a mistrial declared?

**RESULT:** In view of the allegation that the former juror had said the jury, or at least some of the jury, had discussed the accused was guilty, an inquiry of the jury and the deputies involved was required. In order to avoid speculation by the jury and any adverse inference by reason of the questioning, the questions posed to the jury asked about discussion of either innocence or guilt. In view of the negative response by all persons questioned, there was no juristic reason to declare a mistrial, and the trial continued.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET.**