

CASE NO.

VOL. NO.

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HER MAJESTY THE QUEEN

- and -

WALTER STEVEN WHYNOT

Appellant

Respondent

C.A.C. No. 156732

Halifax

CHIPMAN, J.A.
(Orally)

[Cite as: R. v. Whynot, 2000 NSCA 16]

APPEAL HEARD:

January 19, 2000

JUDGMENT DELIVERED:

January 19, 2000

WRITTEN RELEASE OF ORAL:

January 20, 2000

SUBJECT:

CRIMINAL LAW - VARIANCE BETWEEN INDICTMENT OR COUNT THEREIN AND THE EVIDENCE TAKEN - WHEN MATERIAL

SUMMARY:

The trial judge withdrew from the jury and acquitted the respondent on a count in an indictment charging the respondent with possession of property on or about September 11, 1998, at or near Milton, Nova Scotia, knowing that the same was obtained by the commission of an offence punishable by indictment contrary to s. 355(b) of the **Criminal Code**.

ISSUE:

Was the variance between the count in the indictment and the evidence taken material with respect to either the time or the place of the alleged offence?

RESULT:

The Court of Appeal, having reviewed the record and heard submissions of counsel, was satisfied that neither time nor place was an essential element of the offence nor crucial to the defence. Reference was made to **R. v. B. (G.)**, [1990] 2 S.C.R. 30. The appeal was allowed, the acquittal was set aside and a new trial ordered.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S JUDGMENT. QUOTES MUST BE FROM THE JUDGMENT, NOT FROM THIS COVER SHEET. THE FULL COURT JUDGMENT CONSISTS OF 2 PAGES.