

**CASE NO.****VOL. NO.****PAGE**

QUOC DUNG TRAN

- and -

HER MAJESTY THE QUEEN

(Appellant)

(Respondent)

Halifax, N.S.

CAC 152193

BATEMAN, J.A.

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**[Cite as: R. v. Tran, 2001 NSCA 2]****APPEAL HEARD:**

November 15, 2000

**JUDGMENT DELIVERED:**

January 4, 2001

**SUBJECT: Criminal law - appeal from conviction - second degree murder**

**SUMMARY:** Quoc Dung Tran appeals his conviction on a charge of second-degree murder of Ali Sharifrazi. He was tried in the Supreme Court of Nova Scotia before the Honourable Justice William B. Kelly presiding with a jury. Mr. Tran assisted Van Khoe Nguyen in the murder of Mr. Sharifrazi at a convenience store in Halifax. There was a single eyewitness, Mr. Roshani. The Crown called "post-offence conduct" evidence of Mr. Tran's involvement with Mr. Nguyen in a plot to kill the eyewitness Roshani. Trial counsel for Mr. Tran did not object to the evidence going to the jury without a *voir dire*.

**ISSUES:** On appeal Tran alleged that the judge should have held a *voir dire* on his own motion to determine the admissibility of the post-offence conduct and that had he done so he would not have allowed the evidence to go to the jury; alternatively, that he should have given a "no probative value" instruction in relation to the post-offence conduct; that he did not adequately instruct the jury on the evidence of the eyewitness; that he should have given a *Vetrovec* caution in relation to an unsavoury Crown witness and that the verdict was unreasonable.

**RESULT:** Appeal dismissed. In these circumstances the judge did not err in not holding a *voir dire* in relation to the post-offence conduct. Had he done so he would have found the evidence to be admissible. Post-offence evidence of interference with a witness is generally held to have probative value. The evidence being admissible, there was no reason to give a "no probative value" instruction to the jury. Such an instruction is an usurpation of the jury's function and therefore appropriate only in rare circumstances. The charge to the jury fully, fairly and appropriately

canvassed the eyewitness evidence and pointed out to the jury the dangers of eyewitness identification. The evidence of the unsavoury Crown witness as to Mr. Tran's involvement in the plot to kill Roshani was corroborated by a police officer. Accordingly, the charge in relation to his evidence, while not a formal *Vetrovec* caution, was sufficient. Finally, the verdict was not unreasonable.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 37 pages.