

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Basso*, 2020 NSCA 80

**Date:** 20201207

**Docket:** CAC 496290

**Registry:** Halifax

**Between:**

Laurence Gary Basso

Appellant

v.

Her Majesty The Queen

Respondent

**Judges:** Wood, C.J.N.S.; Bryson and Bourgeois, JJ.A.

**Appeal Heard:** December 7, 2020, in Halifax, Nova Scotia

**Written Release** December 8, 2020

**Held:** Appeal allowed, per reasons for judgment of Wood, C.J.N.S.;  
Bryson and Bourgeois, JJ.A. concurring

**Counsel:** James M.C. Giacomantonio, for the appellant  
James A. Gumpert, QC, for the respondent

**Reasons for judgment (orally):**

[1] A trial judge convicted the appellant of assault causing bodily harm contrary to s. 267(b) of the *Criminal Code* and imposed a sentence of 3 months incarceration to be served intermittently followed by 12 months probation.

[2] The appellant appealed, seeking a new trial. He was released on conditions with a surety pending the outcome of the appeal. The appeal was scheduled to be heard on December 7, 2020.

[3] The Crown has written to the Registrar conceding that the appeal should be allowed and a new trial ordered.

[4] One of the grounds of appeal advanced by the appellant is that the trial judge misapprehended the complainant's evidence and improperly relied on his interpretation of a video of the alleged assault.

[5] The Crown agrees that the trial judge should not have used the complainant's testimony about what he saw on the video. They submit this formed an essential part of her reasoning process thereby resulting in a miscarriage of justice requiring a new trial.

[6] In these circumstances, we agree with the submissions of the appellant and the Crown, quash the conviction and order a new trial. As a consequence, the sentence imposed is vacated.

[7] The parties agree that the appellant ought to be released pending his new trial on the condition that he reside at a designated address and attend court as directed with these conditions secured by a surety. We leave it to the parties to make the necessary arrangement for an order to that effect to be issued by a single judge of the Court pursuant to s. 679(7.1) of the *Criminal Code*.

[8] The release order issued by the Registrar of the Court on February 13, 2020 is set aside and the surety released.

Wood, C.J.N.S.

Concurred in:

Bryson, J.A.

Bourgeois, J.A.