

NOVA SCOTIA COURT OF APPEAL

Hallett, Hart and Roscoe, JJ.A.

Cite as: R. v. Taylor, 1994 NSCA 47

BETWEEN:

JAMES WALTER TAYLOR)	The Appellant
)	in person
Appellant)	
)	
- and -)	Kenneth W.F. Fiske, Q.C.
)	for the Respondent
)	
HER MAJESTY THE QUEEN)	
)	
Respondent)	
)	
)	Appeal Heard:
January 17, 1994)	
)	
)	Judgment Delivered:
)	January 18, 1994
)	
)	

THE COURT: Leave to appeal denied, per reasons for judgment of Hallett, Hart and Roscoe, JJ.A.

THE COURT:

The appellant was convicted of assault in Provincial Court before Judge Cole and fined \$100.00 or five days in default. He appealed conviction to Justice MacDonnell who dismissed the appeal.

The appellant's brother and Mr. Victor Strang both own property in Chapman Settlement and they had an on-going dispute about the use of a right of way. Mr. Taylor is the caretaker of his brother's land. On the day in question, Mr. Strang and his wife, Ms. O'Brien, went to the property to remove "no trespassing" signs from the right of way. As they got back in their car, they were approached by Mr. Taylor. Mr. Strang and Ms. O'Brien testified that Mr. Taylor struck Mr. Strang in the face, through the open car window. They said that Mr. Strang grabbed Mr. Taylor by the jacket and held him close to the car while he got the car started and in gear. They said he let go as they started to move. Mr. Strang also testified that his lawyer had advised him to remove the signs.

Mr. Taylor testified that he did not strike Mr. Strang. He said that he leaned in the car window to see if they had his signs and that Mr. Strang grabbed his jacket, held him to the side of the car and drove off, dragging him for several feet. He said Mr. Strang tried to hit him while he was being dragged.

The trial judge based his decision on the credibility of the witnesses and found Mr. Taylor's story hard to accept. He said he had "considerable difficulty believing him". He believed the evidence of Mr. Strang and Ms. O'Brien.

On the appeal, Justice MacDonnell noted that findings of credibility by the trial judge should not be lightly disturbed. He held that the trial judge made no error in law, that the verdict was reasonable and supported by the evidence, and therefore dismissed the appeal.

Mr. Taylor, on the appeal to this Court, alleges that Mr. Strang should have been charged with theft or assault, and that his credibility should not have been in question since he was pursuing a thief. In his written brief, he alleges that Mr. Strang is trying to expropriate his brother's land and that his testimony should not have been accepted by the trial judge. He also provides detailed information regarding the property dispute.

The issue of credibility is a matter for the trial judge and is a question of fact. There is nothing on the record that discloses any error in law on the part of the trial judge or the Summary Conviction Appeal judge. The extensive written arguments and the oral presentation of Mr. Taylor have been considered by this Court, but since we can see no error of law on the part of either of the judges below, leave to appeal is denied.

Hallett, J.A.

Hart, J.A.

Roscoe, J.A.