

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. J.P.*, 2014 NSCA 29

Date: 20140325

Docket: CAC 412682

Registry: Halifax

Between:

J.P.

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: Pursuant to s. 486 of the Criminal Code of Canada

Judge: The Honourable Justice Beveridge

Appeal Heard: September 25, 2013, in Halifax, Nova Scotia

Subject: Criminal law: Correct application of the burden of proof; misapprehension of evidence; judicial notice

Summary: The complainant testified that the appellant behaved inappropriately and touched her sexually when she was age six to twelve. The appellant denied having done so. The trial judge declined to find that the winter weather conditions in Cape Breton made some of the allegations of the complainant impossible.

The trial judge found the allegations proven beyond a reasonable doubt. In the course of his reasons, he said he found the evidence of the appellant not to be convincing, and that this cast doubt on the credibility of his other evidence. The judge also considered his evidence not to be persuasive, and therefore not credible.

The judge considered the memory of the complainant to have

been “recovered” memory. There was no evidence to support such a finding.

Issues:

- (1) Did the trial judge err by refusing to take judicial notice of the weather conditions?
- (2) Did the trial judge misapply the burden of proof?
- (3) Did the trial judge misapprehend the evidence?

Result:

The trial judge did not err in law in declining to take judicial notice of the weather conditions. In fact he did so, but he was not prepared to conclude that those conditions made the description of the frequency and time of visits by the complainant to be impossible.

The trial judge misapplied the burden of proof. There was no burden on the appellant to convince the trial judge, or be persuasive—it need only raise a reasonable doubt.

The trial judge also misapprehended the evidence. The misapprehension was not merely part of the narrative, but was referred to by the judge in the course of resolving the key issue, the credibility of the complainant’s evidence. The convictions are quashed, and a new trial ordered.

This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 31 pages.