



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *R. v. Warford*, 2024 NLCA 17

Date: May 22, 2024

Docket Number: 202301H0044

BETWEEN:

CHARLENE WARFORD

APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: D.E. Fry C.J.N.L., F.P. O'Brien and F.J. Knickle JJ.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador,
Grand Bank 0822A00131

Appeal Heard: May 22, 2024

Judgment Rendered Orally: May 22, 2024

Memorandum of Disposition Filed: May 24, 2024

Reasons for Judgment by: F.J. Knickle J.A.

Concurred in by: D.E. Fry C.J.N.L. and F.P. O'Brien J.A.

Counsel for the Appellant: Andrea K. Vizsolyi

Counsel for the Respondent: Jeffrey A. Summers

MEMORANDUM OF DISPOSITION

F.J. Knickle J.A.:

[1] The appellant was convicted of aggravated assault after a trial in the Provincial Court of Newfoundland and Labrador. The only issue at trial was the identity of the victim's assailant. The appellant appeals her conviction and sentence.

[2] This appeal is unusual in that no contentious issue is presented to this Court for consideration. Rather, both the appellant and the Crown agree that the trial judge erred in convicting the appellant. An important aspect of the legal system is the duty of the Crown to seek justice rather than merely securing convictions. Fairness, transparency, and upholding the rule of law are essential principles in any justice system. This appeal is an example.

[3] Both the Crown and appellant agree that this is not a situation where the matter should be remitted for a new trial but, rather, that the only proper remedy in the circumstances is to set aside the conviction and enter an acquittal pursuant to section 686(2)(a) of the *Criminal Code of Canada*. We agree.

The Circumstances of the Assault

[4] While at her brother's home on July 2, 2022, the victim was stabbed in the arm by an unknown female. Her brother was also stabbed in the groin area. The victim was reluctant to make a complaint to the police. The victim lied to the hospital staff as to how she received the injuries and, also, initially lied when she finally spoke to the police. Her brother did not admit to any stabbing as having occurred and refused to cooperate with the police.

[5] The identification evidence of the assailant of the assault was weak. The victim did not know her assailant and could provide no identifying features apart from the fact that the assailant was female. This was so, even though at the time of the assault, the appellant had a distinguishing identifying feature as her head was partly shaved following a brain injury and surgery.

[6] An unidentified person at the home during the altercation told the victim that the assailant was the girlfriend of an individual known as Brandon Boland. No statement was taken from the person who made this statement. Shortly after the

incident, the victim's son located an account on social media with the name "Brandon Charlene Boland." Located in that account was a picture with a female that the victim recognized as her assailant. The person identified in the photo was named "Brandon Charlene Boland."

[7] The victim's son then sent electronic communications to the account and accused the recipient of the stabbing. There were communications back and forth between the son and someone from that account. There was at least one video communication between the victim's son and the person recognized in the photograph. At no time during these communications did the recipient admit to being the appellant or to having committed any offence.

[8] The police interviewed the appellant soon after the stabbing. She provided a lengthy videotaped cautioned statement. The brain injury suffered by the appellant impacted her memory and recall. Although not entirely clear in her recollections, the appellant admitted to recently being at the home of the victim's brother. However, she repeatedly denied being at the home while another female was present or being involved in any kind of altercation with another person involving a knife. She denied that she was at the home on the night that the stabbing occurred. She admitted to communicating with the victim's son electronically via social media.

[9] At trial, the videotape of the cautioned statement was entered as an exhibit and played in court, however, no transcript of the statement was available. The Crown also tendered a copy of the electronic communications between the appellant and the victim's son. The victim identified the appellant, who was sitting in the prisoner dock, as her assailant. She could not explain why she believed the person sitting in the prisoner dock was her assailant except to say that she "recognized" her. The appellant did not testify.

The Trial Judge's Decision

[10] The trial judge did not find the victim a credible witness because she repeatedly lied about what had happened. However, he was satisfied beyond a reasonable doubt that the identity of the appellant had been proven. The trial judge stated that while he would not have accepted the victim's identification of the appellant standing alone, in combination with two other pieces of evidence, namely the appellant's cautioned statement and the appellant's electronic communications with the victim's son, he was satisfied that identity had been proven.

[11] The trial judge concluded that the exchanges of communications between the victim's son and the appellant had "by necessary implication" confirmed that the appellant was Brandon Boland's girlfriend and, therefore, the victim's assailant. The trial judge also concluded that the appellant admitted in her cautioned statement to being at the residence in question on the night of the stabbing. This admission, the trial judge concluded, provided the opportunity for the appellant to have committed the offence.

Discussion

[12] The conviction must be set aside. The trial judge misapprehended the evidence and this misapprehension resulted in him finding facts that were not supported in the evidence. These unsupported facts were material to his conclusion that the evidence proved beyond a reasonable doubt that the appellant was the assailant.

[13] Firstly, the trial judge misapprehended what the appellant stated in her cautioned statement. Contrary to the conclusion of the trial judge, at no point did the appellant admit to being at the house on the night in question. This was a significant misapprehension because the trial judge relied on this finding to conclude that the appellant had the opportunity to commit the offence. Despite her admission that she had been at the house at some point in the past, there was no evidence that placed the appellant at the scene at the time of the assault.

[14] Secondly, the trial judge then misapprehended the evidence in concluding that the appellant's participation in the electronic communications between her and the victim's son affirmatively established that the appellant was the assailant. At most, the exchanges with the victim's son, when coupled with her statements in her cautioned statement, established that she was a user of the social media account in question. There is nothing in the exchanges that could be reasonably taken as her having admitted the accusations by the son. To the contrary, like in her statement to the police, she repeatedly denied any wrongdoing.

[15] These misapprehensions in the evidence led the trial judge to conclude that there was corroboration of the victim's identification of the appellant, when no such corroboration was available. The trial judge erroneously reasoned that the corroborative value of the cautioned statement and social media exchanges nullified any concerns with the victim's identification of the appellant as her assailant.

[16] Neither of these pieces of evidence diminished the trial judge's genuine concerns with the victim's identification of the appellant as her assailant. The identification by the victim occurred after she overheard that the assailant was the girlfriend of Brandon Boland. No one testified to verify this hearsay evidence. When shown the photograph, she knew it came from the account connected to Brandon Boland. There was every reason for the trial judge to be concerned that the reason the victim identified the person in the photograph as her assailant was precisely because she knew the photograph came from the account connected to Brandon Boland.

[17] The other pieces of evidence did not nullify concerns about the weight to be attached to these identifications because they in no way corroborated that the appellant was the assailant. The cautioned statement did not corroborate that the appellant was the assailant. The exchanges on the social media account only corroborated that the appellant had access to that account.

[18] There was no corroboration of the victim's identification of the appellant from the photograph on the social media account or the prisoner dock. The only evidence of identification came from the victim, which the trial judge rejected as unreliable. In these circumstances, no properly instructed trier of fact could have rendered a verdict of guilty on the evidence at trial. It follows that an acquittal is the proper remedy in the circumstances.

[19] The appeal is allowed and an acquittal is entered. Given that the conviction has been set aside, it is unnecessary to address the appeal from sentence and we decline to so do.

F.J. Knickle J.A.

I Concur: _____
D.E. Fry C.J.N.L.

I Concur: _____
F.P. O'Brien J.A.