

Her Majesty the Queen v. A.B., a young person
(2394957; 2394958; 2394959; 2394961; 2394962; 2394963; 2012 NSPC 31)

Indexed As: R. v. A.B.

Nova Scotia Provincial Court
Campbell, P.C.J.
May 2, 2012.

Summary:

The accused youth was charged with the dissemination of hate propaganda or the willful promotion of hatred (Criminal Code, s. 319(2)). He was also charged with mischief (s. 430(4)) arising from acts of vandalism in various locations. The s. 319(2) charges related to graffiti at a baseball field and at one specific residence.

The Nova Scotia Provincial Court found the accused not guilty of the s. 319(2) charges and guilty of the s. 430(4) charges.

Editor's Note: Certain names in the following case have been initialized or the case otherwise edited to prevent the disclosure of identities where required by law, publication ban, Maritime Law Book's editorial policy or otherwise.

Criminal Law - Topic 1550

Offences against person and reputation - Hate propaganda - Communicating statements wilfully promoting hatred - The Nova Scotia Provincial Court discussed the offence of communicating statements wilfully promoting hatred and what constitutes a "hate crime" - See paragraphs 11 to 36.

Criminal Law - Topic 1550

Offences against person and reputation - Hate propaganda - Communicating statements wilfully promoting hatred - The accused youth and two friends went on a vandalism spree with a can of spray paint - On several surfaces, they painted a bizarre "mish mash" of racist, vulgar, sexual, obscene and inane drawings and words - They then went to the home of the family who were singled out for racist treatment - The accused knew where the only black family lived on the street - The young men painted the word "Nigger" in large letters in the driveway with arrows pointing at the house - A swastika symbol was painted in the middle of the roadway - Further down the street the words "White Power" were written - A large picture that was described as a big smiling face was sprayed on the street - The face had a sinister aspect to it - The accused was charged with the dissemination of hate propaganda or the willful promotion of hatred (Criminal Code, s. 319(2)) and mischief (s. 430(4)) - The Nova Scotia Provincial Court found the accused not guilty of the s. 319(2) charges - The intent to promote hatred had not been proven beyond a reasonable doubt - In that legal sense, the accused was not guilty of the charge of hate crimes - When asked why he did this, he said that he "had nothing else to do" - The accused showed a disturbing lack of insight, but he did not have a distorted world view required to have the intent to promote hatred - He was guilty of the s. 430(4)

charges, aggravated by the expressions of extreme racism and further grossly aggravated by the manner in which those expressions were specifically directed.

Criminal Law - Topic 2243

Wilful acts respecting property - Mischief - What constitutes - [See second **Criminal Law - Topic 1550**].

Cases Noticed:

Mugesera et al. v. Canada (Ministre de la Citoyenneté et de l'Immigration), [2005] 2 S.C.R. 100; 335 N.R. 229; 197 C.C.C.(3d) 233; 2005 SCC 40, refd to. [para. 25].
R. v. Ahenakew (D.), [2008] 2 W.W.R. 68; 307 Sask.R. 220; 417 W.A.C. 220; 2008 SKCA 4, refd to. [para. 26].
R. v. Buzzanga (1979), 25 O.R.(2d) 705; 49 C.C.C.(2d) 369 (C.A.), refd to. [para. 27].
R. v. Harding (M.) (2001), 152 O.A.C. 230; 57 O.R.(3d) 333 (C.A.), dist. [para. 28].
R. v. Keegstra, [1990] 3 S.C.R. 697; 117 N.R. 1; 114 A.R. 81; 77 Alta. L.R.(2d) 193; 1990 CarswellAlta 192, refd to. [para. 29].

Statutes Noticed:

Criminal Code, R.S.C. 1985, c. C-46, sect. 319 [para. 4 et seq.].

Authors and Works Noticed:

Kennedy, Randall, Nigger: The Strange Career of a Troublesome Word (2003), generally [para. 39].

Counsel:

John Nisbett, for the Crown;
Michael Scott, for the defence.

This case was heard at Halifax, N.S., on April 23 and 30, 2012, by Campbell, P.C.J., of the Nova Scotia Provincial Court, who delivered the following decision on May 2, 2012.

Order accordingly.

Editor: Anick Ouellette-Levesque

Criminal Law - Topic 2243

Wilful acts respecting property - Mischief - What constitutes - The accused youth and two friends went on a vandalism spree with a can of spray paint - On several surfaces, they painted a bizarre "mish mash" of racist, vulgar, sexual, obscene and inane drawings and words - They then went to the home of the family who were singled out for racist treatment - The accused knew where the only black family lived on the street - The young men painted the word "Nigger" in large letters in the driveway with arrows pointing at the house - A swastika symbol was painted in the middle of the roadway - Further down the street the words "White Power" were written - A large picture that was described as a big smiling face was sprayed on the street - The face had a sinister aspect to it - The accused

was charged with the dissemination of hate propaganda or the willful promotion of hatred (Criminal Code, s. 319(2)) and mischief (s. 430(4)) - The Nova Scotia Provincial Court found the accused not guilty of the s. 319(2) charges - The intent to promote hatred had not been proven beyond a reasonable doubt - In that legal sense, the accused was not guilty of the charge of hate crimes - When asked why he did this, he said that he “had nothing else to do” - The accused showed a disturbing lack of insight, but he did not have a distorted world view required to have the intent to promote hatred - He was guilty of the s. 430(4) charges, aggravated by the expressions of extreme racism and further grossly aggravated by the manner in which those expressions were specifically directed.