NOVA SCOTIA COURT OF APPEAL
Citation: R. v. Seymour, 2005 NSCA 5

Date: 20050107
Docket: CAC 207668
Registry: Halifax

Between:

Richard Elliott Seymour

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Jamie W.S. Saunders

Appeal Heard: December 6, 2004

Subject: ***Arson. Fraud. Corbett Application. Section 12 of the Canada Evidence Act. Note from the Jury. Exhortation to the jury. Right to be present at one's trial, s. 650 of the Criminal Code. Application of the curative provisions of s. 686. Reasonableness of the Verdict***

Summary: The appellant appealed his conviction on arson and fraud related offences following the destruction of his motel and business establishment by fire and explosion. The three principal grounds of appeal were: that the trial judge erred in the manner in which he disposed of the Crown's **Corbett** application; that the judge erred in failing to disclose the contents of a jury note during the course of the jury's deliberations; and that the jury's verdict was unreasonable and not supported by the evidence.

Result: Held: Appeal dismissed. A trial judge has a discretion to exclude evidence of prior convictions in those unusual circumstances where a mechanical application of s. 12 of the **Canada Evidence Act** would undermine the right to a fair trial.

No error here in the trial judge's decision, following a *voir dire*, to permit cross-examination upon a previous criminal conviction, when the appellant chose to testify on his own behalf. The trial judge gave clear, complete and proper instructions to the jury on the issue of the appellant's prior criminal conviction and its prohibited use when considering such evidence during their deliberations.

The trial judge erred in failing to disclose the contents of a jury note which indicated, at an early stage of their deliberations, that they were split 10:2 favouring conviction. Such did amount to a breach of s. 650 of the **Criminal Code**. However, such failure was, in the circumstances of this case, a procedural irregularity that could be cured by operation of s. 686(1)(b)(iv).

No error in the substance or timing of the judge's exhortation to the jury. No merit in the appellant's submission that the judge's reference to the jury oath amounted to a compulsion to render a unanimous verdict.

In light of the extensive evidence presented by investigators and expert witnesses, it could not be seriously suggested that the verdicts were unreasonable or unsupported by the evidence. For example, the experts' testimony supported the theory that a line to a propane tank had been deliberately disconnected; that both burn patterns and the speed of this fire and massive explosion were consistent with the use of accelerants; that lengths of bed sheets had been twisted and left in the hallway to form trailers or wicks to speed up and direct the path of the fire; that burn patterns on the appellant's head, hands and arms as well as other substances found on his person were consistent with someone crouched down attempting to ignite a fire; that the appellant had access, motive and opportunity to orchestrate the loss; and rejecting as implausible the submissions advanced by the appellant, attempting to characterize the loss as accidental.

Appeal dismissed.

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 40 pages.