Date: 20001116
Docket: CAC 161112

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Woodworth, 2000 NSCA 132]

Roscoe, Hallett and Bateman, JJ.A.

BETWEEN:

KEVIN ALLAN WOODWORTH

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

Counsel:	David R. Hirtle for the appellant James A. Gumpert, Q.C. and Craig M. Harding for the respondent
Appeal Heard:	November 16, 2000
Judgment Delivered:	November 16, 2000
THE COURT:	Leave to appeal is granted and the appeal dismissed per oral reasons for judgment of Bateman, J.A.; Hallett and Roscoe, JJ.A. concurring.

BATEMAN, J.A.: (Orally)

[1] This is an appeal from a decision of Justice Hiram Carver of the Supreme Court dismissing a summary conviction appeal. Mr. Woodworth was convicted by Provincial Court Judge Anne Crawford of offences contrary to ss. 68 and 91 of the **Wildlife Act**, R.S.N.S. 1989, c.504, as amended, in particular, failing to comply with the direction of a Conservation Officer and hunting wildlife with the assistance of a light.

[2] As this Court said in **R. v. Cunningham** (1995), 143 N.S.R. (2d) 144 (N.S.C.A.) at p. 152:

> An appeal of the decision of a summary conviction appeal judge, pursuant to s. 839 of the **Criminal Code**, requires leave of the court and is limited to questions of law.
>
> Such an appeal is not a second appeal against the judgment at trial, but rather an appeal against the decision of the judge of the summary conviction appeal court. (**R. v. Emery** (1981), 61 C.C.C. (2d) 84 (B.C.C.A.)) The error of law required to ground jurisdiction in the Court of Appeal is that of the summary conviction appeal judge, not the trial judge.

[3] Mr. Woodworth says that his ss. 7, 8 and 10(b) **Charter** rights were violated and that the verdict is an unreasonable one.

[4] In **R. v. Yebes** (1987), 36 C.C.C. (3d) 417 (S.C.C) an "unreasonable" verdict was defined as one that a properly instructed trier of fact could not have come to on the evidence. After reviewing, re-examining and re-weighing the record, as he was required to do, Justice Carver concluded that the verdict was reasonable and supported by the evidence. In so doing, Justice Carver applied the correct test (**see R. v. Grosse** (1996), 107 C.C.C. (3d) 97 (Ont. C.A.)) and did not err.

[5] Nor is there substance to Mr. Woodworth's allegations that his **Charter** rights were breached - specifically, that he was not properly informed of his right to counsel and that he did not give a truly voluntary consent to search his premises. Additionally, I would note that the record reveals that the validity of the premises search was not seriously challenged at trial and there was no objection to the admission into evidence of the fruits of that search. (see **R. v. Kutynec** (1992), 70 C.C.C. (3d) 289 (Ont.C.A.))

[6] Although we grant leave to appeal, the appeal is dismissed.

Bateman, J.A.

Concurred in:

Hallett, J.A.

Roscoe, J.A.