C.A.C. No. 02906

NOVA SCOTIA COURT OF APPEAL

Freeman, Roscoe and Pugsley, JJ.A.

Cite as: R. v. Sylliboy, 1993 NSCA 217

BETWEEN:

ALFRED JOSEPH SYLLIBOY Appellant - and - HER MAJESTY THE QUEEN Respondent	)	Alison P. Brown for the Appellant Dana Giovannetti for the Respondent Appeal Heard: November 15, 1993 Judgment Delivered: November 15, 1993

THE COURT: Appeal dismissed, per oral reasons for judgment of Roscoe, J.A.; Freeman and Pugsley, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

ROSCOE, J.A.:

The appellant was convicted of having possession of a knife for a purpose dangerous to the public peace, contrary to s. 87 of the **Criminal Code**, after a trial in Provincial Court. The sentence was suspended and the appellant was placed on probation for a period of two years and ordered to perform 75 hours of community service. The appeal against conviction raises two issues: whether the trial judge erred by not properly addressing the issue of self-defence and whether he erred by finding the appellant had formed the necessary intention to use the knife for a purpose dangerous to the public peace.

The facts giving rise to the charge, as found by the trial judge, involve a confrontation between Maurice Hepworth and the appellant outside Mr. Hepworth's apartment in Truro. Mr. Hepworth heard a commotion outside his apartment, looked out and saw the appellant arguing with others. He overheard what he thought were derogatory remarks about his sister and went outside with a two-foot long stick, the diameter of a broom handle, which he kept concealed. The appellant and Mr. Hepworth exchanged angry words for a few minutes and then Mr. Hepworth began to return to his house. At that time the appellant approached Mr. Hepworth armed with a knife with a four-inch blade. Upon seeing the knife, Mr. Hepworth raised his stick at which time the appellant attempted to stab Mr. Hepworth's arm. The trial judge found that (p. 60 of his decision):

> ". . . the intention on Mr. Sylliboy's part changed drastically as the confrontation was escalating between him and Maurice Hepworth. And at that point or just before attempting to stab Mr. Hepworth's left arm, the intention was clearly to use the knife as a weapon.

And further on p. 61 he says:

> "But when Mr. Sylliboy attempted the stabbing motion it was clearly here if I had to analyze it very closely it was clearly there for a purpose dangerous to the public peace, ie. in this particular case a breach of the Queen's peace."

The appellant testified that he used the knife:

> ". . . just to scare him away so he wouldn't come after me any more, but he did keep coming after me . . ."

The appellant now argues that the trial judge did not deal with the submission at trial that the appellant was acting in self-defence when he used the knife. Although the trial judge does not specifically refer to the self-defence theory in his decision it is evident from the following passage, at p. 61, that he rejected it:

> "There is clear evidence that Mr. Sylliboy far from shying away from the confrontation was looking for it." [emphasis added]

It is clear that the trial judge preferred the evidence of Mr. Hepworth over that of the appellant where it was in conflict. Having examined the transcript, and to some extent re-weighed the evidence, and considered its effect, it cannot be said that he made any error in rejecting the defence of self-defence.

The second submission of the appellant is that the trial judge erred by finding that the Crown proved the offence by establishing only that the use of the knife was for a purpose dangerous to the public peace. If the trial judge had done that, it would have been an error in law because it is necessary for the Crown to prove that the accused formed an intention to use the weapon for a purpose dangerous to the public peace and that the intention preceded the use of the weapon. (See **R. v. VanDooren**, [1969] 4 C.C.C. 217 (B.C.C.A.); **R. v. Chalifoux** (1974), 14 C.C.C. (2d) 526 (B.C.C.A.); **R. v. Calder** (1984), 11 C.C.C. (3d) 546 and **R. v. Roberts** (1990), 99 N.S.R. (2d) 81 (N.S.C.A.).)

Here, the trial judge found that the appellant's intention had "changed drastically" and that his "intention was clearly to use the knife as a weapon". It is obvious that in using these words that the trial judge directed his mind to the question of the intention of the appellant and how it had changed from the time of the initial innocent possession of the knife. There is a finding of

intention separate and distinct from the actual use of the weapon. There was no error on the part of the trial judge in this respect.

The appeal is dismissed.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Pugsley, J.A.