NOVA SCOTIA COURT OF APPEAL
Citation: ***R. v. Bell***, 2007 NSCA 101

Date: 20071019
Docket: CAC 273181
Registry: Halifax

Between:

William R. Bell

Appellant

v.

Her Majesty the Queen

Respondent

Judges:	Bateman, Oland, Hamilton, JJ.A.
Appeal Heard:	October 11, 2007, in Halifax, Nova Scotia
Held:	Leave to appeal is granted and the appeal is dismissed per reasons for judgment of Hamilton, J.A.; Bateman and Oland, JJ.A. concurring.
Counsel:	John D. O'Neill, for the appellant Paul B. Adams, for the respondent

Reasons for judgment:

[1] The appellant fisherman, William R. Bell, was convicted of four offences under the **Fisheries Act**, R.S.C. 1985, c. F-14 by Provincial Court Judge Anne E. Crawford: possession of undersized lobsters, a female lobster with eggs attached, and female lobsters with a v-notch in their right flipper and failure to produce his licence to fish. He was fined a total of $4,200.00, and his licence was suspended for four days at the beginning of the 2006 lobster season. His appeal of his conviction and sentence to the summary conviction appeal court was dismissed by Nova Scotia Supreme Court Justice John D. Murphy. Neither decision is reported. He now applies to this Court for leave to appeal pursuant to s.839 of the **Criminal Code**, R.S., 1985, c. C-46 and, if successful, appeals Murphy, J.'s decision.

[2] Mr. Bell was represented by an unpaid lay person before Crawford, J.P.C., and was represented by counsel before Murphy, J. and this Court.

[3] The standard of review on appeals of this kind was succinctly stated by Saunders, J.A. of this Court in **R. v. Croft**, 2003 NSCA 109; [2003] N.S.J. No. 368:

> ¶8 It is important to recall the standard of review in matters such as this. An appeal may be taken to this Court, with our leave, on any ground that involves a question of law alone, against a decision of the SCAC [Summary Conviction Appeal Court] in respect of an appeal to that court. See **Criminal Code**, ss. 839(1)(a); 822; and 813. Accordingly, in this appeal, we review for error of law made by the SCAC, and not the trial judge....

[4] The issues raised by the appellant on this appeal were essentially the same as those raised before Murphy, J.; namely, that Crawford, J.P.C. erred in reaching an unreasonable verdict or one not supported by the evidence, that her conduct of the trial gave rise to a reasonable apprehension of bias against the appellant and that the sentence she imposed was unfit. At the hearing before this Court Mr. Bell withdrew his application for leave to appeal his sentence by conceding that fitness of sentence does not raise a question of law alone.

[5] As indicated by the standard of review set out in paragraph 3 above, this Court reviews for errors of law made by the Summary Conviction Appeal Court, not those made by the trial judge. For the purpose of this appeal I have reviewed

the record and considered the arguments to determine whether Murphy, J. erred in law in determining that Crawford, J.P.C. did not err.

[6] Murphy J.'s thoughtful and complete oral decision indicates he was alive to all of the issues and arguments raised by both counsel before him on appeal. It is undisputed that he set out the correct standard of review to be applied. In his decision he dealt with each contested issue separately.

[7] In dismissing Mr. Bell's first ground of appeal Murphy, J. concluded the following with respect to the appellant's argument that there was no evidence before Crawford, J.P.C. to allow her to infer that the undersized, egg bearing or v-notched lobsters in the crates inspected by the fisheries officers were in his possession or control:

> ... In my view it was a reasonable inference to be drawn from the evidence that the accused was in possession of the lobsters. His actions as outlined in the evidence and described by the fisheries officer and the interaction that he had with them throughout a substantial period of time, in my view, were a reasonable basis on which the trial judge could determine that there was an acknowledgement of possession. The conviction is based on the evidence of the conduct of Mr. Bell and his interaction and the circumstances in which he led the officers to the lobster and in which they were examined, there is nothing in the evidence to suggest that he was not in possession or that he raised any suggestion or suspicion that he was not the person in possession of the lobsters. In my view it was appropriate for the trial judge to reach the conclusion she did. Indeed, there is no other reasonable conclusion which would have been available for her to reach except that Mr. Bell was in possession of the lobsters. His facility in locating them and his handling them and demonstrating them without any reluctance indicates to me he acted as a person who would reasonably be appreciated to be in possession.

[8] His decision on this issue discloses no error of law that would attract appellate intervention.

[9] Murphy, J. also dealt with Mr. Bell's argument with respect to possession of the female lobster with eggs attached, that the eggs may have been extruded during the weeks the lobster was in his crates. He noted that possession of such a lobster was a strict liability offence and that Mr. Bell had not presented any evidence that would suggest due diligence:

> ... It's not for the [trier] of fact to speculate about special circumstances which might change the apparent conclusion from the evidence on a strict liability

> offence in the absence of the defence raising some issue such as a due diligence issue. And that was not done in this case. The possession was not challenged. There was no suggestion before the judge that there were special circumstances of the due diligence nature. Indeed, as the court noted, there was no evidence from the Defendants. The Defendants made their election. They elected not to call evidence after the Crown presented it and therefore there was no due diligence issue raised.

[10] Again, his decision on this issue discloses no error of law that would attract appellate intervention.

[11] Mr. Bell argued that Crawford, J.P.C.'s conduct at the beginning of the trial gave rise to a reasonable apprehension of bias on two bases. First, she did not permit him to be represented by the two people he had brought to speak for him, one "potentially". The judge told him to choose one, he did, and that agent conducted his case. Second, according to the transcript, when the Crown then made a motion to exclude witnesses, she responded:

> Yes, obviously we've got the blind helping this halt in the lane here this morning. Witness for both Crown and defence will be excluded until called...

[12] Murphy, J. considered these impugned actions in the context of the whole trial. He stated with respect to Mr. Bell's argument concerning one versus two agents:

> ... In that circumstance I find that there is no bias demonstrated by the trial judge's decision or conduct in that regard. She allowed the accused to present his case through an agent. She would have had a discretion not to do so. She didn't go so far as to allow him to use more than one agent and I must say I'm not aware of any circumstances where a party not represented by counsel has been allowed to use more than one agent. So she did not divert from the normal practice. She didn't adopt any practice not generally followed in our courts and there is no indication that the Appellant had any disagreement with the decision that she gave in that regard.

Before this Court the appellant agreed that there was no evidence his defence was prejudiced by Crawford, J.P.C. permitting only one lay agent to represent him at trial.

[13] According to Mr. Bell, although the judge's response to the motion to exclude witnesses was a single comment, it was made early in the hearing and without him having done anything to trigger it. He urges that it was sufficient to

give rise to a reasonable apprehension of bias on the part of a self-represented litigant. Murphy, J. stated:

> Whether the transcript captures the exact words the judge intended to use is perhaps uncertain but I have concluded that in the context of the trial as a whole, that that comment made at the opening when the court was dealing strictly with the procedural matter of whether witnesses would be excluded. It does not constitute bias and would not raise the reasonable apprehension of bias as described in the **National Energy Board** case or other authorities. The comment was not directed toward a particular person. It was not directed toward any evidence or toward any person's credibility. It didn't involve a contrast with one person or another. It, in my view, does not constitute any suggestion that the judge had predetermined the situation or that the Appellant would not get a fair trial. It's not to speculate on what may have been meant. In my view, however, a reasonable person would be perhaps more likely to conclude that the court was simply acknowledging that when persons are not represented by counsel, procedural concessions have to be made. I think that is the more likely conclusion that a reasonable person would draw than that there was some pre-disposition against the accused. So the second ground of appeal with respect to bias does not succeed.

[13] My review of the record satisfies me that Justice Murphy's decision discloses no error of law on this issue.

[14] Accordingly I would grant leave but dismiss the appeal.

Hamilton, J.

Concurred in:

Bateman, J.A.

Oland, J.A.