

Date: 19970616

Docket: CAC 134615

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Nickerson, 1997 NSCA 132

Freeman, Roscoe, and Flinn, JJ.A.

BETWEEN:

WORDLOW NICKERSON

)
Appellant

) S. Clifford Hood, Q.C.
) for the Appellant

- and -

HER MAJESTY THE QUEEN

)
Respondent

) Michael Paré
) for the Respondent

)
) Appeal Heard:
) June 16, 1997

)
) Judgment Delivered:
) June 16, 1997

THE COURT:

The appeal is dismissed as per oral reasons for judgment of Roscoe, J.A.; Freeman and Flinn, JJ.A., concurring.

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

ROSCOE, J.A.:

[1] This is an appeal from a decision of Justice Charles E. Haliburton who dismissed an appeal from conviction of the appellant entered by Judge Robert M. J. Prince of the Provincial Court, for an offence under s. 78 of the **Fisheries Act**, R.S.C. 1985, c. F-14, of fishing with lobster traps without valid tags.

[2] Pursuant to s. 839(1) of the **Criminal Code** appeals to this Court from a Summary Conviction Appeal Court are on questions of law alone. To succeed, the appellant must show that the Summary Conviction Appeal Court judge erred in law.

[3] We have reviewed the decision of Justice Haliburton, the grounds of appeal raised in the notice of appeal and have considered the argument of the appellant and the Crown. In his decision Justice Haliburton reviewed the evidence that was before the trial judge, and reviewed the trial judge's decision. He concluded as follows:

Essentially, the conclusion of the Trial Judge here was a finding of fact. The string of traps was fishing illegally and several of the traps bore tags which had been issued to the Appellant. There may have been some innocent explanation, but it is evident that there was a strong circumstantial case for the Accused to meet. It was proven that tags issued to the Appellant were attached to some of these traps. It may be that the buoys and lanyards were attached by two or more persons. The buoys and the ropes had two or more places of origin. It was, nevertheless, an obvious inference that all the traps in this string had been "set" by one person. In the absence of an explanation, the conclusion is obvious.

One might well ask, as the Appellant does: Why would he set a string of 30 tagless traps and then place his own "signature" by adding tagged traps to conclude the string? The answer, in the circumstances, can only be speculative. Was he framed or set up? Did he think all the traps were untagged? Did he hope that any investigation would start at the other end of the string where there were, apparently, at least five properly tagged traps in a row?

The Trial Judge properly instructed himself on the law with respect to circumstantial evidence. He referred specifically to **R. v. Cooper**, [1980] 1 S.C.R. 1149, Supreme Court of Canada, and other cases, and concluded that there was no evidentiary basis to support the alternative explanation postulated by the Appellant.

[4] We are unanimously of the view that Justice Haliburton did not err in dismissing the appeal from conviction. The trial judge did not ignore any proven facts in arriving at the conclusion that the inferences suggested by the defence were speculative

and tenuous. The appellant's guilt was consistent with all the evidence and inconsistent with any other rational conclusion. Justice Haliburton did not commit any error of law in commenting on the accused's failure to testify nor in dismissing the appeal before him.

[5] The appeal is therefore dismissed.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Flinn, J.A.