C.A.C. No. 108627

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Murphy, 1995 NSCA 52

Clarke, C.J.N.S., Matthews and Roscoe, JJ.A.

BETWEEN:

KENNETH MILTON MURPHY	)	
	)	Philip J. Star
	)	for the Appellant
Appellant	)	
	)	
- and -	)	
	)	Robert C. Hagell
	)	for the Respondent
HER MAJESTY THE QUEEN	)	
	)	
Respondent	)	Appeal Heard:
	)	January 13, 1995
	)	
	)	
	)	Judgment Delivered:
	)	January 13, 1995
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THE COURT: Leave to appeal is granted but the appeal is dismissed per oral reasons for judgment of Matthews, J.A.; Clarke, C.J.N.S. and Roscoe, J.A. concurring.

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

MATTHEWS, J.A.:

The appellant was charged with operating a motor vehicle while impaired by alcohol or a drug: s. 253(2) of the **Code**. On November 4, 1991, Provincial Court Judge

John R. Nichols, after trial, reserved his decision and then found him guilty of the offence.

He appealed that conviction. Summary Conviction Appeal Court Justice Charles E. Haliburton, after hearing argument and receiving briefs, reserved his decision and, on August 23, 1994, dismissed the appeal.

The appellant now seeks leave to appeal and if that is permitted, appeals that latter decision.

Judge Nichols' decision is brief:

> Again, I have reviewed my notes on that matter and on the evidence I am of the view that Kenneth Murphy knew or ought to have known that the ingestion of the drug with the alcohol would cause the reaction that he exhibited. He exceeded the required dosage voluntarily and as a result the signs of impairment were noted by the constables on the day in question.
>
> Clearly his impairment was a result of ingestion of both alcohol and drugs. I therefore make a finding of guilty.

On appeal, Justice Haliburton restated the issues as:

> Issue 1: That the Learned Trial Judge erred in law by entering a conviction when the form of Information before the Court was not bilingual in form contrary to Section 841(3) of the Criminal Code.
>
> Issue 2: That the Learned Trial Judge erred in law in failing to provide reasons and to enunciate his findings of fact in reaching the conclusion that the Accused "knew or ought to have known of the effects of the drug that he was taking".

The same issues were raised before this Court.

ISSUE 1:

The appellant concedes that this issue has been decided by the majority opinion of this Court in **R. v. Goodine** (1992), 112 N.S.R. (2d) 1 which held that the failure to comply with s. 841(3) did not render the information a nullity. However, in light of the dissent in **Goodine** he wishes "to keep the issue alive in the event of a further appeal or, in the alternative, should a decision from a higher Court be consistent with the dissent in

Goodine, supra, or should this honourable court find reason to overrule its decision in **Goodine, supra**".

We dismiss this ground of appeal.

ISSUE 2:

There can be no doubt that the appellant was impaired. Haliburton, J. summarized the pertinent evidence:

> Mr. Murphy's erratic driving attracted the attention of Police Officer Kendall at 9:05 on the evening in question. Officer Kendall was returning from interviewing suspects in another matter when he came up behind Murphy's vehicle travelling at 20 kilometres an hour on the wrong side of the highway. The vehicle failed to respond when he engaged his emergency lights. When he engaged his siren, the vehicle accelerated, travelling at speeds up to 120 kilometres an hour on a hilly, twisty, secondary road, occupying both sides of the road and generally behaving erratically. When the driver eventually stopped, Officer Kendall observed him to have very bloodshot eyes, a strong odour of liquor on his breath, an unsteady, staggering gait, and slurred speech. The officer promptly gave him a breathalyzer demand. Because of the difficulty he had had in stopping the car, Officer Kendall had radioed his detachment for backup and Constable Forbes attended at the scene. When he arrived, Mr. Murphy was already in the backseat of Kendall's vehicle. Constable Forbes' evidence was:
>
> > ...I know Mr. Murphy personally and just from observations of his manner in the back seat of the car, his eyes and just from my observations, I made the opinion he was drunk.
>
> Later, at the police detachment:
>
> > ...I noticed that his speech was slurred, his eyes were bloodshot and the pupils dilated. He had a strong odor of liquor on his breath and his walk was staggered and it confirmed my earlier observation and it confirmed the fact that he was drunk.

The appellant does not quarrel with this evidence. However, he says that he adduced evidence through the testimony of a friend with whom he had two drinks just prior to his apprehension by the police; his own testimony in respect to his drinking and ingestion of medication; and that of his medical doctor respecting his prescribing the medication to the appellant and its possible effect upon the appellant if taken when drinking.

He alleges that Justice Haliburton erred in law:

> i) by upholding the conviction when the Learned Trial Judge failed to provide reasons for accepting the evidence of various witnesses, failed to make findings of credibility with respect to witnesses, and failed to comment on the credibility and evidence of the witnesses;
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> ii) by upholding the conviction when the Learned Trial Judge did not make a decision on all issues of law and fact raised by the Defence;
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> iii) by holding that "the evidence of the Defence witnesses, if believed, does not raise a reasonable doubt as to whether the Accused's voluntary consumption of alcohol caused his impairment".

In his 15 page decision, Justice Haliburton, after discussing the relevant facts and applicable law, remarked:

> The bottom line here is that the evidence of the Defence witnesses, if believed, does not raise a reasonable doubt as to whether the Accused's voluntary consumption of alcohol caused his impairment. The police constables cited a number of indices relating to his appearance and behaviour which prompted them to form the belief that he was "drunk". There is no suggestion in the evidence of Dr. MacDonald that the consumption of Librex alone or in combination with alcohol would cause bloodshot eyes, staggering, or slurred speech. He suggested that there might be bizarre indications if the user was unfamiliar with the drug but his evidence was that Murphy had been using this particular medication for as much as 20 years. Given the hypothetical situation set up by the Accused, the doctor expressed his professional opinion that "you would think that a person could handle it".

> The Trial Judge was certainly entitled, if not obliged, to draw the appropriate inferences from the fact that Mr. Murphy appeared to be coherent at the time of his arrest and sufficiently aware to appreciate that he had a right to counsel, to access counsel, to take counsel's advice, to not give a sample of breath, and to ultimately refuse the demand. His Counsel was present with him at the police office. These circumstances create further inferences to be drawn from the fact that Mr. Murphy did not think to mention his consumption of Librex to the police at any time before the commencement of the trial and he apparently did not mention it to his Counsel on the night in question. Otherwise, one would assume that it would have been raised at that time by Counsel.
>
> While it would have been helpful for appeal purposes and much more satisfactory to the Accused had the Trial Judge spelled out specifically his reasons for ruling out the **mens rea** defence, his failure to give reasons does not offend the various criteria enunciated in the cases submitted by the appellant. The issue of credibility did not arise and hence a determination as to the credibility of various witnesses was unnecessary. The only fact which could possibly be in issue was the actual knowledge of the Accused that consuming liquor in combination with the sedative Librex "could possibly" have an unexpected impact, an impact which, according to the evidence the Defence produced, was unknown to his own doctor except on a speculative basis. Dr. MacDonald said in effect that Mr. Murphy "ought to have known" that it was dangerous to combine the drugs with alcohol and that is exactly the finding of Judge Nichols which the Defence now disputes.
>
> The appeal is without merit. The decision of Judge Nichols is confirmed.

Justice Haliburton was entitled to review this evidence given at trial. The duty of an appellate court was once more commented upon by the Supreme Court of Canada, rendered after the decision of Haliburton, J., in **R. v. Burns**, [1994] 1 S.C.R. 656 at p. 664:

> The Court of Appeal's main concern was not that there was insufficient evidence to support the verdicts of guilty, nor that those verdicts were unreasonable, but that the trial judge's reasons failed to indicate that he had considered certain frailties in

> the complainant's evidence. Given the brevity of the trial judge's reasons, they could not be sure that he had properly considered all relevant matters.
>
> Failure to indicate expressly that all relevant considerations have been taken into account in arriving at a verdict is not a basis for allowing an appeal under s. 686(1)(a). This accords with the general rule that a trial judge does not err merely because he or she does not give reasons for deciding one way or the other on problematic points: see **R. v. Smith**, [1990] 1 S.C.R. 991, affirming (1989), 95 A.R. 304, and **Macdonald v. The Queen**, [1977] 2 S.C.R. 665. The judge is not required to demonstrate that he or she knows the law and has considered all aspects of the evidence. Nor is the judge required to explain why he or she does not entertain a reasonable doubt as to the accused's guilt. Failure to do any of these things does not, in itself, permit a court of appeal to set aside the verdict.
>
> This rule makes good sense. To require trial judges charged with heavy caseloads of criminal cases to deal in their reasons with every aspect of every case would slow the system of justice immeasurably. Trial judges are presumed to know the law with which they work day in and day out. If they state their conclusions in brief compass, and these conclusions are supported by the evidence, the verdict should not be overturned merely because they fail to discuss collateral aspects of the case.

After a thorough review of the material placed before us it is our opinion that Justice Haliburton did not err in dismissing the appeal. The conclusion of Judge Nichols is supported by the evidence.

While we grant leave to appeal we dismiss the appeal.

J.A.

Concurred in:

Clarke, C.J.N.S.

Roscoe, J.A.

C.A.C. No.108627

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

KENNETH MILTON MURPHY

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT BY:

MATTHEWS, J.A.