NOVA SCOTIA COURT OF APPEAL
Citation: ***R. v. Doncaster***, 2013 NSCA 133

Date: 20131122
Docket: CAC 416625
Registry: Halifax

Between:

Ralph Ivan Doncaster

Appellant

v.

Her Majesty the Queen

Respondent

Judges:	MacDonald, C.J.N.S., Beveridge and Farrar, JJ.A.
Appeal Heard:	November 19, 2013, in Halifax, Nova Scotia
Held:	Appeal allowed and the citation for contempt of court remitted to the Nova Scotia Supreme Court to be heard by another judge, per reasons for judgment of Beveridge, J.A.; MacDonald, C.J.N.S. and Farrar, J.A. concurring.
Counsel:	Ralph Doncaster, in person for the appellant Marian Fortune-Stone, Q.C., for the respondent

Reasons for judgment:

[1] The appellant appeared on June 3, 2013 before The Honourable Justice David MacAdam in the Nova Scotia Supreme Court. The appearance was for Mr. Doncaster to present oral submissions on a summary conviction appeal. The appearance was short. It started at 9:34 a.m. and concluded at 9:37 a.m. It was short because the appellant refused to comply with a direction by Justice MacAdam to remove his motorcycle helmet from counsel table.

[2] The appellant refused, suggesting that his helmet was not any different than his briefcase. The Judge repeated his request that it be removed, and that he was not going to debate the matter. Mr. Doncaster said he was going to debate it. The dispute escalated quickly. He essentially called the judge an irrational emotional prude, and dared him to find him in contempt. The judge complied and adjourned the hearing of the summary conviction appeal without day.

[3] The transcript is not lengthy. The relevant exchanges are as follows:

> **THE DEPUTY**: My Lord, if I can, I explained to Mr. Doncaster that this helmet is a security issue.
> **THE COURT**: That's fine, it has to be removed.
> **MR. DONCASTER**: How is that any different than my briefcase?
> **THE COURT**: Your helmet has to be removed, sir. Please, have it removed. I'm not going get into a long debate with you.
> **MR. DONCASTER**: Yeah, I will. You can throw me out if you....
> **THE COURT**: Well, you can have your debate, sir, if you want to have this...
> **MR. DONCASTER**: No, I will.
> **THE COURT**: You're...
> **MR. DONCASTER:** I'm not into irrational emotional prudes.
> **MR. THEUERKAUF**: My Lord...
> **THE COURT:** I'm not prepared to have a debate with you, sir.
> **MR. DONCASTER:** Tough.
> **THE COURT**: Your helmet is to be removed. As the Deputy has said, it's a security issue...
> **MR. DONCASTER**: Why?
> **THE COURT:** ...I accept what he said. I don't care, sir. I want it removed.
> **MR. DONCASTER**: For what?

THE COURT: Did you ever...well, we're going to have a short hearing today, Crown, because I'm going to...if you don't have it removed quickly...
MR. DONCASTER: Yeah.
THE COURT: ...I will fine you in contempt.
MR. DONCASTER: Go ahead. I'd like to have a contempt...
THE COURT: One hundred dollars.

[4] When Justice MacAdam proceeded to put in the record the reason for his finding of contempt, the appellant was disruptive. The following illustrates:

MR. DONCASTER: What?
THE COURT: Just remain silent or you'll have another contempt and we'll place you in custody.
MR. DONCASTER: If…if you…fine.
CROWN: My Lord …
THE COURT: Okay.
MR. DONCASTER: Try it. Try and impress me.
CROWN: My Lord…
THE COURT: We're now adjourned without day.
MR. DONCASTER: Because you no longer have it.

[5] The appellant suggests the issues on appeal to be:

Was the adjournment necessary?

Was the *instanter* contempt procedure justified?

[6] The appellant further suggests that both these issues are questions of law and therefore reviewable by this Court on the standard of correctness. We agree that the second issue is a question of law, reviewable for correctness, but the first is not.

[7] Whether to adjourn a proceeding is a matter of discretion for a presiding judge. As such, considerable deference is owed to how that discretion is exercised. We see no basis to interfere with how Justice MacAdam exercised his discretion. In fact, with respect, it was entirely appropriate.

[8] The respondent would recast the second issue in a more complete fashion, that we would adopt:

> Whether the circumstances justified the Summary Conviction Appeal Justice in convicting and sentencing the Appellant for contempt within a single proceeding (contempt *instanter*)?

[9] We also respectfully agree with the Crown's suggestion that Justice MacAdam was amply justified in initiating summary contempt proceedings given the appellant's behaviour. The only issue is whether the circumstances justified disregarding the procedural steps outlined by the Supreme Court of Canada in *R. v. K.(B.)*, [1995] 4 S.C.R. 186 and *R. v. Arradi*, 2003 SCC 23.

[10] There is no need to set out the facts in *K.(B.)* or *Arradi*, nor review all of the principles discussed in these cases. It is sufficient to say that when someone is cited for contempt, it is not an expression of a finding of contempt, but is notice to the accused that he or she has been contemptuous and will be required to show cause why they should not be held in contempt (*K.(B)*. para. 11).

[11] There are two procedures available for dealing with someone cited for contempt: the ordinary procedure which provides the accused with the usual procedural guarantees of a criminal trial; and the summary procedure which allows the judge to forego the formalities of a criminal trial and convict a person of contempt, even *instanter* in some cases (*Arradi* para. 29).

[12] The summary procedure is reflected in s. 10 of the *Criminal Code*, R.S.C., 1985, c. C-46. It deprives an accused of such guarantees as the presumption of innocence. Summary procedure is only justified where it is urgent and imperative to act immediately (*Arradi*, para. 30). The power is nonetheless subject to the requirements of natural justice. For contempt proceedings, these were set out in *K.(B.)*:

> [15] There is no doubt in my mind that he was amply justified in initiating the summary contempt procedures. I, however, find no justification for foregoing the usual steps, required by natural justice, of putting the witness on notice that he or she must show cause why they would not be found in contempt of court, followed by an adjournment which need be no longer than that required to offer the witness an opportunity to be advised by counsel and, if he or she chooses, to be

> represented by counsel. In addition, upon a finding of contempt there should be an opportunity to have representations made as to what would be an appropriate sentence. This was not done and there was no need to forego all of these steps.

[13] Conviction and sentencing for contempt of court *instanter*, where it is not "urgent and imperative to act immediately", is an error of law that may be reviewed by an appellate court (*Arradi*, para. 32).

[14] The Crown concedes that the record does not disclose the necessary urgent and imperative circumstances required for Justice MacAdam to act immediately. The concession is appropriate.

[15] With all due respect to the summary conviction appeal court judge, it was not urgent and imperative to act immediately. As a consequence, doing so amounted to legal error. The Crown does not suggest that the conviction can be upheld despite the error in law by invocation of the s. 686(1)(b)(iii) curative *proviso*. The appropriate remedy is to quash the conviction and remit the citation for contempt to be heard by another judge of the Nova Scotia Supreme Court.

[16] Mr. Doncaster displays in his factum a continuing disdain for Justice MacAdam, and for the authority of all judges. He wrote:

> "There was no urgency here at all; this was a matter of **an impatient old judge taking offence to someone in his courtroom who disagreed with him.**"

[17] And:

> "My helmet is not a security issue. The claim that it was a security issue was an irrational excuse and an inappropriate attempt at asserting arbitrary authority over the minutia of courtroom decorum. The contempt order arose not from any real contempt, **but from my refusal to submit to an archaic concept of the absolute authority of judges.**"

[18] This was patently not a case of a judge, impatient or old, taking offence at someone who disagreed with him. It was a case of a judge deciding what was appropriate for security in his courtroom, and directing a litigant to comply.

[19] Rather than comply, the litigant, Mr. Doncaster, in essence, called the judge an irrational emotional prude. After polite requests to remove the helmet, the judge warned the appellant it will be a short hearing if he did not remove the

helmet, and be fined in contempt, the appellant taunted the judge to go ahead, he would like to "have a contempt".

[20] The appellant fails to understand that the presiding judge does indeed have absolute authority in the courtroom. It is not some archaic concept. It is the law. If a litigant believes the authority was not exercised in accordance with the law, a remedy is available; it is called an appeal. Apart from that remedy, the litigant is required to comply.

[21] At the conclusion of the hearing of this appeal, the Court announced that it was the unanimous decision that the appeal was allowed and the citation for contempt of court remitted to the Nova Scotia Supreme Court to be heard by another judge, with reasons to follow. The above are our reasons.

[22] The appellant requested costs. Costs are an unusual, even exceptional remedy in criminal cases, let alone in conjunction with appeals in indictable matters. Even assuming this court has such a power, there are no circumstances that would come close to justifying such an award. We do not award costs to the appellant.

Beveridge, J.A.

Concurred in:

MacDonald, C.J.N.S.

Farrar, J.A.