

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Borden, 2004 NSCA 84

Date: 20040615

Docket: CAC 203482

Registry: Halifax

Between:

John Arthur Borden

Appellant

v.

Her Majesty The Queen

Respondent

JUDGE: Glube, C.J.N.S.

APPEAL HEARD: June 15, 2004

JUDGMENT DELIVERED: June 15, 2004

WRITTEN RELEASE OF ORAL: June 17, 2004

SUBJECT: 1) Charter breach and admissibility of evidence (**Charter** 24(2)).
2) Section 803(2): Court proceeding to trial and sentence in the absence of the accused.

SUMMARY: This appeal from a summary conviction appeal deals with an arrest without a warrant in a dwelling and house, and the accused then threatened the two police officers. He was charged with resisting arrest, breach of probation and making a threat. The trial judge ruled all the evidence inadmissible as a result of ss. 8 and 10(b) **Charter** breaches. On appeal, it was sent back for a new trial. After some months, a *voir dire* was held on the **Charter** issue and the resisting arrest charge was stayed but the evidence was admitted for the trial of the remaining charges. Again, a number of months elapsed before efforts were made to set the case down to conclude the trial. Counsel appeared, acknowledged the accused knew of the date but counsel only received a phone message from

an unknown person saying the accused would not be at his trial due to a death in the family. After agreeing that his counsel could withdraw, the court proceeded with the trial, entered a conviction and sentence in the absence of the accused.

ISSUE:

Issue 1: Did the Summary Conviction Appeal Court judge err in upholding the trial judge's decision to not exclude the evidence of the threat pursuant to s. 24 of the **Charter**?

Issue 2: Did the Summary Conviction Appeal Court judge err by upholding the trial judge's decision to conclude the trial and imposing sentence in the absence of the appellant?

RESULT:

1. Assuming without deciding that the evidence was obtained in a manner infringing the **Charter**, exclusion of the evidence, rather than its admission, would bring the administration of justice into disrepute.
2. Given that the accused knew of the trial date, **Criminal Code**, s. 803(2) applies to allow the trial judge to exercise discretion to continue the trial in the absence of the accused.

Leave to appeal granted. Appeal dismissed.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.