

Cite as: R. v. Purdy, 1982 NSCO 9

CANADA  
PROVINCE OF NOVA SCOTIA  
COUNTY OF YARMOUTH

C.Y. No. 2484

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

BETWEEN:

HER MAJESTY THE QUEEN  
(on the information of  
Edwin William Power)

APPELLANT

- and -

GRANT CALVIN PURDY

RESPONDENT

HEARD: at Yarmouth, Nova Scotia, the 13th of May,  
A.D., 1982.

BEFORE: His Honour Judge Peter Nicholson, J.C.C.

DECISION: June 28th, 1982.

COUNSEL: S. Clifford Hood, Esq., for the Respondent.  
Irving C. Pink, Q.C., for the Appellant.

1.

The Crown has appealed against the Decision of Judge P. R. Woolaver of the Provincial Magistrate's Court, whereby he acquitted the accused on a charge that he at or near Rockville in the County of Yarmouth, Nova Scotia, on or about the 21st day of May 1981 did unlawfully have in his possession a radio apparatus, contrary to the provisions of subsection 3(1) of the Radio Act, contrary to Section 11 of the Radio Act, R.S.C., c. R-1, as amended.

Notice of Appeal was filed on behalf of the Crown on 7 May 1982, and an application to set down the Appeal for hearing was made to me at the Court House at Yarmouth, N.S. on the 13th of May 1982.

Counsel for the accused (Respondent) made objection to the setting down of the Appeal on the basis that the Appellant did not give notice to the Summary Conviction Court that a transcript of the evidence was required at or before the time for filing a Notice of Appeal.

In the Nova Scotia County Court Rules for Summary Conviction Appeals, registered on 11 May 1977 and published in the Canada Gazette Part II, Vol 111, No. 9 of the Statutory Orders and Instruments 77-86, provide in part as follows:

2.

"3. Transcripts: (1) Where the parties agree in writing of the facts or where the appeal is from sentence only, no transcript of the evidence is necessary unless the court otherwise orders.

(2) In all other cases, the appellant shall, before or at the time of filing a notice of appeal, notify the summary conviction court that a transcript is required.

(6) Non-compliance: Non-compliance with these rules shall render a proceeding void, unless the court otherwise orders."

It has been held in several cases, and in particular, by this Court in R. vs. Allen Roy Comeau, C.D. No. 1362, that the provisions of Section 3 (2) are mandatory and that for the Court to otherwise order under Section 6 there must be an extraordinary set of circumstances. No such circumstances existing in this case.

The Motion made by Counsel for the Respondent is granted, the proceeding is void, and the Appeal is dismissed with costs.

DATED at Annapolis Royal, Nova Scotia, this 28th day of June, A.D. 1982.



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JUDGE OF THE COUNTY COURT OF  
DISTRICT NUMBER THREE

3.

TO: Clerk of the County Court  
Court House  
YARMOUTH, Nova Scotia

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