SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Maloney, 2011 NSSC 477

Date: 20111222
Docket: CR. Am 346625
Registry: Amherst

Between:

Her Majesty the Queen

Plaintiff

v.

Lacy Maloney and Mitchell Chapman

Defendants

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Judge:	The Honourable Justice A. David MacAdam
Heard:	November 7, 8, 9, 14, 15, 16, 17, 18, 21, 22, 23, 25, 2011, in Amherst, Nova Scotia
Final Written Submissions:	November 9, 2011
Written Decision:	December 22, 2011
Subject:	criminal law, aggravated assault, failure to provide the necessaries of life to an infant
Summary:	The two accused were the parents of an infant who was brought to hospital at the age of approximately one month and, after having a seizure, was found to have a skull fracture. Both parents denied that they had caused or witnessed any trauma occurring to the child, although both speculated that the infant's head injuries could have been related to alleged incidents at the time of his birth, or caused by the mother's four-year-old son, who was a "hyper" child with an interest in wrestling.

Issue: Had the Crown proven guilt on either or both charges?

Result: The Crown had not established beyond a reasonable doubt that either parent had assaulted the infant. There was no evidence that either parent had applied force to the infant, and evidence of the father's alleged temper was not sufficient proof. The offence of failing to provide the necessaries of life required the Crown to prove a marked departure from the conduct of a reasonably prudent parent in circumstances where it was objectively foreseeable that the failure to provide the necessaries of life would lead to a risk of danger to the life of the child, or a risk of permanent endangerment to the health of the child. The evidence respecting the timing of the injuries established that they could not all have occurred as the result of any alleged incident at the time of his birth. In view of the accused's denials, and their suggestion that the four-year old could have caused the injuries, as well as evidence of the four-year old's behaviour, it was established that the only conclusion was that the older child caused the injuries, and that this did not occur during a momentary lapse in attention. The parents' failure to protect the infant from a very "hyper" older child who should not have been left alone with a small infant was sufficient to establish guilt under s. 215. If the parents were lying or misleading in suggesting that it was the older child, then the only other persons identified as possibly causing the injuries were one or the other of them. They would then have been acting in concert by blaming the older child, and thereby failing to provide the infant with the necessaries of life, either by causing the injury or by failing to disclose its cause. As such, both accused were guilty of failing to provide the infant with the necessaries of life.