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CR 03624

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

RENIE CAMSELL

APPELLANT

- and -

HER MAJESTY THE QUEEN

RESPONDENT

Transcript of Reasons for Decision on the Appeal before Justice J. E. Richard, in Yellowknife, in the Northwest Territories, on the 9th day of July, A.D. 1998.

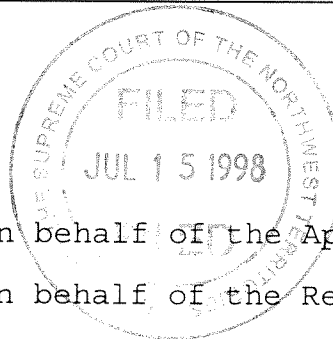
APPEARANCES:

MR. S. EICHLER:

On behalf of the Appellant

MS. D. SYLVAIN:

On behalf of the Respondent



Charge under s. 84 (x 2) Liquor Act

1 THE COURT: The appellant Renie Camsell appeals
2 his conviction for unlawfully selling liquor in his
3 home community of Rae Edzo. He was convicted on June
4 11th, 1998, by a Justice of the Peace in Rae Edzo
5 following a trial. The principal participants at that
6 trial were a lay Justice of the Peace, a lay
7 prosecutor, the unrepresented accused, and the Crown's
8 sole witness, that is, the person who allegedly
9 purchased liquor from Mr. Camsell.

10 On this appeal, Mr. Camsell's counsel argues error
11 committed by the Justice of the Peace in his conduct of
12 the trial and requests a new trial.

13 From my review of the record, it appears that when
14 the police charged Mr. Camsell with bootlegging, the
15 police were in possession of a signed statement of the
16 witness Matthew Jeremica in which Mr. Jeremica stated
17 he purchased liquor from Mr. Camsell on the date in
18 question.

19 At the trial before the Justice of the Peace, the
20 witness Jeremica initially waffled as to Renie Camsell
21 being the precise person who sold him the liquor at the
22 Renie Camsell residence. But in the end result, after
23 some persistent cross-examination by the prosecuting
24 police officer particularly with respect to his earlier
25 statement to the police, the witness Jeremica, under
26 oath, clearly identified the accused Renie Camsell as
27 the person who sold the liquor to him.

1 During the examination-in-chief of Jeremica, the
2 prosecuting police officer cross-examined to a limited
3 extent on Jeremica's earlier statement to the police.
4 At the conclusion of what is normally termed the
5 examination-in-chief of Jeremica, the transcript shows
6 that the prosecuting police officer stated as follows:

7 "Your Honour, at this time I have no more questions
8 for the witness. Mr. Camsell may...".

9 The accused Renie Camsell then asked questions of
10 the witness Jeremica, and in these few questions and
11 answers Jeremica confirmed that it was not Camsell but
12 someone else at Camsell's house who sold him the
13 liquor.

14 The transcript then shows that the prosecuting
15 police officer states: "Excuse me, Your Honour, could I
16 cross-examine?" and the Justice of the Peace allowed
17 the prosecuting police officer to ask further questions
18 of Jeremica.

19 During this second segment of the prosecuting
20 police officer's questions, the police officer again
21 referred Jeremica to the written statement that he had
22 earlier given to the police and reminded him he was
23 under oath to tell the truth.

24 The police officer's final question of Jeremica
25 was, "Did you buy the bottles from Renie Camsell?"
26 Answer, "Yes."

27 The Justice of the Peace then asked the accused

1 Renie Camsell if he wished to ask further questions of
2 the witness Jeremica and the accused did so. During
3 this second segment of Mr. Camsell's questions, the
4 witness Jeremica stated clearly that it was Renie
5 Camsell who sold him the liquor and that the reason he
6 had lied earlier in his testimony was that he was
7 scared.

8 On this appeal, the complaint put forward on
9 behalf of Renie Camsell is that the prosecuting police
10 officer should not have been permitted to put a second
11 series of questions to Jeremica about his previous
12 statement. In the Notice of Appeal, this complaint is
13 phrased thus:

14
15 The learned Justice of the Peace
16 erred by allowing rebuttal evidence
17 by the Crown following the Defence's
18 cross-examination of the sole Crown
19 witness, resulting in 'case
20 splitting' by the Crown."

21 With respect, what occurred was not rebuttal
22 evidence nor, in my opinion, can it be characterized as
23 the Crown "splitting its case", as that term is
24 commonly used.

25 The two case authorities cited by counsel in
26 support of this appeal, that is R. v. Crane (1991), 69
27 C.C.C. (3d) 300, and R. v. Coombs (1977), 35 C.C.C.
(2d) 85, relate to rebuttal evidence and are not on
point here in my view. What occurred here, in my

1 opinion, can fairly and reasonably be considered or
2 described as an extension of the prosecutor's
3 examination-in-chief and an extension of the defence's
4 cross-examination.

5 The lay judge exercised a discretion in his
6 conduct of the trial and granted leave for this
7 procedure. In all of the circumstances of this case as
8 appear on the record, it cannot be said that in doing
9 so the Justice of the Peace committed a fatal
10 procedural error or an error in law. I am unable to
11 find that in the circumstances of this case there was a
12 miscarriage of justice or that the accused Renie
13 Camsell suffered any prejudice.

14 One must remember that this summary conviction
15 trial took place before a lay Justice of the Peace in
16 the community and that no lawyers or legally trained
17 people were present. The charge was an infraction
18 under the Liquor Act in a community that is plagued by
19 problems of alcohol abuse.

20 Policy makers in this jurisdiction have decided
21 that summary conviction trials, such as this one,
22 should preferably be dealt with by community Justices
23 of the Peace on an expeditious or a timely basis,
24 rather than by professional judiciary who are in the
25 community on an itinerant basis only. In my
26 unsolicited but respectful opinion, there is wisdom in
27 that decision.

1 This means, however, that technical or legalistic
2 rules or procedures may not always be followed to the
3 letter in summary conviction trials conducted by a lay
4 Justice of the Peace. For example, in the present
5 case, even though the Crown witness was being referred
6 to a previous inconsistent written statement, no regard
7 was had to the procedure prescribed in Section 9 of the
8 Evidence Act by any of the laypersons involved in the
9 trial. I note that this is not a ground of appeal here
10 and, in any event, in my view no harm was done
11 thereby.

12 The issue here is not whether strict procedure was
13 followed but rather whether Mr. Camsell received a fair
14 trial.

15 On this appeal, it has not been shown that
16 Mr. Camsell did not receive a fair trial. The Justice
17 of the Peace explained the trial procedure carefully to
18 Mr. Camsell at the beginning of the trial and the
19 Justice of the Peace conducted the trial in a fair,
20 balanced and impartial manner.

21 Mr. Camsell's liberty can only be taken from him
22 in accordance with the principles of fundamental
23 justice. This is his constitutional right. He also
24 has a right to a fair trial by an impartial and
25 independent judge. These rights were not infringed or
26 denied to Mr. Camsell in this case. Accused persons do
27 not, however, necessarily have a right to a trial

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conducted by a professional judge for each and every
summary conviction offence that might arise.

For these reasons, I find there is no merit in the
ground of appeal advanced on behalf of Mr. Camsell
during oral argument. The other grounds of appeal in
the Notice of Appeal have been withdrawn. Accordingly,
the appeal is dismissed.

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Certified pursuant to Practice
Direction #20 dated December 28,
1987.

Annette Wright

Annette Wright
Court Reporter