Date: 20020221
Docket: 00/120
Decision No.: 2002 NFCA 14

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

BETWEEN:

SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS
(NEWFOUNDLAND AND LABRADOR) APPELLANT

AND:

RICHARD HARDING RESPONDENT

Coram: Wells, C.J.N., Gushue and Roberts, JJ.A.
Court Appealed From: Supreme Court of Newfoundland, Trial Division, 1996 St. J. No. 3869

Appeal Heard: February 21, 2002
Judgment Rendered: February 21, 2002
Written Reasons Filed: February 28, 2002

Reason for Judgment by Gushue, J.A.
Concurred in by Wells, C.J.N. and Roberts, J.A.

Counsel for the Appellant: David G.L. Buffett, Q.C.
Counsel for the Respondent: Bradford Wicks

Gushue, J.A.:

[1] The respondent, a veterinarian, was charged with two counts of causing unnecessary pain and suffering to an animal, contrary to s. 446(1)(a) of the **Criminal Code**. A breach of s. 446 is a summary conviction offence.

[2] The Provincial Court judge who tried the matter acquitted the respondent of the charge of stabbing the animal, a basset hound, in the nose with a needle and convicted him of punching the dog in the ribs. With respect to the latter, the judge imposed a sentence of a conditional discharge, six months probation and a two hundred dollar victim fine surcharge.

[3] The respondent appealed the conviction to the Trial Division, sitting as a summary conviction appeal court. The SPCA appealed the sentence in relation to the conviction and sought a new trial on the acquittal. The Trial Division judge affirmed the acquittal and allowed the appeal in respect of the conviction, thereby acquitting the respondent completely. The SPCA has appealed that decision to this Court, claiming errors of law by the Trial Division judge. Following the hearing before this Court, the panel affirmed the Trial Division decision, to the effect that the acquittals in respect of both charges were to stand. This Court, however, disagreed with the Trial Division judge with respect to that part of his decision which dealt with the six month limitation period set forth in s. 786(2) of the **Criminal Code**.

[4] It was stated that brief, written reasons would be filed. These are those reasons.

[5] With regard, firstly, to the acquittal at trial of the “stabbing” charge, the trial judge, while stating that he believed the version of the witness, Julie Murphy, who testified as to the stabbing, found that:

> ... upon a careful review of the evidence I find that Dr. Harding’s evidence is capable of belief, even if I do not believe it, and it does raise a reasonable doubt, and it raises the doubt in law as to whether or not the stabbing was intentional or accidental, and I apply the doctrine of reasonable doubt to that incident and find Dr. Harding not guilty of Count No. 1.

[6] The summary conviction appeal court judge found that the trial judge had properly complied with the directions set out by the Supreme Court of Canada, per Cory J., in **R. v. W.(D.)** (1991), 63 C.C.C. (3d) 397 (SCC), at p. 409, which stated:

> ... If you do not believe the testimony of the accused, but you are left with a reasonable doubt by it, you must acquit.

The Trial Division judge found that there could be no reason to interfere with the acquittal. This Court agrees.

[7] As to the second charge and its overturning by the Appeal Court, the appeal judge did so because he was of the view that the trial judge did not take into consideration the evidence of Roxanne Power who was present during the incident, as was Julie Murphy. Ms. Murphy testified it did occur, but Ms. Power testified that she could not confirm that it happened. In the opinion of the appeal judge, the trial judge made no mention of "how he resolved the significant differences between the testimony of Julie Murphy and that of Roxanne Power, differences which went to the heart of Julie Murphy's credibility and reliability". There was further no mention by the trial judge of a report of "no problems" by Julie Murphy to her employer relating to the events of the week in which the incidents allegedly occurred. The appeal judge felt that without a "clear indication" of how the trial judge resolved the inconsistency between the evidence of the two witnesses, "it is impossible to conclude this is a safe conviction, which gives proper application to the principle of reasonable doubt". He therefore set the conviction aside. We concur with the appeal judge for his expressed reasons.

[8] The final issue of concern, as mentioned, is the appeal judge's conclusion relating to computation of the six-month limitation period within which a summary conviction charge must be laid. We disagree with the judge's decision in that regard and, while it has no bearing on the outcome of this matter because acquittals have been entered in any event, we deem it important that the error be corrected.

[9] Section 786(2) of the **Code** states:

> No proceedings shall be instituted more than six months after the time when the subject matter of the proceedings arose, unless the prosecutor and the defendant so agree.

The appeal judge's reasoning may be found in his judgment, but essentially it is with his interpretation of one aspect of s. 28 of the **Interpretation Act**, R.S.C. 1985, c. I-21, that he and we differ. Section 28 states:

> 28. Where there is a reference to a period of time consisting of a number of months after or before a specified day, the period is calculated by
>
> (a) counting forward or backward from the specified day the number of months, without including the month in which that day falls;
>
> (b) excluding the specified day; and
>
> (c) including in the last month counted under paragraph (a) the day that has the same calendar number as the specified day or, if that month has no day with that number, the last day of that month.

[10] The appeal judge says that he interprets the section:

> ... as merely clarifying that the six month count commences on June 9th rather than June 8th (the day on which the incidents occurred), and ends on December 8th, rather than December 7th. It does not assist on the question of whether an Information laid any time on the last day is valid.

[11] In our view, it does so beyond any doubt. By including in the last month counted under paragraph (a) the day that has the same calendar number as the specified day, it is intended, and means, that the whole of that day is available for the laying of the Information. Parts of days or hours within a day are obviously not meant to be included in the computation, which is why s. 28(b) excludes the specified day, ie., the day on which the alleged offence occurred. By this method one arrives easily at a six month limitation period without having to be concerned with days or hours therein. It is completely fair to all parties and obviously obviates the possibility of disruption within the system which would otherwise be likely to result if the exact time of commission of an offence had to be established and then, likewise, the exact time of the filing of the Information.

[12] As well, it cannot reasonably be argued that Parliament intended to count the six month time period down to the last minute or second when, depending on the day of the year that the period commences, it may have been as little as 181 days or as many as 184 days. In that circumstance, seconds and minutes, or even hours,

are obviously of no consequence. The usual court practice of treating a period of time, within which some act or thing may be done, as expiring at the close of business on the last day of the specified period, should not be deviated from merely because the period is expressed as “the time within which”, rather than “the number of days within which”.

[13] Leave to appeal is granted. The appeal is dismissed with the result that the acquittals of Richard Harding will stand. The appeal is allowed, as outlined above, with respect to that part of the judgment of the summary conviction appeal court which deals with the computation of the six month limitation period for the filing of a summary conviction information.

J.R. Gushue, J.A.

I concur:

C.K. Wells, C.J.N.

I concur:

D.M. Roberts, J.A.