

Date: 20121219
Docket: 12/61, 12/62 & 12/63
Citation: *R. v. Gosse*, 2012 NLCA 78

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

DANIEL GOSSE

APPELLANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

Coram: Welsh, White and Harrington JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division, 201201G4296

Appeal Heard: December 10, 2012

Judgment Rendered: December 19, 2012

Reasons for Judgment by Welsh J.A.

Concurred in by White and Harrington JJ.A.

Counsel for the Appellant: Self Represented

Counsel for the Respondent: Iain R.W. Hollett

Welsh J.A.:

[1] On August 15, 2012, Daniel Gosse was convicted of three regulatory offences under the *Highway Traffic Act*, RSNL 1990, c. H-3. The convictions were entered by a trial judge in provincial court when Mr. Gosse failed to provide a defence to the charges because he failed to appear at the time set for the hearing. He appealed the convictions to the summary convictions appeal court. Unfortunately, he also missed that court date and, upon his failure to appear, his appeal was dismissed. Mr. Gosse then appealed to this Court.

[2] When a person charged with an offence fails to appear to answer the charge, there are two concerns to be addressed by a court on appeal. The first is the fundamental right of an individual to “have a day in court”; the second is the responsibility of the citizen to attend court at an appointed time and, where the individual fails to appear, the consequent burden placed on the judicial system.

[3] To address these concerns, it is necessary to consider the reasons for the failure to appear and the potential merits of the appeal. In this case, Mr. Gosse was unrepresented throughout. He was issued three summary offence tickets under the *Highway Traffic Act*: (1) failure upon request by a police officer to produce the vehicle licence issued for the vehicle (section 29); (2) using an identification plate on a motor vehicle other than the plate issued for the vehicle (section 42); and (3) driving a motor vehicle without an insurance policy for the vehicle (section 75).

[4] Mr. Gosse, a young, inexperienced, unsophisticated man, was joined by his father when he appeared in this Court. Both Mr. Gosse and his father provided information orally to the Court to explain why Mr. Gosse should not have been convicted of these offences. The explanation was not given as evidence. While it is unusual to receive information in this way, the Crown did not object, and the information was necessary for proper consideration of the appeal. The essence of the explanation is that the vehicle had been obtained by Mr. Gosse’s father from a second-hand dealer for a trial period of one or two days, and that, if there was an error or omission in respect of the above charges, it was the responsibility of the dealer that owned the vehicle. The information provided by the Gosses leads to the conclusion that their explanation, if accepted at trial, could have resulted in acquittals.

[5] In response to Mr. Gosse's appeal, the Crown submitted that an offence under the *Highway Traffic Act* is governed by the *Provincial Offences Act*, SNL 1995, c. P-31.1. Section 6(1) of the latter incorporates *Criminal Code* provisions regarding summary convictions:

Except where and to the extent that it is otherwise specifically enacted, the provisions of the *Criminal Code* respecting summary convictions and the proceedings relating to them apply, with the necessary changes, in respect of offences and orders and proceedings relating to the offences and orders made or to be made under this Act.

[6] Section 839 of the *Criminal Code* provides for appeals to this Court in summary conviction matters. Leave of the Court is required. Under that section, the appeal must be brought on a ground involving a question of law alone and the ground of appeal must have a "reasonable possibility of success" or be of significance to the administration of justice (*R. v. Newfoundland Recycling Ltd.*, 2009 NLCA 28, 284 Nfld. & P.E.I.R. 153).

[7] In Mr. Gosse's case, I am satisfied that his appeal would have a reasonable possibility of success because, if the information provided to this Court had been available at trial, the judge would have had a reasonable defence to the charges to consider. The difficulty is that, because Mr. Gosse failed to appear for the hearings, there is no decision on the merits based on evidence. It is also clear that neither the trial judge nor the summary conviction appeal judge proceeded contrary to an expressed request from Mr. Gosse for a postponement such as occurred in *R. v. Ramalheira*, 2009 NLCA 4, 282 Nfld. & P.E.I.R. 29.

[8] The rationale for restricting an appeal to a question of law is a useful beginning point in considering whether, in circumstances such as occurred in this case, failure to appear at the designated time for hearings would preclude an appeal to this Court. An appeal to this Court when section 839 applies is a second level of appeal, the decision of the trial judge having already been reviewed by the summary conviction appeal court. In those circumstances, the *Criminal Code* restricts a further review by the court to questions of law, which have broader implications for the administration of justice generally.

[9] The Crown relied on the decision in *R. v. Cody*, 2009 NLCA 64, 291 Nfld. & P.E.I.R. 266, in submitting that leave to appeal should not be granted in Mr. Gosse's situation because the appeal lacks the required

question of law. In *Cody*, the Court was concerned with whether to strike Mr. Cody's notice of appeal for want of prosecution. Green C.J.N.L., in chambers, referred to the question of law requirement where the charge arises from the *Highway Traffic Act* and section 839 is engaged. However, in that case, it was unnecessary to decide the issue and, indeed, there is no determination on the point. The issue was, therefore, left to be decided in a case such as the present one in which the issue is central to Mr. Gosse's appeal.

[10] I begin by noting that Mr. Gosse is not charged under the *Criminal Code*. Rather, his charges are regulatory offences under the *Highway Traffic Act*. This distinction is referenced in *Ramalheira* at paragraph 17. Section 839 of the *Code*, which is concerned with criminal offences, applies to provincial regulatory offences only by virtue of its incorporation by reference under the *Provincial Offences Act*. Where a strict construction of section 839 may lead to an unfair result in the context of a provincial regulatory offence, appropriate accommodation may be made as necessary (see paragraph 5, above).

[11] In this case, Mr. Gosse failed in his responsibility to appear at the time set for the hearings. He did provide explanations for his failures. While he should have made greater efforts to seek postponements where he was not available due to work commitments at a distance from St. John's, I am satisfied that this is a situation where Mr. Gosse should have the opportunity to have the merits of the charges against him determined on the basis of evidence. As noted above, if his explanation is accepted at trial, acquittals could follow. Mr. Gosse was unrepresented throughout the process and is young, inexperienced and unsophisticated. This does not excuse his conduct, but is relevant in balancing the interests of justice where there is a real possibility he would have been acquitted had the charges been tried on their merits.

[12] In the particular circumstances set out above, leave to appeal is granted, the appeal is allowed, the convictions are set aside and the matter is remitted to provincial court.

[13] Despite the result on the facts of this case, I would emphasize that it will be only in rare circumstances that this Court will grant leave to appeal where the appellant has failed to appear for hearings in provincial court and in the summary conviction appeal court. Citizens charged with a regulatory offence have a fundamental responsibility to appear at the time set for the

hearing of the charges or, if that is not possible, to request that the matter be set for an alternate time.

B. G. Welsh J.A.

I Concur: _____

C. W. White J.A.

I Concur: _____

M. F. Harrington J.A.