

Date: 20151214
Docket: 15/57
Citation: *R. v. Hann*, 2015 NLCA 57

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

BETWEEN:

GEORGE CLARENCE HANN

APPELLANT

AND:

HER MAJESTY THE QUEEN

APPLICANT/RESPONDENT

Coram: Rowe, White and Harrington JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
Trial Division (G) 201404G0175

Appeal/Application Heard: December 14, 2015

Judgment Rendered: December 14, 2015 (Orally)

Memorandum of Disposition Filed: December 14, 2015

Counsel for the Appellant: Gary Kearney Q.C. (via video conference)

Counsel for the Applicant/Respondent: Iain R.W. Hollett

MEMORANDUM OF DISPOSITION

White J.A.:

[1] The Appellant was charged with a number of offences arising out of an incident alleged to have occurred in December of 2013. The charges

included uttering threats (s. 264.1 of the *Criminal Code*) and using a firearm in the commission of an indictable offence (s. 85 of the *Criminal Code*).

[2] The Crown elected to proceed by way of summary conviction in relation to the offense of uttering threats. This matter is still active before the Provincial Court.

[3] In respect of the s. 85 offence, the Appellant elected to be tried in the Supreme Court of Newfoundland and Labrador. He was convicted of using a firearm in the commission of the indictable offence of uttering threats and sentenced to 12 months incarceration – the mandatory minimum sentence for this offence.

[4] The Appellant appealed to this Court and was released pending appeal.

[5] The Crown submitted, citing *R. v. Pringle*, [1989] 1 S.C.R. 1645, that an accused “could not be convicted of using a firearm in the commission of an indictable offence unless the accused was actually convicted of the underlying indictable offence during which the firearm was said to have been used”.

[6] As no conviction has been entered in respect of the still active proceeding relating to the underlying offence (uttering threats) the Crown requested that the appeal be expedited and heard without the filing of factums, and consented to the appeal being allowed, the conviction set aside and an acquittal entered.

[7] The panel considered the written and oral submissions of counsel and were in agreement with the request of counsel for the Crown as agreed to by counsel for the Appellant. It was so ordered.

C. W. White J.A.