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Docket: 11/43  
Citation: *R. v. Barrett*, 2012 NLCA 12

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

**BETWEEN:**

HER MAJESTY THE QUEEN

APPELLANT

**AND:**

ANTHONY BARRETT

RESPONDENT

Coram: Green C.J.N.L., Welsh and Hoegg JJ.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador  
St. John's, NL

Appeal Heard: January 19 and January 24, 2012

Judgment Rendered: February 24, 2012

Reasons for Judgment by Welsh J.A.

Concurred in by Green C.J.N.L. and Hoegg J.A.

Counsel for the Appellant: Stephen Dawson

Counsel for the Respondent: Bernard Coffey, Q.C.

**Welsh J.A.:**

[1] This is an appeal by the Crown against the acquittals of Anthony Barrett on charges of refusing to provide a blood sample, driving while impaired and failing to stop at the scene of an accident, contrary to provisions of the *Criminal Code*. The appeal raises issues as to the basis for a directed verdict and the *mens rea* required for the offences of driving while impaired and leaving the scene of an accident.

**BACKGROUND**

[2] In the early morning hours on July 15, 2010, Mr. Barrett was driving his vehicle in a downtown area of St. John's where several drinking establishments are located. A taxi was proceeding along a one-way street when Mr. Barrett turned onto the street heading in the wrong direction. The taxi driver sounded his horn but Mr. Barrett's vehicle continued traveling and hit the taxi head-on. Mr. Barrett then backed up and drove along the side of the taxi, scraping the driver's side of that vehicle. Without stopping, Mr. Barrett continued up the street heading in the wrong direction. A short distance further along, he made a U-turn and, heading in the correct direction, drove slowly past the taxi, looking at the taxi, but not stopping. Mr. Barrett then proceeded up the road, turning onto a main street. The taxi driver and a passenger sustained injuries.

[3] Another taxi followed Mr. Barrett and reported that he had driven in a circuitous route in an area adjacent to the downtown. In the process, Mr. Barrett's vehicle struck a parked car and continued on without stopping. A witness described Mr. Barrett's driving as "all over the road", "like somebody driving incoherent", "somebody driving that's totally, you know, not, not conscious of what he was doing". Eventually, Mr. Barrett stopped his vehicle, got out, and began walking down the street where he was stopped by police.

[4] Mr. Barrett could not speak as a result of surgery to his mouth and throat, and at the time in question he was on medication for pain related to the surgery.

**ISSUES**

[5] At issue in this appeal is whether the trial judge erred in:

- (1) Directing a verdict of acquittal on the charges of refusing to provide a blood sample for analysis to determine the concentration of alcohol in Mr. Barrett's blood;
- (2) Determining that Mr. Barrett did not have the requisite *mens rea* for the offence of driving while impaired; or
- (3) Determining that Mr. Barrett did not have the requisite *mens rea* for the offence of failing to stop at the scene of an accident.

## **ANALYSIS**

### **Appeal Against Acquittal on a Question of Law Alone**

[6] Section 676(1)(a) of the *Criminal Code* provides for an appeal by the Attorney General against an acquittal:

The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal

(a) against a judgment or verdict of acquittal ... of a trial court in proceedings by indictment on any ground of appeal that involves a question of law alone;

...

[7] Mr. Barrett submitted that the above issues regarding *mens rea* do not raise questions of law alone as required by section 676(1)(a). This submission does not withstand scrutiny when assessed in light of the submissions on which the Crown is relying and which are discussed below. The relevant analytical approach is summarized by McLachlin C.J.C. and Charron J., for the Court, in *R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R. 527:

[20] While there can be no doubt that the existence of reasonable and probable grounds is grounded in the factual findings of the trial judge, the issue of whether the facts as found by the trial judge amount *at law* to reasonable and probable grounds is a question of law. As with any issue on appeal that requires the court to review the underlying factual foundation of a case, it may understandably seem at first blush as though the issue of reasonable and probable grounds is a question of fact. However, this Court has repeatedly affirmed that the application of a legal standard to the facts of the case is a question of law: see *R. v. Araujo*, 2000 SCC 65, [2000] 2 S.C.R. 992, at para. 18; *R. v. Biniaris*, 2000 SCC 15, [2000] 1

S.C.R. 381, at para. 23. In our view, the summary conviction appeal judge erred in failing to distinguish between the trial judge's findings of fact and his ultimate ruling that those facts were insufficient, *at law*, to constitute reasonable and probable grounds. Although the trial judge's factual findings are entitled to deference, the trial judge's ultimate ruling is subject to review for correctness.

(Italics in original.)

[8] It is clear from the following discussion that, applying these principles to the case now before this Court, the issues as raised by the Crown satisfy the requirement restricting an appeal to a question of law alone.

#### Impaired Driving - Relevant Legislation

[9] Section 253(1) of the *Criminal Code*, which establishes the offence of driving while impaired by alcohol or a drug, states:

Every one commits an offence who operates a motor vehicle ...

(a) while the person's ability to operate the vehicle ... is impaired by alcohol or a drug; or

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

[10] Section 255(2) of the *Criminal Code* applies where a person suffers injury caused by an impaired driver:

Everyone who commits an offence under paragraph 253(1)(a) and causes bodily harm to another person as a result is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

[11] Section 254(3) of the *Criminal Code* authorizes a police officer to demand a breath sample, or in particular circumstances, a blood sample, where there are reasonable grounds to believe a driver is impaired:

If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under section 253 as a result of the consumption of alcohol, the peace officer may, by demand made as soon as practicable, require the person

(a) to provide, as soon as practicable,

(i) samples of breath ...; or

(ii) if the peace officer has reasonable grounds to believe that, because of their physical condition, the person may be incapable of providing a sample of breath or it would be impracticable to obtain a sample of breath, samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood; ...

[12] Section 254(4) specifies requirements to be met where a demand is made for a blood sample:

Samples of blood may be taken from a person under subsection (3) ... only by or under the direction of a qualified medical practitioner who is satisfied that taking the samples would not endanger the person's life or health.

“Qualified medical practitioner” is defined in section 254(1) to mean “a person duly qualified by provincial law to practice medicine”.

[13] Section 254(5) makes it an offence to refuse to provide a requested blood sample:

Everyone commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made under this section.

### Directed Verdict of Acquittal – Blood Sample Refusal

[14] The test for determining whether a directed verdict may be entered is set out in *R. v. Barros*, 2011 SCC 51, [2011] 3 S.C.R. 368:

[48] A directed verdict is not available if there is any admissible evidence, whether direct or circumstantial which, if believed by a properly charged jury acting reasonably, would justify a conviction: *R. v. Charemski*, [1998] 1 S.C.R. 679 (S.C.C.), at paras. 1-4; *R. v. Bigras* [2004 CarswellOnt 3527 (Ont. C.A.)], 2004 CanLII 21267, at paras. 10-17. Whether or not the test is met on the facts is a question of law which does not command appellate deference to the trial judge. An error of law grounds a Crown appeal under s. 676 of the *Criminal Code*.

[15] In *Charemski*, Bastarache J., for the majority, referred to the extent of evidence that must, of necessity, be adduced by the Crown:

[3] For there to be “evidence upon which a reasonable jury properly instructed could return a verdict of guilty” in accordance with the *Shepard* test [[1977] 2 S.C.R. 1067] (at p. 1080), the Crown must adduce some evidence of culpability

for every essential definitional element of the crime for which the Crown has the evidential burden. ...

(Underlining in the original.)

[16] In the case of this appeal, in an oral decision, the trial judge directed a verdict of acquittal on the two charges of refusing to provide a blood sample on the basis that the requirements of section 254(4) of the *Criminal Code* were not satisfied because:

... there's no evidence about a qualified medical practitioner who was satisfied it would not endanger the person's life or health and that was never communicated to Mr. Barrett. So that is one of the essential elements that deals with the issue of the refusal at the front end ...

[17] In concluding that there was no evidence on an essential element of the offence, the trial judge was relying not on what had occurred at the police station before Mr. Barrett was transported to the hospital but on events taking place at the hospital. At the police station it quickly became apparent that, due to his medical condition, Mr. Barrett would not be able to provide a breath sample. Section 254(3)(a)(ii) of the *Criminal Code* was, therefore, engaged and a police officer read Mr. Barrett the demand for a sample of blood. The officer specified, as part of the demand, that the blood sample would only be taken by or under the direction of a qualified medical practitioner and only if the medical practitioner was satisfied that the taking of the sample would not endanger Mr. Barrett's life or health. Mr. Barrett indicated his agreement to the demand by nodding his head. The police then took him to a hospital.

[18] At the hospital, the demand for a blood sample was not repeated by a police officer. Rather, a nurse who had been provided with a "blood kit" by the police asked Mr. Barrett if he consented to her taking his blood. Mr. Barrett indicated his refusal. At that point, he was charged with the offence of failure or refusal to provide a blood sample under section 254(5) of the *Criminal Code*.

[19] The issue raised here is whether an essential element of the offence is evidence of a communication to the accused when the sample is about to be taken that the person taking the sample is either a qualified medical practitioner or someone acting under the direction of such a person, and that the medical practitioner was satisfied that taking the sample would not endanger the accused's life or health.

[20] The Crown's position is that the essential elements of the offence are satisfied if the accused refuses to comply with a demand for a blood sample provided the officer had reasonable grounds for making the demand and the demand, when given, incorporated the assurance regarding the required involvement of a medical practitioner. Counsel submitted that the essential elements of the offence would not include evidence that the medical practitioner requirement was, in fact, met and that the accused had knowledge of this when the sample was about to be taken. Rather, he submitted, a refusal to comply with a demand on this basis would engage consideration of the defence of reasonable excuse, which, being a defence, is not an element of the offence which the Crown must prove.

[21] In making this submission, the Crown relies on the decision in *R. v. Green*, [1992] 1 S.C.R. 614. La Forest J., for the Court, explained, at page 617:

This case raises the issue of whether a demand for blood samples by a peace officer pursuant to s. 254(3) must incorporate the assurances of s. 254(4) that the samples of blood will only be taken by or under the direction of a qualified medical practitioner and only if the qualified medical practitioner is satisfied that the taking of those samples would not endanger the life or health of the patient. In other words it raises the question whether the phrase "under the conditions referred to in subsection (4)", which appears in s. 254(3), should be interpreted as describing what the demand should contain. In my view it should. Otherwise, the phrase would be surplusage. Parliament's purpose appears to be directed to putting to rest the fear that an improper procedure might be followed or that unqualified persons might conduct the procedure. The danger is that a person might be prompted to refuse to take the test on such grounds. While a detained person has the right to counsel under s. 10(b) of the *Canadian Charter of Rights and Freedoms*, it must be remembered that the blood sample, unlike a breath test, may be taken in circumstances where a person is particularly vulnerable. ...

La Forest J. concluded that a demand which included the assurances specified in section 254(4) would satisfy the requirements of the provision. That case did not deal with the issue raised here; that is, the effect of a refusal occurring at the time when the blood sample is to be taken.

[22] The issue in *R. v. Degiorgio*, 2011 ONCA 527, 275 C.C.C. (3d) 1, was whether the essential elements of the offence of failure to comply with a demand to provide a breath sample "forthwith" included the requirement that the police have access to an approved screening device to permit the sample to be taken forthwith. Degiorgio had given an immediate and

unequivocal refusal to the demand. The Court concluded that this was sufficient to constitute the offence, and that evidence that the police were in a position to comply with the requirement that the sample be taken forthwith was not an element of the offence. LaForme J.A., for the Court, explained:

53 There is a well-established line of authority holding that where an accused is charged with refusing to provide a sample, the Crown does not have to prove that the sample could in fact have been taken in accordance with the provisions of the *Criminal Code* to secure a conviction on a charge of refusing to comply with the demand: see *R. v. Lemieux* (1990), 41 O.A.C. 326 (Ont. C.A.); *R. v. McCauley* (1997), 161 N.S.R. (2d) 154 (N.S. C.A.); *R. v. Wilson* (1999), 121 B.C.A.C. 111 (B.C. C.A.).

[23] Similarly, in *R. v. Danychuk* (2004), 183 C.C.C. (3d) 337 (ONCA), Blair J.A., for the Court, concluded:

[22] ... The word “forthwith” in subsection 254(2) does not define the substance of the offence. Rather, it imposes on the person to whom the demand is made an obligation to comply in a timely fashion, and on the authorities an obligation to conduct the test in a timely fashion once the request is honoured in order that the detainee’s right to counsel under s. 10(b) of the *Charter* are [sic] minimally impaired.

[24] The Crown draws the analogy between the requirement that a breath sample be provided “forthwith” and the requirement that a blood sample be taken “only by or under the direction of a qualified medical practitioner who is satisfied that taking the samples would not endanger the person’s life or health”. In other words, the circumstances under which the sample is actually taken do not constitute an element of the relevant offence. Rather, in the case of a blood sample, a refusal to comply with the demand because necessary information to permit the accused to assess whether the medical practitioner requirement was being met when the sample was about to be taken falls to be considered under the defence of reasonable excuse. I agree.

[25] In the case now before this Court, Mr. Barrett did not refuse when the demand for a blood sample was made. Indeed, he indicated his assent and was transported to a hospital. However, when the nurse asked whether he consented to her taking his blood, Mr. Barrett indicated that he did not. The effect of this failure to consent to the actual taking of blood relates to whether Mr. Barrett had a reasonable excuse for failing to comply with the demand. Assessment of that defence would depend on evidence as to his rationale for the refusal.

[26] In the result, the trial judge erred in directing a verdict of acquittal because such a verdict was premature. There was evidence on the essential elements of the offence required to be proven by the Crown: the police officer had reasonable grounds to believe that Mr. Barrett had been operating a motor vehicle while impaired by alcohol or drugs; because of his physical condition it was apparent that he could not provide a breath sample; he was given a demand to provide a blood sample; that demand included the required assurances that the sample would be taken only by or under the direction of a qualified medical practitioner who was satisfied that taking the samples would not endanger his life or health; Mr. Barrett understood the demand as evidenced by his assent at the police station; and, at the hospital, he refused to comply with the request for a blood sample.

[27] Of course, it does not follow from these facts that Mr. Barrett was guilty of the offence. Evidence may have established that he had a reasonable excuse for the refusal. However, an acquittal by directed verdict was premature. As stated in *Charemski, supra*, the Crown had adduced “some evidence of culpability for every essential definitional element of the crime for which the Crown has the evidential burden” (paragraph 15, above). A directed verdict of acquittal was, therefore, not available. The remedy as a result of this error is an order for a new trial on these counts.

### Mens Rea – Driving While Impaired

[28] *Mens rea* in the context of driving while impaired is discussed in *R. v. King*, [1962] S.C.R. 746, at pages 763 to 764:

... I am of opinion that when it has been proved that a driver was driving a motor vehicle while his ability to do so was impaired by alcohol or a drug, then a rebuttable presumption arises that his condition was voluntarily induced and that he is guilty of the offence ... and must be convicted unless other evidence is adduced which raises a reasonable doubt as to whether he was, through no fault of his own, disabled when he undertook to drive and drove, from being able to appreciate and know that he was or might become impaired.

If the driver’s lack of appreciation [of impairment] when he undertook to drive was induced by voluntary consumption of alcohol or of a drug which he knew or had any reasonable ground for believing might cause him to be impaired, then he cannot, of course, avoid the consequences of the impairment which results by saying that he did not intend to get into such a condition ...

The existence of a rebuttable presumption that a man intends the natural consequences of his own conduct is a part of our law, but its application to any

particular situation involves a consideration of what consequences a man might be reasonably expected to foresee under the circumstances.

...

It seems to me that it can be taken as a matter of “common experience” that the consumption of alcohol may produce intoxication and, therefore, “impairment” ... and I think it is also to be similarly taken to be known that the use of narcotics may have the same effect, but if it appears that the impairment was produced as a result of using a drug in the form of medicine on a doctor’s order or recommendation and that its effect was unknown to the patient, then the presumption is, in my view, rebutted.

[29] In the case of this appeal, the trial judge drew a distinction between whether Mr. Barrett may have been negligent in the civil law sense, which engages the objective standard of the reasonable person, and his responsibility for the criminal offence of driving while impaired, which incorporates a subjective analysis. The interplay between civil negligence and criminal responsibility based on recklessness was discussed in *Sansregret v. R.*, [1985] 1 S.C.R. 570. McIntyre J., for the Court, explained, at pages 581 to 582:

The concept of recklessness as a basis for criminal liability has been the subject of much discussion. Negligence, the failure to take reasonable care, is a creature of the civil law and is not generally a concept having a place in determining criminal liability. Nevertheless, it is frequently confused with recklessness in the criminal sense and care should be taken to separate the two concepts. Negligence is tested by the objective standard of the reasonable man. A departure from his accustomed sober behaviour by an act or omission which reveals less than reasonable care will involve liability at civil law but forms no basis for the imposition of criminal penalties. In accordance with well-established principles for the determination of criminal liability, recklessness, to form a part of the criminal *mens rea*, must have an element of the subjective. It is found in the attitude of one who, aware that there is danger that his conduct would bring about the result prohibited by the criminal law, nevertheless persists, despite the risk. It is, in other words, the conduct of one who sees the risk and who takes the chance. It is in this sense that the term “recklessness” is used in the criminal law and it is clearly distinct from the concept of civil negligence.

(Emphasis added.)

[30] Recklessness in the context of driving while impaired is discussed in *R. v. Mavin* (1997), 154 Nfld. & P.E.I.R. 242 (NLCA). Marshall J.A., for the Court, wrote in summary:

[39] ... An individual is considered to have had the requisite mens rea to support a conviction for impaired driving under s. 253(a) of the **Code** if his or her impairment resulted from self-induced voluntary intoxication which comprehends instances of voluntary ingestion of alcohol or a drug intentionally for the purpose of becoming intoxicated, or acting recklessly, aware the impairment could result, but persisting despite the risk. ...

[31] The trial judge reviewed the relevant principles outlined above. He then proceeded to consider the evidence as to Mr. Barrett's consumption of alcohol and the quantity of medication he had ingested. Mr. Barrett testified that he had attempted to drink a mouthful or two of a beer that had been provided to him, but that "the beer spilled out of his mouth onto his shirt" due to his medical condition (decision of the trial judge, at paragraph 17). He testified that the smell of alcohol detected by the police officer came from the spill. The trial judge concluded:

[17] ... Thus with respect to the issue of the ingestion of alcohol, I must conclude that I cannot say with any degree of certainty that the evidence satisfies me that Mr. Barrett ingested beer, even if only one or two mouthfuls. I am therefore left to consider whether it has been established there was "voluntary ingestion" of the drug Tramacet and that this ingestion caused the impairment in this case.

[32] There is no basis on which to interfere with the trial judge's finding of fact regarding Mr. Barrett's consumption of alcohol. The trial judge accepted that Mr. Barrett's admitted impairment must have been as a result of the medication. While there was no expert evidence led at trial that directly established a causal connection between taking the drug, Tramacet, and impairment, the judge was prepared to infer that connection. His finding in that regard is not the subject of this appeal.

[33] Mr. Barrett admitted he had taken more than the prescribed dosage of the medication, Tramacet, before the incident leading to criminal charges. He had been prescribed this drug for pain control in place of morphine. In considering whether Mr. Barrett was reckless in ingesting the drug and then driving, the trial judge explained:

[20] ... Based on the evidence provided in this trial, I have to be satisfied beyond a reasonable doubt that Mr. Barrett, being aware that there is danger that the ingestion of more pills than set out in the prescription could cause him to be impaired, persisted in the act. He was aware from the prescription label from the pharmacy that he was to take one or two pills every six hours, and that he took approximately twice that number in a six hour period. However, although his

action may be considered negligent in the civil law context, it does not, in my view, rise to a level that satisfies me beyond a reasonable doubt of the degree of recklessness required by the criminal law. That is, there is no pharmacological evidence to suggest what effect the ingestion of a double dosage of this prescription might have. There is no indication on the prescription form or on the box or on the back of the tablet packaging of any effects of this prescription, and nothing to indicate what effect that a double dosage might have on the recipient. There is a warning not to exceed eight per day, and not to exceed the dosage. But there is nothing to suggest what the result of that might be. That is, might it have an adverse effect on ones' kidneys or bowels or stomach, or might it have an impairment effect? While the taking of a double dosage of medication might not be prudent, the evidence as presented at this trial does not lead me to conclude that it is reckless [in the criminal law sense]. As a result, I am unable to conclude that the Crown has established to the degree necessary that the ingestion of this medication was voluntary, in the sense that its ingestion was reckless from a criminal law perspective. ...

[34] The trial judge was clearly attuned to the difference between negligence in the civil law context which incorporates the objective standard of the reasonable person and recklessness in criminal law which incorporates a subjective element. He reviewed the evidence as to Mr. Barrett's experience with the medication including the fact that he had not previously taken double the prescribed dosage of the drug and then driven, though he had driven after taking the prescribed dosage. As well, the trial judge accepted Mr. Barrett's testimony that he had not received any medical information cautioning that the effect of the medication, whether taken as prescribed or exceeding the prescribed dose, may result in impairment of his ability to drive.

[35] The trial judge assessed Mr. Barrett's responsibility incorporating the appropriate subjective perspective and concluded that he was not satisfied beyond a reasonable doubt that Mr. Barrett had acted recklessly. There is no basis on which to interfere with the decision of the trial judge acquitting Mr. Barrett on the offences of driving while impaired. The appeal on this issue is, therefore, dismissed.

### Mens Rea - Leaving the Scene of an Accident

[36] Section 252 of the *Criminal Code* makes it an offence to leave the scene of a motor vehicle accident if the intention is to avoid civil or criminal liability:

Every person commits an offence who has the care, charge or control of a vehicle,  
... that is involved in an accident with

...

(b) a vehicle, ...

and with intent to escape civil or criminal liability fails to stop the vehicle, ...

Subsection (2) specifies a rebuttable presumption as to intention based on the accused's conduct:

In proceedings under subsection (1), evidence that an accused failed to stop his vehicle ... offer assistance where any person has been injured or appears to require assistance and give his name and address is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability.

[37] The Crown's appeal in this case is based in part on the submission that the trial judge failed to give adequate reasons for the acquittals on this charge. The trial judge dealt in some detail with the offence of driving while impaired, reviewing the law and the evidence. He followed this analysis with a short statement acquitting Mr. Barrett on the charge of leaving the scene of an accident:

[20] ... I must therefore dismiss counts 1 and 2 [driving while impaired]. For the same reasons, as the evidence is that Mr. Barrett was unaware that he had struck two vehicles, and because the voluntary ingestion of the drug has, for the same reasons not been established, I must conclude that counts 5 and 6 [leaving the scene of an accident] must also be dismissed.

[38] The trial judge's finding that Mr. Barrett was unaware that he had struck two vehicles is not supported by reference to relevant evidence. The fact that Mr. Barrett was impaired, even if involuntarily impaired as the judge found, does not lead to the necessary conclusion that he was unaware that he had struck the vehicles. There was evidence from bystanders that Mr. Barrett, upon striking the taxi head-on, backed up, drove past the taxi scraping the side of the vehicle, made a U-turn, and drove slowly past the taxi again, looking at it as he passed. He then took a circuitous route followed by two other taxis before stopping and leaving his vehicle in a place which would lead to questions about why he stopped at that particular location. The effect of this and other evidence central to a charge of leaving the scene of an accident, as opposed to driving while impaired, was not discussed by the trial judge.

[39] In *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, McLachlin C.J.C., for the Court, reiterated the rationale underlying the requirement for adequate reasons:

[15] ... The reasons must be sufficient to fulfill their functions of explaining why the accused was convicted or acquitted, providing public accountability and permitting effective appellate review.

...

[17] These purposes are fulfilled if the reasons, read in context, show why the judge decided as he or she did. The object is not to show *how* the judge arrived at his or her conclusion, in a “watch me think” fashion. It is rather to show *why* the judge made that decision. ...

(Italics in original.)

Reasons are of particular importance when the case requires resolution of confused, unclear or contradictory evidence on a key issue (*R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at paragraph 55, point 6).

[40] In the case now before this Court, the reasons given by the trial judge for acquitting Mr. Barrett of the offence of leaving the scene of an accident are inadequate because they do not permit review by this Court. The trial judge failed to direct his mind to the central live issues required to be determined, issues which did not align with those relevant to the driving while impaired offences.

[41] Section 252 of the *Criminal Code* creates a rebuttable presumption that Mr. Barrett’s failure to remain at the scene of either accident was proof of his intent to escape civil or criminal liability. Having acquitted Mr. Barrett, the trial judge must have been satisfied that the presumption had been rebutted. The basis for that conclusion is unclear. In the circumstances, the fact that Mr. Barrett testified that he did not remember hitting the vehicles would not necessarily lead to the conclusion that he lacked the requisite intention.

[42] In the result, the trial judge failed to provide a sufficient basis to permit effective appellate review. This failure constitutes an error in law for which the appropriate remedy is an order for a new trial.

## **SUMMARY AND CONCLUSION**

[43] In summary, the trial judge erred in directing a verdict of acquittal on the charges of refusing to provide a blood sample for analysis to determine the concentration of alcohol in Mr. Barrett's blood. Circumstances occurring at the time of taking the sample when Mr. Barrett indicated his refusal are properly considered within the ambit of "reasonable excuse". The appeal on this issue is allowed and a new trial ordered.

[44] The appeal with respect to whether Mr. Barrett had the necessary *mens rea* for the offence of driving while impaired is dismissed. There is no basis on which to interfere with the trial judge's conclusion that it had not been proven beyond a reasonable doubt that Mr. Barrett had acted recklessly.

[45] The appeal against the verdict of acquittal on the charges of leaving the scene of an accident is allowed. The trial judge did not give adequate reasons, addressing the particulars of the offence, for his conclusion. A new trial is ordered on these charges.

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B. G. Welsh J.A.

I Concur: \_\_\_\_\_

J. D. Green C.J.N.L.

I Concur: \_\_\_\_\_

L. R. Hoegg J.A.