REGINA v. SNARCH

Quebec Superior Court, Mackay, J. May 30, 1969.

Jacques Ducros and *Richard E. Shadley,* for petitioners.
Claude Crete, for the Crown.
Charles E. Flam and *Claude Armand Sheppard,* for complainant.

MACKAY, J.:—This is an application for special leave to appeal from a decision of Long, Soc. Welfare Ct.J., of the Social Welfare Court, adjudging the petitioner, Anne Carol Snarch, a juvenile delinquent, for having violated a provision of the *Criminal Code* of Canada in that she committed a mischief on February 11, 1969, by wilfully obstructing and interfering with the lawful use, enjoyment and operation of the computer centre of Sir George Williams University.

The application is made in virtue of s. 37 of the *Juvenile Delinquents Act,* R.S.C. 1952, c. 160, which provides that:

> 37(1) A Supreme Court judge may, in his discretion, on special grounds, grant special leave to appeal from any decision of the Juvenile Court or a magistrate; in any case where such leave is

granted the procedure upon appeal shall be such as is provided in the case of a conviction on indictment, and the provisions of the *Criminal Code* relating to appeals from conviction on indictment *mutatis mutandis* apply to such appeal, save that the appeal shall be to a Supreme Court judge instead of to the Court of Appeal, with a further right of appeal to the Court of Appeal by special leave of that Court.

(2) No leave to appeal shall be granted under the provisions of this section unless the judge or court granting such leave considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that such leave be granted.

(3) Application for leave to appeal under this section shall be made within ten days of the making of the conviction or order complained of, or within such further time, not exceeding an additional twenty days, as a Supreme Court judge may see fit to fix, either before or after the expiration of the said ten days.

This case arises from the sit in at or the occupation of the computer centre in the Henry F. Hall Building of Sir George Williams University between January 29th and February 11, 1969, by the petitioner and five other juveniles, Alan Joel Bailin, Victor Brott, Renalee Gore, Mark Webb and Elizabeth Morgan, who have also applied for leave to appeal and some 84 other persons who have been charged in the Criminal Court. The petitioner and four other juveniles were students at the University. Bailin is at McGill University.

On February 11, 1969, barricades were erected behind the main doors of the computer centre and the two side doors were locked and therefore those responsible for the use and operation of the centre were denied access to it. The petitioner and the five other named juveniles were arrested and thereafter appeared in the Social Welfare Court, which in Quebec is the Court established to deal with juvenile delinquents.

On February 26th, the trial of the petitioner and the five other juveniles implicated in the sit in proceeded before Long, Soc. Welfare Ct.J., who rendered judgment on March 5th, finding that the petitioner had wilfully caused the mischief complained of and adjudging her to be a juvenile delinquent. On the same day, he caused to be issued to the parents of the petitioner and the other juveniles a notice in virtue of s. 22 of the *Juvenile Delinquents Act* calling upon them to show cause why the provisions of that section should not be invoked against them. On March 12th, sentence was rendered both against the juveniles and against their parents.

The sentence imposed on the petitioner was this:

(a) You will refrain from being *present at* an unauthorized gathering while you are below the age of 21.

(b) You will report personally to your probation officer once a week till the first of June, 1969.

(c) There will be a fine, but as I am of the opinion that your parents have conduced to the commission of the mischief by neglecting to exercise due care of you, or otherwise, I am giving them an opportunity of being heard.

Following the sentence, a fine was imposed on the parents. Because that condemnation is the subject of a separate application for leave to appeal, it will be dealt with in the judgment on that petition.

The petitioner's application for leave to appeal alleges, with respect to the judgment, that:

> the said conviction is against the law, the evidence and the weight of evidence;
>
> the learned Trial Judge erred in holding that the facts adduced at the trial constituted proof that your Petitioner had committed the above mentioned delinquency;
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> the Learned Trial Judge erred in finding from the evidence that there was mens rea on the part of your Petitioner;
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> the Learned Trial Judge erred in convicting your Petitioner on the information before him;
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> the Petitioner cannot be guilty of an offence merely by being present while others may have committed that offence;
>
> the mere presence does not make a person a party to an offence;
>
> the Learned Trial Judge erred in holding your Petitioner to be a party to the offence since the evidence disclosed no common intention to carry out an illegal purpose and there was no evidence whatever of your Petitioner's assisting other persons in that purpose.

As noted, s. 37(2) of the *Juvenile Delinquents Act* provides that no leave to appeal shall be granted unless the Judge granting such leave considers that in the particular circumstances of the case, it is essential that in the public interest or for the due administration of justice such leave be granted.

At the hearing on the application, I was urged to grant it, not only for the reasons given in the petition but also because the petitioner was a classmate of some of those before the Criminal Court and she was entitled to the benefit of appeal, as her classmates will be, in the event they are found guilty.

In my opinion, none of the reasons set out in the petition or urged at the hearing considered individually, are sufficient to relieve me from the restriction upon my discretion to grant leave to appeal; for I may only grant it if I am convinced that in the particular circumstances of the case it be essential in the public interest or for the due administration of justice, that such leave be granted. In what circumstances may leave

be granted? The authorities to which I have been referred are clearly restrictive unless there appears to be a case of extraordinary circumstances.

In *Simard v. Simard*, [1943] Que. S.C. 84, it was held that:

> La permission d'appeler d'une ordonnance de la Cour des Jeunes délinquants ne doit être accordée que dans des cas exceptionnels, comme par exemple, l'absence totale de juridiction, déni de justice manifeste, abus de pouvoir indéniable, qui doivent apparaître *prima facie* à la requête pour permission d'appel.

In *R. v. Bawa Singh (No. 1)* (1948), 93 C.C.C. 193, it was held that the Judge to whom an application is presented must be satisfied that justice was done and the accused was convicted according to law.

The cases in which leave to appeal has been granted clearly result from a failure properly to administer the law.

In *R. v. Lee*, [1964] 3 C.C.C. 200, 43 C.R. 142, 46 W.W.R. 700, leave to appeal was granted where a Juvenile Court Judge ordered restitution of stolen property by juveniles and likewise made a similar order against the parents.

In *Regina v. P.*, [1964] 2 C.C.C. 27, 41 C.R. 254, 44 W.W.R. 511, leave to appeal was granted where a Judge had dismissed two charges in the absence of counsel for the Crown and the accused, where the case had stood adjourned for continuation and not judgment.

In *R. v. McLeish* (1961), 34 C.R. 30, the Appeal Court was of the opinion that it was in the interest of the due administration of justice to grant leave where accused was convicted of contributing to the delinquency of a 12-year-old girl on the uncorroborated evidence of the girl and where the Judge had refused counsel for the accused the right to cross-examine regarding the girl's similar complaints of others.

Having considered the complete record of this case in the Social Welfare Court, as well as the evidence given in that Court and the judgment rendered on that evidence, I am of the opinion that justice was properly administered in the petitioner's case as well as in the case of each of the other five juveniles before that Court.

But is this case not a matter of public interest? Public interest does not mean something in which the public is interested, for the public may be interested in any number of sensational matters which do not concern it. Public interest means something in which the public has some vital interest which affects the public in either a pecuniary or personal sense.

As Lord Campbell, C.J., said in *R. v. Inhabitants of Bedfordshire* (1855), 4 El. & Bl. 535, 119 E.R. 196, "The term 'interest'

[as used in the words public or general interest] . . . does not mean that which is 'interesting' from gratifying curiosity or a love of information or amusement, but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

The present application arises from a sit in by students and their supporters at a university supported by the public of the Province of Quebec, either by taxation or by private donations. As a direct result of the sit in, considerable damage was caused, damage which (directly or indirectly) must be repaired at a considerable cost to the general public. The whole community therefore has a pecuniary interest in this matter.

But vastly more important is the fact that student disorder, as exemplified by the occupation of the computer centre, is a matter of immediate public interest. The views of such persons as the petitioner, which lead to disturbances and violence in the universities, are surely of the greatest concern not only to educators and administrators of universities but also to parents who would avoid having their children act as did the petitioner and those with whom she associated. The present academic strife leading as it has to violence and destruction to obtain unstated and perhaps unstatable aims is a matter of the very greatest concern. We are passing through an era where militants — some students, others not — have adopted a philosophy of nihilism which affects the interest of the entire public and affects it vitally.

In the record are a number of letters the trial Judge received from various sources in favour of the petitioner and the other juveniles. One such letter in support of the Morgan girl was sent by an assistant professor of psychology at Sir George Williams University. He had this to say in part:

> The fact that those three were occupying university property and that they were attending extra discussion sessions are both indications of a genuine desire to improve the quality of their education. We agree about the shortcomings of our educational institutions but she had the courage to do something about them.

Surely, it is in the public interest to know that such philosophy is being inculcated in the youth the public are supporting at its universities. Is it not in the public interest to know what are the causes of the present discontent in Canadian universities? To put the question is to answer it.

I am convinced that in the public interest it is essential that petitioner's participation in the unhappy events which occurred at Sir George Williams University and the facts

concerned therewith as well as the law governing the conduct of students who carry out sit ins or occupations at the universities which they attend, in order to disrupt the orderly operation of those universities, be reviewed by this Court.

For the foregoing reasons leave to appeal the judgment of Judge Long of the Social Welfare Court in and for the District of Montreal adjudging petitioner a juvenile delinquent is granted.

MACKAY, J.:—Leave to appeal having been granted and thus having been seised of the appeal (*Bloomstrand v. The Queen* (1952), 104 C.C.C. 34, 15 C.R. 249, 6 W.W.R. (N.S.) 680) I thereupon ordered the appeal to proceed following prior notice to counsel that I would be prepared to hear the appeal should motion for leave to appeal be granted.

In order to decide whether or not to grant leave to appeal, it was incumbent upon me to make a full investigation of the case and to that end I have examined the record and the testimony of the witnesses, the judgment and sentence, the notes and authorities submitted to the trial Judge as well as all reports submitted to him and which are in the record.

The appellant asks that the judgment be set aside on several grounds:

In fact because:

(1) the conviction is against the weight of evidence and there is no evidence upon which the Judge could find *mens rea* on the part of the appellant;

(2) there was no evidence that the appellant aided or abetted those responsible for committing a public mischief or that she herself did so.

In law because:

(1) the Judge erred when he referred in the sentence to fire and damages in the amount of $2,000,000 when there was no evidence of fire or damage in the record;

(2) the prosecution did not establish the elements of the offence in that the mere presence of an accused at the scene of a crime does not make that person a party to an offence.

The appellant and five other juveniles, four of whom have appealed to this Court, were charged upon the information and complaint of one Graham Martin, director of the computer centre at Sir George Williams University, as follows:

> On or about February the 11th 1969, the said accused accompanied by ALAN JOEL BAILIN, ELIZABETH MORGAN, VICTOR BROTT, MARK WEBB, REAL BLANCHARD, RENALEE GORE and other persons, did commit a mischief in relation to private property by wilfully and without legal justification or excuse and without color of right, obstructing, interrupting or interfering with the lawful use, enjoyment or operation of the Computer Center of the Henry F. Hall Building, by Sir George Williams University, the whole contrary to the Law.

The mischief which appellant is alleged to have committed is covered by s. 372(1)(*c*) of the *Criminal Code*:

> (1) Every one commits mischief who wilfully
>
> (*c*) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or

In order for the trial Judge to hold that the appellant had committed a delinquency and was therefore a juvenile delinquent, he had first to find that she had violated s. 372(1)(*c*) of the *Criminal Code* as defined by s. 371.

Thus, he had to be satisfied beyond a reasonable doubt that the appellant had, on or about February 11, 1969, together with Bailin, Morgan, Gore, Brott, Webb and Blanchard, and other persons wilfully, without legal justification or excuse or colour of right, obstructed, interrupted or interfered with the lawful use, enjoyment or operation of the computer centre at Sir George Williams University.

The evidence of the Crown, there being none for the appellant and the other accused, was to the effect that the Corporation of Sir George Williams University is the owner of the Henry F. Hall Building, which is situated at 1455 Maisonneuve Boulevard West, in Montreal. The building is used for the general academic purposes of the university and includes on the ninth floor a computer centre which occupies approximately one-fourth of the area on that floor. The centre, which contains a computer system valued at $1,475,000, served several functions both academic and administrative but also served as a source of revenue for the university in that the use of the computer was leased to various customers. Until January 29, 1969, the computer system was used by its owners for at least eight hours a day. On that day, the computer centre and other sections of the building were occupied by a group of persons, most of whom appeared to have been students at the university, and the university was thereupon effectively denied the use of the computer centre. During the period of occupation there appear to have been a number of discussions between the occupants and representatives of

the university, and the latter were from time to time admitted to the centre for purposes of conducting these discussions. However, the university, according to the director of the computer centre, was unable to use the centre because the occupants were in full control of it although none of them had any legal right to be there.

The occupation continued until February 11, 1969, and the events of that day are important because they are the basis of the charge against the appellant and the five other juveniles, Morgan, Gore, Brott, Webb and Bailin who with appellant were charged in the Social Welfare Court with having committed a mischief on that day.

At 5 a.m. on February 11th, the Dean of Commerce of the university visited the computer centre for the purpose of verifying the condition of the computer system. A group of persons were milling around both inside and outside the centre itself and at that time there was free access through the doorway to the centre. The occupants were free to leave had they wished to do so. Dean Brink later returned to the centre at 8:15 a.m. and found the entrance doors to be closed. Through the glass in the doors he saw that a barricade had been erected behind them. He then left and when he returned at noon he found the barricade still in place. It was not possible to gain entrance through two side doors, which were locked from the inside, although these doors could have been opened by anyone inside the computer centre area.

Outside the barricaded doorway were a number of university officials and police who remained there until driven away by smoke coming from the centre. The occupants were also driven away from the centre by smoke and one of the fleeing occupants was identified by a constable as being the appellant.

The appellant was further identified as having been one of the persons in the computer centre on February 11th, by the other accused, Bailin (whose evidence was far from satisfactory), Webb, Gore and Morgan.

In fact, it was proven beyond any reasonable doubt that the appellant and the other accused had participated in the unauthorized occupation from its early stages and had remained with others in occupation of the computer centre until 1:30 p.m. on February 11, 1969, when they were driven out by smoke.

I would first dispose of the appellant's objections as to the manner in which her trial was conducted. It was argued that the trial having occurred so soon after the events which gave

rise to it, a fair trial was impossible in view of the hostile climate then extant. It was also argued that the appellant was forced to undergo a medical examination and detained for seven days, that the Judge at the time of sentencing appellant asked her to state how long she had been at the centre and that the Judge referred to a fire at and damage to the centre at the time of sentencing appellant.

In my view, the appellant had a fair trial which was consistent with the proper administration of justice. That the proceedings were conducted with an informality which would perhaps be unacceptable in a more formal Court of law is true. However, such informality is covered by s. 17 of the *Juvenile Delinquents Act*, R.S.C. 1952, c. 160, which provides that proceedings in a Juvenile Court shall not be affected by informality or irregularity where it appears that the disposition of the case was in the best interest of the child. The record unquestionably shows that the Judge's greatest concern was to protect the rights of the appellant and the other accused and to treat them not as criminals but as misdirected and misguided children, as he was in law bound to do in virtue of s. 38 of the Act.

That the Judge ordered a medical examination of the appellant and her detention for a period of seven (7) days is irrelevant. His reference to the fact that the centre was on fire and that the system was damaged is supported by the record, although there is nothing in law which prevents a Judge going outside the record after conviction in order to establish what sentence should be inflicted on an accused.

On the facts, the trial Judge properly found that the lawful use, enjoyment or operation of the computer centre in the Henry F. Hall Building had been obstructed, interrupted or interfered with by a group of persons who occupied the centre without legal justification or excuse or without colour of right and that the appellant and the other accused were six of the persons illegally occupying the centre.

The sole point at issue is whether the appellant and the other accused *wilfully* interfered with the lawful use and operation of the computer centre by its owner, the Corporation of Sir George Williams University, there being no evidence that the appellant or any other of the accused participated in the erection of the barricade on the morning of the 11th.

It must first be said that the occupation of the centre and the denial of its use to its owner depended for its success on the number of individuals who participated in the occupation. What one or two persons will dare not do, larger numbers will.

Had those who organized the occupation and the erection of barricades attempted to do so alone it is probable that they would have been summarily escorted from the building. The appellant and the other juveniles, whether or not they erected the barricades, gave the occupation the strength of numbers which it required for its effective continuation, and indeed this was the reason these juveniles participated in the occupation.

While it is true that mere presence of a person at the commission of an offence does not make that person a party to an offence, nevertheless if the circumstances are such as to show that by that person's presence the party who actually committed the offence was aided and abetted by that person's presence then in virtue of s. 21 of the *Criminal Code*, that person is a party to the offence.

As was said by Estey, J., in *Preston v. The King*, 93 C.C.C. 81 at p. 84, [1949] S.C.R. 156 at p. 159, 7 C.R. 72:

> In order to find the appellant guilty of aiding, abetting, counselling or procuring, it is only necessary to show that he understood what was taking place and by some act on his part encouraged or assisted in the attainment thereof . . .

In *R. v. Hoggan*, [1966] 3 C.C.C. 1, 47 C.R. 256, 53 W.W.R. 641, it was said by Johnson, J.A. [p. 5]:

> There are two things that must be proved before an accused can be convicted of being a party by aiding and abetting. It must first be proved that he had knowledge that . . . an offence is to be committed, the presence of an accused at the scene of the crime cannot be a circumstance which would be evidence of aiding and abetting.

In *R. v. McHugh*, [1966] 1 C.C.C. 170 at p. 178, 50 C.R. 263 *sub nom. R. ex rel. Cardwell v. McHugh*, 51 M.P.R. 173, Bisset, J., stated that:

> It seems to me that "wilfully" in this matter must be given the broad meaning provided for by s. 371(1); that the section does not restrict the meaning of "wilful" but extends it to include reckless acts as well as acts done with a bad motive or evil intent or acts done by anyone as a free agent who knows what he is doing and intends to do it . . .

In the present case, the appellant and the other accused were shown to have at various times formed part of a mob which occupied for a period of some thirteen (13) days the computer centre to the exclusion of its use by its owner. They knew that their presence there was without legal justification and that the use of the centre was being denied to the owner, Sir George Williams University, and must be presumed to know that a crime was thereby committed, a fact which they chose to ignore.

There is no evidence that she or the others were forcibly restrained from leaving by any of the other persons present. As the trial Judge said, they were free to leave at any time by one of the side doors and their continued presence, until forced out by smoke, aided, abetted and assisted those who were responsible for erecting the barricades which effectively interfered with the use of the centre by its owner. She was therefore properly found to have wilfully committed the offence.

In view of the foregoing, I find that the judgment of Judge Long of the Social Welfare Court was well-founded both in fact and in law and that therefore the appeal must be dismissed as must the appeals of Elizabeth Morgan, Victor Brott, Mark Webb and Renalee Gore, for the reasons given in the present judgment and which reasons shall be applicable to the other appeals.

Leave to appeal granted;
appeal dismissed.