S.C.C. No. 02706

NOVA SCOTIA COURT OF APPEAL

**Jones, Hart and Chipman, JJ.A.**

Cite as: R. v. B.L.J., 1993 NSCA 88

**BETWEEN:**

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|---|---|---|
| B.L.J. | ) | Paul B. Scovil |
| | ) | for the Appellant |
| Appellant | ) | |
| | ) | |
| - and - | ) | |
| | ) | William D. Delaney |
| | ) | for the Respondent |
| HER MAJESTY THE QUEEN | ) | |
| | ) | |
| Respondent | ) | Appeal Heard: |
| | ) | March 31, 1993 |
| | ) | |
| | ) | |
| | ) | Judgment Delivered: |
| | ) | March 31, 1993 |
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Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

**THE COURT:** Appeal against conviction dismissed and appeal against sentence abandoned per oral reasons for judgment of Hart, J.A.; Jones and Chipman, JJ.A. concurring

The reasons for judgment of the Court were delivered orally by:

HART, J.A.

The appellant, a young man in his early 20's, was convicted after a two and a half day trial before Judge Haliburton of the County Court of the offence of sexually touching a young girl under the age of 14 years contrary to **s. 151** of the **Criminal Code of Canada**,R.S.C. 1985, c. C-46.

The first ground of appeal alleged that the trial judge was in error by permitting the complainant to testify behind a screen without first conducting a *voir dire* and by relying solely upon the representations of Crown counsel to the effect that she would be uncomfortable without a screen. Even if it could be said that the trial judge had improperly exercised his discretion under **s. 482 (2.1)** of the **Code** we cannot say that the fairness of the trial was in any way impaired and would find that no miscarriage of justice occurred.

The second ground was that the trial judge permitted the complainant to read a statement she had given to the police to refresh her memory during cross-examination. It was, however, the defence counsel who put the statement to her and who originally suggested that she read it over. We find no merit in this ground of appeal.

The next two grounds of appeal allege that the trial judge interfered with the trial and created an impression of unfairness by posing questions to the complainant and another witness during the course of their testimony. A reading of the transcript as a whole, however, convinces us that no such unfairness resulted. The trial judge was the trier of fact and in many incidents it was necessary for him to obtain explanations of the evidence that had not been made clear during the direct and cross-examination of counsel. Although excessive interference by a judge with the development of the evidence by counsel should not be condoned, we cannot say that Judge Haliburton went beyond reasonable inquiries in this instance. We would therefore reject these grounds of appeal.

The final ground of appeal alleges that the verdict was unreasonable and was not supported by the evidence.

We have thoroughly reviewed the record of this trial and have considered the argument of defence counsel put before us and are convinced that there was evidence before the trial judge to reasonably support the conclusion that he reached. The complainant was under 14 years and no issue of consent arose. The appellant did not testify and the complainant described how he had in fact had intercourse with her under circumstances that would suggest it could well have been expected to take place. As directed by the Supreme Court of Canada in **Yebes v. The Queen**, (1987) 36 C.C.C. (3d) 417 we have re-examined and re-weighed the evidence and concluded that this appeal against conviction of the appellant must be dismissed.

The appeal against a sentence of six months has been abandoned.

J.A.

Concurred in:

Jones, J.A.

Chipman, J.A.