S.C.C. No. 02714

IN THE NOVA SCOTIA COURT OF APPEAL

Hallett, Hart and Pugsley, JJ.A.
Cite as: R. v. D.C., 1993 NSCA 89

BETWEEN:		
C. (D.)		Maurice G. Smith for the Appellant
	Appellant	
- and -		
HER MAJESTY THE QUEEN		Robert E. Lutes for the Respondent
	Respondent	
		Appeal Heard: March 25, 1993
		Judgment Delivered: March 25, 1993

THE COURT: The appeal is dismissed as per oral reasons for judgment of Pugsley, J.A.; Hart and Hallett, JJ.A., concurring.

PUGSLEY, J.A.:

The only issue raised in this appeal by the Appellant, is whether the provisions of s. 56 of the Young Offenders Act, R.S.C. 1985, c. Y-1 were complied with, so as to permit the introduction into evidence of a statement given by the young offender.

His counsel contends that the statement was not voluntary and that no proper written waiver to counsel, was obtained from the young offender.

While acknowledging there are "problems" with the statement, counsel for the Crown contends that s. 686(1)(b)(iii) of the Criminal Code, R.S.C. 1985, c.-46 should be applied.

That section reads:

> "686(1) On the hearing of an appeal against a conviction . . . the court of appeal
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> . . .
>
> (b) may dismiss the appeal where
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> . . .
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> (iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph (a)(ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred."

In the recent case of F.F.B. v. The Queen decided by the Supreme Court of Canada on February 25, 1993, Mr. Justice Iacobucci for the majority stated at p. 20:

> "Section 686(1)(b)(iii) of the **Criminal Code**, is for use in exceptional cases only, as this Court has emphasized in two recent cases. In **R. v. S. (P.L.)**, [1991] 1 S.C.R. 909, Sopinka, J. held for the majority, at p. 916, that s. 686(1)(b)(iii) can only be invoked where 'the evidence is so overwhelming that a trier of fact would inevitably convict'."

At p. 620, Mr. Justice Sopinka said:

> "Accordingly, the question here is whether there is any possibility that the trier of fact would have had a reasonable doubt as to the guilt of the accused had the impugned evidence been removed from their consideration."

A review of the evidence in this case discloses that the guilt of the young offender was established beyond a reasonable doubt by the evidence of two accomplices and other Crown witnesses. Their evidence implicating the young offender in the crime was unchallenged.

Had the statement not been introduced in evidence, we nevertheless conclude on the evidence of the accomplices alone that there is no possibility that a trier of fact would have had a

reasonable doubt as to the guilt of the accused.

While s. 686(1)(b)(iii) is only to be used in exceptional cases, in our opinion, this case falls into that category.

Accordingly, the appeal is dismissed.

J.A.

Concurred in:

Hart, J.A.

Hallett, J.A.