

CASE NO.

VOL. NO.

PAGE

HER MAJESTY THE QUEEN

- and -

S.F.A.

(Appellant)

(Respondent)

CAC 169701)

Halifax, N.S.

Freeman, J.A. (Orally)

[Cite as: **R. v. S.F.A., 2002 NSCA 42]**

APPEAL HEARD:

March 27, 2002

JUDGMENT DELIVERED:

March 27, 2002

WRITTEN RELEASE OF ORAL:

April 2, 2002

SUBJECT: **Criminal Law - DNA Order - Sections 487.052 and 457.051(2)
Criminal Code.**

SUMMARY: The respondent was convicted of two counts of aggravated assault and one of unlawful confinement in circumstances described by the trial judge as horrendous. He was sentenced to concurrent four-year sentences. However the trial judge refused the Crown's application for an order that the respondent provide a sample of his DNA for forensic purposes pursuant to s. 487.052. He considered that identification had not been an issue in the offences, that the respondent's prior criminal record had not been extensive, and that the state should not be more invasive with respect to the security of his person than it already had been. The Crown appealed.

ISSUE: Did the court properly exercise its discretion in refusing the order?

RESULT: The appeal was allowed and a sample of the respondent's DNA was ordered. The trial judge did not have the benefit of having

read **R. v. Jordan**, [2002] N.S.J. No. 20 and **R. v. Murrins**, [2002] N.S.J. No. 21, both of which followed two Ontario Court of Appeal cases, **R. v. Briggs** (2001), 157 C.C.C. (3d) 38 (Ont. C.A.) and **R. v. P.R.F.**, [2001] O.J. No. 5084 (C.A.), all of which were subsequently decided. The factors he considered were not relevant to determining the best interests of the administration of justice.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.