C.A.C No. 150128

NOVA SCOTIA COURT OF APPEAL

Cite as R. v. Kane, 1998 NSCA 10

BETWEEN:

JEFFREY STEVEN KANE	)	Leonard J. MacKay
	)	for the applicant/appellant
Applicant/	)	
Appellant	)	
	)	
- and -	)	
	)	
	)	
HER MAJESTY THE QUEEN	)	Susan Bour
	)	for the respondent
Respondent	)	
	)	
	)	
	)	Application heard:
	)	November 12, 1998
	)	
	)	Decision delivered:
	)	November 12, 1998
	)	
	)	

BEFORE THE HONOURABLE JUSTICE ELIZABETH A. ROSCOE,
IN CHAMBERS

ROSCOE, J.A.: (in Chambers)

This is an application by Jeffrey Kane for bail pending appeal pursuant to s. 679(3) of the **Criminal Code**. Mr. Kane was convicted of trafficking in a narcotic and sentenced to fourteen months incarceration followed by one year probation. His appeal from conviction is scheduled to be heard on January 26, 1999.

The ground of appeal in the Notice of Appeal, filed before Mr. Kane had retained counsel, was, although poorly worded, apparently an allegation that there was an unreasonable verdict. Mr. MacKay, who now represents Mr. Kane, has undertaken to the Court to amend the Notice of Appeal to add the following grounds:

> That the trial judge erred in admitting hearsay evidence under the so-called conspiracy exception;
>
> That the trial judge erred in his consideration of whether the appellant actually aided the vendor or the buyer in the offence transaction;
>
> That the trial judge erred by considering irrelevant evidence as an indication of the appellant's guilt; that is, that the appellant was targeted; and
>
> That the trial judge erred in assessing and relying on the evidence identifying the appellant.

In order to succeed on his application for bail, Mr. Kane must establish that the appeal is not frivolous; that he will surrender himself into custody in accordance with the terms of the order; and, his detention is not necessary in the public interest.

It is, of course, difficult at this stage of the appeal to assess the merit of the grounds of appeal since we have neither the transcript of evidence nor the reasons for his conviction. Perhaps that is why the courts have said, and counsel have agreed, that the threshold is low on this first part of the test. The appellant only has to show that at least one ground of appeal is arguable or has a possibility of success. I would find in this case that if the trial judge did in fact rely on evidence that the police targeted Mr. Kane as significant in establishing his guilt, that would be at least an arguable ground of appeal.

On the second part of the test; that is, whether he will surrender himself into custody, it appears that Mr. Kane does have significant family ties in this immediate area, including children, mother and siblings. He also has a girlfriend, Ms. Randolph, who has appeared today and who has said she is prepared to sign as a surety and allow Mr. Kane to reside with her and their daughter. He has also appeared in court when required to do so in the past.

The biggest factor against Mr. Kane's application is his past criminal record, which I think can be considered both under the second and third parts of the test in s. 679(3). Mr. Kane's record is lengthy - fourteen prior offences, including offences of violence, two sexual assaults, seven prostitution related offences, and a failure to comply with a probation order. It also appears that most of the offences were committed while Mr. Kane was serving probation orders.

Considering the record and the nature of this particular offence - that of

trafficking in cocaine - I am not satisfied that Mr. Kane has shown that it is in the public interest that he be granted bail.

The application is therefore dismissed.

Roscoe, J.A.