Date: 19980330 Docket: CAC 145932

NOVA SCOTIA COURT OF APPEAL

Cite as R. v. Corkum, 1998 NSCA 18

BETWEEN:

DAVID ROLAND CORKUM	)	Alan G. Ferrier
	)	for the Applicant/Appellant
Applicant/	)	
Appellant	)	
	)	
- and -	)	
	)	Denise C. Smith
	)	for the Respondent
HER MAJESTY THE QUEEN	)	
	)	
Respondent	)	Application Heard:
	)	March 27, 1998
	)	
	)	
	)	Decision Delivered:
	)	March 30, 1998
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	)	

BEFORE THE HONOURABLE JUSTICE FLINN IN CHAMBERS

FLINN, J.A.: (in Chambers)

The appellant was convicted, following a trial before Justice Hall without a jury, of forcibly seizing, and unlawfully confining a 19 year old female. On January 28th, 1998, the appellant was sentenced to 12 months imprisonment. The trial judge did not make any order for probation, feeling that would be redundant because the appellant was already serving a lengthy period of probation with respect to another offence, of which I will say more about later in these reasons.

The appellant appeals his conviction and sentence. He has applied under **s. 679(3)** of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46 for release pending the hearing of his appeal. I have the discretion to order his release, pending the determination of his appeal, provided the appellant satisfies me that:

(a) the appeal is not frivolous;

(b) the appellant will surrender himself into custody in accordance with the terms of any order which I may grant; and

(c) the appellant's detention is not necessary in the public interest.

The Crown opposes the appellant's application.

I am satisfied that the appellant has met the first two conditions. With respect to the first condition, since the trial judge's conclusions, as to the appellant's guilt, were largely based on his assessment of the credibility of witnesses, this appeal creates some difficulty for the appellant. Having said that, I am persuaded that the

appeal is not frivolous. That is the extent to which I have to be satisfied on this application.

With respect to the second condition, I am also satisfied that the appellant will surrender himself into custody in accordance with the terms of any order which I may grant.

It is the third condition which has given me the difficulty on this application. The appellant has not satisfied me that his detention, while awaiting the hearing of his appeal, is not necessary in the public interest. I will set out my reasons for coming to this conclusion.

The circumstances surrounding the offence which is the subject of this appeal were described by the trial judge, at the sentencing hearing, as follows:

> ..... on the day in question, June 20, 1993, the complainant, a young lady 19 years of age had gone for a walk nearby her home. While she was walking along a rural highway passing through an uninhabited wooded area, the accused came upon her in his automobile, stopped and purported to ask for directions to N.. After the complainant had provided the information the accused got out of his vehicle and immediately the complainant became frightened, suspected that something was up, started to run away but fell down. The accused then forced her into his car and drove along the highway for a way and then up a wood road where he parked. The accused then asked the complainant as to the colour of her underclothing and eventually he told her to take off all her clothes. She declined to do so but the accused put his hand on her bare thigh and she told him not to move it any further. To his credit he did not. About a half hour later the accused drove his vehicle from that location and then dropped off the complainant at the place where she requested. The accused was not apprehended until some time later since the complainant did not know his identity.

This is a most serious matter. As the Crown points out, but for the

composure of this young woman, who did not panic, the situation might have been much more serious. What if she had complied with the appellant's demand that she remove her clothes? What if she had not admonished him - not to move his hand any further - when he put his hand on her bare thigh?

It is, particularly, disturbing because of the appellant's history of anti-social and criminal activity.

At the time of this offence, the appellant's record comprised five convictions for offences of theft, common assault, harassing and indecent telephone calls, and break and enter. Since the date of this offence he has been convicted for offences of being unlawfully in a dwelling, dangerous driving, failing the breathalyser and disturbing the peace.

The offence of disturbing the peace, which occurred after the offence which is the subject of the appeal, is relevant. The Crown described the circumstances of this offence as follows:

> On the noted date and time Ms. D. and Ms. H., who are both fifteen (15) years of age, were walking into N. from the N. High School where they had just finished classes for the day. The girls started to walk across the L. Bridge when they were approached by a small blue automobile driven by the appellant. The appellant stopped the vehicle and through the open driver's window of the car, asked for directions to B.. The girls gave the appellant verbal directions, at which time the appellant uttered the words, "I want to lick your pussy". Rather surprised by the appellant's remarks, Ms. H. asked him what he said. The appellant then repeated "I want to lick your pussy." Both girls ran the rest of the way across the bridge and hid in a local store until they were sure that the appellant had not followed them.

The sentencing history of the appellant indicates that he was ordered to undergo counselling for sexual dysfunction. There is no indication, in this application before me, that the appellant has received such counselling, or the results of that counselling.

I am not persuaded, therefore, that the appellant's detention, while awaiting the hearing of his appeal, is not necessary in the public interest. Further, on the basis of the circumstances which I have described above, public confidence in the administration of justice would suffer were I to release the appellant pending the hearing of his appeal.

The application is dismissed.

Flinn, J.A.

C.A.C. No. 145932

NOVA SCOTIA COURT OF APPEAL

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Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

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