

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. K.F.*, 2010 NSCA 45

Date: 20100521

Docket: CAC 314810

Registry: Halifax

Between:

Her Majesty The Queen

Appellant

v.

K.P.L.F.

Respondent

Restriction on Publication: 486.4 (1) Order restricting publication – sexual offences

Judges: The Honourable Chief Justice Michael MacDonald; (Bateman, J.A. concurring);
The Honourable Justice Duncan R. Beveridge concurring by separate reasons

Appeal Heard: March 17, 2010

Subject: Criminal Law, evidence, admissibility of warned statement, voluntariness, police caution.

Summary: Crawford, J.P.C. ruled inadmissible the respondent's confession regarding several sex-related charges involving the three year old son of his then common-law wife. He was subsequently acquitted. The Crown appeals the acquittals that flow from this ruling, asserting that it reflects reversible error. It abandoned its appeal on other acquittals unrelated to this confession.

Issue: Did the judge commit reversible error by ruling the statement inadmissible?

Result: Appeal allowed and new trial ordered, per MacDonald, C.J.N.S. (Bateman, J.A. concurring):

The judge in her reasons said there was an “absence of any caution to the Defendant informing him of his right to silence”. Yet the officer who took the statement, at the outset said: “you need not say anything. You have nothing to hope from any promise or favour, and nothing to fear from any threat whether or not you say anything, anything you do say may be used as evidence. Do you understand that?”, to which the respondent replied “yeah”. This represents a palpable and overriding error of fact that was significant to the outcome. This error commands a new trial.

Per Beveridge, J.A. (concurring in the result by separate reasons):

The respondent testified that he did not know he had the right to remain silent. The trial judge found that the caution did not inform him of this right. In these circumstances, her conclusion was not a palpable and overriding error of fact. However, the trial judge erred in law by focusing on the issue of right to silence. She said that the failure to inform the respondent precluded a finding of voluntariness, rather than considering her finding along with all of the other circumstances.

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 18 pages.