

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. A.M.G. 2000 NSCA 6]

Freeman, Roscoe and Pugsley, JJ.A.

BETWEEN:

A. M. G.)	Timothy A. Reid
)	for the appellant
Appellant)	
)	
- and -)	
)	
HER MAJESTY THE QUEEN)	Dana W. Giovannetti, Q.C.
)	for the respondent
Respondent)	
)	
)	
)	Appeal Heard:
)	January 11, 2000
)	
)	Judgment Delivered:
)	January 11, 2000
)	
)	

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

THE COURT: Appeal allowed as per oral reasons for judgment of Freeman, J.A., Roscoe and Pugsley, JJ.A., concurring

Publishers of this case please take note that s.38(1) of the **Young Offenders Act** applies and may require editing of this judgment or its heading before publication. Section 38(1) provides:

38(1) No person shall publish by any means
any report

(a) of an offence committed or
alleged to have been committed
by a young person, unless or
order has been made under
section 16 with respect thereto,
or

(b) of a hearing, adjudication,
disposition or appeal concerning
a young person who committed
an offence

in which the name of the young person, a child
or a young person aggrieved by the offence or
a child or a person who appeared as a witness
in connection with the offence, or in which any
information serving to identify such young
person, is disclosed."

FREEMAN, J.A.: (Orally)

[1] The appellant was convicted in youth court of sexual assault on his younger sister between January 1, 1984 and September 21, 1985, when she was aged nine to eleven and he was aged sixteen and seventeen.

[2] The assaults were alleged to have continued after his eighteenth birthday on September 21, 1985 and he also faced two charges in adult court. At the request of the Crown, the trial judge, Crawford, J.P.C., agreed that the evidence in the youth court trial could also be evidence on the preliminary inquiry for the adult charges. She stated:

I'm going to order that the trial will proceed first. That the Crown can proceed to call all of it's evidence and I will make a decision as to preliminary hearing at the conclusion of the trial. . . . All of the evidence will come in the trial, yes. And I will obviously confine my decision on the trial to the dates alleged in the youth court information. And then I will consider it separately but I will hear all of the evidence together." ...

[3] The appellant's counsel did not consent to this procedure and in fact, objected. On appeal he argues that the youth court judge (a) exceeded her jurisdiction and, (b) heard negative testimony with respect to the adult charges that "would have contaminated her deliberations on credibility when deciding the youth court trial."

[4] The latter point is of little merit for, as the Crown points out, "it is an everyday matter for evidence to be admissible for one purpose and not for another." A trial judge routinely hears and rejects evidence in *voir dire*s, for example, or may conduct both preliminary hearings and subsequent trials, without fear of "contamination."

[5] The Crown on appeal concedes that the procedure followed is not “done on a regular basis” as the Crown asserted at trial. But it argues this is not necessarily erroneous or in excess of jurisdiction, that the appellant has cited no authority for the jurisdictional argument, and that the appellant suffered no prejudice. It cites Lamer, C.J.C., in **R. v. Clunas** (1992), 70 C.C.C. (3d) 115 S.C.C. at 116-117:

...I am firmly of the opinion that the importance of departures from the traditional form of procedure from which no prejudice arises should not be so escalated as to result in the invalidity of the proceedings where a Court is satisfied that the result would have been the same had the trial proceeded in the manner in which it is alleged it should have.

[6] The Crown submits that if there was a procedural irregularity resulting in error, it was a harmless error and the court should apply either s. 686(1)(b)(iii) or (iv) of the **Code**. Section 686(1)(b) however cannot provide a remedy when the court is without jurisdiction.

[7] While there may have been practical advantages in the procedure adopted in the present case, which involved stressful testimony by family members, there are no provisions in the **Criminal Code** or the **Young Offenders' Act** for combining a youth court trial with the preliminary inquiry into alleged indictable offences committed by an adult. Where an objection was raised, as here, by defence counsel, we are of the opinion that the youth court judge had no jurisdiction to proceed as she did. This case is distinguishable from **Clunas** because there was no consent to proceed in that

fashion. The appeal is allowed and the conviction is set aside as a nullity; a new trial is ordered.

Freeman, J.A.

Concurred:

Roscoe, J.A.

Pugsley, J.A.