C.A.C. No. 115321

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Langille, 1996 NSCA 152

Flinn, Hart and Matthews, JJ.A.

BETWEEN:

BRIAN GREGORY LANGILLE Appellant - and - HER MAJESTY THE QUEEN Respondent	Alan G. Ferrier for the Appellant William D. Delaney for the Respondent Appeal Heard: May 16, 1996 Judgment Delivered: May 16, 1996

THE COURT: Leave to appeal is granted but the appeal is dismissed per oral reasons for judgment of Matthews, J.A.; Hart and Flinn, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

MATTHEWS, J.A.:

On March 9, 1995, the appellant was convicted, following his trial before Justice Carver and a jury, of violating s. 151 of the **Criminal Code**. He was found guilty of the offence that between January 1, 1991 and January 17, 1993, he unlawfully, for a sexual purpose, touched with his hands and mouth, C.A.S., a person under the age of 14 years.

The appellant appeals on questions of law, and with leave, on questions of mixed law and fact.

While several alleged errors are advanced on behalf of the appellant, the underlying basis of the appeal is, in the language of s. 686(1)(a) of the **Criminal Code**, that due to the alleged errors, the verdict should be set aside because it is unreasonable and cannot be supported by the evidence and that the guilty verdict resulted from a miscarriage of justice.

C.A.S. was the only witness at the trial. He was then 16 years old. He was subjected to a vigorous cross-examination by counsel experienced in the criminal law. The appellant did not testify.

The thrust of the evidence of C.A.S. was that over a period of one and one-half years the appellant forced C.A.S., among other acts, to engage in oral sex. C.A.S. testified he was unsuccessful in preventing the appellant from doing these acts. C.A.S. asserted he never touched the appellant's body for a sexual purpose.

Inflammatory or vindictive remarks and those expressing the personal opinions of counsel regarding the evidence or the conclusions which the jury should reach should be scrupulously avoided. See **Boucher v. The Queen** (1954), 110 C.C.C. 263 (S.C.C.) and **Regina v. Murphy** (1981), 58 C.C.C. 338. Here any such alleged remarks by Crown counsel did not, in our opinion, result in a miscarriage of justice. They were not such serious breaches of duty as to have prejudiced the accused in having a fair trial.

We have carefully considered the record of the proceedings. We have re-examined and to some extent reweighed the evidence. We have studied the submissions that

have been made by counsel, both oral and written.

In our opinion Justice Carver conducted the trial and made decisions during the course of it which were not in error. His charge to the jury was fair to the position of the appellant. He demonstrated that he was alert to the issues, both of law and fact. Being properly instructed, as we believe the jury was, it rendered a verdict, which acting judicially, it could reasonably do. It is a verdict which is supported by evidence and, in particular, that C.A.S. was under the age of 14 years at the time of the offence. Therefore, it satisfied the test mandated by the Supreme Court of Canada in **R. v. Yebes**, [1987] 2 S.C.R. 168; (1987), 36 C.C.C. (3d) 417, at p. 430; **R. v. W.(R.)**, [1992] 2 S.C.R. 122 at p. 130.

It is our unanimous opinion that the verdict should not be disturbed.

While leave to appeal is granted, the appeal is dismissed.

J.A.

Concurred in:

Hart, J.A.

Flinn, J.A.

C.A.C. No.115321

NOVA SCOTIA COURT OF APPEAL

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BRIAN GREGORY LANGILLE	)	
Appellant	)	
- and -	)	REASONS FOR
	)	JUDGMENT BY:
HER MAJESTY THE QUEEN	)	
	)	MATTHEWS,
	)	J.A.
Respondent	)	
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