

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. White, 1994 NSCA 238

Clarke, C.J.N.S.; Hart and Roscoe, JJ.A.

BETWEEN:

SABRINA DIANE WHITE
and
S. L. B.

Appellants

- and -

HER MAJESTY THE QUEEN

Respondent

)
) Vincent Calderhead
) for the Appellants

)
) Robert C. Hagell
) for the Respondent

)
) Appeal Heard:
) November 15, 1994

)
) Judgment Delivered:
) November 15, 1994

THE COURT: The appeals are dismissed as per oral reasons for judgment of Roscoe, J.A.; Clarke, C.J.N.S. and Hart, J.A., concurring.

The reasons for judgment of the Court were delivered orally by

ROSCOE, J.A.:

The issue in this appeal is whether the equality rights of the appellants were breached as a result of the manner in which the Halifax Police Department

enforced s. 213 of the Criminal Code. Section 213(1) provides:

"Every person who in a public place or in any place open to public view

(a) stops or attempts to stop any motor vehicle,

(b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or

(c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person

for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction."

The appellants were each charged in separate informations with communicating for the purposes of prostitution, Ms. White as an adult and S.L.B. as a young offender. Ms. White was tried and convicted in the Provincial Court by Judge Bremner and sentenced to one day in jail, deemed served by her attendance in court. An appeal of her conviction was dismissed by Justice Anderson, then of the County Court for District Number One. S.L.B. was tried in Youth Court by Judge Daley and upon being found guilty was sentenced to three months probation. The offence date concerning Ms. White was September 18, 1991 and that of S.L.B. was October 1, 1991.

At the trials of the appellants, it was submitted that their rights pursuant to s. 15 of the **Charter** had been infringed as a result of the methods of enforcement of the Halifax Police. Statistics showing that more females were charged under s. 213 during a specific period of time, including the offence dates herein, were submitted along with other extrinsic evidence consisting of reports on street prostitution. Judge Bremner's finding that the defence had not proven a violation of s. 15 was upheld on appeal to Justice Anderson who concluded that there was no error in law or fact by the trial judge. Judge Daley, finding no difference between the case of S.L.B and that of Ms. White, relied on Justice Anderson's decision and concluded there had been no

breach of **Charter** rights.

The issue on appeal is whether the learned trial judges and summary appeal justice erred in law in failing to find a breach of the appellants' equality rights.

The argument of the appellants can be summarized as follows: The result of the exclusive use of the "decoy" system to enforce s. 213, is that the police charge more women than men with communication for the purpose of prostitution. Since as many men commit the offence as women, there is discrimination on the basis of gender.

The statistics presented at both trials indicate that from June 1, 1990 to November 30, 1991, of a total of 234 charges under s. 213(1)(c), 189 were laid against females and 45 against males. These numbers include adults and young offenders. In other words 80.77% of the total charged were female and 19.23% were male.

Constable William MacLeod of the Morality Section of the Halifax Police Department testified at both trials concerning the so-called "decoy" method of enforcing s. 213. He said that in Halifax there are two main areas where female street prostitutes frequent, and one area where male homosexual prostitution is practiced. The "decoy" method consists of having one or more male police officers in plain clothes drive by one of the "strolls" in an unmarked vehicle and stop the vehicle. A female approaches the car, a conversation takes place and if sex for money is offered, she is arrested. Similar attempts to charge male prostitutes have not been successful according to Constable MacLeod because the targets of the enforcement are not as likely to approach unknown males and they are more cautious in their conversations. Additionally, there are only a couple of male prostitutes. When the police are attempting to enforce the section against customers as opposed to the prostitutes, they use female police officers who stand on a corner of a "stroll" and wait until they are approached by someone. Constable MacLeod testified that the police have as many female officers working as

"decoys" as they do male officers, but that not as many charges result against customers as against prostitutes because of certain limitations. There are a number of reasons the female officer is less effective than her male colleague. One is that the real prostitutes often recognize the newcomer as a police officer and tip off potential customers. Also the female officer is often harassed by pimps, customers and prostitutes, making the role a dangerous one and requiring backup in the immediate area. Thirdly, the female "decoy" is limited in what she can say to a potential customer in order to avoid entrapment. She must wait until the male initiates the conversation and directs it to talk of sex for money. Constable MacLeod testified that there is no other effective method of enforcing s. 213.

The appellants' argument has a major flaw and that is that it is premised on the assumption that every time an offence is committed under s. 213(1)(c) there are two parties to the offence, usually a male and a female. It is clear from the evidence of Constable MacLeod that many solicitations are made by a prostitute before one is accepted by a customer. In the absence of evidence to the contrary, it can be inferred that many of these solicitations do not attract any answer from a potential customer that contravenes s. 213, and therefore the offence is committed more often by prostitutes than by customers. In other words, contrary to the argument of the appellants, the offence can be committed by one person acting unilaterally. There was no evidence that male customers regularly approach women who are not prostitutes and engage in conversation that is prohibited by the section. If the offence is committed more often by females than by men, it is not surprising that more females are charged. If the burden of s. 213 falls more heavily on females because the offence is committed more often by females, then the appellants have not met the burden of proving a breach of s. 15 of the **Charter**. There being no reversible errors in law by the Youth Court judge or the Summary Appeal Court judge, the appeals are accordingly dismissed.

Roscoe, J.A.

Concurred in:

Clarke, C.J.N.S.

Hart, J.A.