

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Finck*, 2007 NSCA 32

Date: 20070327

Docket: CAC 246654

Registry: Halifax

Between:

Carline Antonia VandenElsen and Lawrence Ross Finck

Appellants

v.

Her Majesty the Queen

Respondent

Judges: By the Court (MacDonald, C.J.N.S.; Bateman and Cromwell, JJ.A.)

Appeal Heard: February 15, 2007

Subject: **Criminal law - armed standoff; child abduction.**

Summary: The appellants are husband and wife and parents of a child. In response to a child welfare proceeding where the agency sought a supervision order in relation to the child, the mother fled the jurisdiction and thus did not appear at the proceedings. The court ordered that the child be placed in the temporary care of the agency, pending further hearings. The mother secretly returned to the jurisdiction joining the father who was residing with his elderly mother in her home. When it was learned that the mother and child had returned, the police attended at the house in order to apprehend the child. The appellants barricaded the home and would not respond to the police. When police attempted to gain entry using a battering ram, someone inside the house fired a shot through the door, narrowly missing one of the police officers. A sixty-seven hour standoff ensued. It concluded when the appellants left the home, the infant child strapped to the mother's chest, and carrying a stretcher with the body of the father's deceased mother. The father was carrying a loaded shotgun and refused to yield when ordered to do so by police.

He was tackled by police and the appellants were taken into custody.

They were charged with numerous counts, electing to be tried by judge and jury. During the preliminary inquiry, they consented to committal on the counts contained in the information. The Crown elected to proceed with the preliminary in order to establish evidence supporting the commission of additional offences. The preliminary inquiry judge declined to commit on other than the offences contained in the information. Crown preferred an indictment which included additional offences.

After 54 court days, during which time the appellants each discharged their counsel, they were convicted on several of the counts. The jury was unable to reach a verdict on some counts.

Appellants appealed.

Issues: Appellants raised numerous issues on appeal.

Result: Appeal dismissed.

1. No error in preferring the indictment to include charges which were not contained in the indictment, but upon which the Crown sought committal and in relation to which the judge did not commit the appellants to stand trial.
2. In the circumstances here, the judge did not err in not permitting a collateral attack on the validity of the apprehension order and in instructing the jury, as a matter of law, that the police were in lawful execution of their duty.
3. The allegation of bias on the part of the trial judge was completely without merit.
4. The wiretaps which the appellants sought to have admitted into evidence were not admissible under any exceptions to the general rule against the admission of prior consistent statements.
5. The judge did not err in refusing to issue subpoenas to proposed

witnesses where the appellants failed to indicate the nature of the evidence or how the witness would assist the court.

6. There was no air of reality to the appellants “defence” of necessity.
7. The judge did not err in declining to dismiss a juror nor in the process followed.
8. There was no ambiguity created, either with the guilty verdicts for the individual appellants or with the verdicts as between the appellants, where the jury returned with “no verdict” on certain counts.
9. The judge did not commit any reversible error in his instructions to the jury, his answers to their questions or in exhorting them to reach a verdict if they could do so.
10. The sentences reflected no error in principle, failure to consider a relevant factor or overemphasis of appropriate factors, nor were they demonstrably unfit.

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 58 pages.