SUPREME COURT OF NOVA SCOTIA

Citation: R v S. R. D. H., 2009 NSSC 223

Date: 20090706
Docket: CRD303563
Registry: Digby

Between:

Her Majesty the Queen

v.

S. R. D. H.

Restriction on publication: There is an order for non-publication in this matter (s. 110 of the Youth Criminal Justice Act).

Revised decision: The headnote of the original decision has been corrected July 29th, 2009 according to the appended erratum.

Judge: The Honourable Justice Patrick J. Duncan

Heard: April 23, 24 and May 18, 2009, in Digby, Nova Scotia

Decision (Voir Dire): July 6, 2009 (orally) (as to admissibility of statement)

Counsel: Rosalind Michie, for Her Majesty the Queen
Bill Fergusson, Q. C., for Her Majesty the Queen
Donald Murray, Q.C., for the Defendant

By the Court:

INTRODUCTION

[1] S.H. is charged that on or about the 30th day of August, 2007, at or near Plympton, Nova Scotia she did:

> 1. Commit first degree murder on the person of Wayne Edward Doucette contrary to section 235(1) of the **Criminal Code**;
>
> 2. Conspire with A.T. and J.T. together to commit the indictable offence of robbery by drawing a map and planning to commit the robbery contrary to section 465(1) of the **Criminal Code**; and
>
> 3. Steal credit cards and an undetermined amount of money and at the time thereof did use violence to Wayne Edward Doucette contrary to section 344(b) of the **Criminal Code**.

[2] The Crown seeks to admit a statement of the then 17 year old accused into evidence at her trial. The accused objects saying that:

1. She was not afforded a reasonable opportunity to consult with an adult relative in advance of the statement taking, and to have that person present for the statement taking, as required by sections 146(2)(c)(ii) and

(d) of the **Youth Criminal Justice Act** S.C. 2002, c. 1 (“YCJA”);

2. The statement was not voluntarily given and therefore is inadmissible. *see*, sections 146 (1) and (2)(a) of the **YCJA**;

[3] A *voir dire* was conducted in which the court heard from seven witnesses, observed a video taped statement, and heard an audio tape of a segment of the statement taking that occurred outside of the interview room where the video was recorded.

BACKGROUND

[4] Police officers identified the accused as a suspect in the unlawful death of Wayne Doucette. On September 2, 2007, investigators attended at S.H.’s residence to execute a search warrant. S.H. met them at the door and at approximately 2:06 p.m. Constable Jamal Gray placed her under arrest for the offence of first degree murder. The accused was handcuffed and placed in the police vehicle where she was advised of her rights pursuant to the **Charter of Rights and Freedoms**, and given the Police Warning. The accused advised that she wished to consult legal counsel.

[5] S.H. was asked for the names of her parents in response to which she provided the name and phone number of her grandmother, R.T., with whom she was living at the time. Constable Gray radioed a request that other members contact R.T. to attend at Digby Detachment.

[6] The accused was transported to the Digby Detachment of the RCMP, arriving at 2:33 p.m.. She was searched by Constable Beverley White and then placed in a room to call duty legal counsel. This in turn lead to the personal attendance of Philip Star Q.C. at the detachment to meet with and provide legal counsel to S.H.. The following is the time line as recorded by the security staff who were in charge of monitoring prisoners in the detachment cells:

September 2, 2007

15:38	Accused enters interview room to consult with legal counsel
16:20	Accused exits interview room and returned to cell
16:24	Accused enters interview room to consult with legal counsel
16:31	Accused exits interview room and returned to cell

[7] R.T. arrived at the detachment at an unspecified time in the afternoon, and after an initial brief meeting with Constable Kenda Sutherland, she was allowed to wait in

a public area at the detachment.

[8] Subsequently Constable Sutherland interviewed R.T. on two occasions, totaling approximately 1 to 1 ½ hours and ending at 5:25 p.m. By this time S.H.'s mother had arrived at the detachment. Constable Sutherland met with the accused privately at around 6:00 p.m. and asked the accused if she would like to meet with her grandmother and/or her mother. The accused accepted the offer.

[9] Constable Sutherland testified that she allowed a private conversation to take place between S.H. and her mother which lasted from approximately 6:00 p.m. to 6:30 p.m. Following this, the accused met with her grandmother for approximately 45 minutes, ending at 7:15 p.m., after which S.H. was returned to her cell.

[10] R.T. testified that she told S.H. during their time together that she would be there if she was needed and that she would not leave her there alone. She also acknowledged that her granddaughter had no learning or mental disabilities, that she could be headstrong, and was likely to ask for her if she in fact wanted her grandmother present or to speak to her.

[11] At the request of the RCMP, R.T. left the detachment for approximately 35 minutes to pick up some medications that were necessary for a co-accused. When she returned to the detachment, she stayed there until 2:00 a.m. of the next day waiting for further word of her granddaughter, S.H.

[12] S.H. had a meal and was allowed to go out under escort to have a cigarette, but otherwise remained in her cell until she was taken into an audio and video monitored interview room shortly after 9:00 p.m. for the purpose of an intended statement taking to be conducted by Constable Sutherland. Corporal Fraser Firth was in an adjoining area monitoring the interview. A little after 11:00 p.m. the officers exchanged places and roles. The statement taking ended at 1:03 a.m. At issue is the admissibility of S.H.'s statements to police in that four hours.

SECTION 146 YCJA: the legal framework

[13] Section 146 of the **Youth Criminal Justice Act** S.C. 2002, c. 1 ("**YCJA**") sets out the framework within which the court adjudges the admissibility of the statements made to persons in authority by young persons who are accused of committing offences. That section reads in part:

146. (1) Subject to this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of young persons.

When statements are admissible

(2) No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless

(a) the statement was voluntary;

(b) the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that

(i) the young person is under no obligation to make a statement,

(ii) any statement made by the young person may be used as evidence in proceedings against him or her,

(iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and

(iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;

(c) the young person has, before the statement was made, been given a reasonable opportunity to consult

(i) with counsel, and

(ii) with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and

(d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

Exception in certain cases for oral statements

(3) The requirements set out in paragraphs (2)(b) to (d) do not apply in respect of oral statements if they are made spontaneously by the young person to a peace officer or other person in authority before that person has had a reasonable opportunity to comply with those requirements.

Waiver of right to consult

(4) A young person may waive the rights under paragraph (2)(c) or (d) but any such waiver

(a) must be recorded on video tape or audio tape; or

(b) must be in writing and contain a statement signed by the young person that he or she has been informed of the right being waived.

Waiver of right to consult

> (5) When a waiver of rights under paragraph (2)(c) or (d) is not made in accordance with subsection (4) owing to a technical irregularity, the youth justice court may determine that the waiver is valid if it is satisfied that the young person was informed of his or her rights, and voluntarily waived them.
>
> Admissibility of statements
>
> (6) When there has been a technical irregularity in complying with paragraphs (2)(b) to (d), the youth justice court may admit into evidence a statement referred to in subsection (2), if satisfied that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected.

[14] This section was considered by the Supreme Court of Canada in *R. v. L.T.H.* 2008 SCC 49. The court held, at paragraph 18, that the procedural rights set out in section 146 "...represent one instance of the enhanced protection Parliament has seen fit to provide for young persons" as mandated by Section 3(b)(iii) of the **YCJA** which states that "...(b) the criminal justice system for young persons must be separate from that of adults and emphasize the following... (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected..."

[15] Justice Cory, in *R. v. J.(J.T.)*, [1990] S.C.R. 755, when considering the

provisions of section 56 of the **Young Offenders Act** R.S.C. 1985, c. Y-1, a section that incorporated similar protections for the young person, held that " Principles of fairness require that the section be applied uniformly to all without regard to the characteristics of the particular young person." (at paragraph 84). Justice Fish, in *L.H.T.*, *supra*, affirmed that this principle also applied when considering issues of compliance with section 146 of the **YCJA**. (at paragraph 29).

[16] The majority in *L.H.T.* held:

1. All of the factors listed in section 146(2) have been determined by Parliament to be appropriate preconditions to the admissibility of a statement by a young person and all must be proved beyond a reasonable doubt. (paragraph 34);

2. The Crown bears the onus of proving beyond a reasonable doubt that the statutory requirements have been met. (paragraph 38);

3. The trial court must be satisfied, upon considering all of the evidence, that the young person's rights in s. 146(2) were in fact explained clearly and comprehensively by the person in authority. (paragraph 28)

4. The Crown must prove beyond a reasonable doubt that the person to whom the statement was made took reasonable steps to ensure that the young person who made the statement understood his or her rights under section 146 of the **YCJA.** (paragraph 7). The test for compliance with the informational component set out in section 146 (2) (b) is objective. It does not require that the Crown prove the young person in fact understood the rights and options explained to that young person pursuant to section 146 (2) (b). However, compliance presupposes an individualized approach that takes into account the age and understanding of the particular youth being questioned. (paragraph 21). Persons in authority must acquire some insight into the level of comprehension of the young person concerned to ensure that the mandatory explanation is appropriate to the age and understanding of that young person. (paragraph 27);

5. A doubt in regard to the adequacy of the statutorily mandated caution provides a sufficient basis for excluding the statement. (paragraph 38);

ISSUE 1: Compliance with section 146(2)(b)(c) and (d)

[17] The accused has framed this part of her argument against admissibility as an

issue of whether the Crown has proven beyond a reasonable doubt that the police complied with the requirements of sections 146 (2)(c)(ii) and 146 (2)(d). Specifically the accused says that there is reasonable doubt as to whether S.H. was provided:

(i) before the statement was made, with a reasonable opportunity to consult with her grandmother, R.T. ; and/ or

(ii) with a reasonable opportunity to make her statement in R.T's presence.

Section 146 (2) (b)(iii) and (iv) YCJA

[18] I start my analysis by determining the sufficiency of the police compliance with the informational components set out in s. 146 (2)(b)(iii) and (iv). If the Crown has successfully proven that these requirements were met, then I must assess whether a reasonable opportunity was provided as required by (2)(c) and (d), and also whether there was a valid waiver of the rights to consult with, and to have R.T. present during the making of the statement.

[19] Constable Sutherland testified that she interviewed R.T. twice for a period totaling approximately 1.5 hours. It is clear from a review of the statement in issue that the information obtained from R.T. was used by the police to show S.H. their familiarity with her and her family, and to encourage S.H. to make a statement. I am

satisfied that Constable Sutherland did not inform R.T. that one of the reasons to interview her was to obtain information that might be useful to obtain a statement from S.H.

[20] Constable Sutherland testified that after she met with R.T., she went to see S.H., who was in a cell. She describes what she said:

> **Q.** How did the grandmother and S.H. get together?
>
> **A.** I'm not sure if I asked S.H. - I told S.H. that her grandmother and mother were there and if she wanted to speak to them she could, and, at that point, S.H. wanted to speak to her mother and her grandmother ...

[21] S.H. then met with her mother, followed by a meeting with her grandmother. This latter meeting ended at approximately 7:15 p.m., almost two hours before the statement taking began.

[22] S.H. was under arrest at the time, and had been given the reason for that arrest some four hours prior to her meeting with her adult relatives. There is no evidence that she was informed, prior to the meeting with her mother and with her grandmother, of the police intention to take a statement from her.

[23] The information provided by the police to the grandmother was summed up in the following evidence of Constable Sutherland:

> **Q.** In speaking to the grandmother would you have told her, roughly, why S.H. was there, like what the issue was?
>
> **A.** Yes.
>
> **Q.** Was anything said by you and the grandmother, that is for that fact, about whether or not she would attend the interview?
>
> **A.** I'm not sure if I made it clear or if she asked but I did advise her that it was S.H.'s right to have her present or her mother if S.H. so wished. If S.H. didn't want that then they would not be present even if they wanted to.
>
> **Q.** Okay, so you left the impression it was S.H.'s choice as to whether the grandmother was there or not?
>
> **A.** That's correct.

[24] It is far from clear that R.T. understood the significance of the role of a suitable adult to the young person in the statement taking process. As such, both S.H. and her grandmother lacked sufficient understanding of the process to have a meaningful consultation as contemplated in s. 146 (2)(c), or to understand the role that R.T. could

play in being present for a statement taking.

[25] There is no other evidence that creates a nexus between S.H.'s meetings with these adult relatives and her rights of consultation and presence provided for in 146(2)(c) and (d). Unless S.H. knew that she was going to be asked to give a statement and that she had certain rights of consultation and presence of an adult relative, she would not have the understanding necessary to use these meetings for the purposes of obtaining the informed advice that these procedural safeguards are intended to provide.

[26] I am not satisfied that the words spoken by Constable Sutherland to S.H. prior to the meeting with R.T. satisfied the informational component of s. 146 (2)(b) (iii) and (iv).

[27] I do not accept that these meetings, having taken place two hours before the statement commenced, and without the accused, and possibly the adult relatives, being aware of the intended statement taking, satisfied the right to consult provided for by s. 146(2)(c)(ii). The intention of that right to consult is to ensure the offender has adult advice relevant to and contemporaneous with the statement taking. These

meetings provided neither.

[28] The next material event occurred when Constable Sutherland entered into the interview room with S.H. at approximately 9:08 p.m. She advised the accused of the charge being investigated and of her intention to provide her with her "rights," and to ensure that S.H. understood those rights.

[29] S.H. expressed her clear intention that "... they told me I have the right to remain silent and I plan on doing that.".

[30] Constable Sutherland explained that she intended to provide a "more detailed" statement of the rights of the accused to which S.H. replied "How's this my rights?". In response, Constable Sutherland made the following statement:

> **Q.** Because I just told you, and I'm gonna go through it and I need you to understand every word. It talks about your lawyer, it talks about everything that you need to know, it talks about, who you want to contact, <u>that you contacted, that you spoke to your, your mom and your grandmother..."</u>

[31] At approximately 9:19 p.m., Constable Sutherland states:

Q. You have the right to consult your parent, and adult relative or another appropriate adult in private without delay. This means that you can talk to and get advice from that person now without the police present. Do you understand?

A. Yep.

Q. You have the right to have a lawyer and your parent or an adult relative or another appropriate adult with whom you can consult here with you. This means that you can ask a lawyer and an adult or both of them to be here with you while we are talking to you and to be with you if we take a statement from you. Do you understand?

A. Yeah.

[32] For reasons that I will expand upon later, I conclude that, having regard to the wording of s. 146 (2) (b)(iv), it was incorrect to inform S.H. that her right was to "ask" an adult to be present. Further, the officer incorrectly stated that the opportunity would arise "if" a statement was taken, when she knew that the attempt to take a statement was an immediate certainty, not a subsequent possibility. This comment lends to confusion as it leaves the question open as to whether or when a statement was to be sought.

[33] In the next part of the conversation, S.H. said she wanted to exercise her right to speak to legal counsel. How Constable Sutherland handled this request is important

to understanding the commitment of the officer to honoring S.H.'s rights. Constable Sutherland asked S.H. twice whether she wished to call a lawyer and on both occasions S.H. said "yes". In response to the second affirmative reply, Constable Sutherland drew S.H.'s attention to the fact that she had already spoken with legal counsel earlier that day.

[34] Instead of exploring the issue of a further consultation she asked S.H. "Do you want the lawyer here with you when you give your statement and while you're questioned?", to which S.H. replied that she was not giving a statement. Constable Sutherland insisted that she needed an answer to the question of whether S.H. wanted legal counsel present for the taking of the statement and when S.H. said that her counsel had already been there Constable Sutherland stated: "Yeah he was here and he left so did you decide not to have him present here while we talk or I talk to you?" S.H. did not answer that question directly saying only that her lawyer had told her "how to handle the situation."

[35] Constable Sutherland then reassured S.H. that if she wanted her lawyer present the questioning would stop until the lawyer was present. The officer then says: "Okay, so you've decided not to talk to a lawyer at this time but you can change your

mind at any time”. This latter statement, made at 9:21 p.m., was clearly incorrect. S.H. said she wanted to talk to lawyer but rather than responding to that, Constable Sutherland redirected the conversation to the question of having a lawyer present during the statement taking. S.H. did not waive the right to have her lawyer present nor did she waive the right to speak with him. Nevertheless, Constable Sutherland was intending to record S.H. as having waived both.

[36] The only reason that the right to consult counsel is not an issue in this matter is because some seven or eight minutes later (9:28 p.m.) S.H. became angry over the officer’s failure to allow her to speak with her legal counsel. Again, Constable Sutherland attempted to redirect the conversation but finally relented. There was a six minute break for S.H. to attend the bathroom and at 9:48 p.m. the accused was allowed to call and speak with her legal counsel. As will be seen, this conduct was consistent with how the police dealt with S.H. ’s rights to consult with, and to provide a statement in the presence of, a suitable adult.

[37] In the interval between 9:21 p.m. and 9:28 p.m. the following exchange occurred between Cst. Sutherland and the accused:

Q. Do you want to consult with your parent, an adult relative or an

appropriate adult in private?

A. Yes

Q. And you did, and you spoke to your mother and grandmother...S.R.H.?

A. I thought that this meant like afterwards?

Q. Well you already spoke to them regarding this, okay?

A. Well, I'd like to talk to A.T., like.

Q. Oh no, you won't be speaking to A.T. , but you spoke to your mom and your grandmother. What's S.R.H's last name?...

Q.... Do you want your mom or your grandmother here while you're questioned? While we talk to you? Okay is that a no, that a head shake?

A. No

Q ... so you decided not to have the adult person you consulted present at this time but you can change your mind at any time. If you change your mind, tell me and all questioning will stop until you have this person present. Do you understand?

A. Yeah

...

Q. Okay, on the bottom of the statement, S.H. if you just want to look here for a sec. Basically what this is is a summary of what we just went through okay. It says my rights have been explained to me. It says I do not want to talk to a lawyer now. I have the right to talk to and get advice from a lawyer now without the police present. I do not want to have a lawyer here with me. I know I have a right to have a lawyer here with me. I do not want to talk to my parent or another adult now. I know I

have the right to talk to and get advice from my parent or another adult relative or another appropriate adult now without the police present. I do not want to have my parents or another adult here with me. I know I have the right to have my parent here or another adult relative or another appropriate adult here with me, okay. Those are what was read to you.

A. Um-hum.

Q. Those are the questions you answered, so I need you to initial those, those blocks for me.

A. I'm not signin' nothin'

[38] The rights intended to be conveyed were not "clearly explained" as required by section 146(2)(b). In the course of trying to explain the right to consult and to have a suitable adult present, Constable Sutherland made four references to the fact that S.H. had already spoken to her adult relatives. In doing so she substantially undermined the value of the information intended to be conveyed.

[39] S.H.'s confusion is evident. When first asked if she wanted to consult with a parent, an adult relative or an appropriate adult in private she replied "yes". She initially interpreted the question correctly as suggesting that she had a prospective right to consult or have an adult present. But Constable Sutherland responded to this by telling the accused that she had already spoken to her mother and her grandmother.

Believing that she had misunderstood, S.H. tells Constable Sutherland that she "... thought that this meant like afterwards". Instead of making it clear that the earlier conversation with her mother and grandmother were not a bar to a further meeting, Constable Sutherland reinforces the error by stating again that S.H. had "already spoke to them regarding this".

[40] There was nothing in the comments of Constable Sutherland that could assist S.H. in understanding that there was a qualitative difference between the reason for consultation with an adult in the course of a statement taking, from the informal visit held over two hours earlier at a time when the issue of a statement taking was not raised. To the contrary, Constable Sutherland's repeated references to the earlier meeting could reasonably cause S.H. to believe that she had no need for further advice or the presence of an adult.

[41] The Crown describes S.H. as a "...very strong willed, intelligent, very articulate young person" who was "...very capable of understanding and asserting her rights, and made every demand perfectly clear and had absolutely no difficulty expressing herself." They point to her grandmother's testimony that S.H. was capable of asking for her grandmother if she wanted her.

[42] I agree that S.H. reflected these qualities at times throughout the interviews with the two officers. However, in my assessment, S.H. presented an apt example of the type of young person described by Justice Cory in *R. v. J.(J.T.), supra*, at paragraph 82:

> By its enactment of s. 56, Parliament has recognized the problems and difficulties that beset young people when confronted with authority. It may seem unnecessary and frustrating to the police and society that a worldly wise, smug 17-year-old with apparent anti-social tendencies should receive the benefit of this section. Yet it must be remembered that the section is to protect *all* young people of 17 years or less. A young person is usually far more easily impressed and influenced by authoritarian figures. <u>No matter what the bravado and braggadocio that young people may display, it is unlikely that they will appreciate their legal rights in a general sense or the consequences of oral statements made to persons in authority; certainly they would not appreciate the nature of the rights to the same extent as would most adults</u>.
>
> (emphasis added)

[43] There is no evidence to suggest that S.H. had any prior experience or familiarity with the process of arrest, detention, or with the exercise of "rights" such as set out in s. 146. At times, S.H. demonstrated a keen awareness and insistence on the exercise of her "rights," while at other times, she made comments that suggest she was being flippant and simply responding to move the process along faster, irrespective of the significance of the right offered or her response. At times she seemed to understand what she was being told and at others, I conclude that she did

not.

[44] I have concluded that Constable Sutherland adopted language in relation to both the right to counsel, and the right to consult with or have the presence of an adult, that was intended to direct S.H. away from exercising her rights. S.H. , through persistence, obtained a further opportunity to speak to her legal counsel. I have significant doubts as to whether S.H. understood the meaning of, or the significance of, the right to consult a suitable adult, or to have one present during the taking of her statement.

[45] When Constable Sutherland attempted to get S.H. to sign the bottom of the statement form, which included the waiver of her rights to consult, she refused to do so. It is significant that it was only a matter of two or three minutes from that time until she expressed her anger at not being able to contact her lawyer. Reciting the "rights" at this point did not add to the explanations already given, nor did it invite questions from S.H. to clarify her rights, where confusion obviously existed.

[46] I emphasize that her initial response when asked whether she wanted to consult with a parent, adult relative or appropriate adult in private was "yes". It is only by the

subsequent confusion created by Constable Sutherland that pushed S.H. away from that response.

[47] There are further difficulties with the manner in which the informational component was provided by Constable Sutherland.

[48] Section 146 (2)(b)(iv) requires that the young person be informed that "any statement made by the young person is *required* to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise".

[49] This language has been subject to recent judicial interpretation in the decision of the Ontario Court of Appeal in *R. v. S.(S.)* 2007 ONCA 481. The accused in that case was charged with robbery and related offenses. He was advised of the right to have counsel or a parent present during questioning, but was not told that the section *required* that any statement be taken in the presence of counsel or an adult with whom the young person consulted.

[50] In language similar to that used by Constable Sutherland, the officer effectively

provided the young person with the option of having an adult present or not. When it came to the Waiver of Rights form it included the following wording: "I have been informed that I have the right to have any of these people with whom I have consulted present when making a statement. These rights have been explained and I understand them. " The officer then stated:

Q. "...you... you don't choose to... you don't want to talk with them and you don't want to have them here with you...

A. No

[51] The trial judge found that 146 (2)(b)(iv) had been breached in that the police officer failed to "... clearly explain to the respondent that any statement made by him was *required* to be made in the presence of any consulted third party, unless he desired otherwise." (at paragraph 16)

[52] S.E. Lang J.A., writing on behalf of the Court of Appeal concluded that:

> 32 When considered in this context, and mindful of the parliamentary purpose of the enhanced procedural protections, in my view, the failure to tell the respondent about the requirement on the police was a breach of s. 146 (2)(b)(iv). That breach denied the young person important information that would have enabled him to decide whether to consult a third party.

> 33... there is an important distinction drawn between a "right" of a young person on the one hand and a "requirement" put on the police on the other. That this distinction was intentional is apparent from a consideration of the structure of s. 146 (2)(b). While s. 146 (2)(b)(iii) refers to a young person's "right" to consult counsel, in contrast, s. 146 (2)(b)(iv) expressly places an obligation on the police. Thus it is clear that Parliament deliberately distinguished between information about a young person's right and about an obligation on the police.
>
> 34... If a young person is informed that, if they consult a third party, that person must be present during the taking of the statement, the young person will be alerted by that information to the significance of any statement he or she may provide and, importantly, will be in a better position to make an informed decision about whether to consult a lawyer or an adult. In other words, information that any statement must be made in the presence of any consulted third party is critical so that the young person can make an informed decision about whether to consult a lawyer or an adult in the first place. Thus, in my view, the "requirement" provides important information that is essential to the enhanced procedural protection provided by section 146 (2).

At paragraph 42, the court concluded that the statutory requirement on the police is the same, whether or not the young person chose to consult a third party, and so the absence of a prior consultation would not dictate a different result.

[53] This decision has been followed by the Ontario Court of Justice in *R. v. F. (N.)* 2008 ONCJ 275 (at paras. 15 *et seq.*), and in *R. v. D.S.*,[2009] OJ 2315.

[54] In *R. v. C.(M.)* 2001 NSCA 64, the court had the opportunity to interpret a similarly worded provision in section 56 (2) of the **YOA**.

[55] In that case the parent was present at the beginning of the statement taking, and then left, after which the accused made an inculpatory statement. The issue was whether the police were under an obligation to re-read the informational component to the accused after the adult relative left. In particular, the court was required to consider the meaning of the phrase "reasonable opportunity" contained in section 56 (2) (d). The court affirmed the decision of the trial judge and concluded that while the informational component indicated to a young person that any statement was *required* to be made in the presence of, among others, an adult relative, it was not mandatory that the consulted person be present throughout the statement taking. The court also ruled that it was not necessary to re-read the informational component to the young person once the adult left the statement taking.

[56] It is significant to note that in the trial decision, reported at *R.v. C.(M.)* 2001 NSSF 7, the court states:

> 87 M.C. had been told not only that he had a right to consult a lawyer and a parent or other adult, he was told in his mother's presence that any statement he gave *had* to be made in that adult's presence unless he wished otherwise. There is

> no dispute that he was told this. Section 56 (2) (b) (iv) was clearly complied with.

The informational component was provided in that case in the language contemplated by the statute and would conform to the view adopted by the Ontario Court of Appeal in *R. v. S.(S.)*, *supra.*

[57] I have reasonable doubt that Constable Sutherland, a person in authority to whom a statement was made by a young person clearly explained to S.H., in language appropriate to S.H.'s age and understanding that she had the right to consult a parent or other person in accordance with the provisions of section 146 (2) (c)(ii).

[58] I also have reasonable doubt that Constable Sutherland clearly explained to S.H., in language appropriate to S.H.'s age and understanding that any statement made by her was *required* to be made in the presence of, among others, a parent, adult relative or other appropriate adult consulted in accordance with s. 146(2)(c), unless S.H. desired otherwise.

[59] I have considered the saving provisions set out in s. 146 (6). I do not accept that the errors made in providing the informational component under section 146 to S.H.

could be characterized as a technical irregularities within the meaning of that subsection. The substantial rights of the accused provided for in section 146 were not clearly explained and I have significant doubts as to whether the accused understood her right to consult with, or have the presence of a suitable adult present at the time the statement was taken. Having regard to the facts of this case and to the strong statements of principle set out in *R. v. L.T.H., supra,* I am not satisfied that to admit this statement would not bring into disrepute the principle that "... young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected."

[60] For these reasons, I conclude that the statement is inadmissible.

[61] While it is not necessary to the disposition of this matter, I note that section 146 (2) (b) requires that the rights set out therein be provided to the young person by "the person to whom the statement was made". Constable Sutherland was not present when S.H. was interviewed by Corporal Firth. It is arguable that Corporal Firth was required to comply with the requirements of section 146 (2) (b) before receiving S.H.'s statement, and that he did not do so. On this interpretation of the section, the statement would be inadmissible for this reason, as well.

Was there an effective waiver of the rights under s. 146 (2) (c) and (d)?

[62] In the event that I am wrong in my conclusion that the Crown has failed to prove beyond reasonable doubt that the requirements of s. 146 (2) (b) were complied with, I will address the question of waiver as provided for in sections 146 (4) and (5) of the **YCJA**.

[63] In *R. v. L.T.H., supra,* the court held that the Crown bears the onus of proving beyond a reasonable doubt that the young person made a valid waiver of the rights set out in section 146. (at paragraph 39). Citing *Korponay v Attorney General of Canada,* [1982] 1 S.C.R. 41 the court approved a statement that:

> ... the validity of a waiver of the statutory right is... dependent upon it being clear and unequivocal that the person is waiving the procedural safeguard and is doing so with full knowledge of the rights the procedure was enacted to protect and of the effect the waiver would have on those rights in the process.

[64] I have concluded that the person in authority did not clearly explain to the young person the provisions of 146(2)(b)(iii) and (iv), and did not provide the correct information in relation to the latter clause. There can be no waiver of a right that was described imperfectly or incorrectly.

[65] The inconsistent answers provided by S.H. with respect to her desire to consult with a suitable adult, given in the context of comments made by the officer which could reasonably have caused S.H. to believe that the right to consult had already been exercised, generates reasonable doubt as to whether S.H. had "full knowledge of the rights the procedure was enacted to protect and of the effect the waiver would have on those rights in the process".

[66] I do not accept that the mere recitation of the waiver contained in the form presented by Constable Sutherland to S.H. for signature enhances the Crown's position in this regard. Notwithstanding the fact that S.H. indicated that she understood everything contained in the waiver form, she refused to sign it, and within minutes demanded the opportunity to consult with legal counsel, an opportunity that the reading of the waiver form would suggest she had waived.

[67] I am not satisfied beyond a reasonable doubt that the test cited in *Korponay*, *supra*, has been met by the Crown, and conclude that there was no valid waiver of the rights under s. 146 (2) (c) and (d).

Was S.H. provided with a "reasonable opportunity" to exercise the rights set out in

s. 146(2)(c) and (d)?

[68] In the event that I am wrong in concluding that the statement is inadmissible by reason of a failure to prove compliance with the informational component of section 146, and further that there was no valid waiver of the rights set out in clauses (c) and (d), I turn to the question first posed by the defense as to whether or not a reasonable opportunity was provided to the accused to exercise the rights set out in those two clauses.

[69] At approximately 9:32 p.m. Constable Sutherland assured S.H. that "your grandmother is coming back". When S.H. expressed doubt, she again was reassured that R.T. would be coming back. In fact, R.T. was waiting in a nearby lobby in the detachment.

[70] Over the ensuing 2 plus hours both Constable Sutherland and Corporal Firth repeatedly invoked the opinions of R.T. and her relationship with her granddaughter as a tool to stimulate S.H. into providing a statement about the offense under investigation.

[71] When it was apparent that Constable Sutherland was unsuccessful in her

attempts to obtain a statement, it was determined that Corporal Firth would take her place in the interview room which he did.

[72] Counsel for the accused relies on the following sequence of events to support the proposition that a "reasonable opportunity" had not been provided.

[73] R.T. was taken into an interview room in another part of the detachment concurrently with the period in which Corporal Firth was interviewing S.H. There was a central command and control office for this investigation which was located in the detachment and under the supervision of other officers. The defense suggests that those persons would be aware of what was happening with R.T. and with S.H. at that time. It has been suggested that I should draw a negative inference from these circumstances and conclude that it was done to inhibit access to her grandmother by S.H.

[74] Corporal Firth and Constable Sutherland do not acknowledge an awareness of R.T.'s presence in the detachment during the taking of the statement and there is no evidence upon which I can conclude that they were so aware. Even if their supervisors had this knowledge, and in the most extreme assessment did intend to pre-occupy R.T. at a crucial point in the statement taking process, I cannot ascribe that knowledge to the

interviewing officers.

[75] S.H. persistently attempted to bargain with Constable Firth to obtain an opportunity to speak with her co-accused and boyfriend, A.T., who was in custody and being interviewed several kilometers away in the Kingston Detachment office. The officer, quite correctly, made it very clear that he would not offer a promise or favor of that nature in order to obtain a statement.

[76] He did not tell her that as a matter of law, *see* s. 146 (2)(c)(ii) **YCJA**, she could not be allowed to consult with A.T., as he was a co-accused and under investigation in respect of the same offence. I do not agree with counsel for the accused that there was an obligation on the officer to inform S.H. of this provision of the law. However, the fact that she did not know the futility of asking is a factor in an overall assessment of the determination as to whether there was a "reasonable opportunity" to consult with another adult.

[77] At approximately 11:35 p.m., S.H., in an effort to obtain an opportunity to speak with A.T., told the Corporal Firth "I'm not askin' for a promise. I'm asking for a deal." The officer refused and S.H. then said "it also says on that paper that I'm allowed to

seek advice" and continues that "... my advice is in Kingston". Again the officer rebuffed this entreaty.

[78] Within a minute of this, S.H. and the officer had the following exchange:

A. Where's my grandmother?

Q. Ah, I'm not sure. I don't think she's here. I don't think she's here. But, A.T...., A.T....

A. I want to talk to A.T.

Q. You want to see that letter now?

[79] The position of the defense is that this was an attempt by S.H. to consult with her grandmother. The accused did not testify in the *voir dire*, and so I have no direct evidence that this was her intention. It is suggested that I can infer that if she was made aware that her grandmother was present then she would have asked to consult with her. The basis of this proposition is that she was asking to speak with A.T. for "advice" immediately prior to posing this question and therefore asking for her grandmother was looking for the next likely adult she would consult, having done so earlier in the day.

[80] The Crown responds that an inquiry as to the whereabouts of the grandmother

should not be elevated to a request to consult. They submit that there was no obligation on the police to either seek out the whereabouts of the grandmother nor to inquire further of S.H. as to her reasons for inquiring as to the whereabouts of her grandmother.

[81] R.T. and S.H. had a close relationship. The accused was living at her grandmother's house. They already had a meeting that day. R.T. testified that she told S.H. during their time together that she would be there if she was needed and that she would not leave her there alone. She was present at the detachment and available, subject to the time that she spent being interviewed by RCMP officers. S.H. had been assured by Constable Sutherland that R.T. was going to return.

[82] I agree that the timing of her inquiry as to the grandmother's whereabouts in conjunction with her relationship with R.T. could support an inference that she intended to consult with her.

[83] This inference is reinforced by Corporal Firth's response to this inquiry. Instead of responding that he didn't know where the grandmother was, as he might have done, he stated that he didn't believe that she was in the detachment. In my view this is a

clear indication that he understood that S.H. was contemplating a consultation with her grandmother. Why else would it matter if she "was in the building"?

[84] The answer he provided was wrong, as R.T. was in the building. He did not attempt to learn the correct information. Constable Sutherland, who was outside the room monitoring the interview, and who had ready access to this information by telephone, also failed to make an inquiry as to R.T.'s whereabouts. The officers testified that they simply didn't think of this as a request, nor that they should have pursued it further.

[85] Once Corporal Firth said that he didn't think R.T. was in the building, S.H. immediately asked to speak to A.T. The officer did not respond but instead changed the topic to a letter he had in his possession and which he knew that S.H. wanted to see. This ended her inquiries about consulting A.T., or any other person. As with Constable Sutherland's handling of earlier requests to speak to counsel, the effect was to divert the accused from an enquiry that could have resulted in an interruption of the interview.

[86] A "reasonable opportunity" to consult involves consideration of the totality of

circumstances.

[87] I have previously concluded that S.H. was provided with an imperfect understanding of her right to consult. When she raised the question of her grandmother's whereabouts, in circumstances where it is reasonable to conclude that she was considering a request to consult, she was provided with incorrect information which would have lead her to believe that her grandmother was not available to her.

[88] Her grandmother told her she would be there to assist her and Constable Sutherland also assured her that R.T. would return. Being told that she wasn't thought to be present in the building would simply reinforce the perception that it would be futile to ask for her. It is impossible to know whether S.H. would have pursued this since she was diverted from the topic and shortly thereafter provided the inculpatory information that the police hoped to obtain.

[89] In the circumstances I am not satisfied that the police afforded S.H. a "reasonable opportunity" to consult her grandmother, or any other suitable adult.

[90] Similarly, I have concluded that S.H. was not provided with a reasonable

opportunity to have her grandmother present during the statement taking. Over two hours passed from their meeting until the statement taking commenced. There was no effort expended by the police to make R.T. available to her granddaughter.

Conclusion as to Issue 1

[91] The accused presented as a difficult and determined interview subject. I conclude that Constable Sutherland and Corporal Firth diminished S.H.'s understanding of, and expectations for, exercising her rights to consult, and to have her grandmother present for the statement taking.

[92] Corporal Firth conducted an interview that exhibited his training and expertise. There was little that he said or did that appeared to be truly spontaneous. He entered the room with a plan to obtain S.H.'s cooperation and he was successful.

[93] Along the path to that result, the enhanced procedural protections of s. 146 were subtly yet definitively undermined.

[94] In the result I conclude that the statement of S.H. is inadmissible.

ISSUE 2: Voluntariness

Law

[95] The applicable provisions of the **YCJA** are:

> General law on admissibility of statements to apply
>
> 146. (1) Subject to this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of young persons.
>
> When statements are admissible
>
> (2) No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless
>
> (a) the statement was voluntary; ...

[96] The onus is on the Crown to prove the voluntariness of the statement beyond a reasonable doubt. At paragraph 38 of the decision in *R. v. L.H.T. supra,* the court held that a doubt in regard to the voluntariness of the statement of the young person provides a sufficient basis for excluding the statement.

[97] As with the analysis under section 146(2), so too must the voluntariness of the statement be assessed in a manner that has regard for the Declaration of Principle set out in section 3(1)(b)(iii) of the **YCJA**.

[98] Iacobucci J, in *R. v. Oickle* 2000 SCC 38, reviewed the application of the so called "confessions rule" beginning at paragraph 32 and concluding with the following summary :

> 68 ... First of all, ... a confession will not be admissible if it is made under circumstances that raise a reasonable doubt as to voluntariness. ... If the police interrogators subject the suspect to utterly intolerable conditions, or if they offer inducements strong enough to produce an unreliable confession, the trial judge should exclude it. Between these two extremes, oppressive conditions and inducements can operate together to exclude confessions. Trial judges must be alert to the entire circumstances surrounding a confession in making this decision.
>
> 69 The doctrines of oppression and inducements are primarily concerned with reliability. However, as the operating mind doctrine and Lamer J.'s concurrence in *Rothman, supra,* both demonstrate,the confessions rule also extends to protect a broader conception of voluntariness "that focuses on the protection of the accused's rights and fairness in the criminal process": J. Sopinka, S. N. Lederman and A. W. Bryant, *The Law of Evidence in Canada* (2nd ed. 1999), at p. 339. Voluntariness is the touchstone of the confessions rule. Whether the concern is threats or promises, the lack of an operating mind, or police trickery that unfairly denies the accused's right to silence, this Court's jurisprudence has consistently protected the accused from having involuntary confessions introduced into evidence. If a confession is involuntary for any of these reasons, it is inadmissible.

70 Wigmore perhaps summed up the point best when he said that voluntariness is "shorthand for a complex of values": *Wigmore on Evidence* (Chadbourn rev. 1970), vol. 3, § 826, at p. 351. I also agree with Warren C.J. of the United States Supreme Court, who made a similar point in *Blackburn v. Alabama*, 361 U.S. 199 (1960), at p. 207:

> [N]either the likelihood that the confession is untrue nor the preservation of the individual's freedom of will is the sole interest at stake. As we said just last Term, "The abhorrence of society to the use of involuntary confessions . . . also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves." . . . Thus a complex of values underlies the stricture against use by the state of confessions which, by way of convenient shorthand, this Court terms involuntary, and the role played by each in any situation varies according to the particular circumstances of the case.

See Hebert, supra. While the "complex of values" relevant to voluntariness in Canada is obviously not identical to that in the United States, I agree with Warren C.J. that "voluntariness" is a useful term to describe the various rationales underlying the confessions rule that I have addressed above.

71 ... a court should strive to understand the circumstances surrounding the confession and ask if it gives rise to a reasonable doubt as to the confession's voluntariness, taking into account all the aspects of the rule discussed above. Therefore a relatively minor inducement, such as a tissue to wipe one's nose and warmer clothes, may amount to an impermissible inducement if the suspect is deprived of sleep, heat, and clothes for several hours in the middle of the night during an interrogation: *see Hoilett, supra*. On the other hand, where the suspect is treated properly, it will take a stronger inducement to render the confession involuntary.

Analysis

[99] An abridged time line for the period during which the statement was taken is:

9:06 p.m. Accused exits cell and enters interview room with Cst. Sutherland

11:03 p.m. Cst. Sutherland exits interview room

11:08 p.m. Cpl. Firth enters interview room

11:11 p.m. Accused becomes ill and Cpl. Firth exits; Cst. Sutherland enters

11:15 p.m. Cst. Sutherland exits interview room

11:20 p.m. Cpl. Firth enters interview room

11:43 p.m. Accused and Cpl. Firth exit for a cigarette

11:53 p.m. Accused and Cpl. Firth return to the interview room

September 3, 2007

12:15 a.m. Accused begins to discuss circumstances of offence

12:41 a.m. Cpl. Firth exits the interview room

12:44 a.m. Cst. Sutherland accompanies the accused to the washroom

12:50 a.m. Cpl. Firth and the accused return to the interview room

12:58 a.m. Cpl. Firth and the accused exit for a cigarette

[100] Such concerns with voluntariness as may exist arise during the interview process

following Corporal Firth's introduction to S.H. in the interview room at approximately 11:08 p.m. Within a couple of minutes, S.H. became nauseous-vomiting into a waste basket. Constable Sutherland re-entered and offered S.H. an elastic to tie back her hair, a paper towel, a cold cloth or a juice pak, but no medical attention. She then said: "See what it's doing to you, S.H.? It's eating you up inside and it's gonna keep doing it until you talk to us." Such a comment is inappropriate. In the case of *R. v. S. (S.L.)* 1999 ABCA 41, the Alberta Court of Appeal allowed an appeal against conviction and ruled a young person's statement inadmissible for a similar approach. Berger J.A. said:

> 16 It follows that categorization of the highlighted excerpts of the interview between the investigating constable and the Appellant, *supra*, is critical to the disposition of this appeal. In my view, the highlighted portions make clear to the Appellant that the constable who had positioned herself as the agent of help was the conduit through which help could be obtained and was the person to whom he should unburden himself. The constable made clear that the "only way he could get better was to tell her the truth. When the Appellant, in response, denied the allegations, he was interrupted and told "You're not on the right track. You're not telling me everything.
>
> 17 An invitation to tell the truth is not an inducement. Nor is an exhortation to seek help for aberrant behaviour. In the case at bar, the investigating constable went further. She induced the Appellant to make the impugned admission by planting in his mind the notion that the path to rehabilitation ("getting better") had to begin with a statement to her that demonstrated that he was on "the right track." A denial of guilt would not do. Nor would protestations that "I'm not that kind of guy.

[101] Constable Sutherland effectively told S.H. that in order for her to stop feeling ill,

she would need to "talk" to the police, thus potentially inducing the accused to believe that the police were the people to whom she should "unburden herself".

[102] S.H. said that she was pregnant. The police made no inquiry as to the status of the pregnancy, or further offer of assistance. I have no evidence to suggest that they had reason to disbelieve this assertion at the time. They left the accused alone for five minutes. Corporal Firth returned and immediately began his questioning of the accused. At this point the accused had been in custody for nine hours and under questioning for the better part of two hours. It had been four hours since she spoke to her grandmother.

[103] It is apparent that the officers were single-minded in their desire to get a statement and the accused's illness, pregnancy, stress or fatigue were not going to divert them from that process. Having regard to the special responsibility owed by a jailer to a person in custody, it is surprising that the officers paid so little attention to S.H.'s physical health or that of the fetus she said she was carrying.

[104] The next concern arises from the exchange between Corporal Firth and S.H. at around 11:38 p.m., which was discussed in a different context previously. When S.H.

asked where her grandmother was and then asked for A.T., she was diverted by the officer who offered her the opportunity to see a copy of a letter that she had written to A.T. The significance was to show her that the police had this evidence which included inculpatory statements made by her. She started to read it and became very emotional. She begged for the opportunity to have a cigarette. She and Corporal Firth exited at 11:43 p.m. for 10 minutes to have a cigarette. Approximately one half hour later she made admissions against her interest.

[105] In the 20 minutes after returning from the cigarette break, S.H. reflected awareness of the possible consequences of making an inculpatory statement. Corporal Firth re-iterated that he was not prepared to offer an inducement or promise to obtain her statement.

[106] When she completed the substantial admissions, she said: “I can’t talk to A.T.?” which could possibly be seen as a hope that she could do so if she gave a statement. When the officer would not offer that to her she continued to make more admissions. Cpl. Firth repeatedly stated that she was not going to speak to A.T. and that he wouldn’t hold out the hope that she could in return for a statement. The only thing he could have done to make his position more clear was to point out that the **YCJA** would

not allow her to "consult" her co-accused.

[107] When the interview ended, Cpl. Firth asked how she felt about the way he treated her and she replied: "Good considering the circumstances".

[108] In summary my concerns are:

(i) the inadequate response to the illness of an allegedly pregnant 17 year old;

(ii) the suggestion that it would keep "eating her up inside" unless she talked to the police;

(iii) the length of time in custody and the obvious fatigue and emotion the accused was showing by the latter part of the statement taking, particularly in view of her age;

(iv) the perception of an inducement created by offering to let her see the letter she wrote to A.T., followed in close proximity to a cigarette break, all just shortly before she yielded to the questioning.

[109] I have considered these concerns in the context of all of the words and actions of the police, as well as the age, intelligence and demeanor of the accused at the time

of the statement taking.

[110] There is no evidence that S.H. was threatened. It was explained repeatedly that the officers could not and would not “negotiate” to obtain her statement, that is, that they would not provide an inducement or promise in return for a statement. Her repeated attempts to speak to A.T. were a product of her persistence, not lack of understanding that the police were not going to allow it.

[111] The evidence satisfies me that S.H. had an operating mind. The evidence supports the conclusion that S.H. is intelligent and able to express her wants definitively. In the video she is frequently shown to give appropriate, if sometimes crude, responses to police questions and comments. She demonstrated an awareness of her surroundings, including the presence of the audio visual equipment, commenting on the presence of the camera and strategically positioning herself relative to its placement in the room so as not to be as visible throughout much of the statement taking, as she would have been if she were to have stayed in the seat she was initially directed to.

[112] I find that there was no air of oppression or coercion which would raise a

reasonable doubt as to the voluntariness of the statement.

[113] Having weighed these various factors and notwithstanding the expressed concerns, I am satisfied that the statement was made voluntarily within the meaning of section 146(2)(a) of the **YCJA,** and the common law.

CONCLUSION

[114] The Crown has not proven beyond a reasonable doubt that the police complied with the provisions of sections 146(2)(b)(iii), (iv), (c)(ii), or (d) of the **YCJA**.

[115] The accused has not been shown to have waived the enhanced procedural protections provided to a young person under s. 146.

[116] The irregularities are not "technical", but substantive and I am not satisfied that admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protections to ensure that they are treated fairly and that their rights are protected.

[117] I am satisfied beyond a reasonable doubt that the statement was made voluntarily.

Delivered orally at Digby, Nova Scotia, July 6, 2009.

____

Duncan, J.

SUPREME COURT OF NOVA SCOTIA
Citation: R. v. S.R.D.H., 2009 NSSC 223

Date: 20090706
Docket: CRD 303563
Registry: Digby

Between:

Her Majesty The Queen

v.

S. R. D. H.

Restriction on Publication: Section 486 CC ban on Publication

Revised decision: The headnote of the original decision has been corrected July 29th, 2009 according to the appended erratum.

Judge: The Honourable Justice Patrick Duncan

Heard: April 23, 24 and
May 18, 2009 at Digby, Nova Scotia

Decision (Voir Dire): July 6, 2009 (orally) (as to admissibility of statement)

Counsel: Rosalind Michie, for Her Majesty The Queen
Bill Fergusson, Q.C., for Her Majesty The Queen
Donald Murray, Q.C., for the Defendant

Erratum:

[1] The headnote Restriction on publication shall read as follows:

> **Restriction on publication:** There is an order for non-publication in this matter (s. 110 of the Youth Criminal Justice Act)