

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. J.M.M., 2011 NSSC 153

Date: 20110419

Docket: Syd. No. 329940

Registry: Sydney

Between:

Her Majesty the Queen

v.

J. M. M.

LIBRARY HEADING

Restriction on Publication: 486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 172, 172.1, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 346 or 347,

...

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with stepdaughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in any of subparagraphs (a)(i) to (iii).

Editorial Notice

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

Judge: The Honourable Justice Frank Edwards

Heard: April 5 & 7, 2011 in Sydney, Nova Scotia

Written Release

of Oral Decision: April 19, 2011

Subject: Criminal Law; Sexual Assault, Code s. 271; uttering threat, s.

264.1; unlawful confinement, s. 279; assault, s. 266; touch person under 14 years for sexual purpose, s. 151

Facts: Between 1989 - 1996, Complainant (now 27) alleged that Accused committed various sexual acts upon her (when she was aged 6 - 16 years). Accused did not testify but called evidence to dispute certain recollections of Complainant. In particular, Accused's wife testified that the Accused would never have had the opportunity to be alone with the Complainant.

Issue: Whether Crown had proven its case beyond a reasonable doubt.

Result: Accused guilty on four counts; not guilty on unlawful confinement count because there was no temporal separation between confinement and commission of sexual act.

Although the Complainant's recollection was faulty on some peripheral details, the Court believed most of her evidence. The Court had a reasonable doubt re the Complainant's account of one instance of sexual intercourse. (For sentencing purposes, that alleged incident will be ignored).

The Court recognized the difficulty assessing evidence of so-called "historical" sexual assaults. The effect of the passage of time on memory is accentuated when an adult testifies about events which occurred while that person was a child. The adult is recalling events from the observations and impressions of a child. The failure to recall, or to some extent, the inaccuracy of the recall, of peripheral detail in such circumstances is therefore understandable and not surprising.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***