

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

Citation R. v. M.C., 2001 NSSF 7

Date: 20001204

BETWEEN:

HER MAJESTY THE QUEEN

PLAINTIFF

-and-

M.C.

DEFENDANT

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 5, 2008.

DECISION

HEARD: Before The Honourable Suzanne M. Hood on November 21, 2000; November 22, 2000; November 28, 2000; December 1, 2000 and December 4, 2000

DECISION: December 4, 2000 (Orally)

WRITTEN RELEASE: February 6, 2001

COUNSEL: Jennifer MacLellan for the Crown
Megan Longley for the Defendant

HOOD, J.

[1] In this matter I have heard the evidence of a number of witnesses: two tellers from the Canadian Imperial Bank of Commerce; another employee of the Canadian Imperial Bank of Commerce, Rae Jardine; and a bus driver, Linda Supple. In addition I have heard evidence from a number of police officers: Cst. Lowther; Cst.

Morris; Sgt. Greencorn and Cst. Hanson.

[2] Kim Borden and Carry MacGrath were the two tellers or Customer Service Representatives who dealt directly with the people who robbed the bank on the date in question. Those witnesses were shown a photo lineup. They chose number one in the photo lineup as the person they thought was the person who stood at the counter at the bank on the date in question. It is clear that the person shown in photo number one is not M.C., the young person accused in this matter.

[3] Rae Jardine and Linda Supple, Rae Jardine being another bank employee and Linda Supple being a bus driver who was on [...] Street at the time the two people left the bank, both were very frank in admitting that they could not make any identification.

[4] Cst. Lowther was responsible for the exhibit that produced the photos from the bank. Cst. Morris testified about his attendance at the bank and also with respect to his interview of M.C.. Sgt. Greencorn put photos in evidence and lifted a fingerprint, which he identified as being that of M.C., from a car that was recovered after the robbery. Cst. Hanson, although he took prints from the bank, from the bag that was left on the sidewalk on [...] Street and from the money, indicated in his testimony that he had no identifiable prints. He also produced a number of photographs which are in evidence.

[5] The identification evidence in this case was from Kim Borden and Carrie MacGrath. Both, although having identified another person on the photo lineup that was shown to them soon after the robbery, identified M.C. in court. I am not satisfied that their identification evidence in court is sufficient to satisfy me beyond a reasonable doubt that M.C. is guilty of the offences charged in this matter.

[6] I refer to the frailties of identification evidence, and in particular in this case the fact that they did not identify M.C. in the photo lineup, but in fact identified another young person who, it is admitted, was in custody at the date of the robbery. As I have said, the other two witnesses could not identify M.C..

[7] With respect to the fingerprint evidence as I have indicated, no prints were taken from the bank or from the bag or from the money that link M.C. with the offences that have been charged. The fingerprint that Sgt. Greencorn took from the car, he testified, and I accepted him as an expert to give evidence in this regard, is

that of M.C.. However, that in itself is not sufficient to satisfy me beyond a reasonable doubt that M.C. was the person in the bank and who is charged with the three offences charged in this information.

[8] The print was on the driver's door and the evidence of the bus driver, Linda Supple, was that someone else was driving the car that was waiting outside the bank. Therefore the only reasonable inference I can draw from that is: the person, who the Crown alleges to be M.C., who came out of the bank, did not open the driver's door where Sgt. Greencorn found the print and in fact was not the driver of that vehicle. In any event, as I have said, I am not satisfied that M.C.'s fingerprint being found on the driver's side of the car is sufficient to link him to the robbery and the offences charged on the information.

[9] The photos taken at the bank which are Exhibits 3 and 4 as well are inconclusive. From those, no one identified M.C..

[10] That leave us with the evidence from the statement of M.C. which I admitted. I ruled that that statement was admissible. In my view it is the only evidence before me that could possibly satisfy me beyond a reasonable doubt that M.C. is guilty of these offences.

[11] In the videotaped statement, M.C. admitted the robbery. He admitted carrying the pellet gun during the robbery. He admitted having a pellet gun which would be for a purpose contrary to the public peace and as set out in the information. Without his confession, the Crown, in my view, has no case. Without it I could not be satisfied beyond a reasonable doubt as I have outlined above based upon the evidence of the other witnesses. However, the statement given by M.C. gave details of not only the robbery, but of the events leading up to the robbery. These included the plan to commit it, including such things as the time that they planned to spend in the bank and the amount of money that he thought they would get from the robbery. He also gave details of the robbery itself. He described what he wore. He described what the person with him wore. He described what he did with the clothes after the robbery. He gave details of the robbery that satisfy me beyond a reasonable doubt that he did commit these offences.

[12] As I have said, without the evidence of M.C. in the statement which I admitted, I would not be so satisfied. That statement with the details in it, given by M.C., satisfy me beyond a reasonable doubt that the elements of the offence are

made out. The offences are made out. I am satisfied beyond a reasonable doubt, therefore, that the young person should be found guilty of these offences.