

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. C.B.K.*, 2015 NSCA 111

**Date:** 20151216

**Docket:** CAC 437414

**Registry:** Halifax

**Between:**

C.B.K.

Appellant

v.

Her Majesty the Queen

Respondent

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**Restriction on Publication: s. 486 of the Criminal Code**

**Judge:** The Honourable Justice J.E. (Ted) Scanlan

**Appeal Heard:** November 10, 2015, in Halifax, Nova Scotia

**Subject:** **Appeal of convictions and sentence**

**Summary:** Appeal of convictions and sentence arising from events wherein the appellant confined his now estranged partner in her home for several hours. During that time he repeatedly beat her after accusing her of infidelity in their relationship. He demanded that she take a polygraph test to confirm her denial of infidelity. After physically assaulting the victim he told her she was going to pay for the polygraph. She gave him \$420 in the hopes that it would stop the beating. The appellant observed that the victim was traumatized after the beatings. He decided that, in an attempt to make things normal, he should engage in sexual intercourse as a way to calm the victim down. She did not object to the removal of her clothing, nor sexual intercourse, as she was afraid to trigger another beating. This occurred in the context of a relationship that had been non-violent up to that point. It was also in the context of the appellant having uttered statements

that had the victim fearing for her life. The victim was told that she would not be allowed to leave her home until the bruising and swelling on her face was no longer visible. The appellant was convicted of theft, sexual assault and unlawful confinement.

Appeal of sentence: The appellant suggested that if the appeal was allowed the sentence should be adjusted accordingly.

**Issues:**

- (1) Did the fact that the victim handed the money over “voluntarily” constitute a defence to the theft charge?
- (2) Did the judge err in finding that the appellant did not have an honest but mistaken belief that the victim had consented to the sexual activity? Alternatively, considering the parties prior sexual involvement did the fact that she did not object to the sexual activity constitute consent?
- (3) Should the court adjust the sentence?

**Result:**

Appeal of convictions and sentence dismissed. A victim who is beaten to the point that they hand over money or do not object to sexual activity is not consenting to either. The findings of the trial judge clearly and concisely support her decision which held that the victim, through her actions, was simply attempting to stop the beating that continued on and off for nine hours. Those beatings vitiated any consent expressed or implied.

The evidence clearly supported the judge’s findings that the victim was not free to leave her home and was therefore unlawfully confined.

The appellant conceded that if the appeals of conviction did not succeed then there was no merit to the appeal of sentence.

The appeal of convictions and sentence is dismissed.

<p><i>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 7 pages.</i></p>
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