C.A.C. No. 116795

NOVA SCOTIA COURT OF APPEAL

Roscoe, Matthews and Pugsley, JJ.A.

Cite as: R. v. J.C.T., 1995 NSCA 222

BETWEEN:		
J. C. T.		Appellant Appeared in Person
	Appellant	
- and -		
HER MAJESTY THE QUEEN		Denise C. Smith for the Respondent
	Respondent	
		Appeal Heard: December 5, 1995
		Judgment Delivered: December 11, 1995

Editorial Notice

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

THE COURT: The appeals against convictions are dismissed as per reasons for judgment of Roscoe, J.A.; Matthews and Pugsley, JJ.A., concurring.

ROSCOE, J.A.:

The appellant, J. C. T., appeals from his convictions on two counts of sexual assault, one involving his daughter and one involving his step-daughter. He was found guilty of the offences after a trial by Supreme Court judge and jury. He was sentenced to a total of four and one half years incarceration. Although he was represented by counsel at the trial, he represented himself on the appeal.

The appellant's step daughter, C.H., who was twenty years old at the time of the trial, testified that when she was five or six years old, the appellant began coming to her room at night and touching her under her nightgown on her breasts and vagina. She said that when she was around seven years old, she began performing oral sex on him and by the time she was twelve he was having sexual intercourse with her on a regular basis. The events happened either while her mother was sleeping or at work. C.H. also testified that the appellant took video pictures of her when she was in the shower. When she was eighteen she moved to a friend's house and the sexual activities stopped. She testified that she did not want him to do these things but that she did not object in order to get permission from the appellant to go out with her friends. She further indicated that she was afraid that if she prevented the assaults that he would begin to bother her younger step-sisters.

J.T., the appellant's daughter, who was fourteen years old at the time of the trial, testified that on one occasion her father approached her from behind, gave her a hug and then grabbed her vagina with his hand. She said she slapped him and ran away. J.T. also testified that she had often heard little noises, like crying, coming from the bathroom when the appellant and her step-sister were in there together. The assaults came to the attention of their mother and then the police when J.T. advised C.H. of this incident.

A letter written by the appellant and delivered to his wife after the charges were laid was entered as an exhibit during her testimony. In the letter he admits to

having had sexual intercourse with C.H. but not until she was over fourteen. He also blamed C.H. for the sexual activity saying that she asked for it. The letter also contained allegations that she had sexual activity with others before he did and accuses her of performing several indecencies, including bestiality.

The appellant testified that he did not assault J.T. He recalled the hug - slap incident but denied any sexual touching. It was his view that she overreacted because C.H. had told her of their sexual relationship. With respect to C.H., he admitted to having sexual intercourse and oral sex with her but said that it did not happen until she was over fourteen and that it was always with her consent.

Although he had been charged with five counts, the jury was instructed that if they found him guilty on the first and third counts, they need not consider the other counts.

The grounds of appeal are stated as follows:

> "The ground and reasons I wish to appeal my conviction and sentence. My lawyer Robert Chipman held back evidence that I gave him before the trile. He did not introduce it at my trile. I wish to bring it up at a new trile. There is a matter that the R.C.M.P. would not investigate before my trile. There is lots of thing that did not seem wright to me in this hole case. I have papers to show how the evidence was misleading at the tile also persons that said I did somthing to them. someone else had did somthing to them before me and may need help because of the lies they told about me. they may not be able to live with themselves because of this."

The "evidence" that the appellant alleges his lawyer held back is another letter that he wrote a few months prior to the trial "to whom it may concern". The letter, which is included in the appeal book, indicates in the first sentence that its purpose is "to let people know the truth about a sexual assault charge against me..." He claims that he is being "framed" so that his wife will obtain a more favourable division of assets on their pending divorce. He also indicates, as he did in the letter that

was admitted into evidence, that C.H. was sexually involved with others before him.

His lawyer asked the trial judge to admit the letter but Crown counsel objected on the basis that since the letter was not delivered to anyone it should be treated as notes that he made for himself, and not admissible. The trial judge ruled that the letter was a prior consistent statement and therefore not admissible. There was no error in this ruling by the trial judge. A review of the record shows that the appellant's lawyer presented his case competently and effectively under the circumstances.

The thrust of the appellant's argument appears to be that since other people may have also sexually assaulted the complainants before he did, they should not be believed. Those allegations were before the jury, in the form of the letter. The jury obviously did not believe the appellant.

The test to determine whether the verdict is reasonable in such a case as this was stated by the Supreme Court of Canada in **R. v. W. (R.)**, [1992] 2 S.C.R. 122. Justice McLachlin wrote at p. 131:

> "It is thus clear that a court of appeal, in determining whether the trier of fact could reasonably have reached the conclusion that the accused is guilty beyond a reasonable doubt, must re-examine, and to some extent at least, reweigh and consider the effect of the evidence. The only question remaining is whether this rule applies to verdicts based on findings of credibility. In my opinion, it does. The test remains the same: could a jury or judge properly instructed and acting reasonably have convicted? That said, in applying the test the court of appeal should show great deference to findings of credibility made at trial. This Court has repeatedly affirmed the importance of taking into account the special position of the trier of fact on matters of credibility: **White v. The King**, [1947] S.C.R. 268, at p. 272; **R. v. M.(S.H.)**, [1989] 2 S.C.R. 446, at pp. 465-66. The trial judge has the advantage, denied to the appellate court, of seeing and hearing the evidence of witnesses."

After thoroughly reviewing, re-examining and reweighing the record, including the transcript of evidence, and after considering the submissions, it is my view that the verdict is reasonable and supported by the evidence. It is a verdict that the jury could reasonably have reached. I am also satisfied that the trial judge made no errors regarding the admissibility of evidence and that the charge to the jury contains no misdirection or non-direction. The charge is complete and fair. The trial judge emphasized the presumption of innocence and the requirement for proof beyond a reasonable doubt. No objection was taken by defence counsel or the Crown counsel regarding the charge.

Accordingly, the appeals against convictions should be dismissed.

At the hearing of the appeal, the appellant abandoned his appeal against sentence.

Roscoe, J.A.

Concurred in:

Matthews, J.A.

Pugsley, J.A.