

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. West*, 2003 NSCA137

**Date:** 20031210

**Docket:** CAC 176667

**Registry:** Halifax

**Between:**

William Fenwick West

Appellant

v.

Her Majesty the Queen

Respondent

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**Judge:** Saunders, J.A.

**Appeal Heard:** November 17, 2003

**Subject:** Bank robbery. Confession Rule. Voluntariness. Standard of proof. s. 7 & s. 10(b) **Charter Rights**. Error of law. Acquittal or new trial. Section 686(5)(a) **Criminal Code**.

**Summary:** The appellant was tried by judge alone and convicted on a nine count indictment including charges of armed robbery, unlawful confinement, car theft, wearing a mask and using an imitation firearm. He was sentenced to eight years' imprisonment. He claimed that his videotaped confessions to the police were involuntary, that the trial judge erred in admitting them, that his **Charter Rights** were violated by the police such that he did not receive a fair trial, and that alibi evidence presented at trial was enough to raise a reasonable doubt as to his guilt.

**Held:** Appeal allowed and new trial ordered. A serious error in law

occurred when the trial judge misstated and consequently misapplied the legal test required to determine the admissibility of a statement made by a accused to persons in authority. No basis for applying the curative provisions of s. 686(1)(b)(iii) to remedy such a critical mistake. The record of the appellant's treatment while in police custody was open to interpretation. A variety of important questions - best left to the trial judge at a new trial - would have to be resolved before any conclusions could be reached with respect to the alleged violation of the appellant's **Charter Rights**. Further, it could not be said that absent the videotaped confessions there was "no realistic possibility of a guilty verdict on a new trial." The sufficiency of other circumstantial evidence possibly linking the appellant to the crimes as charged is best left to the trier of fact on a new trial.

Convictions quashed and new trial ordered pursuant to s. 686(5)(a) before a judge and jury.

**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 13 pages.**