
CANADA / JUDGMENT

R. v. S.G.F.

2001 BCCA 320

COURT

British Columbia Court of Appeal

DECIDED

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R. v. S.G.F.

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CA027280

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COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

REGINA

RESPONDENT

AND:

S.G.F.

APPELLANT

Before:

The Honourable Madam Justice Prowse

The Honourable Mr. Justice Hall

The Honourable Madam Justice Saunders

R.J. Stewart

Counsel for the Appellant

K.J. Gillett

Counsel for the Respondent

Place and Date of Hearing:

Vancouver, British Columbia

March 13, 2001

Place and Date of Judgment:

Vancouver, British Columbia

May 2, 2001

Written Reasons by:

The Honourable Madam Justice Prowse

Concurred in by:

The Honourable Mr. Justice Hall

Dissenting Reasons by:

The Honourable Madam Justice Saunders (Page 19, para. 41) Reasons for Judgment of the Honourable Madam Justice Prowse:

NATURE OF APPEAL

[1] This is an appeal from the decision of a Provincial Court judge, made March 29, 2000, finding Mr. F. guilty of one count of sexual assault perpetrated against his daughter between April 1, 1997 and March 13, 1999. His daughter, whom I will refer to in these reasons as "D.", was between five and six years of age at the time of the assault. She was seven at the time of trial.

ISSUE ON APPEAL

[2] The critical issue on appeal is whether the verdict is unreasonable and unsupported by the evidence within the meaning of s. 686(1)(a)(i) of the Criminal Code, R.S.C. 1985, c. C-46 (the "Code").

[3] Counsel for Mr. F. also argued that the trial judge should have excluded from evidence a videotaped statement of D. made on March 12, 1999. Counsel submitted that the statement should have been excluded either because the requirements of s. 715.1 of the Code had not been met, or pursuant to the trial judge's residual discretion under that section. The panel advised counsel during the course of the appeal that, in its view, neither of these grounds could succeed. It is evident from the transcript of the trial proceedings that the

requirements of s. 715.1 of the Code were met and that the arguments raised by counsel for Mr. F. were arguments going to the weight of the evidence, rather than to its admissibility.

STANDARD OF REVIEW

- [4] The standard of review to be applied by an appellate court under s. 686(1)(a)(i) of the Code is set forth by Madam Justice Arbour, speaking for the Court in *R. v. Biniaris*, [2000] 1 S.C.R. 381, at para. 36:

The test for an appellate court determining whether the verdict of a jury or the judgment of a trial judge is unreasonable or cannot be supported by the evidence has been unequivocally expressed in *[R. v.] Yebes* [[1987] 2 S.C.R. 168] as follows:

[C]urial review is invited whenever a jury goes beyond a reasonable standard.... [T]he test is 'whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered'. ... That formulation of the test imports both an objective assessment and, to some extent, a subjective one. It requires the appeal court to determine what verdict a reasonable jury, properly instructed, could judicially have arrived at, and, in doing so, to review, analyse and, within the limits of appellate disadvantage, weigh the evidence....

Madam Justice Arbour noted that the test is somewhat easier to apply when the appeal is from the decision of a trial judge sitting alone where reasons for judgment are provided, since the reviewing court is in a better position to identify any error which may have led to an unreasonable verdict.

CONCLUSION

- [5] Applying the standard of review set forth in *Biniaris*, supra, I am not satisfied that the verdict is unreasonable and unsupported by the evidence. Based on a review of the evidence, including critical portions of the videotaped evidence of D. upon which the trial judge clearly placed significant reliance, I am unable to conclude that the trial judge erred in finding, on the whole of the evidence, that D. could not have given such a graphic description of the act of oral sex which she described in her videotaped statement unless she had experienced it. Although there were numerous frailties in D.'s evidence which were highlighted by Mr. F's counsel, both at trial and on this appeal, the trial judge dealt with all of those frailties in detailed and careful reasons for judgment.
- [6] I would dismiss the appeal.

BACKGROUND

- [7] The critical events which led to Mr. F. being charged with sexual assault occurred over a four-day period in March 1999.

- [8] On March 9, 1999, Mrs. F. was advised by another parent at the elementary school D. attended that D. had been acting out on the playground by making inappropriate remarks about sex and lifting her shirt up in front of some of the boys. As a result, the parent said that she was not going to allow her daughter to play with D.
- [9] Mrs. F. was very upset by this telephone call and confronted D. about her behaviour. D. refused to talk about it. As a result, Mr. and Mrs. F. discussed moving D. to another school, sent her to her room, and told her she could not watch television for a month.
- [10] The next day, March 10, Mrs. F. kept D. home from school.
- [11] On March 11, Mrs. F. talked with D.'s teacher who expressed concern that there had been some unspecified talk about sex by the students at D.'s table.
- [12] That evening, Mrs. F. asked D. what she had been saying about sex at school. D. replied that another student had asked her about sex. Mrs. F. asked her what she knew about sex. D. replied that she knew that seeds come from a man and go into a woman and that's how babies were made. She further stated that seeds come from a man's "bum" (the word she used for "penis") and that seeds are in the "white stuff" that comes from a man's "bum." It was the reference to the "white stuff" that comes from a man's "bum" that alarmed Mrs. F. When she asked D. what she knew about white stuff, D. replied that "I saw it come from Daddy's bum when he was in the shower." Mrs. F. then called Mr. F. into the room and had D. repeat what she had said.
- [13] At that time, Mr. F. said that D. had walked in on him on one occasion when he was masturbating in the shower and that he thought she would have forgotten about it. Mrs. F. told Mr. F. she did not believe him and asked him to leave the home. She later apologized to D. and told her that nothing was her fault.
- [14] The following day, Mrs. F. took D. with her to her pastor who recommended they go to the police. At the police station, an officer briefly interviewed Mrs. F. and then D. Thereafter, a videotaped statement was taken from D. over the course of about two hours. A female RCMP officer and a female social worker interviewed D. during the videotaped proceedings. Mr. F. was charged with sexual assault shortly thereafter.

PROCEEDINGS AT TRIAL

- [15] As earlier stated, D. was seven years old at trial. The trial judge determined that she understood the meaning of an oath and she was duly sworn. The trial was conducted in a closed courtroom.
- [16] It is common ground that D.'s evidence in direct examination was of little evidentiary value in proving the Crown's case. Many of her answers were vague and unresponsive, and in many instances she said that she could not remember.

- [17] The Crown sought to admit the videotaped interview of D. pursuant to s. 715.1 of the Code. The trial judge declared a voir dire. Defence counsel admitted that the videotape was authentic and made within a reasonable time. The videotape was played in court and stopped at regular intervals. D. was asked if she remembered being questioned by the police officer, if she remembered the questions she was asked and the answers she gave, and if she was telling the truth when she answered the questions. D. answered each of those questions in the affirmative.
- [18] Defence counsel at trial indicated that the threshold test for adoption of a statement under s. 715.1 was low and he declined to cross-examine D. at that point. The trial judge admitted the videotape into evidence with the concurrence of defence counsel. A transcript of the videotaped interview was also entered in evidence.
- [19] The critical portions of the videotape included statements by D. that when she had been with her father in the shower he had squirted white stuff on her. She also said that she had sucked or licked Mr. F.'s bum and gotten some white stuff in her mouth which she spit out. She also said that she had seen the white stuff when Mr. F. rubbed his bum with his hand and it "spits" and he put it in the sink or toilet. At one point she described the white stuff as "really kind of hard and sticky" and explained that it got into a mom's stomach to make babies. She said she thought she learned about that from a baby-sitter named Andrea who was "a really bad lady." When D. was asked whether she had seen this "one time or two times or ten times or twenty times" she said "a lot", "maybe a hundred times", "maybe ninety." She said this happens at home, "all around, we'll say all around."
- [20] During direct examination following the playing of the videotape, D. said that she thought the "licking" happened in the house one time, she didn't know where, and that the "sucking" happened maybe one time.
- [21] During cross-examination, D. retracted much of what she had said on the videotape. She said she did not remember the part about the white stuff getting into her mouth very well, and she said that licking her dad's bum just occurred once in the house, but she wasn't sure where in the house. She also thought the sucking had only occurred once. She said she had never seen the white stuff in the shower.
- [22] During cross-examination, D. also admitted that many of the things she had said on the videotape were "made up." These made-up stories covered a wide variety of subjects, some of which reflected badly on Mr. F. These included statements that Mr. F. had spanked her with a belt, that he had only taken her to the park once, and that he had walked outside the house smoking with no underpants on. Many of D.'s made-up stories were confirmed as being either untrue, or unlikely, by Mrs. F.

- [23] Mrs. F. confirmed that the family had had a baby-sitter named Andrea who was dismissed because she allowed the children to watch inappropriate television and did not supervise them properly. She also stated that while their own family did not have materials around the home depicting explicit sexual activity, they had friends who were very open about sexual matters. The daughter of those friends had demonstrated French kissing to D., much to D.'s distress. Mrs. F. also stated that their own family was very casual about nudity.
- [24] Mr. F. testified and denied any sexual contact with D. His explanation for D. knowing about white stuff coming out of a man's bum was that D. had surprised him in the bathroom when he was masturbating and that he had ejaculated onto the sink and toilet. He stated that he had cleaned up after himself and gone into his bedroom to change, and that when he came out of his bedroom he saw D. in the bathroom touching some ejaculate which he had failed to notice on the edge of the sink. Mr. F. said he did not tell Mrs. F. about this incident because he was too embarrassed.
- [25] Mr. F. also testified that he had showered with D. on three or four occasions.

REASONS OF THE TRIAL JUDGE

- [26] The trial judge framed the issues before him as follows:

The central issues before the court regarding her [D.'s] evidence are can it be said that the child effectively adopted the contents of the video when she testified in court, and what weight can be attached to such evidence. Can the videotaped interview be used by the court to found a conviction for sexual assault of the accused on his daughter, which should be concluded from her cross-examination wherein she recanted both on peripheral and important aspects of her videotaped interview?

- [27] It is common ground that the trial judge had forgotten that he had conducted a voir dire into the admissibility of the videotaped statement and that he had already found that D. had adopted the statements contained in the video. I do not find this error to be significant in relation to the issue concerning the application of s. 686(1)(a)(i) of the Code.
- [28] The trial judge noted that both examination and cross-examination of D. were conducted in a professional, sympathetic and understanding manner. This is significant only because there is no suggestion that D. recanted part of her testimony, or acknowledged having made up stories, as a result of a forceful or intimidating cross-examination.
- [29] The trial judge noted that D.'s evidence on the tape "involved a mixture of reality and imagination.". He also noted that she had clearly not told the truth about some matters, such as her father spanking her with a belt. He then referred to several portions of D.'s evidence which were either untrue, or unreliable. He noted that D. had stated in cross-examination that she had never had white stuff in her mouth and that she could not remember putting her tongue on her dad's penis.
- [30] In summarizing Mrs. F.'s evidence, the trial judge stated:

She speculated about how children, even very young children, seem to acquire sexual information from many sources. She could not think of how her daughter could possibly have acquired such graphic information about oral sex. She has a small house. Lots of affection is expressed in it, and kissing was common. There was a casual openness about nudity but she is sure the children saw nothing untoward of a sexual nature. She describes her husband as an involved father. The child has been devastated by the enforced separation of close to one year of the family. She never noticed any signs of sexual dysfunction about her husband. She agreed that around the relevant time her daughter apparently picked up and was upset by some knowledge of French kissing. This was from family friends. She agrees some sexual knowledge has been acquired by her daughter elsewhere than at home and in school. She felt an ex-babysitter had been a source of negative language and information. [31] The trial judge was aware of the need for caution in approaching D.'s evidence. After reviewing the evidence in some detail, he stated: "The real concern, as I say, is the reliability of the taped interview as affected by cross-examination." He summarized his conclusions with respect to the evidence in the following passages of his reasons for judgment:

I have carefully considered the in-court cross-examination together with the taped interview. The child does not now remember telling the police about the penis in her mouth and the white stuff. The child has no clear, present, reliable recollection of these events. Most of her observations are true, some are not. There are contradictions between the taped interview and the in-court cross-examination. The taped interview is the earliest disclosure of events that occurred and was made on March the 12th, 1999 versus the in-court formal atmosphere on January the 24th and February the 4th of the year 2000. The interview was conducted by two females in a relaxed atmosphere. It, in my view, is the most reliable account of what transpired. The father admits to an extremely graphic act in the presence of his daughter. She does not recall this. She simply does not. This simply does not explain the sucking or licking of his penis possibly more than once. I feel this was not invented. The evidence is not explained other than by the accused's denial and the in-court cross-examination where she agreed that if she said it occurred on the tape then it wasn't true, this is when she says she can't now remember it. It was a very sympathetic cross-examination. The child was obviously not intimidated by the questioner. I do not consider this contradiction in the evidence as negating it. I do not accept that this young girl has somehow, from sexual education, the school yard, older children, the babysitter, television or family friends, gleaned sexual knowledge sufficient to describe the graphic act of having a penis in her mouth to the point of ejaculation. The only logical, common sense inference is that she actually has experienced it. She did not like it. She was traumatized by it. She did not even know the correct word for "penis" but called it the "bum." She does not want it in her memory and it took the majority of the interview to get her to talk on the subject. What emerges from the interview, in my view, is a pattern of abuse by the father over time, not a lie, not exaggeration or invention by the child. I do not accept the accused's denial, nor do I have a reasonable doubt in that regard. The tape-recorded interview, in my view, is relatively untainted. She talks of matters that no six-year-old with her life experience and family background could reasonably be expected to relate without having actually experienced them. On all of the evidence being considered, I am satisfied

of this beyond a reasonable doubt and I find you guilty as charged, sir. [Emphasis added.]

DISCUSSION

- [32] The standard of review to be applied by an appellate court in determining whether a verdict is unreasonable and unsupported by the evidence within the meaning of s. 686(1)(a)(i) of the Code is set out at para. 4 of these reasons.
- [33] In this case, the trial judge was well aware of the need to approach the evidence of D. with caution. Her evidence on direct examination prior to the introduction of her videotaped statement was vague and unhelpful; she admitted to having made up stories in her videotaped statement, including stories that reflected badly on Mr. F.; Mrs. F. confirmed that some of D.'s evidence was untrue or unlikely to be true; it is apparent that D. was in trouble with her mother prior to making the allegations against Mr. F.; and D. recanted some of the allegations relating to the circumstances in which a sexual assault may have occurred.
- [34] These weaknesses in the Crown's case were brought to the attention of the trial judge and he discussed most of them in his reasons for judgment. He made a point of reviewing portions of the damning evidence in detail and finding that, in itself, that evidence was not sufficient to support a finding of guilt beyond a reasonable doubt. In the result, however, he concluded that the graphic description provided by D. in her videotaped statement of having licked her father's penis, of having the white stuff come into her mouth, of spitting it out in the sink, of its sticky texture and of how it scared her, were inexplicable other than by D. having participated in an act, or acts, of oral sex. In that regard, he referred to the following excerpt from p. 52 of the videotaped transcript:

One day, the first part of what my dad started doing to me, asking me to do, make me lick it. He makes me lick his bum and he makes me -- makes me lick and he makes me suck it, and that's the worst part what I -- that's the worst part, when that white stuff comes out 'cause -- because -- and one day he got it in my mouth and I really didn't like that. That's why -- that's why I told him I couldn't do it any more because the first was very scary. That's scary to me. [35] The trial judge expressly rejected the evidence of Mr. F., and his explanation of how D. could have learned about the "white stuff" coming from a man's bum and its sticky texture. In that respect, it is interesting to note that, when he was first confronted with D.'s allegation on March 11, Mr. F. did not refer to D. coming back into the bathroom and touching ejaculate that had been left on the sink.

- [36] Further, there was no evidence that any other source of sexual information available to D. could have provided the detail which would have enabled her to describe the act of oral sex in such "graphic" terms, which referred not only to the nature of the act, but how the "white stuff" looked, its texture, the feeling of it in her mouth, her spitting it into the sink and the scary feeling it gave her.

[37] Despite the weaknesses in D.'s evidence, I cannot conclude that the trial judge erred in finding that her evidence was sufficiently reliable in its description of the act, or acts, of oral sex, to permit him to find that the charge of sexual assault had been established beyond a reasonable doubt. While this Court was able to view parts of the videotaped evidence, the trial judge also had the benefit of seeing and hearing all of the witnesses.

[38] In my view, this is a case in which the following remarks of Madam Justice Arbour, speaking for the Court, in *R. v. A.G.*, [2000] 1 S.C.R. 439, at para. 29, apply:

As this Court's s. 686(1)(a)(i) jurisprudence makes very clear, the fact that an appeal court judge would have had a doubt when the trial judge did not is insufficient to justify the conclusion that the trial judgment was unreasonable. See, e.g. *Corbett v. The Queen*, [1975] 2 S.C.R. 275, at p. 282; *Yebes*, supra, at p. 186; *R. v. W.(R.)*, [[1992] 2 S.C.R. 122], at p. 130; *R. v. François*, [1994] 2 S.C.R. 827, at p. 835; *R. v. Burke*, [1996] 1 S.C.R. 474, at para. 3. With respect, and while acknowledging that a reviewing judge is entitled to express his or her misgivings about the result of the trial, I can find nothing in the reasons of Finlayson J.A. that demonstrates that his different appreciation of the facts make the trial judge's conclusion unreasonable. [39] Similarly, in this case, any misgivings I have about the many difficulties presented by D.'s evidence, do not make the trial judge's conclusion that Mr. F. was guilty unreasonable. There was evidence, which he was entitled to accept, to support his conclusion.

RESULT

[40] I would dismiss the appeal.

"The Honourable Madam Justice Prowse"

I AGREE: "The Honourable Mr. Justice Hall"

Reasons for Judgment of the Honourable Madam Justice Saunders:

[41] I have had the advantage of reading, in draft form, the reasons for judgment of Madam Justice Prowse in this troubling case. With respect, I would come to another conclusion and allow the appeal on the basis that the verdict was not supported by evidence and was unreasonable in the result.

[42] The verdict is based entirely upon a portion of a videotaped statement of the young complainant, D., which she said in cross-examination was untrue. In my view, it is unsafe to rely upon the now contradicted videotaped statement in the circumstances of this case.

[43] In considering the statement, I agree that D. initially adopted the statement in a form sufficient to meet the low threshold for admissibility of videotaped statements under s. 715.1 of the Criminal Code, as described in *R. v. C.C.F.*, [1997] 3 S.C.R. 1183, (1997), 120 C.C.C. (3d) 225. In that case Mr. Justice Cory, writing for the Court, discussed the meaning of the word "adopts" used in s. 715.1. After canvassing the meaning of the term in the context of prior inconsistent statements, he approved the approach of the Alberta Court of Appeal in *R. v. Meddoui* (1990), 61 C.C.C. (3d) 345, leave to appeal refused (1991), 69 C.C.C. (3d) VI, wherein

it was found that a witness "adopted" her statement within the meaning of s. 715.1 when she recalled the statement and testified that she was attempting to be honest and truthful when she gave her statement. D.'s testimony met these criteria.

- [44] The videotaped statement does not contain any portion exploring other possible sources of D.'s sexual knowledge and contains D.'s reluctant account of many events she said took place. The testing of the account took place at trial. That evidence, however, revealed that the videotape contained several stories by D. about her father which were "made-up." For example, she said in her videotaped statement that she did not stay with her father during a period of her mother's absence, that her father spanked her with a belt, and that her father walked naked in his front yard, smoking. All of these allegations were established to be untrue. Concerning the critical evidence on the videotape that her father had performed what may be described generally as oral sex with her, D. said the following in cross-examination:

Q Do you remember walking into the bathroom, the main bathroom, and surprising your daddy rubbing his penis? Do you remember that? A No. Q You don't remember that? A No. Q Do you remember that maybe at that time when you walked in the bathroom and he was rubbing his penis that that's when you saw the white stuff come from your daddy's penis? A I think so, yes. Q That may have happened? A Yes. ... Q Okay. Do you remember your daddy yelling at you and telling you to get out of the bathroom then? A He didn't yell at me, but he did talk to me and tell me. Q He told you to get out of the bathroom? A Yes. Q But he didn't yell? A No. Q Okay. But you remember that? A Yes. Q You're not just saying that because I want - because I'm asking you? A Yes. Q You do remember that? A Yes ... Q So, you remember a little bit about that but not everything? A Right. Q Or you remember a little bit about that and some things you don't remember at all? A Right. Q Right. Okay. Now, are you sure it was in the new house, the one you're in now? A No. Q You're not sure even when it was? A No. Q Okay. I'm going to suggest to you, okay, that that was actually the only time you ever saw white stuff come from your daddy's penis, right? A Yes. Q Yes? A Yes. Q And you're sure of that? A Yes. Q Okay. Now, sometimes after that you took showers with your daddy, right? A Right. Q Right. Not many times but a few times? ... Q And were you afraid at that time that his penis might spit that white stuff out again? A No. Q Okay. You weren't worried about that? A No. ... Q Oh, here we are. Oh, no. So, the only time that you saw the white stuff come out of your daddy's penis was the time you told us about today? A Yes. Q Okay. And you remember that? A Yes. Q Yes. Okay. And you say you never touched it? A No. ... Q Okay. Now, how do you know, then, that this really, really white stuff is hard and sticky? A It just looks sticky. Q Okay. But you didn't touch it ever? A No. Q Okay. Now, I'm going to suggest you never had it on your mouth or in your mouth either, right? A No. Q Never? A No. Q Do you know that you told the police officer that you had some white stuff in your mouth one time? Do you remember telling the police officer that? A No. Q You don't? Okay. I'm going to ask you now and it's really important that you don't guess at your answer. A Okay. Q Okay? Now, you were telling us today you've never had white stuff in your mouth. Is that true? A Yes. ... Q Okay. And she started to ask you again about the white stuff and you said that you didn't really remember, but then she mentioned that - I think she either mentioned or you remembered that you had seen

yourself talking about it on the tape, okay? And she asked you again some questions about getting white stuff in your mouth, all right? And you said it did happen, this morning you said that, and you said it was in this house and that you were in your mom's room and afterwards you had to go to the bathroom to get it out of your mouth. Do you remember telling her that this morning? A Um, no. Q You don't remember saying that? If you gave those answers to her would that be a made-up thing? A Yes. Q Okay. Because you never had the white stuff in your mouth? A No. ... Q You don't know? Okay. Did you ever put your tongue on your dad's penis? A Um - Q Don't guess. A I don't remember. Q Sorry? A I don't remember (underlining mine)

[45] Given D.'s young age, it would not be fair to characterize her evidence as recanting her earlier statement. But it would be fair, in my view, to characterize it as dis-adopting those portions of the statement relied on by the learned trial judge in convicting the appellant. Such a change in her evidence did not render the evidence inadmissible under *R. v. C.C.F.* However, it clearly undermined the weight that should be afforded to the statement in the circumstances. This effect was anticipated in *R. v. C.C.F.* at p. 241 (C.C.C.):

... As well, the child can be cross-examined at trial as to whether he or she was actually being truthful when the statement was made ... [46] The learned trial judge, in assessing the weight of the videotaped statement, questioned D.'s knowledge of oral sex, and dismissed the possibility that it emanated from a source outside the home, in this passage:

It was a very sympathetic cross-examination. The child was obviously not intimidated by the questioner. I do not consider this contradiction in the evidence as negating it. I do not accept that this young girl has somehow, from sexual education, the school yard, older children, the babysitter, television or family friends, gleaned sexual knowledge sufficient to describe the graphic act of having a penis in her mouth to the point of ejaculation. The only logical, common sense inference is that she actually has experienced it. She did not like it. She was traumatized by it. She did not even know the correct word for "penis" but called it the "bum". [47] In reaching the conclusion that D. spoke from personal experience the trial judge did not address D.'s knowledge that "seeds come from the balls that hang under the penis and go into mommy's tummy", as she told the police officer, nor that she said she learned this information from a babysitter. Nor did he relate this knowledge to evidence that the babysitter ceased to work for the family because D.'s mother was concerned that the babysitter watched inappropriate shows. Nor did he discuss the extent to which inappropriate images and conversation may be available where supervision is inadequate. Further, there was evidence that a neighbour's child had demonstrated French-kissing, that D. had been disturbed by this, and that she had advised her mother. And there was the appellant's evidence that D. had seen him ejaculate when she entered the bathroom. While this latter evidence was disbelieved by the trial judge, this disbelief followed his conclusion that D. could not describe the event without having experienced it. If this conclusion does not hold, the primary basis for the trial judge's finding that the evidence of the appellant did not raise a reasonable doubt must be reconsidered.

[48] It is settled law that this Court's power to review under s. 686(1)(a)(i) is limited: R. v. Yebes, [1987] 2 S.C.R. 168, R. v. W.(R.), [1992] 2 S.C.R. 122, R. v. Burke, [1996] 1 S.C.R. 474, R. v. Biniaris, [2000] 1 S.C.R. 381, 2000 S.C.C. 15. Even on that standard, however, considering the several sources of sexual knowledge available to D., her evidence that she did not have the appellant's penis in her mouth and the several portions of the statement demonstrated to contain "made-up" stories, I would find that the conviction is not one which can be supported on the evidence, and is unreasonable within the meaning of s. 686(1)(a)(i).

[49] I, therefore, would allow the appeal.

"The Honourable Madam Justice Saunders"

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