Saskatchewan Court of Queen's Bench
Judicial Centre of Prince Albert

Citation: R. v. Knife (F.F.)
Date: 1993-09-29
Docket: 1993 Q.B.C.A. No. 7

Between:
Flores Faye Knife, of Prince Albert, Saskatchewan (appellant)
and
Her Majesty The Queen (respondent)

Wedge, J.

Counsel:
P. Baumgartner, for the accused
K. Azure, for the Crown

[1] Wedge, J.: Flores Knife said that she had been "raped" shortly after 9 o'clock in the evening of October 13, 1992. She reported the assault to Mobile Crisis from a pay phone about an hour later, after first going home to tell the babysitter to stay. She was taken to the hospital for a physical examination. Her clothing was not dishevelled and she had no bruises; forensic testing revealed no evidence of sexual assault, nor did the scene of the assault as described by her.

[2] At the hospital she was questioned repeatedly by the police and, after giving three statements, she recanted her accusations in a fourth. As a result she was charged with and then convicted of public mischief, under s. 140(c) of the *Criminal Code of Canada*, for intentionally misleading the police. She has appealed that conviction on the grounds that the decision of the provincial court judge was unreasonable and contrary to the evidence.

[3] Although the trial judge did hold a voir dire on them, the first three statements given by Ms. Knife are admissible as the actus reus of the offence without the necessity of proof of voluntariness. (See, for example, *Stapleton v. R.* (1982), 26 C.R.(3d) 361 (Ont. C.A.)). The fourth, the recantation, was properly ruled inadmissible as he found that her *Charter* rights had been breached.

[4] In his decision (transcript p. 196, line 19) the Provincial Court judge referred to this fourth statement by saying that the "Accused said she had made it up". However her apology to the nurse for wasting the nurse's time was admissible.

[5] The trial judge's finding of fact (set out on transcript pp. 194-200) led him to the conclusion that

> "... no rape took place, that the Crown has established that the Accused, with intent to mislead, told the Police that a rape had taken place, that these allegations

of the Accused caused the Police to enter into an investigation, thus establishing all of the elements of the offence and I convict the Accused as charged."

[6] He also found (on p. 201, lines 4-7) that Mrs. Knife had no motive to make false accusations but that this was not necessary to establish the offence.

[7] On appeal, the Crown apparently did not agree with the judge on the question of motive. Crown counsel argued that Flores Knife made up her story because she was afraid that her boyfriend would discover her dalliance with another man that evening. Although he did not say so, it may be that the trial judge concluded that the boyfriend would probably have been ignorant of the whole incident had it not been reported by Ms. Knife.

[8] In arriving at his conclusion that the Crown had proven the offence charged, the trial judge considered the facts that, shortly before the time of the alleged attack, the police said they had seen Ms. Knife apparently enjoying necking and hugging a man, that there was no physical or forensic evidence to substantiate her story, that she was first emotional, then calm, then angry during questioning. He referred to her conflicting statements and her eventual admission that it had not happened.

[9] Flores Knife said that she saw the police while she was being forcibly "hugged" by the man but had not cried out because he had threatened her and she was afraid. When she was forced onto a lying position in the snow, she was laying on the man's coat and did not struggle or cry out because he was so much bigger than she is.

[10] Dr. Mateen, a psychiatrist, had been treating Ms. Knife for depression, anxiety and panic attacks which he attributed, at least partially, to the fact that she had been sexually assaulted when she was 12 years old and had also suffered through several abusive common law relationships.

[11] He explained "rape trauma syndrome" and said that denial, shock and anger were elements of the trauma. Based upon what Ms. Knife had told him, he believed either that she had been raped or had panicked and believed that she had been raped. The reason given by the trial judge for completely discounting this opinion was that Dr. Mateen had based his opinion on "his belief of the Accused's version of the events. He has accepted that she was raped". (transcript, p. 200, lines 4-5). But Dr. Mateen clearly said (transcript p. 185, lines 9-10), "It could be something which she imagined in her state of anxiety" and (on p. 166) he agreed with the statement that "she was either raped or that the rape did not occur, but she panicked and believed that she had been raped".

[12] The trier of fact placed little weight on any of Ms. Knife's evidence nor on the opinion evidence of Dr. Mateen who had treated Ms. Knife before and after the incident.

[13] The Supreme Court in *R. v. R.W.*, [1992] 2 S.C.R. 122; 137 N.R. 214; 54 O.A.C. 164; 74 C.C.C.(3d) 134; 13 C.R.(4th) 257, again affirmed the importance of taking into account the special position of the trier of fact on matters of credibility. However

(on p. 265 C.R.) the court went on to explain that

> "... it remains open to an appellate court to overturn a verdict based on findings of credibility where, after considering all of the evidence and having due regard to the advantages afforded to the trial judge, it concludes that the verdict is unreasonable."

[14] Ms. Knife did not have to prove beyond a reasonable doubt that she was sexually assaulted; it is for the Crown to prove beyond a reasonable doubt that she intended to mislead the police. It appears that the trial judge thought he had to be "convinced" that "any such thing took place" before going on to consider the element of intent.

[15] Mrs. Knife's lack of motive, as found by the trial judge, his failure to address himself to an integral part of Dr. Mateen's testimony, together with his reference to Ms. Knife's recantation, which he found to be inadmissible, lead me to the conclusion that, based upon the evidence before the trial judge, the verdict was unreasonable.

[16] The conviction is set aside and an acquittal entered.

Appeal allowed.