

In the Court of Appeal of Alberta

Citation: R. v. Lukasik, 1982 ABCA 229

Date: 19820726
Docket: 15221
Registry: Edmonton

Between:

Her Majesty the Queen

(Appellant)

- and -

Nicole Marie Lukasik

(Respondent)

The Court:

**The Honourable Mr. Justice Lieberman
The Honourable Mr. Justice Moir
The Honourable Mr. Justice Haddad**

Memorandum of Judgment Delivered from the Bench

COUNSEL:

J. Watson, Esq., for the Appellant

R.G. Powelson, Esq., for the Respondent

MEMORANDUM OF JUDGMENT DELIVERED FROM THE BENCH

LIEBERMAN, J.A. (for the Court):

[1] The respondent, after a trial by judge and jury, was convicted of perjury and of public mischief. She received a sentence of 45 days, intermittent, plus 2 years' probation on each charge. The sentences were ordered to be concurrent.

[2] The Crown seeks leave to appeal the sentence on the perjury charge.

[3] The respondent's perjury led to a charge of attempted rape being laid against one R. Canada. The perjured evidence was contained in two statements made by the

respondent and continued throughout a preliminary hearing. The respondent maintained her false story, notwithstanding an expression of doubt by Crown counsel and in spite of cross-examination. Finally, during the preliminary Crown counsel requested an adjournment. Investigations were carried out and all charges were withdrawn against Mr. Canada.

[4] Perjury is under ordinary circumstances a most serious offence. It undermines the very cornerstone of the administration of justice in our courts. When perjured evidence leads to the implication of an innocent person in a crime, it becomes even more serious than if it is committed in order to obtain an acquittal.

[5] The respondent is 30 years of age. She is married and she and her husband have four children. She is an excellent mother and housekeeper. There is psychological evidence to the effect that she has some feelings of inadequacy and as a result is driven to draw attention to herself.

[6] The circumstances surrounding the incident that resulted in the false allegations and the perjury that followed are most unusual. Some of them, in our view, may be classified as extenuating. None of the circumstances, however, can explain, condone or excuse the respondent for maintaining her false story throughout the proceedings against Mr. Canada.

[7] In our view the learned trial judge gave too much emphasis to the deterrent aspect of sentencing as it affected the respondent and insufficient consideration to what is in our judgment the paramount factor in sentencing for perjury, namely, general deterrence.

[8] We accordingly grant leave to appeal, we allow the appeal, and for the sentence imposed we substitute a sentence of 9 months' imprisonment. In our view this is not a case where probation should be ordered. We direct that the respondent be given credit for the time that she has already served.