Her Majesty The Queen v. T.(B.)
(2388561 - 2388565; 2012 NSPC 59)

Indexed As: R. v. B.T.

Nova Scotia Youth Justice Court
Derrick, P.C.J.
June 28, 2012.

Summary:

B.T., aged 17, was charged with first degree murder. At issue on this voir dire was the admissibility of B.T.'s statement to police and a re-enactment of events that he had described in his statement, made two days after the murder. B.T. argued that in obtaining the evidence, ss. 146(2)(b)(i) and (ii) of the Youth Criminal Justice Act had not been complied with.

The Nova Scotia Youth Justice Court held that the evidence was inadmissible.

Editor's Note: Certain names in the following case have been initialized or the case otherwise edited to prevent the disclosure of identities where required by law, publication ban, Maritime Law Book's editorial policy or otherwise.

Criminal Law - Topic 5334

Evidence and witnesses - Confessions and voluntary statements - Voir dire - Procedure - B.T., aged 17, was charged with first degree murder - At issue on a voir dire was the admissibility of B.T.'s statement to police and a re-enactment of events that he had described in his statement, made two days after the murder - B.T. argued that in obtaining the evidence, ss. 146(2)(b)(i) and (ii) of the Youth Criminal Justice Act had not been complied with - The Nova Scotia Youth Justice Court held that B.T. was entitled to have the issue determined summarily on the basis that no evidence had been led to support a critical pillar of admissibility - The fact that a young person's rights were implicated amplified the court's role in providing procedural safeguards - Continuing the Crown's application to have the statement admitted would require B.T. to decide whether to give evidence - He should not have to make that decision until the issue concerning the fundamental requirements of s. 146(2)(b) had been determined - He was entitled to ask the court to decide whether the Crown's application to admit his statement should be "non-suited" - See paragraphs 32 and 33.

Criminal Law - Topic 5347

Evidence and witnesses - Confessions and voluntary statements - Young offenders - [See **Criminal Law - Topic 5334** and **Criminal Law - Topic 8845**].

Criminal Law - Topic 5347

Evidence and witnesses - Confessions and voluntary statements - Young offenders - Section 146(2) of the Youth Criminal Justice Act (YCJA) governed the admissibility of statements made to the police "on the arrest or detention of the young person ..." - Such statements had to be voluntary (s. 146(2)(a)) - Further, they were not admissible unless,

inter alia, "146(2)(b) The person to whom the statement was made has, before the statement was made, clearly explained to the young person in language appropriate to his or her age and understanding that (i) the young person is under no obligation to make a statement, (ii) any statement made by the young person may be used as evidence in proceedings against him or her ..." - The Nova Scotia Youth Justice Court rejected the Crown's view that the statutory language of s. 146(2)(b) did not establish bright lines respecting the statement-taking process for a young person - "An explicit principle of the YCJA is the enhancement of procedural protections for young persons to ensure fair treatment and the protection of their rights. (section 3(1)(b)(iii)) Only clear, unambiguous language can serve these objectives. A loose, permissive interpretation of rights language in the YCJA is inconsistent with the principles the YCJA seeks to serve and the Supreme Court of Canada jurisprudence that has applied the legislation." - See paragraphs 27 and 44.

Criminal Law - Topic 8702.1

Young offenders - General principles - Interpretation of legislation - [See second **Criminal Law - Topic 5347** and **Criminal Law - Topic 8845**].

Criminal Law - Topic 8845

Young offenders - Evidence and proof - Admissibility of evidence obtained contrary to Youth Criminal Justice Act - B.T., aged 17, was charged with first degree murder - At issue was the admissibility of B.T.'s statement to police and a re-enactment of events that he had described in his statement, made two days after the murder - B.T. argued that in obtaining the evidence, ss. 146(2)(b)(i) and (ii) of the Youth Criminal Justice Act (YCJA) had not been complied with - The Nova Scotia Youth Justice Court held that the evidence was inadmissible - The review by Det/Cst. Withrow of the Statement of a Young Person Form was not the start of the statement that was subsequently taken by Sgt. Kelly - In any event, the statutory language was clear: the person to whom the statement was to be made was the person who had to comply with the s. 146(2)(b) requirements - Where there was no evidence that ss. 146(2)(b)(i) and (ii) had been complied with, there was nothing more to be said on the issue of admissibility - The contemporaneous recital of the right to silence and the caution ensured that the young person was not confused, had not forgotten, and did not misconstrue what his or her entitlements were - At the point when a police officer was set to go to work on getting the young person to talk, the young person would understand clearly that they did not have to do so and that if they did, there might be significant legal consequences - The language in the provisions did not allow for an alternative approach and a failure to comply was not the kind of "technical irregularity" sheltered under s. 146(6) - The re-enactment was inadmissible for essentially the same reasons - Either it was a continuation of the cubicle statement already found inadmissible, or, if it was a second statement, no steps to achieve s. 146(2)(b) compliance had been undertaken by either officer present - See paragraphs 34 to 57.

Cases Noticed:

R. v. Gartland, 1981 CarswellOnt 1845 (Prov. Ct.), refd to. [para. 32].

R. v. W.C.K., [2012] A.R. TBEd. JN.074 (C.A.), refd to. [para. 36].

R. v. L.T.H. (2008), 379 N.R. 247; 268 N.S.R.(2d) 200; 857 A.P.R. 200 (S.C.C.), appld.

[para. 37].
R. v. J.T.J., Jr. (1990), 112 N.R. 321; 70 Man.R.(2d) 81 (S.C.C.), refd to. [para. 39].
R. v. M.B.W. et al., [2006] A.R. Uned. 333 (Prov. Ct.), refd to. [para. 55].
R. v. D.A.B. (2003), 171 Man.R.(2d) 240 (Prov. Ct.), refd to. [para. 55].

Statutes Noticed:

Youth Criminal Justice Act, S.C. 2002, c. 1, sect. 146(2)(b)(i), sect. 146(2)(b)(ii) [para. 27].

Counsel:

Ronald Lacey and Kimberly McOnie, for the Crown;
Luke Craggs, for B.T.

This voir dire was heard on June 25-28, 2012, by Derrick, P.C.J., of the Nova Scotia Youth Justice Court, who delivered the following decision on June 28, 2012.

Evidence excluded.

Editor: Jana A. Andersen

Criminal Law - Topic 5347

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statement that was subsequently taken by Sgt. Kelly - In any event, the statutory language was clear: the person to whom the statement was to be made was the person who had to comply with the s. 146(2)(b) requirements - Where there was no evidence that ss. 146(2)(b)(i) and (ii) had been complied with, there was nothing more to be said on the issue of admissibility - The contemporaneous recital of the right to silence and the caution ensured that the young person was not confused, had not forgotten, and did not misconstrue what his or her entitlements were - At the point when a police officer was set to go to work on getting the young person to talk, the young person would understand clearly that they did not have to do so and that if they did, there might be significant legal consequences - The language in the provisions did not allow for an alternative approach and a failure to comply was not the kind of "technical irregularity" sheltered under s. 146(6) - The re-enactment was inadmissible for essentially the same reasons - Either it was a continuation of the cubicle statement already found inadmissible, or, if it was a second statement, no steps to achieve s. 146(2)(b) compliance had been undertaken by either officer present - See paragraphs 34 to 57.

Criminal Law - Topic 8702.1

Young offenders - General principles - Interpretation of legislation - Section 146(2) of the Youth Criminal Justice Act (YCJA) governed the admissibility of statements made to the police "on the arrest or detention of the young person ..." - Such statements had to be voluntary (s. 146(2)(a)) - Further, they were not admissible unless, inter alia, "146(2)(b) The person to whom the statement was made has, before the statement was made, clearly explained to the young person in language appropriate to his or her age and understanding that (i) the young person is under no obligation to make a statement, (ii) any statement made by the young person may be used as evidence in proceedings against him or her ..." - The Nova Scotia Youth Justice Court rejected the Crown's view that the statutory language of s. 146(2)(b) did not establish bright lines respecting the statement-taking process for a young person - "An explicit principle of the YCJA is the enhancement of procedural protections for young persons to ensure fair treatment and the protection of their rights. (section 3(1)(b)(iii)) Only clear, unambiguous language can serve these objectives. A loose, permissive interpretation of rights language in the YCJA is inconsistent with the principles the YCJA seeks to serve and the Supreme Court of Canada jurisprudence that has applied the legislation." - See paragraphs 27 and 44.

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