JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 20/89

BEFORE: The Hon. Mr. Justice Carey, P. (Ag.)
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.

R. v. TYRONE KELDO

P. DeLisser for the Appellant

S. Bulgin for the Crown

October 9 & November 16, 1989

CAMPBELL, J.A.

The appellant was tried before Harrison J and a jury in the Home Circuit Court for the offence of Carnal Abuse. He was found guilty and convicted for the offence on January 27, 1989 and sentenced to imprisonment at hard labour for three years.

Miss X a schoolgirl then attending Edith Dalton James Secondary School lived with her father in the same building as the appellant but in different apartments. On Friday November 13, 1987 at about 8.30 a.m. she went to the apartment of the appellant seeking ice water with which to make lemonade.

The door of the appellant's apartment was open. Miss X knocked on the door. The appellant who was inside enquired what she needed. She made known her request. The appellant approached the doorway, placed his hands across her mouth and drew her inside into his bedroom in which, in addition to a bed there were a television set and a refrigerator. The appellant pushed her on to the bed, took off her panty and sexually assaulted her. She got up after he had completed his

act put on her panty and ran outside. She left for the country that same day to visit her aunt and returned on the following Sunday.

Her father having in her absence received a report of the incident, questioned her on her return on the Sunday and she confirmed the report. Thereafter on the following Monday she went with her father to the police station where she reported the incident.

Evidence was adduced to prove that she was then just twelve years old. She explained her reason for not spontaneously reporting the matter to her father namely that she was ashamed.

The learned trial judge in his direction to the jury dealt correctly and fully with the issue of corroboration in sexual cases. In addition he warned the jury that it was dangerous and unsafe without corroboration to convict on the evidence of a child. He did not however direct the jury on the reason why it is dangerous and unsafe to convict on the evidence of children in the absence of corroboration.

Leave to appeal was granted by the single judge on the ground that a direction on how to approach the evidence of a young girl was necessary especially where as in the instant case parental coercion was suggested by the defence.

We have carefully perused the evidence and are unable to discover any evidence whatsoever of parental coercion nor have we been able to discover any suggestion by the defence of any such coercion. What was suggested, but denied, was that one Eileen a complete stranger to the complainant and her father conspired with the complainant and the latter's father to bring the charge because of a dispute which the appellant had with Eileen in the absence of the complainant and her father. This totally unreal and far-fetched suggestion was naturally denied

and was not maintained by the appellant as part of his defence when he gave sworn testimony.

As the factual basis on which the single judge granted leave to appeal was not substantiated on the evidence, we dismissed the appeal and confirmed the sentence. We have not considered it necessary nor desirable to deal with the wider and more general issue whether the absence of reasons for the warning which was given that it is dangerous and unsafe to act on the uncorroborated evidence of a young child who is the complainant in a case of carnal abuse renders the directions inadequate, particularly where a full and adequate direction has already been given on the rule as to corroboration in sexual offences. Suffice it to say that D.P.P. v. Hester (1972) 3 All E.R. 1056 on which Mr. DeLisser relies in support of his submission that reasons in addition to the warning must be given, does not establish such a principle. Lord Diplock's observation at p. 1076 would appear to negative any such obligation, as in the instant case, to give reasons. He said:

> "No doubt if there is unsupported evidence of a child complainant fit to be left to the jury, the judge should tell them that it is open to them to convict on her evidence alone, although he should remind them forcibly of the danger of doing so."

It is for the above reason that as already stated we dismissed the appeal and confirmed the sentence.