

2005 WL 2883047 (Ont. C.J.), 2005 CarswellOnt 6313
(Publication page references are not available for this document.)

2005 CarswellOnt 6313

R. v. Cox

Her Majesty the Queen v. Allison Cox and Orlando Klass

Ontario Court of Justice

Hudson J.P.

Heard: July 29, 2005
Judgment: July 29, 2005
Docket: None given.

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Counsel: D. Maylor, for Crown

J. Bogle, for Allison Cox

S. Pieters, for Orlando Klass

Subject: Criminal

Criminal law.

Hudson J.P., (Orally):

1 Notwithstanding that the allegations were presented on a joint basis regarding both accused, counsels representing each person gave submissions on behalf of each of the accused person. So the Court will proceed in giving the decision on Ms. Cox, because Mr. Bogle was the first counsel to speak.

2 Please stand up. Ms. Cox, the burden is on the Crown in this matter to show cause why you should not be released. Allegations are that you are the guardian and care provider for the deceased person, Tiffany Pinckney. And that Ms. Pinckney resided with you and your husband, the co-accused Mr. Orlando Klass Junior, since 2002, after your wedding. The Crown is alleging that on or about the 2nd of April, 2005, Mr. Klass discovered the unresponsive body of Ms. Pinckney, in the basement of her Fairwind Drive home. The basement being the place of residence where Ms. Pinckney occupied as her living quarters. The Crown described in detail the condition of the basement, including the sparse furnishings.

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3 The Crown alleges that it is approximately five hours after Mr. Klass discovered the unresponsive body of the deceased person, that medical assistance was sought. Several reports were entered in the Crown's allegation. Reports from the pathologist and coroner. Pathologist indicating that the body weight of Ms. Pinckney had declined considerably from the year 2002, to the time that she became deceased. The coroner indicating that approximately a day or two prior to her death, that she was not fed. The condition of Ms. Pinckney was described as mentally delayed, or she had problems with cognitive matters. And although at twenty-three years old, she had the ability to communicate of that of a three year old.

4 The Crown is submitting further, that there are concerns on the primary grounds. However, with the support of family members, in particular the sureties who were present on your behalf today, the fact that you do work and live in the community, own your own property, primary ground might not be a major issue. Crown continues to submit to this court, that the tertiary ground is one to be considered in terms of your detention. And as such, he's submitted to this court, that the court should consider your detention.

5 Your counsel, on the other hand, submits to this court that you've lived an exceptional life from the young age of nine, where you stayed around to assist your family with care for the deceased person. That you have two children with connections to their grandparents, and that you're the wife of an extraordinary man who has given service to the community, who is surrounded by people of faith, who have come forward with substance, in terms of economics, and the ability to properly supervise you. And therefore, this court should consider releasing you because of the productive nature of your existence in the community, and the fact that these are allegations.

6 This court's responsibility, Ms. Cox, under the two areas that both Crown and counsel identified to the court, primary ground, tertiary ground, is to ensure that you come to court. Based on the submissions of both Crown and counsel, this court is not overly concerned that you will not attend court, and so that issue is of satisfaction in the mind of the court.

7 The tertiary ground which has been highlighted by the Crown, due to the nature of the allegations before the Court, raises some concern. The fact that you are the caregiver, primary caregiver and guardian for this person who has not seen a doctor in five years according to the allegations, and from the doctor's report, was not fed for approximately two days, causes some concern.

8 However, based on the calibre and the substance of the sureties that appeared on your behalf, the court is satisfied that with a properly fashioned release order, that you can be released. And the court therefore, finds that in your case the Crown has not met its onus.

9 So the court is going to release you on a recognizance and that will be in the amount of \$20,000, no deposit. And will name as your sureties, Orlando Klass Senior and Eugene Marshall. The court will order the following conditions: That you reside at an address approved of by your surety and abide by the direction of your surety. That you not possess any weapons or firearms as outlined in the Criminal Code. Do not apply for any licence or authorization to either own or use those items. Do you have any weapons or firearms, Ms. Cox?

2005 WL 2883047 (Ont. C.J.), 2005 CarswellOnt 6313
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MS. COX: No.

THE COURT: The Court will order that you not have custody or care for any person with limited physical or mental capacity, or children other than your own, and that you return to court as required. Does Crown or counsel wish to make any further recommendation?

Hudson J.P., (Orally):

10

THE COURT: Thank you, counsel. You may be seated Ms. Cox, thank you. Stand up please, Mr. Klass. Just for the record sir, I'll indicate in your case that this is a Crown onus, which places the burden on the Crown to show cause why you should not be released.

11 The allegations mirror those that I alluded to regarding Ms. Cox. The difference here is that the allegations did not designate, or see you as the primary caregiver or the legal guardian, but as the partner, husband, of Ms. Cox, and therefore sharing in the responsibility for the well-being of Ms. Pinckney.

12 The Crown in his submission, also highlights that the tertiary ground in your matter would be a major issue, and as such, that you should be detained because of the public's opinion or view of the justice system, if you were to be released.

13 The primary ground to which the Crown refers as an issue, and later indicated that the strength of the sureties, and your connection to the community, reduces the concerns in that area. The Court is satisfied that with the roots that you've established, not only through family, but through the community services that you have performed, that that will not be a major issue for this Court, that you would come to court.

14 On the tertiary ground however, the allegations have been described as heinous and very disturbing, and such might be of concern to the ordinary person in the community. However, sir, on the basis of the calibre of the sureties that appeared on your behalf, and your counsel's submission in terms of the level of respect and law abiding citizen that you have been, this Court feels satisfied and confident that if you're released to the supervision of the sureties with a properly fashioned plan of supervision, that you will come back to court and the public will not be as outraged as one would be led to believe.

15 The Court therefore finds sir, that the Crown did not meet its onus, and you will be released on a recognizance, \$20,000, no deposit. And the Court will name as your surety Stanislaus Shepherd and Bernadette Klass. The court will order the following conditions: That you reside at an address approved of by your surety, and abide by the rules and direction of your surety. That you not possess any weapons or firearms as outlined in the Criminal Code. You are not to apply for any licence or authorization to either own or use those items. Do you have any weapons or firearms?

MR. KLASS: No.

2005 WL 2883047 (Ont. C.J.), 2005 CarswellOnt 6313

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THE COURT: You're not to have custody or care of any person with limited physical or mental capacity, or children other than your own. You are to return to court as required. And you are to advise Detective Harnden, badge number 1125, Peel Regional Police, 21 Division.

MR. MAYLOR: Twelve.

THE COURT: 12 Division, thank you. 12 Division, twenty-four hours prior to any change in your residence address or your place of employment. Those are the conditions of this Court, Mr. Klass, do you understand them?

MR. KLASS: Yes, I do.

MR. PIETERS: Your Worship, I just have one submission to make with respect to the last condition.

THE COURT: Yes.

MR. PIETERS: The last condition you may wish to put twenty-four hours if he voluntarily changes his employment. Because certainly if he's terminated from his employment, he wouldn't have notice. An employer can terminate him without notice. I'm just cognizant of that fact, so that possibility exists. I know it's law and....

THE COURT: Getting fairly technical counsel.

MR. PIETERS: I do employment law, so.

MR. MAYLOR: We can tell.

THE COURT: Well there's also something called reasonable notice to the employee, right?

MR. PIETERS: But the employer can terminate without cause.

THE COURT: I know. It takes time though, I think twenty-four hours is reasonable. So it's going to be left as is. All right. Mr. Klass, having had that discussion with your counsel, do you understand the conditions of the Court?

MR. KLASS: Yes, I do.

THE COURT: And you're prepared to follow the orders of the Court?

MR. KLASS: Yes, I will.

THE COURT: If you fail to comply with any one of those conditions, additional charges will be brought against you, and the \$20,000 is forfeited to the Crown. Do you understand?

MR. KLASS: Yes, I do.

THE COURT: All right. You'll be required to sign a recognizance once the

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terms are in place. The return date that was set earlier is the 18th, counsel?

MR. PIETERS: Thank you.

THE COURT: In agreement? 18th of August sir, nine o'clock a.m., in courtroom 107, in this building. Thank you so much folks. Thank you, Mr. Maylor.

MR. MAYLOR: Thank you, Your Worship.

MR. BOGLE: Thank you, Your Worship.

MR. PIETERS: Thank you, Your Worship.

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