Regina v. Fex*

(1974), 1 O.R. (2d) 280

ONTARIO
COURT OF APPEAL
KELLY, JESSUP and
MARTIN JJ.A.

26TH SEPTEMBER 1973

*An application by the Crown for leave to appeal to the Supreme Court of Canada was dismissed on December 21, 1973.

Criminal law — Evidence — Confessions — Statements by impaired driver to investigating officer at scene of accident — Existence of statutory duty under Cr. Code, s. 233, does not dispense with Crown's onus to establish voluntariness.

APPEAL by the Crown from the decision of Addy, J., [1973] 3 O.R. 242, 12 C.C.C. (2d) 239, 21 C.R.N.S. 360, allowing the accused's appeal by way of stated case from his conviction for impaired driving.

R.M. McLeod, for the Crown, appellant.

H. Smyth, for accused, respondent.

The judgment of the Court was given orally by

JESSUP, J.A.:— Despite Mr. McLeod's able argument, I would dismiss the appeal on the sole ground that I am of the opinion that the existence of the statutory duty under s. 233 of the Criminal Code does not dispense with the onus upon the Crown to establish that a statement made pursuant to that section was not otherwise involuntary. I do not wish to be taken as accepting otherwise the reasons on which Mr. Justice Addy's judgment proceeded.

In the result the appeal must be dismissed.

Appeal dismissed.