

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. D.W.S.*, 2007 NSCA 16

Date: 20070207

Docket: CAC 26773 **Registry:** Halifax

Between:

D.W.S.

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: pursuant to s. 486(3) [now s. 486.4(1)] of the
Criminal Code

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: January 18, 2007

Subject: Appeal from conviction for sexually assaulting daughter.

Summary: The appellant was found guilty of sexually assaulting his daughter when she was between the ages of 3 1/2 and 5 years old. She disclosed the allegations (2 events of abuse) to her mother. Her account was videotaped during an interview with a social worker and police officer. At trial she adopted the videotape (s.715.1 **Criminal Code**). She was age 7 at the time of trial. On the first occasion she said her father "put his finger in her butt hole". The next assault involved him putting his penis in her mouth having covered her eyes with taped-over swim goggles. The father denied assaults.

Issue: The appellant alleged that the judge erred by failing to provide adequate reasons for rejecting the appellant's denial; failed to properly apply **R. v. W.(D.)**, [1991] 1 S.C.R. 742; and misapprehended the evidence by failing to appreciate material inconsistencies and frailties in the complainant's evidence.

Result:

Appeal dismissed. Inadequate reasons is not a stand alone ground of appeal. The appellate court applies a functional test in the context of all the circumstances of the case (**R. v. Sheppard**, [2002] 1 S.C.R. 869). The appellant must demonstrate not only that the reasons are deficient but that the alleged deficiency prejudiced the appellant's right to appeal. The appellant's evidence denying the assault was uncomplicated. The judge stated that he disbelieved evidence and it did not create a reasonable doubt. It was clear from a reading of the reasons as a whole that the judge applied the proper burden of proof (**R. v. W.(D.)**, *supra*) and the appellant was left in no doubt as to why he was found guilty. This was not a case where there was confused or conflicting evidence or difficult issues of law that needed to be addressed in the reasons. Additionally, the judge carefully scrutinized the complainant's evidence and provided detailed reasons why he accepted it. He was alive to the inherent frailties in a child's evidence and the particular issues which arose regarding the evidence of this complainant.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 12 pages.