

Date: 19981118

Docket: C.A.C. 146160

**NOVA SCOTIA COURT OF APPEAL**

**Cite as: R. v. Rogers, 1998 NSCA 233**

**Chipman, Hart, Bateman, JJ.A.**

**BETWEEN:**

COREY ROGERS

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

)  
)  
) Ann Copeland  
) for the Appellant  
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)  
) Dana W. Giovannetti  
) for the Respondent  
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)  
) Appeal Heard:  
) November 18, 1998  
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) Judgment Delivered:  
) November 18, 1998  
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**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**THE COURT:** Appeal is dismissed as per oral reasons for judgment of Bateman, J.A., Hart and Chipman, JJ.A.

**BATEMAN, J.A.: (Orally)**

On February 23, 1998 the appellant, Corey Rogers was convicted of committing a sexual assault upon T. D. L. (**s.271(1)(a)** of the **Criminal Code**).

Mr. Rogers appeals the conviction pursuant to **s.686(1)(a)(i)** and **(ii)** of the **Code**, alleging that it is unreasonable, cannot be supported by the evidence or is otherwise a miscarriage of justice.

Ms. L. fell asleep on the couch while watching television in the livingroom of a friend's apartment. Two men, the appellant being one, were in the livingroom with her. She later awoke feeling someone's fingers inside her vagina. She pushed her attacker away with her foot, but continued to feign sleep, keeping her eyes closed. As a result she did not see who had attacked her. When she opened her eyes about 5 minutes later, Mr. Rogers was sitting on the end of the couch where she had been sleeping, and there was no one else in the room. Ms. L. had not heard anyone leave the room after the assault and before she opened her eyes. The defence did not call evidence at trial. Mr. Rogers was convicted. The only issue was the identity of the person who committed the assault. It was not suggested that the assault did not occur.

The trial judge, in convicting the appellant, concluded that Mr. Rogers was the only other person present in the room at the time of the assault and was thus satisfied that the Crown had met the burden of proof.

We have reviewed and re-weighed the evidence to the extent required on an appeal. It is only where we determine that a conviction cannot be supported on the evidence that we can overturn the trial court's verdict. (**R. v. Yebes** (1987), 36 C.C.C. (3d) 205 (N.S.C.A.)) The case against Mr. Rogers was circumstantial. We are satisfied that the trial judge's conclusion that he was the only one in the room with the victim at the relevant time, and thus committed the assault, was the only reasonable inference from the evidence. The conviction is therefore supported by the evidence and is not unreasonable.

Accordingly, the appeal is dismissed.

Bateman, J.A.

Concurred in:

Hart, J.A.

Chipman, J.A.

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REASONS FOR  
JUDGMENT BY:  
Bateman, J.A.  
(Orally)