

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. B.W., 2012 NSCA 13

Date: 20120131

Docket: CAC 346509

Registry: Halifax

Between:

B.W.

Appellant

v.

Her Majesty the Queen

Respondent

Editorial Notice

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

Restriction on Publication: Pursuant to 486.4 of the *Criminal Code*

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: January 24, 2012

Subject: Criminal law: remedy for misapprehension of the evidence

Summary: The appellant was convicted of sexual assault and unlawful confinement and sentenced to three and one-half years incarceration. The trial judge failed to carry out any analysis of the conflicting evidence between the complainant and the appellant about their sexual contact because of his conclusion that the complainant was unlawfully confined. The respondent acknowledges that the trial judge misapprehended the evidence in making this finding, and concedes that there must be a new trial, at least on the charge of sexual assault. The appellant sought the entry of an acquittal on the basis that the verdicts were unreasonable.

Issue: What is the appropriate remedy where the trial judge has misapprehended the evidence.

Result:

The appellant did not receive a fair trial due to the misapprehension of the evidence by the trial judge. Where there is evidence that could reasonably result in a finding of guilt, the appropriate remedy is a new trial. The convictions are quashed and a new trial ordered on all counts should the Crown wish to proceed again.

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 7 pages.