

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Laing*, 2017 NSCA 69

Date: 20170720

Docket: CAC 461979

Registry: Halifax

Between:

Andrew Michael Laing

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: s. 486.4 <i>Criminal Code</i>
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Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: June 14, 2017, in Halifax, Nova Scotia

Subject: Criminal law: sufficiency of reasons; reliance on a prior consistent statement

Summary: The complainant's evidence was that she had said no to unprotected sexual intercourse, but the appellant persisted. The appellant testified at length about the sexual activity, including intercourse. He said he was aware of the complainant's stated wishes not to have unprotected intercourse; nonetheless, she had initiated the intercourse. A day or two later, the complainant sent the appellant a message that the sex felt wrong, and she did not want to see him anymore. A complaint to the police followed. The trial judge convicted. She made no mention at all of the appellant's evidence or of the cross-examination of the complainant. Instead, she relied on the message as being consistent with her in-court testimony and corroborative of her claim of lack of consent.

Issues:

- (1) Were the reasons sufficient?
- (2) Did the trial judge improperly use the prior statement?

Result:

The reasons were manifestly inadequate. The trial judge did not even mention the appellant's evidence; nor the myriad details that were put to the complainant in cross-examination where she did not contradict the appellant's evidence, professed no recall or grudgingly admitted details favourable to the appellant. The trial judge twice referred to the electronic message as being consistent with the complainant's evidence that she had not consented. In the circumstances, the trial judge used that consistency to convict the appellant of sexual assault. On either ground, the appeal is allowed and a new trial ordered.

<p><i>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 21 pages.</i></p>
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