

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Dim.*, 2017 NSCA 80

Date: 20171020

Docket: CAC 456111

Registry: Halifax

Between:

Chukwunonso Sinclair Dim

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: s. 486.4 *Criminal Code*

Judge: The Honourable Justice Elizabeth Van den Eynden

Appeal Heard: April 20, 2017, in Halifax, Nova Scotia

Subject: **Sexual assault; consent; standards of scrutiny; misapprehending evidence; *Browne v. Dunn*; insufficient reasons; expert qualifications**

Summary: Mr. Dim appealed his sexual assault conviction. The trial judge found Mr. Dim and the complainant had engaged in consensual sexual activity, up to a point. He found there was no consent to sexual intercourse. Mr. Dim acknowledged that he understood the complainant had not consented to sexual intercourse and said sexual intercourse did not occur. The complainant said it did. During the trial, credibility was a central issue.

The trial judge, relying in part on expert evidence, found that sexual intercourse did occur and the complainant did not consent. The grounds of appeal deal primarily with complaints

about the trial judge's treatment of evidence.

Issues:

Did the trial judge err by:

1. Applying markedly different standards of scrutiny to the evidence presented by the Crown and defence;
2. Materially misapprehending text message evidence;
3. Failing to appreciate the disinhibiting effects of alcohol;
4. Improperly conflating capacity to consent with consent;
5. Making an adverse credibility finding against the appellant due to a violation of the rule in *Browne v. Dunn*;
6. Providing insufficient reasons respecting why the appellant's evidence was rejected and how he arrived at credibility and reliability findings; and
7. Improperly qualifying an expert witness and then further erring by relying on such expert evidence.

Result:

Appeal dismissed.

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 25 pages.