

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
Cite as: R. v. H. V.R., 1998 NSCA 183		
H.V.R. (Appellant)	- and -	HER MAJESTY THE QUEEN (Respondent)
C.A.C. No. 145067	Halifax, N.S.	Bateman, J.A. (Orally)

APPEAL HEARD: September 15, 1998

JUDGMENT DELIVERED: September 15, 1998

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**SUMMARY:** Appellant convicted of sexually assaulting female hitchhiker. When responding to questioning by the police, he failed to mention a significant, exculpatory incident, to which he later testified at trial.

**ISSUES:** Did the judge fail to properly apply **R. v. W.(D.)**; did he err in drawing an inference in the absence of evidence; did he wrongly rely upon the appellant's failure to make a post arrest utterance?

**RESULT:** Appeal dismissed. Judge properly applied **R. v. W.(D.)**. Given the nature of the questioning of the appellant by the police it was appropriate for the trial judge, in assessing the appellant's credibility, to take into account his failure to refer to a key exculpatory explanation of the circumstances to which he later testified.

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