

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Ord*, 2012 NSCA 115

Date: 20121122

Docket: CAC 375541

Registry: Halifax

Between:

Jason John Ord

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: September 25, 2012

Subject: **Memory Lapse. Admissibility of Prior Police Statement. Principled Approach to Hearsay. Necessity and Reliability. Fresh Evidence. Burden of Proof. Motive to Fabricate. Opportunity to Effectively Cross-Examine. Standard of Review.**

Summary: At his trial on assault charges for having punched his girlfriend the complainant's memory lapses prompted the Crown to seek to introduce her prior statement to the police for the truth of its contents. After a *voir dire* the judge admitted the statement after finding that the requirements of necessity and reliability had been met under the principled approach to hearsay. By consent, the *voir dire* evidence was admitted as evidence in the trial. The appellant was convicted of assault and breach of recognizance. Those convictions were upheld on appeal to the SCAC which found that the trial judge had not erred in admitting the statement. The appellant appealed the decision of

the SCAC to this Court.

Held:

Appeal dismissed. The appellant's attempt to introduce fresh evidence was rejected as the proffered documentation did not meet any of the necessary requirements for admissibility. The SCAC did not err in affirming the trial verdict by misapplying the principled approach to the rule against hearsay. The trial judge's reasons showed a thorough and thoughtful analysis of the numerous factors considered when deciding threshold reliability. The judge's choice of words when read in the context of her decision as a whole, were not problematic and did not reveal any mangling or reversal of the burden of proof. Each of the factors considered by the trial judge was valid and compelling. Taken together they were enough to satisfy the Crown's burden of proof on a balance of probabilities. No error in the way in which either court considered the allegation that the complainant had a motive to fabricate, or assessed the opportunity for meaningful cross-examination as one of many *indicia* to guarantee reliability and overcome presumptive inadmissibility.

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 19 pages.