

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. McLellan, 2011 NSSC 118

**Date:** 20110314

**Docket:** SYDJC335121

**Registry:** Sydney

**Between:**

Her Majesty the Queen

Plaintiff

v.

Waylon McLellan

Defendant

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**Restriction on Publication:** Sexual Assault on a 15 yr. old

**Judge:** The Honourable Justice Frank Edwards

**Heard:** March 8, March 9, 2011 in Sydney, Nova Scotia

**Written Decision:** March 23, 2011

**Criminal Law:** Sexual assault; application of **W.D.**

**Facts:** Complainant, 15 yrs. old, alleges that she was sexually assaulted by the Accused. Complainant had been invited to an overnight stay in cottage rented by the Accused and his common-law spouse. Assault allegedly took place after night of heavy alcohol consumption in the same bed where the Accused's spouse was sleeping/passed out.

**Issue:** Whether Crown had proven case beyond a reasonable doubt.

**Result:** Not Guilty. Accused not believed nor did his evidence raise reasonable doubt. However, the evidence of the complainant was problematic to the extent that it precluded a finding of guilt. She had returned to the Accused's house the day after the alleged assault knowing he was probably home alone. On a

scale of 1 -1 0 (10 being most drunk) she had rated herself a 9 on the night in question. Finally, though she disclosed 3 - 8 months after the event, she was unable to specify even the month in which the alleged assault occurred.

Case Noticed: **R. v. W.(D)**. [1994] 3SCR 521