

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Al-Rassi, 2013 NSSC 204

Date: 20130703

Docket: CRH 396767

Registry: Halifax

Between:

Her Majesty the Queen

v.

Adnan Al-Rassi

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Restriction on publication: Section 486.4 of the *Criminal Code of Canada*

Judge: The Honourable Justice Peter P. Rosinski

Heard: June 18, 2013 in Halifax, Nova Scotia

Subject: *Hearsay - Principled exception to hearsay rule - regarding the preliminary inquiry evidence of a complainant in a sexual assault trial*

Summary: Complainant testified at trial that accused massage therapist sexually assaulted her at the end of massage session. At the preliminary inquiry she had answered in cross examination that she was “pretty much asleep” at end of massage session. At trial she was adamant that she never actually fell asleep. Defence sought, in part, to introduce her preliminary inquiry evidence that she was “pretty much asleep” to provide evidentiary foundation for proposed expert opinion evidence that, in such a near sleep state she may have genuinely but mistakenly believed that she saw the accused commit sexual assault due to perceptual disturbances known as hypnopompic hallucinations.

Issue: Is the preliminary inquiry evidence of the complainant admissible as an exception to the hearsay rule?

Result: Either the proposed evidence is not “hearsay” or is not “necessary” under the principled exception to the hearsay rule. Moreover, the prejudice of admitting it substantially outweighs its probative value.

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