

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Cain*, 2017 NSCA 96

Date: 20171228

Docket: CAC 460968

Registry: Halifax

Between:

Percy Cain

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: s. 486.4 of the *Criminal Code*

Judge: The Honourable Justice Joel E. Fichaud, van den Eynden, J.A. concurring; Scanlan, J.A. dissenting

Appeal Heard: November 17, 2017, in Halifax, Nova Scotia

Subject: Criminal law – prior consistent statements

Summary: Mr. Cain was charged with sexually assaulting the Complainant. During the cross-examinations of the Crown witnesses, the Defence introduced the contents of the Complainant's oral and signed statements to the police, to challenge her with inconsistencies between her statements and her testimony. The Defence asked the judge to find that those inconsistencies impugned the Complainant's reliability for the core allegations of assault. The trial judge found that the inconsistencies were insignificant and were attributable to the Complainant's short-term memory loss, caused by a stroke, while her relation of the central facts was consistent, and the inconsistencies did not impair the Complainant's reliability respecting the central allegations of sexual assault. The judge convicted Mr. Cain.

Issue: Mr. Cain appealed to the Court of Appeal. His ground was that the judge infringed the rule against the use of a prior consistent statement.

Result: The Court of Appeal (Fichaud, J.A., Van den Eynden, J.A., concurring) dismissed the appeal. The rule against the use of a prior consistent statement is subject to the contextual exception. That exception permits a trial judge to examine the context of the statement in order to appraise the Defence's submission that the inconsistencies were material. The trial judge responded to the Defence's submission that the circumstantial inconsistencies impaired the Complainant's reliability on the core allegations of assault. The judge was entitled to consider the full statement in order to rule on that submission.

Scanlan, J.A., dissenting, would have allowed the appeal due to the improper use of a prior consistent statement by the Complainant.

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 33 pages.