

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v*. Cain, 2018 SCC 20, [2018] 1 S.C.R. 631 | **Appeal heard:** May 14, 2018  **Judgment rendered:** May 14, 2018  **Docket:** 37926 |

Between:

**Percy Lewis Cain**

Appellant

and

Her Majesty The Queen

Respondent

**Coram:** Wagner C.J. and Karakatsanis, Gascon, Côté and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 4) | Wagner C.J. (Karakatsanis, Gascon, Côté, and Martin JJ. concurring) |

R. *v*. Cain, 2018 SCC 20, [2018] 1 S.C.R. 631

Percy Lewis Cain Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.*** Cain

2018 SCC 20

File No.: 37926.

2018: May 14.

Present: Wagner C.J. and Karakatsanis, Gascon, Côté and Martin JJ.

on appeal from the court of appeal for nova scotia

*Criminal law — Evidence — Prior consistent statement — Defence introducing at trial statements by complainant to police and cross-examining complainant on inconsistencies between statements and her testimony — Trial judge finding that inconsistencies did not impair complainant’s reliability and convicting accused of sexual assault — Court of Appeal holding that trial judge did not err in his use of complainant’s prior statements — Conviction upheld.*

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, s. 271.

APPEAL from a judgment of the Nova Scotia Court of Appeal (Fichaud, Van den Eynden and Scanlan JJ.A.), 2017 NSCA 96, [2017] N.S.J. No. 512 (QL), 2017 CarswellNS 949 (WL Can.), affirming the conviction of the accused for sexual assault. Appeal dismissed, Côté J. dissenting.

Roger A. Burrill, for the appellant.

James A. Gumpert, Q.C., and *Sean P. McCarroll*, for the respondent.

The judgment of the Court was delivered orally by

1. The Chief Justice — Mr. Cain was convicted at trial of sexual assault, contrary to s. 271 of the *Criminal Code*, R.S.C. 1985, c. C-46. He appealed on the ground that the trial judge relied on the complainant’s prior consistent statement for an impermissible purpose, namely, to confirm the truth of her testimony. A majority of the Nova Scotia Court of Appeal dismissed Mr. Cain’s appeal, Scanlan J.A. dissenting. Mr. Cain appeals to this Court as of right.
2. A majority of this Court would dismiss the appeal, substantially for the reasons of the majority of the Court of Appeal. At trial, Mr. Cain challenged the reliability of the complainant’s testimony on the basis of inconsistencies between it and her prior statements to police. The trial judge found that the inconsistencies involved only insignificant peripheral matters, and so he rejected Mr. Cain’s contention that any inconsistencies rendered the complainant not credible or her evidence unreliable. The trial judge did not rely on consistencies between the statements and testimony to bolster the truth of the complainant’s testimony. This was an appropriate use of a prior consistent statement and did not constitute an error of law.
3. Justice Côté, dissenting, would have allowed the appeal, substantially for the reasons of Scanlan J.A.
4. Therefore, the appeal is dismissed.

*Judgment accordingly.*

Solicitor for the appellant: Nova Scotia Legal Aid, Halifax.

Solicitor for the respondent: Public Prosecution Service of Nova Scotia, Halifax.