

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v*. W.L.S., 2019 SCC 27, [2019] 2 S.C.R. 403 |  | **Appeal Heard:** May 7, 2019  **Judgment Rendered:** May 7, 2019  **Docket:** 38427 |

**Between:**

**W.L.S.**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** Moldaver, Côté, Brown, Rowe and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 6) | Martin J. (Moldaver, Côté, Brown and Rowe JJ. concurring) |

R. *v.* W.L.S., 2019 SCC 27, [2019] 2 S.C.R. 403

W.L.S. Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.*** W.L.S.

2019 SCC 27

File No.: 38427.

2019: May 7.

Present: Moldaver, Côté, Brown, Rowe and Martin JJ.

on appeal from the court of appeal for alberta

*Criminal law — Sexual assault — Consent — Accused’s child testifying that accused repeatedly sexually assaulted sleepy and drugged complainant — Trial judge accepting child’s evidence as truthful and reliable but acquitting accused of sexual assault as she was not satisfied beyond reasonable doubt that there was absence of subjective consent — Court of Appeal entering conviction — Court of Appeal finding trial judge erred in law by not providing alternative supportable theory after concluding absence of subjective consent was not only inference that could be drawn from evidence — Trial judge misapplied law of circumstantial evidence to evidence of witness and misapplied law of consent — Conviction upheld.*

APPEAL from a judgment of the Alberta Court of Appeal (McDonald, Crighton and Khullar JJ.A.), 2018 ABCA 363, [2018] A.J. No. 1283 (QL), 2018 CarswellAlta 2558 (WL Can.), setting aside the acquittal of the accused for sexual assault and entering a conviction. Appeal dismissed.

Dane F. Bullerwell and James Wegener, for the appellant.

Cheryl A. Schlecker, for the respondent.

The judgment of the Court was delivered orally by

[1] Martin J. — The accused was acquitted of sexual assault following a trial before a judge alone in the Provincial Court of Alberta. The Crown appealed the acquittal to the Alberta Court of Appeal, which unanimously allowed the appeal and substituted a conviction. The accused appeals to this Court as of right.

[2] We would dismiss the appeal and uphold the conviction for substantially the reasons of the Court of Appeal. We would add, however, in our view, it was not necessary to reach back into the record of the trial judge’s interactions with counsel to identify an error of law. Rather, errors of law are apparent on the face of the trial judge’s reasons.

[3] The trial judge accepted the testimony of the witness as being truthful and reliable on the “core issues”, namely that he saw his father, the accused, drag the complainant from her bedroom into the living room and engage in sexual activity with her on several occasions. The trial judge accepted this evidence but held that “one inference, given the evidence of [the witness] is that [the complainant] was not consenting to the sexual activity involving the accused, it must be the only reasonable inference if the Crown is to prove lack of consent beyond a reasonable doubt” (trial reasons (Alta. Prov. Ct.), December 1, 2017).

[4] In our view, the act of dragging the complainant while asleep and drugged is inconsistent with any sort of consent. There was no evidence, or absence of evidence, to support any reasonable inference other than non-consent. No alternative inference was posited to the trial judge in submissions, and she did not cite any alternative inference in her reasons.

[5] In this case, the trial judge misapplied not only the law of circumstantial evidence to the evidence of the witness, which she accepted, she also misapplied the law on consent. This complainant was statutorily incapable of consenting and any other finding on this point was a clear error of law.

[6] We would therefore uphold the Court of Appeal’s decision to enter a verdict of guilty on the charge of sexual assault and remit the case back to the trial court for sentencing.

*Judgment accordingly.*

Solicitors for the appellant: Legal Aid Society of Alberta, Edmonton; Sinclair Law Office, Stony Plain.

Solicitor for the respondent: Attorney General of Alberta, Edmonton.