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| **SUPREME COURT OF CANADA** | | | |
| **Citation:** R. *v.* Waterman, 2021 SCC 5, [2021] 1 S.C.R. 14 |  | **Appeal Heard:** January 22, 2021  **Judgment Rendered:** January 22, 2021  **Docket:** 39214 |
| **Between:**  **Her Majesty The Queen**  Appellant  and  **Angus Frederick Waterman**  Respondent  - and -  **Attorney General of Ontario and Criminal Lawyers’ Association (Ontario)**  Interveners | | | |

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| **Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Brown, Rowe and Martin JJ. | | |
| **Judgment Read By:**  (paras. 1 to 5) | Moldaver J. |
| **Majority:** | Wagner C.J. and Abella, Moldaver, Karakatsanis and Martin JJ. |
| **Dissent:** | Brown and Rowe JJ. |
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r. *v.* waterman

Her Majesty The Queen Appellant

v.

Angus Frederick Waterman Respondent

and

Attorney General of Ontario and

Criminal Lawyers’ Association (Ontario) Interveners

**Indexed as: R. *v.* Waterman**

2021 SCC 5

File No.: 39214.

2021: January 22.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Brown, Rowe and Martin JJ.

on appeal from the court of appeal for newfoundland and labrador

*Criminal law — Appeals — Unreasonable verdict — Evidence — Significant inconsistencies in complainant’s statement to police and testimony at preliminary inquiry and trial regarding allegations of criminal sexual activity against accused — Accused convicted of* *indecent assault and gross indecency by jury — Court of Appeal holding that jury’s verdict was unreasonable and unsupported by evidence because Crown failed to adduce evidence necessary to prove offences beyond reasonable doubt and complainant’s evidence was not credible — Court of Appeal setting aside convictions — Convictions restored.*

APPEAL from a judgment of the Newfoundland and Labrador Court of Appeal (Welsh, White and Butler JJ.A.), 2020 NLCA 18, 453 D.L.R. (4th) 586, [2020] N.J. No. 106 (QL), 2020 CarswellNfld 126 (WL Can.), setting aside the convictions of the accused for indecent assault and gross indecency. Appeal allowed, Brown and Rowe JJ. dissenting.

*Arnold Hussey*, *Q.C*., for the appellant.

*Michael Crystal* and *Heather Cross*, for the respondent.

*Lisa Joyal*, for the intervener the Attorney General of Ontario.

*Alan D. Gold*, for the intervener the Criminal Lawyers’ Association (Ontario).

The judgment of the Court was delivered orally by

[1] Moldaver J. — The only issue on this unreasonable verdict appeal is whether the inconsistencies in the complainant’s testimony are so significant that a conviction registered on the basis of his evidence is unreasonable as a matter of law. Although some of the inconsistencies are troubling, a majority of the Court is satisfied that the jury acted reasonably in believing the complainant.

[2] The complainant accepted that his testimony was inconsistent with his prior statements. These inconsistencies were the focus of vigorous cross‑examination, forceful closing submissions and a comprehensive jury charge, which the parties agree was free of errors. For his part, the complainant explained that counselling had helped improve his memory since his initial police statement. In the majority’s view, it was for the jury to decide whether this explanation neutralized any reasonable doubt caused by the inconsistencies. In these circumstances, the lens of judicial experience causes us to yield to the wisdom of the jurors who had the advantage of hearing the complainant testify. We decline to second guess this determination.

[3] With respect, the majority disagrees that the Crown had to either lead further evidence on the complainant’s counselling sessions or adduce expert evidence on the role that counselling can play in refining memory.

[4] For these reasons, the majority would allow the appeal, set aside the acquittals and restore the convictions.

[5] Justices Brown and Rowe, dissenting, would dismiss the appeal, substantially for the reasons of Justice White.

*Judgment accordingly.*

*Solicitor for the appellant: Department of Justice and Public Safety, Clarenville, N.L.*

*Solicitors for the respondent: Crystal Cyr, Ottawa.*

*Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.*

*Solicitor for the intervener the Criminal Lawyers’ Association (Ontario): Alan D. Gold Professional Corporation, Toronto.*