



**SUPREME COURT OF CANADA**

**CITATION:** R. v. Gerrard, 2022 SCC  
13

**APPEAL HEARD:** April 19, 2022  
**JUDGMENT RENDERED:** April 19,  
2022  
**DOCKET:** 39874

**BETWEEN:**

**Andre Aaron Gerrard**  
Appellant

and

**Her Majesty The Queen**  
Respondent

**CORAM:** Moldaver, Karakatsanis, Rowe, Kasirer and Jamal JJ.

**UNANIMOUS** Moldaver J.

**JUDGMENT READ**

**BY:**

(paras. 1 to 6)

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**Andre Aaron Gerrard**

*Appellant*

v.

**Her Majesty The Queen**

*Respondent*

**Indexed as: R. v. Gerrard**

**2022 SCC 13**

File No.: 39874.

2022: April 19.

Present: Moldaver, Karakatsanis, Rowe, Kasirer and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR NOVA SCOTIA

*Criminal law — Evidence — Assessment — Credibility — Absence of evidence of motive to lie — Lack of embellishment — Accused convicted of numerous charges for assaulting and threatening former common law spouse and damaging her property — Accused appealing convictions on basis that trial judge erred in application of W.(D.) principles and in assessing complainant’s credibility — Majority of Court of Appeal holding that trial judge did not misapply W.(D.), that trial judge properly dealt with evidence of whether complainant had motive to lie, and that trial judge did not rely on complainant’s lack of embellishment in favour of her credibility — Convictions upheld.*

## Cases Cited

**Referred to:** *R. v. W.(D.)*, [1991] 1 S.C.R. 742; *R. v. Vuradin*, 2013 SCC 38, [2013] 2 S.C.R. 639; *R. v. G.F.*, 2021 SCC 20; *R. v. Stirling*, 2008 SCC 10, [2008] 1 S.C.R. 272; *R. v. Ignacio*, 2021 ONCA 69, 400 C.C.C. (3d) 343; *R. v. Swain*, 2021 BCCA 207, 406 C.C.C. (3d) 39.

APPEAL from a judgment of the Nova Scotia Court of Appeal (Bryson, Hamilton and Bourgeois JJ.A.), 2021 NSCA 59, 468 D.L.R. (4th) 393, [2021] N.S.J. No. 313 (QL), 2021 CarswellNS 533 (WL), affirming the convictions of the accused. Appeal dismissed.

*Jonathan T. Hughes*, for the appellant.

*Jennifer A. MacLellan, Q.C.*, and *Mark Scott, Q.C.*, for the respondent.

The judgment of the Court was delivered orally by

[1] MOLDAVER J. — Mr. Gerrard appeals his 13 domestic violence-related convictions to this Court, as of right, based upon a dissenting opinion at the Nova Scotia Court of Appeal. A majority of the Court of Appeal rejected his submissions that the trial judge erred both in her application of *R. v. W.(D.)*, [1991] 1 S.C.R. 742, and her assessment of the complainant's credibility.

[2] We would dismiss the appeal. On the first issue, the trial judge instructed herself correctly on the *W.(D.)* test and its application. It is immaterial that the trial judge assessed the

complainant's credibility before the accused's; this does not automatically demonstrate that she reversed the burden of proof (*R. v. Vuradin*, 2013 SCC 38, [2013] 2 S.C.R. 639, at para. 21). Rather, the trial judge's reasons demonstrate that she did not evaluate the complainant's evidence in isolation, but properly tested it against the evidence of other witnesses — including the accused — and offered cogent reasons for finding that the complainant's evidence was credible without improperly marginalizing that of Mr. Gerrard's or any of the other witnesses. Trial judges' reasons must be read generously, as a whole, and with the presumption that the judge knows the law (*R. v. G.F.*, 2021 SCC 20, at paras. 69 and 74). We see no reason to interfere with her analysis.

[3] On the second issue, we do not accept Mr. Gerrard's submission that the trial judge made improper credibility findings about the complainant regarding lack of motive to lie, lack of embellishment, and reluctance to report to the police and testify. The trial judge properly considered each of these factors in assessing the complainant's credibility as a direct response to Mr. Gerrard's defence at trial, namely that the complainant had long threatened to report him to the police and finally followed through with this threat by fabricating allegations because he made a derogatory comment about her to her daughter. Put another way, he alleged that she had a motive to lie and was, in fact, lying. Credibility findings are owed significant deference on appeal (*G.F.*, at para. 81). The trial judge's reasons were responsive to live issues at trial — raised by Mr. Gerrard — and reveal no error justifying intervention.

[4] Two of these factors warrant a few additional comments. Lack of evidence of a complainant's motive to lie may be relevant in assessing credibility, particularly where the suggestion is raised by the defence (*R. v. Stirling*, 2008 SCC 10, [2008] 1 S.C.R. 272, at paras. 10-11; *R. v. Ignacio*, 2021 ONCA 69, 400 C.C.C. (3d) 343, at paras. 38 and 52). Absence

of evidence of motive to lie, or the existence of evidence disproving a particular motive to lie, is a common sense factor that suggests a witness may be more truthful because they do not have a reason to lie. That said, when considering this factor, trial judges must be alive to two risks: (1) the absence of evidence that a complainant has a motive to lie (i.e. there is no evidence either way) cannot be equated with evidence disproving a particular motive to lie (i.e. evidence establishing that the motive does not exist), as the latter requires evidence and is therefore a stronger indication of credibility — neither is conclusive in a credibility analysis; and (2) the burden of proof cannot be reversed by requiring the accused to demonstrate that the complainant has a motive to lie or explain why a complainant has made the allegations (*R. v. Swain*, 2021 BCCA 207, 406 C.C.C. (3d) 39, at paras. 31-33).

[5] Lack of embellishment may also be relevant in assessing a complainant’s credibility and often arises in response to suggestions that the complainant has a motive to lie. But, unlike absence of evidence of motive to lie, or the existence of evidence disproving a particular motive to lie, lack of embellishment is not an indicator that a witness is more likely telling the truth because both truthful and dishonest accounts can be free of exaggeration or embellishment. Lack of embellishment cannot be used to bolster the complainant’s credibility — it simply does not weigh against it. It may, however, be considered as a factor in assessing whether or not the witness had a motive to lie.

[6] For these reasons, we would dismiss the appeal.

*Judgment accordingly.*

*Solicitors for the appellant: JTH Law, Halifax.*

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