

**Lawson v R**

**25 August, 15 September 2004  
(BR) Martin CJ, Riley J & Priestley AJ  
[2004] NTCCA 7**

The appellant was convicted by a Darwin Supreme Court jury of one count of having sexual intercourse without consent and one count of deprivation of liberty.

At trial the complainant gave evidence that as she was walking home at night she was grabbed by the appellant, forced into nearby bushes and raped. A month after the incident, police took a statement from the appellant in the form of a witness statement. The investigating officer did not inform the appellant that he was investigating a sexual assault. In the statement the appellant gave an account which made no mention of having sexual intercourse with any person. The appellant was arrested six months later. When formally interviewed by the police in respect of the allegation of rape he gave an account of his movements including having consensual intercourse with the complainant. He said after he had sex with the complainant she demanded money which he didn't have at which point she said that she would report the matter to police. He said he did not mention this when first spoken to by the police because on that occasion he had not been told that the police were investigating a sexual assault. He said he did not think it was anyone's business if he had slept with someone or not. His second version was also different from his first as to the route he took walking home that night.

At trial, in the absence of the jury, the prosecutor informed the court that the Crown relied on the differences in the appellant's two versions as relevant to credit only and not to consciousness of guilt. However, when addressing the jury, the prosecutor plainly told them that in his second statement the appellant was trying to distance himself from what had happened. He put to the jury that the appellant was not "up-front" because if he was up-front, he would be admitting that he raped the complainant.

On 9 July 2002 the appellant was granted leave to appeal on the ground that the trial judge failed to direct the jury adequately in relation to the alleged lies told by the appellant in his record of interview.

The Court of Criminal Appeal allowed the appeal holding that the way the prosecution had put its case carried with it a serious risk that the jury would have understood it to mean that a lie was told because the appellant knew that the truth would implicate him in the commission of the offence. In these circumstances, it was necessary for the trial judge to give what is known as an *Edwards* type direction (*Edwards v The Queen* (1993) 178 CLR 193), that is, to instruct the jury as to the use of lies. In the present case, that meant telling the jury that if it was satisfied that the appellant told a lie or lies, then the telling of such a lie or lies was not evidence of guilt and that it could only be used as evidence going to the appellant's credit. The court held that the directions of the trial judge left open to the jury the conclusion that the appellant told lies because he had something to worry about, namely, that the truth would implicate him in the crime charged.

The convictions were set aside and a re-trial ordered.