

# Judge finds sexual assault complainant had reason to make up story

A Saskatoon judge has ruled a woman who said she was raped in a hotel room after a night out with friends had a reason to make up the story.



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Saskatoon Court of Queen's Bench *GREG PENDER / SASKATOON STARPHOENIX*

## Warning: graphic details

A woman who said she was raped in a hotel room after a night out with friends had a reason to make up the story, a Saskatoon judge has ruled.

Queen's Bench Justice Gary Meschishnick noted the woman, a 20-year-old student at the time, wrongly described the location of her alleged assailant's tattoos, was unsure of his ethnicity (he is African Canadian) and said he was nine inches shorter than his actual height. She also did not pick him out of a photo lineup.

"The complainant had a reason to fabricate a story about being sexually assaulted. It would have been for the purpose of preserving a relationship with her then boyfriend," Meschishnick wrote in his decision, adding the woman may have purposefully mis-described the man to police so that he wouldn't be implicated.

The 44-year-old father from Winnipeg stood trial in October. Last week, Meschishnick acquitted him of sexual assault.

He was accused of assaulting the woman twice in his room at the Colonial Square Inn and Suites on Feb. 7, 2015, following a night of drinking at the motel bar.

Court heard the woman does not remember the first incident because she blacked out at the bar. She testified that when she awoke later that morning, she was naked from the waist down and tried blocking the accused with her arms and saying “no” as he performed oral sex and penetrated her against her will.

The accused said there was no sexual contact in the morning. He said he assumed they’d had sex earlier in the night because he saw a used condom, but testified that, like the complainant, he had no memory of it.

Motel surveillance video showed the woman stumbling down the hallway, barely able to walk as the accused held her up. They enter his motel room around 2:45 a.m.; both testified that they do not remember doing so.

The next morning, surveillance video captured the complainant crying as she waited for a cab at the motel’s front desk. The woman said she told the receptionist she’d been raped, but that she wanted to go home and get support before going to the police station and hospital, which she did later that day.

The Crown argued the first encounter would constitute sexual assault because the complainant was too drunk to consent, and the second encounter constituted forced sex.

Justice Meschishnick said some of the accused’s testimony could have been self-serving, including his statement that people who commit sexual assault are “the lowest form of life.” By saying he didn’t remember the first sexual encounter, the accused avoided the responsibility of obtaining consent, the judge wrote.

However, he concluded that in the first scenario, there wasn’t proof beyond a reasonable doubt that the woman was cognitively impaired to the point of making her incapable of consenting to sex.

In the second “he said/she said” scenario, Meschishnick said the complainant’s erroneous description of the accused and her “reluctant corroboration” of his evidence left him with reasonable doubt about her credibility. Only under cross-examination did the woman admit it was possible she told the accused she had a boyfriend, and it was possible he told her to leave during a conversation the next morning.

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