

CANADA / JUDGMENT

R. v. Cyrus

2026 ONCA 2

COURT

Court of Appeal for Ontario

DECIDED

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C70815

Judges

Fairburn, J. Michal; Sossin, Lorne; Monahan, Patrick J.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Cyrus, 2026 ONCA 2[1]

DATE: 20260105

DOCKET: C70815

Fairburn A.C.J.O., Sossin and Monahan JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Adriel Cyrus

Appellant

Carter Martell and K.Y. Tina Yuen, for the appellant

Emily Bala, for the respondent

Heard: December 16, 2025

On appeal from the conviction entered by Justice Anthony F. Leitch of the Ontario Court of Justice on February 20, 2018.

REASONS FOR DECISION

A. Overview [1] The appellant, Adriel Cyrus, appeals his convictions for sexually assaulting two women and uttering a threat against one of them. At trial, the appellant did not dispute that he had sexual intercourse with the complainants, A.B. and S.D., in June and August 2016, respectively. It was also uncontested that both sexual encounters occurred in the stairwell of a public parking garage in Hamilton, Ontario. The only material issue at trial was the complainants' consent.

[2] The first complainant, A.B., who at the time suffered from a heroin addiction, testified that she first met the appellant at Jackson Square Mall in Hamilton and asked to purchase heroin from him. The appellant said that the heroin was in his car in the parking garage, which they walked to together, sharing a marijuana joint that he offered along the way. Once in the stairwell, the appellant asked A.B. if she wanted to have sex with him. When she refused and began moving towards the door, the appellant stood up and said, "it doesn't matter, I'm going to get it anyway". The appellant then physically overpowered her, rolled on top of her, and subjected her to vaginal intercourse while both were partially clothed. After a short while, the appellant got up, put on his pants and left through the door to the parking garage.

[3] The second complainant, S.D., testified that she first met the appellant while waiting for a bus. The appellant approached her to ask for a cigarette. They talked about sports and volunteering, and S.D. agreed to smoke a joint with the appellant in the stairwell to the parking garage. After they smoked the joint, S.D. testified that she received an "uneasy type of glance" from the appellant, who then touched her breast. After S.D. pushed his hand away and said "no", the appellant physically overpowered her and rolled on top of her. The appellant ripped her clothes off before attempting to anally penetrate her. After this attempt, he subjected her to vaginal intercourse for 20 minutes. S.D. testified that, after the assault, the appellant bragged about his performance, saying, "isn't my dick so big and hard?" He then told S.D. that he had recently been in jail, before instructing her to leave the parking

garage. On the street, the appellant caught up to S.D., attempted to kiss her, grabbed her buttocks, and then said he would kill her if she told anyone about the assault.

- [4] The appellant testified that both sexual encounters were consensual. His evidence regarding the details of those encounters also diverged from that of the complainants' in a number of other respects.

B. Decision Below [5] The trial judge began by granting the Crown's application to admit cross-count similar fact evidence. The defence conceded that the evidence met the threshold for admissibility in this case. Notwithstanding the concession, the trial judge conducted his own analysis and concluded that the probative value of the similar fact evidence outweighed its prejudicial effect. With respect to prejudicial effect, the trial judge instructed himself against engaging in impermissible propensity reasoning and found that no moral or reasoning prejudice would result from this evidence in a judge-alone trial.

- [6] In the trial judge's view, the evidence was probative because of the level of similarity between the complainants' respective testimony with respect to the material facts in issue. The trial judge noted that the fact in issue in this case was the same as that in *R. v. Handy*, 2002 SCC 56, [2002] 2 S.C.R. 908 – the consent element of the actus reus of sexual assault. In the trial judge's view, the complainants' respective testimony contained a sufficiently compelling degree of similarity regarding the nature of the assaults to overcome the possibility of coincidence, thus bolstering each complainant's credibility. In other words, the high degree of similarity between the complainants' testimony rebutted the accused's evidence of consensual sexual encounters with the complainants and confirmed each complainant's evidence of being subjected to a non-consensual attack.
- [7] The trial judge found that the similar fact reasoning as between counts allowed him to reject the evidence of the accused on the issue of consent. He instead accepted the complainants' version of events, and, pursuant to the framework in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, found that the Crown had proven all of the charges beyond a reasonable doubt. This was partially due to the inferences arising from the similar fact evidence, and partially because he found the complainants to be credible witnesses whose testimony was not shaken in cross-examination.

C. Issues on Appeal [8] The appellant raises two grounds of appeal:

- (1) Was the trial so tainted by the appearance of unfairness, including as a result of repeated interjections by the trial judge, that a miscarriage of justice occurred?
 - (2) Did the trial judge wrongly apply the complainants' evidence across counts as similar fact evidence?
- [9] We address each ground of appeal below.

1. The trial judge's interventions did not undermine trial fairness [10] Judicial intervention in a trial may be warranted on several grounds, including, but not limited to: clarifying evidence, avoiding irrelevant evidence, curtailing repetitive evidence, ensuring that a witness's response to questions is appropriate and does not unduly impede the progress of the trial, and ensuring fairness and efficiency in the conduct of the trial: *R. v. Walton*, 2025 ONCA 368, 448 C.C.C. (3d) 83, at paras. 19-30.
- [11] In *R. v. Murray*, 2017 ONCA 393, 347 C.C.C. (3d) 529, this court set out the types of judicial intervention in the conduct of a trial that attracts appellate disapproval. These include, but are not limited to:
- (i) questioning an accused or witnesses in such a way as to convey an impression that the judge aligns him or herself with the case for the Crown;
 - (ii) questioning witnesses in such a way as to make it impossible for counsel to present the defence case;
 - (iii) intervening to such an extent in the testimony of the accused that it prevents the accused from telling his or her story; and
 - (iv) inviting the jury to disbelieve the accused or other defence witnesses: *Murray*, at para. 94.
- [12] The appellant takes issue with several of the trial judge's interjections during evidence in this trial, including:
- During the examination-in-chief of A.B., the trial judge interjected to ask A.B. whether there was a window in the stairwell of the parking garage, through which she could see the parking lot, which she answered in the affirmative.
 - During A.B.'s examination-in-chief, he asked her to point out on a map where she crossed the street instead of where the assault occurred, "cause [she was] sure of that, okay?"
 - During the examination-in-chief of the nurse who did S.D.'s sexual assault kit, the trial judge walked the nurse through qualifying her notes when the Crown had already started doing this.
 - During A.B.'s cross-examination, the trial judge corrected defence counsel when he asked A.B. whether the appellant was wearing a sweater to say that the appellant was wearing a hoodie.
 - During A.B.'s cross-examination, the trial judge interjected to say that A.B. had been sitting against the wall of the stairwell, to which A.B. replied, "No, I was standing against the wall".
 - During A.B.'s cross-examination, the trial judge suggested to A.B., and she agreed, that she had leaned towards the door separating the stairwell from the parking garage when the appellant asked her if she wanted to have sex.

- During the examination-in-chief of S.D., the trial judge said to S.D. that the Crown was “going to ask [her] some questions”, and that defence counsel had “a right to ask [her] some questions.”
 - During S.D.’s cross-examination, the trial judge interjected when S.D. said that the appellant told her that he had recently been in jail to ask defence counsel to clarify when this conversation occurred.
- [13] Defence counsel (who is not the appellant’s counsel on appeal) did not object to any of the trial judge’s interjections during the trial.
- [14] The appellant argues that these frequent interventions by the trial judge amounted to an “atmosphere of oppression” for defence counsel and demonstrated that the trial judge was aligned with the Crown.
- [15] The appellant also raises a concern with the trial judge posing additional questions to the appellant. During his cross-examination, the trial judge asked the appellant a number of questions about his criminal record, which was originally put to the appellant by the Crown, including asking whether the appellant would “acknowledge that he was convicted ... of uttering threats”. When the appellant obfuscated, the trial judge said, “well, it’s right on the record we just put to you”.
- [16] Additionally, after the Crown’s cross-examination of the appellant, the trial judge asked a series of questions focusing on the phone number the appellant was alleged to have given to S.D., which was not functional. These questions probed the appellant about whose house he lived in, in whose name the phone service was registered, what the phone number was, why the line had been cut off and precisely how and when he learned it had been cut off.
- [17] The appellant contends that these exchanges amounted to improper cross-examination by the trial judge, demonstrating that he was aligned with the Crown.
- [18] The Crown argues that the interventions do not give rise to a reversible error on the part of the trial judge and do not displace the strong presumption that a trial judge has not interfered unduly in the proceeding: see *Walton*, at para. 53; *Murray*, at paras. 95-97; and *R. v. Stucky*, 2009 ONCA 151, 240 C.C.C. (3d) 141, at paras. 61-72.
- [19] In our view, the majority of the trial judge’s interventions in this case were intended to ensure an effective, fair and efficient trial. For example, the trial judge’s reminder to one of the complainants that defence counsel was entitled to put questions to her, based on the appellant’s narrative of the incidents in question, falls into this category.
- [20] We do not accept the appellant’s argument that the trial judge usurped the role of counsel, or that his interventions demonstrated a lack of neutrality as between the parties. Viewed from the perspective of a reasonable person present throughout the proceeding, none of the trial judge’s interventions give rise to an appearance of unfairness, either individually or cumulatively: see e.g., *Walton*, at para. 24.

- [21] At the same time, it is worthy of a reminder that trial judges engage with a delicate balance when executing on their responsibilities as arbiters of fair and efficient trials, all the while ensuring that they do not unwittingly interfere in litigation strategy or give rise to the appearance of having taken a side.
- [22] While we conclude that the trial judge's interventions did not impact either the reality or appearance of trial fairness in this case, there were many interventions, some of which could have been left alone. In particular, the purpose of the trial judge's extended questioning of the appellant regarding the phone number he allegedly gave to S.D. remains entirely unclear. That said, we are not persuaded by the appellant's suggestion that this line of questioning was prejudicial to the appellant or contributed to any trial unfairness.
- [23] For these reasons, we reject this ground of appeal.
2. The trial judge did not improperly rely on similar fact evidence [24] Similar fact evidence is presumptively inadmissible: *Handy*, at para. 101. As set out in *Handy*, the test for admission of similar fact evidence requires the Crown to rebut this presumption by establishing, on a balance of probabilities, that the probative value of the proposed evidence outweighs its prejudicial effect: at para. 150. The probative value of similar fact evidence can derive from the improbability of the coincidence that more than one person, acting independently, would give such similar accounts: *Handy*, at paras. 76, 99.
- [25] The assessment of similarity is contextual. As this court stated in *R. v. Norris*, 2020 ONCA 847, 398 C.C.C. (3d) 1, at para. 18:

The degree of similarity required in any given case depends upon the issues at work in that case and the purpose for which the evidence is sought to be admitted into the trial or across counts. The cumulative effect of similarities in the way the acts were committed will often push toward admission into the trial or across counts. But there is no categorical approach. Factors to be considered involve: proximity in time, the similarity between the acts, the number of alleged occurrences of similar acts, the circumstances surrounding the acts, any distinctive features involved in the similar acts and whether there exist any intervening events: *Handy*, at para. 82. Dissimilarities must also be considered.

- [26] The trial judge's assessments of probative value, prejudicial effect, and the balance between them are entitled to significant deference on appeal: *Norris*, at paras. 26-27.
- [27] The trial judge set out the similarities between the two assaults at para. 20 of his reasons, which we reproduce below:
- Each complainant was invited to smoke marijuana with the accused picking the place where the attack happened.
 - Each complainant met [the appellant] on the street and asked for or was offered drugs [T]hey were strangers.

- In each case he chose the same isolated place out of public view with no cell phone service ... a landing at the bottom of a stairwell leading to a public underground parking lot.
- In both cases he engaged in small talk before the alleged sexual assault, directed at setting the complainants at ease, in one case telling [A.B.] she was too young and pretty to be on heroin; and in the case of [S.D.] he talked about sports and working for charity.
- In one case he asked for sex and in the other he tested the waters by touching the complainant's breast [There was] no sign of an invitation in either case.
- Both complainants said no by words and actions and the accused immediately pinned them down and sexually assaulted them.
- In both cases he used forced vaginal intercourse, attempting anal intercourse as well with one complainant who screamed in pain because she had a hemorrhoid; he used physical force to overcome each victim.
- In both cases he acted as if there had been no attack, bragging about his sexual prowess to one complainant and casually leaving the other after the attack.
- During the sexual assault both [complainants] describe his demeanour [as] calm, [with him] speaking in a calm low voice.
- In both cases he plied them with drugs to alter their consciousness, ... made them high and relied on that altered state to make them easier to overcome physically.

[28] The trial judge also noted a key dissimilarity with respect to both complainants' accounts of the assaults. With respect to S.D., she testified the appellant spent some time with her after the assault and uttered a threat to kill her if she told anyone, whereas A.B. testified that the appellant left immediately after assaulting her, with no further contact.

[29] After this analysis, the trial judge concluded that the similarities between these accounts were considerable and defied any chance of coincidence. Further, he found the probative value of the similar fact evidence was strong and supported each complainants' account that the accused refused to take no for an answer. It also rebutted the appellant's evidence of a consensual encounter with these two women he had just met in the street. He stated:

The improbability of coincidence is strong. I find it highly unlikely that two women unknown to one another would both consent to sex with the accused, within minutes of first meeting him, on a dirty concrete floor outside a parking garage where they could be discovered in the act at any moment. It is highly likely that they were each attacked by the accused as the complainants have described. [Emphasis in original.]

[30] The appellant argues the trial judge improperly relied on similar fact evidence, both by misapprehending some of the evidence he concluded was similar, and by discounting the significant dissimilarities between the alleged assaults.

- [31] According to the appellant, the only similarities were generic, and insufficient to be the basis for relying on similar fact evidence. The appellant contends that the circumstances in which he met each complainant were different, as was the dynamic of their interactions, as well as the initiation, commission and resolution of the assaults.
- [32] Although defence counsel at trial conceded that the test for admissibility was met, the appellant emphasizes that because propensity evidence is presumptively inadmissible, it remained incumbent upon the trial judge to ensure there was a proper basis for its admission, which he failed to do.
- [33] While we agree the trial judge had to ensure a proper basis for the admission of the similar fact evidence, we do not agree with the appellant that he failed to do so.
- [34] The trial judge properly instructed himself on the test for admitting similar fact evidence from Handy, and correctly observed that similar fact evidence derives its strength from the improbability of coincidence. His conclusions with respect to the similarities between the assaults set out above, and the improbability of coincidence in relation to those similarities, were open to him and reveal no error.
- [35] Further, the trial judge expressly found that even without the benefit of comparisons between the two assaults, he was left with no reasonable doubt that the appellant was guilty of each assault. He stated, at para. 30:

The complainants' evidence, along with the strong similar fact inferences I make from it, is sufficient to reject the accused's evidence. I find as well that his evidence is improbable without comparison to their evidence. The idea that 2 women would consent to sex with him minutes after meeting him, on a dirty concrete floor, in a semi-public outdoor setting defies common sense. [Emphasis added.]

- [36] In these circumstances, we reject this ground of appeal as well.

D. Disposition [37] For these reasons, the appeal is dismissed.

"Fairburn A.C.J.O."

"L. Sossin J.A."

"P. Monahan J.A."

- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.

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