
CANADA / JUDGMENT

R. v. Edwards

2003 BCCA 47

COURT

British Columbia Court of Appeal

DECIDED

27 January 2003

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2003BCCA0047

Citation:

R. v. Edwards

Date: 20030127

2003 BCCA 47

Docket:

CA028247

Registry: Vancouver

COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

REGINA

RESPONDENT

AND:

OBIYOMI EDSSEL EDWARDS

APPELLANT

Before:

The Honourable Chief Justice Finch

The Honourable Madam Justice Newbury

The Honourable Madam Justice Saunders

D. St. Pierre

Counsel for the Appellant

W. Rubin

Counsel for the Respondent Crown

Place and Date of Hearing:

Vancouver, British Columbia

October 2, 2002

Place and Date of Judgment:

Vancouver, British Columbia

January 27, 2003

AN ORDER HAS BEEN MADE UNDER SECTION 486(3) OF THE CRIMINAL CODE DIRECTING THAT THE IDENTITY OF THE COMPLAINANT AND ANY INFORMATION THAT COULD DISCLOSE THE IDENTITY OF THE COMPLAINANT SHALL NOT BE PUBLISHED IN ANY DOCUMENT OR BROADCAST IN ANY WAY

Written Reasons by:

The Honourable Madam Justice Saunders

Concurred in by:

The Honourable Chief Justice Finch

The Honourable Madam Justice Newbury

Reasons for Judgment of the Honourable Madam Justice Saunders:

- [1] Mr. Edwards appeals from his conviction of one count of sexual exploitation contrary to s. 153 of the Criminal Code. R.S.C., 1985, c. C-46 (the "Code"). Section 153 of the Code prohibits sexual activity between persons, whether or not consensual, where one person is in a position of trust or authority to the other or there is a relationship of dependency:
153. (1) Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who
- (a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person, or
 - (b) for a sexual purpose, invites, counsels or incites a young person to touch directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

(2) In this section, "young person" means a person fourteen years of age or more but under the age of eighteen years.

[2] It is acknowledged by Mr. Edwards that the person Mr. Edwards was convicted of exploiting is a young person within the meaning of s. 153(2) at the relevant times. He also acknowledges that the touching between himself and that person fits within the conduct described in s. 153(1)(a). As a position of authority or relationship of dependency was not alleged, the sole issue at trial was whether Mr. Edwards was in a position of trust towards her.

[3] The charges arise from a sexual relationship between Mr. Edwards, then 27 years old, with a 14 year old female member of a dance class he taught at Burnaby South High School under the auspices of Burnaby Parks and Recreation, a branch of the municipal government.

[4] The learned trial judge found as fact, in convicting Mr. Edwards:

In the case at Bar the accused is hired by the Parks and Recreation Department of the City of Burnaby to teach hip-hop dancing to a group of teenagers at the Burnaby South High School. A City department sponsors these classes. The City holds him out as being their representative to teach this class. I draw the inference that this is one of the reasons the complainant's parents allow her to take the course. A quasi-governmental department sponsors the course. The parents of the complainant entrust their 14-year-old daughter to the care of the City's agent, the accused, from 5:00 p.m. to 6:30 p.m. one day a week. The fall session is an all-girl class. The spring session does have one boy.

At the time the accused is 27 years of age she is 14. He is good-looking, an experienced dance teacher. He has taught young females in a similar situation to this case. He is well-aware how vulnerable girls of this age are. He is well-aware of the standard of conduct that is expected of him by his employer.

Almost from the very beginning he begins to focus his attention on the complainant. He talks to her more than he does the others and stands closer to her than he does the others when he is talking to her. He walks out with her and her friend A. at the end of the class to wait for the complainant's parents to pick her up. Almost at the commencement of the classes in the fall of 1999 he tells the complainant she is cool. He tells her that she can talk to him about her problems with her father. This is a course of conduct, which he knows will ingratiate him with the complainant and is totally inappropriate which he knows from his experience in the spring of 1998. He takes her out to lunch in his car. He gives her his cell phone number. He calls her almost on a daily basis at home and if she does not answer he gives a false name to her parents. The complainant tells the parents the person calling is the boyfriend of her best friend. The accused subsequently uses his car to entertain the complainant. He begins to buy liquor for the complainant and her friend. He tells the complainant that he is separated from his wife, which is

false. He invites the complainant to travel with him to Toronto. He tells the complainant to tell her parents that he is taking a group of teenagers to make a video. This is false. In short, the accused enters into a course of conduct he knows is likely to seduce the complainant. The accused's conduct results in the complainant consenting to sexual intercourse.

He concluded:

The intercourse takes place on various occasions over a period of four or five months. The accused's conduct constitutes a breach of trust within the meaning of section 153(1) of the Criminal Code.

[5] Mr. Edwards contends on appeal:

1. that the judge erred in making factual findings that had no basis in evidence. Further, he says those errors are such that the verdict cannot be sustained, that is, that the verdict is unreasonable.
2. that even on the facts as found the learned trial judge erred in finding that Mr. Edwards was in a position of trust with respect to E.; and

Issue One: Errors of Fact

[6] Mr. Edwards contends that four conclusions of fact are in error:

1. he entered into a course of conduct he knew was likely to seduce the complainant;
2. he arranged to contact her at home by using a false name so as to deceive her parents as to who was calling;
3. he told the complainant he was married but separated from his wife, which was false; and
4. he could infer that the City holding him out as their representative is one of the reasons the complainant's parents allowed her to take the course.

[7] In particular, Mr. Edwards contends that there is no evidence that he seduced the young person, that the evidence established she came up with the idea of Mr. Edwards leaving a false name, that she testified that she knew Mr. Edwards was not separated from his wife and that the inference is not supported by the evidence.

[8] I would not give effect to this ground of appeal. In my view the evidence was capable of supporting the impugned findings of fact. In particular the evidence of Mr. Edwards' conduct towards the young person, including the evidence of her friend about his initial flattering overtures to the young person and the progress of the relationship, supported the characterization of the behaviour as seduction. And while the young person testified that she consented to the sexual relationship, consent does not negate seduction, as demonstrated by volumes of literature. Nor is the conclusion that Mr. Edwards arranged to contact the young person by using a false name undermined by the fact that the idea came from the young person. The evidence was strong that Mr. Edwards acted upon her

suggestion and utilized the false name ploy when phoning her home, thus deceiving her parents. Likewise the conclusion that Mr. Edwards falsely told the young person he was separated from his wife is not undermined by the fact she did not believe him. Lastly, in my view, the inference complained of was, on the evidence, a fair inference for a trier of fact, having heard the evidence of the mother concerning parental supervision of their daughter by means of careful rules of behaviour and their habit of transporting her to the dance class.

Issue Two: Position of Trust

[9] The proposition of the appellant is two-fold. First, he contends that the learned trial judge erred in law in the test he applied in finding guilt, as shown by the conclusion that Mr. Edwards was in breach of trust rather than a conclusion that Mr. Edwards was in a position of trust. Second, he says that the circumstances do not support a conclusion that Mr. Edwards was in a position of trust.

[10] The leading authority on s. 153 of the Criminal Code is *R. v. Audet*, [1996] 2 S.C.R. 171 (S.C.C.), referred to by the trial judge, and by this Court in *R. v. G.G.*, 2001 BCCA 462, [2001] B.C.J. No. 1483. In his majority opinion in *Audet*, La Forest J. referred in para. 33 to the reasons of Blair J. in *R. v. P.S.*, [1993] O.J. No. 704 (Q.L.):

... Finally, Blair J., also in *P.S.*, wrote the following about the term "position of trust":

One needs to keep in mind that what is in question is not the specialized concept of the law of equity, called a "trust". What is in question is a broader social or societal relationship between two people, an adult and a young person. "Trust", according to the Concise Oxford Dictionary (8th ed.), is simply "a firm belief in the reliability or truth or strength of a person".

Where the nature of the relationship between an adult and a young person is such that it creates an opportunity for all of the persuasive and influencing factors which adults hold over children and young persons to come into play, and the child or young person is particularly vulnerable to the sway of these factors, the adult is in a position where those concepts of reliability and truth and strength are put to the test. Taken together, all of these factors combine to create a "position of trust" towards the young person. [Emphasis added.]

[11] Mr. Justice La Forest then held:

[34] In the absence of statutory definitions, the process of interpretation must begin with a consideration of the ordinary meaning of the words used by Parliament. Le Grand Robert de la langue française (2nd ed. 1986) defines the French word "autorité" as a [Translation] "[r]ight to command, power (recognized or unrecognized) to enforce obedience", which is, at least in substance, quite similar to the definition proposed by Proulx J.A. It adds that another meaning of "autorité" is [Translation] "[s]uperiority of merit or seductiveness that compels unconstrained obedience, respect, trust". The Oxford English Dictionary (2nd ed. 1989) suggests similar definitions for the English word "authority": "[p]ower or right to enforce obedience" and "[p]ower to influence the conduct and actions of others". I am in complete

agreement with Proulx J.A. that the meaning of the term must not be restricted to cases in which the relationship of authority stems from a role of the accused but must extend to any relationship in which the accused actually exercises such a power. As can be seen from these definitions, the ordinary meaning of the word "authority" or "autorité" does not permit so restrictive an interpretation. Furthermore, the comments of Proulx J.A. are entirely appropriate in view of the express intention of Parliament, which, in declining to include in s. 153(1) a list of the cases in which a person must refrain from sexual contact with a young person, intended to direct the analysis to the nature of the relationship between the young person and the accused rather than to their status in relation to each other. I will return to this.

- [35] The French word "confiance", according to Le Grand Robert, is a belief in or firm expectation of something, or faith in someone, and the confidence that results therefrom. In English, the word "trust" can have various meanings, especially in a legal context. However, considering that Parliament used the word "confiance" in the French version, I doubt that the word "trust" as used in s. 153(1) refers to the concept as defined in equity. I therefore agree with the reservations expressed by Blair J. "Trust" must instead be interpreted in accordance with its primary meaning: "[c]onfidence in or reliance on some quality or attribute of a person or thing, or the truth of a statement". The word "confidence" is defined as follows: "[t]he mental attitude of trusting in or relying on a person or thing; firm trust, reliance, faith"
- [36] I would add that the definition of the words used by Parliament, like the determination in each case of the nature of the relationship between the young person and the accused, must take into account the purpose and objective pursued by Parliament of protecting the interests of young persons who, due to the nature of their relationships with certain persons, are in a position of vulnerability and weakness in relation to those persons.
- [37] Even in light of these definitions, the concept of a "position of trust" is difficult, perhaps even more than that of a "position of authority", to define in the abstract in the absence of a factual context. . . .
- [38] It will be up to the trial judge to determine, on the basis of all the factual circumstances relevant to the characterization of the relationship between a young person and an accused, whether the accused was in a position of trust or authority towards the young person or whether the young person was in a relationship of dependency with the accused at the time of the alleged offence. One of the difficulties that will undoubtedly arise in some cases concerns the determination of the times when the "position" or "relationship" in question begins and ends. It would be inappropriate to try to set out an exhaustive list of the factors to be considered by the trier of fact. The age difference between the accused and the young person, the evolution of their relationship, and above all the status of the accused in relation to the young person will of course be relevant in many cases.

- [12] Mr. Edwards contends that the learned trial judge's reference to "a breach of trust within the meaning of s. 153(l) of the Criminal Code" demonstrates that an erroneous assessment of Mr. Edwards' conduct against the standards of the law of equity. I do not agree. While the words "breach of trust" are not found in the Criminal Code, the trial judge correctly referred to s. 153 of the Code and *R. v. Audet*, and he accurately set out the issue earlier in his reasons:

What is the nature of the relationship between the accused and the complainant?" Is it one which constitutes a position of trust, and/or authority, and/or dependency within the meaning of s. 153(1) of the Criminal Code?

In discussing this element of the offence, the trial judge referred to aspects of the evidence that were relevant to the existence of a position of trust, particularly that Mr. Edwards was an instructor of the young person, that he was significantly older than she was, that Mr. Edwards was employed by Burnaby Parks and Recreation, that the venue of the class was a secondary school, that he appeared to single her out in class and invited her to confide in him concerning problems she may have, and that the relationship developed while he was in the position of her dance instructor.

- [13] The term 'breach of trust' used by the trial judge is not, I consider, a term of art, nor was it used by him in that fashion as the trial judge qualified the phrase by adding "within the meaning of s. 153(l) of the Criminal Code".
- [14] The second submission is that the relationship of hip-hop dance instructor to the young person was not, in the circumstances, capable of putting Mr. Edwards in a position of trust. In support of this submission we were referred to evidence of the young person that she dismissed Mr. Edwards' protestations of love, that she did not believe him when he said he was separated from his wife, that as a dance instructor he had no power over her except to instruct her on dance movements, that the relationship developed in a 'natural way', that her participation in the relationship was consensual and that she was free to leave without penalty. Mr. Edwards compared his role with the young person to that of an aerobics instructor at a fitness center.
- [15] Whether there was a position of trust is a question of fact: *R. v. R.H.J.* (1993), 86 C.C.C. (3d) 354 (B.C.C.A.), leave to appeal refused, [1994] S.C.C.A. No. 45. In *Audet*, the relationship of teacher-student was capable of creating a position of trust. However, in *R. v. Weston*, [1997] A.J. No. 263 (Q.B.), a case in which the complainant was not a regular member of the team coached by the accused and the accused was not coaching the complainant at the time of the incident, Sanderson J. held that the accused was not in a position of trust.

- [16] In my view, the facts found by the trial judge are capable of demonstrating a position of trust. Of particular significance is the sponsor of the instruction, a branch of local government; the venue of the class, a school; the mix of dance students, teenagers; and Mr. Edwards' role, that of a significantly older person paid by Burnaby Parks and Recreation to instruct the teenage attendees.
- [17] In my view, the trial judge's conclusion as to Mr. Edwards' relationship to the young person is one which a reasonable trier of fact, on the evidence, could reach. I would not interfere with the verdict on that basis.

Conclusion

[18] It follows from these reasons that I would dismiss the appeal.

"The Honourable Madam Justice Saunders"

I AGREE:

"The Honourable Chief Justice Finch"

I AGREE:

"The Honourable Madam Justice Newbury"

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Prepared on 25 October 2026 · Esheria