

CANADA / JUDGMENT

R. v. Elk

2025 BCSC 2042

COURT

Supreme Court of British Columbia

DECIDED

19 August 2025

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2025 BCSC 2042 R. v. Elk

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Elk,

2025 BCSC 2042

Date: 20250819

Docket: 188787

Registry: Victoria

Rex

v.

Michael Darren Elk, Isaac Aaron Michael Hildebrand

and Jordan Reginald White

Before: The Honourable Justice LeBlanc

Oral Reasons for Judgment

Counsel for the Crown:

K. Grant

Counsel for the Accused, Michael Elk:

T. McLean

Counsel for the Accused, Isaac Hildebrand

B. Movassaghi

Place and Date of Trial:

Victoria, B.C.

August 5-7, 2025

Place and Date of Judgment:

Victoria, B.C.

August 19, 2025

Introduction

[1] THE COURT: Michael Elk and Aaron Hildebrand are charged along with Jordan White of the following:

Count 1

Michael Darren Phillip Elk, Isaac Aaron Michael Hildebrand and Jordan Reginald White on or about the 29th day of June, 2024, at or near Saanich, in the Province of British Columbia, did commit aggregated assault of Devon Ruest, contrary to Section 268(2) of the Criminal Code.

[2] Prior to trial, Mr. White plead guilty to Count 1.

[3] Mr. Elk and Mr. Hildebrand have plead not guilty to Count 1.

[4] The Crown called three witnesses: a corrections officer and two investigating officers.

[5] Mr. Ruest has chosen not to give a statement regarding the June 29, 2024 incident and did not testify.

[6] Mr. Elk and Mr. Hildebrand elected not to testify or present any evidence, which is their right.

[7] The position of the Crown is that Mr. Elk and Mr. Hildebrand either directly committed the assault on Mr. Ruest or aided and/or abetted Mr. White in committing the assault. The Crown submits that it is not required to separate the different forms of participation and relies on s. 21(1)(b) of the Criminal Code.

[8] The Crown's case is circumstantial relying primarily on video footage of individuals moving around the Juliet Unit of the Vancouver Island Regional Correctional Centre before, during and after the assault.

- [9] Mr. Elk and Mr. Hildebrand acknowledge that Mr. Ruest was assaulted on June 29, 2024; however, argue that mere presence during the assault does not amount to aiding or abetting. They further argue that the Crown has failed to prove beyond a reasonable doubt that they encouraged Mr. White or did anything to facilitate the commission of the offence. Counsel for Mr. Elk and Mr. Hildebrand have provided theories they suggest are equally plausible and are consistent with a finding of innocence.
- [10] I will first address the legal principles applicable to my decision followed by a review of the facts the Crown has established. I will conclude with my analysis of the facts to the applicable legal principles to determine if the Crown has made out its case beyond a reasonable doubt.

Legal Principles

Presumption of Innocence and the Burden of Proof

- [11] It is a fundamental principle of criminal law that an accused is presumed to be innocent, unless and until the Crown proves their guilt beyond a reasonable doubt. The presumption of innocence is only defeated if and when the Crown proves that an accused is guilty of the offence charged by proving every essential element of those offences beyond a reasonable doubt. That is a high threshold, and the burden rests solely on the Crown. In order for there to be a conviction, the Crown must establish that the evidence as a whole proves guilt beyond a reasonable doubt.
- [12] Reasonable doubt is not imaginary, far-fetched, or frivolous and is not a doubt based on sympathy for, or prejudice against, anyone involved in the trial. It is a doubt based on reason and common sense, which logically arises from the evidence, or lack of evidence.
- [13] While a reasonable doubt does not require proof to an absolute certainty, or proof beyond any doubt, more is required than proof that the accused is "probably" guilty: *R. v. Lifchus*, [1997] 3 S.C.R. 320 at para. 36. The Crown's onus to prove the guilt of an accused beyond a reasonable doubt "is inextricably linked to the presumption of innocence": *Lifchus* at para. 13.
- [14] Proof beyond a reasonable doubt does not apply to individual pieces of evidence; rather, it applies to the totality of the evidence: *R v. Morin*, [1988] 2 S.C.R. 345 at paras. 36-38, 40.
- [15] Although evidence must be assessed as a whole and cumulatively, the frailties of each aspect of the evidence does not gain strength when considered together: *R. v. Dodd*, 2015 ONCA 286 at para. 84.

Circumstantial Evidence and the Requirement for Proof Beyond a Reasonable Doubt

- [16] Much of the evidence in this case is circumstantial.

- [17] The Crown can satisfy its onus of proof beyond a reasonable doubt by relying on direct evidence or circumstantial evidence or both. Circumstantial evidence is "evidence that tends to prove a factual matter by proving other events or circumstances from which the occurrence of the matter at issue can be reasonably inferred": R v. Cinous, 2002 SCC 29 at para. 89.
- [18] Circumstantial evidence is "any item of evidence, testimonial or real, other than the testimony of an eyewitness to a material fact. It is any fact from which the trier of fact may infer the existence of a fact in issue". With circumstantial evidence, "there is, by definition, an inferential gap between the evidence and the matter to be established": R. v. Arcuri, 2001 SCC 54 at para. 23.
- [19] The danger that arises in the context of circumstantial evidence is that the trier of fact will bridge the gap in the evidence by jumping from the circumstantial evidence, to unwarranted conclusions: R. v. Villaroman, 2016 SCC 33 at para. 27.
- [20] Inferences must be reasonably and logically drawn from facts established by the evidence. Inferences which do not flow reasonably and logically from established facts are merely conjecture and speculation which must be avoided: R. v. Fraser, 2016 BCCA 89 at para. 73.
- [21] However, inferences consistent with innocence do not have to arise from proven facts. A theory alternative to guilt is not "speculative" simply because there is no affirmative evidence supporting the theory. A "theory alternative to guilt" can arise from a lack of evidence: Villaroman at para. 35. As observed in R. v. Khela, 2009 SCC 4 at para. 58, the defence does not have to "prove" certain facts in order for the jury to draw an inference of innocence from them". To make this a requirement for finding alternative rational inferences would be to reverse the burden of proof.
- [22] The court must consider the range of reasonable inferences that can be drawn from the circumstantial evidence and if there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt and the accused must be found not guilty: Villaroman at para. 35.
- [23] The basic question is whether the circumstantial evidence, "viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty" and the alternate inference other than guilt must be reasonable, not just possible: Villaroman at para. 42.
- [24] If there are reasonable inferences other than guilt, that can be drawn from the circumstantial evidence or the absence of evidence, assessed logically and in light of human experience and common sense, then the Crown's evidence does not meet the standard of proof beyond a reasonable doubt: Villaroman at paras. 35-36, 38.

Aggravated Assault

- [25] The relevant provision of the Criminal Code regarding aggravated assault is:

Aggravated Assault

268 (1) Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.

[26] An aggravated assault is an assault that wounds, maims or disfigures the complainant, or endangers his or her life: s. 268(1) of the Criminal Code. In addition to the actus reus and mens rea components of the underlying assault, the Crown must prove an additional mens rea component; objective foresight of bodily harm: *R. v. Cuadra*, 1998 CanLII 15001 (BC CA) at para. 20. In the jurisprudence, this requirement has sometimes been framed as an objective foresight of risk of bodily harm, but it means the same thing: *R. v. Brodie* (1995), 60 B.C.A.C. 153 at para. 4. It is not necessary for there be intent to wound or maim or disfigure: *R. v. Godin*, [1994] 2 S.C.R. 484. An objective foresight of the specific wounds is not the test; rather, the test is simply an objective foresight of bodily harm: *Cuadra* at para. 21.

Provisions of s. 21 of the Criminal Code

[27] The Crown submits that the indictment may charge all who are present and abet the act as principles of the act. The Crown submits that if the evidence does not establish Mr. Elk and Mr. Hildebrand personally caused the injury to Mr. Ruest, the evidence establishes that the two aided and abetted Mr. White in the assault.

[28] Section 21(1) of the Criminal Code provides:

21(1) Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit it, or
- (c) abets any person in committing it.

[29] As summarized in *R. v. Thatcher*, [1987] 1 S.C.R. 652 at para. 68, s. 21(1) of the Code is designed to make the difference between aiding and abetting and personally committing an offence legally irrelevant. It provides that either mode of committing an offence is equally culpable and, indeed, that whether a person personally commits or only aids and abets, he is guilty of that offence.

[30] The actus reus of aiding or abetting is "doing (or, in some circumstances, omitting to do) something that assists or encourages the perpetrator to commit the offence." Aiding means "to assist or help the actor", while abetting includes encouraging, instigating, promoting or procuring the crime to be committed": *Briscoe* at para. 14.

[31] The mens rea requirement for aiding, reflected by the word "purpose" within s. 21(1)(b), is made up of two components: intent and knowledge: *Briscoe* at para. 16.

- [32] To satisfy the first component, intent, the accused must have intended to assist the principal in the commission of the offence. "Purpose" is not to be conflated with "desire", the latter of which is not a component of the mens rea requirement for aiding or abetting: Briscoe at para. 16. Similarly, the aider need not have the same mens rea as the principal offender or share the principal offender's intention to commit the offence. Rather, they only need be aware of the principal offender's intention; "[i]t is sufficient that [the aider], armed with knowledge of the perpetrator's intention to commit the crime, acts with the intention of assisting the perpetrator in its commission": Briscoe at para. 18.
- [33] To satisfy the second component, knowledge, the aider must know the perpetrator intends to commit the crime, not precisely how it will be committed: Briscoe at para. 17.

The Facts

- [34] This case is not fact-intensive. The primary piece of evidence is the video footage from the Juliet Unit of the Vancouver Island Regional Correctional Centre of June 29, 2024, along with the evidence of Nicholas Kala, the corrections officer on duty in the Juliet Unit on the evening of June 29, 2024.
- [35] Two members of the Saanich Police Department Major Crimes Unit also testified concerning their investigation in the days following the assault.
- [36] No forensic evidence was before the court.

Video Footage

- [37] The video footage includes the downstairs common area of the Juliet Unit and the hallway of the second floor of the Juliet Unit containing the cells. The video footage does not include audio.
- [38] The assault of Mr. Ruest took place in Cell J27 and there is no video footage of what occurred within the cell.
- [39] At 9:25:25, the video of the common area shows Mr. White giving something to Mr. Ruest. The exchange is unremarkable.
- [40] At 9:25:50, Mr. Ruest goes upstairs and into his Cell J27. At 9:27:08 two unidentified individuals go upstairs and the video shows them pacing up and down the hallway talking with one another, eating popcorn. At 9:27:42 Mr. White goes upstairs. At 9:27:46, Mr. Hildebrand goes upstairs and at 9:28:02 Mr. Elk goes upstairs. At 9:28:28, Mr. White and Mr. Hildebrand enter Cell J27 and at 9:28:42 Mr. Elk enters Cell J27. One of the two men pacing the hallway partially shuts the door to Cell J27. The video shows Corrections Officer Kala running up the stairs at 9:28:42.

- [41] At 9:28:50, the video shows Mr. White, followed by Mr. Hildebrand, followed by Mr. Elk exiting Cell J27. Mr. White is running, while Mr. Hildebrand and Mr. Elk are walking out. At 9:28:59, the video shows Mr. White putting something in the back of his pants and throwing a white object in a garbage can.
- [42] Prior to the men going upstairs the video of the common area shows Mr. White and Mr. Elk engaged in some conversation and Mr. Elk holding a black object in his hand. There is no audio of the conversation.

Evidence of Crown's Witnesses

- [43] I found the Crown's witnesses to be reliable and credible. I have summarized the evidence I have relied upon below.
- [44] Immediately before Corrections Officer Kala is seen running up the stairs, he heard a loud thump that was consistent with someone being hit skin on skin and he believed there to be an assault in progress.
- [45] After the assault, two items were recovered from Cell J27. Those items are depicted in Exhibit 3 and the smaller item shown on page 4 is consistent with the black object seen in Mr. Elk's hand earlier. The other item is a piece of a crutch. Corrections Officer Kala testified that the items were located near Mr. Ruest when he entered Cell J27. Neither item had blood on it.
- [46] Mr. Ruest sustained serious injuries including a large laceration on the left side of his head starting at the top of his head and continuing to his mouth. The injury is depicted in Exhibit 2, photograph 4 and Exhibit 6, photograph 1. When Corrections Officer Kala entered Cell J27, Mr. Ruest was lying on the ground in a pool of blood around his head and torso.
- [47] The garbage from the common area from the day of the assault was seized and in it was a brown paper bag containing a metal item described as a piece of a crutch as depicted on page 7 of Exhibit 8.
- [48] Pursuant to a warrant, a search was conducted of Mr. White and Mr. Elk's Cell J17 and Mr. Hildebrand's Cell J15. A set of crutches was located under the bed in Cell J15. The Crown did not adduce evidence matching the crutch piece found in Cell J27 and the garbage with the crutches located in Mr. Hildebrand's Cell J15.
- [49] Corrections Officer Kala testified that neither Mr. Elk nor Mr. Hildebrand had his permission to enter Cell J27, which is required prior to entering another inmate's cell. He also testified that he was not aware of any prior ill-will between Mr. Ruest and Mr. White, Mr. Elk or Mr. Hildebrand.

Analysis

- [50] The Crown acknowledges that it cannot prove what occurred in Cell J27 during the assault. It argues that Mr. Elk and Mr. Hildebrand encouraged and facilitated the assault and encourages me to take a wholistic approach to the evidence to determine that there was no other reasonable explanation for their entering Cell J27.
- [51] The parties agree that the Crown must prove all of the following elements (R. v. Barnes, 2018 BCSC 1554 at para. 28):
- Did Mr. Elk or Mr. Hildebrand assist or help Mr. White to commit the offence?
 - Did Mr. Elk or Mr. Hildebrand know that Mr. White was going to commit an assault and would a reasonable person have foreseen the risk of non-trivial bodily harm?
 - Did Mr. Elk or Mr. Hildebrand intend to assist or encourage Mr. White with the commission of the assault of Mr. Ruest?

Did Mr. Elk or Mr. Hildebrand assist Mr. White?

Circumstances Involving Mr. Elk

- [52] Mr. Elk is observed having a conversation with Mr. White prior to the assault. At this time, he is holding a black item in his hand with a cog shape on one end. The nature of the conversation is unknown.
- [53] Mr. Elk is observed entering Cell J27 behind Mr. White and Mr. Hildebrand.
- [54] Mr. Elk did not shut the door to Cell J27.
- [55] Following the assault, the same black item is recovered from Cell J27. The black item did not have blood on it and the injuries sustained to Mr. Ruest's face were not consistent with the black item held by Mr. Elk.
- [56] Mr. Elk was not observed as having blood on him.

Circumstances Involving Mr. Hildebrand

- [57] Mr. Hildebrand is observed entering Cell J27 behind Mr. White.
- [58] Mr. Hildebrand did not shut the door to Cell J27 and he was not observed as having blood on him following the assault.
- [59] A search of Mr. Hildebrand's cell recovered a set of crutches under the bed; however, the Crown was unable to establish that the crutch pieces found in Cell J27 or in the garbage were pieces belonging to the set that was recovered in Mr. Hildebrand's cell.

Finding

- [60] Looking at the whole of the evidence, I am unable to conclude that Mr. Elk or Mr. Hildebrand assisted or otherwise helped Mr. White with the assault.
- [61] I am to consider the range of reasonable inferences that can be drawn from the evidence and if there are reasonable inferences other than guilt, the Crown has failed to meet its burden.
- [62] There are reasonable inferences that can be drawn from the evidence that could lead to a finding of innocence. Based on the evidence before me, it is just as reasonable to infer that Mr. Elk and Mr. Hildebrand were entering Cell J27 unknown as to what was going to transpire.
- [63] Other than being in the presence of the assault, the Crown has not established how Mr. Elk and Mr. Hildebrand assisted Mr. White in the aggravated assault.
- [64] The Crown must establish all three elements and has failed to do so. I would have also found that the Crown failed to establish that Mr. Elk or Mr. Hildebrand knew or could have reasonably foreseen that Mr. White was going to harm Mr. Ruest.

Conclusion

- [65] I conclude that the Crown has not proved its case beyond a reasonable doubt.
- [66] Mr. Elk, please stand if you are able. I find you not guilty on Count 1.
- [67] Mr. Hildebrand, please stand if you are able. I find you not guilty on Count 1.

"Justice LeBlanc"

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