

CANADA / JUDGMENT

R. v. Giwa

2025 ONCA 714

COURT

Court of Appeal for Ontario

DECIDED

20 October 2025

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R. v. Giwa Collection Decisions of the Court of Appeal Date 2025-10-20 Neutral citation 2025 ONCA 714 Docket numbers COA-24-CR-0595 Judges Gillese, Eileen E.; Zarnett, Benjamin; Thorburn, Julie Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Giwa, 2025 ONCA 714[1] DATE: 20251020 DOCKET: COA-24-CR-0595 Gillese, Zarnett and Thorburn JJ.A. BETWEEN His Majesty the King Respondent and Shakiru Giwa Appellant Shakiru Giwa, acting in person Megan Stephens, appearing as duty counsel Kevin Rawluk, for the respondent Heard and rendered orally: October 9, 2025 On appeal from the conviction entered by Justice Stephen Darroch of the Ontario Court of Justice, on December 1, 2023, and from the sentence imposed on June 7, 2024. REASONS FOR DECISION Overview

- [1] Mr. Giwa was convicted of sexual assault, for which he was sentenced to two years and six months' imprisonment. He appeals against both conviction and sentence.
- [2] Mr. Giwa prepared voluminous materials to support his claim that the trial judge's credibility assessments below were flawed. The court received and reviewed those materials in advance of Mr. Giwa's submissions at the oral hearing of the appeal.
- [3] At the outset of the oral hearing, duty counsel advised that she was unable to assist the court with this matter.
- [4] At the conclusion of the oral hearing, the court advised the parties that the appeal was dismissed and gave a summary of the oral reasons set out below.

Analysis

- [5] Mr. Giwa's conviction appeal rests on his contention that the trial judge erred in his credibility findings, both his adverse findings in respect of Mr. Giwa's credibility and his positive assessment of the complainant's credibility. The complaints that Mr. Giwa makes before this court are essentially the same as those that were made at trial. In his reasons, the trial judge thoroughly addressed all of those matters.

- [6] Mr. Giwa's main submission on the conviction appeal focused on the way the trial judge treated a text message he sent the complainant after the incident in which he said he was "sorry" several times. He maintains that it is customary in his culture to use the word "sorry", so the trial judge erred in taking the text message to be an apology.
- [7] In assessing Mr. Giwa's testimony at trial, the trial judge found that it was not reliable and described it as "evasive, inconsistent, self-serving, and continuously evolving". The trial judge found the appellant provided "nonsensical" explanations and was unable to explain the inconsistencies in his testimony, including his ever-changing testimony throughout cross-examination. The trial judge pointed out that Mr. Giwa refused to accept basic propositions put to him on cross-examination. Further, the trial judge found that the apology text message the appellant sent to the complainant effectively amounted to an admission, was highly corroborative of the complainant's account of the incident, and demonstrated the appellant's awareness of the complainant's lack of consent. On the findings of the trial judge, in the text message, the appellant "outright and directly apologized" for holding the complainant down while she was saying that it hurt and was attempting to move away. In any event, the trial judge stated that he would have been satisfied beyond a reasonable doubt of the appellant's guilt without the text.
- [8] We acknowledge Mr. Giwa's submission that his use of the word "sorry" was not an apology for his actions but we reject that submission. There is no basis for appellate interference with the trial judge's reading of the text message or with his adverse assessment of Mr. Giwa's credibility.
- [9] In terms of the trial judge's assessment of the complainant's credibility, again we see no basis for appellate intervention. The trial judge found her account to be detailed and consistent, noting that her conduct towards the appellant after the incident was consistent with her version. Further, as the trial judge noted, the appellant's text message of apology was corroborative of her version of events.
- [10] Credibility determinations are within the unique purview of the trial judge who saw and heard the witnesses. The trial judge applied settled legal principles to factual findings that were fully open to him. There is no basis for appellate intervention.
- [11] While leave to appeal sentence is granted, we dismiss that appeal as well. We have been pointed to no error in the trial judge's reasons and, in any event, it cannot be said that the sentence is demonstrably unfit. For sexual assaults of this sort, the range is three to five years, as the trial judge noted. The trial judge explained that he imposed a sentence lower than the range to reflect the mitigating circumstances in this case and the collateral consequences to the appellant.

Disposition

- [12] Accordingly, the appeal against conviction is dismissed, leave to appeal sentence is granted, and the sentence appeal is dismissed. “E.E. Gillese J.A.” “B. Zarnett J.A.” “Thorburn 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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