

CANADA / JUDGMENT

R. v. Hawco

2024 BCSC 1307

COURT

Supreme Court of British Columbia

DECIDED

2 July 2024

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2024 BCSC 1307 R. v. Hawco

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hawco,

2024 BCSC 1307

Date: 20240702

Docket: 95767-2

Registry: Kelowna

Rex

v.

Joshua Wayne Hawco

Restriction on publication: Pursuant to s. 486.4(1) of the C.C.C.

Corrected Judgment: The text of the judgment has been

redacted at paragraph [8] on July 23, 2024

Before: The Honourable Mr. Justice G.P. Weatherill

Oral Reasons for Sentence

Counsel for the Crown:

J. Hatherly

Counsel for the Accused:

S. Tessmer

Place and Date of Trial/Hearing:

Kelowna, B.C.

May 27, 2024

Place and Date of Judgment:

Kelowna, B.C.

July 2, 2024

[1] THE COURT: These are my reasons for sentence.

Introduction

[2] On November 5, 2022, a jury convicted Mr. Hawco of one count of sexually assaulting the complainant, K.T., on December 24, 2020, contrary to s. 271 of the Criminal Code, R.S.C. 1985, c-46. He is now to be sentenced.

[3] The maximum sentence that can be imposed is 10 years' imprisonment.

Background

[4] In brief terms, the evidence at trial was that in the late evening of December 23, 2020, Mr. Hawco, a Newfoundlander, then living in Kelowna, was celebrating what is known as "Tibb's Eve", a Newfoundland tradition, with other Newfoundlanders at a friend's house. There was drinking involved. Meanwhile, the complainant, K.T., had recently become roommates with a Ms. Barrett and, after work that night, they were at home getting acquainted. There was also drinking involved.

[5] Between 12:30 a.m. and 1:00 a.m. on December 24, 2020, Mr. Hawco began a Tinder conversation with Ms. Barrett that led to Ms. Barrett inviting him to the home she shared with K.T. Mr. Hawco accepted and arrived by cab around 1:51 a.m. Neither Ms. Barrett nor K.T. had previously met Mr. Hawco.

[6] Mr. Hawco brought a bottle of wine with him and the three spent some time in the living room socializing. At around 3:00 a.m. and because K.T. expected that Ms. Barrett and Mr. Hawco would end up having sex, she excused herself to leave them alone, retired to her bedroom, closed her bedroom door, and put on a movie. She texted her boyfriend, "D.", to say that Ms. Barrett had a guy over and the two of them were going to have sex. Shortly afterwards, she fell asleep.

[7] K.T. testified that she woke up to a naked Mr. Hawco in her bedroom with his penis in her mouth and his fingers in her vagina. She said she was disorientated, scared, and confused. She was worried that something might have happened to Ms. Barrett and was afraid he would hurt her. She said she felt paralyzed, and it took a moment for her to understand what was happening. She stated that she attempted to move her body away from Mr. Hawco, but

he held her and continued his actions. She said that, a short time later, he stopped what he was doing and left the bedroom.

- [8] She grabbed her cellphone at 4:15 a.m., sent quick texts to D. stating, "Oh my god, [D.]" and "[D.]," hoping he was awake.
- [9] Mr. Hawco returned to her bedroom with a condom and again put his penis in her mouth and fingers in her vagina. She stated that he flipped her over on her stomach, pulled her shorts down, and commenced having sexual intercourse with her. She stated that she told him to stop and to get off. She stated that the sex was painful, and she made painful sounds which she said Mr. Hawco ignored. She said she tried to push herself off the bed, but he was holding her hips too tight. She says that after about five minutes, Mr. Hawco suddenly stopped, pulled out of her, and quickly left the room.
- [10] She got up and got dressed, wanting to ensure Mr. Hawco left and to check on Ms. Barrett. After gathering his things and asking K.T. if she was okay, Mr. Hawco left the house at about 4:30 a.m.
- [11] K.T. stated that she woke up Ms. Barrett to ensure she was okay and waited for D. who was due to arrive at 5:30 a.m. She telephoned her sister, and, on her recommendation, she called 911 to report the incident to the police.
- [12] Ms. Barrett's testimony at trial about the events that evening was vague because she could not remember much due to the significant amount of alcohol she had consumed.
- [13] Mr. Hawco's evidence was different from K.T.'s. He agrees to being at Ms. Barrett and K.T.'s house and drinking with them. He admits going into Ms. Barrett's bedroom and having sex with her. He says that when Ms. Barrett passed out, he got up and opened the door to K.T.'s bedroom to see what she was up to. He says K.T. sprang up and gestured him to join her. He stated that K.T. performed oral sex on him and they had sex together, all of which was consensual. He says that he left the bedroom briefly to retrieve a condom because K.T. asked him if he had protection. During the sex act, he says he heard K.T. make a painful sound and he stopped immediately, asked her if she was okay, and left shortly afterwards.
- [14] In short, while he admits engaging in various sexual acts with K.T., he says they were not only consensual, but were initiated by K.T.
- [15] By its verdict, the jury clearly accepted K.T.'s version of events over Mr. Hawco's and were convinced beyond a reasonable doubt that he was guilty of the charged offence.

Pre-Sentence Report

- [16] A presentence report (PSR") was prepared and filed on January the 9th, 2023.
- [17] Mr. Hawco is now aged 32 and was born in St. John's, Newfoundland. He was 28 years old at the time of the offence.

- [18] According to the PSR, his parents separated when he was about age one. Other than that, his upbringing seems to have been reasonably unremarkable with him growing up in a stable environment without any traumatic events, abusive situations, or substance abuse issues.
- [19] The PSR states that Mr. Hawco struggled with and left school at age 18 before graduation and entered the workforce working odd jobs. He says he had symptoms of ADHD during high school and was prescribed medications. He has no other mental health issues of note.
- [20] He completed grade 12 about five years later.
- [21] In 2015, he joined the Boilermakers Union and, by 2017, commenced his Red Seal training in Newfoundland. At age 26, he left Newfoundland to pursue work opportunities in Ontario, Alberta, and British Columbia, staying with friends and "couch surfing" along the way.
- [22] He has no prior convictions. This is his first offence.
- [23] Mr. Hawco continues to deny that he sexually assaulted K.T. or that he did anything wrong. He continues to say the interaction with K.T. was consensual.

Victim Impact Statement

- [24] I will now deal with K.T.'s victim impact statement.
- [25] The impact of your offending on the complainant, Mr. Hawco, has been predictably negative.
- [26] You heard at the end of sentencing this afternoon K.T. read a lengthy, heart-wrenching, and powerful victim impact statement describing how your actions, Mr. Hawco, some three-and-a-half years ago, continue to traumatize her.
- [27] You heard her when she said that the visual memories of what you did continue to haunt her physically and psychologically as she continues to try to put herself back together. You made her feel worthless and powerless in the sanctuary of her own private bedroom. She was terrified then that you would kill her. Her terror continues to this day. Your actions triggered old fears and traumas to the point of trying to take her own life a month or so afterwards. She became anorexic, resorted to the use of drugs, neglected her life, herself, and she hit rock bottom.
- [28] In short, your actions that night shattered the life of a young woman who was just starting out. You destroyed her relationships, her opportunities, and her self-worth. She experienced self-blame and chastised herself for not fighting back.
- [29] Mr. Hawco, your offending has had a lasting impact on your victim. You have heard how she has fought to have some sort of normalcy in her life for the past three-and-a-half years. Despite sheer hard work and determination, it remains unknown whether she will be able to find the help she needs and get her life back or whether what you did to her will be a lifelong struggle for her.

[30] Mr. Hawco, it is for precisely these reasons that the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9, and our Court of Appeal in *R. v. G.M.*, 2015 BCCA 165, and very recently, *R. v. Maslehati*, 2024 BCCA 207, recently directed trial courts to impose sentences of imprisonment for these types of offences.

Principles of Sentencing

[31] I will deal now with the principles of sentencing. The fundamental purpose of sentencing is to protect society and to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing measured sanctions that have the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or the community;
- (b) to deter offenders and persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to the victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and an acknowledgment of the harm done to the victims of the community.

[32] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and it should be similar to sentences imposed on similar offenders for similar offences committed in similar cases.

[33] When it comes to sexual assault cases, by far and away the predominate sentencing principles are denunciation and deterrence. The directions from appellate courts which I must follow could not be clearer.

Aggravating and Mitigation Circumstances

Aggravating Circumstances

[34] The aggravating factors are:

- a) the offence took place while K.T. was sleeping with you taking advantage of her vulnerable position: *R. v. Kasokeo*, 2009 SKCA 48, at para. 5;
- b) the offence was invasive and protractive, lasting at least 10 minutes;

- c) although, Mr. Hawco, you had the right to deny the defence and require the Crown to prove your guilt at trial beyond a reasonable doubt, your continued lack of acceptance of wrongdoing or remorse, explanation, or insight into your conduct demonstrates a lack of insight into your offence which is a factor to consider in whether you are likely to reoffend: *R v. G.M.* at paras. 29 and 30; and
- d) the impact to the victim, K.T. in this case, of the offence has been significant.

Mitigating circumstances

[35] The mitigating circumstances are:

- a) that you have no prior criminal record;
- b) the stigma of having been charged, prosecuted, and convicted of a sexual offence; and
- c) for your livelihood, you travel all over Canada working as a boilermaker, you are a member in good standing with the Boilermakers Union and are very close to obtaining a Red Seal as a boilermaker.

Decision

- [36] I recognize that sentencing is an individualized process. No two cases are alike. Cases on sentencing to which I have been referred by the Crown include *Friesen*; *R. v. G.M.*; *Kasokeo*; *R. v. Barnes*, 2022 BCSC 2073; *R. v. Fode*, January 27, 2023, Kelowna Registry Number 94595-1.
- [37] The sentencing cases I was referred to by Mr. Tessmer on your behalf are *R. v. Schank*, 2023 BCSC 2216; *R. v. G.D.L.*, 2022 BCSC 940; and *R. v. T.H.*, 2024 BCCA 123.
- [38] I have reviewed these cases and I have found them helpful. Other cases have noted society's "deepened" understanding of the harm caused by sexual violence. For example, in *R. v. Goldfinch*, 2019 SCC 38, the Supreme Court of Canada stated at paragraph 37:
- [37] . . . Throughout their lives, survivors [of sexual violence] may experience a constellation of physical and psychological symptoms including: high rates of depression; anxiety, sleep, panic and eating disorders; substance dependence; self-harm and suicidal behaviour. The harm caused by sexual assault, and society's biased reactions to that harm, are not relics of a bygone Victorian era.
- [39] As was pointed out in *Maslehati* at para. 65, this enhanced understanding was reiterated in *Friesen* as applying to both child and adult sexual assaults because the offender is treating the victim as an object and disregarding the victim's human dignity.
- [40] Since counsel made their submissions on sentencing in this case, our Court of Appeal handed down *Maslehati* on May 31, 2024, reiterating that, in sentencing offenders for sexual assault, trial judges must impose a sentence that is proportionate to the seriousness of the offence and the offender's blameworthiness. In the end, it must be a fit and fair sentence as

informed by the circumstances of the offender, the relevant aggravating and mitigating circumstances, the community context in which the offence occurred, and the judge's application of the governing legal principles.

- [41] The circumstances of this case involved the sexual assault against an adult, prosecuted by indictment for which there are aggravating circumstances. Mr. Hawco, I consider the seriousness of your offence and your moral responsibility and blameworthiness to be high. You entered K.T.'s room where she was sleeping and violated her sexual integrity. What you did was outrageous and has caused her profound harm. As such, denunciation and deterrence are paramount with the range of sentencing to be in the range of two to six years: *R. v. G.M.* at paras. 17, 22, and 23.
- [42] The Crown here seeks a period of incarceration of four years. Mr. Tessmer, while acknowledging that any sexual assault without consent is serious, argues for a period of incarceration of one year with two years' probation to follow.
- [43] Mr. Hawco, please stand up.
- [44] The Supreme Court of Canada and our Court of Appeal have instructed me in clear terms that a significant penitentiary sentence is normal for people like you, first-time offenders who commit the sort of offence that the jury in this case found you guilty of committing.
- [45] I will do so in your case not only because the appellate authority requires it, but also because I consider it a fit and proper sentence in your case given all the circumstances. Giving you the benefit of every consideration you are entitled to and using as much restraint as I can muster, I sentence you to a period of three years' imprisonment.
- [46] You may now sit.

Ancillary Orders

- [47] First, as a s. 271 sexual assault is a primary designated offence, I am making a firearms prohibition under s. 109 of the Criminal Code for a period of 10 years after your release from prison.
- [48] In accordance with s. 743.21 of the Criminal Code, I order that you have no communication directly or indirectly with K.T., the complainant, while you are serving your sentence.
- [49] In accordance with s. 487.051(2) of the Criminal Code, because you have been convicted of a primary designated offence, I order you to forthwith provide a sample of your genetic material by the least intrusive means available.
- [50] You are also to comply with the requirements of the Sex Offender Information Registration Act, S.C. 2004, c. 10, for a period of 20 years.
- [51] Now, unless I have left something out, this matter is concluded.

[52] CNSL S. TESSMER: Only one -- only one thing, Justice, I note my client was in custody on this matter pretrial for a month. I would ask that you -- the court deduct 45 days from that three-year sentence to recognize time served.

[53] THE COURT: Mr. Hatherly?

[54] CNSL J. HATHERLY: That would be appropriate.

[55] THE COURT: All right. So, you are entitled to credit for 45 days -- is it 30 days that he was in -- in --

[56] CNSL S. TESSMER: Yes.

[57] THE COURT: Thirty days? All right. So, at one-and-a-half times, it is 45 days will be deducted from the 36 months.

"G.P. Weatherill J."

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