

CANADA / JUDGMENT

R. v. Holder

2026 ONCA 39

COURT

Court of Appeal for Ontario

DECIDED

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COA-25-CR-0445

Judges

Lauwers, Peter D.; Sossin, Lorne; Pomerance, Renee M.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Holder, 2026 ONCA 39

DATE: 20260123

DOCKET: COA-25-CR-0445

Lauwers, Sossin and Pomerance JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Vernon Rudolph Holder

Appellant

Vernon Rudolph Holder, acting in person

Sonya Shikhman, appearing as duty counsel

Étienne Lacombe, for the respondent

Heard: January 8, 2026

On appeal from the convictions entered by Justice Anne M. Molloy of the Superior Court of Justice on September 19, 2024, with reasons reported at 2024 ONSC 6473, and the sentence imposed on December 11, 2024.

REASONS FOR DECISION

- [1] The appellant was convicted after a judge-alone trial of aggravated assault, assault with a weapon, and assault causing bodily harm. He was sentenced to three years' imprisonment, less three weeks' credit for pre-sentence custody.
- [2] The appellant appeals both his convictions and his sentence.
- [3] For the reasons that follow, we dismiss the appeals.

BACKGROUND

- [4] All the convictions relate to altercations with a single complainant, KP. KP alleged that on December 26, 2020, the appellant hit her with his motor vehicle. She also alleged that he committed a series of assaults on her from the night of December 30, 2020, to the early morning of December 31, 2020. These later assaults occurred in one Mr. Sukhdeo's apartment.
- [5] Specifically, KP alleged that the appellant attempted to throw her off the apartment's sixth-floor balcony and threatened to kill her. KP also alleged that, after the attack on the balcony, she and the appellant went back into the apartment, where the assault continued. In particular, she alleged that the appellant grabbed her by the throat and punched, body slammed, and stomped on her. Finally, she alleged that the appellant assaulted her with a beer bottle, a wine bottle, and a cellphone. These assaults caused significant injuries to KP, including cuts, bruising, and four lost teeth. During the course of the assaults, KP called 911 and described what was happening to her.

Decision below on the convictions

- [6] With respect to the December 30th/31st altercations, the trial judge found the appellant guilty of one count of aggravated assault, three counts of assault with a weapon (one count each with a beer bottle, wine bottle, and cellphone), one count of assault causing bodily harm, and one count of common assault. This last count was stayed as duplicative: see *Kienapple v. R.*, [1975] 1 S.C.R. 729. She also found the appellant not guilty of attempted murder and threatening death with respect to the portion of the assaults that occurred on the balcony. With respect to the December 26 motor vehicle altercation, she found the appellant not guilty of one count of assault with a weapon.
- [7] The trial judge admitted the tape and transcript of KP's 911 call into evidence. She did so for two reasons. First, she concluded that it fell under the spontaneous utterances exception to hearsay because it was made while KP was still under the appellant's control. The trial judge also reasoned that the call was admissible as part of the narrative of events, including as circumstantial evidence of the credibility and reliability of KP's trial evidence. It was thus exempt from the rule against the admissibility of prior consistent statements, pursuant to this court's decision in *R. v. Khan*, 2017 ONCA 114, 345 C.C.C. (3d) 419, leave to appeal refused, [2017] S.C.C.A. No. 139.
- [8] The trial judge rejected the appellant's version of events, namely that it was KP who had assaulted him and that he was merely defending himself. She described the appellant's evidence generally as a "tissue of lies." She also found that none of the appellant's evidence raised a reasonable doubt with respect to the December 30th/31st altercations. Thus, she moved to the third step of W.(D.) and considered whether the evidence she did accept satisfied her of the appellant's guilt beyond a reasonable doubt.
- [9] The trial judge accepted that the appellant tried to push KP off the balcony. She found KP to be a credible witness whose testimony was sometimes unreliable with respect to the peripheral details surrounding the assaults. Further, the trial judge found that KP's testimony was corroborated by her contemporaneous 911 call, and the evidence of two witnesses from a neighbouring building who testified that they saw the balcony assault from their apartment. However, the trial judge was not satisfied that the appellant had the specific intent to kill necessary for her to find him guilty of attempted murder. Therefore, given her finding that the appellant's actions endangered KP's life, the trial judge instead found the appellant guilty of the lesser included offence of aggravated assault.
- [10] With respect to the remainder of the assaults, including those committed with various objects, the trial judge similarly accepted KP's version of events. The trial judge found that KP's testimony and statements on the 911 call were corroborated by Mr. Sukhdeo's testimony and were consistent with KP's injuries. Accordingly, she found the appellant guilty of three counts of assault with a weapon and one count of assault causing bodily harm.[1]
- [11] The trial judge concluded, at para. 85 of her reasons:

I found KP to be a truthful witness. She may have some sequencing wrong and be mistaken about details about how she got from one point in the apartment to another or where specific things happened. However, I am satisfied as to the honesty of her testimony about the central core of her story. I also found her to be very fair in conceding points she could not remember, including conceding things that ultimately led me to acquitting Mr. Holder on some of the charges against him. I am satisfied beyond a reasonable doubt that Mr. Holder held her down on the couch and assaulted her, grabbed her with force against her throat, assaulted her again when she was on the floor, stomped on her, and assaulted her with a beer bottle, a wine bottle, and a cellphone. She sustained multiple injuries as a result of these assaults, which were far more than trivial or fleeting in nature.

Decision below on sentence

- [12] The trial judge imposed a global sentence of three years' imprisonment.
- [13] With regard to aggravating factors, the trial judge focused primarily on the seriousness of the offences and the significant injuries to KP.
- [14] In terms of mitigating factors, the trial judge acknowledged the appellant's strong work record, positive relationships with his family, and lack of criminal record. The appellant had previously been convicted of and granted a record suspension for an unrelated offence. In light of this, the trial judge treated the appellant as a first-time offender.
- [15] The trial judge also noted that neither rehabilitation nor specific deterrence played a significant role in determining the sentence, but that denunciation suggested a significant sentence was necessary.
- [16] The trial judge then considered the general range of sentences in similar cases. She noted that four to six years was a fairly typical sentence for someone with a history of violence, but that the appellant did not have such a history. However, she also noted that the serious nature of the offence made it inappropriate for the appellant to receive a sentence of under two years, thus making him ineligible for a conditional sentence.

ISSUES

- [17] In his notice of appeal, the appellant states that he wanted to have a trial by judge and jury, and that the sentence he received was "harsh and excessive". The appellant did not pursue his concerns with respect to the mode of trial during oral submissions.
- [18] With the assistance of duty counsel, the appellant raises several additional concerns with the convictions, which duty counsel submits are unsafe. In particular, duty counsel submits that the trial judge erred in her rejection of the appellant's version of events and her acceptance of KP's.

[19] With respect to the sentence, duty counsel submits that the trial judge improperly failed to recognize the appellant's rehabilitative potential, and failed to apply Downes credit in light of the appellant's extensive time subject to bail conditions involving house arrest.

[20] We address the conviction and sentence appeal in turn.

ANALYSIS

The conviction appeal

[21] Duty counsel contends that the trial judge misapprehended certain key aspects of the evidence and failed to explain sufficiently why the appellant's account of the altercations was rejected, while KP's account was accepted. This failure to explain her conclusions, according to duty counsel, rises to the level of unequal scrutiny of the evidence.

[22] For his part, the appellant repeats his account of the altercations leading to his convictions, including that he was the victim of an assault initiated by KP. He asserts that the trial judge unfairly rejected his account and the evidence which supported it.

[23] The Crown submits that the trial judge's credibility and factual findings are entitled to deference and reveal no error. We agree.

[24] We see no reversible error in the trial judge's analysis or conclusions with respect to the evidence, nor is there a basis for this court to interfere with the trial judge's assessment of credibility. The trial judge was entitled to accept KP's account of the altercations even though she found KP's evidence to be unreliable in certain respects.

[25] Similarly, it was open to the trial judge to reject the appellant's evidence and to refer to this evidence as untruthful.

[26] For these reasons, we dismiss the appellant's appeal of his convictions.

The sentence appeal

[27] With respect to the sentence, the appellant first argues that the trial judge improperly equated access to counselling services with rehabilitation. This, the appellant contends, led to the trial judge failing to give effect to the principle of rehabilitation in her analysis. The trial judge suggested that the appellant might benefit from alcohol abuse counselling, but added:

[I]t doesn't really factor into my analysis on what is the appropriate sentence, because whether [the appellant is] in custody or not in custody, [he is] still going to have access to counselling and rehabilitation programs for any alcohol abuse problem [he] might have. So, I don't see rehabilitation as a significant factor here.

- [28] The Crown argues that the sentence was justified in relation to the applicable sentencing principles, particularly the aggravating and mitigating factors present in this case and the sentencing ranges for similar convictions. The Crown reiterates that the trial judge is entitled to deference in her application of those principles.
- [29] In our view, it was open to the trial judge to conclude rehabilitation was a neutral factor in her sentencing analysis. We do not accept that doing so constituted an error in principle.
- [30] The appellant also contends the trial judge erred by failing to award any sentence mitigation for his strict bail conditions, which included house arrest. Though stringent bail conditions are, strictly speaking, a mitigating factor, judges often speak of awarding “Downes credit” for such conditions, which is then set off against the sentence that would otherwise be imposed: *R. v. Downes* (2006), 79 O.R. (3d) 321 (C.A.), at para. 33; *R. v. C.C.*, 2021 ONCA 600, at paras. 4-5. Ultimately, the trial judge found that because the appellant was alleged to have breached his bail conditions, and because it was “very unlikely” he observed the bail restrictions rigorously, it would be inappropriate to award any credit.
- [31] The appellant argues that this failure to award Downes credit, based on these alleged breaches, infringed the presumption of innocence and constituted a reversible error. The question of whether, and if so, to what extent, allegations of a breach of bail conditions may be considered as part of the Downes credit analysis does not appear to have been addressed by this court. In our view, there are clearly instances where relying on such unproven allegations in declining to award Downes credit would be improper.
- [32] We need not address this issue in the context of this case, however, because the appellant failed to discharge his onus to introduce evidence of the conditions of his release and the impact that he experienced: *R. v. McNelis*, 2007 ONCA 777, at para. 5. As a result, the calculation of Downes credit was not a live issue, and even if the reliance on unproven allegations of a breach of bail conditions was an error, the record does not contain the evidence necessary for this court to adjust the sentence.
- [33] It is uncontested that the appellant spent approximately three years on bail and that this period of bail included house arrest. The terms of the bail, however, are not part of the appeal record. The Crown argues that it was the appellant’s burden to satisfy the trial judge that the harshness of his bail conditions entitled him to Downes credit. The Crown contends that the appellant did not meet this burden.
- [34] We agree. The appellant led no evidence as to the harshness of the bail conditions at his sentencing hearing. First, the precise terms of the recognizance were not before the court. It was not, for example, known whether the appellant was entitled to leave the house at any time so long as he was in the company of his surety. The details of house arrest can vary. It is for this reason that the courts have rejected use of a rigid formula in this context.

[35] Second, it was incumbent upon the appellant to lead evidence of the impact of his release conditions on his liberty. This was critical. As noted by Rosenberg J.A. in Downes, at para. 34: “In some cases, the terms of house arrest may impinge very little on the offender’s liberty”. As he went on to explain:

Some accused may be allowed to work as usual, take care of their family obligations as usual and in general, see little serious impact on their pre-bail way of life. For others, house arrest may be very difficult. The accused may find themselves essentially confined to a very small space, cut off from family and friends and unable to obtain employment. [Citations omitted.]

[36] Where the offender asks the trial judge to take pre-sentence bail conditions into account, the offender is required to supply the judge with information as to the impact of the conditions. If there is a dispute as to the impact of the conditions, the onus is on the offender to establish those facts on a balance of probabilities in accordance with s. 724(3) of the Criminal Code: Downes, at para. 37. That did not occur here.

[37] For these reasons, while we grant leave to the appellant to appeal his sentence, we dismiss the sentence appeal.

“P. Lauwers J.A.”

“L. Sossin J.A.”

“R. Pomerance J.A.”

[1] In addition to the count of simple assault stayed under Kienapple.

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