
CANADA / JUDGMENT

R. v. Kruk

2020 BCSC 1480

COURT

Supreme Court of British Columbia

DECIDED

12 March 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1480 R. v. Kruk

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Kruk,

2020 BCSC 1480

Date: 20200312

Docket: X081355

Registry: New Westminster

Regina

v.

Christopher James Kruk

Restriction on Publication: Pursuant to 486.4 C.C.C.

Corrected Judgment: The text of the judgment has been amended at paragraphs 3 and 18, and anonymized individuals by their initials on February 2, 2022.

Before: The Honourable Mr. Justice Tammen

Oral Reasons for Judgment

Counsel for the Crown:

C.G. Giles

Counsel for the Accused:

C. Paquette

Place and Date of Trial:

New Westminster, B.C.

January 13-17 & 20-23, 2020

Place and Date of Judgment:

New Westminster, B.C.

March 12, 2020

- [1] THE COURT: The accused, Christopher James Kruk, is charged with one count of sexual assault said to have occurred on May 27, 2017. This offence, if it occurred, happened between approximately 2:00 a.m. and 4:00 a.m. at the home of the accused in Maple Ridge, British Columbia.
- [2] At the time, the complainant, T.P., was 19 years old. She lived at home with her parents and older brother in Langley. The accused was 34 years old at the time. He lived on the upper level of a home in Maple Ridge. His father lived on the lower level of that house.
- [3] The important witnesses called by the parties were as follows: For the Crown, the complainant, T.P. (who I will occasionally refer to as the complainant) and in addition three of her family members: her mother, S.B.; her father, K.P.; her brother, B.P. In addition, there was a sexual assault nurse examiner called by the Crown named Irene Isaacs. For the defence, the accused, Christopher Kruk, testified as did his father, Robert Kruk.
- [4] I will first outline T.P.'s evidence. On May 26, 2017, in the afternoon, she travelled to North Vancouver and attended a small pool party with a group of approximately five female friends. There was a good deal of alcohol consumed of various types, and in particular T.P. consumed a great deal of alcohol. After dinner at a restaurant, the complainant went downtown with two of the other four women. By that time, the complainant was already intoxicated.
- [5] They went to a bar in Gastown called The Met. On the complainant's own evidence, she rated her level of intoxication on arrival at that bar as six out of 10. By the time she departed at 11:30 p.m., she put herself at seven or eight out of 10. She left that bar alone to meet other friends at a different bar. She became disoriented en route, found herself lost, and stopped on the sidewalk, crying. A man, who obviously turned out to be the accused, approached her and offered to assist her. He introduced himself as Chris. He offered to get her home safely. They walked to the SkyTrain station together.
- [6] The complainant recalled switching trains at some point but could not say where. By that time, she required assistance walking, such was her state of intoxication. She had some recollection of calling her mother from the SkyTrain. She said she used the cellphone of the accused because hers had a dead battery.
- [7] I pause here to note two things:

- 1) There was considerable evidence of general emotional lability throughout the evening exhibited by the complainant. Her own evidence and that of her friends was that at various times she was crying, seemingly for no reason. Therefore, any evidence of her emotional state immediately after the alleged offence is of little or no assistance in determining what occurred.
- 2) Because of the complainant's state of extreme intoxication, she has massive gaps in her memory. For example, she cannot recall the taxi ride to the home of the accused from the SkyTrain station. She cannot recall arriving at the home of the accused and walking to the second level of the house. She must have been awake, that is conscious, for reasonably long periods of time for which she has no memory. She was in a state of alcohol-induced blackout. Equally, there is no doubt that at some point in time, she either passed out or fell asleep at the home of the accused; that is, she was in a state of unconsciousness. The complainant cannot say when her state of consciousness changed.
- [8] Her next recollection after switching SkyTrains is of waking up with the accused's penis inside her vagina. Her pants were off. She did not think he was wearing a condom. She did not see his penis. The room was dark. She pushed the accused off by placing her hands on his chest. She had to do so twice, yet could not say if he was wearing a shirt. Her immediate reaction was to query, "Where's my dad?"
- [9] She was lying on a bed on her back. When she got up to look for a phone, she noticed that she was wearing her sweatshirt and her underpants, but no shoes or pants. The complainant could not recall falling asleep, but said she was asleep immediately prior to her realization that the accused's penis was inside her. She agreed that she was disoriented. She said there was a lot of weight on her.
- [10] In a prior statement made to police, she said she thought the accused "was just leaning on top of me." In her evidence, she said that meant his entire weight was not on her.
- [11] The complainant was adamant that the accused's penis was inside her. She said she could feel it and she knew what she was feeling.
- [12] The complainant, still disoriented, wandered throughout the house looking for a phone charger and was unable to work light switches. She heard her father's voice downstairs saying, "Where's my daughter?" She ran downstairs and out of the house into a pickup truck where she had a conversation with her brother. She was still wearing no pants. She believed she told her brother that the accused "was inside me". The brother said her words were, "He raped me."
- [13] The complainant told her brother not to call the police. She went home to Langley with her dad and her brother, then later that morning to the hospital by ambulance. That occurred at approximately 6:30 a.m.

- [14] I turn next to the evidence of the family members of the complainant, starting with her mother, S.B.
- [15] S.B. testified about her phone conversations with both her daughter and the accused in the early morning hours. Her memory was poor, but she confirmed certain calls and their timing by reference to her own cellular phone records. The first call she received from her daughter was at 1:10 a.m. There was apparently some discussion about a pickup by either the complainant's father or uncle at the King George SkyTrain station. At some point, that plan changed. S.B. also spoke with the accused on the phone while he and the complainant were on the SkyTrain. S.B. believed that the accused assured her that he would stay with her daughter and assist in getting her home safely.
- [16] S.B.'s evidence about what precisely the accused said was both confused and confusing. She said the accused only gave her his first name, Chris. S.B. denied that the accused told her where he lived.
- [17] Her phone records show an incoming call at 2:14 a.m. She said that was a call she received from the accused saying that her daughter was in a cab on her way home. Over the ensuing two hours, the phone records show more than 20 calls by S.B. to the phone of the accused, none of which was answered. S.B. also sent a text message to the accused's phone number to advise that her daughter was not home and asked which cab company to call. The time of that text message was 2:46 a.m.
- [18] I turn to the evidence of the complainant's father, K.P. He said that sometime after 1:10 a.m., on instructions from his spouse, he set out for the King George SkyTrain station to pick up his daughter. He spoke to the accused at least once on the telephone, and believed that the accused told him that the accused and T.P. would take a cab from the Coquitlam station and come to the P. household. The accused said he wanted to make sure that the complainant got home safely. K.P. went home and waited for his daughter's arrival. After some time, his son B.P. found a Facebook profile for the accused and thus the family saw a picture of him and his full name.
- [19] The father phoned multiple taxi companies. Ultimately, he learned of the Maple Ridge address of the accused from Alouette Taxi. He phoned them and learned that they had picked up a fare at 11:25 p.m. from the Coquitlam SkyTrain station. The taxi company gave K.P. the address in Maple Ridge to which that fare went.
- [20] K.P. and his son B.P. went to that address, which was the home of the accused, arriving at approximately 4:00 a.m. K.P. knocked on the door. After a time, the accused answered. K.P. immediately asked, "Where's my daughter?" K.P. said the accused looked sheepish. At the time, he said the accused was wearing blue and white underwear, nothing else. He later conceded that the accused was wearing blue and white swim trunks when Exhibit 8 was shown to him.

- [21] The accused went upstairs and a short time later the complainant came down, crying and obviously intoxicated. The complainant was wearing a sweatshirt, no pants. At K.P.'s request, the accused retrieved the complainant's pants and shoes from upstairs and gave those clothing items to K.P. K.P. went to his truck and, after speaking with the complainant, returned to the house, knocked again, and when the accused answered, accused him of raping his daughter. The accused denied the accusation. An older man was present on that occasion.
- [22] I turn to the evidence of B.P. B.P. added little to the evidentiary fabric of this case, but he did confirm the state of undress of both the complainant and the accused. The accused, he said, was wearing no shirt, only shorts. His sister was wearing just a sweater, no pants.
- [23] B.P. said his sister told him, once inside the truck, that she had been raped. B.P. placed, then discontinued, a call to 9-1-1. The telephone records show that call occurring at 4:12 a.m.
- [24] Finally, I turn to the evidence of Irene Isaacs, the sexual assault nurse examiner. Ms. Isaacs conducted an examination of the complainant commencing at 11:45 a.m. on May 27, 2017. Of note, she observed a one-centimetre linear abrasion on the posterior fourchette at the six o'clock position, which extended into the vagina.
- [25] I turn next to the evidence of the accused. The accused, an electrician, worked during the day on May 26, 2017. After work, he went to the apartment of a friend and co-worker near Main and Hastings, where he showered and changed clothing. The two of them socialized for a time. They went to a bar called No. 5 Orange, then returned to the apartment. The accused, a non-drinker, smoked some marijuana during the evening, for which he holds a licence from Health Canada.
- [26] The accused went out to buy cigarettes shortly after midnight. On his way back to the apartment, he encountered the complainant, who was crouched on a sidewalk, crying. It was apparent to the accused that the complainant was heavily intoxicated. He thought she might have been drugged. He offered to assist her in getting to her home in Langley. The two of them walked to the Main Street SkyTrain station, stopping at his friend's apartment so that the accused could collect his belongings. They took the Expo Line to Commercial and Broadway, and then transferred to the Millennium Line. The accused said the complainant was at that time staggering, confused, and had trouble navigating stairs. Once on the Millennium Line, the complainant called her mother. The accused spoke with the mother, who was, in his words, "extremely concerned" about her daughter.
- [27] The accused was never privy to any plan concerning the King George SkyTrain station. He said he gave the complainant's mother his full name, address, and offered her his driver's licence number. He did not recall speaking with the complainant's father on the telephone. While on the train, the cellphones of both the accused and the complainant ran out of battery.

- [28] The two of them took a cab from the Coquitlam station to the home of the accused in Maple Ridge. The complainant was still extremely drunk. She could only say that she lived in Langley, and could not provide a residential address. The accused paid the cab driver and told him the complainant was going to Langley. He then went into his house. He said he plugged in his phone and called the complainant's mother to say the complainant was in a cab on her way home. He confirmed that the 2:14 a.m. incoming call to S.B.'s phone was likely that call from him.
- [29] The accused said approximately five to ten minutes later, the cab driver returned the complainant to his house because she was so intoxicated. By that time, the accused's father was awake. The three of them went upstairs to the accused's residence. The complainant had trouble with those stairs.
- [30] The accused said his father was upset and angry with him. The accused had to work relatively early the next morning. At the complainant's request, the accused showed her where the bathroom was. After that, she asked for a glass of water. He gave her one and left her sitting on a couch in the living room. He went downstairs to talk to his father and have a cigarette.
- [31] When he returned upstairs and checked on the complainant, she was passed out on the couch and had spilled the water all over herself and his leather couch. The accused woke her up and cleaned the couch. He said he then offered her a pair of pyjamas to wear and said she could change in his bedroom. The accused said the complainant went into his bedroom and closed the door. He sat on the couch in the living room and may have dozed off.
- [32] He yelled to ask if the complainant was okay. She said she was. He then said he went downstairs again to speak with his father to see if his father could give the complainant a ride home. When he returned upstairs, he yelled again for the complainant, this time received no reply. He said he knocked on the bedroom door and entered the room. The complainant was lying parallel to the foot of the bed, asleep, as if she had fallen over. He said her pants were halfway down her calves, around the ankle area. He put a blanket over her and summoned his father. The two of them could not rouse the complainant, even by shaking her.
- [33] By then, the accused said he was very annoyed with the situation. He wanted the complainant out of his house. He checked his phone. It was plugged in on a table by the head of his bed. He said the ringer was turned off, in keeping with his usual practice. Because of a faulty charge cord, it was not charging. The accused said he then fell asleep for a time while sitting at the head of the bed, he did not know for how long. He said at that time, he was very uneasy about this strange person in his house. He was worried that he had a drunk person in his house and that she might wake up and steal something from him.

- [34] When he woke up, she was still passed out and he thought "enough is enough", so he shook her on her shoulders, on her arms and shoulder area, told her to wake up, and even pushed her on the hip a few times. Ultimately she came to and he said she was startled. Her pants were still halfway around her ankles. He said at that time, he believed he was wearing shorts and could not remember what else he was wearing.
- [35] When the complainant woke up, her immediate query was, "Where's my dad?" She then started running around the house. The accused believed that she kicked her pants off before doing that. He told her to put her pants on, but she did not.
- [36] The complainant could not work the dimmer switch for the lights in the house. She was still very drunk.
- [37] As the accused was trying to explain to the complainant what had happened with respect to the taxi, there was a knock on the door. The accused went downstairs and answered the door. It was the complainant's father. The father immediately said, "Where's my daughter?" He seemed very angry. The complainant then ran down the stairs, out the door, still wearing no pants.
- [38] At some point, the accused's father joined the group in the doorway area. A short time later there was a second knock on the door and the complainant's father levelled the rape accusation at the accused. The accused said he could not believe that was the thanks he was getting for going through this ordeal.
- [39] The accused denied ever placing his penis in the complainant's vagina. The accused said he did not call the complainant's parents after the taxi returned the complainant to the home because:
- a) his father was angry at him and he was answering his father's questions;
 - b) he felt safe since he was in a safe place; and
 - c) he was not expecting the complainant to come back in the taxi.
- [40] He agreed that the complainant's father arrived at approximately 4:00 a.m. and that the complainant had been at his house approximately one and a half hours by then.
- [41] The accused denied removing the complainant's pants. He said nothing sexual occurred between the two of them.
- [42] He agreed that he was wearing the swim trunks, Exhibit 8, when the complainant's father arrived. He could not recall when he changed into those shorts and did not say why he did so. He could not recall whether or not he was wearing a shirt.
- [43] The accused said he did not see the text message from the mother until well after the fact. In cross-examination, he said he did not check his phone after the complainant returned in the taxi.

- [44] There was considerable cross-examination of the accused on a statement he made to the police on October 12, 2017, which, to the extent it impacts my assessment of his evidence, I will summarize in due course.
- [45] I turn to the evidence of the accused's father, Robert Kruk. He said he was woken up by a knock on the door. I infer that must have been the taxi driver returning the complainant to the house. Mr. Kruk said he saw his son helping a lady up the stairs; she was having difficulty. He accompanied them upstairs. He said his son got the complainant a glass of water. He spoke with his son for a time, then went back downstairs.
- [46] After a time, his son called him back upstairs and told Mr. Kruk the complainant had spilled water on herself. Mr. Kruk went upstairs and said he saw his son walk the complainant into the bedroom. He said this: "I saw them walk back into the bedroom." He and his son then went back downstairs for a cigarette. He confirmed that he was angry with his son. He offered to drive the complainant home. Both he and his son went upstairs and into the bedroom. The complainant was laying at the foot of the bed with a blanket on her. She could not be roused. He told his son that he would give her a ride home in the morning and he went back downstairs to bed.
- [47] Later he heard a bang on the door and went to the foyer, where he saw his son speaking with a man, obviously the complainant's father. He saw the complainant exit the house, but did not observe what she was wearing. He agreed that at the time, his son was wearing the blue swim trunks and that he was not wearing those when he came home earlier. Mr. Kruk could not say when his son changed into those shorts. Mr. Kruk agreed that at no point did he discuss with his son: (a) calling the complainant's parents; or (b) the fact that his son's phone was dead.

General comments with respect to reliability or credibility

- [48] The complainant, T.P., is an obviously unreliable witness because of her state of extreme intoxication. There are massive gaps in her memory.
- [49] All four family members of either the complainant or the accused are subtly and understandably biased. None was a particularly observant witness. At times, each proved to be a poor historian. For example, the complainant's father was clearly mistaken about what the accused was wearing when he came to the door. He at all times described it as underwear, when it was clearly a pair of swimming trunks. The complainant's brother B.P. gave rather glib and extremely unimpressive evidence about the reasons for his aborted call to 9-1-1. With respect to the father of the accused, there were some issues in his testimony separating what he observed from things that were told to him by his son. He gave the rather incredible evidence that he failed to notice a young lady exiting his home at four in the morning while not wearing pants.

- [50] I turn to the live issues in this case. This is really a case of whether or not the alleged conduct occurred. The accused says there was no sexual contact between him and the complainant. The complainant describes unwanted penile penetration of her vagina while she was sleeping. There can be no issue of consent.
- [51] If I am satisfied beyond a reasonable doubt that the accused inserted his penis into her vagina in those circumstances, all the essential elements of sexual assault are established. That would clearly amount to an intentional application of force which violated the complainant's sexual integrity without her consent. I do not perceive the accused to submit otherwise. There is an implicit concession by the accused that at the critical time the complainant was asleep or unconscious, and therefore incapable of giving consent. Nor is there any issue of honest but mistaken belief in consent.
- [52] I turn to an assessment of the evidence of the accused. Obviously if I accept his evidence which is a full denial, I must acquit. Even if I do not accept his evidence, if it leaves me in a state of reasonable doubt, I must acquit.
- [53] For reasons I will outline, I reject the evidence of the accused on several key issues.
- [54] I do not believe that the accused gave the complainant's parents his address. The cellular phone records disclose several calls by the members of the complainant's family to various taxi companies in an effort to ascertain the address of the accused. That is a comparatively minor point.
- [55] Other minor inconsistencies between the evidence of the accused at trial and his police statement are these: He told the police he basically carried the complainant over his shoulder into the house. That is quite inconsistent with his evidence at trial. He gave the police an incomplete and arguably inconsistent account of his attempt to send the complainant to Langley via taxi.
- [56] Of far greater importance, I reject the accused's evidence related to the reasons for the state of dress, or rather undress, of each of the accused and the complainant at the time the complainant's father arrived. I also flatly reject the accused's evidence related to the reasons he failed to contact the complainant's mother after 2:14 a.m.
- [57] I start with the removal of the complainant's pants. His evidence at trial was that after they arrived at his house and she used the bathroom, she asked for a glass of water, he gave it to her, and left her sitting on the couch while he went downstairs to talk to his father. When he came back upstairs, he saw that she had passed out on the couch and had spilled the water all over the couch and herself, including her pants, which were thus wet. It was at that point that he made his offer that she could change into some other clothing.
- [58] In his statement to the police, when he was asked how he explained the fact that the complainant was not wearing any pants, he said this:

Well, when she first got there, I offered her pyjamas. I went to go down to go talk to my dad and when I did come back up, she did have her pants like halfway around her ankles.

...

[T]hat's why I put a blanket over top of her.

...

I did offer her pyjamas, though 'cause she, she, like I can't remember, she had like a big spill of somethin' on her jeans.

- [59] That account made to the police is obviously quite inconsistent with the detailed evidence he gave at trial about the timing of the offer of pyjamas and the spilling of water on her pants while she was sitting on the couch. In his statement to police, he clearly said he offered her the pyjamas when she first got to his house.
- [60] I have also considered carefully the evidence of the accused about the complainant's pants at the relevant time being around her ankles or part way down her calves. Almost as an afterthought in his evidence, when asked about what happened before she began running around his house, he said he believed she kicked off her pants. I find that improbable in the extreme. The likelihood of her being able to do that in her state of disorientation and extreme intoxication, without falling flat on her face, is remote.
- [61] There is also the accused's evidence that after he offered pyjamas to the complainant, he invited her to change in his bedroom and that she went into the bedroom alone and closed the door. The evidence of the accused's father is that he saw both his son and the complainant walk into the bedroom together.
- [62] I turn to the evidence surrounding the state of dress of the accused when the complainant's father arrived at his home. There is considerable evidence that at that time the accused was wearing a pair of blue and white swim trunks, no shirt. The accused conceded that he was wearing those swim trunks, but could not say whether or not he was wearing a shirt. As noted, he could not recall when he changed into the swim trunks, and he gave no evidence as to why he did so.
- [63] In his statement to the police, the accused told them that he was fully clothed when the complainant's father pounded on the door. He told the police that when he answered the door, he was still wearing the same clothes he was wearing when he went out earlier that night. He also told the police that he fell asleep with all his clothes on. The accused said in evidence that he was not lying to the police, but was telling them what he remembered at the time. I cannot accept that. I find that the accused was lying to the police about an extremely important fact.

- [64] The accused's father could not say when the accused changed into the swim trunks, but the most likely time, on his evidence, is the interval between their joint inability to rouse the complainant and when the complainant's father arrived at the home. There does not appear to be any other opportunity for the accused to have changed clothes without his father noticing.
- [65] I turn next to the failure of the accused to contact the complainant's mother after the 2:14 a.m. call. With respect to his own cellphone, the accused said in chief that just before he fell asleep on the bed, so likely well after 3:00 a.m., he checked his phone. He discovered the problem was a faulty charge cord, unplugged the cord, turned it around, and plugged it in again so that the phone was once again charging.
- [66] When pressed in cross-examination, he said he never even checked his phone after the taxi returned the complainant to the home. In his statement to the police, he said he could not call the complainant's parents when he arrived home because both phones were dead. After that, his phone was charging but was set on silent. He also told the police at one point he thought of using his father's phone to call the complainant's father. Clearly, the accused had both parents' phone numbers in his phone. He was able, presumably by plugging in his phone, to make the call to the complainant's mother at 2:14 a.m. If his evidence in chief is accurate, once he got the phone charging again, he would have surely seen some of the missed calls from the complainant's mother and also her text message from 2:46 a.m. Phoning the complainant's mother at that time would have been as simple as pressing two or three buttons on his phone. He knew the complainant's mother was extremely upset and worried about her daughter. He had told the complainant's mother at 2:14 a.m. that the complainant was on her way home, yet made no effort at all over the 90 minutes after the complainant returned in the taxi to update S.B.
- [67] All of this, despite his evidence that he wanted rid of the complainant and found her continued presence in his home both unwanted and annoying. He was even worried that she might steal from him. If he truly wished to be rid of the complainant's annoying presence, surely he would have made some effort to call her parents. His failure to do so is inconsistent with a desire to be rid of the complainant and potentially consistent with some other motivation on his part.
- [68] Having rejected important parts of the accused's evidence, I must assess the entire body of evidence to determine if I am satisfied beyond a reasonable doubt that the offence occurred. In particular, I must assess the core assertion made by the complainant that when she woke up, the accused's penis was inside her vagina. Her evidence is devoid of detail, yet she claims to be certain that she was not mistaken. She said she felt his penis inside her and she knew what she was feeling. In short, her tactile sense was engaged. It is extremely unlikely that a woman would be mistaken about that feeling.

- [69] There is some circumstantial evidence consistent with a sexual encounter having occurred between the accused and the complainant. Obviously, at some point while the complainant was in the accused's bedroom, the accused took off all of his clothes, and at some undetermined time put on swimming trunks. More importantly, the complainant's pants were completely removed. I have considered the possibility that the complainant for some reason removed her own pants and think such a notion is fanciful. I conclude that it was the accused who removed her pants.
- [70] Finally, I consider the failure of the accused to contact the complainant's parents in the overall circumstances here to be consistent with an intention to take sexual advantage of a young woman he knew to be in an extremely compromised and vulnerable state. That desire culminated in him removing her pants, likely after completely disrobing himself, and inserting his penis into her vagina. That act is likely what awakened the complainant, as she essentially described in her testimony.
- [71] I find the accused guilty.

"Tammen J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/14/2020BCSC1480cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-kruk-2020>

Prepared on 26 October 2026 · Esheria