

CANADA / JUDGMENT

R. v. P.R.T.W.

2025 BCCA 72

COURT

British Columbia Court of Appeal

DECIDED

13 March 2025

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2025 BCCA 72 R. v. P.R.T.W.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. P.R.T.W.,

2025 BCCA 72

Date: 20250313

Docket: CA48510

Between:

Rex

Respondent

And

P.R.T.W.

Appellant

Restriction on publication: A publication ban has been mandatorily imposed under s. 486.4(2) of the Criminal Code to ban the publication, broadcasting or transmission in any way of information that could identify the complainant referred to in these reasons as "K.W.". This publication ban applies indefinitely unless otherwise ordered.

Before:

The Honourable Madam Justice Fenlon

The Honourable Mr. Justice Grauer

The Honourable Justice Edelmann

On appeal from: An order of the Provincial Court of British Columbia, dated
July 11, 2022 (conviction) (R. v. P.R.T.W., Vancouver Docket 251819-1).

Counsel for the Appellant:

D.M. Turko, K.C.

Counsel for the Respondent:

E. Purtzki

Place and Date of Hearing:

Vancouver, British Columbia

January 29, 2025

Place and Date of Judgment:

Vancouver, British Columbia

March 13, 2025

Written Reasons by:

The Honourable Justice Edelmann

Concurred in by:

The Honourable Madam Justice Fenlon

The Honourable Mr. Justice Grauer

Summary:

The appellant appeals his conviction for assault against his then six-year-old daughter. The appellant said he put his hand on his daughter's chest to prevent her from getting out of bed at bedtime. Having listened to an audio recording of the appellant's yelling during the incident, the trial judge found that he was in a state of uncontrolled anger and was not applying force for the purpose of corrective parental discipline. He was therefore not shielded from conviction by the defence for parental discipline in section 43 of the Criminal Code. The appellant says the judge erred in assessing the evidence and applying the section 43 defence.

Held: Appeal dismissed. The judge accepted parts of the appellant's evidence and was entitled to reject others. The judge was entitled on the evidence to find that the appellant did not hold his daughter to the bed for the purpose of appropriate corrective action.

Reasons for Judgment of the Honourable Justice Edelmann:

- [1] This is an appeal from a decision in the Provincial Court finding the appellant guilty of assault against his six-year-old daughter. The appellant said he held his daughter down by putting his hand on her chest to keep her from getting out of bed. Having reviewed an audio recording of the incident, the trial judge concluded that the appellant was in a state of uncontrolled anger or rage and his use of force was not appropriate discipline in the circumstances.
- [2] In his factum, the appellant alleges the trial judge erred as she "misapprehended the doctrine of reasonable doubt as it is applied to the issue of [his] credibility." The argument, however, was focused on a number of alleged errors in the manner in which evidence was dealt with by the trial judge and the application of the defence relating to parental discipline set out in s. 43 of the Criminal Code, R.S.C. 1985, c. C-46. I will begin by addressing the evidentiary issues before turning to the defence under s. 43.

Evidence at Trial

- [3] The appellant was charged with various offences against his two biological daughters (K.W. and C.W.) between 2007 and 2016. Six of the seven counts concerned sexual offences and one count alleged physical assault of K.W. During an eleven-day trial in Provincial Court, both complainants along with a number of other family members testified. The trial judge articulated various concerns with the credibility and reliability of the complainants' evidence, acquitting the appellant of the sexual offences. She found him guilty of the assault on K.W.
- [4] The assault was alleged to have occurred in the evening of November 17, 2010. The appellant was at home with four children. His daughter K.W. was six years old, her sister C.W. was five years old, and their brother E.W. was three years old. Their half-sister, Z.C., was a teenager.
- [5] Both K.W. and the appellant testified about the incident.
- [6] K.W. said that after she refused to use mint toothpaste to brush her teeth before her bedtime, the appellant started to yell at her. She said that the appellant slapped her across the face. K.W. said that she ran into her room and climbed up onto the top bunk. She said that, at this point, the appellant grabbed her shoulders and choked her until she began to lose her vision. In cross-examination, K.W. conceded that she may have been exaggerating when she said that the appellant choked her until she almost passed out.
- [7] The appellant testified that he was trying to get the kids to bed. K.W. was refusing to brush her teeth and go to bed. C.W. hit her head on the bottom of the bunk bed in their room and was crying. He grabbed K.W. and lifted her onto the top bunk and told her to "knock it off." She was trying to get up, so he put his hand on her chest to prevent her from getting out of bed. E.W. came into the room to say there was a fly in his room and the appellant went to E.W.'s room to deal with the fly.

- [8] Z.C. was in a nearby room during the incident. She did not directly observe the interaction between the appellant and K.W. but made a series of video recordings on her laptop that were entered as evidence at trial. The video only captured Z.C. sitting in front of her laptop, but she testified that the audio captured portions of the interactions in the home that evening.
- [9] Having reviewed the audio recordings, the trial judge rejected much of the evidence of both K.W. and the appellant. In particular, she did not accept K.W.'s evidence that the appellant choked her:
- [260] I do not accept that P.W. choked K.W. She was screaming continuously and would not have been able to do so if she had been choked. She had initially testified that he put his hands around her throat and started choking her until she felt like she was starting to pass out. She then acknowledged this was probably an over exaggeration. B.S. [her mother] never saw bruises on her neck.
- [10] The trial judge correctly instructed herself on the approach to be taken to P.W.'s evidence, setting out the framework in *R. v. W.(D.)*, [1991] S.C.R. 742 in the following terms (at para. 252):

If I believe the evidence of the accused, I must acquit.

If I do not believe the evidence of the accused, but am left in a reasonable doubt by it, I must acquit.

Even if I am not left in a reasonable doubt by the evidence of the accused, I must ask myself whether, on the basis of the evidence which I accept, I am convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

- [11] She provided cogent and coherent reasons for disbelieving portions of the appellant's version, in particular as they were inconsistent with the recordings:
- [256] Contrary to P.W.'s testimony, the comments in the first video about an unnamed child crying at line 20 of the transcript and P.W. replying to an unknown child that, 'She banged her head' came several minutes into Video 2 where K.W. was reported by Z.C. to be screaming after K.W. slammed the door. It is during the timeframe in Video 2, which started at 19:41 that K.W. can be heard screaming on the tape and another child identified by Z.C. in the transcript as C.W. says 'Daddy. You're hurting her.' K.W. continues to scream until E.W. comes into the bedroom and says there is a fly in his room. Video 4 was made after P.W. returned to the complainant's room and asked K.W. if [s]he wanted to challenge him and she replied 'No' several times.
- [257] I do not accept P.W.'s evidence that the child screaming constantly was C.W. or his evidence that she was screaming because she hit her head jumping into bed. It is not consistent with the recording or the transcripts. C.W. was not asked if she hit her head on the bunk bed jumping into bed. I find that K.W. was the child screaming constantly.

- [258] P.W. acknowledged that he put his hand on K.W.'s chest while she was on the top bunk and kept pressing her back into the pillow and mattress. He testified that while he was pressing K.W. down E.W. came into the room and said there was a fly in his room.
- [12] Trial judges are entitled to "accept some, all, or none of a witness's testimony" (R. v. Kruk, 2024 SCC 7 at para. 81), including that of the accused. In this case, the trial judge accepted crucial parts of the appellant's testimony but rejected others. I am not persuaded she erred in doing so.
- [13] The appellant makes a number of arguments in his factum challenging the authenticity or reliability of the recordings. I note that some of the arguments are being made for the first time on appeal and were not raised at trial or put to Z.C. In any event, it was squarely within the trial judge's role to assess the evidence before her and give as much or as little weight to the recordings as she concluded they warranted. It is not the role of this Court to re-weigh the evidence, and I am not persuaded the trial judge erred in the weight she gave to the recordings.
- [14] I would not accede to the grounds of appeal on the evidentiary issues.

Defence Under s. 43

- [15] A person commits an assault when, without the consent of another person, they apply force intentionally to that other person, directly or indirectly (Criminal Code, s. 265(1)(a)). The appellant testified that he applied force to get his daughter into the bed and further used force to restrain her in the bed. He also testified that she was not consenting to the use of force and was resisting going to bed. The only issue was whether the appellant could avail himself of the defence available to parents under s. 43 of the Criminal Code:

43 Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

- [16] A person wishing to rely on this defence must establish both that the force applied was for educative or corrective purposes, and that the force used did not exceed what was reasonable. This case turns on the first requirement.
- [17] In *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, the Supreme Court of Canada addressed that requirement, saying:

24 [] [T]he person applying the force must have intended it to be for educative or corrective purposes: *Ogg-Moss*, supra, at p. 193. Accordingly, s. 43 cannot exculpate outbursts of violence against a child motivated by anger or animated by frustration. It admits into its sphere of immunity only sober, reasoned uses of force that address the actual behaviour of the child and are designed to restrain, control or express some symbolic disapproval of his or her behaviour. The purpose of the force must always be the education or discipline of the child: *Ogg-Moss*, supra, at p. 193.

- [18] The trial judge came to the following conclusions about the application of force to K.W.:
- [255] Throughout most of the audio, P.W. is yelling in a manner that was loud, angry and out of control. It was chilling to listen to in court over ten years later.
- [259] I find that P.W. was in a rage when he was pushing K.W. down into the bed. He said he was doing this so she did not get out of bed. In the circumstances I do not find this was done as appropriate discipline but while he was in a state of uncontrolled anger.
- [19] The main thrust of the appellant's oral argument was that the trial judge erred in applying the defence set out in s. 43 because she did not address whether the force used exceeded what was reasonable. He submits that holding a child down in bed is not necessarily unreasonable force, and the trial judge made no findings suggesting that the physical force used was unreasonable in and of itself. The appellant further argues that yelling alone could not constitute unreasonable force, and the fact that a parent is angry when disciplining a child cannot preclude them from availing themselves of the defence set out in s. 43.
- [20] I do not accept the trial judge ought to have taken the piecemeal approach being suggested by the appellant. To the contrary, the nature and tenor of the appellant's yelling provided important context to assess the first requirement for establishing a s. 43 defence: whether the purpose of the force used was discipline. The trial judge concluded that the appellant was in a state of uncontrolled anger when he applied force to K.W. and that it was not done as appropriate discipline. The appellant was an adult who was much larger than his six-year-old daughter. His conduct in applying force, including the tenor and content of the yelling, were relevant context in assessing whether he was engaged in the type of discipline protected by s. 43. The trial judge concluded that he was not, describing the nature of the yelling heard on the recording as "chilling". Having reviewed the recording as part of the appeal record, I am satisfied it was open to her to come to the conclusion she did. Having come to that conclusion, the defence could not be made out, and it was not necessary for the judge to go on to consider whether the force used exceeded what was reasonable in the circumstances.
- [21] The appellant also raised a further evidentiary point, alleging that the trial judge erred as "we are unable to know when the holding down was happening" and therefore she could not conclude his state of rage coincided with the use of force. I disagree. The trial judge accepted the appellant's own testimony that he was holding K.W. down when E.W. came into the room. As noted by the trial judge, E.W. can be heard on the recording saying there was a fly, which clearly placed the assault in the context of the other sounds on the recordings.
- [22] I would not accede to this ground of appeal.

Conclusion

- [23] For the reasons above, I would dismiss the appeal.

"The Honourable Justice Edelmann"

I AGREE:

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Mr. Justice Grauer"

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Prepared on 29 October 2026 · Esheria