

CANADA / JUDGMENT

R. v. Pressman

2025 ONCA 737

COURT

Court of Appeal for Ontario

DECIDED

24 October 2025

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R. v. Pressman Collection Decisions of the Court of Appeal Date 2025-10-24 Neutral citation 2025 ONCA 737 Docket numbers COA-23-CR-0936 Judges Trotter, Gary T.; Wilson, Darla A.; Pomerance, Renee M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Pressman, 2025 ONCA 737[1] DATE: 20251024 DOCKET: COA-23-CR-0936 Trotter, Wilson and Pomerance JJ.A. BETWEEN His Majesty the King Respondent and Kenneth Pressman Appellant Geoff Haskell, for the appellant Hannah Freeman, for the respondent Heard and rendered orally: October 22, 2025 On appeal from the convictions entered by Justice Chris de Sa of the Superior Court of Justice, sitting with a jury, on July 5, 2022, and from the sentence imposed on October 28, 2022. REASONS FOR DECISION

- [1] The appellant was convicted of one count of assault and one count of sexual assault relating to the same complainant. He was sentenced to 7 years' imprisonment.
- [2] The indictment covered an 11-day period when the appellant and the complainant were together. Numerous incidents of assault and sexual assault were alleged.
- [3] The appellant raises two, related grounds of appeal. First, the appellant's trial was rendered unfair because he lacked testimonial capacity as a result of a mental illness. Second, the trial was also unfair because the counts in the indictment were vague and failed to identify specific instances of assault and sexual assault, especially in light of the appellant's claims relating to his testimonial capacity.
- [4] The appellant's first ground of appeal entails an examination of the trial record and an application to admit fresh evidence on this appeal.
- [5] By way of background, it was common ground at trial that the appellant suffered from a mental illness – likely bi-polar disorder. As trial counsel advised the trial judge, the appellant had previously been under the jurisdiction of the Ontario Review Board, albeit many years ago. Nonetheless, six weeks prior to trial, the appellant was the subject of a fitness assessment with respect to other offences. It was determined that he was fit to stand trial.

- [6] The appellant submits that the transcript of his evidence shows that he was unable to answer questions directly. His answers were long-winded, over-inclusive, and tangential. This was addressed with the trial judge at certain times during the trial. Defence counsel raised concerns that the appellant had not always received his medication at the jail. The trial judge agreed to endorse the warrant of remand to ensure that the appellant received his medication each day.
- [7] As part of this ground of appeal, the appellant seeks to adduce fresh evidence comprised of medical records going back many years. This package also includes documents relating to the appellant's time under the jurisdiction of the Ontario Review Board, records from correctional institutions, and other medical records. Some of this pertains to events following the appellant's trial. The appellant relies on this evidence in support of the submission that his psychiatric condition, combined with the improper administration of his medication, undermined his testimonial capacity.
- [8] We agree with the Crown that the proposed fresh evidence should not be admitted. Much of this evidence could have been adduced at trial by defence counsel. A lot of it is in an inadmissible form. Most importantly, the evidence lacks cogency in the sense that it is adduced without any evidence from the appellant himself and/or an expert opinion addressing the impact, if any, of the appellant's mental illness on his testimonial capacity and/or fitness during his trial. Without this crucial link, we are unable to draw the conclusions from these documents that the appellant submits that we should. We dismiss the fresh evidence application.
- [9] As noted, the appellant's mental health was addressed a number of times at trial. Defence counsel, whose performance is not challenged on this appeal, did not ask for a fitness or capacity assessment. The trial judge, who was clearly alive to the appellant's mental health challenges, did not see the necessity for a further fitness assessment. His judgment on this issue is entitled to deference on appeal.
- [10] Overall, we are not persuaded that the trial was rendered unfair. We dismiss this ground of appeal.
- [11] Nor are we persuaded that the trial was rendered unfair by the manner in which the indictment was drafted. The two counts in issue did not violate the single transaction rule in s. 583 of the Criminal Code. A single count may include a course of conduct comprised of more than one act. Defence counsel did not ask for further particulars, nor did he ask that the counts be divided to provide greater precision. The appellant received full disclosure of the allegations against him. The appellant knew the case he had to meet and he responded to it during his testimony. Any testimonial difficulties he experienced was not the result of how the indictment was drafted; instead it arose from the operation of s. 276 of the Criminal Code when the appellant attempted to testify about other sexual contact he had with the complainant, which he claimed was consensual. When this issue arose, the precise allegations were clarified for the appellant.

- [12] The appeal from conviction is dismissed. The appeal from sentence is dismissed as abandoned. “Gary Trotter J.A.” “D.A. Wilson J.A.” “R. Pomerance 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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