

CANADA / JUDGMENT

R. v. R.G.

2025 ONCA 800

COURT

Court of Appeal for Ontario

DECIDED

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R. v. R.G.

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2025 ONCA 800

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COA-24-CR-0685

Judges

Miller, Bradley; Trotter, Gary T.; Rahman, Moiz

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. R.G., 2025 ONCA 800[1]

DATE: 20251124

DOCKET: COA-24-CR-0685

Miller, Trotter and Rahman JJ.A.

BETWEEN

His Majesty the King

Respondent

and

R.G.

Appellant

Brad Greenshields, for the appellant

Jacob Millns, for the respondent

Heard: October 9, 2025

On appeal from the conviction entered by Justice Kimberly E. M. Moore of the Ontario Court of Justice on March 26, 2024, and from the sentence imposed on July 17, 2024.

B.W. Miller J.A.:

- [1] The appellant was convicted of a single count of sexual assault of his closest friend's 17 year old daughter. The appellant was 58 years old at the time. He testified in his defence that all of his sexual activity with the complainant was consensual. He received a sentence of six years' imprisonment. The appellant appeals both conviction and sentence. For the reasons that follow, I would dismiss both appeals.

Factual overview

- [2] The appellant and the complainant's father had worked together for many years as long-haul truckers. Their families were close. After the complainant had been discharged from the hospital following a suicide attempt, the appellant suggested that she come work with him to stain the deck of his house. The idea appealed to both the complainant and her parents, who thought it would be a good idea for the complainant to get out of the house for a few days and keep busy. It would also provide her with some money. The complainant's mother asked if the complainant could stay overnight at the appellant's house while she did the work, so she would not have to keep driving the complainant back and forth to the family home. The appellant agreed. The complainant would have her own space in the basement. Everyone was comfortable with the arrangement.
- [3] After the work on the deck was completed, the complainant asked if she could stay a few days longer, as she was enjoying being away from the family home. The appellant and the complainant's parents agreed, and the appellant found more work for the complainant to do on a cottage he managed for his brother-in-law, which was on an island nearby. The appellant and complainant went to the cottage together for two days. Altogether, the complainant was with the appellant July 6 – 13, 2022. Nothing untoward took place.

- [4] At some point, plans were made for the complainant to return with the appellant on July 25 to the cottage to apply a second coat of stain on the fence. On July 24, the appellant went to visit the complainant's family, who were then camping at a campsite with the complainant. He suggested that the complainant drive back with him a day earlier than planned, stay at his house that night, and go to the cottage with him the next morning. Everyone agreed.
- [5] After leaving the campsite, the appellant suggested to the complainant that they go to the cottage that night instead. She agreed. They went to their respective houses to get a change of clothes and continued the drive. The complainant joked about having a drink at the cottage, and the appellant stopped at an LCBO and bought Sour Puss liqueur for her at her request. He also brought a bottle of vodka from his house.

The events of July 24th

- [6] At the cottage, they decided to have a drink in the hot tub. They each ended up having four drinks. The complainant was not an experienced drinker.
- [7] Both parties testified to sexual activity in the hot tub. The complainant ended up sitting on the appellant's lap and they kissed. He undid the strap of her bikini top, which she then removed. He touched her breasts. The complainant agreed that this was all consensual.
- [8] On cross-examination, however, and after the complainant had testified that she had consented to the sexual activity in the hot tub, the appellant testified for the first time that while they were in the hot tub, the complainant placed his hand on her genital area. This was not put to the complainant on cross-examination. Accordingly, it necessitated recalling the complainant under the rule in *Browne v. Dunn* (1893), 6 R. 67 (H.L.), weeks after she had completed her testimony and with only a few days' notice.
- [9] It is evident from the transcript that the complainant was unhappy about being recalled, and was in a hurry for the ordeal to be over. There were some inconsistencies between the complainant's initial testimony and her evidence that day. On recall, in response to a question from the trial judge about whether the appellant digitally penetrated her in the bedroom, the complainant initially stated that she could not remember. In re-examination she clarified that the appellant did put his fingers inside her vagina in the bedroom. She explained that this inconsistency arose because after her initial testimony she "didn't want to think about it" any longer. But her evidence about the touching that occurred in the hot tub was consistent with her evidence during her examination in chief and cross-examination, which did not include any mention of the appellant touching her vagina.
- [10] The trial judge did not find the appellant credible on whether touching occurred in the hot tub, or on any other point, and was not persuaded that there was vaginal touching in the hot tub. This finding became significant on appeal, because of the appellant's argument that an instance of digital penetration later in the bedroom was simply a continuation of the consensual activity in the hot tub.

- [11] The trial judge found that by the end of the time in the hot tub, the complainant was highly intoxicated. She did not have a clear memory of leaving the hot tub, and her next memory was lying naked in the appellant's bed, with the appellant lying down next to her. Her memory of what happened subsequently was not clear due to her intoxication. Her evidence was not coherent, and the trial judge was not able to rely on it. The complainant could not recall if there was vaginal or oral sex in the bed that night, although she testified that she remembered that there was digital penetration, that it hurt, and that she did not consent.
- [12] The appellant testified that the complainant told him "I want to ride your cock", that he digitally penetrated her, that they attempted intercourse but the appellant could not maintain an erection, and that they then performed oral sex on each other. The trial judge did not accept all the appellant's evidence as to what took place in the bedroom. The trial judge did, however, accept his evidence that he digitally penetrated the complainant. She found that the complainant was not consenting and had not communicated consent.

The events of July 25th

- [13] The complainant testified that the next morning, July 25, she awoke with a hangover and her vagina hurt. After she went to the bathroom, she heard the appellant calling her name, and she found him lying in her bed, telling her to lie down next to him. She did. He rolled on top of her, digitally penetrated her, and briefly penetrated her with his penis. He then ejaculated onto her leg and the bed sheets. He pushed her head towards his penis and forced her to perform oral sex. During this, he got semen in her mouth.
- [14] The appellant denied there was any sexual intercourse that morning. He testified that it was the complainant, lying naked on her bed, who invited him to come and "try again". He testified that he declined and told her what had happened the night before was wrong and inappropriate.
- [15] After leaving the cottage, the appellant stopped at a Walmart, at the complainant's request, to purchase a Plan B pill (a morning after pill designed to prevent pregnancy) for her. They returned to his house, the complainant took the pill, and they napped separately before the appellant dropped the complainant off at her house. On the way, the appellant stopped at an ATM and gave the complainant \$100, even though she did not end up doing any work on the fence.
- [16] The trial judge found that it was proven beyond a reasonable doubt that the appellant sexually assaulted the complainant on July 24 and 25, and convicted him of a single count of sexual assault.

Grounds of appeal

- [17] The appellant appealed his conviction on the basis that: (1) the finding of guilt with respect to the July 24 events was unreasonable, and that the trial judge erred in failing to find that the complainant consented to all of the sexual activity that took place on that day; and (2) with respect to her findings in relation to both events, the trial judge erred in failing to apply the principles of *R. v. W.(D.)*, [1991] 1 S.C.R. 742.
- [18] The appellant also seeks leave to appeal his sentence, and requests a reduced carceral term.

Analysis

The events of July 24

- [19] Credibility was central to this trial. The trial judge found the appellant to be an unbelievable witness, rejected his evidence, and found that it did not leave her with a reasonable doubt. The trial judge found the complainant credible and accepted her evidence with respect to what occurred in the hot tub on July 24 and in the bed on July 25. These core credibility findings are repeated throughout the trial judge's reasons. The trial judge found that the complainant consented to the sexual activity in the hot tub, had communicated her consent to the appellant through her activity, and, critically, that the sexual activity in the hot tub did not include digital penetration or any touching below the waist.
- [20] With respect to the sexual activity in the bedroom on July 24, the trial judge had difficulties with the reliability of the complainant's evidence. Her memory was impacted by her alcohol consumption, and she could not testify reliably as to what sexual acts took place at that time. Notwithstanding the problems with the reliability of the complainant's evidence, the trial judge did not have a reasonable doubt about digital penetration on that occasion, because the appellant had also testified to it.
- [21] The appellant characterized the trial judge's reasoning with respect to the July 24 events as an error like the one detailed in *R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190: an unreasonable verdict where the trial judge makes a finding of fact "essential to the verdict that is plainly contradicted by the evidence relied on by the trial judge in support of that inference or finding, or shown to be incompatible with evidence that has neither been contradicted by other evidence nor rejected by the trial judge.": *R. v. C.P.*, 2021 SCC 19, [2021] 1 S.C.R. 679, at para. 29.
- [22] The appellant argues that the trial judge did not expressly reject much of the appellant's evidence as to what happened in the bedroom, and particularly erred in her analysis of the absence of consent in the actus reus of the sexual assault. The argument, essentially, is that just as the trial judge found that the complainant's conduct in the hot tub manifested her consent as to what took place in the hot tub, the trial judge ought to have found that the complainant had similarly communicated consent to what occurred in the bedroom. The consent to kissing and sexual touching in the hot tub was, on the appellant's argument, a

manifestation by conduct of consent to the digital penetration which occurred later in the bedroom.

- [23] The appellant's argument is premised on the trial judge not having specifically rejected several factual propositions advanced by the appellant with respect to what happened in the bedroom. The appellant argues that there is much evidence that was not specifically rejected that raises a reasonable doubt as to whether the complainant did not consent. I do not agree with the appellant's reading of the trial judge's reasons.
- [24] The trial judge's findings, although spread throughout a very lengthy judgment, are clear and consistent as to why the trial judge did not find that there was a reasonable doubt that the complainant did not consent. First, the trial judge was not required to specifically state that she disbelieved every factual proposition advanced by the appellant. The trial judge rejected the appellant's evidence at large, finding him to be disingenuous and incredible. She did not find him to be a believable witness. The problems with his evidence were not limited to the substance of his testimony. There were also problems with how the evidence was presented.
- [25] In particular, the appellant claimed during cross-examination that while in the hot tub, the complainant pulled his hand towards her vagina. As noted above, this violated the rule in *Browne v. Dunn*, and required the complainant be recalled weeks after her cross-examination had been completed. The transcript of that evidence shows a witness who is exasperated.
- [26] The appellant argues that the trial judge ought to have drawn two conclusions from the complainant's evidence. First, that gaps and uncertainties present in her testimony, for example as to who was making drinks for whom when they were in the hot tub, should have led the trial judge to discount the complainant's evidence about what occurred in the hot tub. And second, that because of these gaps, the trial judge should not have rejected the appellant's evidence as to what occurred in the hot tub: that the complainant placed his hands on her vagina.
- [27] But the trial judge was permitted to find that this testimony did not detract from the complainant's earlier testimony, and was permitted to find that it did not raise a reasonable doubt.
- [28] Although the trial judge had difficulty with the reliability of much of the complainant's evidence as to what specific sexual acts occurred in the bedroom on July 24, she had no such difficulty with the reliability of the complainant's evidence – consistent throughout all of her testimony – that she was not consenting and that she did not do or say anything to communicate consent to any sexual activity that occurred after they left the hot tub.
- [29] Third, much of the appellant's argument depends on the trial judge making findings that she did not make, such as the complainant having said "I want to ride your cock", and the appellant touching the complainant's genital area in the hot tub. As stated above, the trial judge was not required to make these findings.

[30] Because the trial judge found that the appellant did not touch the complainant's vagina in the hot tub, there is no factual foundation for the appellant's submissions that the complainant manifested her consent to digital penetration through her earlier actions. Nor can it be said that the two events represented a continuous transaction. The sexual acts in the bedroom were of a markedly different nature than the activity the trial judge found occurred in the hot tub: kissing and above-the-waist touching.

Events of July 25

- [31] With respect to the argument that the trial judge did not properly apply the principles of W. (D.) to the acts that took place in the bedroom the morning of the July 25, I do not agree.
- [32] The appellant makes much of the fact that the trial judge was unable to accept the complainant's testimony with respect to the sexual acts alleged to have taken place in the bedroom the night of July 24, but was able to accept the testimony with respect to the morning of July 25. However, there is no mystery to the difference. The complainant's recall of events from the morning of July 25 were of a different nature than her narration of the events of the night before. The trial judge attributed this to the fact that in the morning the complainant was sober, and she was able to recall events coherently. That the trial judge had a reasonable doubt as to whether some of the alleged acts happened the night of July 24 therefore had no bearing on her assessment of reasonable doubt as to what transpired the next morning. The trial judge did not err.

Sentence appeal

- [33] The appellant received a six year carceral sentence. He seeks leave to appeal, and if his appeal of sentence is successful, a reduction in his sentence to three years.
- [34] The grounds of appeal are (1) that the trial judge erred in her assessment of mitigating and aggravating factors; and (2) that the trial judge applied a sentencing range appropriate to a different class of offender and a different class of offence.
- [35] The standard of review on a sentence appeal is highly deferential. Appellate intervention is permitted only where there is an error in principle that had an impact on sentencing, or the sentence is demonstrably unfit: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 11, 42-44.
- [36] The appellant argues that the trial judge overemphasized the appellant's position of trust relative to the complainant, compared to *R. v. A.J.K.*, 2022 ONCA 487, 162 O.R. (3d) 721, which endorsed a three to five year range and incorporated the aggravating factor of the offender holding a position of trust. However, the facts here differ from those in *A.J.K.*: most significantly, the complainant in *A.J.K.* was not a child and the offender was not in a position of trust. The trial judge did not err in applying *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424.

- [37] Although the complainant in this case is significantly older than the very young complainant in Friesen, she is nevertheless a child who was sexually abused by a much older man who committed the offence by abusing the trust placed in him by the complainant and her parents. As the trial judge acknowledged, Friesen's holding applies broadly to those under the age of 18. The court in Friesen specifically advised trial courts to be "particularly careful to impose proportionate sentences in cases where the victim is an adolescent": at para. 136.
- [38] The trial judge's finding that the appellant lacked insight and remorse was reasonable. The appellant relied on his alleged demonstration of insight and remorse as a mitigating factor. The trial judge found that the appellant only showed insight into certain aggravating features of the offence. She found that he did not show insight into the actual offences. This conclusion was reasonable, particularly in light of the appellant's continued insistence that there was no sexual assault on the morning of July 25, when the most invasive acts took place.
- [39] The sentence is not manifestly unfit. It is a harsh sentence, but not out of line with similar offences considering: (1) the appellant's breach of trust as a longtime friend of the family; (2) the vulnerability of the complainant: alone on an island with the appellant, entirely dependent on him, drinking to the point of severe intoxication, and having just attempted suicide weeks before; (3) the continuing harm suffered by the complainant and her parents; (4) the degree of violation of the complainant's physical integrity; and (5) the complainant's age.
- [40] I would not interfere with the sentence.

DISPOSITION

- [41] I would dismiss the appeal against conviction, allow leave to appeal and dismiss the sentence appeal.

Released: November 24, 2025 "B.W.M."

"B.W. Miller J.A."

"I agree. Gary Trotter J.A."

"I agree. M. Rahman 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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