

CANADA / JUDGMENT

R. v. Turner

2025 BCCA 383

COURT

British Columbia Court of Appeal

DECIDED

6 November 2025

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

2025 BCCA 383 R. v. Turner COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Turner, 2025 BCCA 383 Date: 20251106 Docket: CA50205 Between: Rex Respondent And Cassidy Joel Turner Appellant Restriction on publication: A publication ban was imposed under s. 486.4 of the Criminal Code restricting the publication, broadcasting or transmission in any way of information that could identify the complainant. On October 15, 2024, the trial judge granted an application to revoke this publication ban pursuant to s. 486.51(3) of the Criminal Code. The publication ban no longer applies. Before: The Honourable Mr. Justice Harris The Honourable Madam Justice DeWitt-Van Oosten The Honourable Justice Edelmann On appeal from: An order of the Provincial Court of British Columbia, dated May 31, 2024 (conviction) (R. v. Turner, Duncan Docket 44528-1). Counsel for the Appellant: S.J. Runyon Counsel for the Respondent: E. Purtzki Place and Date of Hearing: Vancouver, British Columbia September 18, 2025 Place and Date of Judgment: Vancouver, British Columbia November 6, 2025 Written Reasons by: The Honourable Justice Edelmann Concurred in by: The Honourable Mr. Justice Harris The Honourable Madam Justice DeWitt-Van Oosten Summary: The appellant was acquitted of a sexual assault but convicted of being unlawfully in a dwelling-house with the intent to commit an indictable offence. He appeals this conviction, alleging that the trial judge erred by relying on aspects of the complainant's testimony and by failing to provide sufficient reasons. He also says that the trial judge erred by failing to consider his acquittal on the sexual assault and his level of intoxication as "evidence to the contrary" to overcome the statutory presumption of his intent to commit an indictable offence. HELD: Appeal dismissed: The trial judge rejected the appellant's testimony in its entirety and explained why he did so. There was no evidence of a lawful excuse for his presence in the complainant's apartment in the middle of the night without her permission. There was also no evidence that the appellant entered the dwelling-house for a reason other than to commit an indictable offence. The acquittal on a separate charge is not on its own "evidence to the contrary" negating the statutory presumption. The limited indicia of intoxication in the evidence at trial were not sufficient to require the trial judge to engage with the issue despite it not being raised. Reasons for Judgment of the Honourable Justice Edelmann: Overview

[1] The appellant was charged with one count each of sexual assault (Count 1) and being unlawfully in a dwelling-house (Count 2). Both offences were alleged to have occurred in the early morning hours of October 25, 2020 on Salt Spring Island.

- [2] The appellant and the complainant had apartments across the hall from each other. The complainant testified that she had gone to bed around midnight, leaving her front door closed, but unlocked, as she was expecting a friend to stay in her apartment. She said she awoke in the middle of the night to find the appellant in her bed "spooning" her and touching her breast. She said she had not given him permission to enter her apartment, much less her bedroom.
- [3] The appellant testified that he returned home around 4 a.m. and realized he did not have his laptop. He went back and forth several times from his apartment, talking loudly on his phone about the laptop. He testified that the complainant's door was open, and she heard him in the hallway. She was on her bed in the bedroom and called to him in the hallway, inviting him to sit on the bed. The appellant testified that after 15 or 20 minutes of conversation the complainant pulled him into a spooning position, but he denied touching her breast. He said that after 5 or 10 minutes he told the complainant that the situation was getting inappropriate, and he left.
- [4] The trial judge found that the appellant's version of events did not make sense. He also found the appellant to have been evasive with respect to several aspects of his testimony. He concluded that the appellant's testimony was not credible "in any way, shape, or form" and rejected it in its entirety.
- [5] The trial judge then went on to consider the complainant's testimony about the alleged sexual assault. He acknowledged that she, too, gave evasive answers in cross-examination. While this on its own might not have led to credibility concerns, the trial judge also found inconsistencies between the complainant's testimony and what she said to others about the events of that night. He was left with a reasonable doubt by her description of what happened in the bedroom. He acquitted the appellant of the sexual assault charge.
- [6] The trial judge then turned to the second charge, being in a dwelling-house without lawful excuse, which he addressed in the following terms:
- [33] With regard to Count 2 there are, of course, different elements to that offence. With regard to what happened, I have already rejected the evidence of [the accused], and I reject it completely for what he was doing inside that residence. When I take into account what is said by [the complainant] as to him being in that residence, I am indeed satisfied, accepting those parts of her evidence that deal with those elements of that offence, that they are proven beyond a reasonable doubt, and with regard to Count 2 I find him guilty of unlawfully [sic] in a dwelling house.
- [7] The appellant challenges that finding on appeal. Issues on Appeal
- [8] The appellant alleges that the trial judge committed errors in convicting him of being unlawfully in a dwelling-house by relying on the complainant's testimony after finding credibility issues in relation to the sexual assault, failing to provide sufficient reasons and failing to ask whether there was "evidence to the contrary" that would displace the statutory

presumption of specific intent. It will be helpful to begin by setting out the legal framework before turning in more detail to the alleged errors, which relate to two different elements of the offence. Elements of the Offence

- [9] The offence of being unlawfully in a dwelling-house is set out at s. 349 of the Criminal Code, R.S.C. 1985, c. C-46: 349 (1) Every person who, without lawful excuse, enters or is in a dwelling-house with intent to commit an indictable offence in it is guilty of an indictable offence [].
- (2) For the purposes of proceedings under this section, evidence that an accused, without lawful excuse, entered or was in a dwelling-house is, in the absence of any evidence to the contrary, proof that he entered or was in the dwelling-house with intent to commit an indictable offence therein.
- [10] The basic elements of the offence require the Crown to prove (1) the identity of the accused (2) as a person who entered or was in (3) a dwelling-house (4) without lawful excuse and (5) with the intent to commit an indictable offence therein.
- [11] The application of the first three elements is relatively straightforward. The fourth element, lawful excuse, was the subject of amendments by Parliament in 2018. Many of the previous cases applying this section, as well as similar provisions relating to break and enter, were decided prior to those amendments. The previous section read as follows: Every person who, without lawful excuse, the proof of which lies on that person, enters or is in a []
- [12] The amendments removed the underlined portion and also removed s. 794(2) of the Criminal Code: 794 (2) The burden of proving that an exception, exemption, proviso, excuse or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, proviso, excuse or qualification does not operate in favour of the defendant, whether or not it is set out in the information.
- [13] Pre-2018 cases, including from our Court, treated "lawful excuse" as a defence. The clear purpose of the amendments was to remove the onus on the accused in the relevant provisions, and it would appear evident that the legislator has sought to reframe the unlawfulness of the accused's presence in the dwelling as an element of the offence. This framing lends greater coherence to the section, as without the element of unlawfulness, the Crown is left to prove only the accused's presence in the dwelling. This understanding of the amended section is consistent with this Court's post-2018 approach to a similar provision relating to break and enter, describing entry without lawful justification as an element of the offence: *R. v. Conway*, 2021 BCCA 460.
- [14] Once the first four elements have been proven by the Crown beyond a reasonable doubt, the presumption in s. 349(2) operates with respect to the final element of the offence. I will address the presumption in greater detail below.

- [15] At trial, the first three elements of the offence were not at issue. There was no question that the complainant's apartment was a dwelling-house and the appellant admitted that he was present in her apartment on the date in question. The trial judge had two issues to resolve. The first issue was whether the appellant had a "lawful excuse" for being in the complainant's apartment. The second was whether he had the intent to commit an indictable offence. Lawful Excuse
- [16] The appellant was in the complainant's apartment in the middle of the night. The complainant was adamant in both her direct evidence and under cross-examination that she had neither invited the appellant into her apartment, nor given him permission to be there. As noted above, the appellant testified that the complainant had invited him into her bedroom. That evidence was rejected in its entirety as not credible.
- [17] The appellant argues that the trial judge ought not to have relied on the complainant's evidence about the circumstances of the appellant's entry into the apartment when he had sufficient concerns about her credibility to raise a reasonable doubt about the sexual assault. I disagree. A trier of fact is entitled to accept some, all, or none of a witness's evidence: *R. v. J.M.H.*, 2011 SCC 45 at para. 25. I am not persuaded that the trial judge erred in accepting the relevant portions of the complainant's testimony.
- [18] I am also not persuaded that the reasons were insufficient. The key question in assessing the sufficiency of reasons is whether the aggrieved party understands what the trial judge decided and why, and whether the reasons permit appellate review: *R. v. G.F.*, 2021 SCC 20 at para. 5. If the trial reasons do not explain the "what" and the "why", but the answers to those questions are clear in the record, there will be no error: *R. v. R.E.M.*, 2008 SCC 51 at paras. 38-40; *R. v. Sheppard*, 2002 SCC 26 at paras. 46, 55. In this case, while the trial judge's reasons do not directly address the issue of lawful excuse, I am satisfied that the record as a whole amply allows the appellant and this Court to understand what the trial judge decided on this element of the offence and why.
- [19] The trial judge explained why he rejected the appellant's evidence, including his evidence that the complainant invited him into her apartment. It is evident that the trial judge then accepted the complainant's evidence that the appellant entered her apartment while she was asleep and was there without her permission. The appellant does not suggest any other basis upon which his presence in the apartment would have been lawful. In my view, it is clear why the trial judge concluded that the appellant was present in the apartment without lawful excuse. Intent to Commit an Indictable Offence
- [20] As noted above, s. 349(2) creates a presumption that someone unlawfully in a dwelling-house intends to commit an offence therein. The presumption requires the trier of fact to presume, absent "evidence to the contrary", that an intruder's unlawful presence in a dwelling-house-- somewhere they have no business being in the first place--is for an improper purpose: *R. v. Holland*, 2013 NBCA 69 at para. 11. The trial judge did not refer to s. 349(2) in his reasons for judgment. However, the application of the provision is implicit. The

trial judge is presumed to know the law he was obliged to apply to the case: G.F. at para. 74.

- [21] Evidence to the contrary is any evidence, in either the prosecution's or the accused's case, which is not disbelieved by the trier of fact and which gives rise to a reasonable doubt with respect to the existence of the intent to commit an indictable offence on the part of the accused: *R. v. Nagy*, 45 C.C.C. (3d) 350 at 356, 1988 CanLII 7138 (Ont. C.A.). Evidence disbelieved by the trier of fact is not "evidence to the contrary": *R. v. Proudlock*, [1979] 1 S.C.R. 525 at 546, 1978 CanLII 15.
- [22] The appellant alleges that the trial judge made two errors in applying s. 349(2). Acquittal as Evidence to the Contrary
- [23] First, the appellant submits that his acquittal on the sexual assault was "evidence to the contrary" of his intent to commit an indictable offence in the apartment. I disagree. The mere fact of an acquittal on a substantive offence does not necessarily translate into "evidence to the contrary" for the purposes of the presumption in s. 349(2). In some cases, the facts underlying an acquittal may well include such evidence. As a general proposition, however, the question under s. 349(2) is not whether the accused committed a particular offence, but whether there was evidence indicating he did not have the intent to commit an indictable offence.
- [24] In this case, on the evidence accepted by the trial judge, the appellant entered the complainant's apartment in the middle of the night without permission while she was sleeping. The trial judge explained in some detail why he rejected the appellant's testimony about being invited in. The trial judge was left with a reasonable doubt about whether a sexual assault actually took place, due to concerns about the complainant's credibility in relation to what specifically occurred in the bedroom after she woke up. However, once the appellant's testimony was disbelieved, there was no indication in the remaining evidence of any reason for him to be in the complainant's apartment other than to commit an indictable offence. Intoxication
- [25] Second, the appellant alleges the trial judge erred in failing to consider his level of intoxication.
- [26] Advanced intoxication to a level sufficient to raise a reasonable doubt on the specific intent to commit an indictable offence is "evidence to the contrary" neutralizing the statutory presumption under s. 349(2): *R. v. Johnnie*, 23 C.C.C. (2d) 68 at 71, 1975 CanLII 1286 (B.C.C.A.). Mild intoxication, where there is alcohol-induced relaxation of both inhibitions and socially acceptable behaviour, has never been accepted as a factor or excuse in determining whether an accused had the intent to commit a criminal offence: *R. v. Daley*, 2007 SCC 53 at para. 41.
- [27] The appellant is raising the issue of his level of intoxication for the first time on appeal. In his testimony and submissions at trial, he did not suggest that he was in a state of advanced intoxication and did not raise intoxication as an issue with respect to his intent on either of

the two charged offences. His testimony was that he had four drinks (a total of six shots of vodka) over the course of six hours prior to the incident. He denied having consumed cocaine or smoked any drugs. He testified that he was "not dead sober" but "wasn't inebriated".

- [28] On appeal, the appellant argues that the trial judge, having rejected his testimony, ought to have considered evidence of his impairment in the complainant's testimony as "evidence to the contrary". However, the complainant did not make any observations that would indicate advanced intoxication. Although she said the appellant told her "he was really drunk and he had been doing cocaine", the only possible indication of actual impairment was that he was speaking quickly and rambling. The complainant also found some powder residue in her bathroom that may have been consistent with cocaine use. There was no evidence of the effect, if any, cocaine may have had on the appellant. I am not persuaded that, on the record before him, the trial judge was required to explicitly engage with the issue of intoxication despite it not being raised.

Conclusion

- [29] For the reasons above, I would dismiss the appeal. "The Honourable Justice Edelman" I AGREE: "The Honourable Mr. Justice Harris" I AGREE: "The Honourable Madam Justice DeWitt-Van Oosten"

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/ca/25/03/2025BCCA0383.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-turner-2025>

Prepared on 25 October 2026 · Esheria