

CANADA / JUDGMENT

R. v. Walkus

2024 BCSC 1497

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Supreme Court of British Columbia

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2024 BCSC 1497 R. v. Walkus

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Walkus,

2024 BCSC 1497

Date: 20240814

Docket: 44610-1

Registry: Campbell River

Rex

v.

Ronald David Louie Walkus

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Before: The Honourable Justice E. McDonald

Oral Reasons for Judgment on Summary Conviction Appeal

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Place and Date of Trial/Hearing:

Nanaimo, B.C.

August 1, 2024

Place and Date of Judgment:

Nanaimo, B.C.

August 14, 2024

Table of Contents

I. Introduction.. 3

II. Background.. 3

A. History of the Trial 3

B. The Trial Judge's Findings. 3

III. Issues on Appeal. 5

IV. The Law.. 5

V. Analysis. 6

A. Did the trial judge fail to consider the reasonable possibility that someone else came into the residence?. 6

B. Did the trial judge fail to meaningfully consider the witnesses' reliability and credibility?. 7

VI. Conclusion.. 9

I. Introduction

[1] On August 9, 2023, a Provincial Court Judge found Ronald Walkus guilty of the sexual assault of S.H. contrary to s. 271 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. The appellant brings this summary conviction appeal seeking an order allowing the appeal, setting aside the conviction and directing a new trial.

II. Background

A. History of the Trial

[2] The offence occurred on or about July 7, 2021. The trial commenced on August 9, 2023, and it took one day to complete.

[3] The Crown called two witnesses at the trial, the complainant and another person who was at the residence at the material time, N.J. At the conclusion of the trial, the trial judge provided reasons for judgment.

B. The Trial Judge's Findings

- [4] The trial judge's reasons for judgment dated August 9, 2023, are brief (the "Trial Reasons"). After summarising the evidence and rejecting the submission that no weight should be given to the evidence of N.J., the trial judge makes the following findings:
- [18] It is my view there are some frailties with regard to some details, but there are central things that [N.J.] testifies to that, quite simply, they are memories, they are what he said happened, and I am satisfied beyond any doubt whatsoever they did happen.
- [19] Specifically, they are these, when he testified that [J.] was asked to leave because of intravenous drug use and that he locked the door after her, I am satisfied that this is a memory that he has, that he is accurate about that, and that that is, in fact, what happened. Secondly, he testified that before going to sleep, he was in the bedroom with himself, [the complainant] and the accused. About that, I am also satisfied that he was accurate and that that is what happened and so, again, I find that as a fact.
- [20] We come to an issue that was raised by defence counsel as to the timing of events. Defence counsel raised the issue of the contradiction between [N.J.] and the [the complainant] as it related to people coming and going, that [N.J.] did not recall that and did not recall that that had happened and [the complainant] was clear that that had happened. The defence submissions, as I undertook it - as I understood it, said that the contradiction created a doubt about what [N.J.] was saying about [J.] being asked to leave and the door being locked and just the three of them in it.
- [21] I have considered that possibility, but I have rejected it. I have rejected it because that people would be coming and going during the course of a lengthy evening, more than six hours according to the evidence, of drinking and drugs, it is hardly surprising that one would not pay particular attention to some of the comings and goings and brief occasions in which someone is there does not surprise me, either, but what we do come down to is a point in the evening where, in my view, and I find, that that had stopped and it had stopped because [J.] had been escorted out and the door locked, and the comings and goings had stopped. That, in my view, is how the evidence fits together when I take into account the totality of the circumstances. I do not have a concern about [N.J.'s] evidence as a result of that difference between he and [the complainant].
- [22] So we are left with his evidence that Mr. Walkus is in the room with [the complainant] at the time that events occur. [N.J.] is the only other person. He says he was asleep. [The complainant] says he was asleep. I find that he was asleep. [The complainant] testified as to what happened from Mr. Walkus and she does that knowing who Mr. Walkus is as she has had some prior interactions. I take it she knows him from this community which is not a large one. So that I am satisfied, when I take all of the circumstances into account, that her identification of Ronald Walkus as the person in the room is proven by the Crown to the requisite standard.

- [23] The defence, turning to the second issue, says that I, nevertheless, cannot be satisfied as to what happened and the defence says that on the basis of a number of factors which come together, first and foremost, is the emotional state in which [the complainant] was in as a result of the unfortunate death of someone close to her; as well, the consumption of alcohol and drugs; and as well, the general uncertainty of events as occur in a room which is being used in the way it was being used.
- [24] All of this leads to the possibility that [the complainant] is wrong about what occurred to her, has misinterpreted events, and perhaps has had some kind of episode in which there was no application of force to her body in the circumstances which would justify an assault or a sexual assault. I raised with defence counsel the one problem I had with that submission. I listened carefully to what defence counsel said about that and I thought about it as I analyzed the evidence and, at the end of the day, it is a fact which, taken with the other facts, in this case and the totality of the circumstances, is one which simply points clearly and, in my view, unequivocally to one conclusion.
- [25] It is that [the complainant] fell asleep with her pink capri pants on and she woke up with those pants pulled down to her knee level. That, in my view, was without question a sexual assault. That, in my view, is what occurred here. I have taken into account the differing descriptions given by -[the complainant], the one to [N.J.], the one in her statement, and find that there are discrepancies in how she described it, but there is no doubt whatsoever in my mind that that aspect of pulling her pants down for the sexual purpose and in those sexual circumstances is the sexual assault that occurred and it occurred at the hands of the accused, Ronald Walkus.
- [26] I find him guilty of Count 1.

III. Issues on Appeal

- [5] In his factum, the appellant submits that at trial the defence and crown agreed that this case required the trial judge to determine whether the circumstantial evidence showed, beyond a reasonable doubt, that the appellant was the only individual that could have been touching the complainant on the offence date.
- [6] The appellant alleges that the trial judge erred by failing to consider all the evidence relevant to the material issue of identification, more specifically by:
- a) Failing to consider the reasonable possibility that someone else came into the residence after the door was locked; and
 - b) Failing to meaningfully consider the witnesses' credibility and reliability.

IV. The Law

- [7] The parties agree as to the legal principles that apply to this summary conviction appeal.

- [8] In *R. v. Gaudaur*, 2008 BCSC 981, at paras. 19-36, Justice Romilly helpfully sets out the role of the appeal court in determining a summary conviction appeal, including the standard of review, deference to findings of fact and sufficiency of the reasons for judgment. More recently in *R. v. Chandi*, 2020 BCCA 305 at para. 38, citing *R. v. Yebes*, 1987 CanLII 17 (S.C.C.) and *R. v. Biniaris*, 2000 SCC 15, Justice DeWitt-Van Oosten states that "to establish that verdicts are unreasonable, the appellant must demonstrate that they are ones a properly instructed jury, acting judicially, could not have reasonably rendered".
- [9] The defence referred me to *R. v. Villaroman*, 2016 SCC 33 [Villaroman] at para. 41, where Justice Cromwell states that "to justify a conviction, the circumstantial evidence, assessed in light of human experience, should be such that it excludes any other reasonable alternative".
- [10] The defence also referred me to *R. v. Bock*, 2016 BCCA 195 paras. 16-17, where Justice Newbury, while referring to *R. v. Trevor*, 2006 BCCA 91 at para. 12, states, "on appeal the court must look at the whole of the evidence and determine through the lens of judicial experience, whether the circumstantial evidence, considered and weighed cumulatively, rationally supports the guilty verdict."
- [11] With these legal principles in mind, I will now analyse the grounds of appeal raised by the appellant.

V. Analysis

A. Did the trial judge fail to consider the reasonable possibility that someone else came into the residence?

- [12] The appellant submits that due to evidence concerning people coming and going from the residence, the trial judge was required to consider the possibility that the door to the residence was left unlocked, thereby creating an opportunity for someone else to enter the residence and touch the complainant. For example, the defence submits that after N.J. testified that he locked the door and went to sleep, the appellant might have departed, leaving the residence unlocked. As well, the complainant's aunt, who lived at the residence, might have returned to the residence and left the residence unlocked.
- [13] Having reviewed the Trial Reasons, I am satisfied that the trial judge correctly instructs himself on the issue of identification. In addition, the trial judge also specifically considers the issue of whether people were coming and going after N.J. said he locked the residence door, leaving only himself, the accused and the complainant inside. The Crown emphasizes that N.J.'s evidence about locking the door is uncontroverted in the sense that he was not challenged in cross-examination as to whether or not he locked the door.
- [14] The trial judge further addresses defence submissions regarding the timing of events and specifically, the discrepancy between the complainant's and N.J.'s evidence about whether people continued coming and going.

- [15] The trial judge considers all of the evidence and rejects the defence submission that there was a possibility of someone else coming into the residence after N.J. had locked the door. The trial judge accepts N.J.'s evidence and finds that he locked the door, which meant the comings and goings had stopped. The trial judge also accepts N.J.'s evidence and finds that after he locked the door, and before he went to sleep, N.J. was in the bedroom with the accused and the complainant.
- [16] In assessing N.J.'s evidence, the trial judge was aware of the frailties that existed due to the fact that N.J. had consumed drugs during the evening. However, the trial judge accepts that N.J. is accurate about these facts and he finds that this is what happened.
- [17] In determining whether the trial judge assessed the circumstantial evidence properly, I am guided by the comments of Justice Watt in *R. v. Hudson*, 2021 ONCA 772, at para. 72:
- [72] At the outset, the question to be answered is whether the jury, acting judicially, could reasonably have been satisfied that the appellant's guilt was the only reasonable conclusion available on the totality of the evidence. Further, we must be mindful that the circumstantial evidence does not have to totally exclude other conceivable inferences and that a verdict is not unreasonable because the alternatives do not raise a doubt in the jury's mind. It remains fundamentally for the trier of fact to decide whether any proposed way of looking at the case is reasonable enough to raise a doubt: *Villaroman*, at paras. 55-56.
- [18] Having considered the trial judge's reasons and his assessment of the evidence, I do not accept the appellant's submissions that the trial judge's findings are unreasonable and not supported by the facts.

B. Did the trial judge fail to meaningfully consider the witnesses' reliability and credibility?

- [19] The appellant submits that for reasons unclear to him, the trial judge accepts the only piece of evidence supporting a conviction offered by N.J. while discarding all of N.J.'s other evidence that supports an acquittal. The appellant specifically points to discrepancies in the evidence of N.J. and the complainant regarding the time that each of them went to sleep, who was in the residence around the time of the offence, the type and quantity of intoxicants they consumed; and, when and what N.J. was told about the offence by the complainant.
- [20] The appellant acknowledges that assessing credibility is within the purview of the trial judge. However, in his factum, the appellant submits that the decision reads as the trial judge discarding every piece of evidence that cast N.J. and the complainant in a poor light while accepting the one, uncorroborated, piece of N.J.'s evidence that supports a conviction.
- [21] Counsel for the appellant referred me to paragraph 22 of the Trial Reasons as an example of the trial judge allegedly failing to grapple with discrepancies in the witnesses' evidence about who was awake and at what time. As defence counsel put it, N.J. testified that he was awake at a time when the complainant had testified that she had already gone to sleep.

- [22] I have considered the Trial Reasons in which the trial judge identifies a number of issues that arise in N.J.'s evidence, including those related to contradictions with the complainant's evidence. Despite those issues, the trial judge rejects the defence submission that N.J.'s evidence has little evidentiary value. The trial judge ultimately concludes, in light of the totality of the circumstances, that N.J.'s evidence should be accepted because there are central things he remembers that the trial judge finds did in fact happen.
- [23] It is well established the trial judge's credibility findings are accorded considerable deference including because the fact finder "has the benefit of the intangible impact of conducting the trial": *R. v. G.F.*, 2021 SCC 20, at para. 81.
- [24] In my view, the appellant has not demonstrated the trial judge was in error by failing to meaningfully assess the credibility or reliability of the witnesses. The Trial Reasons, in my respectful view, demonstrate the trial judge meaningfully engaged with the issue of whether the witnesses were credible and reliable.
- [25] The trial judge's conclusions on this matter are clearly set out, for example, at paragraph 18 of the Trial Reasons, where he states that in respect of N.J.'s evidence "there are some frailties with regard to some details I am satisfied beyond any doubt whatsoever that they did happen". His conclusions are further set out at paragraph 21, where the trial judge states he has no concern about N.J.'s evidence differing from the complainant's on whether the comings and goings had stopped.
- [26] For the reasons I have explained, I find it was reasonably open to the trial judge to reach the conclusions that he did regarding the credibility and reliability of the witnesses. I therefore disagree with the appellant that the trial judge erred by failing to meaningfully engage with the issue of whether the witnesses were credible and reliable.

VI. Conclusion

- [27] Mr. Walkus' summary conviction appeal is dismissed and his summary conviction is affirmed.

"E. McDonald J."

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