

CANADA / JUDGMENT

R. v. Woldemichael

2025 ONCA 780

COURT

Court of Appeal for Ontario

DECIDED

13 November 2025

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R. v. Woldemichael Collection Decisions of the Court of Appeal Date 2025-11-13 Neutral citation 2025 ONCA 780 Docket numbers COA-25-CR-1372, M56422 Judges Lauwers, Peter D. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Woldemichael, 2025 ONCA 780[1] DATE: 20251113 DOCKET: M56422 (COA-25-CR-1372) Lauwers J.A. (Motion Judge) BETWEEN His Majesty the King Respondent and Yonatan Woldemichael Appellant (Applicant) Richard Fedorowicz, for the appellant/applicant Gavin MacDonald, for the respondent Heard: November 7, 2025 REASONS FOR DECISION

- [1] The applicant was convicted of one count each of voyeurism, publishing child pornography, and criminal harassment. The complainant was a sixteen-year-old girl with whom the applicant had a three-month relationship. The applicant was also convicted of two counts of failing to comply with his pre-trial bail. He was sentenced to 30 months' imprisonment.
- [2] The applicant appeals against conviction and seeks bail pending appeal. The Notice of Appeal specifies two grounds of appeal:
- (1) Uneven scrutiny to the evidence of the complainant and the appellant; and
- (2) Misapprehension of evidence on identity and reversing the burden of proof. I. The Governing Principles [3] For bail pending a conviction appeal, the applicant must establish the three elements set out in s. 679(3) of the Criminal Code, R.S.C. 1985, c. C-46: (1) that the appeal or application for leave to appeal is not frivolous; (2) that he will surrender himself into custody in accordance with the terms of the order; and (3) that his detention is not necessary in the public interest.
- [4] The Crown argues that the appeal fails the first and third elements of the test. He submits that the grounds of appeal are frivolous. He also submits that the applicant should remain incarcerated on the third ground alone: that his detention is necessary in the public interest on the basis of preserving public confidence in the administration of justice.

- [5] As the Supreme Court noted in *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at para. 41, the “not frivolous” criterion “operates as an initial hurdle” that “allow[s] for the immediate rejection of a release order in the face of a baseless appeal”. The court must conduct a preliminary assessment of the strength of the grounds of appeal, based on judicial knowledge and experience: *R. v. Ruthowsky*, 2018 ONCA 552, at para. 15.
- [6] The public interest element must be tested under the framework set out by this court in *R. v. Farinacci* (1993), 86 C.C.C. (3d) 32, (Ont. C.A.), [1993] O.J. No. 2627, per Arbour J.A. (as she then was): *Oland*, at paras. 23-26. I am obliged to weigh the factors of reviewability and enforceability.
- [7] Under s. 679(3)(c) of the Criminal Code, there are two components to consider: public safety and public confidence in the administration of justice: *Oland*, at para. 23; *Farinacci*, at paras. 41-44. As Arbour J.A. wrote in *Farinacci*, at para. 41: The concerns reflecting public interest, as expressed in the case-law, relate both to the protection and safety of the public and to the need to maintain a balance between the competing dictates of enforceability and reviewability. It is the need to maintain that balance which is expressed by reference to the public image of the criminal law, or the public confidence in the administration of justice.
- [8] In striking the balance between enforceability and reviewability, “appellate judges should keep in mind that public confidence is to be measured through the eyes of a reasonable member of the public”, being “someone who is thoughtful, dispassionate informed of the circumstances of the case and respectful of society's fundamental values”: *Oland*, at para. 47, citing *R. v. St-Cloud*, 2015 SCC 27, [2015] 2 S.C.R. 328, at paras. 74-80. II. The Principles Applied 1. Is the applicant’s detention necessary in the public interest? [9] The Crown concedes that only the second component, public confidence, is engaged in this application. Consideration of the public confidence component involves striking the balance between enforceability and reviewability.
- a. Enforceability
- [10] With respect to enforceability, “[p]ublic confidence in the administration of justice requires that judgments be enforced”: *Farinacci*, at para. 42. In this case, there are several factors that weigh in favour of enforceability and against the release of the applicant.
- [11] The seriousness of the crime figures in the assessment of the enforceability interest: *Oland*, at para. 37. This court has identified sexual offences relating to children as being on the higher end of the gravity spectrum in the context of bail pending appeal applications: *R. v. J.B.*, 2023 ONCA 264 at para. 17, citing *R. v. M.S.*, 2022 ONCA 348, at para. 15; see also *R. v. C.M.*, 2023 ONCA 700, at para. 5; *R. v. G.B.*, 2023 ONCA 621, at para. 10; and *R. v. J.C.*, 2023 ONCA 617, at para. 6.
- b. Reviewability

[12] As the court in Oland notes, “in assessing the reviewability interest, the strength of an appeal plays a central role”: at para. 40. The grounds of appeal are quite weak.

[13] I assess each ground of appeal.

2. Did the trial judge apply uneven scrutiny to the evidence of the complainant and the applicant? [14] This is a difficult ground to make out. In this case the trial judge entirely rejected the complainant’s evidence on the first set of charges and accepted it on the second set. The difference is that the complainant’s evidence in the second set was supported by still shots taken from videos, and by her reaction to the publication of images captured on a police bodycam. It was also supported by other social media evidence. The trial judge noted: I am satisfied that the female in the sexual video and still captures is RS based on RS’s evidence, the screenshots I can see in the message strings retrieved from her phone, as well as the supporting evidence of Officer Yellapah that she viewed the video and could see RS’s face to identify her and observed her engaged in sexual activity in the video clip with a black male.

[15] I find little merit in this ground.

3. Did the trial judge misapprehend the evidence on identity and reverse the burden of proof. [16] The trial judge’s self-instruction on the burden of proof was impeccable. There is little merit to this ground, which is essentially a repackaging of the first ground.

[17] In my view, the appeal barely meets the low “not frivolous” bar.

[18] Despite my assessment of the merits, under the reviewability standard, the circumstances tend to favour granting bail. There is no public safety concern. The applicant has been on house arrest for about three years without any breaches. He does not pose a flight risk or a risk to public safety. Taking into account sentence credits, I am advised that there are 660 days left of the sentence of 30 months. With the delay attendant on the production of transcripts and perfection, there is a risk that the applicant will serve most of his sentence before the appeal is heard if bail is not granted.

[19] Reviewability acknowledges that the “justice system is not infallible” in its results, such that “persons who challenge the legality of their convictions should be entitled to a meaningful review process” that does not “require them to serve all or a significant part of a custodial sentence only to find out on appeal that the conviction upon which it was based was unlawful”: Oland, at para. 25. This factor is pertinent to this appeal.

[20] In striking the balance between enforceability and reviewability, “appellate judges should keep in mind that public confidence is to be measured through the eyes of a reasonable member of the public”, being “someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society’s fundamental values”: Oland, at para. 47.

- [21] For these reasons, I grant bail on terms to be spoken to, and direct that the preparation of the transcripts and the appeal be expedited. “P. Lauwers 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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