COURT OF APPEAL OF YUKON

Citation: *R. v. T.L.*,
2024 YKCA 12

Date: 20240903
Docket: 22-YU887

Between:

Rex

Respondent

And

T.L.

Appellant

Restriction on publication: Publication of information that could identify the complainant or a witness is prohibited pursuant to s. 486.5 of the *Criminal Code*.

Before: The Honourable Mr. Justice Groberman
The Honourable Madam Justice Cooper
The Honourable Madam Justice Fenlon

On appeal from: An order of the Territorial Court of Yukon, dated February 4, 2022 (conviction) (*R. v. T.L.*, 2022 YKTC 3, Whitehorse Docket 20-10026).

Counsel for the Appellant: L. Faught

Counsel for the Respondent: B. Demone

Place and Date of Hearing: Whitehorse, Yukon
May 13 ,2024

Place and Date of Judgment: Whitehorse, Yukon
September 3, 2024

Written Reasons by:
The Honourable Madam Justice Cooper

Concurred in by:
The Honourable Mr. Justice Groberman
The Honourable Madam Justice Fenlon

Summary:

The appellant was charged with four counts of assault on his intimate partner, including an aggravated assault that occurred after a house party, where his partner sustained severe injuries. Following a judge alone trial, the appellant was acquitted on all charges except that of aggravated assault. On appeal, the appellant argues that: (i) the conviction is unreasonable in light of the trial judge's misapplication of the law on circumstantial evidence; and (ii) the trial judge failed to provide sufficient reasons for finding that he possessed the requisite intent for aggravated assault. Held: Appeal dismissed. The trial judge did not err in applying the law on circumstantial evidence—the inferences he drew from the findings of fact are reasonable and do not warrant appellate intervention. Further, the trial judge gave sufficient reasons with respect to the issue of intent when read in the context of the entire judgment.

Reasons for Judgment of the Honourable Madam Justice Cooper:

I. INTRODUCTION

[1] The appellant was convicted of aggravated assault following a judge alone trial. He appeals his conviction and seeks, alternatively, the entry of an acquittal, a new trial, or the entry of a conviction for the lesser offence of assault.

[2] I would dismiss the appeal for the reasons that follow.

II. BACKGROUND

[3] The appellant was charged with four counts of assault on his intimate partner. The charges spanned a time frame of four years. The evidence generally revealed a dysfunctional relationship characterized by heavy substance abuse by both parties. The appellant was acquitted on all charges except that of aggravated assault.

[4] In relation to the charge of aggravated assault the Court heard from a number of witnesses.

[5] The evidence was that the appellant and the victim were at a house party where significant amounts of alcohol and drugs were being consumed by the partygoers, including the appellant and victim. It was not in dispute that the appellant got into a physical altercation with another man at the party and that during the altercation the drywall was damaged, resulting in a call being made to the RCMP.

The appellant and the victim left the party shortly after the altercation and before the RCMP arrived. They drove back to the home of the appellant's mother, with whom they were staying with at the time. The appellant drove and the victim was in the front passenger seat.

[6] The RCMP responded to the call and decided to check on the appellant and the victim after receiving information from the partygoers. The RCMP attended at the residence where the appellant and the victim were staying and asked to speak with the victim. The victim presented herself at the door, highly intoxicated and with obvious injuries. At the urging of the police she went to the hospital, which was just across the street from where she was staying. The victim walked to the hospital and the appellant accompanied her.

[7] The victim suffered numerous injuries, including two fractured ribs on her left side, a left orbital floor fracture (i.e., a fracture of the eye socket), a broken nose, as well as tenderness to the sternum and right calf. As stated, her injuries were apparent to the RCMP when they first saw her at the residence.

[8] Witnesses who were at the party testified that the victim did not have any injuries when she and the appellant left the party.

[9] The victim had little to no memory of the drive home. She told the police that she had no memory of being in the car or of the appellant hitting her, however at trial she testified that she recalled getting in to the car and being punched in the face by the appellant but had no memory after the punch.

[10] The appellant testified that he did not hit the victim or cause her injuries. He testified that when they arrived at his mother's house he helped the victim out of the vehicle and she fell twice on the steps leading into the house.

[11] The victim was medivaced to Whitehorse for follow up care. She was released the day following the incident to the care of her stepfather, who took her home with him.

[12] The day after the victim attended the hospital in Whitehorse, the appellant sent her a number of text messages in which he apologized, said he felt badly, and said that he was never going to drink or do drugs again. The messages are quite lengthy; however, the general tenor of the text messages is reflected in this excerpt:

> baby i love you so much i'm so so so sorry baby. I love you with my whole heart. i'm relly [*sic*] feeling ashamed and broken today. please call me when you get this. Pls [*sic*] forgive me your [*sic*] my whole life i can't make it without you.

[13] In reasons indexed as *R. v. T.L.,* 2022 YKTC 3 ("RFJ"), the trial judge carefully evaluated the victim's evidence and found her to be an unreliable witness. He rejected her evidence that she recalled having been punched when she and the appellant first got into the car. He found that she did not have any memory of the event.

[14] The trial judge also rejected the evidence of the appellant as to the victim having fallen on the stairs on her way into the house and having sustained her injuries through a fall.

[15] Relying upon the timing as to when the injuries occurred, the nature and extent of the injuries, and the text messages sent by the appellant the following day, the trial judge found the appellant guilty of the offence of aggravated assault.

III. ISSUES ON APPEAL

[16] The appellant argues that:

i. the conviction is not supported by the evidence because the trial judge misapplied the law on circumstantial evidence; and

ii. the trial judge's reasons on intent are insufficient.

Is the Conviction Not Supported by the Evidence Because the Trial Judge Misapplied the Law on Circumstantial Evidence?

[17] This ground of appeal asserts that the verdict of guilt was not reasonable.

[18] A verdict is reasonable if it is one that a properly instructed jury acting judicially could reasonably have rendered: *R. v. Biniaris*, 2000 SCC 15 at para. 36.

[19] The trial judge correctly instructed himself on the burden of proof and the analysis to be undertaken in cases which turn on the credibility or reliability of witnesses, consistent with the principles set out in *R. v. W. (D.),* [1991] 1 S.C.R. 742, 1991 CanLII 93.

[20] An appellate court must show deference to findings of credibility by a trial judge. Absent palpable and overriding error, findings of credibility should not be interfered with on appeal: *R. v. Gagnon*, 2006 SCC 17 at para. 10; *R. v. Kruk*, 2024 SCC 7 at para. 82. The trial judge gave detailed reasons for rejecting evidence of the witnesses, including that of the appellant.

[21] The trial judge referred to four areas of concern that led him to reject the appellant's evidence.

[22] The trial judge found that the appellant was intoxicated and that while he testified to detail on some matters, his ability to recall was "conveniently lacking" on other matters.

[23] The trial judge found that the victim was highly intoxicated; a finding which was supported by the evidence, including that of the appellant who testified that when they arrived home he had to help the victim out of the car due to her level of intoxication. The appellant testified that once out of the car the victim tried to run up the steps, fell but got herself back up and started to run back and forth, and again ran up the stairs. The trial judge found that given the victim's severe level of intoxication she would not be capable of moving in the manner described by the appellant. Accordingly, he rejected the evidence of the appellant as to how the injuries were sustained.

[24] The appellant submits that the trial judge erred in his assessment of the inferences which could reasonably be made from the text messages. In particular, it

is argued that the text messages were equally consistent with an unintentional application of force as they were with an intentional application of force.

[25] The appellant testified that he sent the text messages to the victim to apologize for having “called her down” the night before. He also testified that he sent the messages to apologize for the state of the relationship generally. However, when testifying as to the events at the party and the drive home, the appellant had not testified that he had “called her down”. The trial judge found the text messages to be disproportionate to what he claimed to be apologizing for—behaviour that was rude and nothing more. Instead, the judge found the appellant to be apologizing for a much more significant event.

[26] The trial judge also rejected the appellant’s evidence that the text messages were in response to messages from the victim, as no such messages were in evidence. Moreover, the victim did not respond to the appellant’s messages, as one would expect if she had initiated the conversation.

[27] All of these findings of credibility were within the purview of the trial judge.

[28] Having rejected the innocent explanation put forward by the appellant and finding that it did not raise a reasonable doubt as to whether he had assaulted the victim, the trial judge was left with evidence of the victim having no injuries prior to getting into the car, her significant injuries when the police arrived at the house shortly after she got home, the appellant having been with the victim during the entire time, and the text messages sent from the appellant to the victim the following day while she was still in the hospital.

[29] In the context of a case based on circumstantial evidence the question is whether the trier of fact, acting judicially, could reasonably be satisfied that the accused’s guilt was the only reasonable conclusion available on the totality of the evidence: *R. v. Villaroman*, 2016 SCC 33 at para. 55.

[30] The trier of fact must consider whether, based on all of the evidence, not just proven facts, there are reasonable inferences that are consistent with innocence.

However, this does not mean that a finding of guilt must be the only possible inference: *R. v. Vernelus,* 2022 SCC 53 at para. 5.

[31] An inference crucial to the verdict that is not supported by evidence may be reviewed on appeal. However, absent such an error, it is for the trier of fact to determine which inferences are reasonable and which inferences are implausible or speculative.

[32] As stated in *R. v. Stewart*, 2022 BCCA 367 at para. 44, citing *R. v. Duong*, 2019 BCCA 299 at para. 65:

> [I]t is the role of the trier of fact to assess whether alternative inferences are merely possible, or whether they are reasonable. On appellate review, "absent unreasonableness, it is not for [an appellate court] to speculate upon alternative inferences" or revive inferences that the trial judge reasonably rejected…

[33] Further, the trial judge's consideration of the circumstantial evidence must be viewed in the context of the appellant having testified and having had his evidence rejected. As stated in *R. v. Grover*, 2007 SCC 51 at para. 3, it is not open to a Court of Appeal to acquit an appellant on the basis of speculation about a possible explanation of their conduct that is contradicted by their own testimony.

[34] As previously discussed, the trial judge gave careful consideration to the evidence and properly instructed himself on the use of circumstantial evidence. He concluded that "the only reasonable inference that I can draw from this circumstantial evidence is that [the appellant] is asking forgiveness for a serious event, for which he is responsible, that occurred between him and [the victim] on [the date of the offence]": RFJ at para. 89.

[35] This finding is reasonable, it is based on the facts, as determined by the trial judge, and there is no error requiring appellate intervention.

Are the Trial Judge's Reasons on Intent Insufficient?

[36] The appellant argues that the trial judge's reasons are insufficient as they do not show how the trial judge determined that the application of force was intentional

rather than accidental, or what the nature of the force was that would lead to a conclusion that bodily harm was reasonably foreseeable.

[37] The appellant argues that, having found the appellant to be responsible for the victim's injuries, the trial judge erred in finding that the application of force was intentional.

[38] The appellant also argues that the reasons are insufficient on the issue of whether the appellant could reasonably foresee bodily harm.

[39] Reasons play an important role in the judicial process, as they are the mechanism by which the parties understand why they have won or lost. In addition to assisting the parties in understanding the outcome, reasons also permit meaningful appellate review of the correctness of the decision: *R. v. R.E.M.*, 2008 SCC 51 at para. 11. However, the trial judge is not required to state every principle of law that has been applied or to discuss each piece of evidence. Appellate courts will take a functional approach in determining the sufficiency of reasons. Further, insufficiency of reasons is not, in and of itself, a ground for reversal on appeal where it is plain from the record why an accused has been convicted or acquitted: *R. v. Sheppard*, 2002 SCC 26 at para. 46.

[40] On the issue of intent, the trial judge stated:

> [91] I find that [the victim] had no injuries when she left the party with [the appellant]. On the other hand, she sustained serious injuries to different parts of her body, specifically to her orbital bone and nose, as well as to her ribs. I also find that [the appellant] and [the victim] were arguing in the car on the way home. In my view, the physical evidence of injuries to both her facial area and her ribs is circumstantial evidence consistent with an intentional application of force by [the appellant] and is the only reasonable inference to be drawn.

[41] The appellant asserts that, in the absence of expert evidence regarding the causation and force required to cause such injuries, it was not possible for the trial judge to infer intent. I disagree. A constellation of factors may be sufficient to make reasonable inferences although each factor, individually, is insufficient: *R. v. Morin*, [1988] 2 S.C.R. 345 at 361, 1992 CanLII 89; *R. v. Okojie*, 2021 ONCA 773 at para. 142. This was such a case.

[42] On the issue of whether the Crown had proven reasonable foreseeability of bodily harm, the trial judge addressed this directly, correctly stated the law, and found that “a reasonable person would have foreseen that their actions would result in bodily harm” in light of the victim’s injuries: RFJ at para. 94.

[43] This finding was grounded in the evidence, which established multiple injuries, including bone fractures in various locations.

[44] I do not find the trial judge’s reasons deficient. The paragraphs addressing the issue of intent cannot be read in isolation. They must be read in the context of the entire judgment and, in particular, with the trial judge’s consideration and rejection of the appellant’s evidence. The trial judge was clearly attuned to the issues and the analysis to be applied in the context of a circumstantial case.

IV. CONCLUSION

[45] The verdict is founded in the evidence; it is one which a properly instructed jury, acting judicially, could reasonably have rendered. It is not an unreasonable verdict.

[46] Further, I find no errors in the trial judge’s reasons and no basis for appellate intervention.

“The Honourable Madam Justice Cooper”

I agree:

“The Honourable Mr. Justice Groberman”

I agree:

“The Honourable Madam Justice Fenlon”