

SUPREME COURT OF YUKON

Citation: *R. v. Couch*, 2017 YKSC 28

Date: 20170504
S.C. No.: 16–01502
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

DAVID COUCH

A publication ban under s. 486.4 was lifted at the request of the victim.

Before Madam Justice B. Keyser

Appearances:

Leo Lane
Michael Sparks

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] KEYSER J. (Oral): David Couch is charged with one count of indecent assault on Leslie Cowley between 1971 and 1980. He has taken the stand and denied that anything inappropriate ever took place.

[2] For that reason, I must undertake a *W.(D.)* analysis. First, if I believe him, I must acquit. Second, if I do not believe him but his evidence raises a reasonable doubt, I must acquit. Third, if I do not believe him and his evidence does not raise a reasonable doubt, I must still determine, on the basis of the evidence I do accept, if the Crown has proven its case beyond a reasonable doubt.

[3] Leslie Cowley testified with conviction and sincerity about two specific incidents where she alleged that her uncle, David Couch, indecently assaulted her. She has no doubt that the incidents took place.

[4] I am well aware, however, that personal conviction and reliability are not the same thing. Ms. Cowley testified about piecing together over the years what had happened to her through body memories, voices, and nightmares about what happened to her. She went for treatment for trauma as well so that she would not consider suicide. Finally, she went to the police and an investigation started.

[5] She testified that she could remember two specific incidents clearly, one at the family home and one at her grandparents' farm.

[6] The first incident she said happened at home when David Couch was babysitting and he crawled into bed between her and [R.]. She was pretending to sleep. He started touching her. His fingers were stroking and poking her. She then heard the sound of a zipper. There was more rubbing. She then felt wetness, a pain, and something being pushed into her.

[7] At the farm, she testified Mr. Couch wrapped her in blankets and took her to the cabin that he was staying in. He had her get naked and took intimate photos of her. He told her she was pretty. He rubbed his penis on her and eventually took her back to the main cabin.

[8] As part of the Crown's case, a video statement given by Mr. Couch to Peace River RCMP was introduced into evidence after a *voir dire*. During the course of that interview, Mr. Couch came to admit much of the conduct testified to by Leslie Cowley.

[9] On the stand, Mr. Couch testified that he never touched Leslie Cowley sexually in any way and that he had lied to the police to get out of the interview room because of the pressure he was feeling.

[10] I do not believe Mr. Couch's denials on the stand, nor do they raise a reasonable doubt for a number of reasons.

[11] First, his testimony is completely contrary to his admissions on video and his reasons for supposedly lying to the police make no sense. On several occasions, he had been advised that he could leave at any time but he continued to stay and discuss the matter, even after he had been charged, cautioned, and told he could get a lawyer.

[12] Second, the admissions on the video start coming after only an hour of questioning, and it is evident from the video that Cpl. Potts was not aggressive in his questioning.

[13] Third, the statement is telling and supports the testimony of Ms. Cowley in many ways.

[14] When Mr. Couch comes into the interview room, he does not know why he is there. When he is asked if he knows Leslie Cowley, who has been in his life since her birth, he hesitates as if trying to buy time. His testimony is that when he heard "Leslie", he thought of his brother Leslie, yet his brother's last name is Couch, not Cowley. He says he is confused because he always called her "Leslie Dale", yet in the rest of the interview, he calls her "Les" or "Leslie", and her full name, as far as he is concerned, has always been Leslie Cowley. He maintains through part of the interview that he does not remember if he had sexual contact with Leslie. One would not forget whether

or not one had sexual contact with a child. Later come partial admissions to sexual contact.

[15] On the stand, Mr. Couch says he was admitting to contact that never happened because he just wanted to get out of the interview room, leaving aside the fact, again, that he was told on several occasions he did not have to stay.

[16] Why would you admit to contact on more than one occasion if that did not occur?

[17] His testimony on that point makes no sense. If you really felt you had to confess to leave, why not confess to a minimum amount?

Am I satisfied beyond a reasonable doubt, on the evidence I do accept, that the guilt of Mr. Couch has been established beyond a reasonable doubt?

[18] Leslie Cowley was unclear on many things, such as dates. That is not surprising, given that she was a child when this happened to her.

[19] However, on the essential issue of whether or not, despite the details, she was indecently assaulted by Mr. Couch, he himself confirms this. At page 33 of his interview, when asked what sexual contact he had with her, he admits to having her naked and maybe touching her, and says, "I dare say, a young guy's penis would be erect"; on page 36, he admits to touching her vagina and rubbing it with his hand; on page 39, he admits to "probably" rubbing his erect penis against her; and by page 42, he admits to sexual contact a maximum of three times with Leslie Cowley.

[20] On the totality of the evidence, therefore, I am satisfied beyond a reasonable doubt that Mr. Couch indecently assaulted Leslie Cowley on more than one occasion when she was a child by having her get naked; by rubbing her vaginal area with his fingers; and with rubbing his erect penis against her.

[21] I cannot find with certainty that he had sexual intercourse with her using his penis, but I am satisfied beyond a reasonable doubt that there was penetration of some sort, at least with his fingers if not his penis.

[22] Therefore, Mr. Couch will be convicted of indecent assault as alleged in the Indictment.

KEYSER J.