

Citation: *R. v. Blake*, 2024 YKTC 27

Date: 20241003
Docket: 23-00343
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Caldwell

REX

v.

DONAVON ARLEN BLAKE

Publication, broadcast or transmission of any information that could identify the complainant or a witness is prohibited pursuant to section 486.4 of the *Criminal Code*.

Appearances:

Felix Remillard-Larose
David C. Tarnow

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] Mr. Donavon Blake is charged with sexually assaulting and forcibly confining C.T. I find Mr. Blake guilty of both charges for the following reasons.

Overview

[2] In brief, the allegations involve both forced penetration and forced fellatio. C.T. alleges that Mr. Blake forcibly penetrated her and forced her to perform fellatio on him on May 27, 2023, while they were in a bathroom stall in the Real Canadian Superstore (“the Superstore”) in Whitehorse, Yukon.

[3] C.T. and her mother, T.B., were called by the Crown. Mr. Blake's mother, Ms. Verna Blake, and C.T.'s aunt, I.T., were called by the defence.

[4] Mr. Blake did not testify, as is his right. I draw no inferences from that decision.

The Evidence

C.T.

[5] C.T. testified first. It is an understatement to say that the process of testifying was difficult for C.T. and all involved in this case, including both counsel. C.T.'s impulse control is significantly lacking. She frequently stormed out of the closed-circuit TV room from where she was testifying and swore in frustration at questions asked by both counsel. I repeatedly asked her to try to let us know if she needed a break before she lost self-control and she agreed to do so but actually doing this in practice appeared to be beyond her capacity.

[6] C.T. is 21 years old but she presented as considerably younger and clearly has challenges both cognitively and emotionally. I do not need expert evidence on this point; it was very evident from her behaviour and answers over her two days on the witness stand.

[7] C.T. testified that she suffered from a disability as a result of the umbilical cord being wrapped around her neck at birth depriving her of oxygen. I do not know if this incident accounts for the full extent of her challenges but the reason behind those challenges is not necessary for me to know. What is important to note is that she presented as a vulnerable young woman, younger than her years, with both emotional

and cognitive challenges. The process of testifying appeared to be very difficult for her and I find, as a fact, that the professed difficulty was genuine.

[8] C.T. said that she went shopping for groceries at the Superstore with her mother on May 27, 2023. Partway through the shopping trip, C.T. told her mother that she needed to use the bathroom. She headed to the store washroom without her mother. Once at the washroom, she saw Mr. Blake whom she knew as a friend of her older brother D.

[9] Mr. Blake told her to come over to him, stating that he needed to talk to her. He was standing by the men's washroom. He grabbed her arm lightly and took her into the men's washroom, pushing her with his hands around her arms. She described it as a one-stall washroom that would hold a wheelchair. Once inside, Mr. Blake locked the door and C.T. testified that she was trapped in the washroom.

[10] She testified that Mr. Blake said, "let's fuck real quick". He also said, "suck my dick". He grabbed her head and pushed it down to his penis. She did what she was told. C.T. thought his penis was soft and did not believe he ejaculated but she was not certain on this point. He turned her around and told her to pull her pants down which she did. She had her hands up against the wall. He bent her over and then put his penis in her bum which hurt. She estimated that this act took four minutes though she later testified that it was difficult to estimate the times because of her disability. She thought that his penis went halfway into her bum and she said that he was not wearing a condom.

[11] Another man was outside by this point. He was telling Mr. Blake to hurry up. C.T. finally pushed Mr. Blake away. She managed to pull up her pants and ran out of the bathroom. When she left, she realized that the other man was Mr. Ty Blake whom she also knew. Under cross-examination she said that a girl named Jada also was present with Mr. Ty Blake. She also said that store workers came over at one point, but she did not tell them what had occurred as she was afraid.

[12] Both men then came out of the washroom and began laughing at her. C.T. recalled Mr. Ty Blake saying, “did you have a quickie with him?” and he then began laughing even harder. Eventually she ran to her mother. C.T. said she was frightened and anxious, but she did not tell her mother what happened because she thought that her mother would be angry with her.

[13] She testified that both Blake men left the Superstore before she and her mother left.

[14] C.T. said she had not wanted to go over to Mr. Blake when he beckoned her initially, that she did not want to go into the washroom with him, and she did not want to have sex with him.

[15] C.T. testified that later she saw blood from her bum and thought she was having her period. About a month after the event, she told her mother what happened. Her mother asked her why she had not confided this in her before, and she told her mother she was afraid her mother would be angry with her. Her mother said that she was not mad, and instead that she would protect her. C.T.’s mother placed the complaint call to the police.

[16] Before the events at the Superstore, C.T. thought Mr. Donavon Blake was a “good guy”. They were in touch over social media, specifically Facebook. He sent a friend request, and she allowed it. At one point, he asked her if she wanted to “hook up” and she did not know exactly what he meant. She wondered if he wanted her to hook him up with drugs. He also swore at her and asked her for money. She said that ultimately he deleted all of these messages. After this date, Mr. Blake messaged her but then he deleted the message before she could read it.

[17] Initially, C.T. said that she looked at her phone after she came out of the washroom and that is the reason she knew that this event occurred on May 27, 2023. Under cross-examination, the following exchange occurred:

[Mr. Tarnow] You were so scared, you kept running. Is that right?

[C.T.] Yeah

[Mr. Tarnow] But you – you weren’t so scared that you looked at your phone.

[C.T.] I looked at my phone at home. What you talking about?

[Mr. Tarnow] No, you didn’t say that. You said you were looking at your phone as you left the bathroom.

[C.T.] Fucking God [and she then exited the witness room]

[18] Under cross-examination, Mr. Tarnow put the following portion of C.T.’s police statement to her:

He’s not going to leave me alone. I just know that. He keeps on blocking me and blocking me and doing it over and over. Like I don’t know what to do like.

[19] In court, C.T. stated that Mr. Blake would block her [on social media], then unblock her, then block her again. Mr. Tarnow asked her why she kept trying to contact Mr. Blake, and she replied, “because I didn’t know – I didn’t know – I thought he would like say sorry to me or something”. He also put to her that she did not tell the police that Mr. Blake not only blocked her but also unblocked her. She also denied that she was pestering Mr. Blake.

[20] C.T. also acknowledged, under cross-examination, that there were occasions that she and her mother would cross paths in town with Mr. Blake’s mother and with her aunt, I.T. She said that she did not use bad language towards the other two women, but she agreed that her mother would use such language. She also indicated that the other two women would use similar words towards her mother. There was an incident outside of the local McDonald’s which led to both parties contacting the police.

[21] C.T. also agreed that prior to her father’s death, her mother did not want her to be in Ms. Blake’s company and stopped her from attending church with her father and Ms. Blake.

[22] She repeatedly spoke of her confusion with the questions, how complicated she found them to be, her frustration with the court process, and her memory difficulties.

T.B.

[23] T.B. is C.T.’s mother. The Crown called T.B. in its case but did so in order to trigger the ability for the defence to cross-examine her. Most questions were asked by Mr. Tarnow, not the Crown.

[24] T.B. recalled shopping at the Superstore with her daughter. She testified that her daughter wanted to use the washroom, seemed to take longer than expected, and was breathing heavily and appeared scared when she returned to her mother.

[25] About one month after this day, C.T. asked her mother if she would be mad if C.T. told her something. The mother responded that it would depend on what it was about. She then promised not to get angry, and her daughter told her about the incident in the bathroom.

[26] T.B. testified that she called the RCMP approximately 10 to 15 minutes after C.T. disclosed though it later became clear that T.B. called the RCMP while she was on a city bus and that her daughter was not with her at the time.

[27] T.B. also said that the relationship between her and Mr. Blake's family had been good prior to this disclosure, but that it has been poor since then.

[28] T.B.'s common-law spouse, M.T., passed away in early 2023, a few months before the alleged incident with Mr. Blake. She testified that she did not know the connection between M.T. and Mr. Blake's mother Verna, that she was not jealous of any connection between them and that she did not try to prevent her daughter from seeing Ms. Blake.

[29] A number of alleged incidents were put to her involving her yelling profanities at Ms. Blake and, on one occasion, challenging her to a physical fight. She denied this behaviour. She also denied conspiring with her daughter to concoct a story about the

sexual assault in order to get revenge on Ms. Blake because of Ms. Blake's alleged affair with T.B.'s deceased common-law spouse.

[30] T.B. agreed that she has a criminal record with six entries for assault and two for threatening.

Ms. Verna Blake

[31] Ms. Blake is a recovery room attendant at a detox centre in Whitehorse. She has four children; Mr. Donavon Blake is her third child.

[32] She testified that she met C.T.'s father, M.T., in their home community where they were both born and raised. She knew him from the time they were children. She described him as a non-romantic friend and said that at one time she, M.T. and C.T. would go to church together.

[33] Ms. Blake described an incident at the Superstore during which T.B. challenged her to a fight. She said that T.B. prefaced the fight invitation with the comment, "you fucking cunt, your son is a rapist and I'll wait for you outside". She dated this incident to April 2024. Ms. Blake called the police and waited until they told her that she was safe to leave the Superstore.

[34] Ms. Blake testified that she reported to the police an incident that occurred at McDonald's. She was with C.T.'s aunt, I.T. She said that T.B. was with her daughter, and T.B. said, "don't you fucking ever talk to my daughter again, you fucking ugly bitches".

[35] Ms. Blake said that later that day, T.B. came up to her when she was at a stop light and began hitting her car, threatening to kill her. C.T. was standing on the sidewalk during that incident.

[36] Ms. Blake also described a complicated family dispute over the location of M.T.'s burial. She said that T.B. wanted him to be buried in Whitehorse but that the rest of the family wished him to be buried in their home community.

I.T.

[37] I.T. also was born and raised in their home community and knew Ms. Blake since they were children. M.T. was her brother.

[38] She also testified to the issue over M.T.'s burial and described run-ins initiated by T.B., at Tim Hortons and McDonald's. All involved T.B. swearing at them, as described previously by Ms. Blake.

Analysis of the Evidence

[39] The defence's argument is straightforward. Mr. Tarnow, on behalf of Mr. Blake, contends that T.B.'s animosity towards the Blake family and Ms. Blake, in particular, is so great that she conspired with her daughter to concoct a story about a sexual assault in order to cause Ms. Blake emotional pain by having Ms. Blake's son arrested and prosecuted. The defence also contends that T.B. has a strong emotional hold over her daughter and thus could successfully influence her to tell such a story.

[40] There is absolutely no direct evidence of any such "conspiracy". That does not end the matter, however. The burden of proof always rests on the Crown and never

shifts. The Crown must prove its case beyond a reasonable doubt; there is no obligation on the defence to prove anything.

[41] I will not further review the details of Ms. Blake's and I.T.'s allegations concerning T.B.'s hostile behaviour. The specific details are not relevant to this case. It is not necessary to make findings of fact regarding which incidents happened and the exact nature of those incidents.

[42] I do accept Ms. Blake's and I.T.'s evidence that T.B. was angry with both of them, but primarily with Ms. Blake. I accept that T.B. was either jealous of, or concerned about, Ms. Blake's friendship with T.B.'s prior common-law spouse, M.T., who was also C.T.'s father.

[43] T.B. maintained that she did not harbour any jealousy towards Ms. Blake, and that she did not try to prevent her daughter from seeing Ms. Blake. She also denied any of the hostile interactions alleged by Ms. Blake and I.T.

[44] I reject T.B.'s evidence concerning the lack of hostility, but I accept her evidence that she did not concoct a false story with her daughter.

[45] I reject T.B.'s evidence regarding the lack of hostility for a few reasons. First, I simply did not find her demeanour convincing. I appreciate that demeanour assessments must be approached with caution; however, they are not irrelevant. I found T.B. disingenuous regarding this issue. I also accept Ms. Blake's and I.T.'s evidence given that each corroborated the other and given the detail in their evidence. Finally, I accept their evidence as it was corroborated by C.T. She was quite upfront

about her mother's prior hostile behaviour, and she also testified that her mother intervened to prevent her from having contact with Ms. Blake.

[46] In fairness to T.B., I also find that I.T. and Ms. Blake were not as passive during these encounters as they both conveyed in their evidence. Again, I do not need to make findings regarding specifics, however, I accept C.T.'s evidence that the bad language flowed both ways. It was clear from the evidence of all three adult women that there was no love lost, so to speak, between them and it would make sense that derogatory comments also were made to T.B.

[47] It flows from my findings that T.B. had animosity towards Ms. Blake and thus could have wished to cause her pain. There are a multitude of ways in which an individual could cause emotional pain to another person. Making up a story that leads to the arrest of that other person's loved one is but one means of causing such pain. What does not flow automatically from my findings, however, is that T.B. actually did work with her daughter to devise a false allegation concerning Mr. Blake. The determination of this issue requires a closer examination of C.T.'s testimony.

[48] Mr. Tarnow provided six pages of written submissions which he then read into the record. Much of the argument can be summarized as an attack on the character of T.B. and, by extension, on the character of her daughter. Mr. Tarnow spoke of the "type of person" that T.B. is, referencing her bad language and the inappropriateness of reporting her daughter's sexual assault by calling the police while she was on a bus. To quote Mr. Tarnow, "why would you make that call – about such a sensitive incident

[sexual assault] – from a public bus?!”. He also referenced C.T.’s swearing, asking rhetorically in submissions, “[i]magine even calling your great aunt a ‘fucking bitch’.”

[49] This trial is not a trial about T.B.’s and her daughter’s adherence to the so-called “rules of civility” however. An individual’s predilection for lying does not increase to match the degree of profanity in the individual’s speech. All I draw from T.B.’s choice of the public bus to place the call to the police is that she has less concern than many about what strangers might overhear.

[50] I turn now to C.T.’s evidence. I do assess her evidence in the context of her clear cognitive and emotional challenges. Long gone are the days in which a “one size fits all” approach is taken to the assessment of a witness’s evidence. This change is most obvious when it comes to the assessment of the evidence of children (see *R. v. B. (G.)*, [1990] 2 S.C.R. 30, at para. 56. *B.(G.)* also emphasized, of course, that such an approach cannot result in a lowering of the standard of proof.

[51] It was clear to me that C.T. finds it difficult to express herself in a linear fashion. She struggles to repeat details in chronological order. I reach this conclusion having reviewed her evidence in its entirety.

[52] Mr. Tarnow made much of the fact that C.T. spoke of looking at the calendar date on her phone when she came out of the bathroom yet later spoke of looking at it after she got home. In direct examination, the following exchange occurred:

Q This morning also, I asked you when did the events occurred and you mentioned the date of May 27th, 2023. And you said that you look at your cell phone.

Can you tell us, when did you look at your cell phone on that day?

A Look at myself. What do you mean?

Q You said that you knew the date because you saw it on your phone.

Do you remember when did you saw it on your phone on that day?

A Well, when I came out of the bathroom, like that's when I looked at the date.

Q When you came out of the bathroom?

A Yeah.

Q Okay. Thank you.

[53] Under cross-examination, as I outlined above, the following interchange occurred:

[MR. TARNOW]:

Q So you remember this event happening on May 27th —

A Yes.

Q — of 2023.

A Yeah.

Q And you remember it because you looked at your phone as you ran out of that bathroom, you said.

A Yeah. I was —

Q Go ahead. Please finish.

A I was so scared, I didn't even stop running.

Q Yeah.

But you weren't so scared to look at your phone. Is that what you're telling the judge?

A What?

Q You were so scared you kept running. Is that right?

A Yeah.

Q But you — you weren't so scared that you looked at your phone.

A I looked at my phone at home. What you talking about?

Q No, you didn't say that. You said you were looking at your phone as you left the bathroom.

A Fucking God.

[WITNESS LEAVES THE ROOM]

[54] Mr. Tarnow contends that such outbursts on C.T.'s part flowed from her frustration at being caught in a lie. Further, he argues that her evidence-in-chief was in clear contradiction with her evidence under cross-examination.

[55] I do not view her testimony in this light. As I outlined at the outset, it is clear that C.T. has trouble controlling her emotions and becomes easily frustrated. At various points in her testimony, she also made it clear that she found the questions confusing and difficult – questions that others would find straightforward.

[56] Upon reviewing her evidence, I do not interpret the two exchanges as clearly contradictory. In the first interchange, counsel and I all concluded that C.T. meant that she literally pulled out her phone to check the date as she was running from the bathroom. It simply would not make sense that the first thing on C.T.'s mind would be to pull out her phone to check her calendar. Instead, I find as a fact that C.T. did look at the date after she left the bathroom, but at a later point in the day. I find that the so-

called contradiction instead reflected C.T.'s difficulties expressing herself. I find as a fact that C.T. did look at her phone after she came out of the bathroom – namely, once she was at home.

[57] Mr. Tarnow also pointed out that T.B. testified that her daughter located her in the fruits and vegetables section of the store while C.T. testified that she found her mother in the frozen food aisle. I find that nothing turns on this difference in recollection. The precise location of T.B. in the grocery section of the store is the type of mundane detail that I would not expect either T.B. or her daughter to recall with any accuracy.

[58] Mr. Tarnow argued that the credibility of C.T.'s complaint was undercut by the delay in reporting the event to her mother. He argued that it made no sense that C.T. would not have complained immediately, especially given her close relationship with her mother.

[59] Long gone are the days in which it was expected that sexual assault victims would complain immediately. The Supreme Court of Canada, in *R. v. D.D.*, [2000] 2 S.C.R. 275, noted at para. 60, that this misconception dated back to the medieval days. The Court held at para. 65:

A trial judge should recognize and so instruct a jury that there is no inviolable rule how people who are the victims of trauma like a sexual assault will behave. Some will make an immediate complaint, some will delay in disclosing the abuse, while some will never disclose the abuse. Reasons for delay are many and at least include embarrassment, fear, guilt, or a lack of understanding and knowledge. In assessing the credibility of a complainant, the timing of the complaint is simply one circumstance to consider in the factual mosaic of a particular case. A

delay in disclosure, standing alone, will never give rise to an adverse inference against the credibility of the complainant.

[60] I do not draw an adverse inference from C.T.'s delay in disclosing to her mother, despite their close relationship. In fact, I found that C.T.'s explanation made logical sense. She testified that she was afraid that her mother would be angry with her. I find that such misdirected self-blame and fear to be a sadly common reaction in sexual assault cases and I accept C.T.'s explanation for the delay in telling her mother what occurred.

[61] I accept C.T.'s evidence that she was both sexually assaulted and forcibly confined in the Superstore bathroom by Mr. Blake on May 27, 2023. I make this finding for a few reasons.

[62] First, C.T. was unshaken in cross-examination on the details of what occurred. Despite her clear challenges and despite the fact that she found the court process extremely difficult, C.T. was both extremely clear, detailed and unshaken regarding the actual incident. Her description of the events also made logical sense.

[63] Secondly, I found C.T.'s description of interactions with Mr. Blake that were contemporaneous with this event made sense.

[64] C.T. described exiting the bathroom to find Mr. Ty Blake standing outside the washroom. She said that Mr. Ty Blake asked, "did you have a quickie with him?". She also said that Mr. Donavon Blake joined him and both men were laughing at her.

[65] Further, she admitted to engaging in text exchanges with Mr. Donavon Blake after this incident. When asked why she would communicate with, and even initiate conversations with a man that had sexually assaulted her, she said, “because I didn’t know – I didn’t know – I thought he would like say sorry to me or something”.

[66] Mr. Tarnow contends that the entire scenario was concocted by T.B. and that T.B. schooled her daughter in what to say. I reject this submission. I find it impossible given the detail which C.T. put forth. Further, I reject that C.T. and her mother would structure a story which both anticipated and included the details and emotional responses that C.T. described regarding both the interchange with the two men immediately after the fact, and regarding the subsequent text exchanges with Mr. Donavon Blake.

Conclusion

[67] I find C.T.’s description of the events on May 27, 2023, both credible and reliable. I find beyond a reasonable doubt that Mr. Donavon Blake sexually assaulted and confined C.T. on that date. I therefore find him guilty of both charges.

CALDWELL T.C.J.