COURT OF APPEAL OF YUKON

Citation: *R. v. Bailey*,
2025 YKCA 7

Date: 20250516
Docket: 24-YU918

Between:

Rex

Respondent

And

Rodney Mervin Bailey

Appellant

Before: The Honourable Chief Justice Marchand
The Honourable Madam Justice Fisher
The Honourable Mr. Justice Alibhai

On appeal from: An order of the Territorial Court of Yukon, dated July 15, 2022 (*R. v. Bailey*, 2022 YKTC 33, Whitehorse Docket 21-00773A).

Oral Reasons for Judgment

Counsel for the Appellant:	K. Eldred
Counsel for the Respondent:	M. Williams D. King (appeared on May 16, 2025 only)
Place and Date of Hearing:	Whitehorse, Yukon May 12, 2025
Place and Date of Judgment:	Whitehorse, Yukon May 16, 2025

Summary:

The appellant appeals his convictions for break, enter and commit assault, and assault. He claims the judge incorrectly determined evidence of colour of right, lawful justification or excuse was irrelevant when she concluded he had broken into the bedroom of the complainant. He argues this error led the judge to overlook potential defences to the assault charge. Held: Appeal dismissed. The evidence was irrelevant. In the circumstances of the case, the appellant's statements that he did not know it was the complainant's bedroom could not have raised a reasonable doubt regarding justification, excuse or colour of right.

MARCHAND C.J.Y.C.A.:

Introduction

[1] Following two days of trial, on July 15, 2022, the trial judge convicted Rodney Mervin Bailey of: (1) break, enter and commit assault; (2) assault; and (3) uttering threats. She acquitted him of committing an assault by choking. The assault conviction was stayed in accordance with the principles in *R. v. Kienapple*, [1975] 1 S.C.R. 179, 1974 CanLII 14. The judge's reasons for judgment are indexed as 2022 YKTC 33.

[2] Mr. Bailey appeals his convictions for break, enter and commit assault, and assault. He says the judge committed two legal errors. First, he challenges the judge's finding that he broke into the bedroom of the complainant. He claims the judge erred in law by dismissing as irrelevant evidence that could raise a reasonable doubt as to whether he entered the room under colour of right or with lawful justification or excuse. Second, he says the judge compounded this error by concluding the defences of consent and self-defence were unavailable because Mr. Bailey had broken into the bedroom. If Mr. Bailey fails on his first ground of appeal, he acknowledges his second ground of appeal cannot succeed.

[3] The Crown submits Mr. Bailey's appeal should be dismissed. In the context of the case as a whole, it maintains the judge was correct to find evidence potentially going to the issues of colour of right, lawful justification or excuse was irrelevant.

Background

[4] The facts as found by the judge are not in dispute.

[5] Mr. Duke and Ms. Hagen were living in the residence of the complainant, Rene Hogan, in Whitehorse. Prior to the offences, Ms. Hogan had clearly indicated to them they were no longer welcome in her home. She had given them two days to move out.

[6] On the date of the offence, January 28, 2022, Mr. Duke had possession of "all" of Ms. Hogan's keys. That afternoon, Ms. Hogan was on her bed in her bedroom. She was recovering from chemotherapy so kept the door closed and locked off to everyone in the household except her life partner.

[7] In response to a knock on the door, Ms. Hogan "asked them to hold on." Before she had time to get off the bed, Mr. Bailey pushed the door open and "burst into" the room. Mr. Duke followed. Ms. Hogan did not know how Mr. Bailey and Mr. Duke got into her room but testified it was easy to slip the lock with a butter knife.

[8] Mr. Bailey introduced himself by name and claimed to be Ms. Hagen's father. Ms. Hogan knew Ms. Hagen's mother was dating a man named Roddy Bailey.

[9] Ms. Hogan got up from the bed, went towards Mr. Bailey, and started screaming, "in no uncertain terms", that Mr. Bailey was not welcome. Mr. Bailey repeatedly said he did not know it was Ms. Hogan's room, but he did not leave. Instead, Mr. Bailey pushed Ms. Hogan back into her dresser. Ms. Hogan was not injured in the incident.

Discussion

[10] On the view I take of the appeal, the only issue is whether the judge erred in law by finding it was irrelevant that Mr. Bailey repeatedly said he did not know it was Ms. Hogan's room.

[11] As the judge put it:

> [13] … Unfortunately, [Mr. Bailey repeatedly saying he did not know it was Ms. Hogan's room] is irrelevant to the fact Mr. Bailey burst into a room that was closed. Even if [Mr. Bailey] thought he had permission to be in the house from Mr. Duke, this room was off-limits and it was off-limits by a door that was closed and, according to Ms. Hogan, and not in any way disputed, locked.
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> [14] Therefore, I find, beyond a reasonable doubt, that Mr. Bailey broke and entered into Ms. Hogan's room. I do not believe it is necessary for me to find whether or not Mr. Bailey knew he had permission to enter through the front door of the home or thought he had permission to enter through the front door of the home because Mr. Duke had a key and it is fair to assume that it could be that Mr. Bailey thought that it was Mr. Duke's home, but certainly not a locked room in which he was the one who pushed through the door. I therefore find him guilty of that offence.

[12] Provincial and Territorial Court judges handle a high volume of cases. To manage their caseload, they often deliver oral reasons very shortly after hearing submissions. That is what happened in this case. The trial judge gave her reasons following the parties' submissions on the second day of trial. In the circumstances, it is understandable her reasons lacked a certain level of detail and polish. But reasons must be read contextually, functionally and as a whole. Perfection is not expected or required.

[13] Here, the only possible relevance advanced regarding Mr. Bailey's statements is they may have raised a reasonable doubt he was justified, had an excuse or had a colour of right to be in Ms. Hogan's room.

[14] Mr. Bailey did not testify in his own defence. The only evidence of what he said came from Ms. Hogan. Although the statements provided some evidence regarding Mr. Bailey's state of mind, I agree with the trial judge they were ultimately irrelevant.

[15] Even if Mr. Bailey had Mr. Duke's permission to be in Ms. Hogan's residence, there was no evidence he had permission to enter a locked room within the residence. His statements that he did not know it was Ms. Hogan's room provided no evidence that he knew whose room it was, had permission to be there or had a reason to be there. In the circumstances, his statements that he did not know it was her room did not justify, excuse or provide a colour of right for him to enter a locked

room. His statements could not have raised a reasonable doubt regarding justification, excuse or colour of right and were therefore not relevant.

[16] The judge was left with the evidence that Mr. Bailey burst into a room through a door that had been closed and locked. There was no evidence he had a reason or permission to be in that room. Rather, he had been told to "hold on." Further, on being told to leave, he advanced rather than retreated. Even on the most generous view of the evidence, there is simply no air of reality to Mr. Bailey's claims of justification, excuse or colour of right.

[17] I would not accede to this ground of appeal. That being the case, the second ground of appeal also fails.

Disposition

[18] For all of these reasons I would dismiss Mr. Bailey's appeal.

[19] **FISHER J.A.**: I agree.

[20] **ALIBHAI J.A.**: I agree.

[21] **MARCHAND C.J.Y.C.A.**: The appeal is dismissed.

"The Honourable Chief Justice Marchand"