

Citation: *R. v. K.S.*, 2025 YKTC 19

Date: 20250408
Docket: 23-10035
Registry: Watson Lake

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REX

v.

K.S.

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

Appearances:
Neil Thomson
Amy E. Chandler

Counsel for the Crown
Counsel for the Defence

This decision was delivered from the Bench in the form of Oral Reasons. The Reasons have since been edited without changing the substance.

REASONS FOR JUDGMENT

[1] COZENS T.C.J. (Oral): The accused, K.S. , has been charged with having committed the offence of sexual assault contrary to s. 271 of the *Criminal Code*. The alleged victim is C.C., and the offence is said to have occurred on or about September 13, 2023, in a Yukon community. The trial took place on December 11, 2024, and judgment was reserved until today's date. This is my judgment.

Cst. Gilroy

[2] Cst. Gilroy testified that on September 13, 2023, at approximately 8:00 p.m., he attended at the hospital where he spoke to C.C. She was in the process of undergoing a medical examination for a sexual assault. He noted her to be upset and emotionally drained. He said that she was not talkative. He did not notice any signs of intoxication, which he assessed on the basis of having had past dealings with her. Cst. Gilroy advised her that he would obtain a statement from her after she had finished the medical process associated with obtaining a sexual assault kit. He left the hospital and return a couple of hours later to pick up the sexual assault kit. By then, C.C. had already left the hospital, so no statement was obtained from her that night.

[3] C.C. subsequently provided an audio and video recorded statement on September 25, 2023, to a different RCMP member. Cst. Gilroy was able to subsequently obtain a statement from a potential witness, referred to herein as Ms. C., on or about September 30, 2023. K.S. was arrested approximately one month later and released on an undertaking. The undertaking to the police officer was dated October 28, 2023.

[4] Several months later, vaginal swabs from the sexual assault kit were sent to the National Forensic Laboratory Services in Surrey, British Columbia, for testing. A report was received on January 31, 2024. No evidence was placed before me as to the results of this report or what this report stated.

Ms. C.

[5] Ms. C. testified that C.C. is her cousin. She also knows K.S. and stated that he resides approximately a 10-minute walk from her residence. Ms. C. stated that on the morning of September 13, 2023, she was in her room and heard C.C. speaking with her, Ms. C.'s, husband. This was at approximately 7:00 a.m. She gave C.C. a ride to town at C.C.'s request, as she was taking her children there in any event. She considered C.C. to have a hangover but did not know her to be intoxicated. She could not recall C.C.'s emotional state.

[6] Based on what C.C. told her, Ms. C. suggested that C.C. call the police. She took C.C. to another individual's house. In cross-examination, Ms. C. agreed that C.C. told her that she first went to the home of A.M. before coming to Ms. C.'s house, but no one was there.

C.C.

[7] C.C. testified that she has known K.S. his entire life. He is her younger nephew, being her cousin's son. I note that the age difference between K.S. and C.C. is approximately 14 years as of the date of trial.

[8] C.C. testified that, on the day leading up to the alleged assault, she had been hanging out and drinking with several friends, both in the community and at the residence of a cousin, C.S., in a nearby community. When asked, she was able to name the specific friends she had been hanging out and drinking with. She said that she had hitchhiked between the two communities to get to her cousin's residence.

[9] C.C. estimated that she arrived at her cousin's house at approximately 11:00 p.m. to 12:00 a.m., as it was dark out. She said that she had a 15 pack of beer with her.

[10] Approximately one half hour after she arrived, her cousin asked her to leave. She then left and another male individual, C.J.D., went with her. They walked on a back road towards K.S.'s house. She said that she had stayed at K.S.'s residence before and that she felt she would be safe there. C.C. said that her cousin's house was a five to 10-minute walk from K.S.'s house. She said that K.S. lived alone.

[11] K.S. told her that she could sleep in his bedroom and that he and C.J.D. would sleep on the futon couch in the living room. She said that after talking for a while, she went to sleep in K.S.'s bedroom. She did not close the door, but she turned the light off. She was wearing joggers and a hoodie sweater with both her bra and underwear on underneath. She took her socks off.

[12] C.C. stated that she got under the covers, as the blanket that was usually on the end of the bed was not there. She said that she "totally crashed out", as she felt that she was in a safe place.

[13] C.C. said that while she had periods in which she blacked out, she felt that she walked fine on the way to K.S.'s house and that she could talk fine.

[14] K.S. came into the room and turned the light on, waking her up and causing her to sit up. He said that he was getting a movie and that he was sorry. She said that after K.S. left the room, she laid down and went back to sleep.

[15] K.S. came in again to grab more movies, saying that he had finished the first one.

[16] C.C. stated that K.S. came into the room two or three times to grab movies. She said that both the light and the sound of K.S. rummaging around woke her up on each occasion.

[17] She awoke to find that K.S. was inside her, having sex with her “like a rape”. She was on her side in a fetal position, and he was penetrating her from behind with his penis inside her vagina. Her joggers and underwear had been pulled down somewhat and her hoodie sweater had been pushed up her back. The blankets were pulled up over them both.

[18] C.C. said, “What the fuck? I am your auntie.” K.S. said, “Sorry, sorry” while he was still in the bed.

[19] C.C. said that she tried to hit K.S. but could not because he was behind her. K.S. got up and ran out of the room.

[20] She got up and pulled up her clothes and put her socks and boots on and sat there feeling numb. She then went out of the room and saw K.S. and C.J.D. lying on the futon. She was angry and she went over and hit K.S. two or three times, asking him, “Why?”, while also yelling and screaming at him. She said that K.S. was acting like he was sleeping.

[21] C.C. said that she could not see how he could be sleeping right after the sexual assault had happened, and that it had been her first reaction when she saw him lying on the futon to hit him.

[22] K.S. said that he was sorry. C.J.D. got up right away and ran out the door, even though C.C. said that she had asked him for help.

[23] C.C. said that she knew it was K.S. and not C.J.D. who had assaulted her, as the room light was on, she saw his face when she turned, and that K.S. and C.J.D. did not sound or talk the same, stating that, "There is no comparison."

[24] C.C. said that she then returned her cousin's house and knocked on the door, but that she would not answer. She then went to the residence of A.M. She told them what had happened and asked if they could call someone for her. However, they would not and told her to go. She then went to Ms. C.'s house and asked for a ride. She said that Ms. C. gave her a ride into town and dropped her off at a friend's trailer and house, the same woman Ms. C. testified she had taken C.C. to.

[25] She went to the hospital later that day after she had taken a shower at the friend's house and gotten rid of her clothes. She acknowledged that she had been told not to shower but she did anyways because she felt gross as a result of the sexual assault.

[26] C.C. said that she never consented to having sex with K.S., that she felt numb, felt like she was in shock, and felt sick to her stomach, and that she could not believe that this had happened.

[27] In cross-examination, C.C. agreed that she could have gone to other places than K.S.'s to sleep, including her brother's, who lived a little further away than K.S. did, approximately another 10-minute walk. She agreed that she had not asked K.S. before coming over to his house. She did not really know at what time things were happening, and she did not keep track of time.

[28] C.C. agreed that she had been consuming a significant quantity of beer (six or seven) from the 15 pack she brought to her cousin's house, wine, maybe as much as a full bottle, and whiskey, a few shots from a shared mickey throughout the day, evening and into the morning. C.C. agreed that she had told the police officers that she was quite intoxicated and further stated at trial that she was pretty intoxicated, in particular, at the time that she went into K.S.'s bedroom to sleep. She agreed that she would blank out and then come to on and off, although she stated that there were no memory gaps about the time that she was at K.S.'s house. She said that these gaps were when she was at her cousin's house in another community and when she was walking back towards K.S.'s residence.

[29] C.C. said that she was distraught at the hospital and did not want to wait around in order to give a statement.

[30] C.C. agreed that there were a number of things that she did not tell the police when she gave her statement. She did not tell the police that she had sat up in bed the first time K.S. came to the bedroom, that she was not under the blankets, that K.S. had come into the bedroom twice to get movies, and that K.S. said that he did not want

C.J.D. to sleep beside C.C. She also did not remember telling the police that she had scratched or tried to scratch K.S.

[31] In re-direct, C.C. said that she did not recall ever having been asked by a police officer about the blankets or coverings. C.C. agreed that sometimes she had slept on the futon at K.S.'s house and added that sometimes she slept in a chair.

[32] C.C. denied that K.S. had told her to get out of the bed or that he had slept in the bed with her on top of the covers while both were fully clothed. C.C. denied that she became angry at K.S. simply because she had woken up and he was lying in bed on the covers when she woke up. C.C. denied that it was possible that she was so intoxicated that she was mistaken when she said K.S. had sex with her. Her response was:

Are you kidding me? Why would I even want to think about having sex with my nephew? It happened. It happened to me. It wasn't anybody else. It was K.S. that did that to me. I didn't go to K.S.'s place to have sex with my own nephew. I went there because I trusted him. I loved him and respected him, and that's all gone.

[33] C.C. was not able to state with any certainty the time of day or night that certain events took place because she was not paying any particular attention to time. She agreed that she was at her friend, Ms. C.'s, place pretty early, likely around 7:00 a.m. because Ms. C's kids had to get to school.

Analysis

[34] As K.S. did not adduce any evidence in his defence, this case primarily turns on my assessment of the credibility of C.C. and the reliability of her evidence. While it

would have been of considerable assistance to have the evidence of C.J.D. before the court, he was not willing to provide the RCMP a statement and to participate in the investigation. The absence of any evidence as to the results of the forensic examination of the DNA evidence is also not something that I can assess as having any bearing on the issue before me, as it would be improper for me to speculate as to what this could potentially mean or to draw an inference that the absence of DNA evidence makes it more likely that there was no sexual contact.

[35] In the end, I am left with the evidence of C.C. as to the occurrence of a sexual assault, to be considered along with the evidence of Cst. Gilroy and Ms. C. C.C. was clearly somewhat confrontational with counsel for K.S. when she was being cross-examined, questioning why she was being asked certain things, providing answers that went beyond the scope of the question asked, and interrupting counsel while counsel was trying to ask her specific questions, to the point where I instructed C.C. to just listen to the question and answer what she was being asked. At one point, C.C. requested a break because counsel was making her “mad”, in her words.

[36] This conduct certainly made the cross-examination more contentious and prolonged than was necessary. This said, I did not find C.C. to be evasive or to be trying to testify in a deceptive or misleading manner. Her testimony was not negatively impacted by the testimony of Ms. C. or Cst. Gilroy but, rather, was somewhat supported by it. Any perceived inconsistency of the evidence of C.C. was minor at best and not damaging to C.C.’s testimony.

[37] C.C. had consumed a considerable amount of alcohol and had been blanking in and out throughout the evening and morning. This said, C.C. said she was not blanking out while at K.S.'s house, and there did not appear to be any evidence that would suggest she was.

[38] Further, the testimony of Ms. C. was that C.C. appeared to be hungover and not overly intoxicated when she showed up at Ms. C.'s residence.

[39] Certainly, the consumption of alcohol to the level of being pretty or quite intoxicated can impact upon the reliability of evidence as to what occurred while C.C. was so intoxicated and blanking in and out, which is not to be confused with passing in and out as a result of intoxication. It does not, however, mean that C.C. is of necessity not a credible witness who was giving reliable evidence on the critical matter at issue, whether K.S. sexually assaulted her, as she testified that he did.

[40] C.C.'s evidence as to the circumstances of the sexual assault itself was clear and consistent throughout direct examination and when challenged in cross-examination. I find her to be a credible witness and her evidence as to the occurrence of the sexual assault to be compelling and reliable. I am satisfied that there is no evidence before me that would undermine the credibility of C.C. and the reliability of her evidence such that it would raise a reasonable doubt as to whether she had been sexually assaulted by K.S., as she testified she was.

[41] I find that K.S. sexually assaulted C.C. while she was sleeping, pulling down her clothing, and penetrating her vagina with his penis. C.C. did not consent to the sexual activity. K.S. is therefore guilty of the offence of sexual assault.

COZENS T.C.J.