

Citation: *R. v. Singh*, 2026 YKTC 4

Date: 20260209
Docket: 24-00884
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

ROBINPAL SINGH

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:

Andreas Kuntz

David C. Tarnow

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] CAIRNS T.C.J. (Oral): Mr. Robinpal Singh (“Mr. Singh” or “Robin”) has pleaded not guilty to a charge contrary to s. 271 of the *Criminal Code* (the “Code”), alleging that he sexually assaulted the Complainant, H.B., on December 7, 2024, in the City of Whitehorse, Yukon Territory.

[2] Mr. Singh begins the proceedings presumed to be innocent of all the charges. The Crown has the burden throughout to prove beyond a reasonable doubt that the accused is guilty of the offences charged. The presumption of innocence remains with

the accused throughout the case unless or until the Crown proves his guilt beyond a reasonable doubt. There is no burden on Mr. Singh to prove his innocence.

[3] Reasonable doubt is based on reason and common sense, arising from the evidence or absence of evidence. Reasonable doubt is a standard that is closer to absolute certainty than to a balance of probabilities. Thinking the accused is probably guilty or likely guilty is not enough.

[4] The trial of this charge proceeded over three days, December 9 to 11, 2025. The Crown called five witnesses, and tendered video footage of Mr. Singh's arrest as well as photographs taken the night the sexual assault is alleged to have occurred; the defence called no evidence. It was not disputed that H.B. was sexually assaulted – her evidence of the sexual assault was unchallenged; the issue at trial was whether the Crown had proven the identify of the accused.

[5] It is important to note that, throughout the trial, the accused, Mr. Singh, sat in the gallery alongside a number of individuals similar in appearance and attire to Mr. Singh. At trial, Mr. Singh sported a lengthy black beard and wore a turban (or dastaar), a Sikh religious head covering.

Facts

[6] K.M.'s evidence was that on December 7, 2024, at around 11:00 p.m., he, K.B., and W.J. went out to the Dirty Northern pub in downtown Whitehorse. K.M. is the stepfather of the Complainant; K.B. is the Complainant's mother; W.J. is a longtime family friend. The Complainant was at home that night with her younger siblings. In

these reasons, from time to time, I will refer to witnesses informally by using their first names and intend no disrespect in doing so.

[7] Once at the Dirty Northern, the group of friends met up with A.P., a friend of W.J.'s that K.M. had not previously met. Through A.P., the friends encountered Robin. The group remained at the Dirty Northern drinking and socializing until closing. After the pub closed, Robin drove the group – K.M., K.B., A.P., and W.J. – in his vehicle to W.J.'s residence to pick up more beer, then on to K.B.'s residence to have more drinks.

[8] The layout of K.B.'s residence was described by various witnesses. Key to that description is that the bedroom where H.B. was sleeping was on the second floor. The kitchen and living room are also on the second floor and this is where the group of adults continued to enjoy the evening, after having arrived at approximately 3:00 a.m. K.B.'s bedroom, where the two younger children were sleeping, was on the first floor.

[9] At some point while at K.B.'s residence, Robin settled on the couch to rest. The evidence is that he lay down on the couch as he was sleepy, and the others did not want him to drive, being concerned about his level of intoxication. K.M. described Robin as pretty drunk, having a hard time standing and walking. He testified that Robin lay down around 6:00 a.m. After Robin lay down on the couch, W.J. and A.P. left, and K.M. and K.B. went to the bedroom downstairs. K.M. said Robin looked like he was falling asleep at that time. K.M.'s evidence was that he and K.B. talked for one and one-half to two hours and then he went up to check on H.B.

[10] Upon heading upstairs to check on H.B., K.M. said he heard her say something like, "oh my god, who is that". As he approached H.B.'s bedroom, K.M. observed that

Robin was not on the couch. He saw Robin in H.B.'s room in his underwear, wearing nothing on his top, and putting on his pants. K.M. said he gave Robin his shirt and sweater, got him to put on his clothes, and to leave. When asked how he knew it was Robin, he confirmed it was the same guy that had come to the house and that he was the only other person there. He said he could see Robin clearly in the bedroom given the lights in the kitchen were on and he turned on the lights in the bedroom.

[11] At K.B.'s suggestion, K.M. ran out and took a photograph of the licence plate of the vehicle Robin left in.

[12] H.B. testified to the incidents of that night. She said that after her mom left, she was on the phone with her boyfriend and was sleeping by the time the adults returned home. She described the layout of her bedroom, with the bed against the wall in the corner and under a window.

[13] H.B. described being woken up that night by someone pulling on her arm and forcing it around their waist, pulling her towards them. She was lying on her left side in the middle of the bed, facing the wall. The person who grabbed her was lying between her and the wall, face-to-face with her. Upon opening her eyes, she saw someone's mouth, jaw, and chin. The person attempted to put their hand in her underwear to touch her "butt"; however, she was able to move her elbow to move his hand. He then pulled her closer, started smelling her hair and then, with a solid grip on her wrist and forearm area, tried to get her to touch his penis with her right hand. When she realized what he was doing, she pulled her hand away. He then grabbed her wrist and tried to do it again. She turned away, so her back was facing his front. He then wrapped his arms

around her waist, tightened them and pulled her towards him. She then described him as slowly dry humping her “butt” and moving his hand under her hoody to touch her chest area. She described herself as being “kind of in shock” and not knowing what to do. When he tried to touch her chest, she got up out of bed and ran to the opposite side of her room. Shortly thereafter, she saw her stepfather walking towards her bedroom.

[14] Neither H.B. nor K.M. were asked to identify the accused in the courtroom.

[15] W.J. testified next, describing the night in question, his relationship with Robin, and tendering photographs taken while the group was at K.B.’s residence after leaving the Dirty Northern.

[16] The photographs taken by W.J. had not previously been disclosed and defence counsel argued that the late disclosure – received after two witnesses had testified – was a breach of Mr. Singh’s s. 7 *Charter* rights, seeking as a remedy either a stay of proceedings or an order excluding this witness. Defence counsel argued that the late disclosure impacted the defence strategy. I ruled that the witness could testify, and the photographs admitted provided they could be authenticated. Defence counsel was advised that if, after the cross-examination of this witness, defence wished to recall the earlier witnesses, that could be accommodated. Defence counsel was also advised that if, after cross-examination, they wished to provide written submissions in relation to a potential s. 7 *Charter* breach, that could also be addressed. Defence counsel did not pursue either of these options.

[17] W.J. testified he had known Robin since early or mid-2024 through multiple encounters at the Dirty Northern where Robin worked as a bouncer. He described a

friendly and positive relationship with Robin, saying he was impressed with Robin's ability to handle rough situations with patrons at the Dirty Northern. He said the night in question had been a fun night, with lots of laughter and joking around.

[18] W.J. also testified that K.B. is a fashion designer who makes Indigenous inspired clothing. That night, the group, including Robin, tried on clothing designed by K.B. while at K.B.'s residence after leaving the Dirty Northern. Two photographs of members of the group wearing K.B.'s clothing were tendered as exhibits. These photographs were taken on W.J.'s phone while at K.B.'s residence on the night in question. In one, there is a group of four people, including a person W.J. identified as Robin Singh. In the other, the photograph is of a single person he identified as Robin. In both photographs, the person identified as Robin Singh is wearing a ribboned suede vest made by K.B. W.J. recalled that Robin was very pleased with K.B.'s work and had asked W.J. to take the photograph. W.J. said that when he left K.B.'s residence that night, Robin was sleeping on the red couch shown in the photographs. W.J. also testified that he had some communication with Robin after the incident on Instagram.

[19] When asked if he could see Robin in the courtroom, W.J. looked carefully around the courtroom and said he could not.

[20] Cst. Liam Adel of the RCMP testified that he had assisted Cst. Verstegen with the arrest of Mr. Singh just after midnight on December 14, 2024. Cst. Verstegen's bodycam recorded the arrest of Mr. Singh, and the video of the arrest was made an exhibit.

[21] Finally, Corrina Lotz, General Manager of the Dirty Northern testified. Ms. Lotz confirmed that Robinpal Singh had been in her employ as a doorman, having been hired in the spring of 2024 and working there until his employment ended in the fall of 2024. She said Mr. Singh's shifts were from 10:00 p.m. to 3:00 a.m. every Friday and Saturday. She confirmed she also worked every Friday and Saturday. After Mr. Singh stopped working at the Dirty Northern, she said she saw him a few times when he came in over the next months. Ms. Lotz was shown both a segment of the arrest video and the photograph of Mr. Singh taken by W.J. She confirmed that the person in the arrest video was known to her as Robin Singh and that he had been in her employ for about six months. She confirmed that the person in the photograph was also Robin Singh. During cross-examination on this point, she again confirmed that the person in the video and in the photograph was Robin.

[22] Ms. Lotz was asked to look around the courtroom to see if she could recognize Robin in the courtroom and, having done so, said she could not recognize him.

[23] I find that all of Crown witnesses provided credible and reliable evidence. Despite the consumption of alcohol by K.M. and W.J. on December 7, 2024, both witnesses provided clear and detailed descriptions of the events of that night.

Argument

[24] The *actus reus* of sexual assault comprises three elements: (1) touching; (2) the sexual nature of the contact; and (3) the absence of consent. Counsel for Mr. Singh concedes that the sexual touching of H.B. occurred without her consent. The issue, as

noted earlier, is whether the Crown has proven beyond a reasonable doubt that Mr. Singh was the assailant.

[25] However, before addressing the issue of identity, I will summarily address the argument made on behalf of Mr. Singh by his counsel that the police investigation was flawed. My attention was drawn to three concerns: the photograph of the licence plate of the car driven by the assailant as they left K.B.'s residence was not obtained by police; video footage from the Dirty Northern was not requested by police during their investigation; and a photo lineup was not done. I note that each of these concerns relate to identification of H.B.'s assailant, which I address below.

[26] Even acknowledging that the police investigation could have been more robust and these evidentiary items obtained, defence counsel has not identified an impact on Mr. Singh's right to a fair trial nor sought any specific remedy. As such, these concerns will not be considered further.

[27] I turn now to the key issue of identification. While I acknowledge that eyewitness evidence is considered inherently unreliable, I find that the identification in this case is better categorized as "recognition evidence". As has been noted by various courts, there is a distinction between, on one hand, the weight of identification evidence that comes from a previous fleeting observation or a first identification in court, and, on the other hand, identification evidence that arises in the context of previous encounters with the accused (*R. v. Muir*, 2013 ONCA 470, at para. 11).

[28] In this case, both witnesses called on to identify Mr. Singh – W.J. and Ms. Lotz – had prior familiarity with him. Based on their prior acquaintanceship with him, they each

recognized Mr. Singh in the images tendered. W.J. easily identified Mr. Singh from photographs taken on the night of the allegations. Similarly, Ms. Lotz was able to identify Mr. Singh from both the arrest video and the photographs taken on the night in issue. She confirmed that the person arrested and the person in the photograph taken at K.B.'s residence were the same person, namely, the person known to her from his employment at the Dirty Northern as Robin Singh. It also bears noting that Mr. Singh appears to be wearing the same black toque with a label on the brim in the photograph taken at K.B.'s residence as he is wearing when arrested, as shown in the arrest video.

[29] The fact that neither W.J. nor Ms. Lotz were able to identify Mr. Singh in the courtroom causes me little concern. I find that the inability to identify Mr. Singh may be explained by the significant transformation in his appearance since December 2024. The images of Mr. Singh in December 2024, both in the photographs taken at K.B.'s residence and in the arrest video, show a young man with a short dark beard wearing a black toque. In contrast, Mr. Singh appeared in the courtroom during the court proceedings with a lengthy dark beard covering much of his face. In further contrast to the images from December 2024, Mr. Singh wore a turban throughout the trial rather than a toque.

[30] I am satisfied that the testimony of Cst. Adel, W.J. and Ms. Lotz, together with the video of Mr. Singh's arrest and the photographs taken at K.B.'s residence, establish beyond a reasonable doubt that the person arrested was the same person present at K.B.'s residence, namely, Robinpal Singh. Further, the evidence of K.M. that Mr. Singh had been lying on the couch at K.B.'s residence after A.P. and W.J. had left and then

was found by him in H.B.'s room in his underpants, coupled with H.B.'s evidence, satisfies me beyond a reasonable doubt that Mr. Singh sexually assaulted H.B. as she described.

[31] I find Mr. Singh guilty of the offence contrary to s. 271 of the *Code*.

CAIRNS T.C.J.