

Action No.: 230639999P1
E-File Name: RCJ25 [REDACTED]
Appeal No.: _____

IN THE ALBERTA COURT OF JUSTICE
JUDICIAL CENTRE OF WETASKIWIN

HIS MAJESTY THE KING

v.

[REDACTED]

Accused

T R I A L
(Excerpt)

Leduc, Alberta
September 4, 2025

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1 Proceedings taken in the Alberta Court of Justice, Courthouse, Leduc, Alberta

2

3 September 4, 2025

Afternoon Session

4

5 The Honourable
6 Justice J.B. Champion

Alberta Court of Justice

7

8 B. Gough

For the Crown

9 Y.R. Ziv

For the Accused

10 M. Corbiere

Court Clerk

11

12

13 THE COURT:

Good afternoon, counsel.

14

15 MR. ZIV:

Good afternoon, Sir.

16

17 MS. GOUGH:

Good afternoon, Sir.

18

19 **Reasons for Judgment**

20

21 THE COURT:

I note for the record Mr. [REDACTED] is present. Mr. Ziv

22 is counsel for Mr. [REDACTED] and Ms. Gough for the Crown. These are my reasons for judgment

23 in the matter of His Majesty the King versus [REDACTED]. I will deliver my reasons orally,

24 but if a transcript is requested, I reserve the right to make any editorial revisions or changes

25 I feel as necessary. It will probably take me about 20 minutes to read through this.

26

27 Sometimes a single event is perceived by two people in very different ways. It does not

28 necessarily mean that one is lying and that one is telling the truth. Rather, perceptions,

29 biases, and motivations affect the recall and understanding of the occurrence in vastly and

30 often conflicting manners. That is what this case presents to me.

31

32 In 2022, [REDACTED], the complainant in this matter, and [REDACTED], the accused,

33 were in an intimate partner relationship. On [REDACTED], 2022, Ms. [REDACTED] was struck

34 in her head by the foot of Mr. [REDACTED]. This is not disputed. It happened while they were both

35 on the bed of their bedroom. She suffered some injuries and was seen by a doctor on several

36 occasions. Mr. [REDACTED] does not contest that his foot contacted her head, but he says it was

37 accidental and that he did not ever have the intention of kicking her.

38

39 On the other hand, Ms. [REDACTED] says that he had been angry with her during the day and

40 that out of frustration he kicked her and that it was on purpose. If she is right, then a

41 conviction should follow. But, Mr. [REDACTED] submits, if the Court has any reasonable doubt as

1 to his intent, then he is entitled to an acquittal.

2
3 Ms. [REDACTED] and Mr. [REDACTED] each testified before me during the 2 day trial that commenced
4 on March 18th, 2024, and was completed over a year later on April 9th, 2025. Based on
5 the evidence presented to me, I must assess the credibility and reliability of their testimony,
6 apply the proper legal principles, and resolve the issues at bar. There were two additional
7 witnesses, RCMP Officer Constable Shyla Michelle Delowski and Ms. [REDACTED]'s friend
8 [REDACTED]. Every analysis of the reliability and credibility of evidence against the
9 accused is necessarily founded on the constitutionally guaranteed presumption of
10 innocence of every accused person. The Supreme Court of Canada has reminded judges as
11 follows: (as read)

12
13 The presumption of innocence is a hallowed principle lying at the
14 very heart of criminal law that confirms our faith in mankind.

15
16 This applies to Mr. [REDACTED] in this case, and accordingly he is protected by the presumption
17 that he remains innocent in the eyes of the law. He may only be convicted once the Crown
18 has established every essential element of its case beyond a reasonable doubt. In *W.(D.)*
19 the Supreme Court of Canada directed that where the credibility of the evidence is a key
20 issue, a trier of fact must pursue an analysis of the evidence of the accused and the
21 complainant following these criteria. A trial judge might well instruct the jury on the
22 question of credibility along these lines. First, if you believe the evidence of the accused,
23 obviously you must acquit. Second, if you do not believe the testimony of the accused, but
24 you are left unreasonable to doubt by it, you must acquit. Third, even if you are not left in
25 doubt by the evidence of the accused, you must ask yourself whether on the basis of the
26 evidence which you do accept, you are convinced beyond a reasonable doubt by that
27 evidence of the guilt of the accused.

28
29 In *Ryon* the Alberta Court of Appeal provided a revision of the *W.(D.)* analysis by giving
30 the following directions to triers of fact, paragraph 51: (as read)

31
32 The burden of proof is on the Crown to establish the accused's guilt
33 beyond a reasonable doubt, and that burden remains on the Crown
34 so that the accused person is never required to prove his innocence
35 or disprove any of the evidence led by the Crown.

36
37 The following is my summary of the appellate court's directions. If I believe the accused's
38 evidence denying guilt, or if I am not confident, I can accept the Crown's version of events,
39 I must acquit. A trial is not a credibility contest requiring me to decide that one of the
40 conflicting versions is true. If after careful consideration of all the evidence I am unable to
41 decide whom to believe, I must acquit. Even if I completely reject the accused's evidence,

1 I may not simply assume the Crown's version of events must be true. Rather, I must
2 carefully assess the evidence I do believe and decide whether that evidence persuades me
3 beyond a reasonable doubt that the accused is guilty. Mere rejection of the accused's
4 evidence cannot be taken as proof of the accused's guilt. The approach taken by the Alberta
5 Court of Appeal in *Ryon*, was further refined in *Achuil* at paragraph 18, and again in *SMC*,
6 where the Court stated at paragraph 23: (as read)

7
8 The purpose of the *W.(D.)* approach is to ensure that the burden
9 never shifts from the Crown to prove every element of the offence
10 beyond a reasonable doubt. When faced with competing stories,
11 the Court must not simply prefer one over the other. In other
12 words, if after careful consideration of all the evidence, the Court
13 is unable to decide whom to believe but must acquit. If the Court
14 is unable to resolve conflicting material evidence, it has a
15 reasonable doubt as to guilt and must acquit.

16
17 The Court must apply the same standards of assessment to the evidence of the complainant
18 and the accused, always bearing in mind that the Crown bears the burden of proof of every
19 essential element of the offence. The accused need only raise a reasonable doubt respecting
20 the element of a charged offence to secure an acquittal. A trier of fact should not impose
21 an elevated or more scrupulous standard of the testimony of the complainant as a Crown
22 witness or to the testimony of the accused as an accused. Further, the Court should not be
23 more forgiving of inconsistencies or improbabilities for one witness as opposed to the
24 other.

25
26 Recently, the Supreme Court has given further directions to triers of fact in relation to
27 credibility findings in the *Kruk* decision. The Court referenced the necessary recourse to
28 common sense as a part of a testimony analysis. The Court clarified that it is sometimes
29 required that judges use, “human experience to interpret evidence or draw inferences”. The
30 Court directed in *Kruk* at paragraph 62: (as read)

31
32 Reasonable doubt applies to credibility assessments such that if
33 the evidence the Crown adduced does not rise to the level required
34 of a criminal conviction, an accused cannot be found guilty simply
35 because they are disbelieved. Some elements of the totality of the
36 evidence may give rise to a reasonable doubt. Even where much
37 or all of the accused’s evidence is disbelieved, any aspect of the
38 accepted evidence or the absence of evidence may ground a
39 reasonable doubt. Moreover, where the trier of fact does not know
40 whether to believe the accused testimony or does not know who to
41 believe, the accused is entitled to an acquittal.

1
2 I will first review the evidence of ██████████ that came up at trial. She indicated that
3 on November 7th, 2022, she was in a relationship with a Mr. ██████████ and they also lived with
4 her two children. On that day, she went to pick him up from work and she was late. This
5 caused some friction between them. She says they returned home and Mr. ██████████ went
6 upstairs while she prepared dinner and that Mr. ██████████ did not come downstairs.
7

8 After several hours, she went up to bed. She got undressed and got into bed. She described
9 Mr. ██████████ as lying with his head toward the foot of her bed watching TV. She said Mr.
10 ██████████, "Swung his foot around and kicked the back of my head, the lower right of my
11 head". She said that there had been nothing said between the two of them before the kick
12 from the time they arrived home. She felt intense pain, she felt nauseous and dizzy, and
13 everything went black. She woke up on the floor with her daughter by her feet. She decided
14 she needed to get checked out. Mr. ██████████ said he couldn't drive, so she called her friend
15 ██████████. Ms. ██████████'s daughter helped her get dressed. ██████████ then arrived and Ms.
16 ██████████ had trouble walking, so Mr. ██████████ helped her out to the car. ██████████ asked Mr.
17 ██████████ two or three times what happened and he did not respond.
18

19 When they arrived in the emergency room, ██████████ stayed for some period of time and
20 then left. Eventually, Ms. ██████████ was treated in the emergency room and then went back
21 home. She did not go back to work for several months because of pressure headaches. She
22 told her family doctor that this was her third concussion. The first was when she was 17
23 years old. She testified that she had been in a motor vehicle collision in September of 2022,
24 about 2 months prior to the incident which forms the present charges, and she suffered a
25 concussion. She was taking some medication as a result of muscular pain in her neck and
26 shoulders. Her medical records were entered as evidence at the trial.
27

28 The cross-examination of Ms. ██████████ was focused on different versions of the events and
29 inconsistencies in her accounts of the event. She agreed that she told the police that there
30 had been no arguments or words exchanged. But on the morning of the trial, she told the
31 police and Crown counsel that she now remembered that Mr. ██████████ had been "verbally
32 abusive" on the day of the incident. There had been "tension". She also said that Mr. ██████████
33 had been "verbally aggressive". On cross-examination, she admitted that there was no
34 arguing or talking when she came into the bedroom.
35

36 On another point, she said that she had given medications for the kick to the head, Tylenol
37 3s and cyclobenzaprine. Later, on cross-examination, she conceded: (as read)
38

39 I may well at that time have been given those ██████████ and
40 cyclobenzaprine when I went in for that motor vehicle collision. I
41 cannot remember for certain.

1
2 She later admitted: (as read)

3
4 There is a chance I may have had the [REDACTED] when I went in 2 months
5 prior to the September.
6

7 The exact exchange in cross-examination went as follows: (as read)

8
9 Q And you are telling this good Court that you weren't on [REDACTED]

10 A I do not remember being on [REDACTED]

11
12 Q Okay.

13 A Other than when I went to the doctor on this day.

14
15 Q Okay, but it's possible.

16 A I - I do not remember being on [REDACTED] before going in for this.

17
18 Q But it's possible.

19 A It is possible that it was back in [REDACTED] of 2022. So, I --

20
21 Q And memory fades with time, correct?

22
23 THE COURT: Just a minute, you cut off her
24 answer.

25
26 MR. ZIV: Sorry.

27
28 THE COURT: She said it is possible, so I --

29
30 A So, it is possible. This is from [REDACTED], 2022. I am not great
31 with drug names like it - it is possible.
32

33 Texts were presented during the testimony from [REDACTED] 4th showing Mr. [REDACTED] was
34 upset about the late pickup. There were later texts entered from [REDACTED] 7th, the day of
35 the incident, but that there were later screenshots of [REDACTED] 7th, the day of the incident,
36 but it did not show any texting between Mr. [REDACTED] and Ms. [REDACTED]. She said that maybe
37 it was during the phone calls that Mr. [REDACTED] expressed anger about the pickup, but she was
38 not certain. She said she "believed" that she called him on the day of the incident.
39

40 Also in cross-examination, she conceded that she was not certain if Mr. [REDACTED] was asleep
41 or awake when she entered the bedroom. She further conceded in cross-examination that

1 she was not certain that Mr. [REDACTED] was watching TV when she entered the bedroom or if
2 it was just on in the background. In direct evidence, she said that “he was watching TV”,
3 but in cross-examination said, “I don't know if it was necessarily on”. When asked if she
4 was sure if Mr. [REDACTED] was watching the TV, she said, “if it was on, I guess he was”.

5
6 Now, I will look at the evidence of Mr. [REDACTED]. He recalled the day of [REDACTED] 7th, 2022.
7 He was working at his job as an apprentice [REDACTED]. His normal work hours did start at 7
8 or 7:30, and he was home between 3:30 and 5. He did not recall specifically if Ms. [REDACTED]
9 picked him up from work that day. He stated on that day of the incident, there had been no
10 arguing or fighting with her. He did recall friction between them on [REDACTED] 4th, but not
11 on [REDACTED] 7th. He did not remember the specifics of the evening, the dinner, or any of
12 the activities he undertook that night, and he frankly admitted he did not have a recall on
13 that.

14
15 He did recall being in bed in the evening. He was getting ready for sleep. He was on his
16 phone at one point and said he was half asleep. He said Ms. [REDACTED] came into the room.
17 Both were on their phones for a certain period of time. She undressed. He was laying on
18 his side of the left side of the bed. His head was toward the TV, and he was facing away
19 from the headboard. He did not recall if Ms. [REDACTED] was lying on the bed or sitting. He
20 said that she touched his inner thigh, which he interpreted as a sexual initiation. He was
21 tired and told her several times he did not wish to, saying, “no, I'm not in the mood”. He
22 said he was not feeling well and wanted to go to sleep.

23
24 He testified that the lights were off, but that Ms. [REDACTED] was on her phone at one point.
25 He recalled falling asleep. She touched his leg again, and he reacted and said that he, “lifted
26 my leg up”, and contacted her head. He said he was not trying to kick her. He described
27 his reaction as “a reflex motion”. He did not recall which of his legs contacted her head.
28 He said he was not trying to kick her and that he was in a “sleep-like state”. He said that
29 Ms. [REDACTED] was not responding for a couple of minutes after she was struck. When he
30 realized Ms. [REDACTED] was in pain, he called her daughter, who was in the basement
31 bedroom. Because of her prior injuries, he was worried that she needed to go to the hospital
32 and that he could not drive because of his licence suspension. Shortly after, [REDACTED] arrived
33 to take her.

34
35 He did not go to the hospital because he had to be at work at 7 AM. When asked in cross-
36 examination why he did not answer [REDACTED] when she asked what happened, he said he
37 expected Ms. [REDACTED] would tell her when she got in [REDACTED]'s car.

38
39 I will now apply the law to these facts. At first blush, this seems to be a classic *W.(D.)* case,
40 because one could assume that the two versions of events are diametrically opposed, thus
41 requiring a *W.(D.)* analysis. But do they, in fact, tell different stories on the essential

1 elements of an assault. An assault is defined as the intentional infliction of physical contact
2 without consent. It is not argued by the defence that Ms. [REDACTED] consented to the contact
3 with her head, which in law is the *actus reus*. The issue in this case is the *mens rea*, or the
4 intent, of Mr. [REDACTED] when his leg made an impact with Ms. [REDACTED]'s head. Did he intend
5 to kick her, or was it, as he testified, a reflexive or accidental action on his part? This is
6 what the Court must determine. She says he kicked her intentionally, but he says it was
7 accidental.

8
9 What is the law on this point? On the issue of the inference of intent to commit a criminal
10 act, the Supreme Court has stated in *Docherty*, found in 1989, 2 SCR 941: (as read)

11
12 The accused must be found to have gone ahead and engaged in the
13 conduct regardless. The onus, of course, is on the Crown to prove
14 that the accused had the requisite *mens rea*. To the extent that
15 direct evidence of intent is almost always difficult to obtain, the
16 Crown may ask the Court, absent any evidence the contrary, to
17 infer intent from the conduct. Any doubt, however, as to whether
18 the accused intended to do what he did, must be resolved in favour
19 of the accused.

20
21 Ms. [REDACTED] did not testify that there were any words, gestures, or actions immediately
22 prior to the striking that would indicate any animosity on his part toward her. She did not
23 say they were arguing in the bedroom, nor that there was a fight or a disagreement. Her
24 evidence was that when she entered the bedroom, he was lying on the bed with his head
25 toward the TV, and that when she got into bed, his leg or foot made contact with her head.
26 She did not testify as to any conduct on his part that would objectively show that the kick
27 was intentional. Indeed, it would not be possible for her to testify as to his state of mind at
28 the time. That evidence would be inadmissible as speculation or opinion evidence.

29
30 What courts require is some kind of extrinsic evidence to prove the required guilty mind
31 or bad intent on his part to meet the criminal standard. The evidence of Mr. [REDACTED] is that
32 he was half asleep and was not interested in her sexual advances and told her so. When she
33 touched his leg, he reflexively lifted it. He denied wanting or intending to kick her. His
34 evidence on this point is neither fanciful nor so speculative as to be unbelievable. There is
35 an air of reality to this testimony.

36
37 The Supreme Court has directed trial judges as follows: (as read)

38
39 Even if you are not left in doubt by the evidence you accused, you
40 must ask yourself whether, on the basis of the evidence which you
41 do accept, you are convinced beyond a reasonable doubt by that

1 evidence of the guilt of the accused.

2
3 A trial is not a contest in which the trier of fact must choose between one of two versions
4 of events. To quote our Court of Appeal in *Ryon*: (as read)

5
6 The burden of proof is on the Crown to establish the accused's guilt
7 beyond a reasonable doubt. So, the accused person is never
8 required to prove his innocence or disprove the evidence led by
9 the Crown.

10
11 I repeat the words of the Supreme Court of Canada in *Docherty*: (as read)

12
13 Any doubt, however, as to whether the accused intended to do
14 what he did must be resolved in favour of the accused.

15
16 Mr. █████, would you please stand? Accordingly, in this case, and based on the totality of
17 the evidence which I have heard, there is insufficient evidence upon which the Crown can
18 rely to meet its burden to prove beyond a reasonable doubt the infliction of force was with
19 the intent to do so, and that it was so in this case. The testimony of Mr. █████ raises a
20 reasonable doubt in my mind as to his intention when he lifted his leg and contacted Ms.
21 █████'s head. Mr. █████, you are therefore entitled to an acquittal on the sole count of
22 assault which is before me, and I find you not guilty.

23
24 THE ACCUSED: Thank you, Sir.

25
26 THE COURT: Any issues arising, counsel?

27
28 MS. GOUGH: No, Sir, I don't believe there's any forfeiture to
29 speak to. Unless my friend is --

30
31 MR. ZIV: No, I don't think there was any forfeiture, Sir.

32
33 THE COURT: All right.

34
35 MR. ZIV: Thank you.

36
37 THE COURT: Counsel I thank you for your written submissions
38 which were a great assistance to the Court.

39
40 MR. ZIV: Thank you, Sir.

41

1 THE COURT:

We are adjourned.

2

3 MR. ZIV:

Thank you.

4

5

6

7 PROCEEDINGS CONCLUDED

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1 **Certificate of Record**

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3 I, Melissa Corbiere, certify that this recording -- that this recording is the record made of the
4 evidence in the proceedings in the Court of Justice, held in courtroom 001 at Leduc, Alberta,
5 on the 4th day of September 4, 2025, and that I was the court official in charge of the sound-
6 recording machine during the proceedings.

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1 **Certificate of Transcript**

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3 I, Debra Gagné, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best of
6 my skill and ability and the foregoing pages are a complete and accurate transcript of the
7 contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and is
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13 Order Number: TDS-1095562

14 Dated: November 27, 2025

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