In the Court of Appeal of Alberta

Citation: R v RAE, 2026 ABCA 361

Date: 20261112
Docket: 2603-0245A
Registry: Edmonton

Between:

His Majesty the King

Respondent

- and -

R.A.E.

Applicant

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that could identify the victim or witness must not be published, broadcast, or transmitted in any way.

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Reasons for Decision of
The Honourable Justice Michelle Crighton

Application for Leave to Appeal

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[1] The applicant seeks leave to appeal her summary conviction under s 839 of the *Criminal Code*.

[2] The 9-year-old complainant said the applicant, his mother, beat him with a wooden spoon so hard that it broke, slapped him, and locked him out of their apartment. He claimed that she did so as punishment for being loud after losing a video game.

[3] The applicant was self-represented at trial. The trial judge accepted the complainant's evidence, rejected that of the applicant, and convicted her of assault with a weapon under s 267(a) of the *Criminal Code*, and causing a child to seek intervention under s 130(a) of the *Child Youth and Family Enhancement Act*. The applicant was sentenced to a six-month conditional sentence order and 18 months of probation.

[4] The Court of King's Bench dismissed her summary conviction appeal. She now seeks leave to appeal to this Court.

[5] For the reasons below, leave to appeal is denied.

Background and Facts

[6] The summary trial took two days. The testifying witnesses included the complainant (the applicant's son), the applicant herself, the applicant's neighbour, and the responding police officer. The primary issue at trial was the credibility of the complainant and the applicant.

[7] The complainant's evidence consisted of a recorded video pursuant to s 715.1 of the *Criminal Code*, followed by in-person testimony. In the video, the complainant claimed that his mother hit him with a wooden spoon across his entire body until it broke and continued thereafter. He claims she did so after his yelling and crying about losing a video game made her angry. The complainant largely adopted his video statement at trial but admitted to being very anxious when making the video and that some of his statements were untrue or half-truths.

[8] At trial, the complainant testified that he tried to phone the police using the landline phone in the apartment after being hit with the spoon. He said the applicant took the phone from him, slapped him twice, and then locked him out of the apartment after he left. He stated that he had marks on his body from the attack, on his knee, body and arms.

[9] On cross-examination, court-appointed counsel asked the complainant about the marks on his knee, which he admitted came from a schoolyard incident. Counsel also challenged the

complainant about inconsistencies in his video statement. He agreed that he lied about his father being present in the apartment, and that he failed to tell the interviewer about his mother slapping him but maintained she had; he otherwise maintained his prior testimony.

[10] The applicant's neighbour testified that the complainant arrived at her door, asking her to call the police. He told her that his mother hit him with a wooden spoon so hard it broke. She described him as shaking and tearful. She did not see the injuries herself. She said that after calling the police, he left to go back to his apartment but soon returned. The neighbour testified that the complainant told her that his mother pushed him out of the apartment. On cross-examination, the neighbour agreed that the complainant also told her that his mother also beats his father.

[11] The responding police officer testified about the circumstances of the charges and how the complainant appeared at the scene. The officer also explained taking two photos of the injuries (of the complainant's knee and leg) but did not search for the broken wooden spoon.

[12] The applicant testified her son's bruises were from a schoolyard injury. She attempted to adduce a letter she claimed to have written to the school after these events, asking them to supervise the playground better. The trial judge refused to admit the statement as hearsay. She next explained that she heard her son crying and weeping in the bedroom on the date in question, and that the neighbours had previously called the police on the family for yelling and being loud. She said that she often reminded her son not to be too loud for this reason, because some neighbours threatened to kill them because of the noise. She denied hitting her son but took the phone away from him to correct his behaviour. She also said he locked himself out of the apartment, not her.

[13] On cross-examination, the applicant claimed that she did not get upset when her son was loud or crying. She also explained how and why her son locked himself out of the apartment, claiming he often got upset in a similar way and left to calm down. When the Crown suggested that she disposed of the broken spoon before the police arrived, she denied doing so, despite being seen disposing of the garbage shortly after. She also denied fabricating the schoolyard incident she alleged caused the injury to the complainant's knee.

[14] When asked if she would be calling any witnesses, the applicant suggested calling her husband, given her son's claim that she had previously hit her husband. The trial judge refused, saying this was a collateral issue and agreeing with the Crown that it would be inappropriate for him to testify since he watched all the other witnesses testify. She also suggested calling her daughter as a witness but admitted failing to subpoena her to court; the trial judge denied her request. The trial judge also denied the applicant's request to admit a statement from her daughter and her son's teacher as hearsay.

[15] The trial judge ultimately found she did not believe the applicant's evidence, nor did it raise a reasonable doubt. She found the complainant's evidence credible and convicted the applicant of both offences as follows:

> So, in conclusion, I remind myself, because of the presumption of innocence, where I was confronted with [a] contradictory version my job was not to decide between the versions, but rather whether the evidence, as a whole, established beyond a reasonable doubt the guilt of the accused. And I note there was no duty on you to raise that reasonable doubt. And the reasonable doubt could come from the Crown's case or the defence case or, you know, really all the evidence that is before the Court. I did not find your evidence believed on the disputed evidence. I considered whether, despite my not believing you, it did raise a doubt; it did not. I considered whether even believing [the complainant's] evidence, whether there was a reasonable doubt that you hit him as described. Well, I am satisfied beyond a reasonable doubt that on September 10th, 2025, … [the complainant], was playing video games on a phone in the bedroom while you were in the living room. He became loud and was crying after being upset by another player bullying him. You came into the room to correct him. You took the phone and hit him with a wooden spoon several times, so hard that the spoon broke, and then you continued to hit him all over with the splintered parts. You hit him all over his body and he tried to protect himself, and you were saying, "Don't kill me, don't kill me". You went back to the living room and sat on the couch. He then went to grab the portable phone in the living room, to go back into the bedroom to call for help, and you came and grabbed the phone, turning it off and slapping him twice in the face. He then left the apartment to cool himself down and you locked the door behind him. He then went to a neighbour to get help. That he had several linear marks as a result of the strikes on his body, to his knee -- and to be clear, I am not talking about the scrape, body, and arms. These were painful and sore for 3 or 4 days … .

[16] The applicant appealed the decision to the Court of King's Bench and was represented by counsel at the appeal hearing. The following grounds of appeal were raised:

1. The trial was unfair because the trial judge did not give enough assistance to the self-represented applicant;

2. The complainant's video statement did not qualify under s 715.1 of the *Criminal Code* because it was hearsay;

3. The trial judge did not properly consider the complainant's testimony;

4. The neighbour's evidence was inadmissible hearsay, and the trial judge failed to address the inconsistencies between the neighbour's evidence, and the complainant's evidence, simply deciding that it was not necessary to do so because she found the complainant reliable and credible;

5. There was a lack of corroborating evidence and no cross-examination on the weapon itself;

6. The trial judge failed to consider the applicant's evidence that the complainant's injuries were caused by others;

7. The trial judge relied on speculation; and

8. The verdict was unreasonable.

[17] The Appeal Justice found that the trial judge's decision was "careful", properly "grappled with the evidence ... adhered to the standard of proof [and] ... the presumption of innocence, and ... [found] no fault with how she applied her analysis with respect to this matter". In brief reasons, the Court concluded that:

1. The trial judge treated the applicant "fairly" throughout the trial, providing time for the applicant to review disclosure and consider her position, engaged with the applicant and explained "the process in an appropriate manner". The applicant did not otherwise adduce fresh evidence on appeal about the impact of any alleged unfairness at trial and why she was unable to bring more witnesses or more effectively examine witnesses;

2. The applicant ultimately dropped the ground of appeal relating to the video statement at trial;

3. The trial judge considered the evidence of the neighbour, but only as it related to the credibility of the complainant by looking at inconsistencies with his evidence, which she permissibly resolved in the complainant's favour; and,

4. On the whole, the trial judge properly assessed the evidence, and to the extent that the Appeal Justice was being asked to reweigh that evidence, found that is not the standard of review nor the role of the appellate court.

Test for leave to appeal

[18] Section 839(1) permits an appeal from a summary conviction appeal decision to this Court with leave on a question of law alone.

[19] The applicant has the burden to establish she has met the test for leave to appeal as follows:

a. the proposed grounds of appeal involve questions of law alone;
b. the matter raises a reasonably arguable case of substance; and
c. the matter is of sufficient importance to merit further appeal.

See ***R v Ruiz***, 2021 ABCA 208 at para 21; ***R v Bhalla***, 2021 ABCA 126 at para 8; ***R v Edmonton***, 2013 ABCA 318 at para 31.

[20] Leave to appeal is in respect of the summary conviction appeal decision, not the trial decision. The scope of reviewability is substantially constrained, and granting leave to appeal is the "exception, not the rule"; leave to appeal to this Court is granted "sparingly": ***R v Lofstrom***, 2020 ABCA 286 at paras 5–6. Leave should only be granted on questions of law with "significance to the administration of justice beyond the four corners of the case": ***R v Chow***, 2017 ABCA 339 at para 7 [***Chow***].

The proposed grounds of appeal

[21] The applicant maintains that the "trial judge committed errors of law and fact and that the verdict is unreasonable". She raises the following grounds of appeal, which largely repeat the grounds from her King's Bench appeal, and allege the trial judge erred by:

1. denying her a fair trial by refusing to allow her to call witnesses or submit documents to the court;
2. admitting the s 715.1 video statement;
3. not properly assessing the complainant's credibility and reliability;
4. improperly relying on hearsay evidence;
5. finding her guilty despite there being no corroborating evidence;
6. failing to account for alternative explanations for the alleged injuries;
7. reaching an unreasonable verdict based on the evidence as a whole;
8. failing to consider investigative gaps and reasonable alternative inferences from the evidence;
9. creating a miscarriage of justice from the trial as a whole; and
10. failing to apply the standard of proof beyond a reasonable doubt.

[22] For the purposes of my analysis, I will consider these ten grounds of appeal in groups as follows:

1. errors in weighing of evidence, the standard of proof and unreasonable verdict;
2. errors in admitting evidence; and
3. errors in trial fairness.

Analysis

[23] The Appeal Justice dealt with all the proposed grounds of appeal below and dismissed each in turn. None of the applicant's grounds of appeal challenge the Appeal Justice's reasons for

decision. Rather, she continues to urge errors by the trial judge. Leave to appeal to this Court is not "a second appeal from the trial decision". Further, leave to appeal is confined to questions of law, and this Court "cannot revisit factual findings or correct errors of mixed fact and law": ***R v Petrin***, 2013 NWTCA 1 at para 27.

[24] However, I recognize that the applicant is self-represented, and therefore I have considered her grounds of appeal as though they were directed at errors of the Appeal Justice, rather than those of the trial judge.

[25] On that basis, none of the proposed grounds of appeal raise questions of law that would merit a hearing before a full panel of this Court: ***Chow*** at para 7. The applicant has not met the test for leave to appeal under s 839 of the *Criminal Code*.

1. Errors in weighing evidence, the standard of proof, and unreasonable verdict

[26] The first group of proposed grounds of appeal do not raise an error of law alone and are not questions of substance. The Appeal Justice properly held that the applicant was asking the court to revisit and reweigh the factual findings made by the trial judge, and which are owed deference on appeal "unless they are subject to palpable and overriding error". The Appeal Justice found no such errors. He determined that the trial judge properly considered the complainant's inconsistent statements, reconciled the evidence and ultimately found facts that did not favour the applicant.

[27] "Whether a witness is credible"—which was a central issue at trial—is a question of fact: ***R v Lofstrom***, 2020 ABCA 109 at para 11 [***Lofstrom***]. There is no basis to disturb the Appeal Justice's findings with respect to the trial judge's assessments of credibility and weighing of the evidence; no question of law is properly raised.

[28] Similarly, the applicant argues there was a lack of corroborating evidence and gaps in the investigation that should have caused the trial judge to have a reasonable doubt. These arguments again challenge the trial judge's findings of fact, which the Appeal Justice found were owed deference. More specifically, the Appeal Justice found the trial judge properly "adhered to the standard of proof ... [and] the presumption of innocence". Having reviewed the trial judge's reasons for conviction (set out above, para 15), I agree. The Appeal Justice's findings do not raise a question of law which would warrant a second appeal.

[29] Finally, the Appeal Justice properly concluded that there was no unreasonable verdict. Whether a verdict is reasonable is a question of law. As the Appeal Justice properly found, an unreasonable verdict is one that a properly instructed jury, acting judicially, could not have reached: ***Lofstrom*** at paras 10-11. A verdict may also be unreasonable if a trial judge makes findings plainly contradicted by the evidence they relied on, or is otherwise not supported by the evidence: ***R v RP***, 2012 SCC 22 at para 9, [2021] 1 SCR 746.

[30] During the appeal hearing, the Appeal Justice properly found that unreasonable verdict raises a "very high standard. Just because a different judge might have weighed the evidence differently, does not allow for unreasonable verdict". No error of law arises from these findings.

2. Errors in admitting evidence

[31] The applicant continues to argue that the trial judge erred in admitting the s 715.1 recorded video statement, and the complainant's out-of-court statements to the neighbour.

[32] First, the applicant's counsel withdrew the ground of appeal relating to the s 715.1 video in the court below. The applicant cannot now revive that ground of appeal; this Court can only review decisions of the Appeal Justice. He cannot have made an error relating to this issue where it was not before him.

[33] Second, the Appeal Justice found that whether or not the neighbour's evidence about the complainant's statements to her were hearsay, the trial judge ultimately considered that evidence in the context of whether it was inconsistent with the complainant's other evidence, and "preferred and accepted [the complainant's] evidence". There was no error in this finding. Further the issue lacks sufficient importance to warrant a further appeal; the law applicable to hearsay is well settled and the evidentiary issues the applicant raises will have no impact beyond this specific case.

3. Errors in trial fairness

[34] As she did in the Court of King's Bench, the applicant continues to argue her trial was unfair because she was self-represented, not properly instructed as to court procedure, and was therefore unable to call various witnesses or admit documents.

[35] Generally, whether a trial is fair raises a question of law. However, as this Court recently said in ***R v WG***, 2024 ABCA 396 at para 7:

> Trial management decisions are subject to deference on appeal. Sufficiency of the assistance provided to a self-represented accused is not a free-standing ground of appeal and requires deference to the trial judge's discretion, unless it rests on a wrong principle or creates a miscarriage of justice. The scope of assistance is limited to what is reasonable; it does not extend to the kind of advice counsel would provide. [Citations omitted]

[36] The Appeal Justice properly assessed whether the trial judge failed to ensure a fair trial for the self-represented applicant. He reviewed the transcript and found that the trial judge treated the applicant in a "fair manner". In particular, the Appeal Justice determined that the trial judge "had to walk the fine line between an adjudicator, somebody who is deciding this case, versus somebody who is required to assist you with this matter. I find that she navigated that appropriately, and treated you fairly, and that the file was overall fair."

[37] No error of law arises from these findings, nor do I find that there was any unfairness the Appeal Justice failed to consider. More specifically, the Appeal Justice stated he "read the transcript, [the applicant] never referred to wanting to call an expert .... She referred to her daughter as a witness; it was a witness who was not produced for trial. She tried to introduce some sort of document, which is not an admissible way to deal with it. Justice Collinson then said, are you asking to call her as a witness? And [the applicant] said, no."

[38] The Appeal Justice quite properly found that to the extent the applicant's counsel on appeal was herself "giving ... evidence at this point, that your client did not have time to assess her position, and was feeling rushed ...", that was "not how an appeal works". Rather, the transcript showed the trial was stood down after the self-representing applicant admitted she had "willfully not ... reviewed disclosure"; the applicant was given "the opportunity to consult with Amicus ... she came back in ... she did not ask for an adjournment, they proceeded with the hearing".

Conclusion

[39] In sum, none of the grounds of appeal proposed by the applicant meet the test for leave to appeal to this Court.

[40] Leave to appeal is denied.

Application heard on November 4, 2026

Reasons filed at Edmonton, Alberta
this 12th day of November, 2026

Crighton J.A.

Appearances:

Applicant R.A.E.

J.C. Snowdon
for the Respondent