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R. v. Cheng, 2025 ONCJ 252

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ONTARIO COURT OF JUSTICE

CITATION: *R. v. Cheng*, 2025 ONCJ 252
DATE: 2025·05·07
NEWMARKET

2025 ONCJ 252 (CanLII)

B E T W E E N :

HIS MAJESTY THE KING

— AND —

KIT WAH CHENG

JUDGMENT
Evidence and Submissions Heard: May 7, 2025.
Delivered: May 7, 2025

Ms. Nicole Cadman ..... counsel for the Crown
Mr. Kit Wah Cheng ..... defendant

KENKEL J.:

Introduction

[1] Mr. Cheng was on a bail with several conditions including a term prohibiting him from attending within 100m of the residence of his daughter and his former partner. The Crown alleges that while subject to that condition, Mr. Cheng attended their residence and dropped off a cardboard box and several bags. Mr. Cheng's daughter called the police. The incident was captured on the home surveillance video system.

[2] Mr. Cheng is charged with failing to comply with a condition of his bail contrary to s 145(5)(a).

The Home Surveillance Video

[3] Mr. Cheng's former partner testified that her home has a surveillance camera system that points towards the back entrance and back yard of their home. She identified the home surveillance video showing her backyard area on June 15,

2024 which was marked as Exhibit #2. She confirmed the date and times displayed on her home video are generally accurate. She testified that the video exhibit represents what was on the SIM card in her system. She agreed with the question put by Mr. Cheng suggesting that there is a gap in the video. She disagreed that she altered the video in any way before it was given to the police.

[4] The accused's daughter testified that she was home at the time of the incident. She confirmed that it happened on June 15, 2024, as recorded on the video. She was in her back yard when she noticed a familiar figure. She walked out to look, then quickly returned inside her residence. She saw Mr. Cheng come into her backyard carrying boxes. She called police as she was afraid for her safety.

[5] Mr. Cheng challenges the video evidence marked as Exhibit #2 and the screenshot from a second video camera in the same system marked as Exhibit #3. He submits that the gap shown in Exhibit 2 suggests the evidence might have been tampered with. He submits the clothing shown in the video and photograph are inconsistent, another indication that the evidence is fake. He submits that it would have been easy for the complainants to falsify the dates and represent video of prior attendances when he was not bound by the bail as having occurred when he was. Given the family breakup and the existence of another matter before the courts, Mr. Cheng submits that both his former partner and his daughter have a motive to fabricate evidence.

[6] I find the credible evidence of Mr. Cheng's former partner and his daughter proves the authenticity and integrity the video and the screen shot photograph. The record is relevant and probative of the central issue at trial. There is no rule that requires it be excluded. The video was admitted on that basis.

[7] I agree with Mr. Cheng that the video includes a gap prior to his appearance. I agree with Mr. Cheng that the emergence of "deepfake" evidence and the ability to manipulate electronic records means this court must carefully consider the weight to be given these exhibits.

[8] The gap was reasonably explained in the evidence of Mr. Cheng's daughter. The home surveillance system activates in response to movement. The video captured the daughter looking to her right as she described in her evidence, then leaving the backyard to step towards the parking lot as she continued looking. The video showed her turn back towards her house. The gap starts there, in the period when she was out of her yard, away from the camera. Within the same minute the video was again activated by movement when Mr. Cheng entered the back yard.

[9] The second circumstance of concern to Mr. Cheng was the alleged discrepancy between the clothing shown in the video captured by camera 1 of the system, and the screenshot taken from the camera 2 video. Comparing the video and the screenshot, it's plain that Mr. Cheng's clothing is exactly the same in both.

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[10] Finally, Mr. Cheng submits that these exhibits could have been taken from prior lawful visits with the date altered to put it within the period when he was prohibited from attending.

[11] There's no evidence of prior lawful visits. Mr. Cheng's former partner didn't know how Mr. Cheng found out where they lived. If there were prior lawful visits, there's no evidence that the SIM card described by the witness would hold such videos long enough for the date to be altered as suggested by Mr. Cheng.

[12] Mr. Cheng's daughter testified that she called police after she saw her father come into the back yard of her residence. She knew he was on a condition at the time not to attend within 100m of her home. Police attended and at their direction she uploaded a copy of the video marked as Exhibit 2 and a screenshot from the second camera video marked as Exhibit 3. She gave her evidence in a credible and straightforward manner. Her evidence was logical and internally consistent. I accept her testimony regarding the video records including the manner in which they were provided to the police without alteration.

[13] I find the Crown has proved that both records were made on the day in question as described by Mr. Cheng's daughter. There's no evidence that could reasonably diminish the weight to be given to that evidence.

The Bail Condition

[14] The Crown tendered the original Information 23-91111083 and the release dated April 29, 2024 as evidence that the accused was subject to the bail condition specified on the date of the alleged breach.

[15] The documents show that Mr. Cheng was subject to a bail which included a condition that he not attend within 100m of the residence of his daughter and his former partner. He was subject to that recognizance on the date alleged.

The Breach

[16] His former partner testified that she and Mr. Cheng separated in 2017. As a result of another incident, Mr. Cheng was subject to a bail condition not to attend at the home she shares with her daughter.

[17] On June 15, 2024, Mr. Cheng's daughter called the police alleging that Mr. Cheng attended the home. She directly witnessed the alleged breach. She saw her father approach her home and she returned inside as she feared for her safety. Her father left a box and several bags in the backyard. Mr. Cheng's former partner testified that the box and bags contained some of his daughter's childhood toys.

[18] The daughter's evidence was credible and logical. Her testimony was consistent with her actions that day. Her evidence was consistent with the external

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video record and screenshot from the second video. Both show Mr. Cheng attended the backyard as she described. Both cameras have direct views of Mr. Cheng and in the camera 2 screenshot he looked directly at the camera. The credible evidence as a whole proves beyond any doubt that Mr. Cheng attended the home of his daughter and former partner on June 15, 2024 contrary to the boundary condition of his bail that was active at that time.

Lawful Excuse

[19] There's no evidence that could provide a lawful excuse.

Conclusion

[20] Considering the evidence as a whole, I find that the Crown has proved the charge alleged. I can find no evidence that reasonably could leave a doubt in that regard.

Delivered: May 7, 2025.

Justice Joseph F. Kenkel

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