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R. v. S.B., 2025 ONCJ 739

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W A R N I N G

The court hearing this matter directs that the following notice be attached to the file:

A non-publication and non-broadcast order in this proceeding has been issued under subsection 486.4(1) of the *Criminal Code.* This subsection and subsection 486.6(1) of the *Criminal Code,* which is concerned with the consequence of failure to comply with an order made under subsection 486.4(1), read as follows:

> **486.4 Order restricting publication — sexual offences.** — (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of
>
> (*a*) any of the following offences:
>
> (i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 162.1, 163.1, 170, 171, 171.1,172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or
>
> (ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or
>
> (*b*) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph *(a)*.
>
> (2) **MANDATORY ORDER ON APPLICATION** — In proceedings in respect of the offences referred to in paragraph (1)(*a*) or (*b*), the presiding judge or justice shall
>
> (*a*) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and
>
> (*b*) on application made by the victim, the prosecutor or any such witness, make the order.
>
> . . .
>
> **486.6 OFFENCE** — (1) Every person who fails to comply with an order made under any of subsections 486.4(1) to (3) or subsection 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

2025 ONCJ 739 (CanLII)

CITATION: *R. v. S.B.,* 2025 ONCJ 739
DATE: 2025·12·18
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2025 ONCJ 739 (CanLII)

ONTARIO COURT OF JUSTICE

B E T W E E N :

HIS MAJESTY THE KING

— AND —

S.B.

Before Justice Peter Scrutton
Heard on July 8, 9, 10, 11 and November 17, 2025
Reasons for Judgment released on December 18,2025

N. Lakhani ..... for the Crown
A. Pillai ..... for S.B.

Scrutton J.:

I. OVERVIEW

[1] S.B. and K.R.'s marriage ended quite unhappily. It is not clear when that unhappiness began or if it was always so. K.R. testified that S.B. was controlling, angry, and eruptive. S.B. testified that things were mostly good in the marriage until he learned that K.R. was involved with another man.

[2] S.B. is charged with assaulting and forcibly confining K.R. in the fall of 2015; with sexually assaulting her in April 2016; and, on a second information, with breaching the release order in respect of those charges in November 2022. He consented to be tried on both informations. My task at this trial is not to make findings about the relative merit of their respective perspectives on their marriage but to determine whether the Crown has

discharged its burden by proving any of the allegations against S.B. beyond a reasonable doubt.

II. PRELIMINARY EVIDENTIARY ISSUES

[3] This trial began with a Crown application to tender evidence of the defendant's prior discreditable conduct. The prosecution outlined five areas that it proposed to call evidence on through the complainant's testimony. The specific areas were:

> 1. evidence that S.B. had punched a wall near the complainant's head on an occasion that did not relate to the charges;
>
> 2. evidence that S.B. was a "Freeman;"
>
> 3. evidence that police had attended S.B.'s home in 2018 out of a concern for self-harm;
>
> 4. evidence that S.B. was controlling; and
>
> 5. emails the complainant sent to S.B. after their separation about times he had entered her home without permission; these communications were sent after the alleged offence date but before her disclosure of them in June 2022.

[4] Ultimately, defence counsel conceded that evidence S.B. was controlling was admissible at trial, and the Crown elected not to tender much of the evidence initially referred to in the application. Because of the parties' positions, I was only required to rule on the admissibility of the 2018 welfare check. With respect to that occurrence, I was not satisfied that the Crown had established how it was relevant to the allegations that S.B. assaulted K.R in 2015 or sexually assaulted her in 2016, or how it related to the allegation that he had failed to comply with his release order in 2022. The Crown argued that this evidence was relevant to providing "context into the nature of the relationship and the decision making of" the complainant. But this happened two years after the most serious allegations and proof of the breach charge does not depend in any way on the complainant's decision making. In fact, the only evidence K.R. had to give in respect of that charge was inadmissible hearsay. I concluded that this evidence lacked any probative value and was clearly prejudicial.

[5] Before defence counsel began to cross examine K.R., he acknowledged that he was not concerned about the admissibility of the testimony the Crown had elicited in respect of the defendant's character (although he does not accept its credibility).

III. EVIDENCE AT TRIAL

K.R.'s Account of the 2015 Assault

[6] K.R. and S.B. began seeing each other in 2007; they married in 2013. They had

2025 ONCJ 739 (CanLII)

three children, the youngest of whom was born in June 2015. The family lived in a house in Scarborough. Both K.R. and S.B. agree that their "official separation", after which there was no subsequent cohabitation, began in April 2016.

[7] In 2015, after their youngest child was born, the relationship was fraught and uncertain. K.R. described S.B. as jealous; it was not unusual for him to take her phone and look through it. One evening they were arguing in their second-floor bedroom. He was angry and began to look through her phone. K.R. was fearful of S.B. when he became angry and the fact that she did not have her phone made her more afraid. She asked for her phone back and he refused, holding it over his head so that she could not reach it. He was holding their baby with one arm at the time. The argument spilled from the bedroom to the hallway by the staircase. At some point, K.R. said she would leave and call the police if he did not return her phone.

[8] S.B. held the phone over his head in one hand to keep it from her, potentially to taunt her, while dangling the baby over his other arm. K.R. recalled reaching for the phone but also being conscious of her daughter's position. S.B. started moving down the stairs, blocking K.R. from reaching the bottom. At that point, she told him she was leaving; he blocked her from getting to the front door by moving her toward the door of a side closet in the vestibule and opening it, wedging her between him and the open closet door, holding her arm. She tried to wriggle across the closet door but could not get past. K.R. kept asking him to let her go, adding that she would not call the police. She said this went on for several minutes. Eventually S.B. gave up and let her go.

[9] K.R. left the house, barefoot, still pleading for her phone. S.B. refused, saying that he did not trust her. She told him she would go next door for help and walked to that stoop, as if to knock on the door. When she did, S.B. threw her phone across the lawn and went inside. When K.R. returned to the house, she told him she thought it best if she left with the baby for the night. He was concerned she would call the police – she said she would not. He suggested that they shake on it, which they did.

[10] That night at her mother's, K.R. took photos of marks on her arm caused by S.B. holding her by the closet. The next morning, *she* received a call from a police officer calling to let her know that someone had filed a report about the incident but that she would not be charged.

Challenges to K.R.'s Account

[11] Defence counsel challenged K.R. on her descriptions of their marriage. She maintained that S.B. cancelled her insurance benefits and cellular plan but acknowledged that the latter account predated their relationship, was in her name, and she did not know how he could have effected such a change. K.R. initially testified that she and S.B. had separated unofficially in December 2015 before officially separating in April 2016. The "unofficial" separation was precipitated by S.B. telling her he did not love her and that he wanted to end their relationship. She denied that there were any attempts to reconcile or

2025 ONCJ 739 (CanLII)

fix the marriage or that any specific events had prompted the separation but subsequently acknowledged that she had attended one or two marriage counselling sessions at S.B.'s request.

[12] K.R. denied that this separation was prompted by her feelings for another man, whom S.B. became aware of in 2015. She explained that she had been mistaken about the date of their separation, which had happened before she had met the other man ("Mike") in 2015; the unofficial separation must have occurred in December of 2014. K.R. acknowledged telling the police the separation began in December 2015 and that, on her revised timeline, this would have been 6 months before the birth of their youngest child. She explained that S.B. had pronounced the end of their marriage a few times, once when she was pregnant and once after she'd had the baby. After some additional questioning, K.R. revised her answer again and said that she "stood by" her initial evidence that their unofficial separation was in December 2015 and not 2014 before saying, differently, that it had happened in both of those months.

[13] K.R. testified that she did not remember when S.B. first learned about the other man. She acknowledged that, at the time of the alleged assault by the stairway, she may have been in a relationship with him but maintained that they were not arguing about that topic.

[14] K.R. denied that she was the one who was physically aggressive in response to S.B. taking her phone. She could not remember at which point S.B. had put the baby down, or where that had happened, but was certain he was not holding the baby when he was confining her in the vestibule. She denied that marks she documented happened when her arm hit the wall as they were stumbling down the stairs.

K.R.'s Account of the Sexual Assault

[15] On the morning of April 2, 2016, K.R. was sleeping in the room she shared with S.B. and her baby, who was in a bassinet near the bed. She and S.B. had been fighting the night before. When K.R. woke up around 7:00 or 8:00 a.m., she pretended she was still asleep, as she was apprehensive about his mood. She felt S.B. touch her side, something she assumed was a prelude to sex. As if to confirm this, he said, "I know you want to" and "come on, come on". She said "no", that she wanted to keep sleeping. S.B. seemed to accept that, as he did not continue his advances. A minute or so later, however, he moved close again. K.R. was worried about angering him but did not want to engage in any sexual activity. He put his arm underneath her and forcibly slid her toward him, turning her over to face him in the process. She said "no" again. K.R. described the oral and vaginal sex that followed in minute detail. Her evidence was clear and unequivocal that she did not consent to any of this sexual activity, and nor did she communicate any consent to it. She described feeling frozen during the sex, in what was almost an out of body experience.

[16] After the intercourse, K.R. went to the washroom, threw up, and took a shower.

2025 ONCJ 739 (CanLII)

She wanted to leave the house immediately. Soon after she took the baby, drove to a hospital, went to the ER, and was sent for a sexual assault examination. On April 5, she and the kids moved into a shelter. She never lived with S.B. again. They remained in the shelter for six weeks or so, during which time S.B. found a rental and moved out, precipitating their return to the family home.

Specific Challenges to K.R.'s Account of the Sexual Assault

[17] K.R. denied that the sexual activity was consensual. She denied that the passage of time, nine years, had negatively impacted her memory of these events. She explained that her memories of the assault were very clear and only her memories of the aftermath were fuzzy.

2022 Allegations

[18] K.R. disclosed the 2015 and 2016 allegations in June 2022, when she called the police after S.B. had entered her home unlawfully, something he formally admitted with a guilty plea during these proceedings. Prior to June 9, 2022, they had been dealing with child custody and access via a family court order imposed in 2017. After S.B.'s arrest he was subject to a release order that provided any access to the children must be through a third party. K.R.'s stepfather, D.D., acted as a third-party facilitator for child pickups and drop-offs, usually at a nearby Tim Horton's.

[19] D.D. went to meet S.B. to pick the kids up around 8:00 p.m. Because of the situation, D.D. endeavoured to be polite at these meetings but also tried to keep any conversation perfunctory. That night, unusually, S.B. began to speak to him about several subjects, including vaccines, his dissatisfaction that K.R. had moved the kids out of Toronto, his own defensiveness about having to justify their move back to his kids, and the amount of money a lawyer would cost to defend his criminal charges. He said that he would appreciate anything D.D. could do to persuade K.R. to eliminate or reduce the criminal charges.

[20] D.D. told him that he did not want to engage in this conversation and that S.B. needed to talk to the police about it. D.D. felt very uncomfortable. He spoke to his wife and K.R. about it immediately upon arriving home and made notes of the earlier conversation.[1] K.R. contacted the police a day or two later and D.D. subsequently provided a statement to them.

[21] D.D. did not recall S.B. asking him whether he knew if K.R. would be willing to move closer to where he lived. He did not agree that S.B. had asked if he had any idea what her plans were for the kids. He maintained that he had understood S.B. to be asking for him to be his emissary in having the criminal charges dropped or reduced.

[1] These notes were not tendered at trial nor the subject of any cross examination; I am referring to them here only as part of the narrative of these events.

2025 ONCJ 739 (CanLII)

Defence Evidence

S.B.'s Account of the 2015 Allegations

[22] S.B. testified that, while he and K.R. had disagreed about minor things relating to the children and chores like most couples do, their marriage had been normal. He disputed that there was any sort of separation between them in 2014 or 2015. He did not tell K.R. that he did not love her until 2021, long after their separation, when they both discussed a divorce.

[23] S.B. learned that K.R. had feelings for another man sometime in the summer of 2015; he came upon her crying, and she explained that she had lost a good friend. After some snooping on her iPad, S.B. found a long string of messages between them. K.R. initially denied she was involved with someone else but ultimately admitted that she had fallen in love but the relationship was over. He felt hurt, betrayed and angry but was committed to their marriage. Unbeknownst to K.R., he spent time searching social media, tracked down the man, and emailed *his* wife to let her know about the extramarital relationship.

[24] Things were up and down in the following weeks. K.R. continued to tell him she loved him and to make plans for their future. S.B. was set to leave for his family's cottage in September and before he left, he asked K.R. not to have any contact with Mike while he was away; she agreed. When he returned home, he snooped through K.R.'s phone and saw that she had continued to message the man. S.B. was distraught and confronted her; she was defensive, almost brash in response and said she was going to take the baby and stay with her mother.

[25] S.B. pleaded with her not to take her phone, which he viewed as her link to Mike. He told her that she was destroying their marriage and took her phone from the table by their bed so that she could not take it with her. She told him to give it back and then came at him. He left the room with the phone and their baby. She followed, reaching for the phone, making contact with him. Things got heated and he tried to get away from her, making his way downstairs with her behind him; she kept reaching around his back for the phone as she followed him down the stairs. He continued to hold the baby, whose legs were dangling. He was concerned and kept telling K.R. to stop.

[26] S.B. got to the bottom of the stairs and made his way to the front door. He tried to open it but she got between him and the door, clawing at his arms in an attempt to get her phone. He tried to leave and eventually, because of his greater strength, got around her to open the door and get outside. She asked him again for her phone, saying that if he did not give it to her, she would knock on the neighbour's door and call the police. He was shocked when she started to walk toward the neighbour's, said "here's your fucking phone," and threw it on the grass before walking back inside with the baby.

[27] When K.R. came back he was scared, panicked, and worried that she would tell

2025 ONCJ 739 (CanLII)

her mother or call the police. She said she would not, offered to shake on it, and then went to get her belongings before leaving for her mother's. He could not sleep that night, felt like he needed to protect himself, and called the police himself around 4:00 a.m. The next morning, he called K.R. to warn her the police would be contacting her but that he was not pressing charges.

[28] In the months that followed, S.B. remained committed to the marriage; he arranged for some counselling sessions and for them to speak to their pastor. K.R. did not seem excited about these efforts.

[29] S.B. characterized taking K.R.'s phone without her permission as a "rash decision" made when he was distraught. He eventually agreed this was a means of trying to control who she could speak to but explained that he only wanted to prevent her from speaking to Mike, no one else. He could not explain why, if he was concerned about K.R. coming at him while he held the baby, he did not simply return her phone. He did not know how K.R. came to have the marks on her arm, but posited she may have been pinched between him and the wall on the way down the stairs when he was bracing himself against her attempts to get the phone.

[30] When asked why he decided to leave the house with K.R.'s phone, he explained that he had no plan other than to get out of the house and away from his other children. He did not believe that he was safe even outside, as the threat K.R. posed continued. He threw the phone away after K.R. mentioned calling the police for the second time. He disputed that any of his actions that day were motivated by anger. He was terrified that K.R. might call the police and *she* suggested shaking on the fact that she would not.

S.B.'s Account of the 2016 Allegations

[31] Despite his lack of trust, things got better after the September 2015 incident. They continued to live together and work on their marriage. When he woke up on April 2, 2016, he thought K.R. was still asleep. He snuggled up to her, kissed her on the cheek, and said good morning. He continued to spoon with her and became aroused, touching her breast to try to arouse her. She told him that the kids were awake and that she was tired. He stopped kissing her for a few minutes but then began to kiss her again. She rolled over to face him and they looked into each other's eyes as they began to kiss. S.B. described the oral and vaginal sex that followed in minute detail. K.R. had actively communicate her consent to their sexual activity through her actions. When the sex ended, he told her he loved her. She got up to go to the bathroom and he went downstairs to see the other kids.

[32] K.R. brought this up a few days later, saying that she wanted to leave the house because he had raped her. He was confused and upset, wanted to talk about this but she told him that if he did not leave, she would call the police. He realized he had no choice and went to his brother's. The following weekend she called him, said she was scared, thought that she had made a mistake, and told him that Children's Aid Society required that he sell his firearm before the family could return home. They never cohabitated again.

2025 ONCJ 739 (CanLII)

[33] S.B. acknowledged that there had been no verbal conversations about having sex after K.R. had said she was tired. He agreed that he had stopped his initial advances because of this but took it as more of a "not right now situation" than a "no". This assumption was confirmed when K.R. rolled over and began to kiss him in response to his next advance, which began when her back was still against him and she was facing away. He denied that he said, "come on" or "you know you want this." He denied that they were separated at this time.

2022 Allegations

[34] S.B. was upset when he drove the children back from a Wednesday visit in November. His visits had been more challenging since October when K.R. had to return to Toronto from Niagara pursuant to their access arrangement. He told D.D. that the kids were upset with him for making them move, he was spending money that he could not afford on his criminal lawyer, and asked if D.D. knew what K.R.'s plan was. D.D. said he could speak to K.R. and S.B. told him "absolutely not," he was not asking him to do that, he was merely asking if he knew what her plans were. S.B. may have complained that the allegations were not true but never insinuated D.D. should speak to K.R. about this. He admitted that he complained about legal fees out of frustration.

IV. THE PARTIES' POSITIONS

[35] Defence counsel submits that there are so many credibility issues with respect to K.R.'s testimony that it simply cannot be relied upon. Additionally, K.R. took every opportunity to paint the defendant in a bad light. S.B.'s testimony should be accepted – it was not seriously challenged in cross-examination and he candidly admitted some of the objectionable things that he did. Mr. Pillai accepts that D.D.'s evidence is free of K.R.'s credibility issues but submits that his inability to recall the exact words that S.B. used in their 2022 conversation means that I should have a doubt about whether S.B. was simply gathering information about K.R.'s plans for their children.

[36] The Crown submits that K.R. was a credible witness and was unshaken on the core aspects of her testimony. Areas of her evidence that may not be reliable are peripheral. S.B.'s testimony should be rejected where it differs from K.R.'s based on the cogency of her account and his evasive and reluctant answers to questions during cross-examination. Both parties agree that if K.R.'s evidence is accepted to the requisite standard, the elements of the offences will be established.

V. RELEVANT LEGAL PRINCIPLES

[37] S.B. is presumed innocent of these charges. The burden of proof is on the Crown, who must prove beyond a reasonable doubt that S.B. is guilty of each offence. There is no onus on him to prove anything. The standard of proof beyond a reasonable doubt is an exacting one. It is more than probable or likely guilt and falls much closer to absolute certainty than it does to proof on a balance of probabilities. Ultimately, I may only find the

2025 ONCJ 739 (CanLII)

accused guilty if I am sure that he committed one of the offences.

[38] S.B. testified and is entitled to the full weight of the Supreme Court of Canada's direction to trial judges in *R. v. W. (D.),* [1991] 1 S.C.R. 742. If I believe his evidence that he did not sexually assault or assault S.B., or indirectly communicate with her in breach of his release conditions, then I must find him not guilty. If I do not believe his testimony but am nonetheless left in reasonable doubt by it, he must similarly be found not guilty. Even if I am not left in doubt by his evidence, I must ask myself whether, based on the evidence which I do accept, I am convinced beyond a reasonable doubt by that evidence of S.B.'s guilt.

[39] The purpose of this framework is to emphasize the burden of proof and the presumption of innocence by ensuring that criminal cases are not reduced to credibility contests. The issue is not whose evidence I prefer but whether the Crown has proven the case beyond a reasonable doubt. In making this determination, I can accept some, none or all of a witness' evidence. No magic formula that applies in assessing credibility. A witness' evidence is to be considered using a common-sense approach that is not tainted by myth, stereotype or assumption. Many factors may be relevant to determining credibility. Some key ones include whether the witness' evidence is internally consistent, whether it coheres with evidence from other witnesses or exhibits, whether the witness has motive to fabricate, whether inconsistencies in the evidence are about important or minor matters, what explanations are given for any inconsistencies, and whether the inconsistencies suggest that the witness is lying.

[40] I must also be mindful of the distinction between credibility and reliability. Credibility relates to the honesty or sincerity of the testimony. Reliability relates to its accuracy, which engages a consideration of the witness' ability to accurately observe, recall and recount an event: *R. v. H.C.*, 2009 ONCA 56, at para. 41.

VI. FACTUAL FINDINGS

[41] I understand that there is no rigid order in which this evidence must be analyzed, as compliance with reasonable doubt principles is a matter of substance: *R. v. C.L.Y.* [2008] S.C.J. No. 2, para. 7. S.B. is charged in relation to three separate events that allegedly occurred in 2015, 2016, and 2022. The evidence with respect to each count must be considered separately. I will begin, however, with some general comments about K.R.'s credibility before making findings that relate to the specific allegations.

[42] K.R. presented as a very smart, articulate, and insightful witness. She answered questions carefully and precisely. Her visceral descriptions of some of what she recalled were compelling. But parts of her testimony concern me.

[43] I am troubled by K.R.'s inconsistent answers about when their unofficial separation began. She was initially clear that this happened in 2015 (both in examination-in-chief testimony and in her police statement, where she referred to her youngest child in this

2025 ONCJ 739 (CanLII)

context). But when she was challenged on that in cross-examination, based on the timing of the birth of that child and, separately, when she first became involved with Mike, her evidence changed. I understand that these are historical allegations and that it is easy for people to get confused about the specific years that events happened in a life. But I would expect that people who began a separation would remember whether it started before or after the birth of a child. Regardless, after K.R. revised her answer that the unofficial separation began in 2014, she re-asserted that it began in 2015, before explaining that it happened in both of those years. Given her intelligence, and the capacity for memory she demonstrated in other areas at this trial, I do not believe that she was simply mistaken or confused about these dates.

[44] Further, I do not think that K.R. was being forthright about the status of her relationship with Mike in 2015. She would not acknowledge that the presence of another person in the marriage was what had motivated S.B.'s jealousy and invasions of privacy in respect of the 2015 allegations. I do not mean to suggest that S.B.'s jealous responses were defensible, or to convey any moral judgments about K.R.'s attachment to another man, but her refusal to admit that S.B.'s awareness of this relationship had any significance in this narrative defies belief. I accept S.B.'s detailed account of when he learned about Mike. I do not accept K.R.'s testimony that she did not meet Mike until after she and S.B. had unofficially separated. The timing and status of when she met Mike and in what capacity are peripheral to whether these allegations occurred but, to the extent that K.R. is not being candid about this, it is relevant to my assessment of the material parts of her account.

[45] I do not accept K.R.'s evidence that their unofficial separation began when S.B. told her that he no longer loved her. K.R. denied that S.B. wanted to save their marriage and denied that he had made any efforts in that respect. But she admitted in cross- examination that they had seen both a counsellor and their church pastor about their marriage at S.B.'s behest. I accept that S.B. wanted to continue, not end, their marriage during this period. I do not think that K.R. was being honest in her characterization of his attitude or efforts.

[46] I make a similarly negative finding about K.R.'s evidence that S.B. was so controlling he would cancel her cellular plan and insurance benefits prior to their separation when he was unhappy with her. I accept his testimony that he only removed her from his workplace benefits in 2018, long after their formal separation, and observe that it would be self-defeating to have done so earlier since he was the main income-earner in the family. I agree with defence counsel that K.R.'s evidence was misleading in this respect.

[47] Clearly, I must consider these negative credibility findings when I am assessing K.R.'s testimony about the specific allegations and, because of my concerns, be very cautious before relying on her testimony: *R. v. Khela*, 2009 SCC 4 at para. 2.

a) The 2015 assault and forcible confinement allegations

[48] I accept S.B.'s evidence about what precipitated this event – his anger and upset

2025 ONCJ 739 (CanLII)

about learning that K.R. had been in touch with Mike when S.B. was away for the weekend. It did not begin because of S.B.'s random snooping. But I reject his testimony about how the rest of the interaction that day unfolded. I do not believe him when he says that, after taking K.R.'s phone, his priority was simply to get away from her out of concern for himself and their baby. S.B. admitted that he was stronger than K.R., whom I observe is slight of build, but was nonetheless concerned that she could harm him. He repeatedly said that he was worried about his safety and "self preservation," and even described feeling a "low grade terror" because he was not sure what K.R. was capable of. Were that really the case, even on S.B.'s version of events, all that he needed to do to deescalate or end this ugly scene was to return her phone.

[49] S.B. persisted in saying that he felt that K.R. was still a real threat to him even after she was outside of the house, which strains all credulity. I do not believe him when he says she scratched and clawed at him or that she did anything more violent or aggressive than try to take her phone from his hand.

[50] S.B. admitted that he acted rashly that afternoon but took little other responsibility for this interaction, which he described as a "battle" that he lost. To the extent that his complaint to the police implies that he believed K.R. assaulted him or acted unlawfully during that interaction, I do not believe him and do not think the complaint was an honest one. Unlike K.R., there is no evidence that he documented any marks to his arm that would presumably be visible from the "scratching and clawing" he described. I do not understand what sincere complaint he could have made about K.R. in circumstances where he took her phone, resisted her efforts to get it back, and threw it on the lawn when she threatened to seek the assistance of a neighbor. I am not, however, using this self-serving complaint as circumstantial evidence from which guilt can be inferred.

[51] I find that S.B.'s description of K.R. that day was greatly exaggerated and that he minimized his own conduct and role in this interaction. For these and other reasons that I will expand on below, I reject S.B.'s evidence that he did not assault K.R. and that he did not forcibly confine her in their house. His testimony does not leave me with a reasonable doubt about what happened that day.

[52] While I do not accept K.R.'s explanation about exactly *what* precipitated this event, that is the only part of K.R.'s account of this episode that I do not accept. I say that mindful of the negative findings I have already made about some parts of her testimony. It is notable that S.B. confirmed many material aspects of K.R.'s account – that he took her phone without permission, that she wanted it back, that she tried to get it back, that he held their baby in one arm and the phone in the other, that they moved from the second floor to the ground floor, that they left the house during this interaction, that she was prepared to enlist the assistance of a neighbor, and that once S.B. understood this, he threw her phone across the lawn.

[53] I accept K.R.'s testimony that she did not assault S.B. but was simply trying to get her phone back. I accept that she was mindful of the baby dangling from his arm, that

2025 ONCJ 739 (CanLII)

he was able to move backward down the stairs without issue and was the first to arrive at the landing. I reject Mr. Pillai's argument that K.R.'s description of S.B. moving backwards down the stairs defies belief. S.B. admitted that he was confident in his ability to handle the baby without her falling. What really defies belief is that S.B. was genuinely concerned about safety but did not return the phone. I similarly reject the submission that K.R.'s inability to recall when and how S.B. put the baby down after coming down the stairs fatally undermines her account. This was a heated, upsetting, physical event that unfolded quickly and unexpectedly. I do not take anything from the fact that K.R. was not able to remember this aspect of it.

[54] While not corroborative, video footage of the family home confirms that the relative positions of the outside door and interior closet door are as K.R. described, and that the open closet door was capable of impeding her movement if S.B. was blocking the other side. The photographs K.R. took that day are of limited quality but do show some marks to her arm. I accept that she took these photos in the aftermath of this event to document her injuries and find that they are corroborative of her account. K.R. threatened to call the police that day but did not. She did not disclose these allegations for seven years. I reject the submission that these photos are a fabrication or exaggeration.

[55] Despite the reservations I have about relying on K.R.'s testimony, I find that after S.B. took her phone, he tried to prevent her from leaving the house, that he did so by restraining her in the vestibule, and that in so doing he assaulted her by grabbing her arm to keep her from leaving. I accept her testimony that he would not let her leave and that he resisted and obstructed her efforts to wriggle away.

[56] Counsel acknowledged that if K.R.'s evidence was accepted, it proved these allegations. Despite this concession, I will still address one element of the offence of forcible confinement. The Crown must prove that the defendant intentionally restrained K.R. or deprived her of her liberty to move from one place to another: *R. v. Bottineau*, [2007] O.J. No. 1495 (S.C.J.) at paras 40-48. Courts have held that unlawful confinement occurs if, "for any significant time period, a person is coercively restrained or directed contrary to their wishes, so that they cannot move about according to their own inclination and desire." See *R. v. Sundman,* 2022 SCC 31 at para. 21.

[57] K.R. testified that they spent several minutes together in the vestibule arguing about her leaving. I am not sure that this is a reliable account of that time because I would not expect someone to have an accurate sense of the passage of time in these circumstances. Context is important to assessing whether the requisite duration was sufficient. Here S.B. confined his spouse to prevent her from escaping his controlling behaviour. I am satisfied beyond a reasonable doubt that K.R.'s confinement was more than momentary or brief and was of sufficient duration to make out the offence: *R. v. Tremblay,* [1997] Q.J. No. 1816 (C.A.) at para. 31. I find S.B. guilty of counts 3 and 4 on information # 4813 998 22 30003071.

b) The 2016 sexual assault allegation

2025 ONCJ 739 (CanLII)

[58] When witnesses recount traumatic events, or events that took place some time in the past, they often do so with gaps in their memory and with some vagueness of detail. It is notable here that both witnesses described the sexual activity that occurred on the morning of April 2, 2016 in comprehensive, minute detail. Perhaps this is because, on K.R.'s evidence, this was a singularly violent and traumatic event, and on S.B.'s evidence, it was memorable because it anchored their formal separation. Whatever the reason, the rich detail both witnesses provided about what happened that morning, and the fact that both purport to remember virtually every aspect of an event that occurred 9 years ago, stands out.

[59] K.R. gave a detailed account of what she alleges happened, and evocatively described how her body reacted to it. She went to the hospital that morning and never lived with S.B. again. Her account of this event was internally consistent and undented by cross-examination. Its specificity of detail, for example, in remembering that she had to forfeit "a favourite" pair of underwear for SAEK testing, would be an elaborate fabrication if untrue.

[60] S.B.'s account was also internally consistent and undented in cross-examination. While he acknowledged that K.R. did not initially want to have sex, he maintained that she actively communicated her consent when he renewed his attempt a few minutes later. I think it is unlikely that K.R. would change her mind so quickly in this respect, especially if she was telling the truth about the state of their marriage at the time. But the problems with her account that I have mentioned previously make me hesitant to accept her testimony about this event. Because of my concerns about her credibility, I am unable to reject S.B.'s version of events based on my reasoned acceptance of the strength and cogency of K.R.'s account, as the Crown submits that I should. Simply put, unlike the incident in 2015, I am not sure that K.R. is telling the truth about what happened that morning or that S.B. is lying about what happened.

[61] After considering S.B.'s version of events, in the context of all the relevant evidence, I am left with a reasonable doubt about what happened that morning. The presumption of innocence and the Crown's burden of proof means that I am not forced to choose between these competing versions of events: *R. v. J.H.S.*, 2008 SCC 30 at paras. 11-12. I find S.B. not guilty of count 2 on information # 4813 998 22 30003071.

c) The 2022 breach allegations

[62] D.D. presented as a completely credible witness, to such an extent that defence counsel quite reasonably avoided challenging his credibility but suggested he could not remember parts of the conversation. In my view, D.D. was fair in answering questions. He acknowledged that he could not quote the conversation verbatim. Despite his relationship to K.R., he did not seem to have any interest in the outcome of these proceedings. I believe him when he says that he was immediately troubled by the content of his conversation with S.B. I accept the sincerity of D.D.'s testimony.

[63] D.D. specifically remembered telling S.B. that it was the police, not K.R., who

2025 ONCJ 739 (CanLII)

had the authority over the charges, which was directly responsive to S.B.'s request that he speak to K.R. about the charges. S.B. confirmed that they spoke that day and that their conversation was not simply polite or perfunctory. D.D. recalled that S.B. complained about the amount of money a criminal lawyer would cost, and about having to explain to his children why they had to return to Toronto. S.B. confirmed that he raised both these topics. S.B. also admitted to telling D.D. that the criminal accusations were not true and that he considered them to be an attack on him.

[64] I reject S.B.'s evidence that he was merely seeking information about K.R. and what her plans were. He was upset enough by the visit with his children and by the fact of the outstanding charges to vent about a number of issues to D.D. I am sure that D.D. did not offer to speak to K.R., as S.B. claimed. S.B.'s denial about asking D.D. to speak to K.R. does not leave me with a reasonable doubt.

[65] I accept D.D.'s testimony that S.B. asked him to speak to K.R. on his behalf to persuade her to reduce or eliminate his charges. I do not have any doubt that D.D. was mistaken about this aspect of their conversation. I am satisfied about the credibility and reliability of D.D.'s account beyond a reasonable doubt.

[66] S.B.'s 2022 release order required that he not communicate with K.R., directly or indirectly, except through counsel, pursuant to a family court order, or through a mutually agreed upon third party for purposes of child access. I am satisfied beyond a reasonable doubt that, in asking D.D. to speak to K.R. on his behalf about his outstanding charges, he is guilty of indirectly communicating with her in breach of that order. I find S.B. guilty of count 1 on information # 998 22 30005766.

Dated: December 18, 2025

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Justice Peter Scrutton

2025 ONCJ 739 (CanLII)