

2012 CarswellOnt 9237
Ontario Court of Justice

R. v. Morgan

2012 CarswellOnt 9237, [2012] O.J. No. 3569, 102 W.C.B. (2d) 475

Her Majesty the Queen v. Clement Morgan

E.A. Ready J.

Heard: June 7, 2012

Judgment: June 7, 2012

Docket: Brampton 11-5004

Counsel: M. Ward, for Crown
G. Nardella, for Clement Morgan

Subject: Criminal

Table of Authorities

Cases considered by E.A. Ready J.:

R. v. W. (D.) (1991), 1991 CarswellOnt 1015, 3 C.R. (4th) 302, 63 C.C.C. (3d) 397, 122 N.R. 277, 46 O.A.C. 352, [1991] 1 S.C.R. 742, 1991 CarswellOnt 80 (S.C.C.) — followed

E.A. Ready J., (Orally):

1 Yes, all right, then. I've had the benefit of hearing all of the evidence on this trial, and I've had lengthy submissions from both counsel. And I've instructed myself after dealing with the evidence as a whole, and in totality weighing it, and in considering the issues of credibility in *R. v. W. (D.)* [1991 CarswellOnt 80 (S.C.C.)]

2 And I, first of all, will deal with Mr. Clement Morgan's evidence. And just very briefly I will say that for the most part I accept the submissions made by the Crown counsel as to why I should both not believe Mr. Morgan and not be left in reasonable doubt by his evidence. And that is the state that I'm left in, in respect to the evidence of Mr. Morgan.

3 But having said that, there is the third part to *W. (D.)*, and based upon the evidence that I do accept, I have to be satisfied beyond a reasonable doubt that the offence of assault has taken place. I have-the Crown has asked me to consider the truth-truthful version of the events to be her statement to the police made under oath, and in a way corroborated by the 9-1-1 tape that was made spontaneously and at the time as-and-and before she voluntarily went to the station and made her statement.

4 But then I also have to consider, as the defence counsel has pointed out, that she came to court and-and she is a witness who could be said to recant. She's come to court and under oath said, she won't go as far as saying that she was a liar, and that she was lying about this to get him into trouble, it was that she was stretching things, she was exaggerating that she was upset, and really wasn't thinking straight.

5 But I've heard all that evidence, and in that evidence that she testified to, she's indicated that she was the aggressor, and that if he took any physical actions towards her it was to subdue her from attacking him.

6 At the end of the day, considering her statement and that she would suggest to the court that under oath she's prepared to lie. And then accepting that I heard her come and testify and be cross-examined under oath and that she has indicated a very different version of the events, but won't go as far as saying that they are lies, that they are exaggeration, they're stretches, they're-it's just a really imaginative way of talking about lying.

7 But at the end of the day with both of these version of the events before the court, it's impossible for this court to conclude beyond a reasonable doubt that the version of the events that she gave to the officers and to the 9-1-1 tape is the version of the events that is truthful and that I ought to rely upon it.

8 When-in many of these instances when one is dealing with a KGB statement and then a witness who is recanting at trial, it-it is a situation that erodes the Crown's case. It's a situation that makes it impossible for the court to rely upon that person and what they have said, whether it was to the officer or to the court.

9 They certainly-it's very, very clear that she's an individual who will either lie to the police or she'll lie to the court. It in fact compromises, erodes and makes her evidence not worthy of acceptance. And I will not rely on this evidence that I have heard from her by way of her statement as proof beyond a reasonable doubt that an-an assault has taken place. For those reasons I am going to dismiss the charge.

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