

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Planetta*, 2021 NSPC 23

Date: 2021-04-30

Docket: 8280579, 8280580

Registry: Sydney

Her Majesty the Queen

v.

Kristopher Karl Planetta

Judge:	The Honourable Judge A. Peter Ross
Heard:	12 February 2020, 30 March 2021, 12 April 2021, in Sydney, Nova Scotia
Decision	April 30, 2021
Charge:	s.266(b) of the Criminal Code of Canada
Counsel:	Alicia Kennedy, for the Public Prosecution Service David Bright Q.C., for the Defendant

DECISION

The Charges

[1] Kristopher Planetta is charged with two counts of assault on Amanda Planetta, his wife. The first count is dated 21 October 2018 and involves an incident at the front door of their residence on 286 Columbia St., Sydney (the “front door” incident). The second count is dated 19 February 2017 and concerns an incident in a bedroom at their previous address of 1866 Lingan Road (the “bedroom” incident).

Background

[2] Most allegations of domestic assault arise within a troubled relationship. This couple separated in October of 2017, again in 2018, and finally in February of 2020. They are now involved in proceedings in the Family Division. Stresses of work and childcare undoubtedly contributed to their troubles. While context helps to situate the conduct, this was not a trial of the marriage, nor who was the better spouse, nor who is to blame for the breakdown of the relationship. What is before the court are two specific allegations of assault. This requires an examination of the conduct of the parties on two discrete occasions, each occurring over a matter of minutes, on different dates, a number of months apart.

[3] The couple have two children who factor into these events. The oldest is J. who was born in 2008. The youngest is D. who was born October 8, 2015 and was just over 1 year 4 months old on Feb. 19, 2017. His age is relevant to the date of the bedroom incident, as will be explained.

[4] The occupation of the defendant has drawn some attention to this case, but for the purpose of trial the fact he was a police officer is irrelevant.

History of the proceedings

[5] The charges were laid on October 31, 2018. Plea was entered on summary conviction proceedings about six weeks later. Trial was scheduled for August of 2019, then again to September of 2019. Defence counsel identified a scheduling conflict which resulted in an adjournment to February 12, 2020. Crown completed its case on that date and the matter was put over to March 12 for Defence evidence. Further disclosure was made in the interim, resulting in a joint request to adjourn to June 24. Personal circumstances of defence counsel necessitated a number of further postponements, all with the consent of the defendant and all with a waiver of any claim of delay prejudice. The case finally concluded on March 30, 2021 when the defendant testified in person. Defence counsel was restricted to appearance by video; Crown counsel agreed that she also would conduct her examination by video so as to avoid any appearance of advantage. Final argument was made by video on April 12 and the case adjourned for decision to April 30, 2020.

The testimony

[6] The allegations refer to relatively minor assaults. The court heard from various police officers involved in the investigation; however, it is the evidence of the complainant and defendant which matters most. The outcome of the case depends primarily on a credibility assessment of the two parties, both of whom gave long and detailed accounts of what happened. I will not relate their testimony

at length, but will provide a brief summary drawn from their direct and cross-examinations. I will then discuss those aspects which I consider germane.

The bedroom incident

[7] The background to the bedroom incident will be familiar to many parents of young children. D. was not sleeping well. The parents both worked and Mr. Planetta did some overnight shifts. According to the complainant it was the defendant's turn to get up with D., but he was unsuccessful in settling the child down and suggested they should let him cry himself to sleep. The complainant got up. The defendant protested, saying it would affect her mood and her work the next day. She testified that they argued over this as they both went to the child's bedroom. She claims that as she prepared to lift D. from the crib the defendant grabbed her by the arms from behind and pulled her backwards, putting her to the floor. They argued some more but because he was so angry she relented, went back to bed, and watched D. on the monitor. The defendant went to the couch to sleep.

[8] The defendant describes a very different sort of event. He recalls a night when his wife got up to breastfeed D. She seemed disoriented on her way to the child's bedroom, was unsteady as she picked the child up from the crib, and lost her balance. Concerned she would drop the baby, he grabbed her by the arms from behind to hold her up, steadied her, then "guided" the baby back down into the crib with a free hand.

The front door incident

[9] As concerns the front door incident, the defendant testified in direct examination that the family was going out to breakfast that morning. He put J. in

the car, and returned to the house for D. As they came off the front step D. jumped in a puddle, got his clothes wet and dirty, and Mr. Planetta had to take him back into the house to change. The complainant, who had been in the kitchen, was walking towards the front door as the defendant opened it with his right hand. At this point their dog darted out. He grabbed the dog by the neck. He had D. under one arm. He asked his wife, who was on the phone, to help. He struggled to get inside, holding the door open with his back. He was “trying to wrestle them all in.” In cross examination he said that he did push his wife at the doorway, but only in order to get D. and the dog and himself back into the house. He acknowledged that to this end he pushed her with his hand; he denies “striking” her. I have the sense from his evidence that he would regard the latter as gratuitous force, whereas he believes what he did was reasonable and necessary in the circumstances. He suggests any contact was incidental to his overall purpose of securing the child and dog inside the house. He adds that once everyone was inside, in the porch, the complainant struck him in the face with a closed fist and said she was going to call 911.

[10] The complainant recalls that she and the defendant were not speaking that morning and that she was “ready to tell him to pack his things and go”. In her mind she alone was taking the children out, thus giving him a chance to get his things together. She saw the defendant put D.’s coat on and take him outside. Then she heard the defendant yell at D. for jumping in the puddle. She says Mr. Planetta took D. back up the steps by the jacket, saying he had to be changed. D. was crying and the defendant was frustrated. She opened the door to allow D. to come in. She bent down and tried to calm him down. She then went to the doorway to ask J. to come back into the house. While standing there, face to face with the defendant, he

shoved her and said “get the fxxx out of my face” followed by a vulgar slur. She says this occurred as she was holding the inside door with the defendant facing her, holding the outside door. She says she received an open-handed push to her shoulder. She announced she was going to call the police. She says the dog was nowhere in sight. She denies striking the defendant in the face. She says D. was not wiggling or struggling but was “just standing there” when she was pushed.

[11] As noted, the evidence bearing on these two incidents is far more extensive than the foregoing summaries. I have considered all the evidence although I refer to only certain important aspects in the foregoing description and in the following discussion.

DISCUSSION

[12] The credibility of the defendant and complainant is assessed on all the evidence, on both charges. Any concern about credibility which arises in relation to one allegation may thus impact the credibility of that party’s account of the other. I will briefly discuss, under caption, some points which arose in final argument or from my own reflections on the evidence.

Demeanour – defendant

[13] With respect to his demeanour, the defendant displayed no obvious animosity towards the complainant, no obvious embarrassment when confronted with the allegations, and no patent dishonesty. He did not appear to be making things up as he went along, or reciting a fabricated version of events, or prevaricating in response to questions. He was polite and respectful towards counsel. He did note that the complainant spent a lot of time on her phone and was

slow to get going in the mornings, but these were connected to the narrative he provided. In other words, he did not make gratuitous attempts to berate the complainant. The misgivings I have about his evidence arise from contradictions and other factors discussed below.

Discrepancy over date of bedroom incident

[14] The defendant gave a statement to Sgt. Vale, an investigator with SIRT, and Crown was allowed to use it to cross-examine the defendant. In the statement Mr. Planetta, speaking about the bedroom incident, connected it to the breastfeeding of D., which he said stopped after about 12 weeks. At trial he said that his wife breastfed D. for “less than a year”. Even taking one year as the period of breastfeeding, this places the event he describes no later than early October of 2016.

[15] The complainant remembers that the incident occurred in mid-February of 2017. She made a Facebook post on February 19, 2017 which contains a brief passage matching her testimony about what occurred. Being a prior consistent statement, the passage is not admissible to support her version of events. It cannot be used to support the veracity of the complainant’s in-court testimony. A person can make a false allegation and repeat it later in a formal hearing, but mere repetition of a statement does not make it more likely to be true. The date of the Facebook post is not received as a statement in this sense, but is received as evidence of the date of the alleged incident. The date is significant because the defendant’s evidence of an incident in the baby’s bedroom - events he outlines in answer to the complainant’s allegations - seems to date to a much earlier time.

[16] Because the defendant himself has so closely connected the bedroom incident to breastfeeding, it cannot possibly be an alternate version of what might have occurred in February of 2017. I am left suspicious that either he is substituting something from months earlier – using an actual but different event to obfuscate what occurred in February of 2017, or he has simply made up a story which cannot be true because D. was not being breastfed at that time.

Implausibility that innocent event gave rise to allegation

[17] The defendant testified that the bedroom incident was not something that would “stand out” in his mind. He then goes on to say that “there was no real discussion of it until years later at marriage counselling.” It is somewhat puzzling that an innocuous event as he describes would arise in the course of marriage counselling. It is possible, of course, but generally such counselling deals with points of friction, not things of little importance.

[18] I am aware that a complainant might lie for a variety of reasons and that as a general proposition courts should not speculate about absence of motive to lie. That said, when looking at the specifics here it strikes me as odd that Ms. Planetta would take an occurrence where the defendant saved her and the infant from falling and twist that into an allegation of wrongdoing, whether at marriage counselling or during a police interview. In this sense the defendant’s story rings hollow.

Inherent plausibility of accounts re front door

[19] Turning to the front door incident, how likely is it that Mrs. Planetta, in the circumstances described by the defendant, would punch her husband in the face?

There was clearly tension between them at that moment. The defendant was frustrated by her texting; the complainant was upset about the relationship and how the situation regarding D. was being handled. Taking at face value the defendant's assertion that he 'pushed' his way into the house, struggling to get both his son and the dog back inside, and assuming that he made physical contact incidental to achieving this purpose (as he claims), I regard it as unlikely that she would resort to the extreme measure of hitting him in the face. While it has been said that 'the best defence is a good offence' it also seems unlikely that she would call the police and falsely claim to be the victim of an assault if she were the aggressor.

[20] I am aware also of a seeming incongruity between the complainant's description of the defendant's behavior and her understanding of who was going out for breakfast. Of interest is whether the defendant factored into the plans. The complainant says he did not. One might ask why Mr. Planetta would be so concerned with getting the children dressed and in the car, and with changing D.'s clothes after he jumped in the mud puddle, if he was not joining his wife and children for the breakfast outing. Why would he become so upset (on the complainant's account) if he had been excluded, if preparing the children was not his responsibility at that time? However, it is possible that the parties were simply not of one mind about this, each acting according to what they expected at the time.

No notice taken of visible injury

[21] A police officer who responded to the 911 call over the front door incident encountered the defendant sitting in his vehicle in the driveway of the residence. He participated in the arrest of Mr. Planetta. He did not observe any sign of injury.

This has some significance, albeit slight, in that the defendant alleges he was struck in the face with a closed fist just minutes earlier. Here I am mindful that the investigating officer may not have been looking for signs of an assault on the defendant.

Ulterior motive

[22] Defence counsel also explored a possible ulterior motive for the complainant to make false complaints, i.e. to bolster her position as the relationship deteriorated and to gain some sort of leverage over the defendant. This certainly requires careful attention. Ms. Planetta, by her own evidence, was “ready to tell him to pack his things and go” the very morning of the front-door incident. Additionally, it was revealed in cross-examination that her brother’s wife had threatened to make a false complaint against her brother which might cost him his job.

[23] Despite these concerns, I do not think that Ms. Planetta has fabricated her account in order to gain some kind of advantage over the defendant. She was completely forthcoming about her own state of mind in her direct examination. It is equally plausible that what she had previously heard about her brother’s situation would cause her to sympathize with someone in her brother’s position, to realize how wrong it would be to falsely accuse someone. On balance, I find that this has no bearing on her credibility, either positive or negative.

Inconsistency with statement made during hiring process

[24] When the defendant was hired by the Regional Police in 2010 he was required to complete a pre-polygraph interview booklet which included a section on domestic violence. Just before the actual polygraph he wrote “my current

girlfriend slapped me in the face during an argument”. This prior statement is a variance with his in-court testimony where he said clearly and unequivocally that he was struck in the face with a closed fist on that prior occasion. Generally a person’s memory is better closer to the event than ten or eleven years later. A slap and a punch are different in nature; most would regard the latter as more serious. This causes one to wonder why he would now exaggerate about that earlier event. The earlier statement relates to the same sort of conduct, with the same person, that he described at the front door on October 21, 2018. While the June 2010 matter is collateral, the discrepancy raises concern over his credibility on the central allegations before the court. It contributes to a sense that the defendant is deliberately attempting to put the complainant in a bad light. I say this mindful of the possibility that in the polygraph interview he may have been embarrassed and thus wanted to minimize the seriousness of that prior incident.

Possible influence of the investigator on the complainant’s evidence

[25] Something which Defence explored with the complainant in depth was her interaction with investigators, especially Sgt. Vale. The defendant asserted that Ms. Planetta struck him in the face during the front door incident – that he was the one who was assaulted. Defence argued that she was given to understand that if she admitted this to police she herself would be charged. Defence seems to suggest that this supports the view that she is withholding evidence, that she is failing to tell the entire truth, thus impacting her overall credibility.

[26] Sgt. Vale denied telling Ms. Planetta ‘not to show up’ at the police station for her interview unless she was prepared to make an admission of her own

wrongdoing. Sgt. Vale acknowledged that he may have told Ms. Planetta that if she admitted to striking the defendant, she herself might be charged.

[27] As Ms. Planetta remembers it, local police had told her about the defendant's assertion – that he was the one who was struck – before giving her statement to Sgt. Vale. She says she was advised not to give a formal statement if she had struck the defendant.

[28] This point was put directly to the complainant in cross-examination. She flatly denied striking the defendant during the front door incident. In this, she showed no sign of embarrassment. Her assertion “Sgt. Vale's statement did not strike me as odd . . . I did not know how the justice system worked” came across as genuine. I do not find any basis for concern about her credibility as a result of the police interactions.

Demeanour – complainant

[29] The complainant presented as a sincere and honest witness. Her account of what occurred flowed naturally without any sense of contrivance or calculation. She recounted both actions and words of both parties in great detail. She was subjected to careful cross-examination on a number of points but her credibility was not undermined in any significant way.

[30] When questioned on certain details, the complainant struggled to recall (such things as the location of the puddle, what D. was wearing, etc.). She often looked away before responding to a question, but this seemed to be in a sincere attempt to search her memory and thus to be as accurate as possible. In other words the

complainant appeared to be careful with her responses, but not to be devising convenient answers.

[31] Ms. Planetta did not display a great deal of emotion, although she became noticeably upset on occasion, as when she described the defendant's state of mind at the front door. However, her emotions seemed oriented and appropriate to things she described; they did not come across as embellishments. Emotions displayed during her testimony seemed extemporaneous, not performative.

[32] Ms. Planetta did comment on the relationship in general terms, describing the defendant as dominant and verbally aggressive, belittling and mocking her if she became upset. I have borne this in mind in determining that her descriptions of these two discrete events are not fabricated or exaggerated.

Nature and degree of force during front door incident

[33] While the defendant admits to pushing the complainant during the doorway incident he portrays this as 'pushing his way into the house' rather than an assault *per se*. Whether characterized as a 'shove' or a 'push', the analysis is the same.

[34] Defence counsel has argued that Mr. Planetta's actions were reasonable. However, Ms. Planetta did not consent, expressly or impliedly, to this application of force upon her person. The defendant's action was not in self-defence. The children's safety was not a concern. I doubt the dog was involved, preferring the complainant's version on this point, but even if it was, frustration with the situation provided the defendant no excuse for pushing her. The defence of necessity does not arise. The doctrine of *de minimus* does not come into play. The push was not merely incidental, nor was it an unintended consequence. Mr. Planetta had a right

to enter his own home, but he had no right to push his wife to gain entry. The push was more than an indication of intent, more than a form of direction, more than a form of communication which a person might accept in such circumstances. While relatively slight, the use of force was unjustified. A push in such circumstances amounts to an assault in law.

Conclusion

[35] Implausibilities within, and inconsistencies between various accounts serve to strain the defendant's credibility. I do not accept his version of the bedroom incident nor that of the front door incident. Neither does his testimony, considered in the context of the complainant's testimony and all the other evidence in the case, give rise to reasonable doubt about the veracity of the complainant's allegations on either occasion. The complainant presented as a credible and reliable witness. Her testimony serves to prove beyond a reasonable doubt that she was assaulted by the defendant, in the way she describes, on both occasions.

[36] The defendant is found guilty on both counts in the Information.

Dated at Sydney, N.S. this 30th day of April 2021

A. Peter Ross, PCJ