
CANADA / JUDGMENT

R. v. Berg

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SUPREME COURT OF CANADA

Citation: R. v. Berg, 2026 SCC 21

Appeal Heard and Judgment Rendered: April 14, 2026

Reasons for Judgment: June 5, 2026

Docket: 41980

Between:

Matthew Berg

Appellant

and

His Majesty The King

Respondent

Coram : Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

Reasons for Judgment:

(paras. 1 to 12)

The Court

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Matthew Berg Appellant

v.

His Majesty The King Respondent

Indexed as: R. v. Berg

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Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

on appeal from the court of appeal for saskatchewan

Criminal law — Evidence — Assessment — Credibility — Accused charged with sexual assault — Trial judge rejecting accused's evidence in part because of acceptance of complainant's evidence — Accused appealing conviction on grounds that trial judge failed to resolve inconsistencies in complainant's testimony and erroneously used it to reject his evidence — Majority of Court of Appeal upholding conviction — Whether trial judge erred in assessment of accused's credibility.

The accused was charged with sexual assault. The main issue before the trial judge was whether the complainant consented to sex with the accused. Both testified at trial. The complainant said she did not consent to the sexual activity; the accused claimed that the entire encounter was consensual. The trial judge rejected the accused's account and the accused was convicted of sexual assault. A majority of the Court of Appeal dismissed the accused's arguments that the trial judge failed to resolve material inconsistencies in the complainant's testimony and failed to assess the complainant's testimony in light of the totality of the evidence and erroneously used it to reject the accused's account.

Held : The appeal should be dismissed.

On the merits of the two issues raised by the accused, there is substantial agreement with the reasons of the majority of the court below. However, guidance is required on the application of the Court of Appeal for Ontario's decision in *R. v. J.J.R.D.* (2006), 218 O.A.C. 37. Reliance on *J.J.R.D.* has become commonplace for trial judges faced with situations where neither of two conflicting testimonial accounts contain any frailties standing alone. Trial judges should not rely on *J.J.R.D.* when structuring their *W. (D.)* analyses or when providing *W. (D.)* directions to a jury. *J.J.R.D.* is a case about appellate review for sufficiency of reasons and it does not set out a formula for performing a *W. (D.)* analysis. It was intended to apply to appellate review of trial decisions when assessing whether the trial judge's reasons were sufficient to permit appellate review, not to be applied by trial judges themselves.

A conviction must always rest on proof beyond a reasonable doubt. *J.J.R.D.* maintains that appellate courts should ensure that trial judges have considered the conflicting evidence — whether it is only the complainant's testimony or also includes circumstantial evidence — and explained why it meets the high standard of proof beyond a reasonable doubt. It is not an invitation for trial judges to enter convictions solely based on a considered and reasoned acceptance of a complainant's testimony. In this case, the trial judge did not use *J.J.R.D.* to resolve a credibility contest, and therefore made no legal error.

Cases Cited

Considered: R. v. J.J.R.D. (2006), 218 O.A.C. 37; R. v. C.L. , 2020 ONCA 258, 387 C.C.C. (3d) 39; referred to: R. v. W. (D.) , [1991] 1 S.C.R. 742; R. v. M.D.R. , 2015 ONCA 323; R. v. H. (D.) , 2016 ONCA 569, 338 C.C.C. (3d) 251; R. v. A.N. , 2017 ONCA 647; R. v. Slatter , 2019 ONCA 807, 382 C.C.C. (3d) 245; R. v. T.A. , 2020 ONCA 783; R. v. S.B. , 2023 ONCA 784, 432 C.C.C. (3d) 169; R. v. R.I. , 2024 ONCA 185, 97 C.R. (7th) 169 ; R. v. S.A. , 2024 NUCA 14; R. v. C.L.Y. , 2008 SCC 2, [2008] 1 S.C.R. 5; R. v. J.H.S. , 2008 SCC 30, [2008] 2 S.C.R. 152.

APPEAL from a judgment of the Saskatchewan Court of Appeal (Tholl, Kalmakoff and Drennan JJ.A.), 2025 SKCA 85 , [2025] S.J. No. 242 (Lexis), 2025 CarswellSask 352 (WL) , affirming the conviction of the accused for sexual assault. Appeal dismissed.

Brian R. Pfefferle , K.C. , and Nathan Metivier , for the appellant .

Erin Bartsch , for the respondent .

The following are the reasons for judgment delivered by

The Court —

[1] The appellant, Matthew Berg, was convicted of sexual assault. He appeals as of right from a decision of the Court of Appeal for Saskatchewan. At the end of the hearing before this Court, we dismissed his appeal and ordered Mr. Berg to surrender himself into custody, with reasons to follow. These are our reasons.

[2] The main issue before the trial judge was whether the complainant consented to sex with Mr. Berg. Both testified at trial and it was common ground that the sexual activity in question included sexual intercourse. The complainant said she did not consent to the sexual activity and Mr. Berg forced himself on her. He claimed that the entire encounter was consensual.

[3] The trial judge rejected Mr. Berg’s account. He noted that he had no reason to reject Mr. Berg’s testimony when considered in isolation. Nevertheless, he went on to state: “I reject Mr. Berg’s account because I accept [the complainant’s] testimony” (A.R., vol. II, at p. 157). This statement would become the subject of much of the debate on appeal and, standing alone, would be problematic. Yet, a functional reading of the trial judge’s reasons clearly shows that he did not engage in a credibility contest by dismissing Mr. Berg’s testimony solely because he preferred that of the complainant. Instead, the trial judge analysed Mr. Berg’s account based on the totality of the evidence, alongside the complainant’s credible testimony and the corroborating circumstantial evidence, and only then was satisfied of Mr. Berg’s guilt beyond a reasonable doubt.

[4] A majority of the Court of Appeal for Saskatchewan dismissed Mr. Berg's appeal. There, Mr. Berg argued that the trial judge made two reversible errors. First, the trial judge failed to resolve material inconsistencies in the complainant's testimony. Second, he failed to assess the complainant's testimony in light of the totality of the evidence and erroneously used it to reject Mr. Berg's account. Mr. Berg now raises the same two issues before this Court.

[5] On the merits of the two issues raised by Mr. Berg, we substantially agree with the reasons of the majority of the court below. The Court of Appeal convincingly explained how the trial judge convicted Mr. Berg based on proof beyond a reasonable doubt. We need not discuss these issues further.

[6] We write to provide guidance on, and correct potential errors that may arise from, the application of the principles flowing from the Court of Appeal for Ontario's decision in *R. v. J.J.R.D.* (2006), 218 O.A.C. 37. Reliance on *J.J.R.D.* has become commonplace for trial judges faced with conflicting testimonial accounts. It is often used to resolve situations where neither of two different testimonial accounts contain any frailties standing alone.

[7] *J.J.R.D.* involved a claim of insufficiency of reasons. In that case, the trial judge convicted the accused, even though his testimony had no obvious flaws standing alone, because the complainant's testimony and the circumstantial evidence were sufficiently compelling to reject his account. On appeal, Doherty J.A. explained that the trial judge's line of reasoning was adequate and permitted effective appellate review. In a now oft-cited passage, at para. 53, he observed:

An outright rejection of an accused's evidence based on a considered and reasoned acceptance beyond a reasonable doubt of the truth of conflicting credible evidence is as much an explanation for the rejection of an accused's evidence as is a rejection based on a problem identified with the way the accused testified or the substance of the accused's evidence.

[8] The trial judge in this case drew on this passage in structuring his *W. (D.)* analysis and rejecting Mr. Berg's testimony (*R. v. W. (D.)* , [1991] 1 S.C.R. 742). The dissenting justice at the Court of Appeal held that the trial judge failed to abide by *J.J.R.D.* and erred by rejecting Mr. Berg's testimony without a "considered and reasoned acceptance" of the complainant's evidence.

[9] As a general rule, trial judges should not rely on *J.J.R.D.* when structuring their *W. (D.)* analyses or when providing *W. (D.)* directions to a jury. *J.J.R.D.* is a case about appellate review for sufficiency of reasons and it does not purport to set out a formula for performing a *W. (D.)* analysis. It was intended to apply to appellate review of trial decisions when assessing whether the trial judge's reasons were sufficient to permit appellate review, not to be applied by trial judges themselves. We agree with Paciocco J.A. in *R. v. C.L.* , 2020 ONCA 258, 387 C.C.C. (3d) 39, at para. 32, when he observed:

... *D. (J.J.R.)* was a sufficiency of reasons case. It was not a jury instruction case, nor even a case about the content of the *W. (D.)* formula. The issue was whether the reasons given by a trial judge, sitting alone, were sufficient to permit effective appellate review: see *D. (J.J.R.)* , at paras. 1-2.

That is why Doherty J.A. describes “a considered and reasoned acceptance . . . of the truth of conflicting credible evidence” as an “explanation for the rejection of an accused’s evidence”. The case is about whether the trial judge explained the conviction by offering a considered and reasoned basis It does not purport to offer a formula for overcoming facially unassailable exculpatory evidence. [Emphasis deleted.]

[10] When invoked in a trial setting, J.J.R.D. may mislead the trier of fact to think that they may reject the accused’s account solely based on a “considered and reasoned” acceptance of the complainant’s testimony. [1] This raises the spectre of turning trials into credibility contests — the very error W. (D.) was designed to prevent. The presumption of innocence means that a guilty verdict cannot rest only on whether the trier of fact believes the Crown’s evidence or finds it more plausible (W. (D.) , at p. 757; R. v. C.L.Y. , 2008 SCC 2, [2008] 1 S.C.R. 5, at para. 6; R. v. J.H.S. , 2008 SCC 30, [2008] 2 S.C.R. 152, at para. 9).

[11] Instead, a conviction must always rest on proof beyond a reasonable doubt. And proof beyond a reasonable doubt demands more than a “considered and reasoned acceptance” of the complainant’s evidence. Indeed, in J.J.R.D. , Doherty J.A. was characteristically careful in his formulation: a trial judge can reject an accused’s evidence “based on a considered and reasoned acceptance beyond a reasonable doubt of the truth of conflicting credible evidence” (para. 53 (emphasis added)). Read in full, this passage maintains that appellate courts should ensure that trial judges have considered the conflicting evidence — whether it is only the complainant’s testimony or also includes circumstantial evidence — and explained why it meets the high standard of proof beyond a reasonable doubt. It is not, by contrast, an invitation for trial judges to enter convictions solely based on a “considered and reasoned” acceptance of a complainant’s testimony.

[12] In this case, the trial judge did not use J.J.R.D. to resolve a credibility contest, and therefore made no legal error. However, caution is warranted to ensure that J.J.R.D. is not invoked in a manner that short-circuits W. (D.) . Accordingly, the appeal is dismissed.

Appeal dismissed.

Solicitors for the appellant: Pfefferle Law Office, Saskatoon.

Solicitor for the respondent: Attorney General for Saskatchewan, Regina.

[1] For some examples, see R. v. M.D.R. , 2015 ONCA 323; R. v. H. (D.) , 2016 ONCA 569, 338 C.C.C. (3d) 251; R. v. A.N. , 2017 ONCA 647; R. v. Slatter , 2019 ONCA 807, 382 C.C.C. (3d) 245; C.L. ; R. v. T.A. , 2020 ONCA 783; R. v. S.B. , 2023 ONCA 784, 432 C.C.C. (3d) 169 (per van Rensburg, J.A., concurring); R. v. R.I. , 2024 ONCA 185, 97 C.R. (7th) 169 ; R. v. S.A. , 2024 NUCA 14.

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