

CANADA / JUDGMENT

R. v. C.P.

2026 ONCA 333

COURT

Court of Appeal for Ontario

DECIDED

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COA-24-CR-1060

Judges

Trotter, Gary T.; George, Jonathon C.; Copeland, Jill M.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. C.P., 2026 ONCA 333[1]

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Trotter, George and Copeland JJ.A.

BETWEEN

His Majesty the King

Appellant

and

C.P.

Respondent

Samuel Greene, for the appellant

Matthew Gourlay and Brendan Alexander, appearing as amicus curiae

Heard: March 30, 2026

On appeal from the acquittals entered by Justice Brian D. White of the Ontario Court of Justice, on September 17, 2024.

Copeland J.A.:

- [1] The respondent was charged with multiple sexual offences against his biological daughter, including sexual assault, incest, sexual interference, and various human trafficking offences. After a ten-day trial, the trial judge acquitted the respondent of all charges. The Crown appeals the acquittals.
- [2] Without going into great detail, the allegations were very serious, and the complainant was in very vulnerable circumstances. She and her younger brother were placed in the care of the Children's Aid Society ("CAS") when the complainant was two years old, and shortly thereafter came to live with their adoptive parents (the "adoptive mother" and "adoptive father").
- [3] The adoptive parents separated when the complainant was almost 13 years old. Soon after the separation, the complainant went to live with her adoptive father and her brother stayed with the adoptive mother.
- [4] Not long after that, after 12 years with the adoptive parents, the adoptive relationship broke down. The complainant and her brother were returned to the care of the CAS. Shortly thereafter, the complainant and her brother went to live with the respondent and their biological mother, and then solely with the respondent. The offences were alleged to have been committed during an approximately three-month period when the complainant and her brother were living with the respondent.
- [5] The complainant was between the ages of 14 and 15 at the time of the alleged offences, and 16 at the time of the trial.
- [6] Although there was a limited amount of evidence with confirmatory force, the Crown's case turned on whether the complainant's evidence was sufficiently credible and reliable to meet the Crown's burden to prove the charges beyond a reasonable doubt.

- [7] In thoughtful reasons, the trial judge considered the credibility and reliability of the complainant's evidence in the context of the evidence as a whole. His reasons explain why he was left with concerns about the credibility and reliability of her evidence. The trial judge's credibility concerns were based on material inconsistencies in the complainant's evidence. His reliability concerns were based on evidence from the complainant's adoptive mother, her brother, and the complainant herself about the complainant experiencing hallucinations and delusions, as well as the complainant's evidence about her heavy consumption of street drugs during the time frame of the allegations.
- [8] The trial judge considered the evidence that the Crown tendered as confirmatory of the complainant, but found it was not sufficient, given his concerns about the complainant's credibility and reliability, to persuade him of the respondent's guilt beyond a reasonable doubt. As a result, he found that the Crown had failed to meet its burden to prove the essential elements of the offences charged beyond a reasonable doubt, and thus, acquitted the respondent of all charges.
- [9] The respondent was served notice of the Crown's appeals and later served with the appeal materials. However, the respondent has a history of homelessness and at times could not be located. As a result, in September 2025, amicus curiae was appointed to respond to the appeal on the respondent's behalf. Shortly before the hearing date, the respondent was located and provided with another copy of the appeal materials and the remote attendance information to participate in the hearing by phone if he chose to do so.

Analysis

- [10] The Crown's right of appeal from an acquittal is limited to questions of law: Criminal Code, R.S.C. 1985, c. C-46, s. 676(1)(a); *R. v. Chung*, 2020 SCC 8, [2020] 1 S.C.R. 405, at paras. 10-11. If the Crown establishes an error of law, it must also establish, to a reasonable degree of certainty, that the error of law "might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the acquittal": *R. v. Graveline*, 2006 SCC 16, [2006] 1 S.C.R. 609, at paras. 14-16; *R. v. Hodgson*, 2024 SCC 25, 438 C.C.C. (3d) 315, at para. 36.
- [11] As I explain below, I am not persuaded that the trial judge committed any errors of law, and would dismiss the appeal on that basis. As a result, it is not necessary to consider the question of materiality to the verdict.
- [12] The Crown argues that the trial judge made two errors of law. I address each in turn.
1. The trial judge did not rely on myths and stereotypes about people living with mental illness [13] The Crown argues that the trial judge's assessment of the complainant's reliability was based on speculation and myths and stereotypes because he relied on evidence about the complainant's mental health issues to find her evidence unreliable in the absence of case-specific evidence of reliability concerns. In addition, the Crown argues that there was a violation of the rule in *Browne v. Dunn* (1893), 6 R. 67 (H.L.), in that trial counsel did not

specifically put to the complainant in cross-examination that the hallucinations and delusions she testified about in the time frame of the allegations were not caused by the street drugs she was taking, as she asserted, but rather were caused by the mental health condition she lived with.

- [14] The resolution of this issue does not turn on the interpretation of legal principles. The jurisprudence is clear that it is an error of law for a trial judge to reason from the fact of a complainant having a mental health diagnosis – alone – to a conclusion that the complainant’s evidence is not reliable, absent case-specific evidence of reliability concerns about the complainant’s evidence: *R. v. Kruk*, 2024 SCC 7, 433 C.C.C. (3d) 301, at para. 41; *R. v. J.D.*, 2024 ONCA 286, at para. 16; *R. v. Summerhayes*, 2012 ONSC 499, at para. 8; *R. v. O’Connor*, [1995] 4 S.C.R. 411, at para. 143. The parties do not dispute the applicable law.
- [15] However, I am not persuaded that the reasons for judgment show that the trial judge relied on myths and stereotypes related to individuals living with mental illness or speculation in the reasons for judgment. Nor am I persuaded that there was any violation of the rule in *Browne v. Dunn*.
- [16] The reasons show that the trial judge was alive to the need for trial judges not to rely on myths or stereotypes. He instructed himself in his reasons both about the need to approach the assessment of a witness’s credibility and reliability with reference to “criteria appropriate to her mental development, understanding, and ability to communicate”, referencing *R. v. W.(R.)*, [1992] 2 S.C.R. 122, at p. 134; and on the need to avoid reasoning based on myths and stereotypes.
- [17] In some cases, despite a correct self-instruction, a trial judge’s reasons will nonetheless show error. This is not such a case.
- [18] The trial judge did not engage in the prohibited reasoning that because there was evidence that the complainant lived with mental health issues, this in itself made her less reliable. Rather, there was an evidentiary foundation in the evidence at trial for the trial judge’s concerns about the reliability of the complainant’s evidence related to her experiencing delusions and hallucinations. The findings made by the trial judge were available to him on the trial evidence and did not rely on myths and stereotypes.
- [19] The evidence that supported the trial judge’s concerns about the complainant’s reliability based on her history of experiencing hallucinations and delusions, including during the time frame of the alleged offences, came from the complainant herself, her adoptive mother, and her brother:
- The complainant testified[2] that during the time frame of the allegations, she experienced hallucinations and delusions on various occasions (which she described in detail). The complainant attributed these hallucinations and delusions to the street drugs she was taking. The complainant also confirmed that during the time period of the allegations, she was not taking her prescription medication used to treat hallucinations and delusions.

- The adoptive mother provided non-expert evidence about her observations of the complainant experiencing hallucinations and delusions over the years that the complainant lived with the adoptive family. The hallucinations and delusions observed by the mother involved the complainant hearing voices and speaking to people who were not, in fact, present. The complainant had been diagnosed with a genetic disorder that the family was advised caused the hallucinations and delusions. Doctors tried various prescription medications to treat the hallucinations and delusions, and eventually a combination of medications was found that reduced those symptoms. However, even when the complainant was on prescription medication, she still sometimes experienced hallucinations and delusions, although much less frequently. The adoptive mother last observed the complainant experience hallucinations or delusions when the complainant was in grade eight, which was approximately one year prior to the time period of the allegations.
- The complainant's brother gave evidence of one event during the time frame of the allegations when he observed the complainant having delusions. The details of this event he provided were confirmatory of one of the events of hallucinations or delusions that the complainant testified about.

[20] Thus, there was evidence that: (1) the complainant had a history of experiencing hallucinations and delusions; (2) although those symptoms were greatly reduced when she was on appropriate prescription medication, she stopped taking that medication in the time period of the allegations; and (3) evidence from the complainant and her brother that she experienced hallucinations or delusions in the time period of the allegations.

[21] Crown counsel argued that the trial judge ought not to have relied on the adoptive mother's evidence about the complainant's hallucinations and delusions when they lived together (until the complainant was in grade eight), because those delusions were based on a specific medical condition, while the complainant testified that the delusions and hallucinations she experienced in the time period of the allegations were caused by her consumption of street drugs. The Crown also argued that the adoptive mother's evidence did not address the time period of the allegations, but was of the complainant experiencing hallucinations and delusions in an earlier time period.

[22] There are two problems with these arguments. The first problem is that there is nothing in the jurisprudence that would impose on a trial judge a restriction that if there is evidence that a complainant experienced hallucinations and delusions due to, arguably, different causes, the trial judge is required to silo his consideration of the evidence by the trigger for the hallucinations.

[23] The second problem is that the evidence before the trial judge does not support the clear demarcation of causes of the complainant's delusions and hallucinations contended for by the Crown. As noted above, the adoptive mother's evidence was that the complainant's delusions and hallucinations improved when she was on prescription medication for them, but did not entirely go away. The last time the adoptive mother saw the complainant have

delusions or hallucinations was when the complainant was in grade eight, which was approximately one year prior to the time period of the alleged offences. I pause to note that the adoptive mother had no opportunity to observe the complainant after that time because, under the terms of her separation from the adoptive father, the complainant lived with her adoptive father from early 2022, and thereafter the complainant went to live with the respondent.

- [24] The complainant's evidence was that she stopped taking her prescription medication during the time she was living with the respondent, but was taking various street drugs.
- [25] Thus, there was an evidentiary foundation that the complainant had hallucinations and delusions both within one year of the alleged offences and during the time of the alleged offences, and that her hallucinations and delusions were worse when she was not taking prescription medication for them and she had stopped taking her prescription medication during the time of the alleged offences.
- [26] The trial judge was not required to accept the complainant's evidence that her hallucinations and delusions in the time period of the alleged offences were solely due to street drugs. In any event, the source of the hallucinations and delusions does not matter. There was a sufficient evidentiary foundation for the trial judge to have concerns about the complaint's reliability without those concerns being based in myths and stereotypes: see *Kruk*, at para. 65.
- [27] Nor am I persuaded that there was a failure to raise the issue of delusions and hallucinations with the complainant during cross-examination that would have engaged the rule in *Browne v. Dunn*.
- [28] The rule in *Browne v. Dunn* requires that a cross-examiner confront a witness on matters of substance on which the cross-examiner intends to impeach the witness, so as to afford the witness an opportunity to explain: *R. v. McDonald*, 2025 ONCA 807, at paras. 57-59, 70.
- [29] The complainant testified that she experienced hallucinations and delusions during the time frame of the allegations. The defence was not seeking to contradict the complainant about the fact that she experienced hallucinations and delusions. The defence was not required to cross-examine her about the specific cause of those symptoms. Further, the defence cross-examined the complainant about the fact that she stopped taking her prescribed medication during the time frame of the allegations. The complainant agreed she did, said she did not need it, and said she was telling the truth. There was no violation of the rule in *Browne v. Dunn* here.
- [30] It was open to the trial judge to be left with a reasonable doubt about the reliability of the complainant's evidence based on the evidence about her experiencing hallucinations and delusions, in the context of the evidence as a whole. He did not rely on myths or stereotypes about people living with mental illness. He committed no error of law.

2. The trial judge did not consider the evidence piecemeal or apply the reasonable doubt standard to individual pieces of evidence [31] Second, the Crown argues the trial judge considered the evidence piecemeal – in isolation – and that he applied the reasonable doubt standard to individual pieces of evidence, contrary to the principles enunciated in cases such as *R. v. Morin*, [1988] 2 S.C.R. 345, and *R. v. Rudge*, 2011 ONCA 791, 108 O.R. (3d) 161, at para. 63, 65, and 67-68, leave to appeal to refused, [2012] S.C.C.A. No. 64. We did not call on amicus to respond to this ground of appeal.
- [32] Once again, the resolution of this issue does not turn on any disagreement about the governing law. Rather, it turns on whether the trial judge's reasons demonstrate the errors contended for by the Crown. We are not persuaded that the trial judge considered individual pieces of the evidence in isolation or applied the reasonable doubt standard to individual pieces of evidence.
- [33] I begin by observing that the reasons for judgment contain detailed self-instructions on the presumption of innocence, the Crown's burden of proof beyond a reasonable doubt, and how that burden applies to issues of credibility and reliability. Importantly, the trial judge specifically instructed himself that "the beyond a reasonable doubt standard does not apply to individual pieces of evidence, but instead is considered once the evidence can be viewed as a whole", and referenced the governing authority of *Morin*.
- [34] The Crown relied on several areas in its written submissions to argue that the trial judge considered the evidence piecemeal and applied the reasonable doubt standard to individual pieces of evidence. I have considered all of the areas argued by the Crown, but I focus my reasons on the two areas the Crown emphasized in oral submissions.
- [35] One Crown witness at trial was a woman who saw the respondent and the complainant in a hotel elevator and observed what she perceived to be sexualized contact between them that was not appropriate for a father and daughter. The Crown argues that the trial judge considered the evidence of this witness piecemeal and failed to consider it in the context of the evidence as a whole.
- [36] I disagree. The trial judge considered this witness's evidence in the context of other evidence and found it did not support the complainant's evidence. In particular, the trial judge noted that the complainant testified that she and the respondent did not engage in inappropriate displays of affection in public. The trial judge's reasoning with respect to the evidence of this witness makes clear that he did not consider the evidence piecemeal because he considered her evidence in the context of the complainant's evidence. While the Crown may disagree with the trial judge's conclusions, his reasons show that he did not consider the evidence piecemeal.

- [37] The Crown also argued that the trial judge applied the reasonable doubt standard to an individual piece of evidence because, in considering whether the respondent's silence in the face of a sexualized text by the complainant constituted an adoptive admission by silence, the trial judge concluded that guilt was "not the only reasonable inference that can be drawn from the [respondent's] lack of response."
- [38] I do not accept that this reference, when read in the context of the reasons as a whole, shows the trial judge applying the reasonable doubt standard to an individual piece of evidence. The trial judge's reference to there being other reasonable inferences for the respondent's silence in the face of the complainant's text was simply the trial judge explaining why he was not prepared to treat the respondent's silence in reaction to the text as an adoptive admission.
- [39] The reasons are clear that the trial judge was concerned about the risks of drawing inculpatory inferences from the silence of the respondent. His concern about the need for caution in drawing inculpatory inferences from the silence of an accused is supported by the jurisprudence about adoptive admissions by silence: *R. v. Robinson*, 2014 ONCA 63, 306 C.C.C. (3d) 242, at paras. 51-58; *R. v. J.F.*, 2011 ONCA 220, 269 C.C.C. (3d) 258, at para. 46, *aff'd* 2013 SCC 12, [2013] 1 S.C.R. 565; *R. v. Ampadu*, 2019 ONSC 1759, at paras. 39-40.
- [40] In *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at para. 69, the Supreme Court cautioned that appellate courts "must not finely parse the trial judge's reasons in a search for error". Although the limits on the Crown's right of appeal from an acquittal to some extent mitigate the risk of such an approach by an appellate court, the concern to avoid finely parsing a trial judge's findings in relation to credibility and reliability remains: see *R. v. Singh*, 2025 ONCA 460, at para. 17; *Chung*, at paras. 13, 33.
- [41] The Crown's submissions on the issue of whether the trial judge considered the evidence piecemeal or applied the reasonable doubt standard to individual pieces of evidence rely on reading brief portions of the trial judge's reasons isolated from the context of the reasons as a whole. The trial judge's reasons demonstrate that he did not consider the evidence piecemeal or apply the reasonable doubt standard to individual pieces of evidence.

Disposition

- [42] The trial judge's reasons provided a comprehensive and contextual analysis of the complainant's credibility and reliability in the context of the evidence as a whole. I am not persuaded he made any legal errors.
- [43] I would dismiss the appeal.

Released: May 11, 2026 "G.T.T."

"J. Copeland J.A."

"I agree. Gary Trotter J.A."

"I agree. J. George J.A."

- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] The complainant's evidence included two statements she gave to police which were admitted as part of her evidence pursuant to s. 715.1 of the Criminal Code.
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